

# STATES OF JERSEY

## OFFICIAL REPORT

TUESDAY, 10th APRIL 2018

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[9:31]

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

## **COMMUNICATIONS BY THE PRESIDING OFFICER**

### **1. Welcome to H.E. The Lieutenant Governor**

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

Again, I am sure Members would wish to join me in welcoming His Excellency to the Chamber this morning. [Approbation]

## **QUESTIONS**

### **2. Urgent Oral Question**

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

Before we start again our Public Business, there is an urgent oral question, which has been listed for first thing this morning that the Connétable of St. Peter will ask of the Minister for Environment.

#### **2.1 Connétable J.M. Refault of St. Peter of the Minister for Environment regarding ...**

Following the refusal of the application for 65 first time buyer homes in St. Peter, would the Minister advise how many homes have been approved under Policy H5 since 2014 and, if none, will he undertake to review this Policy to ensure that it enables the future delivery of parish-led developments which provide homes which seek to maintain the vitality and viability of those parishes?

#### **Deputy S.G. Luce of St. Martin (The Minister for Environment):**

Before I start my answer could I just clarify something, a misunderstanding between myself and my Assistant Minister yesterday? I was in fact in Southampton on States business yesterday and not on a family matter. Policy H5, affordable housing in rural centres within the States-approved Island Plan zoned 2 specific sites for affordable housing. It is envisaged that the total number of affordable houses to be delivered through this policy would amount to no more than 50 units, although it is accepted that other proposals may emerge. The first site in St. Martin was given planning permission in December 2017 for 20 homes and the other site in St. Ouen is also likely to be developed for around 20 affordable homes and no planning application has yet been received. The policy allows for other sites to come forward to support the viability and vitality of Jersey's rural settlement, although to date no formal planning applications for other sites have been made under this policy.

#### **2.1.1 The Connétable of St. Peter:**

The question I would like to further ask the Minister is, given that the parishes of St. Peter, St. Ouen, St. John, St. Martin and Grouville, currently have in excess of 500 applicants for affordable first-home buyer homes described by the Planning Officer at the independent planning officer hearing as lists of data on a parish hall wall, can the Minister explain what measures his department used to determine in their evidence to the inquiry that no need exists?

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

The policy is quite clear and I might read it to States Members: "Establish an authoritative evidence base" is the heading and it reads as follows: "The Strategic Housing Unit will publish an annual housing assessment report, which will provide evidence on current and future numbers of

households in need across all housing tenures. This will be matched against the anticipated supply in order to provide the evidence base to support the objectives of the Housing Strategy and inform policy decisions.” I have to say that my department has not been formally advised by the S.H.U. (Strategic Housing Unit) that the current supply in housing planned is not currently met with demand. Indeed, the housing unit must recognise this because they have very recently decided that they are going to review these statistics.

### **2.1.2 Connétable C.H. Taylor of St. John:**

When I took office I was told there was no waiting list but soon it became apparent that there were parishioners wanting affordable housing because the parish had not done any affordable housing schemes since 1992. A full generation has grown up in the parish and in October 2016 a letter went to all parishioners and I have over 170 parishioners with strong ties to the parish looking for affordable housing. Currently I have a scheme ready to go forward looking for 16 houses and I would like to know with some confidence as to whether this is going to be viewed or whether I am wasting my time.

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

I am not sure what the question was, but I will attempt to give an answer. I can only reassert, the Constables who have demand - and I do not dispute that there is demand - need to speak to the Minister for Housing, they do not need to speak to the Minister for the Environment because I have to make a decision on planning applications, I have to follow policy, I have to balance policies, and I need, as it says here, the evidence, which is produced by the Housing Unit, to show that there is more demand than supply and then we move forward. As I have explained to Constables, there are a number of different ways to come forward with applications for these types of schemes, one is to do as we have had from St. Peter, to provide a planning application and test the Island Plan. But be under no illusions, the tests for the Island Plan were considerable in this case. The other one of course is to do, as we have done in the past, is to come to this Assembly and seek to amend the Island Plan, to rezone some sites and move forward in that way. There are a number of different ways of moving forward. But if that demand is there it needs to be properly evidenced and I am not saying that the people coming to the parish halls are not providing that evidence, it is just there is a process to go through, an Island Plan agreed by this Assembly, by which we set policy, by which we allow these sites to move forward and be developed. We need to follow the structure. I would say something else to the Constable, complicated applications, as we know only too well, do not often go through on the first time. We have repeated amendments and we get there eventually and that is what we have to do. I refer Members, before they come back at me again, to the report, and I hope Members have read the report because there is some very interesting stuff in there, and the last thing it says here is that: “The case for St. Peter has not demonstrated to me that there was sufficient justification but rather it would be premature to permit the proposed development ahead of the work already undertaken aimed at providing necessary clarity in respect of the Island’s affordable housing needs.” That is not a glimmer of hope; that is an indication of where we need to be looking. These sort of applications need to go back, you need to look at the inspector’s report, find out where the problems are, challenge those problems, make the changes and come back again.

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

Supplementary, just a suggestion, I know a number of my parishioners do not register through the housing scheme because they do not offer houses in the parish. So there is a disconnect there and perhaps that needs to be addressed somehow and this should be examined by the Minister for Housing. But I put that forward as a suggestion ...

### **The Deputy Bailiff:**

This needs to be a question, this is an oral question, it must have the same rules as questions ...

**The Connétable of St. John:**

Yes, I was going to ask if the Minister agreed with my interpretation.

**The Deputy of St. Martin:**

The Constable has his own interpretation and that may well be correct. But if these people who feel they have demand for property, for houses, are not eligible through the gateway, they need to speak to the Minister for Housing and make sure that they are identified properly and that evidence is brought forward.

**2.1.4 Senator S.C. Ferguson:**

Given the Statistics Department forecast for housing, given the size of the immigration over the past 2 years, which is 185 Le Marais flats - blocks of flats - by 2035, not to mention the occasions where Planning have ignored Island Plan policies, how can the Minister justify the no need for the houses statement?

**The Deputy of St. Martin:**

In the current Island Plan we know there was a demand for a certain number of houses and the applications that we have are either in the construction at the moment or coming forward at the moment meet that demand. Unless the evidence base - and I refer back to it again - is updated and another number for demand is published, there is no need to change the plan. But I accept, if the evidence base changes, yes, the plan will need to change with it.

**2.1.5 Senator S.C. Ferguson:**

Supplementary. Does the Minister not think that, given the reputation, the very solid good reputation of our Statistics Department, does he not think that he ought to listen to them?

[9:45]

**The Deputy of St. Martin:**

I take great notice of the Independent Statistics Unit but, as I can only reiterate again, the need needs to be evidence-based and it needs to be published by the Housing Unit officially to myself and the Planning Department before we can start taking a different view of applications.

**The Deputy Bailiff:**

I have Deputy Martin, the Deputy of St. Ouen, Deputy Tadier and Deputy Andrew Lewis. That will take us well beyond the reasonable time allocated for that, so that will be the limit to questions when they come in now. Deputy Martin.

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

I am sorry but I have very little confidence in this Minister because when I asked him about the 800 family homes that he had planned in St. Helier, had he spoken to the Minister for Education where the children will go, he said no. I have residents, and I do not know where they are from, they were 800 on the housing list last year, they have now been told, this is not one family, they have been phoned and said: "We are not doing anybody over 800" when the list is now 1,000 families. Where does this Minister think there is no demand? He cannot put the 1,000 homes out there and ...

**The Deputy Bailiff:**

This must be a question directed at the Minister.

**Deputy J.A. Martin:**

Yes, the question is, he is telling us the Strategic Housing Unit has said there is no need. Has he been in and spoken to them because there is a need, 1,000 on the first-time buyers list that was 800 this time last year, who is not talking to who? Is the Minister talking to anybody else?

**The Deputy of St. Martin:**

I have said on a number of occasions publicly during my time as Minister that I wanted the Housing Unit to come up with updated figures. I have also said this morning that that has not been done but it is currently work that is underway.

**2.1.7 Deputy R.J. Renouf of St. Ouen:**

I would like the Minister to explain the phrase “sufficient justification” because why can his department not take account of the fact that in St. Peter and in St. John and also in St. Ouen and in a number of other parishes there are lists that have been established of young people who wish to be housed in affordable homes? **[Approbation]** Why is the Minister saying that it is not up to his department to go and verify these lists; he has to receive his information from the Housing Department? Why can his officers not work with the parishes and satisfy themselves that this need exists?

**The Deputy of St. Martin:**

There are 2 things to say there, the one is that Ministers for Planning get criticised but they cannot be judge, jury and executioner. The other thing I would say is that we have a system in place, which currently has a proposed way, the way we do our business, the way we come forward with applications, and those need to change. I would like nothing more than to be able to do all this work. It seems crazy to me that I cannot go out and identify a need, and then identify the fields and identify the applicant and go out and build it, but that is not the way the current system operates. Maybe it is time the system was changed; indeed it would be quicker, simpler, and better for everybody. But I would say to the Deputy that he talks about sufficient justification, but I repeatedly talk to Members on this and it is a question of balancing the current policies in the Island Plan, so it is not just about demand, there are 7 other reasons in the inspector’s report why this particular application should not be approved, spatial, statutory, sequential approach, protecting the natural historic environment, better by design, general development considerations, affordable housing in rural centres, safeguarding agricultural land, there is a long list of reasons why, if you look at the Island Plan, this particular application needs to be changed before it can be approved. Notwithstanding the demand, notwithstanding the green field that is going to get built on, notwithstanding many of those other things, can Members not see there is an opportunity, if this scheme moves forward, to do a wonderful thing in the heart of St. Peter around a village centre, a village green, an area at the heart of that village there that could be so much better and I said ...

**The Deputy Bailiff:**

Minister, this is a question and answer and you have run well over the normal time allocated for giving answers. Deputy Tadier.

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

I am just thinking out loud here but asking: where is St. Helier’s parish housing scheme? It presumably does not have one because it is called social housing in St. Helier. But that is not my question. The question is, to cut to the chase, and I think the nub of this, is the Minister comfortable with green fields and agricultural land being redeveloped, taking it out of agriculture in perpetuity for development of residential housing and is this an indictment on yet another 4 years of continued population failure policy from this, his Government?

**The Deputy of St. Martin:**

As I have just said, the environmental policy ERE1, safeguarding agricultural land, has a strict presumption against building in the green zone, especially when the green zone in question is a green field of green grass with brown cows grazing around in it. This Minister is keen on protecting agricultural land but this Minister is also a realist and there will be times in the future... and I know when we review the next Island Plan there will be enormous pressure on expanding village developments, and I would support that as well because I know only too well how important it is to parishes to keep the vitality in the parish and to keep their young people in the heart of the parish.

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

When there is a net of 1,000 plus people population increase in the Island and that is net, that must mean that there are more than 1,000 new people coming to the Island every year, which far exceeds his Council of Ministers policy of 325, first of all where are these people supposed to be housed and how are people supposed to be linked to the parish and have strong ties to the parish if there 2,000 odd new people are coming to the Island every year? Will they all be housed in St. Helier and the overcrowded urban areas?

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

No, they are not all going to be housed in St. Helier. They are going to be housed around the Island but we have a new Island Plan that will come into effect in 2020, we are going to start reviewing on that very shortly. I know, and as I have just said, the villages, the rural parishes, will all come forward and I would support them to come forward with schemes to develop more parish housing in their parishes so their young families with their young children can stay in the parishes and attend the schools. But I say to the Deputy, he goes on about population, there are more people in work, more people in jobs, we do have a housing challenge with finding places for people to live but we are up for that, Andium are doing a great job and we know the private sector continues to come forward with places that will be built for people to live in.

### **2.1.10 Deputy A.D. Lewis of St. Helier:**

I know the Minister would like to resolve this problem if he could. He said that maybe the system needs to be changed. I would like to know how did it get this far with this particular application where promises were made, expectations were not met, what has happened with the pre-planning process so that these issues could be identified much earlier so that those people that were so excited about becoming home owners, hopes have been dashed, perhaps temporarily, what happened with the pre-planning advice? The issues that the Minister has raised, surely a lot of those would have come out in pre-planning advice. Why did they not before people's expectations were raised?

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

As I indicated right at the beginning, I view this particular refusal and application as the start of the process, not the end of the process. But I would say to the Deputy that we do have some major development companies in Jersey who will not proceed with a planning application until they know they have a scheme, which meets the approval of officers in the department. I do not want to go on and talk too much about the hospital site, but when the first application was refused I sat down with my Chief Officer the next day and I said: "This must never happen again." We must make sure our major States schemes, our major schemes come forward in such a way that there is enough discussion that the application is received and has the support of officers in my department. That would be the best way to move forward and I can only urge people with large schemes to make sure they talk to us. It is always a compromise, there will always be give and take, but the most important thing is that the Planning Department come out with an approval at the end and not a refusal.



**2.1.11 Deputy A.D. Lewis:**

Supplementary. The Minister did not answer the question. So why did the pre-application advice not occur in this particular instance? He is saying that it should have done but clearly it has not. Could he perhaps answer as to why it did not?

**The Deputy of St. Martin:**

I cannot answer the Deputy's specific question. The application comes across my desk at the beginning of the process and unless it goes to an appeal or public inquiry it does not come back before me again and it would not be right that it did. So I cannot answer the Deputy's question but I will go back again and reiterate to officers that we must continue to try to work with all applicants at every stage to make sure that everybody moves forward in the same direction.

**2.1.12 The Connétable of St. Peter:**

If I can just start very quickly and praise the department, particularly one member of the department, the Principal Planning Officer, who worked with us tirelessly from day one, 3 years ago, and took us through every wrinkle, every hoop, and every trough that we had to go through.

**The Deputy Bailiff:**

Connétable, this does have to be a question.

**The Connétable of St. Peter:**

I will get to it. Just to say that we went through every process, guided by a member of the department right the way through. Two words: one Government - this is what we want, one Government, and to rely on people to come and tell me what needs to be done is not an answer, it is about Government working together, talking to each other.

**The Deputy Bailiff:**

Connétable, I appreciate your feelings run high, but this is really a speech, it is not a question. Could you please ask a question?

**The Connétable of St. Peter:**

Sorry, yes. I do not think I have another question for the Minister.

**The Deputy Bailiff:**

Thank you very much.

**PUBLIC BUSINESS – RESUMPTION**

**3. Jersey Consumer Council: appointment of Chairman (P.67/2018)**

**The Deputy Bailiff:**

The next item of business is the Jersey Consumer Council: appointment of Chairman lodged by the Minister for Economic Development, Tourism, Sport and Culture. I ask the Greffier to read the proposition.

**The Greffier of the States:**

The States are asked to decide whether they are of opinion to refer to their Act dated 2nd February 2011 regarding the Jersey Consumer Council and, in accordance with paragraph (b)(ii) of Jersey Consumer Council – future mandate, P.182/2010, to approve the appointment of Mr. Carl Walker

as Chairman of the Jersey Consumer Council for a term of 3 years commencing on 14th April 2018.

**Senator L.J. Farnham:**

Deputy Norton will take this matter.

**3.1 Deputy M.J. Norton of St. Brelade (Assistant Minister for Economic Development, Tourism, Sport and Culture - rapporteur):**

As the Assistant Minister for Economic Development, Tourism, Sport and Culture, with specific responsibility for Consumer Protection, before I move to the proposition itself I would like to place on record my sincere thanks to Advocate Rose Colley for her commitment and enthusiasm leading the Jersey Consumer Council as Chair over the last 6 years. **[Approbation]** I think it would be accurate to say that Advocate Colley has been the driving force in enhancing the profile of the Jersey Consumer Council alongside her voluntary board members and the executive officers and has carried out sterling work in the representing and interests of consumers in Jersey. Some examples, and I will be brief on these: engaging with telecommunications providers, tackling issues regarding such as fibre rollout, roaming charges and bill shock, the introduction of the telco and fuel watch websites, surveying Islanders and organising focus and user groups, and revealing consumer attitudes and experiences on subjects including transport, rental accommodation, primary health, all of which have fed into policy-making decisions. The production of the consumer guides on subjects such as funeral matters, airline and ferry passengers and the rights and energy costs, delivering in partnership with other organisations aspects of the personal social health education curriculum for secondary school children, and active involvement in primary health sustainability projects and of course the organisation of an array of specialist lunchtime talks. Members I am sure will agree that this valuable work carried out for the Consumer Council has been a real asset to our community. I now move on to the proposition today, which is to seek the approval of the Assembly to appoint Mr. Carl Walker as the new Chair of the Jersey Consumer Council for a period of 3 years. The recruitment process was overseen by the Jersey Appointments Commission. The quality of those applicants made the job of the selection board extremely difficult. As you may well know, Mr. Walker has now been offered the role subject to the approval of the Assembly today. There is a brief C.V. (curriculum vitae) of Mr. Walker in the proposition; I do not propose to repeat it. I would suspect that many Members here today have either met or know of Mr. Walker most recently as the creator of the Pride of Jersey Awards. It only remains for me to say that I have great pleasure in recommending that Members approve the appointment of Mr. Walker as the Chairman. I am confident that he will lead the Council into a new era where strong consumer representation is more important than ever. I therefore commend this proposition to the Assembly.

**The Deputy Bailiff:**

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

**3.1.2 Senator L.J. Farnham:**

Can I just add my thanks to that of Deputy Norton's to the former chair and the staff and the board of the Consumer Council. I also take this opportunity as possibly the last time I will be able to thank Deputy Norton publicly for his work as Assistant Minister in my department and the same; I know it is not directly related, to the Constable of St. Brelade, they have been excellent and supportive Assistant Ministers.

[10:00]

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

I would agree with the Assistant Minister that Mr. Walker is an excellent candidate for the Consumer Council because he was the individual that led the *Jersey Evening Post* fair trading or comparative price study that the *J.E.P. (Jersey Evening Post)* ran for a number of years, which was instrumental. So I wonder whether the Assistant Minister would say whether or not there has been any discussions with the incoming Chairman and the Consumer Council to more closely align, while keeping them separate... more closely aligning the work of the Jersey Competition Regulatory Authority, who seem to be completely absent in any understanding of consumer issues, and whether or not that is going to be one of the new driving forces behind the Chairman's appointment?

**The Deputy Bailiff:**

Does any other Member wish to speak on the proposition? I call on Deputy Norton to respond.

**3.1.4 Deputy M.J. Norton:**

Thank you to the 2 speakers for their comments and with regard to Senator Ozouf's comments there I know that Mr. Walker has those very subjects in his sights, it is very early yet and has not yet had the approval of the Assembly, so once hopefully that happens I am sure he will get his feet under the table. He has many, many good ideas on consumer issues and, as I have said before, I am sure the Island will benefit greatly from the work that he is going to do and I am sure that will encompass some of that work that at the moment is involved with C.I.C.R.A. (Channel Islands Competition Regulatory Authority). I once again make the proposition.

**The Deputy Bailiff:**

The appel is called for. I invite Members to return to their seats. Members have had the opportunity to return to their seats. I ask the Greffier to open the voting.

<b>POUR: 41</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy of St. John				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				

Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

**4. Code of Practice for Engagement between ‘Scrutiny Panels and the Public Accounts Committee’ and ‘the Executive’ (P.56/2018)**

**The Deputy Bailiff:**

The next item is the Code of Practice for Engagement between Scrutiny Panels and the Public Accounts Committee and the Executive, lodged by the Chairmen’s Committee and I ask the Greffier to read the proposition.

**The Greffier of the States:**

The States are asked to decide whether they are of opinion to approve the Code of Practice for Engagement between Scrutiny Panels and the Public Accounts Committee and the Executive as set out in the Appendix to the report accompanying this proposition.

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

I am acutely aware of time pressures today so I shall try to keep this relatively short. This has been a long-standing piece of work for the Chairmen’s Committee, partially as a legacy issue that we inherited, but also when we were looking through things it expanded into some other parallel pieces of work, which was aimed broadly at trying to resolve some issues around scrutiny, possibly slightly to raise the standing of scrutiny as well. I will touch on it briefly, I will refer to it under the next piece a little bit, there are some outstanding issues about protection for witnesses who appear in front of scrutiny, because bear in mind it is a parliamentary process and there are issues around parliamentary privilege. We have also had a look at are we slightly deficient, for example, *vis-à-vis* select committees, for example, in the U.K. (United Kingdom) in terms of powers that they now have that we might not have. Anyway, what then this also resulted in is updating what I am going to refer to as the Engagement Code between Scrutiny and the Executive, so obviously there has been quite a lot of work and consultation with the Council of Ministers, with the Law Officers, with the C.&A.G. (Comptroller and Auditor General) and the Jersey Audit Office and what we are being asked to approve today is the result. To just touch on some aspects of what is being approved, it is with the support of the Chief Minister and I hope he will nod in accordance with that in a sec. But there is obviously a very clear expectation of co-operation and the provision of information from Ministers and departments to the panels and P.A.C. (Public Accounts Committee) and it works both ways. So to quote the importance of evidence to an effective scrutiny process is recognised by all parties. The process for the provision of confidential information is defined and then we also establish in the Engagement Code a number of what we hope are unambiguous

timeframes for the completion of certain key processes. One other aspect, which I note was commented on in the media very recently, is on page 6 of the Engagement Code at paragraph 12: “The Council of Ministers will use their best endeavours to try to ensure that all propositions on major policies and legislation are lodged au Greffe at least 6 months before the date of the next elections.” Now that is “best endeavours”; if there is an emergency that can be overridden very obviously, but the idea is to express an intention that hopefully we better organise our work in the future so that we do not get this kind of concertinaing of important propositions in the last few sittings of the Assembly. It is a step in the right direction to try to manage that flow and that is just expressing the intent there. I think on that point I will stop. It has been a piece of work; we worked quite closely obviously in consultation with all the Scrutiny Panels. There have been various iterations and this is the final piece, which has been agreed with the Council of Ministers as well. On that basis I make the proposition.

**The Deputy Bailiff:**

Is the proposition seconded? [**Seconded**] Does any Member wish to speak on the proposition? All those in favour of adopting the proposition kindly show? The appel is called for. I invite Members not in the Assembly to return to their seats. I ask the Greffier to open the voting.

<b>POUR: 39</b>	<b>CONTRE: 0</b>	<b>ABSTAIN: 0</b>
Senator P.F. Routier		
Senator P.F.C. Ozouf		
Senator I.J. Gorst		
Senator L.J. Farnham		
Senator P.M. Bailhache		
Senator A.K.F. Green		
Senator S.C. Ferguson		
Connétable of St. Clement		
Connétable of St. Lawrence		
Connétable of St. Ouen		
Connétable of St. Brelade		
Connétable of St. Martin		
Connétable of St. Saviour		
Connétable of Grouville		
Connétable of St. John		
Connétable of Trinity		
Deputy of Grouville		
Deputy J.A. Hilton (H)		
Deputy J.A.N. Le Fondré (L)		
Deputy K.C. Lewis (S)		
Deputy M. Tadier (B)		
Deputy of St. John		
Deputy M.R. Higgins (H)		
Deputy J.M. Maçon (S)		
Deputy S.J. Pinel (C)		
Deputy R.G. Bryans (H)		
Deputy of St. Peter		
Deputy R.J. Rondel (H)		
Deputy S.Y. Mézec (H)		
Deputy A.D. Lewis (H)		
Deputy of St. Ouen		
Deputy L.M.C. Doublet (S)		
Deputy S.M. Wickenden (H)		

Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

**5. Draft States of Jersey (Powers, Privileges and Immunities) (Scrutiny panels, etc.) (Amendment No. 2) (Jersey) Regulations 201- (P.51/2018)**

**The Deputy Bailiff:**

The next item is the States of Jersey (Powers, Privileges and Immunities) (Scrutiny panels, et cetera) (Amendment No. 2) (Jersey) Regulations lodged by the Chairmen’s Committee and I ask the Greffier to read the citation.

**The Greffier of the States:**

Draft States of Jersey (Powers, Privileges and Immunities) (Scrutiny panels, P.A.C. and P.P.C.) (Amendment No. 2) (Jersey) Regulations 201- The States, in pursuance of Article 49 of the States of Jersey Law 2005, have made the following Regulations.

**5.1 Deputy J.A.N. Le Fondré:**

As I say, this is one of the pieces of work that we were doing when we were looking at the Engagement Code and other matters was the aspect of how Scrutiny Panels operate and putting Scrutiny Panels on to a similar basis where necessary with, for example, select committees in the U.K. and, as I said, there are a couple of aspects that we have touched on. One aspect that came through, which is still outstanding, I just make this as a note of record, is about witnesses appearing in front of panels. As I said, it is a parliamentary process and there are certain protections in place for witnesses who do appear in front of panels. However, there is an anomaly or a gap in part of that protection. That is not what is being debated today. I note as a matter of record it is the type of thought process we have gone through fairly carefully. So what this particular Regulation does is puts us on to the same level as select committees in the United Kingdom, for example, and I believe other jurisdictions, which allows certain witnesses to be placed on oath in front of Scrutiny Panels if necessary. It is anticipated to be used in very limited circumstances but it does raise the standing of Scrutiny Panels up to a select committee. The select committees in the U.K. have had these powers for very many years. On that basis, I make the proposition.

**The Deputy Bailiff:**

Is the proposition seconded? [**Seconded**] Does any Member wish to speak on the principles? Those in favour of adopting the principles kindly show? Those against. Very well, the principles are adopted. I am assuming you do not want to call this in?

**Deputy J.A.N. Le Fondré:**

No. [**Laughter**]

**The Deputy Bailiff:**

How do you wish to deal with the matter in Second Reading?

**5.2 Deputy J.A.N. Le Fondré:**

*En bloc.*

**The Deputy Bailiff:**

There are 2 Regulations, so you propose them *en bloc*. Are they seconded? [**Seconded**] Does any Member wish to speak on the Regulations? The appel is called for. I invite Members to return to their seats. I ask the Greffier to open the voting.

<b>POUR: 39</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A.N. Le Fondré (L)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

### **The Deputy Bailiff:**

Do you move the matter in Third Reading?

### **5.3 Deputy J.A.N. Le Fondré:**

Yes, and in doing so can I just thank everybody who has been involved, particularly the Chairmen's Committee and if I may in particular single out the Deputy of St. Ouen and the Deputy of St. Mary who, as lawyers, were roped in to look at the detailed wording many times in all of the work that

we have done, not necessarily on this one, but also on the Engagement Code as well. On that I move it in the Third Reading.

**The Deputy Bailiff:**

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

**5.3.1 Deputy M. Tadier:**

It is just on a general principle and it is not a criticism or directly linked immediately, although it is obviously linked sufficiently for me to talk about it in the Third Reading hopefully. It is that we have just seen a strange situation about how Jersey legislation and regulations are made and we know that it is a uniqueness of our system that, not only Ministers, not only the Government can bring forward regulations and indeed legislation, provided there is sufficient law drafting time, but Back-Benchers and the scrutiny function can propose and move legislation and regulations themselves. What we have seen today is the strange scenario where you have the same scrutiny body effectively proposing regulations, which then gets offered for them to scrutinise, and I presume I am not the only one in the Assembly that sees the philosophical and practical problem with that. The scrutiny function, which we all stand up here to defend on a regular basis, relies on the fact that there should be at least demarcation, if not separation, between a Government and non-Government and when we have the non-Government part of the Assembly proposing legislation or regulations, which then cannot objectively be offered to be scrutinised by a separate body, that does pose a problem. So again it is not only linked to this particular motion today, but generally I think these issues need to be looked at and I suspect it means that either we start to do things completely properly, where in the future only Government can bring forward certainly legislation, or we look at a system of who can bring what. So I just raise that perhaps at this juncture, which might be appropriate, before the new Assembly convenes in May or June.

**The Deputy Bailiff:**

Does any other Member wish to speak in Third Reading? I call on the Chairman to respond.

**5.4 Deputy J.A.N. Le Fondré:**

Deputy Tadier to an extent does have a point. I would say I was asked in 2 capacities because obviously I am proposing the Regulations as Chairman of the Chairmen's Committee and I was being asked I believe in my capacity as Chairman of the Corporate Services as to whether I wish to scrutinise it, so it was 2 different hats that were being worn at that point. But Deputy Tadier does have a point. He will know that the Chairmen's Committee have made representations in terms of the overall legislation process to P.P.C. (Privileges and Procedures Committee) and obviously we will see how that goes in terms of the length of time, because I think we all do accept this was the slight anomaly, I only found out relatively recently that it would be referred to me, but wearing a different hat obviously. I did have that internal discussion with myself as to whether it might be appropriate to call it in or not, but I concluded it was not worth it. But more seriously the legislation process, and in terms of the speed of legislation, which it goes through, particularly on complex matters, this is a very simple matter, is important and the one plea I would make is that one has to allow time, we know there is this issue, there is certainly a move I believe to allow what we could call in at a First Reading stage, which I think is important; that is almost at the principles stage. But it is allowing sufficient time in both of those stages because certainly in the last few months there has been a lot of pressure on complicated legislation coming through and the ability of scrutiny and the resources and capacity of scrutiny to handle the volume that has been coming through. Part of that is covered in the Engagement Code that I just talked about, which is trying to avoid this kind of compression, because scrutiny can do it provided it has time. But I just make that point and I move the Regulations.



**The Deputy Bailiff:**

All those in favour of adopting the Regulations? The appel is called for. I invite Members to return to their seats. I ask the Greffier to open the voting.

<b>POUR: 41</b>	<b>CONTRE: 0</b>	<b>ABSTAIN: 0</b>
Senator P.F. Routier		
Senator P.F.C. Ozouf		
Senator I.J. Gorst		
Senator L.J. Farnham		
Senator P.M. Bailhache		
Senator A.K.F. Green		
Senator S.C. Ferguson		
Connétable of St. Helier		
Connétable of St. Clement		
Connétable of St. Peter		
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Connétable of St. Mary		
Connétable of St. Ouen		
Connétable of St. Brelade		
Connétable of St. Martin		
Connétable of St. Saviour		
Connétable of Grouville		
Connétable of St. John		
Connétable of Trinity		
Deputy J.A. Martin (H)		
Deputy of Grouville		
Deputy J.A.N. Le Fondré (L)		
Deputy K.C. Lewis (S)		
Deputy M. Tadier (B)		
Deputy of St. John		
Deputy M.R. Higgins (H)		
Deputy J.M. Maçon (S)		
Deputy S.J. Pinel (C)		
Deputy R.G. Bryans (H)		
Deputy of St. Peter		
Deputy R.J. Rondel (H)		
Deputy S.Y. Mézec (H)		
Deputy A.D. Lewis (H)		
Deputy of St. Ouen		
Deputy L.M.C. Doublet (S)		
Deputy S.M. Wickenden (H)		
Deputy S.M. Bree (C)		
Deputy T.A. McDonald (S)		
Deputy of St. Mary		
Deputy G.J. Truscott (B)		
Deputy P.D. McLinton (S)		

**Deputy J.A.N. Le Fondré:**

Can I just take the opportunity, I did not specifically mention them, I referred to them, just also to thank obviously the Officers involved in doing the 2 pieces of work that we have just voted through. Thank you.

## **6. Draft Forfeiture of Assets (Civil Proceedings) (Jersey) Law 201- (P.55/2018)**

### **The Deputy Bailiff:**

In accordance with notification given to the Assembly yesterday, the Chief Minister has deferred P.54, and so the next item of business is the Draft Forfeiture of Assets (Civil Proceedings) (Jersey) Law lodged by the Chief Minister and I ask the Greffier to read the citation.

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

Draft Forfeiture of Assets (Civil Proceedings) (Jersey) Law 201- A Law to provide for the seizure and forfeiture, by way of civil proceedings, of cash and other assets suspected to be property originating, or intended to be used, in unlawful conduct; to confer powers to investigate into the nature, ownership, extent and whereabouts of such property, including powers to search, to require information, and to monitor bank accounts; to create offences of obstruction of, and interference with, such investigations; to compensate owners of property wrongly seized or forfeited; and for connected purposes, the States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

[10:15]

### **6.1 Senator I.J. Gorst (The Chief Minister):**

The Draft Forfeiture of Assets (Civil Proceedings) (Jersey) Law introduces a civil forfeiture regime for Jersey by replacing and extending the current Proceeds of Crime (Cash Seizure) (Jersey) Law 2008 to create a civil forfeiture procedure that would apply to both cash and property held in bank accounts. Freezing and confiscating of tainted property derived from criminal activity remains a key priority for Government in its general commitment to the worldwide fight against financial crime. Following MONEYVAL's onsite inspection of Jersey in 2015, Members will be aware that a Report was published in May 2016, which contained a number of recommendations. The MONEYVAL evaluation team recommended that Jersey could consider the introduction of a non-conviction-based confiscation regime to apply in parallel with the conviction-based scheme. The Government, advised by the Financial Crime Strategy Group, has decided to act on this recommendation, particularly as the 2012 Financial Action Task Force Recommendations and 2013 Methodology place greater emphasis on effectiveness of a financial crime regime. In practice this means to what extent jurisdictions are able to deprive criminals of illicit property. Since the MONEYVAL report, my department in conjunction with the Attorney General's Chambers has been working on this draft legislation to introduce a non-conviction based confiscation in Jersey. The draft legislation has been subject to extensive formation and consultation over the past 2 years, resulting in the legislation we have before us today. As I have said, the legislation proposes to replace and extend the current Proceeds of Crime (Cash Seizure) (Jersey) Law 2008 to create a civil forfeiture procedure that would apply to both cash and, critically, property held in bank accounts. Non-conviction-based confiscation regimes are common in a number of jurisdictions around the world and this legislation has been formed with reference to similar regimes that exist in both the U.K. and Guernsey. They provide a judicial mechanism for authorities to make an application to confiscate assets, where potentially due to an inability to obtain evidence to reach the criminal standard for prosecution, i.e. beyond reasonable doubt, it would not be possible to confiscate such assets. A common use of these regimes may be to confiscate funds that have been frozen for a significant period of time by a bank after a suspicious activity report, known as a S.A.R., has been filed. These situations arise where an account holder may have simply abandoned the funds and has made no attempt to prove their legitimacy further to requests from the bank. It is important to note the judicial mechanisms proposed in the draft legislation incorporate important safeguards to address the rights of the individual in respect of property. As to the structure of the legislation, the

draft law introduces 3 procedural tracks for the operation of the regime. These are (a) preservations of the existing procedure for tainted cash under the Cash Seizure Law; (b) a procedure for the summary forfeiture of property in bank accounts which has been subject to a “No Consent” by the Joint Financial Crime Unit for a period of 12 months; and (c) a procedure for the forfeiture of property in bank accounts which is otherwise suspected to be property that is the proceeds of unlawful conduct or is used/intended to be used in unlawful conduct. I am grateful to the Attorney General and his Chambers for all the support that they have given in bringing forward this legislation. I am also grateful to the Economic Affairs Scrutiny Panel for their involvement and the briefings and the questions that they have provided to officials and the Attorney General and his Chambers through this process. I understand, but no doubt they will say otherwise, that they are broadly content for the legislation to proceed today. I see the proposed introduction of this regime as an enhancement of an already well-functioning system for prevention of financial crime in Jersey. This is evolution and a development of our regime. Overall, this legislation looks to act or acts to reinforce the existing leading position Jersey holds worldwide on the prevention of financial crime and I hope Members will give it their support. I propose the principles of the legislation.

**The Deputy Bailiff:**

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

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

Without wanting to prolong this debate, I do want to ask the Chief Minister, because there is an important issue, which has been raised in recent weeks concerning the potential arrangements for the forfeiture of assets from so-called oligarchs and indeed I have seen the front page of the *Jersey Evening Post* today, it is the *Evening Post*, but it is still the morning, and the front page has a story in relation to a number of companies that are based in Jersey linked with criminal Kremlin-based oligarchs. Questions that have been put particularly to the Attorney General, who may wish to just deal with this, because this is the right and appropriate time to do it; the Chief Minister will recall that I asked specifically what arrangements there could be in Jersey for a so-called Magnitsky Act, which had the objective of effectively seizing assets from named individuals. Now I understand that this law would be a way of achieving the objectives of the Magnitsky Act in the United States, which has been replicated in Canada and a number of other places. I wonder whether or not in his remarks or whether the Attorney General could explain to the Assembly the linkage between what the purposes of Magnitsky Acts in other jurisdictions have with this law that is before us because it seems to me that outwith an extension, which may be considered necessary in future, which is this law deals with just cash, that if that was to be extended to other assets types then we would have effectively the vehicle should the international community and particularly the U.K. Government name individuals that would be subject to the concerns raised by the promoter of this legislation in a number of jurisdictions, then we would have the necessary legislation in order to achieve those objectives. Because I think that is a really important issue. This is not called a Magnitsky Act but I would like the Attorney General or the Chief Minister to say whether or not it could be, if it would be widened, it could be used for the purposes of that, but we are not a self-determining jurisdiction and we would have to take those lists from other places, particularly the U.K.

**The Deputy Bailiff:**

Senator, do you wish the Attorney General to answer it, because he will only answer it if you specifically ask?

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

I will leave it to the Chief Minister and the Attorney General, the Chief Minister is capable of answering, but if he needs to have the Attorney General, who gave a very helpful written answer to my question yesterday.

**The Deputy Bailiff:**

Does any other Member wish to speak on the principles?

**6.1.2 Deputy S.M. Brée of St. Clement:**

The Chief Minister was quite correct in saying that the Economic Affairs Scrutiny Panel had a number of briefings and meetings with the Attorney General on this. The panel at first had an issue with non-conviction-based forfeiture because it goes against the principles of the law under which we live, which is you are innocent until proven guilty. However, it was explained to us by the Attorney General at some length that what this is dealing with is the fact that every opportunity will be given to the account holder to prove that the funds sitting in that account are not the result of criminal activity or are not intended to be used for such activity. It was really this understanding of effectively going, well if a freeze order effectively is placed on an account in a bank in Jersey, you are saying to the account holder: "You have to prove you are innocent." Now that is a difficult concept to get one's head around. However, it was felt by the panel that, while we still have perhaps minor concerns in that area, we are not qualified lawyers; we are not practised in the art of court cases and understanding the procedures. The Attorney General was very clear that at all stages throughout the procedure the account holder has the opportunity to prove that the money sitting in the account is free of any criminal activity. With regards to the question of what does this cover, again it was questions that we asked of the Attorney General, and I am sure either the Chief Minister or the Attorney General will be able to clarify this point, the draft law talks about property held in an account. Now it is possible that in a safe custody account shares can be held, bonds can be held, so this law, as the panel understand it - and certainly I understand it - does extend beyond pure cash, provided that property is held in a transferable form. It is important I feel that we do also look at this in a much wider context than just possibly Jersey. It is important that Jersey is at the forefront of being able to deal with criminal activity. It is important that Jersey has the right legislation in order to deal with situations that may arise. There will be situations that will arise in the future and I think we have to accept that and I think that it is an important part of the overall legislation that Jersey has available to it. We have the Cash Confiscation Law at the moment, which I have to say I was not aware of until I got a briefing from the Attorney General on it. This fits with that. Unless we understand that we have to protect Jersey's reputation worldwide and this goes to doing so, this goes to proving that we have the right set of legislation that a well-regulated finance industry has. Therefore, despite my initial misgivings on this, despite my initial thoughts that a non-conviction-based legislation was fundamentally wrong, I am going to be supporting this proposition.

**6.1.3 Senator S.C. Ferguson:**

I have concerns about this legislation. In the United States, if your assets are seized under their version of this law, it tends to be final and it is difficult, if not impossible, to get your assets back. There have been a number of cases of this where people have been driven into bankruptcy because they happen to have won x-thousand dollars in Las Vegas and it is just taken. Sadly, we do not appear to have any comments or a report on this from scrutiny and I would be grateful for the Attorney General's comments that it is impossible for this to occur under this law in this jurisdiction.

**The Deputy Bailiff:**

Attorney, are you able to assist at this point, given that the question now is directly put to you?

**6.1.4 Mr. R.J. MacRae, H.M. Attorney General:**

Yes, perhaps I can assist in relation to one or 2 issues that have been raised by more than one speaker this morning. To answer the point that I think Senator Ferguson raised, and also I think

that Deputy Brée touched on as well, it is right that there can be no forfeiture under any of the 3 sets of procedures laid out in this law without notice being given to the account holder or the person from whom the cash was seized and a court hearing. As I told scrutiny, in each case the court would ensure that there was adequate time given to any person the subject of a potential forfeiture order in respect of the assets potentially attributable to them between notice given to them and the court hearing taking place.

[10:30]

Further, there would be a right of appeal in each case to the Court of Appeal. Overall, we are clear that the structure of the Law is human rights compliant. It is in some ways not a revolutionary Law in that it is an extension of the principles contained in the Proceeds of Crime (Cash Seizure) (Jersey) Law 2008, which has worked successfully for the last 9 years in relation to seizing tainted cash, usually in large sums from vehicles leaving the jurisdiction, which are believed to be the proceeds of drug trafficking. In relation to the general principle of non-conviction-based forfeiture, I should reassure Members, as I did scrutiny, that this is not a shortcut to forfeiting tainted assets in the sense that if there is evidence, which can be used for the purpose of a prosecution, then the preference of the authorities would be to prosecute a case, convict the offender, and obtain confiscation orders in the usual way. But the reality is that we are an Island and a finance centre and with the best will in the world sometimes it is difficult to secure the documents, the evidence, the witnesses, and even the suspect, all of which are required to put someone on trial in Jersey. As we saw 2 years ago in the Windward case it took 9 years and assistance from 12 other jurisdictions to produce the evidence and documents and witnesses to secure a conviction. So there are cases where cash is held in Jersey accounts, often, it is one of the main points of this law, under an old suspicious activity report filed by a bank or trust company on the police, there is no consent given by the police to pay the funds away, and in those circumstances the funds can be left for a period of years with the purported account holder knowing that these funds are tainted, the bank knowing these funds are tainted, but the authorities being powerless to do anything in relation to those funds. This Law will cure that problem but also provide in every case for the bank and the account holder to have notice of any application to forfeit the funds in question. Finally, in relation to the Magnitsky Act issue, that of course is a development arising in recent years, arising I think out of the death in custody of a Russian citizen who was exposing fraud I think in Russia, and the principle adopted by I think 6 jurisdictions now is to ensure that those jurisdictions have legislation in place to ensure that the proceeds of Human Rights abuses conducted by Government officials stand to be confiscated in the jurisdictions in question. In England and Wales that has been dealt with by an amendment in 2017 to their Proceeds of Crime legislation, which came into effect in January of this year, and what they have done in that jurisdiction is to provide that the proceeds of unlawful conduct are expressly extended by statute to incorporate any monies, which are connected to gross Human Rights abuses or violations. Plainly that new statute is something, which we have not had the chance to examine yet in Jersey in respect of its usefulness or the extent to which it may cover assets, which are not covered by existing legislation in Jersey. But one thing I can say, and I have said in the answer, which I filed yesterday, is that, although the new Law in front of the Assembly today does not refer to gross Human Rights abuses or violations, the fact is that the definition of unlawful conduct and tainted property within this law is in my view wide enough to include gross human rights abuses and violations in other countries because all such conduct would amount to unlawful conduct as a matter of Jersey law as it currently stands. But, nonetheless, if there is any evidence of property being held in Jersey, which might be covered by wider legislation, then of course that will be looked at urgently by my department and of course by the Chief Minister. I hope that answers the questions that I have been asked this morning.

#### **6.1.5 Deputy A.D. Lewis:**

Can I just ask a question of the Attorney General while he is on his feet? Attorney General, are you saying that there already exists a number of bits of legislation under the Proceeds of Crime Law that currently we have in place that enables assets to be seized already and in effect frozen? So what is it that this legislation does that does not already be achieved by other Proceeds of Crime regulations and legislation?

**6.1.6 The Attorney General:**

The current legislation in relation to tainted property seized domestically, where there is no criminal proceedings afoot here or in other jurisdictions, is limited to cash only. There are provisions in relation to interim seizing or forfeiture of assets in Jersey of any nature in relation to domestic criminal proceedings or foreign criminal proceedings, but in the absence of foreign criminal proceedings or domestic proceedings there is currently no mechanism to seize and forfeit tainted assets, which are not cash. This Law extends the Cash Seizure Law to property held in bank accounts, which currently cannot be the subject of any proceedings in relation to forfeiture of such assets absent any criminal prosecution in Jersey or another jurisdiction. I hope that answers the question that Deputy Lewis asked.

**6.1.7 The Connétable of St. John:**

Yes, to the Attorney General, mistakes do happen and if assets are forfeited it is simpler in the case of cash but where they are other assets, which are prone to market fluctuations, if it is proved that they were not tainted, is there a process of compensation due to market fluctuations for the value that the true owner might or might not suffer?

**6.1.8 The Attorney General:**

There are compensation provisions under the Law at Article 30 and there is always, in relation to the situation where perhaps someone did not discover the forfeiture proceedings because they were not notified, perhaps they were somewhere else or did not receive the correspondence, or for any other reason there is an injustice, there is always the opportunity to appeal to the Court of Appeal out of time in relation to assets that might theoretically be wrongly forfeit.

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

I am extremely pleased to hear what the Attorney General says in his answer, it is going to be a huge comfort to people to hear that the Magnitsky Act provisions could be extended with such a piece of legislation for us. Except, I wonder if the Attorney General could explain in clearer terms, if I have not understood it, the definition of “assets” because the provisions of the equivalent Magnitsky Acts do cover non-cash property and this law does only deal, as I read it, with the assets held within a bank account, must therefore be cash. So could he just explain exactly what the development could be and what this definition again of “assets” is, because I do not think it is clear.

**6.1.10 The Attorney General:**

The current legislation, the Cash Seizure Law, only applies to cash. Although the definition of property within the definition section in this law is wide, the forfeiture provisions under Parts 3 and 4, which deal with non-cash items, only apply to property held in bank accounts. If in due course it is thought that we need to widen the scope of property caught by this law then there will need to be an amendment to the Law.

**6.1.11 Connétable S.W. Pallett of St. Brelade:**

Just on the issue of compensation the Constable of St. John has just brought up and the Attorney General has mentioned Article 30, I know it is unlikely or very rare that mistakes will be made, but in regards to Article 30, there are reasons given in regards to considering compensation and one of them is: “(c) Any other relevant circumstances.” I just wondered whether the Attorney General

could say whether that included damage to the character or damage to the reputation of a business for example, because some of the people that might be involved with this could be very wealthy and any potential compensation could be quite high. In regards to that, the compensation ordered to be paid under this Article is to be paid by the States. So I want to know if there is any limit to the liability of the States in regards to any compensation made and how will it be paid? Would it be automatically paid by the Treasurer or would it be paid through a States proposition? I just want to know how compensation would physically be paid. If it was a States proposition clearly it would be for this Assembly to decide, but just interested in how that would be paid.

**6.1.12 The Attorney General:**

The compensation would be paid by the States, the amount is not limited, but the Members will see that compensation is only payable in circumstances where there is evidence of bad faith. As to the Constable's question in relation to the reputation of a business, the court is entitled to take into account other relevant circumstances and I daresay that might, in appropriate circumstances, include that consideration.

**The Connétable of St. Brelade:**

Can I just ask, in terms of how would that be paid, would it be a States proposition or would it be purely a decision of the Treasurer?

**The Attorney General:**

It would be payable pursuant to a court order by the States.

**The Deputy Bailiff:**

Does any other Member wish to speak on the principles? I call on the Chief Minister to respond.

**6.2 Senator I.J. Gorst:**

I am not sure if it is a good sign that we have already started to discuss the details of the Articles on the principles or not. I am of course extremely grateful to the Attorney General for his clarificatory remarks. I am not sure there is a great deal more for me to answer. With regard to Senator Ferguson perhaps I could just further confirm that there are safeguards throughout the Law that we will come to in the Articles. Authorities will have to apply to the courts with the owner of course being able to apply to the court for return of those assets as well. There is a proper and reasonable notification process and time periods granted to the owner. Senator Ozouf is right that this law does cover some of the provisions in the Magnitsky Act but there may, in due course, as the Attorney General suggested, be a need, and that need is looking greater perhaps post the U.S. (United States) issuing its Treasury Notice than it might have done before, with regard to an extension and a clarification that Human Rights breaches are included and potentially also a need to extend for the asset classes as well. But, as Deputy Brée said, this is an important piece of legislation. It will maintain us at the forefront of those jurisdictions following evolving standards and showing that we can maintain the very highest standards here with the appropriate safeguards as well. We are not absolutely at the forefront because, as we said earlier, others have got similar provisions, but it maintains us in the front line of jurisdictions, which is something that I think right across this Assembly we agree is absolutely necessary and is in our best national interests, so I maintain the principles. I call for the appel.

[10:45]

**The Deputy Bailiff:**

The appel is called for. I invite Members to return to their seats. I ask the Greffier to open the voting.

<b>POUR: 34</b>
Senator P.F. Routier
Senator P.F.C. Ozouf
Senator I.J. Gorst
Senator L.J. Farnham
Senator P.M. Bailhache
Senator A.K.F. Green
Senator S.C. Ferguson
Connétable of St. Helier
Connétable of St. Peter
Connétable of St. Mary
Connétable of St. Brelade
Connétable of St. Martin
Connétable of St. Saviour
Connétable of Grouville
Connétable of St. John
Deputy of Grouville
Deputy J.A.N. Le Fondré (L)
Deputy K.C. Lewis (S)
Deputy of St. John
Deputy J.M. Maçon (S)
Deputy S.J. Pinel (C)
Deputy R.G. Bryans (H)
Deputy of St. Peter
Deputy R.J. Rondel (H)
Deputy S.Y. Mézec (H)
Deputy A.D. Lewis (H)
Deputy of St. Ouen
Deputy L.M.C. Doublet (S)
Deputy S.M. Bree (C)
Deputy M.J. Norton (B)
Deputy T.A. McDonald (S)
Deputy of St. Mary
Deputy G.J. Truscott (B)
Deputy P.D. McLinton (S)

**CONTRE: 0**

**ABSTAIN: 0**

**The Deputy Bailiff:**

Deputy Brée, presumably your panel, having spoken, does not wish to ...

**Deputy S.M. Brée:**

No, we do not.

**The Deputy Bailiff:**

How do you wish to deal with the matter in Second Reading?

**6.3 Senator I.J. Gorst:**

We are looking as though we are going to, today, enjoy an abundance of time. It did not quite look like that when we started. I will endeavour to, because it is an important piece of legislation, keep it ... not be too lengthy in my explanation but it does need to be given appropriate justice. So, if I take the 3 parts separately ... sorry, 5 parts, I shall endeavour to address them now, I think, all *en bloc* and then we can answer any questions as we go through. So, part 1 provides for the



interpretation of the law. Part 2 replaces and updates the provisions of the Proceeds of Crime (Cash Seizure) (Jersey) Law 2008. Part 3 deals with the new procedures introduced by the regime for the forfeiture of tainted property which, in summary, may occur in one of 2 ways. First, as provided by Article 10, the Attorney General may, where there are reasonable grounds - and that is important, reasonable grounds - to believe that property held in a bank account in Jersey is tainted property and a suspicious activity report has been made, serve a notice on the holder of that account. In relation to property which is suspected to have been tainted but which, in respect of no report of suspicious activity having been received, the Attorney General may apply to the Bailiff under Article 12 for a property restraint order prohibiting withdrawal, transfer or payment out of the property specified in the order. As I said, there are a number of important checks and balances in the legislation. Article 16 confers rights of appeal against forfeiture orders. Article 17 makes provision as to the inter-relationship of property restraint orders and forfeiture orders with proceedings for bankruptcy. Part 4 confers additional investigative powers on the Attorney General and authorised officers in connection with several forfeiture investigations defined by Article 18. Articles 19, 22, 23 and 24 provide for the making of, respectively, production orders, customer information orders, account monitoring orders and disclosure orders. Article 20 sets out the circumstances in which the Attorney General, or an authorised officer, may apply for a search warrant in relation to premise on which it is suspected there may be material of substantial value in relation to a civil forfeiture investigation. Part 5 of the law makes miscellaneous general provisions. Article 26 provides that proceedings, except offences, under the law are civil proceedings to be determined on the balance of probabilities. Article 27, again, is a check and balance which enables victims of crime who have been deprived of property which is the subject of proceedings under this law to apply to the court for that property to be released to them, prior to the making of any forfeiture order in respect of the property. Articles 28 and 29 limit the liability of the Viscount and the Attorney General, respectively, in carrying out their functions under the law, unless any act is done in bad faith. We discussed this in the opening principles, under Article 30, provision is made for compensation to be payable where a person has suffered loss as a result of an act done in bad faith, which, I think, is slightly different from what the Constable of St. John was trying to ask of the Attorney General, so it is important that Members are aware of Article 30. Article 31 creates a general offence of obstructing the Attorney General or an authorised officer in the lawful exercise of powers under the law, punishable by imprisonment. Article 32 creates an offence of tipping off. Article 33 makes general provision as to liability of directors and similar officers of certain bodies for offences committed by those bodies. Article 34 confers power on the court to consent to settlement of proceedings under various Articles and Article 35 makes a consequential amendment to the Civil Asset Recovery (International Co-operation) (Jersey) Law 2007, and Article 36 effects the repeal of the Proceeds of Crime (Cash Seizure) (Jersey) Law 2008. Article 37 is the citation. I will endeavour to answer any questions and of course lean heavily upon the learned Attorney in doing so. Thank you.

**The Deputy Bailiff:**

Are the Articles seconded? [**Seconded**]

**6.3.1 Senator S.C. Ferguson:**

Going on a bit from the Constable of St. John's comments. What happens if, under Article 17, an individual is made bankrupt by the forfeiture of assets and then it turns out that the forfeiture was incorrect and the assets are refunded but it is too late, he has got the stigma of having been declared bankrupt; what happens then?

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

I wonder if the Chief Minister could comment on whether or not he will, as a result of this debate and the remarks of the Attorney General, bring forward a further extension of this law that covers those assets that were clearly explained by the Attorney General in the debate on the preamble that ensures that the Articles are updated to recover other forms of assets. In doing so, in his opening remarks he explained the relevance of the international community, it was the I.M.F. (International Monetary Fund), I think, oversight group that was responsible for advising this step to be taken and I am familiar with that. Would he confirm whether or not the recommendations of the I.M.F. would be ... it would be compliant with those recommendations to extend the definition of “cash”? Or the Attorney General could answer that as well being the expert.

### **6.3.3 Senator P.M. Bailhache:**

I rise only to follow up, I think, the interventions of Senator Ozouf in relation to the Magnitsky Act and also the intervention by Senator Ferguson. I remember when I held the office held by the Attorney General, many years ago, that I had a conversation with a very senior police officer from the States of Jersey Police who had just returned from a visit to Florida. In Florida he had been taken by the United States police to inspect a whole row of the most wonderful fast speedboats that were then in the custody of the United States police authorities. The Jersey police officer said: “How on earth did you get hold of those wonderful boats which are obviously very useful to pursue drug traffickers?” who were at that time, probably still now, conveying drugs from South America into Florida. The police officers explained the new United States legislation which allowed property to be forfeited and in default of any explanation from the purported owner of the property, that it was *bona fide* property and not the proceeds of crime or being used to assist in crime in some way, then that property could be forfeited to the authorities. I was thinking of that when Senator Ferguson was making her speech because I am not sure that this law goes far enough. I would like the Attorney General or Chief Minister, if he would like, to deal with it but alternatively the Attorney General to tell me whether I am correct that although tainted property is defined sufficiently widely to enable it to embrace things like fast speedboats used to convey drugs and therefore that that property could be the subject of a forfeiture order. When it comes to the question of restraint, the restraint only bites upon moveable property which is contained in a bank account, and so that in theory such a fast speedboat could be moored in St. Helier harbour but could not be made the subject of a restraint order, what used to be called a *saisie judiciaires*, I think, although it could ultimately be subject to a forfeiture order made by the Royal Court. I do not know whether this was a deliberate odyssey decision, it might have been for good reasons. But I wonder if the Attorney General could explain whether I am correct in the provisional conclusion that I have drawn and whether this issue was the subject of any discussion and whether, in fact, it might be the subject of further discussion particularly in the light of the interventions made by Senator Ozouf in connection with property shown to be the proceeds of human rights abuses or other criminal activity.

### **The Deputy Bailiff:**

Does any other Member wish to speak in Second Reading? Chief Minister, do you wish the Attorney to address these points or do you wish to address them yourself?

### **Senator I.J. Gorst:**

It would be rude of me to stand when the Attorney is already standing, Sir.

### **The Deputy Bailiff:**

Yes. [Laughter] Attorney, are you able to assist the Assembly?

### **6.3.4 The Attorney General:**

Perhaps I am the rude one there. Dealing, if I may, with 2 of the points that are raised, the point that Senator Ferguson raised in relation to Article 17 of the draft law in relation to bankruptcy, perhaps I can explain what Article 17 does or is supposed to do. It is not supposed to deal with a circumstance where someone is made bankrupt as a consequence of an order made under the law. It is simply to ensure that where a property restraint order, which of course is an interim order that can be set aside on the application of a person, effectively is made in relation to property, and the person who is connected to that property subsequently becomes bankrupt then that property is ring-fenced from the estate of the bankrupt in his bankruptcy. Moving on to the point that Senator Bailhache made, yes, he is absolutely right in his analysis of the law. Can I indicate that of course *saisie judiciaires* are still sought and obtained under the Proceeds of Crime Law where there are criminal proceedings extant in Jersey or indeed in other jurisdictions and orders are made in this jurisdiction in aid of those foreign criminal proceedings.

[11:00]

Such orders can and do extend to speedboats, cars, property of all nature, fine wine and so on, which is held in Jersey. He is right that this law extends principally, indeed exclusively in terms of forfeiture, to cash and property held in bank accounts. It was not a mistake it was a deliberate policy decision to focus on assets held in the finance industry, in its broadest sense, through banks that were tainted. But speaking for myself, although it is principally a matter, of course, for the Assembly in due course, I am encouraged by the view expressed that in due course this law might be revisited to ensure that the scope of orders made by the law might extend to a wider variety of property than cash and property held via bank accounts.

### **6.3.5 Senator I.J. Gorst:**

Perhaps I should start by apologising. I was told that, as I was going through the Articles, I was rather quiet. I think it is probably because I have got a cold, so I apologise to Members if they could not hear me. Sometimes one brings a piece of legislation to the Assembly concerned that Members may feel it is too restrictive and goes too far, if I might use that term. So it is a pleasant surprise for me, and perhaps it goes to show how the public mood changes over time, that today Members are wishing it to be more broad or greater in its reach with regard to the items that Senator Bailhache has referred to. Of course, as the Attorney General said, they are and can be covered but also with regard to the issues that Senator Ozouf raised, he, of course, was responsible for financial services in his role and therefore started this work with officials working with the Attorney General and the Attorney General's chambers. I suspect little did he know, when he started that work, that we would be debating this piece of legislation on the very same day that the *Jersey Evening Post* has the headline that it does within a matter of days that the U.S. Treasury issued its note, on either Thursday or Friday of last week, I cannot recall exactly which day it was. We sometimes like to focus on individuals and we have been having a debate, not only in this Assembly but in the wider public, about a number of individuals who have been given licences to take up residency here or who already have residency here. But the issues that the U.S. Treasury notice raises are not about those individuals *per se* but about their assets and their wealth and how it was arrived at. I think I have already said during this debate, we do follow E.U. (European Union) sanctions and U.N. (United Nations) sanctions and that is one of Senator Bailhache's current responsibilities, to implement those sanctions. But what we are seeing internationally, certainly in the U.S. and what we are seeing in the U.K. as well, is making us consider how we would respond and what our response should be to individual states making such notices and freezing orders and sanctions because what is certain is, of course, we do not have the infrastructure and all the requirements of that infrastructure, nor would we wish to, I do not think, on gathering that information or that intelligence, shall we say, which gives an indication of the type of infrastructure that one would require in order to just have our own processes in this regard. That, I suppose, is a

long way of saying to Senator Ozouf he is of course right; once this law gets approved we really will need to take another look at it to see whether, certainly those human rights violations issues need to be put in black and white in the law to make that clear and also the extension to other asset classes. This law will take us to the forefront with the front running pack as we have had a policy position of doing elsewhere. But as we know with these international standards, what is acceptable and how finance and international finance centres like ours should respond to them is ever changing and ever evolving. We must also change and respond as well because this is primarily, of course, about our business and financial services sector, showing that we meet the very highest standards and that we have all the tools available to us that one might expect to find in a country much larger than ours, much more complex than ours and showing that we can still meet those standards despite the nature of our size. It may be that we need to think about extensions in those other regards as well. I am not sure that there were any other items other than to say that the compensation, and I tried to make it clear as I went through the Articles, is awardable if the Viscount and the Attorney General have acted in bad faith. It is important there is understanding that there is a caveat there in that regard for compensation to be issued by the court, and it is issued by the court as a court order, therefore, because it has been issued by the court, the States would have to be under an obligation to pay it otherwise they would be in breach of that court order as well. So, I maintain the Articles in Second Reading and call for the appel.

**The Deputy Bailiff:**

The appel is called for. I invite Members to return to their seats. I will ask the Greffier to open the voting.

<b>POUR: 34</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of Grouville				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				

Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

**The Deputy Bailiff:**

Do you wish to deal with the matter in Third Reading?

**6.4 Senator I.J. Gorst:**

If I may, I just want to thank the Attorney General and his chambers, thank my officials who seem to be busier and busier every day dealing with issues in the international arena and showing that we can act appropriately in that international arena with the highest expertise and professional individuals, and this is just another piece of legislation which shows that. Perhaps I would also like to thank - I will get its name correct - all of those who sit on the Financial Crime Strategy Group. They have been involved in this process as well and they will continue to have a growing role as we continue to show to the world that we are at the forefront of fighting issues of anti-money laundering, dealing appropriately with the proceeds of financial crime and ensuring that we are not, in the first instance, used in that regard. But if we are, then we can hold people to account: we can freeze assets, we can return them to other countries and to those to whom they belong. So I thank all of those who have been involved in getting us to this stage. Thank you.

**The Deputy Bailiff:**

All Members in favour of adopting the ... the appel? Thank you very much indeed. **[Laughter]** All Members in favour of adopting the law in Third Reading, kindly show? Those against? The law is adopted in Third Reading.

**The Deputy Bailiff:**

Coming to the next item I will announce the lodging of the Referendum Commission report, the Draft Referendum (Presidency of States Assembly) (Jersey) Act 201-, presented by the Privileges and Procedures Committee (P.76/2018).

**7. Draft Human Transplantation and Anatomy (Jersey) Law (P.57/2018)**

**The Deputy Bailiff:**

The next item is the Draft Human Transplantation of Anatomy (Jersey) Law lodged by the Minister for Health and Social Services. Before I ask the Greffier to read the citation, are you happy to read this as amended?

**Senator A.K.F. Green:**

Yes, please, Sir.

**The Deputy Bailiff:**

They are amendments proposed by the Minister. Are Members happy to accept them as amended? I will ask the Greffier to read the citation.

**The Greffier of the States:**

Draft Human Transplantation and Anatomy (Jersey) Law 201-. A Law to make provision concerning the storage, removal and use of the body, or relevant material from, the body of a deceased person for transplantation, teaching of anatomy, medical education or research and therapeutic purposes, and for related matters. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

**The Deputy Bailiff:**

Yes, Minister.

**7.1 Senator A.K.F. Green (The Minister for Health and Social Services):**

I am pleased to be able to bring this draft law, as amended, to the Assembly today. But before going into detail I would particularly like to place on record my thanks to the Health and Social Security Scrutiny Panel for its report on my plans to introduce the new opt-out deemed consent organ donation system. In reviewing the draft law, the panel raised a number of constructive points in policy and legislative matters and it is for that reason that I have amended this draft law in response to recommendations in the Scrutiny Panel's report. I will speak more about this later but at this point I just wanted to acknowledge scrutiny's helpful role in reviewing and improving this legislation; a critical friend indeed. Over a year ago I announced to the Assembly my desire to facilitate a change in the approach to organ donation in Jersey. I wanted to make it easier for Islanders to donate their organs and potentially, therefore, to save lives. But above all, I was keen that any change in approach encourage people to have a conversation with their families, with their loved ones, with their friends about donating, while still fit and well rather than leaving it until the emotive aftermath of a fatal accident or illness. I have always believed that few words now can make such a big difference later on. We should not forget that donating an organ saves lives and substantially improves the recipient's health and quality of life, with all the society benefits that follow from that. It can mean that something positive emerges from the tragic loss of a loved one. There is a growing acknowledgement that more can be done to increase the supply of organs for transplant. Hundreds of people die every year in the United Kingdom while waiting for organ transplant. An estimated 6,500 people are currently on the waiting list. Organ donation and transplantation crosses borders and we need to look beyond the issue and the implications that are held here in Jersey. Islanders may have friends or relatives off-Island who are waiting on the waiting list for an organ donation and people in Jersey who are waiting for an organ donation but their organ donation is most likely to come from a U.K. donor. In 2017, 8 Island residents received a transplanted organ. My hope is that the new deemed consent opt-out approach set out in the law before us today will help to raise the profile of organ donation and make it the norm here in Jersey. At the moment many people only realise the importance of organ donation when they become exposed to it, and we know that talking about death is always difficult and not something which most of us wish to contemplate. This was perhaps reflected in Islanders' answers to the questions on organ donation included in the 2017 Jersey Opinions and Lifestyle Survey where three-quarters of adult respondents wanted an organ transplant if they needed one, with only 6 of the respondents turning that option down.

[11:15]

Over half said they would wish to donate with one-third not sure and 14 per cent saying they would not. Promoting discussion of organ donation is one - as I said before - of the key aims of moving to a deemed consent process. The need for this is evidenced by the fact that, according to the survey, overall around two-fifths of adults have informed their family of their wishes; only two-fifths of adults have informed their families of their wishes upon their death. Somewhat ironically, proportionately fewer of those who do not wish to donate their organs, have had that conversation. So the ability to actively choose to opt out, under the deemed consent system, would make clear

such wishes which might otherwise have remained unknown. Members may ask why now do we want to change the law. I think it is fair to say that in recent times there appears to have been a general positive shift in how people view organ donation. A catalyst for change has been the move by the Welsh Government, in December 2015, to a system of what is termed “deemed consent” where people are deemed to have consented to donating their organs unless they have actively opted out. The Scottish Government has also announced its intention to introduce similar legislation to Wales, supporting what it terms as a “soft opt-out system”. England, Ireland, Guernsey and the Isle of Man have all begun to look at this issue with the aim of adopting similar approaches. France moved to the system of “presumed, therefore deemed consent” in January last year. In fact, deemed consent and opt-out systems are now becoming the norm across European states. The current system in Jersey and the U.K., other than in Wales, is one where individuals who wish to donate can choose to sign up to the O.D.R. (Organ Donor Register). This is sometimes called “expressed consent”. Jersey has a relatively low proportion of people registered as organ donors, officially around 12 per cent compared to the U.K.’s 36 per cent. Even then, we know there has been a difficulty with the driving licence but even if those are taken into account then our proportion may double to 24 per cent. It still lags behind the U.K. Yet evidence from the Jersey Opinions and Lifestyle Survey suggests that only a quarter of those who said that they were happy to donate their organs are on the organ donation register. Of the 78 per cent who are not on the register, less than one-fifth have failed to do so because they do not wish to donate. Over 60 per cent have not registered because they have not got around to it. I wonder how many of us that might apply to. Some are not sure how to or do not realise that Jersey residents can register. A deemed consent system that is being proposed will alleviate all of those issues. While few deaths in Jersey occur in circumstances where the person is able to donate their organs, this makes it even more important, when an opportunity does arise, that the chances of organ donation are considered. In the year to 31st March 2017 there were 3 deceased donors in Jersey whose organs were transplanted to 9 different individuals. Per head of population the number of organs donated by the Island holds up well. In 2018, 12 people in Jersey are waiting for transplant. Just to be clear, what is the new system for organ donation that I am proposing for Jersey? The new system being proposed, as I said before, is the deemed or presumed consent or an opt-out system of organ donation. By saying opt out, that means that those who do not wish to consent opt out of the system. This means that the default legal position is one where adults are deemed or are considered to have given their consent unless they have, as I said, specifically opted out. This approach will permit organs to be donated in cases where, for example, a person had not been opposed to donation but had simply not got around to signing up to that organ donation register. As I said before, this is often the case that we are faced with at the moment. Individuals who opt in will still be able to exclude particular organs if they so wish. As an aside, a friend of mine was quite happy for all of their organs to be donated when the time came but not their eyes for some reason best known to them. So, people will be able to say: “I consent to my organs being donated” but not a particular organ if they so wish. In the Jersey Opinions and Lifestyle Survey, such a presumed deemed consent approach to donation was supported, as I have said, by over half of respondents with 19 per cent not sure and 29 per cent saying no. I think it is reasonable, therefore, to suggest that with further information on the arrangements for safeguarding of vulnerable groups, for example, a significant number of those who are not sure may well be willing to move into the deemed consent area. After all, if they were inclined to oppose the idea out of hand they could easily have done so. I just think for many people they have not thought about it or discussed it. I would like, now, just to look at the safeguards that will be in place to protect vulnerable groups. This was something that the Scrutiny Panel was particularly interested in. The Scrutiny Panel noted that the move from an opt-in to an opt-out system means that appropriate safeguards are required to protect vulnerable groups and also to provide those people who do not wish to donate their organs with a means of opting out. The panel went on to say: “On the evidence that we have

received as part of our review we are satisfied that the Minister's opt-out proposals provide these protections. These safeguards mean, for a number of specific groups, that deemed consent does not apply. These groups are: persons under 18 years of age, adults who have not ordinarily been resident in Jersey for 12 months immediately before dying, and those who lack capacity to understand the notion of deemed consent and therefore the option to opt out from that system. That is not to say that people falling within those groups cannot donate their organs but instead expressed consent would be required in their case, whether that consent be expressed by the individual himself or herself or expressed by their representative, i.e. a parent in the case of a child." I would like to say a little more about safeguards, taking children first. A requirement for expressed consent to donate their organs will apply to anyone under the age of 18. This expressed consent would have to be given by a parent or a guardian if they were under 16. Of course there is nothing stopping a child making clear in discussion with their parents their views on the matter but it would be for their parents or for their guardians to make the final decision. A young person aged 16 or 17 may be able to give their own expressed consent where they are competent to do so, i.e. it would appear to a reasonable person that the young person has sufficient understanding of an informed decision. If they fail to give expressed consent in their lifetime then expressed consent would be required from their parents or their guardians. In relation to people lacking mental capacity to understand that they have a choice to opt out, they too would not be covered by the deemed consent. Expressed consent would apply when a person, over a period of time before their death, does not have the mental capacity to make a decision on donation due to cognitive impairment. This means that they could not understand views or weigh-up the information presented. In such cases, expressed consent would be required from someone appointed on their behalf to make such decisions for organ donation to go ahead or by their family. In common with the Welsh legislation, and likely to be the arrangements in Scotland, it is proposed that deemed consent would not apply in cases for people who, at the time of their death, have not lived in Jersey for a period of 12 months continuously. This would safeguard people who have been on the Island for only a short time who might not have been aware of the arrangements and therefore their opportunity to opt out. Visitors to the Island, obviously, would not be considered as having given deemed consent. If a visitor to Jersey died while on the Island and they were thought by medical staff to be a suitable donor, checks would be made to see if they were on the organ donor register. If they were, then efforts would be made in the usual way to contact their next of kin regarding medical checks and authority to proceed. Scrutiny also highlighted the important role families will continue to play in organ donation process. In its report, and I quote, it said: "Family members and the next of kin must continue to be treated sensitively; with care and respect as they ultimately have the final say on whether their loved one's organs can be donated." I think nobody would disagree with that. While in law the emphasis may change from a situation where individuals are giving expressed consent to one where they are giving deemed consent, it is still the families that have an important role to play in the organ donation process. The support of the family is key. Key in providing background information on the potential donor to enable the transplant surgeons to decide whether the organs or tissue are likely to be safe for transplantation. The involvement of the potential donor's family means that this approach is often termed as the "soft opt-out system"; ultimately the next of kin has to give permission for the donation to go ahead. This means that the donation would not proceed where the family have expressed the view that their loved one did not want to be a donor, even if they have not formally opted out. It is also unlikely that medical staff would proceed if clearly doing so would cause severe family distress or lead to family conflict. The intention would be, under the new arrangements, that there would be much more discussion of the individual's wishes well in advance, and should choices have to be made the families are much more likely to be supportive if their loved one was known to have wanted to be a donor and therefore it did not come as a surprise to the family. This is important because it appears that generally there is a tendency for families to say no to organ donation if they do not know of their



loved one's decision. The involvement of families in any decision should help to reassure those who oppose or have concerns on the new proposals because of religious or moral, or because they just consider deemed consent amounts to the state taking people's organs, rather than people actively choosing to give them. A key aspect of this new law is to provide adequate provision for people to opt out. While the Scrutiny Panel accepted this, it suggested that a mechanism should be in place for recording a decision of those who wished to opt out from consent. To give effect to the suggestion, in the amendment I have made it mandatory rather than discretionary that such a mechanism must be put in place through regulation.

[11:30]

In practice it is likely that individuals will register their decision with the N.H.S. (National Health Service) Blood and Transplant Service which currently maintains the single - and that is really important - U.K.-wide register. What you do not want is a register in Jersey, a register in the U.K., a register somewhere else. To be absolutely sure that it will work properly, it has to be a single U.K.-wide register. They record whether an individual has opted out or in some cases opted in. Under the proposed deemed consent arrangements, the following scenarios and checks would be envisaged when someone died in hospital and their organs could potentially be donated. If they have registered as opting out from the donation then no further action, no donation will proceed. If they had registered as opting in or have not opted out their family would be informed and their co-operation in the process of examining the feasibility of donation would begin. If a person has not registered any decision on the organ donor register they would, in the first instance, as inferred, be deemed to have given consent. Family or friends will be approached and asked if their relative or friend had expressed any objections to them, and if the person was not known to have expressed any objections then the assumption would be that the donation could proceed. However, if it became clear that in proceeding, as I said earlier, it would cause distress to the family and lead to potentially them refusing to provide important background information, then the donation will not proceed. We have to be sensitive to families at the time of grief as well. Where there is no family or close friend who is contactable then the donation will not proceed, and this is important, as much as not knowing the wishes of the individual directly, because the clinicians do need to know about the person's lifestyle and medical history to safeguard the quality and the safety of donated organs. Given the size of Jersey's population and the low number of deaths in circumstances where donation is potentially possible, it is unlikely that these changes will lead to a huge increase in organ donation. However, the intention would be that making organ donation the default position would reinforce a positive view of organ donation and this culture change would increase the likelihood of organ donation when the situation arises. We should not forget that one organ donor can potentially save or enhance the lives of up to 9 individuals. If the States agree to the changes in the law to give effect to the deemed consent approach to organ donation, then there must be and there will be a high profile public information and awareness raising campaign. This will take place over a year before the new law takes effect. It is planned that the new law will not take effect until July 2019. This will give time to inform Islanders of the change and explain clearly the choices that are available with regard to registering an organ donation decision; opting in or out, and the implications of not registering a decision where that individual's consent could then be said to be deemed. We would begin work with our colleagues at the N.H.S. Blood and Transplant Service, the organisation that provides the transplantation service to the N.H.S., to ensure that the registration process was straightforward and the process for opting out and opting in clear and easy to access. This might involve registering online or by phone as well as information on how individuals add or remove their name if they so wish. Those who have already opted in on the current register would be treated as having made an opt-in decision unless of course they do this to change their mind. I think I have covered most of the principles of the law. I am sure there will be some discussion on this. I move the principles and ask Members for their support.

## **The Deputy Bailiff:**

Are the principles seconded? **[Seconded]**

### **7.1.1 Connétable M.P.S. Le Troquer of St. Martin:**

I know we know, all of us, that this is something that the Minister has tried to achieve, to introduce for a considerable time; high on his 'to do' list as Minister for Health. He has achieved so much, as we know, during his time in this Assembly, not just in health, as a Deputy and as a Senator. It is also one of those very difficult issues to debate. It is not a straightforward decision. Not one of those debates that there is only one way to vote, as we saw yesterday evening with the unanimous votes that followed through several propositions, and indeed they should have been unanimous votes as they were. The proposition that has to be approved because it is obviously correct and we must have to support it. That is why I wanted to speak today. I think the point is acknowledged within the report accompanying the proposition, acknowledged in various comments throughout the whole document that there are many issues to consider, and likewise, by the Scrutiny Panel in their report. I would like to thank the Health and Social Security Scrutiny Panel for their helpful factual report produced at short notice while they were very busy with other issues to deal with. It contains much particular facts, not views. I do not think they have expressed views, which is correct, but they have produced so many facts that I know now a lot more than I did before I read the report about organ transplants. I am not sure if a briefing for Members might have been of assistance, I do not think so on this particular occasion. This is an issue that many will have their own personal views on, not just Members of this Assembly, because there will be many, too, that have no idea about the debate today, they will have no knowledge of the consequences that may arise if we approve this proposition. Many are unlikely to sign and opt-out despite any amount of publicity that the Minister wishes to bring to the notice of the public. It is not that long ago that we brought the legislation to the Island to allow transplants; I think it was in the 1980s. I believe it was brought about for a particular reason, or at least brought forward quicker than normal and with amendments to it, I think, because of a particular incident that I was dealing with at that time. It was so that organs could be used after the sudden death of a young person I was dealing with. I know today is not about rescinding that legislation. Today is not about stopping transplants from taking place. Organ donations and transplants will continue. The Minister has emphasised that and saying maybe there will not be enough but that will carry on. I am not speaking today because I think organ donation transplants should cease, I really wish to make that clear. I am not speaking on religious reasons either and I think, from the Scrutiny Panel report that I have read, you can see that even the religions differ in their views on this, and, as I say, this is something I did pick up in the report. Although I have my own personal views on the issue of using a person's body parts for transplants, I am not speaking about that for those reasons either. In saying all of that, I have got no idea, and I hope there is no one in this Assembly that has but there may be, in saying how would I feel with sitting with a member of my family at that most awful of times. I have no idea. That moment, a time that we never want to experience, either hoping for a donor for ourselves or for a loved one, or having to discuss when we wish to consent to allow organs from a loved one to be taken for someone else. That can only be our worst ever moment that we hope we will never face. As I said, I am sorry if there is anyone in this Assembly today that has ever faced that situation and I admire their courage. But this is also the reason I speak today, so the nearest and dearest making that decision of a gift of an organ to another; a gift, and I will talk about that later in my few words. That decision being taken away through some form of legislation, however well-meaning that legislation may be. What concerns me today, if this proposition is approved, is where the States, the Government making rules to control, even with the proper controls that the Minister has within his proposition, is where the Government, through making this law, starts to take control of a person's body. I ask Members, is that really what we want to do? Are we not saying, if we approve this proposition today, that we are approving the removal from a person maybe of their

hearts or lungs, kidneys, livers, eyes, pancreas, small bowel or tissue? I mention those because at the moment they are the ones that are listed on the driving licence application form that everyone on the Island fills in when they apply for a driving licence. Should we take control of a person's body to allow removal of organs for reuse, as it might be in some cases, just because a person has failed to sign a form to say they do not wish their organs donated for transplant purposes? How far is a state, a government entitled to take control of a person, and in this case the body of a dead person? I have this view, rightly or wrongly, that we have recently seen how we, in this Assembly, have decided to control a person's strongly held beliefs by not allowing that person to have a view on an issue. I refer of course to the no tolerance clause that we debated not long ago. Human rights were cited many times, maybe seen, as others, as one-sided on one part only. Discrimination was cited many times, seen again as being a one-sided view. There were some that could and indeed did suggest, rightly or wrongly, during that debate that the Government imposed legislation, a form of government-controlled legislation or introduced it to control a person's mind or their personal views and that they were discriminated against. Today it could be seen by some that if we legislate further we could take control of their body too. But the Minister will, I am sure, respond again and say there are many safeguards within the proposed legislation to prevent this. Just 3 weeks ago on the 19th March in this very Assembly we all read an answer to a written question and listened to the Constable of St. Clement tell this Assembly, during question time, what appeared to be the total disarray of the system that was specifically put in place to record those who wished to donate organs in the event of their death. There were only 15,000 people who had registered on the register, yet none of them on the organ donor register. Maybe that is where work needs to be done. Can I suggest that is where the work needs to be done? Maybe the Minister will respond in a very reasoned way that the legislation is needed but showing how one scheme has failed does not fill me with confidence that a different system will be better, that mistakes will not be made and that we will be able to administer this new opt-out deemed consent system. Let us remember how people are with filling in forms: rate returns, income tax forms, fire return renewals, dog licences and the like. Should the donation of an organ not be a gift, a gift that is volunteered? The recipient appreciates that gift and is honoured to receive that gift, that the gift from the donor and all their family and not because the Government has made legislation to ensure that more organs are available. That is what makes it special. There appears to be evidence that a presumed consent system will not increase donations and indeed I have read that there have been drops in Wales, although that is contradicted in some reports that you read when you search online. In Brazil policy was scrapped because fewer organs were being made available because the public did not support presumed consent. In summing up, I fully support the Minister and any future Minister and for this Government to concentrate on more improved campaigns to publicise organ donation on the Island. There is little out there, you have to search to try and find it. We need a higher profile campaign for donors and to make sure that those who have opted in are in. It is certainly not publicised as well as campaigns such as alcohol, drug abuse, cigarettes. I am opposed to the easy opt-out scheme that is proposed today. Why do it if we are still going to ask the family? Why do it if we are unlikely to get more organs? Why do it if it is unlikely to result in more operations? I just wanted to speak in the debate to allow Members today to reflect on what we are voting for and what is this Government wanting to do, even with the best of intentions, just to offer a few different views is how I see it today. I think if Members have got any concerns and they are uncomfortable with this proposition then they should vote against it. I am sorry, I will not be supporting the Minister's proposition. Thank you.

[11:45]

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

I am very pleased to be here to be able to vote and speak on this proposal. It is something that has come up, I know, since at least 2012. I think it is important to acknowledge the work that Deputy

Le Hérissier, a former Deputy in this Assembly, who had asked questions and who I had been working with on this issue as well, and in oral questions had lodged his own proposition in 2013 asking the States a very simple proposal: first of all, to establish an organ donors register in Jersey, and secondly, to review the current policy in respect of organ donations and to bring forward recommendations for improvement. Now, the first part of that did not succeed and the States at that time, for whatever reason, decided that it was not appropriate or they did not want to establish a Jersey register but they did say that they wanted to look at this issue. I have to put this on record although it is a good day, I have to question why it has taken effectively 8 or it will be 9 years before this legislation comes into play and if you do a quick search for “organ donation” or “opt out” on the States internet site you will find out that there have been lots of questions asked from 2012. We had another proposition in 2013, follow-up questions in 2014 and it has taken us a while to get to this point today. If I just read from one of the question exchanges in 2012, it was my question to an Assistant Minister for Health essentially asking, among other things: “Will she consider a move to make the organ donation scheme in Jersey opt-out rather than opt-in?” Later on, interestingly enough, we heard from the then Dean, at the time, it was the Very Reverend Bob Key, as we affectionately called him: “Would the Assistant Minister take it from me that there are many of us, as religious leaders, who would love to see an opt-out system on the very sensible grounds of love thy neighbour, and when I do not need my kidneys anymore, I am not going to need them in heaven either, somebody else is very welcome to them and would she accept that from me?” It is good that we are here in this position but it has taken 6 years and it will be 7 years. We were told again by the *Care Inquiry Report* that this Assembly is very good at fast-tracking certain pieces of legislation, and we know that if it had been the finance industry or the law industry that had asked specifically for a particular mechanism or particular piece of law to be introduced that it would have been done very quickly because they would have said: “This is absolutely necessary.” How much more necessary is it when we have people dying in our communities? I am sure we all know people who have been affected by the issue of organ donation, whether we know them immediately or whether we know people who have either successfully received a transplant or unfortunately, in many cases, have not been able to receive one in time, and they can be people from right across the spectrum of any age. What I would say to anyone who might have some kind of niggling feeling of unease, and I think it is that thing which you cannot quite put your finger on, it is not easy to rationalise these issues internally and there are, no doubt, conflicts, instinctively in people’s lives. I think that is nothing more complex than the fact that nobody likes to think about their own demise. This is exactly the reason we need the opt-out system because you can find all sorts of reasons in life not to do something, that is very much the basis for procrastination and some of us procrastinate perhaps more than others. Part of the definition of procrastination is that you put off doing things often which are unpleasant or that you do not like thinking about and you find other more pressing issues to get on with. Sometimes it is the most urgent jobs that we put off, and it is quite understandable that that conflict goes on in people’s minds because rationally, nobody has any objection to this. We know that once we are gone from this planet we do not need the husk of a body that we have got. We all have different opinions, of course, about what happens after we have finished with our bodies. Some of us believe that is it and our body simply goes on to be recycled. Others believe that there may be reincarnation or that there may be some form of afterlife but that is not relevant to this debate because I think most people, if not all, agree that the body is an irrelevance. The body is for this life and we, as humans, cannot exist without the body, and similarly, after that process it becomes unnecessary obviously. What I would say perhaps to the Constable of St. Martin and any others is that your organs will be donated anyway whatever happens but at the moment they will be donated to the ground, they will be donated to the trees and if I can say this - it is unpleasant but let us speak frankly - they will be donated to the worms and the maggots, and they will be grateful for it, they will not discriminate, they will say: “Thank you very much” and in turn they will be eaten by birds and the birds will drop seeds and mistletoe will

appear, thinking back to the speech from Deputy Duhamel a while ago, and the whole cycle will go on. So your organs are going to get recycled anyway. I would much prefer to think that if there is anything left which is of any use to somebody, that they can be welcome to it. That is why I find it very strange, although understandable, that people might get protective about their eyes. There might be a couple of reasons you do not want to donate your eyes, it might be because they are so beautiful that you could not contemplate anybody else having them, or you might think your partner's eyes are so beautiful you would not want anyone else to walk around and fall in love with those lovely eyes. But it seems strange that if they are such good eyes you are quite willing to donate them to the worms. But obviously that might not be the only reason so I understand people have these perhaps irrational reasons and fears when it comes to these issues. More seriously, something I am concerned about, and I think it perhaps goes to the very language that is used in deemed consent, and that is the point that once you are dead you cannot give any consent obviously. In reality, although we can express wishes about what happens to our husk, once we have left it, the reality is that those decisions will be made by somebody else on our behalf. They are either made by our family or, in their absence, because remember often people nowadays may die without any family and may even die without friends, then it is ultimately the job of the state to dispose of the body. So in those cases the reality is that you do not have control over what happens to your body when you die, so it does raise those very philosophical questions of whose job is it. Does your body just belong to the state or does it belong to your family and whose decision is it to give about what happens to your organs. I raise this specifically in the context of under 18s because my ears pricked up when I heard that the opt-out system will not apply to under 18 year-olds, which I think could have a perverse consequence. I understand why it has been put in there from a legal perspective because you do not want someone to give deemed consent for something that they are not of age to be able to give consent for, the same with those of limited capacity. I think that is the issue. So by calling it "deemed consent" we are saying that we presume that you consent because you have capacity to opt out if you do not want to do it, whereas if we just said that on death all of your organs will revert to the state and they can do what they want with them, then you do not have the question about consent. The issue for under 18s, and that may of course make people uncomfortable, is that what happens if somebody who is under 18, whether they are ... and these are very sensitive issues and I think it is right to acknowledge how the Minister has handled these very sensitively. But what happens if a 2 year-old, a 5 year-old, a 10 or a 17 year-old dies in unforeseen circumstances? It may be due to complications very near to birth, it could be an accident when they are 13 and their organs will not be used. The presumption is against them being used and then you have to have the very difficult conversation with the family in those very difficult circumstances where it is not somebody who maybe it had been expected. The perverse consequence is that then you have to sit down with somebody who has just lost a young family member and say: "Oh, by the way, we have got somebody waiting in the next room who needs an organ; how do you feel about donating that?" If the idea is to make that conversation ... or not need the conversation because it would already have been had, I think that is going to be a perversity. Presumably those age groups are difficult to find organs for, they are the most difficult, I would imagine, and perhaps the Minister can deal with that in summing up. So, I know if I were a parent I would not have any problem with the opt-out system applying to all people including children because I would have that conversation, I would know that because it would be part of the consultation. I would not need to worry about having to have that conversation with my partner at the very moment when we are in deep shock and in deep bereavement. So, although I can understand legally why we might have an opt-out for under 18s, I do not think we should necessarily have that opt-out, it should apply across the board. So, those are my concerns but of course I welcome the spirit and the practical help that this law will give, and of course it is not just about opt-out there is also lots of other updating in the law which I know the Minister has touched on already and will do in summing up.

### **7.1.3 Deputy K.C. Lewis of St. Saviour:**

I have been carrying my donor card for many, many years now. It has got very dog-eared but the details are still there. The facility was not available in Jersey at that time for donation so I went direct to the N.H.S. hotline in the U.K. This is a very crucial proposition. It does have my support but I would like the Minister to outline the safeguards for people with the-opt out; would they eventually carry a card or would it be on a database if people wished not to have some or all of their organs used? I do know of quite a few people who are more than happy to donate all their organs except their eyes. They say the eyes are the windows to the soul and a lot of people are very sensitive about the eyes. What you would do later on without your main organs but keeping your eyes, I do not know, but that is people's decision if they want to follow that line. Plus organ donation is crucial because organ donation is not necessarily for ever. It is my understanding, and somebody correct me, please, if I am wrong, that somebody, for instance, with a kidney transplant, the recipient of a kidney, they last only between 12 and 15 years when they would need another kidney transplant, I believe. Hopefully somebody in the medical line will correct me if that is wrong. But it is just to have these safeguards there should there be any problem. But on the whole I am more than happy to go along with this. I carry a donor card, I have talked to my wife about my wishes and am perfectly happy with it. So, I wish the Minister good luck with it and I will support it.

### **7.1.4 Deputy L.M.C. Doublet of St. Saviour:**

I am fully behind the Minister on this proposition I think it is very important. I think Members should support it because it does no harm because there is the option for people to opt out there if they do not want it and the family safeguards are there. I think it will only have positive effects. If we only save one person's life then it is worth doing. So even if people have some doubts about this, perhaps just think about the fact that we could save one person or more than one person. We could save lives by passing this today. I want to focus in on the scrutiny recommendation about the public awareness campaign because while I am behind this law change I think that it has got to be informed consent from the public. Even if it is presumed consent, the public do need to be well informed about it. I am particularly worried... again, it mentioned in the scrutiny report about those speaking other languages so I would like some more information really on the planned awareness campaign, on the scope of that campaign. How long will it continue for and when the initial campaign is over how does the Minister plan to address issues such as those coming into the Island? Will there be something in the processes for when people arrive in the Island whereby they can be informed that we have this policy and this law? Also, is there a set point perhaps in the school curriculum, in one of the year groups, that children could be informed perhaps via their P.S.H.E. (Personal, Social, Health Education) lessons as to what this law change is about. But I will be fully supporting the Minister on this and I hope that you can take my points on board.

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

I do not rise to raise any objections I have no objections to the principles of this. But I do arise to ask a couple of questions. I have heard some quite fanciful notions this morning but I think mine is probably even more fanciful in that I am a devotee of things like Inspector Morse, *et cetera*. So I have looked at this from a different angle and the person I have not seen mentioned in any of the documents or the speeches today, I do not think, is the Coroner. I would like to hear from the Minister what consultation, if any, has taken place with the Coroner's Department because I know, having looked at this myself, it is quite a difficult position for a coroner. They do not ever give consent to an organ donation of a body that they have got an interest in but they can raise a judicial objection. There is a detailed guidance note the Chief Coroner in the U.K. has given out and I just think that it is a matter that cannot be overlooked, that we need to ensure that the right guidance is

in place for the Coroner and I would be grateful to hear an update on what has happened there. Thank you.

[12:00]

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

I am a little concerned at the report that accompanies this proposition because I do not think, in my opinion, that it gives the full facts of what our approving this law would mean to people who have organs donated. The Minister, in his speech, has spoken on many occasions about transplant. We have heard other Members say, and Deputy Doublet has just said it, that even if one life is saved, even if only one life is saved with the adoption of this law, then that is worth doing. I absolutely agree with that and why would any of us want to donate our organs, or one of our organs? I imagine it would be because we would want to save a life or, with our eyes, to improve a life. So that is the reason, I am sure, that we would want to opt in to donate our organs now and I know that is the reason that my daughter has opted in to do that. We want to make a difference. But I refer back, and I cannot read it very well because it is just on my phone, to the report of this proposition which deals totally with donating an organ. It says: "Donating an organ saves lives and improves the recipient's health and quality of life. It can mean that something positive emerges from the tragic loss of a loved one." We have heard about how it is opt-in or it is opt-out for children, for people who do not have mental capacity, and we know that the families would be consulted before an organ is removed. What it does not say anywhere in this report, because it does concentrate on donation of organs to save lives, it does not say anywhere in this report that your organ may be donated for the purposes of teaching of anatomy or medical education or research and therapeutic purposes or, as it says in Article 1(1): "Or any other activity as may be specified in Regulations." So not having signed up to the option now to donate my organs, I would like to know from the Minister when he sums up, what provision would there be to donate an organ for transplant only for the purpose of saving a life or for the purpose of improving a life? Who decides at the time that somebody passes away that their organs would be better suited for the teaching of anatomy or medical education or research and therapeutic purposes? Because I am going to have to discuss this with my daughter. I am not quite sure whether she would want any of her organs to be used for those purposes. I would like the Minister, as I say, to explain how people can potentially opt out of that if all they want to do is donate their organs for the purposes of saving a life or improving a life. I think it was Deputy Tadier who said: "Does anyone have any niggling doubts?" This certainly causes me to have a niggling doubt, albeit that I recognise I think that the majority of people would want to save a life or improve a life. It is interesting to note, is it not, in the information that we have been given I think from the Jersey Opinions and Lifestyle Survey, that many of us would want to be the recipient of an organ but not so keen to donate. I think it really is important, and it comes back to what Deputy Doublet said and what the scrutiny report has said about the public information, the communication to the public of what this would mean, it would not mean simply that we save or improve a life. Who makes that decision that someone's heart can be used for medical research? It has to be certain, in my opinion, that anyone who does decide to donate or if they have not opted out - we are all deemed to be opting in - that the person whose organ is going to be used would have wanted it to be used for a particular purpose. I have to say to the Minister that it is almost incomprehensible to me that this is not put in the report itself. It is only when we get on to the Articles that we realise that it is not for the purpose of saving a life only and that disappoints me because I think it should have been in there. Maybe the Minister can explain why it has not been and why he has concentrated only on the life-saving part of this. Having said that I am going to support this because it comes down to the Regulations, as we know, but the principles I will support. Thank you.

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

I was on the Health and Social Security Panel which looked at this, but I have got one query which has not yet been resolved. Now I have no problem with donation of organs as a basis. No problem. However, I am a little concerned that the principle behind this legislation which is effectively taking control of a body after death, admittedly under certain circumstances, but it is a sort of *force majeure*. We are, for want of a better word, nationalising bodies after death and it is the principle of the thing. You are taking the choice away. When does one's body stop being one's own? It is just a thought. I can leave my body to science and this apparently overrides organ donation, so this implies it is mine to dispose of. So legislation to assume donation is effectively, as I have said, a type of *force majeure* by the state. Could this lead to misuse of this power? Now given the current debate on our sister Island about assisted dying, there will be a bit of a conflict there, I would have thought. There are regimes where organs are obtained to order whether you are alive or dead. I do not think the implications of this are quite as simple as the Minister says. Perhaps a decent marketing campaign to get everybody to opt in would be rather more effective than this somewhat bullying approach. I would be interested if the Attorney General could explain the ownership of dead bodies.

**The Deputy Bailiff:**

Mr. Attorney, there is a question for you. Are you able to assist us with the ownership of dead bodies, Mr. Attorney?

**The Attorney General:**

Can I have a moment or 2 to reflect on this? **[Laughter]** I do have an answer in mind, but I would like to reflect on it, if I may?

**The Deputy Bailiff:**

Yes. Yes, of course.

**Deputy M. Tadier:**

While we are with it, can we ask the Dean as well because **[Laughter]** it probably crosses into the realms of philosophy, I think.

**The Deputy Bailiff:**

Well I think it will be open to the Dean to make a contribution if he wishes to, but the learned Attorney will obviously advise the Assembly shortly.

**7.1.8 The Deputy of St. Ouen:**

I am pleased to follow Senator Ferguson who served on our Scrutiny Panel most usefully. Yes, I accept Senator Ferguson always voiced some concerns, but at the end of the day we were able to agree the report that was presented to this Assembly because I hope, as the Connétable of St. Martin has said, it is largely a factual report. We do not necessarily come down on one side or another, but there are positives, I think we found, in ensuring that organ donation should be available because organ donation does save and does enhance lives. What we found was that despite the proposal to move to a deemed consent, that there would be little change in reality, in practice, in what happens at present. The fact is that families are always, always closely involved and families have the final say. This move to a deemed consent if it is approved will allow the specialist team that are there engaging with the families to establish what the norm is, and the norm is shifting. It has shifted in Wales, it is likely, the suggestion is, it will move in Scotland and England also to the position of deemed consent. They are reinforcing a positive view that organ donation can save lives. But at the end of the day even if a person has signed up to the organ donation register and said they want to give everything possible, at the end of the day it comes down to their next of kin. If those families, if those next of kin, do not wish that to happen, it will



not happen, despite this law that says consent is deemed to have been given. One can imagine the harm it would do to the N.H.S. Organ Donation Scheme if the state took control, if a health service overrode the wishes of families in those traumatic circumstances and grabbed the organs of a deceased against the wishes of families. That would destroy any sort of public-awareness campaign and that would destroy the reputation of the N.H.S. One cannot imagine, I would suggest, in it realistically happening except in our darkest dreams of a dysfunctional world, so Members can rest assured that families will always be given that final say. Therefore, it is important that families have those conversations. This discussion that has been happening recently and that has happened in Wales when the law was changed, is there in part to encourage a public debate about how we use these valuable resources to preserve lives and to encourage people to sign up to the register because that is still going to exist and is still a very important feature regardless of deeming consent. The register will be there, not only to opt in and express your wishes that you wish to donate, but to opt out also, and that is a feature of the register at the moment. You can make your wishes clear if you do not wish anything to be given after your death in those tragic circumstances. It will not happen if that person has opted out, but where it can happen we have seen that it can save or enhance lives. Unfortunately, our figures in Jersey for the organ donation register are low and part of that is because of the difficulty we have had over registering via driving licence applications.

[12:15]

The U.K. are higher but they have been able to indicate their wishes and get on to the register through driving licences. We have not been able to do that in Jersey, so we have only got about 14 per cent of our population on the register compared to 38 per cent in the U.K. This makes it even more difficult for a public-awareness campaign, I suggest. We must work harder at enlightening members of the public as to the benefits or, even if they do not wish to give their organs, the opt-out provision. We receive very great assistance from Neil Maclachlan who is the consultant obstetrician and gynaecologist at the hospital, but he is also the founder of the Jersey Love Hearts Appeal. He came to speak to us because he has been the motivator for getting people registered in Jersey on the organ donation register. He was firmly of the view that the law does not really add a great deal to the numbers that are going on the register and what is far more effective is a public-awareness campaign to tell people they can opt out or they can opt in too, and that is crucial. That is going to be crucial and needs to happen here. If we have one criticism of the Minister's proposals is that the amount proposed to be spent on the public-awareness campaign is just far too small. The Minister proposes to spend £20,000, which amounts to just 20 pence per person in Jersey. In Wales when they moved to this system, they spent the equivalent of £1.10 per person to get the message out there. This needs to be not just a single burst of activity on a given day, this needs to be something that is sustained over, well, for always, but certainly before this law might come into force if approved in 18 months' time, it needs to be a sustained and high-profile campaign because we as a Scrutiny Panel wanted to ensure protection for all persons. We recognise that there will be people who do not want to be part of this and will want to opt out and it is important that they know how to opt out and it is important that that structure is there for them to opt out. We were also helped by members of the public who contributed to our review and in particular we heard, we had a meeting with 2 individuals who had been closely involved as family members when someone nearest and dearest to them passed away in circumstances where organ donation was a possibility. They came to talk to us about their experience and that was perhaps one of the most difficult scrutiny meetings that I have been involved in in the last 3½ years. I commend their courage for coming to speak to us, who they did not know, politicians, why should they share those personal and intimate moments? But they did choose to, and they told us about their feelings and how they wished to be given the opportunity to save a life or to enhance a life. But in one case, particularly, they just found the circumstances all so overwhelming that they could not go through

with it, they could not cope with it. It is the case that in those circumstances there is some very intensive questioning that goes on. In other meetings we explored why that should be and of course it is the case that clinicians do need to know about the medical history or the lifestyle circumstances of a potential donor because they might be receiving an organ and placing it in somebody else and they have a responsibility towards the potential recipient to make sure that they know as much as they can about the organ they are potentially donating. They do not want to be reckless about it, they are trying to preserve the life of somebody, but they need to know that this organ that is a potential life-saver, has a chance of doing the job. So that means questioning the donor's family quite intensively about personal things, and that is difficult of course for a family. One has to commend families who are coping with the looming loss of a loved one and having to discuss those issues too and I do not think there is a way around that. One cannot simply say: "Well we will not ask those difficult questions" but we are satisfied that the N.H.S. ... it is not a general nurse that asks these questions or someone untrained, there is a very high degree of expertise among a specialist team that is brought to Jersey to ask those questions and we believe that those questions will be asked as sensitively as possible. It is in the course of that questioning, if I can try and help the Connétable of St. Lawrence, because it is my understanding, although the Minister will answer the questions, it is my understanding that it is in the course of that questioning by the specialist N.H.S. team that the issues of how the organ is used are dealt with. So, the primary purpose is to donate that organ in a life-saving situation. So wherever it is possible to donate an organ, it will be used to save or enhance somebody's life, but the team then goes on to question the family before any organ is taken. If it were not possible to use that organ to save lives, then would the family wish that organ to be used for research or teaching purposes or any other therapeutic purposes? If the family then change their mind or say: "Well only to place in another person only" then that wish is respected, and one would hope that would always be the case. We heard that from a clinical manager who we are privileged, I would say now, to employ in our hospital who has worked at a very high level in the N.H.S. Organ Donation Service and we gained a great deal from her in our understanding of the procedures, so I believe that area is adequately covered. We were satisfied as a result of our review that vulnerable groups were safeguarded: those who lack capacity, those who have come to the Island recently and children, the deemed consent will not apply. It will always need to be an express consent and, again, families will always be involved and have the final say. For that reason, I cannot quite agree with Deputy Tadier that children, there should be a deemed consent for children. But, in any event, the families, as I say, will always be involved and will have the final say and it is right, especially in the case of children. So, a Scrutiny Panel, as Senator Ferguson has alluded to, we might have our principled views, but I think we have investigated the position thoroughly and we are satisfied that if anybody wants to opt out, that can be done. If they do opt out, then their organs will not be touched, so that can happen. Vulnerable groups are safeguarded and, for myself, I am satisfied that I can support this law and I would be pleased to do so. Thank you.

#### **7.1.9 Deputy M.J. Norton:**

I was just waiting for more legal advice there, but I am sure that is going to come very shortly. I tend to agree a great deal with the last speaker and just looking at some of the comments that were made already, much has been said so I will not over-rehearse them. The Connétable of St. Martin touched on a very sensitive issue which is that very difficult time that we all dread when that conversation we may well be having. But I am brought back to, not only a public debate, but the debates that will probably be had across dining room tables by families which is exactly the right place for it to happen. It is part of those difficult conversations that families should have, and hopefully will have. As the Minister knows, because we have had many discussions over this over the last 3½ years, I am delighted that we are where we are today because it is a very good day because we are finally at the point that I hoped we would be at. I would congratulate him and the

work that has been done along with that of scrutiny which has been, I would say, extremely balanced. I think it is important that the teaching and the research is enhancing, it goes hand in hand with that of saving lives to that which is enhancing and is a very important part of this, and that is why it is in there. I am delighted that acknowledgment has already been given that there is a conversation that is had to decide where such an organ should go. Going back to the difficult conversation at the time that we all dread as a family with something that is inevitable for all of us. That time is emotional, that time is difficult, and that time is no more difficult, in fact I think is less difficult, than the time that you can spend with a family member who is sitting there waiting for an organ, who is hoping that somebody will match them, that their life will be saved. If not all organs are used, if only one saves one, then it is a good law, and it is the right decision. People will have their own personal decisions as to whether they opt in, they opt out, but from the perspective of difficult conversations, the difficult conversation is the conversation of: "What if they do not find an organ for me?" That is an overriding factor that makes me support the work that has been going on, long overdue, glad it is here today, and will be very happy to support it. Thank you.

**The Deputy Bailiff:**

Mr. Attorney, are you ready to give assistance to the Assembly?

**7.1.10 The Attorney General:**

Yes, thank you. The position is that there is no property or ownership in a body. A dead body cannot be stolen, for example. There are certain people who have duties in respect of a body: the next of kin or executor may have a duty in relation to burial, a hospital or the Coroner may have various rights in relation to the body, but there is no property in relation to the body as such. That is reflected in part when one looks at the Human Rights Review prepared for the Assembly which indicates that on the case law the deceased has no *locus* to make a claim by his estate because he or she has no human rights because they have died. But the human rights of the relatives under Article 8, the respect for private life may be infringed if there is not legislation like this in force in relation to the use of organs, but the deceased himself has no such rights which is consistent with the position in relation to ownership of a body.

**7.1.11 Deputy A.D. Lewis:**

This is of course a somewhat morbid subject, but it is also a very happy subject too because it is about saving lives as well. I am perhaps one of those individuals that is almost slightly superstitious about carrying a donor card. I wonder how many other people out there are the same. So if that decision is taken out of your hands, which is what happens here, and put into the hands in effect of your family after you have gone to wherever that may be in the future, which some of us believe in, then it makes that a bit easier.

[12:30]

When I am reading the proposition, there was some really startling figures that hit me that made this feel even more an important thing to do. There are only 12 per cent of people in Jersey that are donors whereas in the U.K. it is 36 per cent, which is still quite low, but we really are well behind the curve, so we already benefit from organs coming from the U.K. because there are not enough here. We are very lucky we are in that situation, of course, we can dip into that pool, but it is not easy and there are lots of people that perhaps should have first choice rather than little old Jersey who is not doing quite as much as it could do. But the thing that really struck me was the figure that said 12 people died already this year that might have been saved if they had received an organ. That really was quite staggering to me and it is because there are not enough organs available. It is a really difficult question to ask somebody that is sitting in hospital with a relative that they know is going to pass away and asking them: "Will you accept the possibility of donating your loved one's organs?" That is a really, really hard conversation to have with anybody at a really difficult time in

their lives and the person who is perhaps in their last hours of life. But it is a really, really important time for the clinician to know that that organ might be available or not. It is critical timing. So to have that taken away to a certain extent: “Yes” with the backstop of being able to say: “No, I really do not want to do this as a relative” but without having to go to Base 1 which is: “Will you consider it?” you already know that that decision is half taken out of your hands already, but you can stop it if you really want to. I think that is a really wonderful thing to be able to do but with that backstop of saying no if you really feel strongly as a next of kin that it should not happen. So I shall not take too much more, I was really impressed with the words of the Deputy of St. Ouen, I think a Minister for Health and Social Services in the making there. It could have been the Minister for Health and Social Services speaking. He said it all, I would just like to add that to it. So, Members, I do hope that you can vote for this. I quite understand the reservations of the Constable of St. Martin who always speaks very eloquently and passionately about what he believes, and I understand that, but I think for me this is something which only people will benefit from. I do hope that Members can vote for it, so we can save lives, albeit have the unhappiness of passing lives, but the happiness is saving others. So I do hope that Members can vote for it. Thank you.

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

I just have a couple of points and I hope to be fairly brief. I would like to hope that the former Deputy Le Hérisier is listening to this debate. I say that because I think back in 2010, 2011, something like that, perhaps it is 2012, he repeatedly came to this Assembly to ask questions about organ donation. I think it was when I was Minister for Health and Social Services I went with him... I did not go with him but went with the department to Wales to begin looking at it. So I hope he is listening to this because he was dogged in trying to push us forward into this very important debate. Life is precious, and we all know that, and this debate is good to have. Again, I suppose at the end of a political career, I am again talking about my professional career of death and dying. So frequently I was at a family's bedside telling them the bad news that their loved one has a diagnosis of cancer and perhaps their time is short. Having that open discussion, allowing families to have that open discussion, is so important. It can bring families together, it can help families after with bereavement and being able for that loved one to be open about their feelings of what they want for the ones left behind can make such a difference. So I will obviously be supporting this proposition, but it is wider than just this, it is encouraging us all to have that conversation of what we want to do, how we want to be treated before we die and afterwards. Funny enough, I suppose it does not surprise you, children are very able to have this conversation. They ask very in-depth, prying questions and sometimes they take you back they are so open and get straight to the point, none of this messing around the issue. Children being treated with respect and being honest, they can cope with it, they can understand it. I have many occasions been in that awful situation when there have been young children involved in death, but most of them do cope well if their questions are answered openly, truthfully, but, above all, in a situation of love and support. So we need to have those conversations and I think this proposition allows that to happen, so when death does come, and we all know for certain that one day all of us will die, that we know what our loved one wants to do with the organs. But not all our organs will be, can I say, fit for purpose. Some of us perhaps have had little challenges along our lives' routes and they may not be right. But that is not up to us, that will be up to the professionals who are experienced, very professional in how they cope with the families explaining the next process. I have got no problems if anything is fit for anybody else when I die, I think: “Great, it is there to have.” So all that is there, but even at that stage when I hope everyone has had all those discussions earlier on in the process that if for one reason or other families do not want their loved-one's organs used, they still have an opt-out clause and I think that is important. As I have talked about the donors, but you also have got to think about the ones who will be receiving those organs. Those patients have been for many, many years having treatments,

on constant medication to keep them alive, and to be in that limbo: “Will I or will I not be able to receive any organs?” So I think we have got to think of the both sides and this is in some ways, what we are doing here today, is giving some people the possibility of a gift of life. If we can approve this, I think, at the end of this session, it is a very good thing to do. Thank you.

**7.1.13 The Very Reverend M.R. Keirle, B.A., Dean of Jersey:**

I do not have a great deal to add because the Deputy has pretty much said what I wanted to say except that I, perhaps more than most here, deal with death frequently. I have just calculated I have taken over 600 funerals in 30 years of ministry and I have to say that by and far the worst funeral I ever took, and I can see her face as I speak now, was a young 26 year-old from my parish in Keston in Kent who was waiting for a heart and the heart never arrived. The trauma of trying to minister to those parents as they waited for a transplant that never took place was a very difficult decision. I am not trying to play the emotive game there, but I just say that to be the reality that it was. To my mind, I think the safeguards are in place here. I would absolutely urge that we put this legislation forward. Again, I would reiterate the critical importance of having those early conversations. Let us talk around the dining room table when there is not the emotive factor of an impending bereavement or a bereavement that has taken place. I think those conversations, as the Deputy said, with children, with grandchildren, with our loved ones around us, are so important early on, removed from the occasion so that our wishes are taken into account. Thank you.

**7.1.14 Deputy D. Johnson of St. Mary:**

I am pleased to follow the Dean. My point essentially is the sub-paragraph headed “Important role for next of kin/families” which has been touched on by a number of people and I am pleased to note that the family are to be involved. My concern simply is that while that may be the intention, I am not sure how that is translated into the law itself and in his summing up, I appreciate if the Minister could say what safeguard there is to ensure that the family is consulted. My second point, which is a secondary one and more for the future, is that as evidence of contrary intention, I think there might be an opportunity here for the department to get in touch with the Law Society in the sense that wills are made by I think a large number of people that are prepared to consider giving organ donations. It should be a comparatively easy matter for it to be a routine matter that on giving instructions for a will, just as they do with cremation, that this point is addressed and that might be helpful. Thank you.

**7.1.15 Deputy S.M. Brée:**

This is a very important piece of legislation for this Assembly to, I believe, pass. An organ donation is a gift of life to somebody. It may be renewed life, but in many cases, there are people who have been on the organ register for a very long time. If through my death I can give that gift of life to somebody, then I would do it. I think that this is a very important role, this legislation, that Government can play because we understand it is a very difficult situation. But what we are doing here is saying: there is deemed consent; the family can object; they are allowed an input; there is a deemed consent from somebody unless that person decides to opt out. So what we are doing is raising the issue in people’s minds. Previously you had to do nothing, and your organs would not be used. But the fundamental principle about organ donation, I know there are concerns from some areas about: “If I die and my organs are to be used, then I would like them to be used as a transplant into somebody who is on the organ donation register.” That is the ideal, but we must not forget that the biggest thing that saves people’s lives is medical research. If, particularly in the areas of cancer research, the donation of an organ can move that research forward, then surely the ability to possibly save hundreds, if not thousands, of people’s lives in the future by the donation of one of your organs to medical research, how can one argue against that? The ideal is: “Yes, I will give one of my organs and hopefully save a person’s life now” but we need to think about the

future and what medical research has done, particularly in the last 20 years when you look at treatments that are coming through for previously-incurable cancer or incurable diseases.

[12:45]

So, I would urge Members not to get too preoccupied with the idea that an organ donation has to be for a transplant; I do not believe that it does. I would urge people that this is government working, I believe, well. It is a well-thought-out piece of legislation. It brings to the fore in people's minds the question of organ donation. It allows for the involvement of family and relatives. It encourages family, relatives and the individual to talk to each other. How could one vote against this, bearing in mind the number of people who are needlessly dying because they do not have an organ that can be transplanted into them? That is what we are talking about here, and I would urge all Members to support this proposition. Thank you.

## **LUNCHEON ADJOURNMENT PROPOSED**

**Senator P.F. Routier:**

May I propose the adjournment?

**The Deputy Bailiff:**

Yes, I was about to say, thank you very much, Senator. The adjournment is proposed.

**Connétable L. Norman of St. Clement:**

Before we adjourn, can I just remind Members that we have a workshop on Members' facilities in the common room downstairs this lunchtime and even those who have not accepted the invitation are more than welcome to attend.

**The Deputy Bailiff:**

Very well, the States stands adjourned until 2.15 p.m.

[12:46]

## **LUNCHEON ADJOURNMENT**

[14:17]

**The Deputy Bailiff:**

We now resume discussion of P.57 Draft Human Transplantation and Anatomy (Jersey) Law. We are discussing the principles.

**7.1.16 Deputy P.D. McLinton of St. Saviour:**

The young are selfish. There is a biological reason for it really and that is if you were dropped in a rainforest by your parents and left there abandoned and, short of being raised by apes, you have to look after yourself, so you have to make a food mine and a shelter mine, so we start off life being selfish. As I have got older, fortunate enough to have 5 wonderful, beautiful children, 4 grandchildren, I have come to realise that I am a link in the chain, a very fortunate link in a very long chain. I am a link in a chain of maybe 50,000 generations of people who had to survive long enough to have a baby, so we are survivors as a species. I am very fortunate to be alive, but this that I hold inside me is a gift of life, and this body that I walk around in is a coincidence of stars that came together to briefly form a thing that I call "me" with a story that I tell myself about myself, and that is all that there is. This energy of life flows, flows through all living things. At the risk of treading in strange territory, that is what God is. God is not a bloke with muscles and a beard, on a cloud smiting people, it is the universal intelligence of life, and right now I am fortunate

enough to have it inside me. One day, for sure it is going to go; guaranteed. Of course, my own personal link in the chain of life are my family. In hundreds of years to come, people who, unless they get involved in whatever programme, Who Do You Think You Are?, might be in a couple of hundred years ago, they will never have a clue as to who I was, but they may look back and an interesting story may be told some time down the line. But the fact of the matter is that I am fortunate enough to have within me life. One of the most bizarre things that I have ever come across is the idea of cryogenic freezing. The whole idea that you can be frozen after you have died and then somebody, the cavalry and medical profession, will, in 100 years' time figure out what you died of and bring you back to life. No, when it is gone, it is gone. When life is gone, you are nothing but a meat suit you used to live in. You do not exist. However, for a brief sliver of time, some bits from that thing you used to call home, your body - and it is always best to look after your body because if you do not look after it, you will have nowhere to live, but one day you really will go - for a brief amount of time, bits of you are useful to somebody else's life, and that is quite something to consider. So, back to that selfishness. You do not need those bits and bobs anymore, you have gone, but somebody can benefit from them, from bits of you, to put it bluntly. So, just imagine if I were to leave this mortal coil and some of me was taken and gifted to somebody else, and I do not much care where that somebody else is - I do not care about borders, I care about the family of humanity - somebody somewhere could be walking around with a little bit of me inside them, keeping their life sustained and going and that, when you think about it, is a wonderful, wonderful thing. So one day, in the distant future, I hope, when, frankly, whatever I have got left is probably not of use to giving to anybody else, perhaps a couple of bits and bobs, but one day when whatever the Assembly is stands for a minute's silence because I popped my clogs, then just maybe my heart might be beating in the chest of somebody else. What a wonderful thing that would be. That somebody else may come to be a parent and the child that is born of the chance and the link of their chain that I gave them, they could invent a cure for cancer. That could not happen if this did not move on, this spark of life that I am was not handed on to somebody else's chain to reinforce it. So, it is with that in my mind and that in my heart that I would be honoured to vote for this legislation to go through. I hope and trust that other Members may view it through the lenses of life rather than selfishness of body. Thank you. **[Approbation]**

### **The Deputy Bailiff:**

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

### **7.2 Senator A.K.F. Green:**

I thank everybody that spoke, and I will endeavour to answer the questions asked. Of course, the debate was started by my good friend - well I started it but followed up by my good friend - the Constable of St. Martin who I utterly respect for his individuality and his views. But I would say to him that the whole point of an opt-out system is that people may opt out if they are not sure about making that gift of life to people after they have departed. I know he understands that, but I do respect his view and I thank him for his support and friendship in the time that I have been in the States. The gift of life. One thing I want to correct before I go through the comments that were made and answer the questions that have been asked, is that I got a feeling going through today, I got a feeling that there is a lot of support for this. I am very grateful for it, but I also had a feeling that some people think that organs will be harvested and then looked around to see if they can be used, and nothing could be further from the truth. If a person is a suitable donor, then a suitable recipient would have to be found. Unless a suitable recipient can be found, then no organs will be taken from that donor. They do not take organs willy-nilly for the sake of research or anything else. That said, if they do take an organ from a person because they have a recipient maybe in Southampton, shall we say, who is suitable, who is prepared, ready to accept that organ, if something goes wrong, say the recipient dies before the organ gets there, and that does happen,

unfortunately, or there has been a delay in transferring the organ, or the organ gets damaged in any way during transportation, and it cannot be transplanted into the person, then by agreement with the family prior to taking the organ from the donor, that organ will be either sent on for medical research or disposed of in an ethical way. But all that would have been agreed with the family before the organ is taken. I am just picking up on other things that the Constable of St. Martin made comment about. The driving licence over here not working and he had concerns that the opt-out system over here might fall into the same trap. I think that is virtually what he was referring to. That is why it is so important that we only have one register, one register held by the U.K. Organ and Transplant Donation Register, not a Jersey register, or Guernsey register and a U.K. register. One register to cover all wishes of people. The Constable also said he was not sure if there was evidence that there had been an increase in Wales on the number of donations. Well the evidence is that there has been a small increase, but a small increase is a significant thing for those who received it, not only in saving life, but in the quality of life. I have had 2 friends that have had kidney transplants. For one they had several and it did not work, and for the other it was successful, and it makes such a huge difference, not just to that person, but to the family as a whole. I would also just like to pick up on - I was not sure if I was going to mention this - but I will mention it because it is very personal, and I will try not to get too emotional about it. Deputy Lewis, who is not in the Assembly at the moment, knows this, and Members might be aware, that some 30 years ago my son had what was almost a catastrophic road traffic accident and he was not expected to have survived the night. It was mentioned to us that we might wish to consider in the event that he did not make it, his suitability for organ donation. The answer at that time, because we had never discussed it as a family, we had never even thought about it, the answer at that time would have been no. Categorically no. I could not imagine my 9 year-old boy cut up and organs taken from him. Conversely, to contradict myself, if they had said to me: "If he has a kidney, or any other organ, he will survive", I would have absolutely said yes; of that, there is no doubt. In hindsight, the answer should have been yes, had it been necessary, but we had not had that conversation, and that is what the Dean was saying and others; I think Deputy Norton as well and others. That conversation should be taking place across the dinner table in families now, not in these emotional situations that I was describing at the bedside in Southampton Neurological Unit. It should be taking place now so families are clear about what they want to do, and nobody is going to go against the wishes of the family. Some people might think that is difficult if you have got a deemed consent thing and then the family do not want to go with it, some people may have a challenge with that, but this is an improved situation of where we are today. Picking up on, Deputy Tadier mentioned about the children, and particularly the under-16s are, as the Attorney General said, and I am very grateful to him, under-16s are deemed not to be in law capable of making consent.

[14:30]

Of course they can make, as the Deputy of Trinity said in her as usual very compassionate understanding of the situation, they can make their views known to their parents. I am sure those of us that have had children, certainly above 10, but maybe even some lower, they let you have their views in no doubt. In fact, I saw an advertisement the other day: "Employ a teenager while they still know everything." **[Laughter]** They know their views and they make it known, but in law it is 16. However, between 17 and 18 they are deemed to be capable of making that, so it is a bit of a borderline between 17 and 18. Deputy Doublet asked about the campaign that we are going to have, and I know that the Chairman of the Scrutiny Panel is concerned that £20,000 may not be enough. If it is not, then more will have to be found, but you have got to remember that when you are not comparing like with like, when you compare us to Wales, because we do not have ... I have worked in Wales and it is something like, we do not have 4 different health authorities, we do not have umpteen different Councils, we do not have all these different Councils and other



organisations, we have one. I would suggest that, yes, we do need to have a proper campaign and it needs to be in different languages. We had already agreed that that would happen. But I would suggest that it would be a continuous thing in letters going out to invite people to come for clinics, when people go to Social Security to register, that something be given to everybody so new arrivals, even though organs cannot be donated as a deemed consent, they can be donated voluntarily for a year, letting Social Security know. One of my favourite mediums, and I hope that the next Minister will take it up, let us get an advertisement on the milk carton. Perhaps they should have it on the milk jug on the breakfast table. Most of us have a milk carton on the breakfast table, or am I being a bit uncouth? **[Laughter]** But I do believe there needs ... my mother would say it was, by the way. **[Laughter]** I do believe that there does need to be a proper campaign and that is why we have allowed over a year for it to happen. The Constable of St. Mary has asked about the Coroner, and in our case, that is the Deputy Viscount. I only recently had contact with the Deputy Viscount. If we go through the Articles one by one, as we describe, these laws do not change the role of the Deputy Viscount, but we may need to look at - and we have offered him the opportunity - new protocols in the way that the Health Department and Deputy Viscount work together, but there is no change to the role of the Deputy Viscount. I think I might have covered the point from the Constable of St. Lawrence around research for organs. Organs can only be taken if there is a recipient, and in that case it is agreed with the family, as I said, what would happen if that donation was not transplanted. I think the Attorney General answered Senator Ferguson's comment about taking ownership of bodies. The Deputy of St. Ouen I thank again for his report as Scrutiny Panel Chair, but we have talked about the publicity campaign. Because the Deputy did mention it, I would like to just pick up for a minute on the questionnaires or the questions that are asked when families have been spoken to about agreeing to donation for their family. Those questions are, by nature, very intimate and very personal and of course, again, if you have had those discussions with family members in advance, perhaps it is less emotional, but they are still very personal. They are no different though - and I am not going to describe the detail that they go into - to the answers that I would have to give if I was donating a litre of blood today, the only difference being that I am answering those intimate questions on my behalf, not on my deceased loved person's behalf. They are difficult, but they are essential to ensure that the right organs are taken and that the organs are safe and will benefit the recipient. I thank Deputy Norton for his comments and for his support. I thank Deputy Lewis for his support; Deputy Lewis of St. Helier, that is. Something prompted me though to point out, although it is not relevant to this law, that we already carry out our own transplants in Jersey. We do not just, with the National Transplant Service, take organs for donation, that we have some really first class eye surgeons and they are doing corneal transplants in Jersey and have been for over 18 months now. The Deputy of Trinity, as I say, made her usual back to the people, compassionate nurse speech and thank her for her practical support with that. I thank the Dean for his support. The Deputy of St. Mary asked about safeguarding for the next of kin. It is the next of kin that has the final say under this current law. If you cannot find a next of kin for whatever reason, then the law does cover a list of other people that might be suitable, like close friends or partners or whatever. If none of those can be found, then organs cannot be recovered or transplantation, because you cannot guarantee the quality of those organs, because you do not know the answer to those very intimate questions. The Deputy of St. Mary also mentioned the Law Society and it is a good idea. Certainly as part of our campaign, that is something I had not thought of, but if people have not opted out, then that is an indication they want to donate their organs, if they put it in their will, although there may not always be time to find that out, because you do not have very much of a window in order to take those organs in good condition, but I take on board the Deputy of St. Mary's comments. Deputy Brée: I am pleased that this is my last proposition and that probably not necessarily the last time I will speak in this House, but it may be, but Deputy Brée and I finish this Assembly's life agreeing with each other, so I am really pleased about that. He talked about the gift of life of new life and of

course that did then remind me that we need to raise the issue, we need to get that out. I think I have covered everything, but I would like to just thank not only those Members that have spoken, but the team that put this together. This has been a lot of hard work for the team, [Approbation] particularly some of our clinicians in this hospital, who have campaigned and worked very hard to get this. This will be the last opportunity that I do it publicly, but I would like to thank my 2 Assistant Ministers, the Constable of St. Peter and Deputy McLinton, for their support, not only this item but in the 3½ years that I have been Minister. With that, I make the proposition.

**Deputy L.M.C. Doublet:**

Can I ask for clarification on the Minister’s speech? I asked about schoolchildren and whether they would be informed within the P.S.H.E. curriculum.

**Senator A.K.F. Green:**

Sorry, I forgot that in my enthusiasm for this. There is no detailed plan yet, but I thought it was an excellent suggestion again from the Deputy. It is something that I will certainly leave in a legacy letter for the next Minister and also for the next Minister for Education, because it should be there as well, then it becomes the norm, in our culture you expect - unless you really object - to donate that gift of life to people when you can no longer use your organs.

**The Deputy Bailiff:**

Very well. The appel has been called for. I invite Members to return to their seats. The vote is on the principles of the legislation. I ask the Greffier to open the voting.

<b>POUR: 45</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Connétable of St. Martin		
Senator P.F.C. Ozouf				
Senator A.J.H. Maclean				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				

Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy S.Y. Mézec (H)				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

**The Deputy Bailiff:**

How do you wish to deal with the matter in the Second Reading?

**Senator A.K.F. Green:**

This is primary law and I do not really want to waste people's time, but I just want ...

**The Deputy Bailiff:**

I beg your pardon, I think formally I know the answer, but I have to ask about scrutiny, given that the Deputy has already spoken.

**The Deputy of St. Ouen:**

No, we do not wish to call it in, Sir.

**The Deputy Bailiff:**

Thank you very much indeed. I apologise for that. Yes, Second Reading.

**Senator A.K.F. Green:**

What I have done is tried to summarise the Articles, if Members want me to go through them. I am reluctant to say *en bloc*, Sir, but depending on what Members indicate. I have got a shorter summary rather than the full-length Articles, so I am in the hands of Members, Sir.

**The Deputy Bailiff:**

You wish to take all of the Articles as amended?

**Senator A.K.F. Green:**

Yes.

**The Deputy Bailiff:**

Unless anyone wishes other than a short summary, that appears to be the mood.

**Deputy M. Tadier:**

It is a question, Sir, rather than necessarily a speech at this point, but it is just to ask whether the Minister might consider talking specifically about the details of those who are not captured by the opt-out and those Articles.

**The Deputy Bailiff:**

Very well. Minister, do you wish to propose them any way you want? Clearly the short version is accepted, with the invitation to elaborate a little bit on certain areas.

**7.3 Senator A.K.F. Green:**

I will try and just give a flavour of each Article, Sir, and then go into detail where Deputy Tadier has asked me to and pick up if Members want anything else. Article 1 provides definitions for certain words. Article 2 defines the transplantation activity, which includes, for example, removing material from the body of a deceased person. Article 3 provides that a person may carry out specified activity in Jersey with the express consent which is required by Article 4, 5, 6 and 7. Article 4: “Consent is deemed to have been given in a specified activity involving the body or relevant material other than excluded material from the body of an adult who is not an excepted person.” So going a little bit further under Article 4: “(a) A decision of the adult not to consent to specified activity was enforced before his death. The case is one in which express consent is required. The case is not one for which express consent is required and a person who stood in a qualifying relationship to the deceased person objects to the specified activity on the basis of views held by the deceased and a reasonable person would conclude that the person who stood in a qualified relationship to the deceased person knows that the most recent view of the deceased person before death on consent for transplantation was that the deceased person was opposed to consent being given.” Article 4 requires the express consent in certain cases for specified activity involving the body. Article 5 requires express consent for specified activity involving the body, and I am trying to summarise this: “An excepted person is an adult who has died but was not ordinarily resident” and I think this is what Deputy Tadier wanted me to cover: “for a period of at least 12 months immediately before dying.” Now, there is nothing stopping that person from opting in, but there is not a deemed consent because they have not opted out if they have only been in Jersey for a period of less than 12 months. The other Article 5(4) also says: “if the person lacked capacity to understand the notion that consent to the specified activity could be given” so in that case, the meaning of “expressed consent” in the case of these excepted persons depend on the circumstances laid out in 5(5). Article 6 requires the expressed consent from a person of under 18, and I think I talked about that in my summing up, so I hope I have covered the area that Deputy Tadier wanted me to. Article 7 gives the Minister the power by order to specify types of relevant material that is or is not included. Article 8 permits a person to appoint one or more persons to represent him or her after death. Article 9 applies where a living adult lacks capacity to consent to transplantation activity, no expressed decision of that adult is in force. Article 10 specifies that: “The removal and use of any relevant material from the body of the deceased person for a specific activity must not be effected by except by a registered medical practitioner or person qualified for registration as a registered medical practitioner, who must be satisfied by personal examination of the body that life is extinct.” Article 11 makes it an offence to carry out that activity without consent.

[14:45]

Article 12: “Permits a person having the control and management of the hospital, nursing home or other institution to take steps for the purpose of preserving relevant material from the body of the deceased person.” Article 13 provides that: “Nothing in this law applies to anything done for the purposes of functions of the Viscount under the Inquests and Post-Mortem Examinations (Jersey) Law 1995.” Article 13 also provides that: “Where a person has reason to believe that an inquest

may be required to be held on a body or that a post-mortem of that body may be required by the Viscount that that person shall not, except by consent of the Viscount, give consent in law.” Article 14 has been deleted in its original amendment following a query from the Scrutiny Panel and further analysis indicates the Article 14 draft law was unnecessary and therefore was taken out completely. Article 15 clarifies that: “Nothing in this law should be constructed as rendering unlawful any dealings with the body or part of the body of a deceased person.” Article 16 provides for: “A person to be guilty of an offence, liable to imprisonment of a term up to 2 years and a fine if the person makes in any document, material evidence or information which is required to be provided to any person entitled to have that information under this law a statement that at the time, in the light of the circumstances under which it was made is known to be false or misleading.” Article 17 makes provision for criminal liability of partners, directors and other officers of partnerships with separate legal personality and bodies corporate. Article 18 provides for limitation of liability of the States, the Minister and the Medical Officer of Health. Article 19 gives the States: “the power by regulation to make such provision as the States may think fit for the purposes of carrying out this law.” As amended, this Article makes it mandatory rather than discretionary to put in place the necessary mechanism for the registration of an opt-out from deemed consent. Article 20 gives the Minister order-making powers. Article 21 makes provision for: “the Minister to issue codes of practice for the purpose of this law and in particular, but without limitation, for the guidance of any person acting under this law.” Article 22 makes provision for: “the power to make rules of the court under the Royal Court (Jersey) Law 1948 to include a power to make rules for the purposes of this law.” Article 23 repeals the Anatomy and Human Tissue (Jersey) Law 1984 and it is replaced by this law. Article 24 provides for the citation of this law and provides for it to come into force on such day or days that the States may appoint by Act.

**The Deputy Bailiff:**

Are the Articles seconded? [**Seconded**]

**The Deputy Bailiff:**

Does any Member wish to speak on the Articles?

**7.3.1 Senator P.F. Routier:**

My query is regarding Article 9, where it talks about the activities involving material from adults who lack capacity to consent. I understand why this Article is here, but I would like to think about the reverse situation, where perhaps somebody who perhaps has a learning disability, who may wish to be party to this legislation, who wants to be able to offer parts of his body. It is really just a matter of how that can be promoted within that community of people with learning disabilities or other people who do not have capacity, how they are going to know this is a possibility for them.

**The Deputy Bailiff:**

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

**7.4 Senator A.K.F. Green:**

This is not a difficult case, and I suspect that this will come under the law that we passed yesterday with the capacity law, because people may be deemed - even though they have difficulties - to have capacity to make decisions on certain parts of their life. If the person is deemed to have capacity to make that decision, even though they may have some other challenges in life, then that will be okay, but if not, their family will have the only say. I would suggest that most people that I know with learning difficulties are capable at least of expressing their desire to their families, rather like young people do. If they are not covered by the capacity law - and I believe some people will be - then they should make their wishes known to the family, bearing in mind that it is the family ultimately that has the final say. I hope that gives some assurance to the Senator.

**The Deputy Bailiff:**

Very well. Those Members in favour of adopting the Articles, kindly show. The appel is called for. I invite Members to return to their seats. I ask the Greffier to open the voting.

<b>POUR: 45</b>	<b>CONTRE: 1</b>	<b>ABSTAIN: 0</b>
Senator P.F. Routier	Connétable of St. Martin	
Senator P.F.C. Ozouf		
Senator A.J.H. Maclean		
Senator I.J. Gorst		
Senator L.J. Farnham		
Senator P.M. Bailhache		
Senator A.K.F. Green		
Senator S.C. Ferguson		
Connétable of St. Helier		
Connétable of St. Clement		
Connétable of St. Peter		
Connétable of St. Lawrence		
Connétable of St. Mary		
Connétable of St. Ouen		
Connétable of St. Brelade		
Connétable of St. Saviour		
Connétable of Grouville		
Connétable of St. John		
Connétable of Trinity		
Deputy of Grouville		
Deputy J.A. Hilton (H)		
Deputy J.A.N. Le Fondré (L)		
Deputy of Trinity		
Deputy K.C. Lewis (S)		
Deputy M. Tadier (B)		
Deputy E.J. Noel (L)		
Deputy of St. John		
Deputy M.R. Higgins (H)		
Deputy J.M. Maçon (S)		
Deputy S.J. Pinel (C)		
Deputy of St. Martin		
Deputy R.G. Bryans (H)		
Deputy of St. Peter		
Deputy R.J. Rondel (H)		
Deputy S.Y. Mézec (H)		
Deputy A.D. Lewis (H)		
Deputy of St. Ouen		
Deputy L.M.C. Doublet (S)		
Deputy S.M. Wickenden (H)		
Deputy S.M. Bree (C)		
Deputy M.J. Norton (B)		
Deputy T.A. McDonald (S)		
Deputy of St. Mary		
Deputy G.J. Truscott (B)		
Deputy P.D. McLinton (S)		

**The Deputy Bailiff:**

Do you propose the matter in the Third Reading, Minister?

**7.5 Senator A.K.F. Green:**

I do, Sir. We have had a really good week, I think, not for us, but for the people of Jersey. We have seen new mental health laws, we have seen new capacity laws and now we have got the Third Reading of the transplant organ donation law. I would like to thank Members for their support on all of those things and their contributions during the debate. Again, I would like to reiterate my thanks to officers, the law draftsmen, the Law Officers, my policy officers for the time and effort they have put into researching, preparing and getting this important legislation to the Assembly. With that, I propose the law in the Third Reading.

**The Deputy Bailiff:**

Is it seconded in the Third Reading? **[Seconded]**

**The Deputy Bailiff:**

Does any Member wish to speak in the Third Reading?

**7.5.1 Senator I.J. Gorst:**

I said that I thought we would get to the taxation matter by 3.00 p.m. so we are still on track for that, hopefully. I did just want to rise and offer my thanks. He has been thanking everyone else around this Assembly, but I did just want to thank Senator Green for the work that he has undertaken **[Approbation]** in what is probably the most difficult portfolio that any Member of this Assembly or Scrutiny Panel has to review. I thought that yesterday during a number of debates, where we were talking about people and putting improving people's lives right at the heart of our policy and our decisions. We saw there a Minister and a Chairman of a Scrutiny Panel working hand in hand in a very positive and productive way **[Approbation]** for members of our community, and again, with this piece of legislation, I think they have worked in a similar manner and I just wanted to congratulate them for that piece of joint working, which is improving people's lives.

**The Deputy Bailiff:**

Does any other Member wish to speak in the Third Reading? I call upon the Minister to respond.

**7.5.2 Senator A.K.F. Green:**

Mutual back-slapping here: I thank the Chief Minister for his thanks. I again acknowledge the very valuable work of the Scrutiny Panel at a time when they were very busy as well. Also I have acknowledged the Law Officers; I have acknowledged the team in the department. Without this, it would not have been possible, but sometimes when the workload got heavy, I have to acknowledge the support of the Chief Minister in helping me keep my head above the water and to keep going. With that, I make the proposition in the Third Reading.

**The Deputy Bailiff:**

Those Members in favour of adopting the law in the Third Reading, kindly show. The appel is called for. I invite Members to return to their seats. I ask the Greffier to open the voting.

<b>POUR: 44</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Connétable of St. Martin		
Senator P.F.C. Ozouf				
Senator A.J.H. Maclean				
Senator I.J. Gorst				
Senator L.J. Farnham				

Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
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Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

## **8. Retail tax: rescindment of States decision (P.62/2018)**

### **The Deputy Bailiff:**

Very well. We now come on to the Retail tax: rescindment of States decision, lodged by Senator Ozouf. Can I ask the Greffier to read the proposition?

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

The States are asked to decide whether they are of opinion: (a) to refer to their Act of 30th November 2017 in which they adopted the Draft Budget Statement 2018 and their Act of 28th November 2017, in which they rejected an amendment to the Draft Budget Statement 2018, which sought to provide that the new income tax levied on large retailers be levied at the rate of 10 per



cent rather 20 per cent, to rescind that part of the Budget Statement 2018 which enabled that new income tax to be levied at 20 per cent and to agree in principle a new income tax levied on large retailers be levied at the rate of 10 per cent; and (b) to request the Minister for Treasury and Resources to bring forward the legislation necessary to implement this decision.

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

The Chief Minister spoke in thanking the Minister for Health about important issues that matter to ordinary people, and while we do not have as many people in the gallery today, this is a matter before the Assembly that matters to hundreds, in fact, every single working individual in Jersey, every young person, senior person, *et cetera*, because everybody requires a facility to purchase goods and other requisites in our retail high street. Lest it be cast as some sort of business-orientated debate, this is a debate which is important in the sense that it affects the very concerns that many Islanders have about the cost of living. We have seen some fantastic numbers today in terms of employment numbers and I think that the Chief Minister, at the end of his term of office, can be really proud - and the Council of Ministers and all those involved - that there has been today the publication and there can be a real pride of the fact that there are more people in work than ever before. In fact, the industry which we are debating today employs some 7,800 Islanders in jobs across the Island, but the Assembly has to be cognisant of the practicalities and the intended and unintended consequences of its policy decisions, and I do not bring a request for a rescindment to a proposition lightly. In 19 years, I do not think I have done any others, maybe one or 2 rescindments. I have certainly been in many other rescindment debates, but I do not do them lightly. I want to be clear, that while I did bring forward a package of Budget amendments in the debate which was held last November and I had originally a 5-part proposition on the table to justify the reduction in corporate income tax from 20 per cent to 10 per cent, which was fully costed, it is only the request to rescind the decision from the 20 per cent to 10 per cent issue which I am asking for Members' thoughts and reconsideration on today. I also am asking Members to do so because there is new information. A rescindment debate which just hears the same information and has the same debate should clearly end up with the same result, so the evidence before Members last November was insufficient for Members to vote in favour of a 10 per cent rate for retail. They wanted to go for a 20 per cent rate. In my remarks, I will be addressing what has changed, what new information, what are the things that Members did not know then that we know now that would justify a change in decision. May I first of all say, I do not have a nomination form, so I think this is going to be my swan song. Can I say that I am absolutely delighted that Deputy Southern is not ... well, I am not pleased he is not here, because I want to thank Deputy Southern. We have had our moments during the last few years, but I want to thank him most warmly - and I do mean this - that he put a provision in for Standing Orders to get a Minister to answer a question, because in getting the Minister to answer a new question, which the Minister was rather ... and I understand why Ministers do not want to answer questions sometimes, I know this. I can hear the current Minister saying that I have done it before and it is probably right, but frankly, what I wanted to tease out - and I am so grateful for the ruling of the Chair yesterday - was that I really sense that maybe the Treasury was being just a bit too prudent in relation to what they were saying was the justification of the retail tax requirements.

[15:00]

Because I came forward with a completely costed alternative to the 10 per cent, which was costing £2.8 million, and again, if the States are going to make a decision to rescind the tax, I am personally a little dubious about the £2.8 million. I am not sure they are going to get that much in, but anyway, I will work with that number. The first question is as I have now dropped all the other ones, which I am pleased the Minister is going to come forward with anyway, i.e. sorting out tobacco and sorting out online liquor traders and all the other issues that came for a costed thing.

The great news is the Minister for Treasury and Resources has revealed in a really quite startlingly fantastic end of term report for himself, which I am sure he must be really pleased about, he has now told us that the income tax receipts for 2017 have broken all records. My goodness me, we used to have a sofa in the Finance and Economics Committee, which we used to put some money in just in case. It was called the sofa. The Minister is asking me where the sofa is. All I can say is I would quite like to know where the sofa is, because my goodness me, the sofa, as it is described, that is the difference between the estimated and actual amount of money that you say you are going to have in the Budget, and then suddenly, in the first few months of the year, you are then not knowing exactly how much money there is, what have we got? It was difficult, but I tell you, the Minister has done really well. He has got £32 million more in income tax receipts than he thought in the Budget last year, £32 million. **[Approbation]** I can almost have 10 years' worth of rebate on hardworking Islanders and the additional costs of their food that they are going to have to pay as a consequence of this. In all seriousness, I do congratulate the Minister on what has clearly been a very prudent approach to budgeting, but I know that he does not do it. There has been a lot of discussion in this debate about the fact that Ministers do do estimates and all the rest of it, which is at the heart of this debate. It is not Ministers that did estimates. Senator Maclean does not get there with his pencil and put the numbers in, it is experts. But the experts were very prudent, but the good news is for Members and those fighting elections and going out and saying how great Jersey is, well, how great Jersey is, up 6.6 per cent over and above the already upgraded number of income tax receipts in 2017. Members can remain with the confidence to know that there is not going to be the threatening meltdown of our public services and our public finances because we make this decision to reduce this tax down to 10 per cent. There is more than enough money, and if I may say, £32 million, I fully expect that that is going to be replicated again by the excellent work this year, as this year is deducted from the last year of income tax receipts, and I do think underspends are about £20 million as well, and that is before the Minister has even told us about his fantastic investment returns. I know that we have probably got a 3 benefit higher-than-estimate amount of money. That is not meaning to say we are rolling in it, but we have got a lot more resources than we otherwise thought. That means the Council of Ministers' policies can be said to have been working. But unfortunately they have not worked in relation to retail and that is what is at the heart of this debate and it is a very serious issue. Now, before dealing with the issues of why 20 per cent arguments are needing to be revisited and what is new, may I first of all deal with the issue of consultation? Consultation means that you talk and you seek information and you take advice, take counsel, pick somebody's brain, call it what you will, when developing a policy proposal. Now, it was said that this tax, as all tax should be - sometimes there is the element of surprise in terms of duty things and things like that - but when you are dealing with a new tax, it is really important... and my experience has been that there has always been a proper consultation in relation to the tax. Now, Senator Ferguson brought forward a Back-Bencher proposition that was accepted in the 2016 Budget and then one would have expected that the Treasury would go around their business and go and ask exactly and now start planning and working out what this tax would look like, but unfortunately ... and I would commend the Chamber of Commerce, who some Ministers do not like. I have not always liked the answers from freedom of information, but the freedom of information, that was a request that was carried out by the Chamber of Commerce, was absolutely clear. There had not been any consultation. There had been no consultation, and if consultation is inviting members of the retail industry to a meeting on the 22nd of September, giving them some slides - and I have got the slides here - of what effectively was a *fait accompli* - sorry, if somebody does not like the French, that is a thing done already, okay - that means an already baked retail plan. That means it had already been signed off by the Minister, signed off by the Council of Ministers. It was not consultation. Now, that is not right, and frankly, this is one of the things that retailers have been extremely upset about. They were very magnanimous in saying: "Yes, we think we should pay something, providing it does not disrupt the finance industry,

providing it does not disrupt and cause havoc and undue pressure.” Now, I consulted with them, and that is why I knew that the 10 per cent, while they did not love it, that they could make it work. But the Treasury did not do that and we did not have therefore the benefit of a proper result of a consultation that should have happened. I think that is a really serious issue. These facts emerged after the Budget debate had completed. We had sensed that there had not been consultation, but then we knew, because the freedom of information request made it absolutely clear. I want to be really nice to the Minister for Treasury and Resources, because we disagreed on some things, but over our time we have agreed with far more than we have disagreed with. But I really was a bit disappointed with his comment, and I know that other retailers were too, of the fact that the Treasury officials ... and I do not think it is the Minister, that is the problem, it is the officials. The officials really did not go and do justice to, I think, what the Minister would have wanted, which was a proper discussion with retailers to understand the consequences. I think that the department let him down and I think in turn the Assembly was let down, but what you cannot do is you cannot make decisions when you have got faulty foundations. We had faulty foundations because we had not asked what the consequences of this tax was. The problem is everything that has happened, because a lot of Members said: “No, no, it is not true. It is not true that retailers ... that we are going to be losing shops on the high street. No, it is okay, the appendix 2 which said that there was not going to be any impact on prices, that is not true.” All of the evidence that we have seen since this debate has confirmed, if anything, it has made worse the representations of the retailers that were suffering this tax. I will deal with those in a second and I will say one other thing that has been very confusing. We had the debate on the retail tax on the basis of the mutual Co-operative Society and I brought a specific amendment in relation to the Jersey insurance being included in the tax. I was told that there was a binary decision, it is mutuals out, they do not pay tax, and unfortunately what I have found since then is a rather more difficult situation that has arisen through mutuals. There is still some scratching of heads. The Minister for Treasury said himself in his comment he did not know whether or not the Co-op in the U.K. pays tax. I think the internet is in the Treasury, it was there when I went in. I looked up on the internet to see the Co-op U.K. tax system and how the Co-op in the U.K. was taxed. It is quite complicated, but effectively it means that tax is paid, and certainly as far as Nationwide Building Society, a big mutual, there has been an issue where they have had tax, and there is a Competition Commission investigation as to the applicability of the banking levy on Nationwide versus the other big banks. So I am just generally saying that the debate was held on the premise that mutuals were absolutely excluded and not part of this whole tax. I know that the Treasury then accepted - which I was really pleased about - a proposition to look at mutual taxation and they are going to have come forward with it, but I want to have in Members’ minds the reality now that it is not as simple as it was stated and it is likely that there should be, on 2 grounds, a consideration given to tax the Co-op and tax Jersey Mutual. In doing so, are Members more comfortable, if that is true, taxing the Co-op at 20 per cent or 10 per cent? There is an issue of fairness, because when I discuss an issue of a Competition Commission investigation into the way that the banking levy in the U.K., which is a tax, applied to the one class of banks versus another, there is an issue of unfairness, and whether or not it conflicts with the competition law. The Minister says it does not. I have to say, I do not think that has been tested, but the competition law does cover the States and certainly we should be at least keeping the spirit of the States decision to have level playing fields. Is it really right or appropriate for one of the Island’s biggest food retailers to be paying 20 per cent tax and the other one paying nothing? Is that fair? Moreover, is it fair that we are attacking the retail sector with 20 per cent and we have financial services at 10 per cent? Does that sound fair? My representation to colleagues is that it is not fair and it even is becoming more unfair when one hears the moves of taxation going down elsewhere in other places beyond. I think all of the messages about the difficulties of the high street have also been significantly strengthened. One thing that we do not need to debate again is who pays tax. Companies do not pay tax, it is people. It is either the workers, the owners or the

consumers. The issue before Members is who is going to pay this tax or who is now paying this tax and what is its effect? It is not as if we are taxing the financial services industry. That is showing strong growth in these employment numbers, up to record numbers of people in work in financial services. It is fantastic. I am delighted to see the Minister for Treasury and Resources agreeing with me, it is probably one of the principal drivers behind those really buoyant tax returns. Those have not happened by accident, they have happened by the increasing performance of the Jersey economy. So we are not discussing the growing financial service sector, we are attacking the retail sector. A retail sector, unless anybody does not watch the news... maybe they read the paper today, they can read the *J.E.P.* today and they can read that even today - and if anybody thinks that I have got any special line into the *J.E.P.*, I think my relationship with the *J.E.P.* over the years has been proven to be somewhat interesting, so I doubt that they did not do this on purpose - but the front page of the *J.E.P.* says: "20 jobs at risk from store closures", 2 high street retailers within metres of each other losing 20 jobs. That is going to be travel agent Thomas Cook and the second one is for Mothercare. That joins the list of all the others: Woolworths, British Home Stores, Austin Reed, Jaeger, Lush, Thorntons, Healthspan. Now, why does this matter? I wonder how many Members, if they do go out - maybe they buy online, I am not sure - but the fact is that have any Members seen a new shop next door, next to that big retailer? Have we seen a new inward investment? Have we seen people beating down the door of the proprietor of that building to say they want to come and open in Jersey? No, we have not. In fact, what we are seeing is we are seeing a very depressed picture in relation to retailing. What we have done, and while many Members may look back with rose-tinted spectacles to the world where we did tax shops at 20 per cent, I will say again that if we had not have brought on Zero/Ten and reduced the tax down on retailers to zero, I would postulate the view that our high street would look very different today. It was not intended, but it acted as a fiscal stimulus. What we did is we put an anti-fiscal stimulus in last year when we put the retail tax in at 20 per cent. Not at 10 per cent, like they do in financial services, or 10 per cent they do in the Isle of Man, at 20 per cent. What do we think that sort of message sends out about retailing in Jersey for somebody who is a landlord? I know Members have difficulty about the rents. Markets set rents, and they will be dealt with through market conditions, and rents certainly have come down and they are going to come down further, that is absolutely inevitable, but we get 20 per cent tax on most rents, so that is okay, but that is less tax as well. But when we consider what we have done with retailers, we have asked them to do general data protection regulations, we are asking them to do family-friendly employment measures, discrimination disability regulations, consumer protection regulations, living wage proposals, all good things, all absolutely great ideas, and all good things that must now be part of the fabric of running a business in St. Helier, all good.

[15:15]

But then is it then realistic to then pile on what effectively is a taxation rate of 20 per cent, which is higher than that of the U.K.? I know there are allowances over the £500,000, but frankly, the equivalent in the U.K. is that you are dealing with multinationals with millions of pounds of turnover. This is quite small Jersey, and a 20 per cent rate of tax is not the Jersey way, it is certainly not giving out stability and it is higher than that of the U.K. It is quite extraordinary. Now, there are 3 types of retailers that are affected by this and this is the issue that Members need to think about, as to whether there is any new information that might change their minds. The first type is the mutuals. They do not pay tax. I warn Members, they might have to pay tax under some new arrangements and certainly at the fairness issue. The second thing is what I describe as the apparel retailers. Where there is a good that you can buy online, then probably what you will do, if you are a normal consumer with normal consumer behaviour, is you will go and try and find what the item is and if you can buy it online, you will substitute the purchase by buying it online, if you get it at a lower price. Of course, if you need it tomorrow, then you will buy it, but most people

plan their purchases quite a lot and that is why we are seeing if any Member goes down to Jersey Post, we are seeing an enormous amount of online purchasing happening with increasing volumes. We are trying to do something about that with another amendment that we dealt with in the Budget, but the reality is that apparel and other such vendors cannot pass the price on. If Members recall the fact that the tax has got to be paid, it is not a mythical amount of money that just comes from beating up a U.K. high street retailer or something, it is a human being behind it. It is like the Chief Minister was saying, it is about a person, a person is paying, and in the case of the person running a retail store, it is going to be the owner and the owner is going to sell less goods, they are going to be more bought online, we are going to see our G.S.T. (Goods and Services Tax) numbers go down and we are going to see less vibrant retailers in future. Deputy Noel may snigger. I do not know whether he is sniggering at me or sniggering at something else, but I hope he is not. I hope he is thinking very seriously about his role as Minister for T.T.S. (Transport and Technical Services) with the public roads that are there, because he might well have to dig up some of the pavements that he has got, because he will not have so many shops in town, because effectively the high street footprint is going to shrink, and if he did not believe me and if other people do not believe me, go and walk down King Street ... and taking a comfort break before 6.30 p.m. and go and walk up and down King Street and all the subsidiary streets go off it and go and count the amount of shops that are empty. It is not a booming economy. It is not an economy that is growing. Dieter Helm, one of our previous economists, said to the Finance and Economics Committee: "Running an economy is a bit like looking after a goose. If you pluck it too quickly it flies away. If you do not feed it properly it dies but if you look after it you can carry on laying golden eggs." Frankly, we have done a bit too much plucking. Twenty per cent is too much plucking from what people think is an easy amount of money and the incidence of shops leaving Jersey is not a casual one and it is the marginal decisions. There are going to be other high street retailers, up and down King Street that are going to suffer some difficult situations in the next few months. This Assembly, I think, has an obligation to ensure that we are at least in the best position that they do not decide to pull out of Jersey. If any Member, in their summing up, can cite me real examples of why I am wrong in my fundamental argument that this is going to contract the retail footprint of Jersey and lower consumer opportunity, which is a bad thing for tourism ... we have got lots of Guernsey people. I see there is to be some new ferries coming from Guernsey. No doubt they are going to be coming to shop on King Street and France and all the rest of it. All of these things matter. We are going to have a smaller footprint. It is not a casual thing and it is not a misplaced argument and it is nothing to snigger about. It is a real issue that there is a contracting retail high street in St. Helier and it is a serious one. Members need to understand the implication. It is easy to say it is some mythical third party that is paying this tax. It is not. It is real people making real business decisions, which is going to contract our high street and I warn Members against it. There are 2 issues that I am going to deal with. There is this issue about the argument about whether or not those retailers, the third bunch of retailers ... so we have got mutuals in group 1, the after-hour retailers that cannot pass on the price in group 2 and, thirdly, the food retailers and these are obviously the ones that really do affect families and every individual. There is an issue here where it is quite difficult to prove what is going on. It is said in some cases that there is some dark arts about the way that food retailing pricing operates. It is quite difficult sometimes really to get your finger on what is happening in relation to pricing. First and foremost, retailers get ... and they try and get reduced prices from their goods that they are buying from the United Kingdom and we have seen one retailer making different pricing arrangements with their supplier and they have said that they are going to reduce prices. That is excellent. But they were very clear in that new supplier, they were going to not be able to pass on the greater savings that they would have done because of the retail tax. Now, what do Members want: to lower the cost of living for Jersey people? Is that the objective? Is that the objective, to make the family budget go further or is it to constrain it? So, of course, we are going to encourage food retailers to become more productive, to reduce their costs. We have done so but

they cannot pass it on because of this tax. Well, that does not seem to make sense. Secondly, it is quite difficult to prove what the Treasury wants me to try and prove and I have had some pretty strong emails from the Treasury saying: "Well, prove the fact that there is food price inflation." Well, I have tried my very best and what happens with food retailing, because it is a small margin business ... in other words, it has not got the margins of some of the apparel businesses. It is operating on slender margins. There is no evidence that Jersey food retailers with the additional competition that we have seen from Waitrose, from the arrival of Iceland, Marks and Spencer, Tesco Alliance and the Co-op. We have really got quite a competitive offer. So what happens is that they have got to run their businesses and they have got to get a return on investment and then what effectively they do is they pass on the price. Now, I know that you cannot put your finger on it but that is what happens and, of course, it does not happen necessarily ... and no way am I saying that there is a problem here but what retailers do is they have to compete and what they tend to do... in every single store I am told that there is something like... in any supermarket there is about 18,000 to 20,000 lines and everybody... I am sure that if I asked Members what a price... there is a good political question that happens at hustings whether or not somebody is in touch with the world, with the real cost of living, and people are asked the price of a pint of milk or a loaf of bread or some baked beans and that is obviously the key line items and those are the ones that are given the prominence in the store for price comparative purposes. But what happens in reality is the lines that are not in the consciousness that are seeing the inflationary cost because the retailers have got no alternative but to do it and that is what shows up in inflation. So if it is true and unless anybody can tell me it is not true, and if the Minister for Treasury and Resources or Deputy Noel or any of the other individuals that seem to know what is the effect... they did not consult but they understand, I think, that they think that there is no increase in prices. Can they tell me in their remarks where is the tax being paid from? Is it going on prices? If not, prove it please. Can they tell me why my evidence is that Guernsey prices went up by somewhat... I cannot see them in the inflation numbers because, frankly, some of the sophistication of ways that inflation rates work are incomparable but the money is basically recovered from prices and it is covered by those prices that are not necessarily in the consciousness of shoppers. There is a song - I am not going to sing - "Salt, mustard, vinegar, pepper" or something and it is in those lines. It is "Salt, mustard, vinegar, pepper" ... is it flour or pickled beetroot, I do not know, but it is in those kind of products that you are going to see the uptick in prices and you are going to also see a reduction ... I wonder how many Members have seen the reduction in 2-for-one offers that has been going on in the last few months. We have seen a reduction in the 2-for-one offers because that is another way that retailers try to recoup their cost. They do not do as many offers and so they get the money back. I know that Deputy Rondel is only a small retailer but he will maybe explain to us whether or not he buys the argument of whether or not the prices go on as a result of the tax because if there is anybody in this Assembly who understands this... Senator Routier knows about the apparel and we have got Deputy Rondel who knows about food retailing and so he will tell us whether or not this tax goes on the cost of food, because I think it does. Now, I wanted to say that in summary there are 4 things that have changed since the debate last November. Number one, we have got more money. We know that we have got a greater amount of income tax receipts than we had before. Number 2, we know the Treasury did not consult. They really did not consult. I am not criticising the Minister, I really do not want to, but they did not consult. Telling retailers on 22nd September is not consultation and the implication for that is we have got some of the bits wrong and I am not even going to bore Members with some of the detail, which we never got into, in terms of the design of the tax because if you do not consult you make difficulties and you also do not understand the consequences and that is why we are here today having to revisit it to reconsider the implications of it. Do Members think since last November the situation in the high street has got better or worse? Well, it has got significantly worse and it is going to carry on getting worse and it

is going to carry on getting worse in even more forceful terms. I do not know whether I am allowed to use a brand name but there is a ... am I allowed to use Amazon brand of a pantry?

**The Deputy Bailiff:**

Well, I think you can say anything if it is necessary for the purposes of your **[Interruption]**.

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

Yes, it is necessary. **[Laughter]** So I went online to Amazon Pantry. I went online to Amazon Pantry. Now, this is the latest online... and Members will know. Deputy Rondel is nodding and the Constable of St. Mary is, so these are all good frugal individuals. So is the Assistant Minister who is charge of the Consumer Council; he knows. The reality is there is now a new force in competition which is happening in food retailing and in retailing of goods day to day and it is called Amazon Pantry or something else Pantry and it is a force to be reckoned with. I bought my weekly shop of a few Diet Cokes and a couple of cakes or something, or whatever I eat. I bought them from Amazon Pantry. I have been eating a few more cakes recently. I have been enjoying myself. I know that the cost of Amazon Pantry is a lot less and that is going to be another really difficult situation. Now, the Treasury is going to sort out digital sales. They are going to sort out digital sales, because we approved that in the Budget but, please, I do not think that we have got an ability to tax Amazon Pantry at 20 per cent. That is not possible yet but under the BEPS Initiative... the Chief Minister will no doubt be supporting this proposition because he knows about the base erosion and profit shifting and he knows all about fairness and he is the Minister - so is the Assistant Chief Minister - responsible for competition. So they are going to be arguing this afternoon ... if they are doing their job properly, they are going to be arguing for fairness and, frankly, it is not fair that Amazon is not paying 20 per cent tax on their goods that used to be just apparel and now pantry. Members, I have to say, this is no laughing matter. This is an issue which is affecting every Islander. I did some research before deciding whether or not I was going to carry on in politics and I did some research about what mattered to Islanders. The thing that mattered, and it has been interesting today, because it has been the 3 issues of things matter to more than anybody. First of all is the cost of living. Islanders are fed up of not being able to get a decent... they feel that they are not getting a decent ability to be able to have keen prices. This tax at 20 per cent makes it worse. The 2 other issues were concern about houses, we have heard that, and also the hospital and getting on with health and the elderly society. We have been relevant to people's lives. Well, at least what we have been doing has been relevant but let us be accurate and let us do the right thing. There is evidence, clear evidence, that the well-intentioned decision, which I know was perhaps understood at the time as being beating up U.K. retailers was the fact that we were going to have a 20 per cent retail tax and that was brought by Senator Ferguson. I have always said to Senator Ferguson she was a good scrutineer, she used to give me a good beating when I was at... not beating physically but, you know, when I was Minister for Treasury... we said: "When the facts change I will change my mind." So when the facts changed, and Senator Ferguson knows this, because she has got an excellent letter from former Deputy Gerald Voisin who is a retailer who will not mind being named in this debate. She has got 3 pages from Mr. Voisin who explains why a Jersey retailer is not at all in favour. In fact he is extremely concerned about the issue of the 20 per cent tax and that is not one these mystical U.K. retailers. That is a local retailer who is really concerned about the 20 per cent tax and, I urge Members in this debate, which has got to be guillotined.

[15:30]

It is the first time I am going ... are you allowed to guillotine your own debate?

**The Deputy Bailiff:**

Only by speaking for less time.

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

Okay, fine. Well, I am not going to say any more. **[Approbation]** But I am not going to say any more because I know that there is going to be lots of other people that are going to be wanting to say things and I am going to write everything down and then we are going to have a summing up, which is going to be done with a very amount of large speed and I have got my books ready for quotes later for any Member that wants to quote anything about consultation, about economics, *Political Brains* or there is even one there called *The Jersey Viper* but let us not go there. I move the proposition in all seriousness. The fact is this is a serious issue. It does need rehearing and I hope Members are going to have a... while there is going to be some final speeches made from individuals, that they are going to make a good and well-intentioned and informed construction of the arguments in order that we can support the rescindment of this tax.

**The Deputy Bailiff:**

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

**Deputy S.Y. Mézec of St. Helier:**

Just before the debate begins could I ask a point of clarification, I think possibly from yourself? The comments that have been lodged by the Council of Ministers to this proposition say that the Council of Ministers is urging Members to strongly reject this proposition. Can we take it as confirmation then that there is collective responsibility bound on this and all the Ministers are expected to vote against?

**The Deputy Bailiff:**

I am not able to answer the question I am afraid unless there is a... I have not seen the comments myself. They came too late to find their way into my bundle. I do not know whether there is a statement relating to collective responsibility but unless there is one I would suspect not.

**8.1.1 Deputy E.J. Noel of St. Lawrence:**

I would like to refer back to the beginning of Senator Ozouf's speech when he mentioned the sofa or this mythical sofa and it is a good thing that our tax receipts are up some £32 million from what was expected but that does not mean we should be spending it. We used to have something called a Stabilisation Fund and that is where that £32 million should be going. **[Approbation]** I have worked with Senator Ozouf as his Assistant Minister for 6 years at Treasury and Resources and I believe that he is not so much of a leopard who has changed their spots but more like a chameleon without the karma. I say this because there is no way he would have brought such a proposition to this Assembly when he has been Minister for Treasury and Resources. At our time on the second floor in Cyril Le Marquand House we explored many options to raising revenues without raising general taxation for Islanders, especially to include those non-locally owned businesses where under Zero/Ten they slipped from paying 20 per cent to zero. Because we were successful, such efforts resulted in expanding the 20 per cent tax regime to include mineral extraction companies - that is quarries to you and I - fuel importing businesses - there is the La Collette Fuel Farm - and the like, bringing them into the corporation tax net along with utility companies, property development companies, property rental businesses, all paying 20 per cent. Using the definition of "consultation" that Senator Ozouf used today we did not consult with those businesses then either. We did this for a number of reasons. One, to raise revenues but it also allowed us to successfully lower the marginal rate of income tax for some 86 per cent of the Island's individual taxpayers. We would have continued to lower the marginal rate in 2014, as we had done in 2013, had the income projections allowed us to. But by taking a small number of very large retailers - and I think there is only something like 20 of them - out of the 20 per cent corporation tax net into a 10 per cent rate will create a real risk of those companies that remain within the 20 per cent net to cry foul and quite



legitimately so. They will quite rightly lobby hard to be allowed to also be taxed at 20 per cent. That is your property developers, that is your property landowners who receive rents; that is your utility companies. All those companies currently paying 20 per cent will have a legitimate argument to be treated like for like with the retail sector and we are only talking about in the retail sector some 20 companies, all earning in excess of £500,000 profit per year. We do have a 10 per cent rate for our financial services industry and that is for a very good reason. Our financial services businesses have no choice but to compete in the global marketplace and as such their corporation tax that applies to them has to be competitive and currently that is a rate of 10 per cent. Our very large retailing businesses have to compete with the smaller local retailers and those smaller local retailers are also paying tax at 20 per cent. So what we did in the Budget for 2018 was to try and create a more level playing field. It is not quite level but it is more level than it was prior to that. Of these 20 or so very large retailers earning in excess of £500,000 a year, because that is when the tax starts to bite, three-quarters of them are non-locally owned. So we have done what we have been asked to do and we have done what Senator Ozouf and I did with the mineral extraction companies and the fuel importation companies. I cannot remember what year we did it but it was during our 6-year term. The 2018 Budget proposals created a more level playing field for those smaller local retailers, such as my Assistant Minister Deputy Rondel and Senator Routier. They are small retailers, as Senator Ozouf pointed out. They are already paying 20 per cent tax on what they take out of their businesses so it gets them on a level playing field with the larger retailers. This morning we received a letter from the chairman of a large locally-owned retailer, I will not name all those, the Senator already has done. He makes a number of claims in his summary. The retail tax does not undermine G.S.T. A corporation tax for retailers with profits in excess of £500,000 will not discourage large entrants into Jersey. For example, if they are a U.K.-based organisation, a 20 per cent corporation tax, which I believe is very similar to the U.K.'s ... the U.K.'s is 19 per cent but they do not get the first £500,000 tax free so they are not going to be discouraged from coming here because they are going to be charged effectively the same rate as they are charged in their host jurisdiction. The chairman claimed that retailers already paid for the collection of G.S.T. They pay their parish rates, they pay their rents, which are taxed at 20 per cent on their landlords, they pay social security on the wages that they pay their staff so we should not be taxing them with retail tax, and all this is true but it is true elsewhere as well. The difference in Jersey is that our parish rates are significantly lower than they are in the U.K. Our employer social security contributions are significantly lower than they are in the U.K. and it is so on and so on. The cost of doing business here is not necessarily higher than the U.K. so a 20 per cent retail tax for those large retailers is fair. Senator Ozouf, when Minister for Treasury and Resources, always sought economic advice from both the States Chief Economist and the F.P.P. (Fiscal Policy Panel) and the States Chief Economist has already said that the 20 per cent retail tax, as agreed by this Assembly in the 2018 Budget, will not lead to significant increases in the cost to the public. So we are talking about here... was it £2.5 million tax a year we are talking about spread over our population of over 100,000 people and our economy of... I cannot remember what our annual economy now but it is about... yes, £5 billion. Thank you, Senator. £2.5 million additional tax over an economy of £5 billion. We are not going to notice it even if it is passed on to the end user. Knowing Senator Ozouf like I do - and we were really good colleagues and we are still good colleagues - I cannot understand how he has moved so far away from what his views were only some 3½ years ago when he was Minister for Treasury and Resources. We always looked to increase States revenues where we could to provide the current services, to fund improvements in those services, to meet the funding pressures on health and education and to decrease the burden on the 86 per cent of taxpayers who are paying tax at the marginal rate. We are talking about 20 large businesses, three-quarters of which are not locally owned, and we are saying that it is unfair to tax them at 20 per cent on their profits on a sliding scale over £500,000. That is not their turnover; that is not their trading profit. That is their taxable profit, so it is after all their expenses. This would be

going into the pockets of their shareholders who live outside of the Island for three-quarters of them. Senator Ferguson successfully amended the 2017 Budget to ask the Minister for Treasury and Resources and the Council of Ministers to bring forward this retail tax, akin to similar measures that they have in Guernsey and indeed what they call the Tesco tax in the Isle of Man and that is what we have done. We have done what the Assembly asked us to do back in 2017 and the 2018 Budget was approved by this Assembly last year. A 10 per cent rate will reduce our revenues. It will reduce our revenues definitely by some £2.5 million but, more worryingly, it means that we could lose the 20 per cent corporation tax that we currently get from our utility companies, that we currently get from our property development companies and the like and I am not prepared to put that at risk.

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

We have had this debate. It took place during the Budget and it was lost and that is why the rate is at 20 per cent. It has been on my mind and it is something I have thought about. At lunchtime today I went for a walk to get some nice fresh air - I needed it - and some thoughts occurred to me. If Thomas Cook - and I use that name because it has been mentioned, which is closing - were making £500,000 a year would they be closing their shop? If Mothercare was making £500,000 a year would they be closing their shop? As I came back up the King Street there were 3 shops with signs in their windows to let. There was one closing down and there was another one that was just empty. The size of those shops is such that none of them would be occupied by a business that would generate £500,000 of profit because if they found something they could sell to generate that amount of money all those shops would be full of people trying to sell those goods. I have a business and I wish I could earn £500,000 before I paid tax but I pay tax at 20 per cent on every single penny of profit that that business makes. **[Laughter]** There is a problem with retail and retail needs help. We have seen some towns in the U.K. who have grasped the nettle firmly and they have introduced measures to reinvigorate their towns. That is what we need to do. Free car parking for shoppers. That is just one issue that has turned a significant number of towns that were declining into expanding. This needs to be looked at. It needs to be looked at thoroughly. Another issue is perhaps a *de minimis* on imported goods could be reduced to half its current level. It may be less viable to collect that money but it is a way of assisting our local shoppers. This is a massive project and it needs to be examined coherently and with government support and perhaps the money we glean from those who are making over £500,000 of profit could be used to reinvigorate St. Helier. It was one of the strategic aims of the Chief Minister; perhaps it is time to put some of that money to where his mouth is. I would love to support this but I feel it is a much bigger project and it needs overall thinking and it is the smaller retailers that are the empty shops and they are the ones that we must be supporting. It is with a heavy heart that I will be opposing this but I can see the merits behind it.

[15:45]

### **8.1.3 Deputy A.D. Lewis:**

I have got a headline here from 2015 and it says: "The tax killing our high streets. For years shopkeepers have complained business rates are crippling. So is George Osborne finally going to set them free?" Is Senator Ozouf going to be a George Osborne? That was about business rates. It is only slightly different. But what it said, or what he was trying to say, was that retailing is changing and if you look at retailing all across the western world, not just about shopping to get the groceries you need to survive that week, it is a leisure pursuit and you go shopping for a leisure pursuit. When you have a tourist destination, which we still are - I am sure Senator Farnham will have to something to say about this later - people go to places where they can do various leisure pursuits one of which, believe it or not, is shopping. So what you try and do with a shopping destination is make it as attractive as possible. We have a fantastic Town Centre Manager, she

works for the parish, and does a huge amount of work to make that happen. **[Approbation]** But the fiscal environment needs to be right as well. The market in Jersey is very small. The market in Guernsey is even smaller, some 60,000 people, and a dwindling tourism market. It is not viable any more as a high street, which is why you have a very poor offering of retail in St. Peter Port. Not because they are not good retailers; the critical mass just simply is not there. The fiscal advantage perhaps is not there either. So if you change any component in that mix in a volatile market, in a small market, then you are opening yourself up for problems. In the U.K. they reckon, economists reckon, that up to 20 per cent of high street shops in the next 2 to 3 years will close. The reason for that of course is obvious - online shopping, changing habits, out of town shopping centres - but there are businesses that are bucking that trend and they do it by a combination of offline and online sales and becoming a destination to go to enjoy a leisure pursuit which is called shopping. But if you change any of the parameters, i.e. the fiscal position, then you change part of the ingredient and I think we are taking a real risk in doing that. I said this in the debate when I suggested to the Minister for Treasury and Resources at that time: "Pull this away and make an amendment on the floor of the Assembly to 10 per cent" because I think the retailers would have accepted that. But instead we are having a debate on it today and it is having this very debate, since we had that initial debate many months ago, has damaged confidence in that sector called retail in Jersey. I am told by people who know a lot more about retail than me that some investors that may have invested in Jersey are not doing so and the reason for that is simple. The market is tiny. So if you can make that extra percentage on your profits because of the fiscal regime then you are more likely to invest in a very small market called Jersey. What that then does is give you a very attractive product called shopping, which people do when they are travelling on business and leisure, coming to a destination. It is an important component. In the U.K. we have seen a lot of catastrophic crashes in retail in recent times - not uncommon in retail, you have heard it before, but more than ever before - and I will go through the list: Toys "R" Us, BHS, Warren Evans, Feather & Black; all gone in recent months. The House of Fraser, Debenhams and New Look are teetering. These are huge businesses and they also are developing quickly an online presence but not quick enough. That is what we are faced with, a change in retail market. Jersey is not immune to that. What happens when the U.K. catches flu is we get a cold. Retailing in the U.K. is changing for lots of reasons but it will change here too. So the more we can do to make it attractive fiscally as well as infrastructure-wise, as well as making St. Helier a nicer place to do business, the better because you will maintain that segment, that industry called shopping and it is a really important one. In answer to Deputy Noel's suggestion that, well, everybody is paying these taxes anyway in other industries as well, it is true that these retailers are paying and making a contribution. They are collecting I.T.I.S. (Income Tax Instalment System) on our behalf. They are paying G.S.T., collecting that for us. They are paying rates to the parish and also they are paying a property company that they may own themselves because most of these shops are put into special purpose vehicles and if they own the shop as well as retail from it or they pay rent that landowner, that landlord, is paying 20 per cent property tax as well. So we are getting a take in many respects. If that retail outlet is not full of a retailer you are getting nothing. No tax on the rent. You are getting business rates but they are very low in Jersey thanks to our excellent secretariat at the Town Hall, who keep our rates low, but it is low. So we are not getting that much money in from an empty shop. No I.T.I.S., no G.S.T., no 20 per cent on your rent. That is what will happen if some businesses decide to do what is happening in the U.K. and go, because we are such a small market. Why bother staying here? Is it because it is just a nice place to be? Was Mr. Green here because he had other interests in Jersey? I suspect he probably was. So if you take away some of those reasons for being here, and that is putting the tax there that has not been there for a number of years back at a time when retail is at its most vulnerable, you are playing with fire. I want to see St. Helier maintain a really healthy vibrant retail segment, an industry, a shopping industry, a shopping destination that people want to come to and go to, whether they live on the Island or they are

visiting it. If you change the parameters you risk losing some of that investment. If you want to change that business that is currently struggling to do just retail, because it wants to become a destination shop, it wants to do online retail as well, that requires investment. If that 20 per cent you might have been putting aside into investment is suddenly gone in tax and you are a small outlet of a much bigger chain they will just pull the business away from here because it is not viable unless you make the investment to change it to a destination shop that does click and collect as well. You need to leave that money in the business and if it is drawn out and you are a local owner you are going to pay 20 per cent on it anyway regardless to whether it is over £500,000 or not. So I supported Senator Ozouf on this for the reasons I have stated. I have been perfectly clear in the debate we originally had. I am disappointed and I do not understand this at all as to why the consultation that the Minister for Treasury and Resources claims was had, why we get a letter today from a major retailer saying that... effectively he is saying that the Minister for Treasury and Resources does not seem to accept the difference between consultation and informing us: "This is what we are going to do." That is from a retailer today. You have all seen the letter. That disappoints me because that is not the sort of consultation I know the Treasury normally do, so I would love an answer to that from the Minister for Treasury and Resources because that is not what happened when we introduced G.S.T., massive amounts of consultation before we did it. That was a really hard decision for this Assembly to make but it was done through consultation. Consultation on this does not appear to have happened and the Minister for Treasury and Resources is shaking his head so I really hope he can explain as to why the retailers, why Chamber of Commerce and why a major retailer is saying that did not happen. It was almost as if Senator Ferguson's well-intended amendment was passed and then the rest followed and it was going to happen anyway: everyone knew about it so why need to consult? I think that is poor consultation if that is how it happened. That is the way I see it. I hope the Minister for Treasury and Resources can correct that because if that happens again and you try and do other things you are not going to get anywhere. So I am supporting Senator Ozouf wholeheartedly with this. Yes, there will be some differentials. We have already got differential. We have already 10 per cent for finance anyway. So why is 10 per cent so bad for retail when you have not got a tax there at all at the moment? What is the problem with putting it up to 20 if it suddenly becomes not a problem? But if you start at 20 it is much more difficult to come to 10 or back to zero. Be careful what you wish for. I think this was a bad idea. I have said so during the debate originally and I talked about bringing a rescindment motion myself. Senator Ozouf beat me to it and I would wholeheartedly support it and I would urge other Members to do the same. If you want to maintain a vibrant shopping destination, which St. Helier still is, do not tamper with it because, at your peril, retailing across the world is changing without investment and with changes to fiscal policy you will end up with less of a product to sell.

#### **8.1.4 Deputy M.J. Norton:**

I think I am right in saying there is no collective responsibility for the Council of Ministers on this. I think I am right in saying that and I look across at the Minister for Treasury and Resources for confirmation of that. I do not see it anywhere in the proposition. Maybe the Chief Minister could confirm that for me visually. He is looking down and looking away which probably means that there is no collective responsibility, which I am delighted about because I am sure there are some Ministers who do not - who do not - support 20 per cent in retail tax. As an Assistant Minister for Economic Development, Tourism, Sport and Culture I do not support a 20 per cent retail tax and I did not the first time round. It was quite interesting, the speaker just before me, Deputy Lewis of St. Helier, saying that the Minister for Treasury and Resources was shaking his head. I looked back at *Hansard* to see the Minister for Treasury and Resources saying: "I see Deputy Norton shaking his head. There was consultation done." There was not consultation done. There was no consultation done or meaningful consultation. Herding a couple of people into a room and telling

them what you are going to do is not consultation. It has got a different word. It is called implementation and that is not consultation whatsoever. When you hear from the largest representative body in business, the Chamber of Commerce, telling you that what the Minister for Treasury and Resources said the first time around when we had this debate - end of November I think it was - was not consultation. Even the letter, the reply, the response to ... and the Minister for Treasury and Resources is shaking his head saying: "There was consultation." But then I read the letter in the appendix that was sent to the Executive Council of the Jersey Chamber of Commerce: "I want to clarify first [says the Minister for Treasury and Resources] that I did not claim, as your letter implies, that we conducted a year's consultation with retailers." So was it a week? Was it a couple of weekends? Was it a rainy Thursday? Was it 5 minutes in one room in the Town Hall? It is really disappointing. One thing that I think many Members have learnt - and maybe I have come to this a little bit late, possibly too late - is that it is not what is in the comments and what the comments say that matter, it is what they leave out, because in the comments from the Council of Ministers it does not say anything about consultation anywhere in the comments. Nowhere does it mention the one sticky issue which we had last time round when I stood up here and said: "There was not enough consultation." Here we are again and why are we back? Why is this a rescindment? Why are we talking about the same thing over again? That is because the facts have changed. Firstly, this was a tax to raise revenue. Revenue that we now find that we have £32 million extra than we thought we were going to have. So do we really need to kick an industry that is struggling, that is already on its knees? Of course, 2 of the strategic priorities, when we were here 3½ years ago, that were all outlined to us, one was the economy and the other was St. Helier. So I will tell you what we will do; we will kick the retailers because: "Well, they must be doing awfully well, must they not?" I mean, they have only got online to contend with. They have only got high rents to contend with. They have got all the other things which are very good things, which Senator Ozouf outlined earlier on, that we brought in, which they will have to be part of. While they are doing all of that: "By the way, we are going to put a 20 per cent tax on you. We will not put it on finance because obviously finance does not bring in very much." Yes, right. It is really important that we keep our finance up and it is really important because if you see the size of what they bring in it is more than all the other things put together. So why pick on retail? There is a thing called sales osmosis. I used to have 2 corner shops, learnt a few things in those times. I also had a couple of restaurants and if you look at where all the big restaurants are, all the big coffee shops are, all the big retailers are; they are right next to each other because that is what creates footfall.

[16:00]

You start losing some of those pillars and the small retailers, all around you... and that is why all the small retailers do not want this, because they want to see the big retailers still there because if the big retailers go you are going to lose all the small ones too. I went back to my home town, which I left 40 years ago nearly, and I wandered around there not long ago and there are temporary shops, there are charity shops, there are empty shops because they have got out-of-town shopping; yes, of course, because they have been taxed out of their own high street. Nineteen per cent in the U.K., 20 per cent here; as Deputy Noel said: "It will not make much difference." It does not make much difference if you put your head in the sand. It will make a difference. The U.K. are talking about going down to 17 per cent. Why, in a very large town in the U.K., when they can pay 17 per cent with a larger area all around them of shoppers, would they come to a very small Island like this for 20 per cent? There are investors who will ... they do not care how beautiful Jersey is. They are coming here because they are investors but they will make our high street. They are important to our high street and the small businesses benefit by having the large businesses there. There is an argument, of course, that we should be supporting all the small local businesses because all small... and I was a small local business holder but what I did not want to do was lose the big places.

People will remember I had a café. I am sorry if I am making this too personal but I did have a business and that business was in a pretty little village and when a very large restaurant with over 350 covers opened everyone said: “Oh, it is going to put you out of business.” No, it did not. It doubled the turnover because it brought more people to that place and that is exactly what a big shop does. You want to see how empty that area was when Woolworths went or that area when BHS went, it affected all the businesses around it. I do not have any axes to grind here because I do not have to please anyone else, as you well know. This will probably be my last speech, but for those of you who are going to go and face an electorate and tell them: “Oh, by the way, yes, I voted for the retail tax. Yes”, explain to them why, explain to them that their prices are going to go up, explain to them they are going to have to pay more, but you did it: “Because we needed £2.5 million when we have just had a bonus of £32 million”, it does not make sense. Why would you possibly run the risk of sacrificing our jewel, our high street? Why would you do that for £2.5 million? It sounds a lot of money but the reality is this is just not worth doing. It is just not worth it. I love that there is a comment down here in the evaluation review: “The Treasury is committed to a policy evaluation review of the measure when the data from the first 2 years of operation becomes available in 2021.” I tell you what we will do, we will decimate the high street and then, in 2021, we will go: “Sorry, it was a bit heavy-handed of us.” We have seen it already: “So let us try it and let us review it later”, by which time we have given retail a proverbial kick in the teeth. The facts have changed, we have more money than we thought we were going to have. We were led to believe there was consultation, and I truly believe that some people voted in favour of the 20 per cent because there had been consultation done, as was assured to us, as is on *Hansard*, by our Minister for Treasury and Resources. When I shook my head at the time and said: “No, it was not” I was told: “Deputy Norton is shaking his head but, yes, we have done consultation.” The freedom of information, the letter from the Chamber of Commerce, the letter from Gerald Voisin; all of these point to scant consultation of what the impacts might be. What we are now being told is: “Well, we will let it run for 2 years and then we will evaluate what the impacts were.” That is a very bizarre way to do things. That is no way to run a railroad: you do not damage everything first and then evaluate it second. People need a reason to invest in all sorts of areas of Jersey life that we will all benefit from. Retail is one of those; retail allows our culture within the area of St. Helier to be vibrant. It allows tourism to flourish, and it is, numbers are up, we are doing really well. Visit Jersey has done a brilliant job and, because of that brilliant job, those people coming expect to see something better than empty shops. Yes, they will want to see some of their familiar shops that they recognise: “I was going to say, look, they have got one of those here. They have got one at home as well.” That is no bad thing, that does not mean we have got to look like any high street anywhere in any town, but the smaller shops thrive around the bigger ones; if you damage them, you will damage everything. The Chamber has proved without any doubt there has been little or no consultation. If you kill the big shops you will kill the little ones. Many years ago when I worked for some fine broadcasters, as I thought they were then, they used to have a thing called the Shopping Basket with someone from the W.I. (Women’s Institute): Carmel ... those were the days. Carmel would come on and she would do the Shopping Basket and she would tell us all the prices and where all the bargains were. Every week they were different in a different shop, so: “The prices have gone up here and the prices have gone down there” and next week: “That shop has gone up and that shop has gone down.” That is indicative of how difficult it is for Senator Ozouf to prove which prices are going up and which prices are going down, because they change, with 19,000 to 20,000 lines in each shop every week. They are still doing that now. There is one thing for certain: you impose a very large tax of 20 per cent on our retailers and they are not just going to suck it up, they are not just going to say: “I tell you what, we will just pay that and we will not put the prices up.” Why would they? They will put the prices up, food will cost more. Of course we can claim that: “Well, the shoppers in Guernsey are happy.” Of course the shoppers in Guernsey are happy; they come to Jersey to shop, that is why. Ask anyone in Guernsey where the

best shopping is and they will tell you it is in St. Helier; that is why they want more boats running in between, that is why Economic Development has put some on. It is really important that you seize this opportunity to save the retail sector that will be damaged by what is a ridiculous tax, when you think about it. If you cannot line your tax up with the finance industry ... why would you have 10 per cent for the finance industry, which is very successful, and that is fine, and: “Oh, no, we could not move 10 per cent in the finance industry”, we have heard that: “because that would damage finance.” Then we slap 20 per cent on retail, which is already struggling from online, and we are the ones who have done it. Please, I urge Members that, for all the right reasons ... and I am sure there are many right reasons why we should go for a 20 per cent for these large retailers because of the amount of money they are losing, you do need some big fish in the ocean too, please support this rescindment, make it fair, as the industry unanimously has said, large and small business: “We are happy with 10 per cent” because the ecosystem works and you need the entire ecosystem. I am sorry, Council of Ministers, on my last speech, you are wrong, and it needs to be 10 per cent. **[Approbation]**

### **8.1.5 Deputy G.J. Truscott of St. Brelade:**

I think, for transparency purposes, I would just like to declare that I am a retailer, but I am not in the Tesco class, *per se*. **[Laughter]** I am a small retailer and ... I am not small, no, but thank you for that, Constable of St. Peter. I am not in that class. My son runs the business, and I do believe we have no dealings with the Tesco-size retailers, so I just wanted to be open and transparent about that. I would like to start with a good news story, and it is related. We have just had the latest unemployment figures out today for the first quarter of 2018, which show that we have now 910 locally-entitled people actively seeking work. This is a fantastic figure, it is the best figure that we have had since September 2009, so I think that is something to be absolutely applauded by the Assembly. It is a good news story. **[Approbation]** As the Assistant Minister for Social Security with political responsibility for the Back to Work scheme, I have got to say I have had a great team of staff down there; they have proactively worked, dedicated to getting people back into work. They have been helping many locals over the years regain their financial independence. I would like to thank all the businesses that have helped and continue to support the Back to Work scheme. Over the years we have developed great working relationships with many local businesses, including the larger retailers. Chamber has concerns regarding the Budget decision to impose this 20 per cent and I concur with it. I would like to hear from the Minister for Treasury and Resources also, just with regard to this business of consultation. Have they been consulted with or have they not? I think it is important; we really do need to drill down on that. I am concerned, it is not easy trading on the high street; we all read and hear about the demise of the United Kingdom’s high street. Large retail chains are suffering. They are consolidating by closing unprofitable stores. U.K. consumer confidence is low right now; inflation is taking its toll. There is low wage growth, competition from the internet is significant and, therefore, profit margins are tight. Without question, retail is tough; they are hard placed to make a reasonable return on capital invested. The signs of retail struggling in Jersey are evident: St. Helier has the highest rate of empty shops since 2008. If you go to the precinct at St. Brelade at Quennevais, we have got 7 to 8 empty shops. As Senator Ozouf mentioned today, and a few others, I was disappointed to see that Mothercare and Thomas Cook are announcing possible closures, and with a potential of 20 job losses, and I just think that really does indicate how tough it is out there. We really do need to encourage and nurture local businesses, not discourage them with this 20 per cent profit tax, albeit a tax in this case aimed specifically at larger retailers, the Tesco-size traders. We should bear all of this in mind. Our local retailers are significant generators and collectors of G.S.T. revenue; they employ thousands of local workers, they contribute significant amounts of money to the social security pot, they employ the services and other traders and professional companies; they are investing in property and bringing new franchises into the Island. They are a great asset to the economy of

Jersey and I, for one, want to keep them here. We can send out a message today by voting for this motion, and demonstrate that we are backing and supporting Jersey retail. We need to send out a clear message that Jersey is open for business, that it is a good place to trade and do business in, it is a place you can make a reasonable return on your capital investment. It is a place where taxes are low, broad and fair. For me, 10 per cent is low, 10 per cent is fair. Chamber is also supportive of a retail tax set at 10 per cent. A short-term gain of 20 per cent will, in my opinion, only weaken, and even threaten the local retail offering we have in Jersey. A 20 per cent tax is too severe, it is not low and, quite frankly, will act as a deterrent for new business arrivals; a reason not to invest in Jersey.

[16:15]

It will act as a drag on the local economy, stunting reinvestment, and it may even result in more shops closing. For the sake of a healthy Jersey retail sector, for the sake of local jobs, I ask Members to vote for the rescindment motion. **[Approbation]**

### **8.1.6 Deputy G.P. Southern of St. Helier:**

Having heard this long litany in praise of retailers, I have a short history lesson for people. The tale starts back when I first got in this Chamber in 2002, and they were the good old days: we had money coming out of our ears, we were rolling in it, to the extent that if you looked at the income tax bill you would find that personal income tax amounted to something like £80 million a year and the tax on businesses brought in something like £400 million a year. If you do those sums now you will find that the numbers have reversed: personal income tax of the order of £400 million, taxes paid by companies of the order of £80 million; such is the change around in our economy and in our taxation system. The government of the day said: "We are going to increase the load on personal taxation rather than on business." Some time down the road, 2009, what did we do? You can all remember it; you may not have been in the Chamber, but yes, we brought about Zero/Ten as a taxation policy. Individuals paid 20 per cent; businesses paid 20 per cent; retailers paid 20 per cent on their profits; even the banks paid 20 per cent. We invented Zero/Ten. What happened? That means that tax on retailers who were doing trade went down from 20 per cent to zero. Boots paid no tax for trading here; it still does not. I notice you all look back with fondness, because 2009 was surely the year when all the prices in the shops tumbled by 20 per cent because we had just taken the 20 per cent tax off them. Senator Ozouf shakes his head. That never happened. Too right it never happened.

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

Would he give way? He has just got his facts wrong.

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

No. I beg your pardon, Senator Ozouf.

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

I think he genuinely inadvertently misled the Assembly, Sir. If you cut the tax by 20 per cent, prices do not go down, that is all.

### **The Deputy Bailiff:**

As I say, it is just a question that Deputy Southern can give way if he wishes to in order to clarify a point in his speech, but ...

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

I am trying to be helpful, Sir.

### **The Deputy Bailiff:**



I understand, but it is a matter for the Deputy.

**Deputy G.P. Southern:**

I thank Senator Ozouf for trying to be helpful. It is always nice to receive help when I am struggling to give a speech. Back in 2009 there we are, taxes come down on businesses, on retailers from 20 per cent to 0 per cent. Unsurprisingly, the prices did not come down as well, so these companies must have been making additional profit; that is what happens if you do not pay tax, you make what some people call windfall profits. Nonetheless, they used to do very well, thank you very much, paying 20 per cent tax on all their profits. They ran a business, it seemed to work; all of a sudden now we have got this tale from around the room that we could not possibly reinstall even a fraction of that 20 per cent on these companies because they will all up sticks and leave. I seem to have heard that argument before about rich individuals: they will all up sticks and leave. No more Boots, no more WHSmith, *et cetera*. They will all leave. What a load of nonsense. If you are telling me that companies cannot make a profit with a tax on some of their profit over the threshold of £500,000 at 20 per cent, then I tell you that what they have got is one lousy business model and they deserve to go to the wall if that is the case. The reality is we took tax off them almost 10 years ago and now we want to put some of it back. Are they really going to go to the wall? Are they going to up sticks and leave? Are we going to see the death of the high street? I do not believe we are. If we are to see the death of the high street it will not be because of these exorbitant and “very large tax on our retailers” as described by Deputy Norton. If that causes them to go to the wall there is something wrong. They will not come here, they will leave if we impose high commercial rents on them, and we know that is a fact in our high street. If you want to see the high street finished then it is about rents, not about a moderate tax, a modest tax on profits, because that is the reality. That is about what I have got to say. This exaggeration, this disaster, this decimation that is going to happen, according to some, is not. This is not endangering our high street *per se*. I think we can safely proceed reinstating some of the tax we used to charge year in and year out on retailers, and the large retailers in particular, and it is a safe move. This argument I do not believe has any tread on it whatsoever.

**8.1.7 Deputy J.A. Martin:**

I deliberately avoided being in here so you would call me after Deputy Southern because I was not able to convince him last time, but it is a very funny alliance today and it was last time. I am absolutely agreeing with every single word Deputy Norton said, Deputy Andrew Lewis, Senator Ozouf, and I find myself in funny sort of waters in that I cannot agree with a word that Deputy Southern has said. It was called very late, it was an early morning before the States and we met with a lot of retailers and we met with people who represented the retailers. Their basis was: “Well, if it is going to be introduced we can live with, at the moment, 10 per cent.” Do they think I deal and work with and like Deputy Southern and Reform, who deal with people who live on a very low income? They are paying half their income in rent, they are not getting any help down there. They are just managing. The person who is in charge of the big Marks and Spencer this end, Waitrose this end, and then Iceland, said: “The money will not go on the food at the top end, because we are already making this much. We are cutting to the bone in this because we are helping out, but we have got the people who are coming in, and that is where the money will go on.” Sadly, I know these people; I see them there shopping with their massive baskets. They are telling me they are going to make their lives worse off? Because, unlike Deputy Noel who said: “Suck it up. It goes in the shareholders’ pockets” the same will still go in the shareholders’ pockets, so where are they going to make this money up? They have got to have the money for their shareholders, of course they have, so then we say tax. Where does it go? It goes on to the essential goods of the lowest earner, who does matter; it matters every week. They do not have money in their bank, they wait every Friday to get their pay. If you go down to some of the Iceland

stores on a Sunday when the whole family is out shopping, you cannot get in there. I sometimes think they are giving it away. It is when people go shopping; they get paid on the Friday, the whole family goes. They are spending for the week. We have made decisions in here in these rosy-coloured times with Deputy Southern - I was here about a year before him - nobody paid more than a third of their hard-earned income in social housing rent, never more than a third. We have changed that; we have abolished it. Ninety per cent rents. No, it is not just 90 per cent of the private market, we are making people pay half of their income. People go, "There is income support"; they do not realise, it does not work like that. If you are on this much of a wage, you do not get anything down there. Be fair. I do not think you understand some of the decisions we make. Deputy Southern and the other 2, last time in this Assembly, say they are going to change the world in this next election because they are going to change the lives of the ordinary working people who have suffered far too long. They then have a row and because, I think, it is Senator Ozouf bringing this, they cannot support it. Do they dislike Senator Ozouf more, or do they like the people they espouse all the time that they represent? **[Approbation]** I am so angry. I purposely went behind Deputy Southern, and I hope he is sitting in there with the other 2 typing their manifestos listening to what I have got to say, and I hope they come up here and vote, because I have not seen them that often this week. **[Laughter and Approbation]** I am not having it. I am not being told: "This, this, this" and then they will come in and tell me: "It is here. Look, Morrisons are coming", but it is not going to be as cheap as it would have been. I can do my basket of shopping here, and I think we have done so well over the last few years. I go home and do the same list at my parents, at Lidl; I cannot believe it, I thought: "Are you sure? Did you pay that?" It is unbelievable. For the cost of living, the 2 things the lowest earners pay out more on are their rent and their food for their children, with no help. I looked at all the people who voted pour last time and I was surprised; I could not believe Reform. I hope they will change their mind but Deputy Southern seems to have stated possibly the party line, I might be wrong; it could be that there are individual votes, but I really do think ... as Deputy Murray Norton said as well, the review is going to be in 2021 and then, as he said, they say: "Oh, I think we got it wrong." I cannot stand here after 18 years and tell you how many people have said: "Do you know what, you were right." I was right on housing trusts giving away millions and millions of pounds of land to very rich people for £10 and then underwriting their loans. I have been told by Ministers: "You were right, you know, and so-and-so was right." It is too late now. I do not care who was right; the land has gone and the rents are sky high. I am sorry, I am just pleading for the very low earners who have just seen ... and we are going to see Morrisons come in. Please support Senator Ozouf today. Introduce this at 10 per cent, let us see how it goes. It is a new tax. I can tell you where taxes go: up; always up. It probably will be my last speech in this Assembly, hopefully I will be back, but I am just trying to say today: "Do not not vote for this because it is Senator Ozouf ... he is seeing this and he has apparently changed his mind from when he was Minister for Treasury and Resources" but I do not think he has. He sort of agreed it. He is not saying: "No tax" and the companies are not saying: "No tax." They are saying: "Start or introduce it at 10 per cent." Please, I urge you all to think of the people who are struggling, and it will go on their food bills and clothes and, and, and ... essentials. **[Approbation]**

### **8.1.8 Deputy J.A.N. Le Fondré:**

I do not know if: "Thank you, Sir" is the right response, after that speech. I usually love following Deputy Martin and I genuinely wish her well in the elections, and I love seeing it when she gets so passionately involved **[Approbation]** and unfortunately I am going to disagree with her. **[Members: Oh!]**

[16:30]

Ironically enough, and the Assembly will never believe this, I always try and deal with the issues, not the people. I will just make one correction in Deputy Martin's speech: she made reference to housing trusts and: "They are all at 90 per cent", and I just point out one teensy weensy minor bit, that I am certainly aware of at least one trust that is not completely at 90 per cent, and I was the one who brought the changes in to make sure they had the flexibility generally. Trusts are not obliged to go to 90 per cent, they have the flexibility to set their rents accordingly, but I take the point she is making. The reason I am not going to be supporting this basically is I do not like doing things on an *ad hoc* basis, particularly in relation to taxation, and particularly about 2½ hours before nomination night. I am going to put the logic round on this, because there is a commitment I will make on this, but yesterday we spent around £2 million a year for which a Minister for Treasury and Resources will have to find sustainable funding. Today, we are being asked to effectively ... and I will use the word "give away", in terms of the Budget, £2.8 million. We cannot do both. What I will also point out is that on 1st January 2020 we will be facing extra revenue expenditure of at least £15 million because that is the extra supplementation bill that is coming down the line, that is in the appendices, because supplementation has been frozen for the last 3½ years, or whatever the figure is, and that freezing "thaws out", if you like, at the end of this present M.T.F.P. (Medium Term Financial Plan). What I am trying to say is we have got a whole load of financial pressures coming down the line already, and that is excluding any provision for Brexit. I wanted to put it in that context because one of the arguments that has been made: "We have got £30 million extra in the kitty and therefore we should spend it, should we not?" Effectively, that is what we are doing, because the argument is ...

**The Deputy Bailiff:**

Could we just let the Deputy continue with his speech?

**Deputy J.A.N. Le Fondré:**

Thank you, Sir. The argument is that because we have had these better figures, therefore we can afford to change our minds on this tax on a very *ad hoc* basis, on the hoof. I would suggest that rationale is one of the reasons we got into the mess we are in in the first place that has taken about 3½ to sort out. I would also suggest that the arguments around for business are things like the living wage, things like business rates, which I understood is what is killing people in the high street in the U.K. Senator Ozouf has been very much a promoter of putting up business property rates hugely, and obviously things like the sewerage charge and waste charge, which I very clearly have actively campaigned against. I am just putting it into the context that I think in this term, and bearing in mind, if I have understood the proposition, I am not sure what happens in terms of the ability to bind any future Minister for Treasury and Resources. There is no opportunity for that item to come back because it says the Minister for Treasury and Resources has to make the relevant changes in the legislation. We have approved that, so when is it going to happen? Where does the certainty come in? I do not get that bit. I will also put into context these wonderful new numbers we have got, which is good, but the forecast deficit for the end of 2017 was £38 million roughly and in 2018 it is £28 million, that is negative. Even on £38 million, and my maths may not be that great, but taking these numbers as read, this is per the Budget, we are now at an £8 million deficit. That is great news, but we are not in the black, according to that, yet. What I will say, which might give some comfort to the people listening, I absolutely recognise that Chamber and other parties strongly consider they were not consulted properly, and I will say that is a theme that has come through on a number of laws and things that we have been looking at from the Council of Ministers over the last number of months. I also recognise there are anomalies in the tax treatment, which I have not quite identified, in terms of retail, wholesale and the 60 per cent split, and that type of stuff. In itself, we have heard it already, this proposition enhances anomalies because we have then got one sector other than finance being taxed at 10 per cent and we have still got construction and

utilities being taxed at 20 per cent. Does that open up the door? I think what I will say is I am not going to support the proposition today but if I am back in the Assembly - and there is no guarantee; we all have that same problem - and if I am in the right place to do so, I would certainly commit to doing a proper review and do proper consultation on that, no question, but the proposition as it presently stands, in my view, is not consistent with a prudent, well thought through approach. On that basis, that is why I will not be supporting it. Sorry, that is a bit of cold water after the last speaker, but I think it is the proper way to do things. We are all in holiday mode and that type of thing, but it is serious stuff and it is money. Yesterday, I think we probably did the right thing, but we have got to find the money for that, and this will not help matters. What I will just say, Deputy Noel and myself have not always agreed in the last few weeks and months on certain matters, hopefully he will find that we are ... he is voting the right way today, shall I say, or perhaps I am voting the right way with him. I just really do want to say to my fellow Deputy, I wish him well and all the best and to thank him for his service within the Assembly and the parish. On that note, I will not be supporting the proposition.

### **8.1.9 Connétable A.S. Crowcroft of St. Helier:**

I would respectfully disagree with the previous speaker: we are not all in holiday mode. If I can go back to the article in the local paper that the proposer referred to and quote from what this major retailer said, which is going to cost us 13 staff on 30th June: "Our store closure programme continues as we grow our digital capability, with 42 per cent of our trade now taken online." Forty-two per cent online. Before I go on, and just in passing, I could not help reading on and the store, which has been named as Mothercare, has a lot of local people concerned because it offers a breastfeeding facility in town and people are really concerned about losing it. I am just going to take the opportunity to announce an initiative of the Town Centre Manager, who has already been referred to, that there will be a family room in the Town Hall, which is nearly ready. **[Approbation]** We are not in holiday mode. We may be, some of us, a bit demob happy, but things are really serious out there on the high street, as we call it. I am really grateful to Deputy Norton, whose speech I thought was simply excellent in setting out, as a retailer with experience, just how important it is to have those big anchor tenants coming in so that smaller shops can gather round them. We have had some other Members who appear to know more about retail than the Chamber of Commerce; they know more about retail than the managing director of one of our oldest and largest department stores; they know more about retail than is good for them, perhaps. It strikes me as almost conceited that some Members have stood up this afternoon and have given the retail community a lesson. We had from Deputy Southern, 2008 I think he referred to, times have changed, things have moved on since 2009 when online sales were not a big factor. We know now that they are, they are a huge factor. It was easier probably then to employ staff than it is now. A lot of people are put off coming to Jersey to operate because of the difficulty of getting staff. There are all kinds of new pressures. There is G.S.T., there is the *de minimis* allowance. For people to stand up ... it started with Deputy Noel, the Constable of St. John joined in, then Deputy Southern joined in, and we had these experts in the Assembly telling us that: "Really, the Chamber of Commerce is wrong, retailers are wrong, and we think we are perfectly happy with imposing this tax on outside retailers." It is not a case of tumbleweed blowing through King Street, it is still an enormously resilient shopping centre, and it has been tremendous, as Constable, to have witnessed the survival of the heart of our shopping in town, weather the recession that we have gone through, whereas there are other towns in the U.K. where you can still see a boarded-up Woolworths, you can see boarded-up BHS. Woolworths did not even come on the market when it was emptied here, it was snapped up. Equally, BHS was snapped up, but that snapping up has slowed. I have been really concerned recently by the figures that I have had, again from the Town Centre Manager, which show that for the first time we have shops in our King Street and Queen Street which have nobody interested in them. That is different. Things have moved on since the time that Deputy

Southern was referring to. I really think we need to listen to the arguments ... and I am just going to refer also to the excellent speech by Deputy Martin, who addressed part of the community that really no other Member has spoken about, which are the people who really need to be able to fill their shopping basket every week and not be affected by rising prices. Are we really going to gamble with the ability of the less-well-off to buy their weekly shopping because we are so confident that a measure that was not consulted upon is not going to have any adverse effects on retail, and particularly on food retail? I think the answer is no, we do not have that knowledge, we do not have that expertise, and we do not need to do it. As Senator Ozouf has pointed out, there is enough money, this year certainly, to make sure that if we start the tax at 10 per cent we can always go up, but if we start the tax at 20 per cent and more stores close, and more large stores do not come into the Island, then we are going to be in a very difficult situation indeed. It was a pleasure to second Senator Ozouf. We have had such a lot of great speeches since he spoke, perhaps people have forgotten just how eloquent and well researched his speech was. I would just say to him I believe that he will be missed in this Chamber [**Approbation**] of course, as will Deputy Norton, but there is still time, there are still 11 Constable seats which are uncontested [**Laughter**] at the time of speaking. I would join with what I hope is a majority of Members here today who feel that now is not the time to kick the retail community. Just another point, let us face it, they have in recent months set up the Jersey Retail Association, we have the Chairman of this new association in the Gallery. That has been supported by Economic Development, Tourism, Sport and Culture. They are taking steps to weather the storms around retail, particularly around online sales. They are doing a great deal, but let us send a message out to the Jersey Retail Association that we are going to support them as a States Assembly and we are not going to kick them as soon as they have got themselves set up, but we are going to say: "Let us work with you and let us put in the tax at 10 per cent and let us see how it goes before we consider any larger hike." I urge Members to support the proposition.

**Deputy M. Tadier:**

Before I start, can I just clarify in my own mind whether the word "tosh" is a parliamentary expression, because if it is not, I can happily use the word "nonsense." I will let that be rhetorical, Sir, so that you do not have to make a ruling.

**The Deputy Bailiff:**

Thank you, Deputy. [**Laughter**]

**8.1.10 Deputy M. Tadier:**

I have not heard so much nonsense being spoken, especially from Deputy Martin, who normally sits in front of me and I normally sit behind her. She has complained that she has not seen much of us recently, and that is presumably first of all because she does not have eyes in the back of her head, and no doubt we have all been busy listening to the debate, whether in here or outside. First of all, there is this complete straw man argument that she sets up that this is about the rich and the poor, so she spends a lot of time for some reason talking about our Party. This is not a Reform Jersey proposition, incidentally. The 20 per cent tax rate was introduced by the Government, it was introduced by the Minister for Treasury and Resources, this proposal for a retail tax, and it is something which the Assembly has agreed on already, as was pointed out by the Constable of St. John. It was done for a reason, because they realised that money was needed. I too was disappointed by the short-termism that we are hearing recently when people stand up and say: "Well, because we have got more money in the reserves than we thought we had and we have got underspend, *et cetera*, we do not need this tax anymore", because that is a very short-sighted way of doing business. Senator Ozouf traditionally has stood up in this Assembly and said to us that he

does not like short-term and short-sighted politics; it is long-term planning that we need in this Assembly. What are the long-term trends in Jersey?

[16:45]

Let us take the left and the right-wing politics of it out. We know that we have an ageing population, we know that the Care Inquiry that recently came out told us that we have been failing vulnerable people in our Island across the board, not just young people, and that we do not invest in our social infrastructure. What we will need in the next few years is a Government and an Assembly which recognises that there are failures in the past and that there is investment that we need, both in the future, and to bring us up to where we should have been in the first place in those key areas of education, investment in young people, in early years, and, not least, in the elderly population in the care industries, and all that. That is going to cost money. It can only cost more money, it cannot cost any less. What this tax seeks to do is go after where the capital is. I am not saying it is the perfect remedy, and of course it can be critiqued, but what it does is it seeks to tax only those businesses which are profitable, and do it at a rate where they are already making significant profits. It kicks-in at £500,000. Those businesses... and they are not the majority because all of the smaller businesses, which maybe are the ones struggling with high rents, they are the ones closing down. If you go to my constituency in Les Quennevais and have a look round, it is not the Icelanders that are shutting down, it is not the Boots, it is not the bookies that are shutting down, it is not those industries. There will always be a place for the U.K. high street chains, the Waitroses of the world, to come and swoop in when rents become too high. So these are completely specious arguments that are being put forward by people, including Deputy Martin. By all means, let us support those small businesses; it is the ones that are struggling to make those profits, the small business people, the bicycle repair shops, the computer shops. Of course some of them are going out of business. There are the cafes, some of them are going out of business, being replaced by conglomerates, which probably do not pay any tax in the Island. That is where the real issue is. It is quite right that capital pays its own tax. Something that has not been mentioned here is automation. Somebody phoned me the other day ... and what happens in those supermarkets, it is not something I thought about, but somebody pointed it out. Of course, we are all aware of automation and where that is going in the future. We know that people's jobs are being outsourced to robots, essentially. At the moment we are in a strange transition period whereby you go into a supermarket, whether it be one beginning with C or one beginning with W and you end up, if you are in a rush, you might want to go and scan it yourself. The irony is at the moment, of course, it takes a lot longer because you have to wait for somebody to come round if you are buying something like alcohol even if you are being served by a 16 year-old. But if you are being served by the robot you also need to be checked. You have to wait around. It ends up taking longer and it seems that it is a very inefficient way. It is also a dehumanising way but these are the issues that we will have to deal with and that the industry is no doubt also dealing with. But what happens to that tax that is now paid by individuals? Let us presume somebody working in retail earns enough to at least pay some form of income tax. They are charged at 26 per cent, remember, on the marginal rate after their allowance has kicked-in. Humans get an allowance, by the way. Humans get an allowance of £14,800, their allowance. That is what they are allowed to live on. After that they get taxed at 26 per cent. Businesses in this case will get an allowance of £500,000. Then they will be taxed at 20 per cent. But unlike individuals who have to pay for their rents and all that kind of thing and expenses which are non-tax deductible... I cannot go to the tax man and say: "Well, my rent this year has been £20,000. Can I have a larger personal allowance before I start paying my tax? I have had to buy a car, I have had to buy food; can you reduce my tax allowance?" Businesses can do that and they obviously do do that. They only pay tax on their profits, not on all their turnover. That goes without saying. Such a luxury is not given to people in personal income tax circumstances. So, if we are going to talk about level playing fields, let us do it properly. Let

us also look at the wider Jersey context. The Council of Ministers and Senator Ozouf will know as a former Minister for Treasury and Resources that he likes to talk about the simple tax system we have. We often hear about Zero/Ten but we never hear the expression zero, one, 10, 20, 26 plus one, because that is what we have at the moment. These are the various different types of tax we have. Some companies pay zero per cent tax. If you are very wealthy, a wealthy immigrant to the Island, you pay 1 per cent on any tax that you might happen to declare, but in reality you are probably not paying that 1 per cent tax because you have put it through a company which pays zero per cent tax anyway. So you make a contribution. You stick your hand into the pocket and you give a contribution to the Minister for Treasury and Resources by arrangement. Some companies, the finance industry, pay 10 per cent. Utilities pay 20 per cent already, but have they gone out of business? Is Jersey Gas not here because they cannot afford the 20 per cent? Is Jersey Electricity not here? Is Jersey Telecom not here because they have to pay 20 per cent? I think these arguments are completely specious. I think the point is they pay tax on their profits. They have already had to make that profit; therefore, they must be doing sufficiently well. Deputy Martin seems to have completely swallowed the argument that there is an inherent link between this 20 per cent tax and prices going up. No, there is not. There is no evidence for that. That has not been proven. She is trying to pit this as an attack on poor people, whereas what it is saying that in our society we will have to pay tax. That is the honest response that the outgoing Minister for Treasury and Resources has acknowledged. Taxes are only going one way and they are going up. The only question is who pays them. Is it the people who have the ability to pay? Is it businesses that are profitable first and then will be taxed according to that, or is it actually the poorer people? Because if this tax does not come in today ... if it comes in at 10 per cent it is likely to stay at 10 per cent. Because if the industry ... and good luck to them, they have lobbied very well. Of course, they will come forward and say: "Introduce it at 10 rather than 20." If we say: "The 10 per cent seems to have bedded-in, we want to increase it to 20 now" there will be an equally strong lobby there. I am not going to be lectured by people who basically manufactured and introduced general sales tax without exemptions and then say that when retailers in the food industry in particular are making profits that it is going to push the price of food up. No, things like G.S.T. push the price of food up. Of course, I admit that the industry at the time obviously said that as well. So we will not be lectured about not looking after the poor. What happens to that £2 million or so which is going to be lost if we go to the 10 per cent rather than the 20 per cent rate? Well, I say to people like Deputy Martin it will be her constituents and it will be the most vulnerable in society as well as the rest of people who pay taxes in Jersey who end up having to pick up that bill. They are the ones. When it comes to things like pupil premium, where you have £2 million less in the pot every year to deal with that, when it comes to things like road improvements, whether it is zebra crossings or road safety, whatever they might be, whether it is to do with employing a few more people at the hospital to get waiting list times down for hip replacements or whether it is to do with making sure that people are listened to more and get quicker response times for mental health issues, we are all going to sign up to this. Everyone on the election platform is going to be saying: "Yes, we need to do more for mental health, we need to do more for road safety, we need to improve all these kinds of things," yet we will do it with less money. It is simply not realistic. While you might be tempted by this last-minute proposal, as Deputy Le Fondré said only a few hours before the Senators are nominated tonight, to make everybody feel good and to help our friends in the retail industry, I do not think we should be enticed. I would like to hear from the Chief Minister robustly as to why he and the rest of the Assembly should be sticking to their guns and supporting this 20 per cent rate. I am not buying into this argument. It is not the poor versus the retailers. What I am saying is that if they are profitable they can afford to pay that 20 per cent tax. They paid it in the past. It is not a new tax, it is just reinstating what was there in the past, and they can afford to do that.

#### **8.1.11 Deputy S.M. Brée:**

We have just heard a very good argument for redistribution of wealth. I do not agree with that at all. I voted against the amendment brought previously to reduce the rate down to 10 per cent from 20 per cent. I did so on the view that: (1), 20 per cent was the rate that the retailers were paying before; and (2), that proper consultation had taken place. I am now seriously concerned from what I have read and what I have heard that proper consultation did not take place. By proper consultation I am referring to what most people believe to be consultation, not just a meeting to advise retailers what is about to happen so gird your loins and watch out. I have changed my mind. I believe that if we are going to introduce a retail tax let us do it at an initial rate of 10 per cent. Because I was going round St. Helier last weekend, last Saturday, because I live so far away in St. Clement and I rarely get into town. I did notice a change in St. Helier. It may be a subtle change but there is a change going on. There are more empty shops. There are a number of retailers that were no longer there. Now, the Mothercare example that has been quoted as being an argument for why we should not maintain the rate of 20 per cent is not a good argument to use because closure of the Mothercare shop in Jersey is because of a head office decision to realign their business and reduce right down the number of retail outlets they have in the U.K. So, I do not think it is a good idea to use that as an example of why we need to think very long and hard about: is there a role for Government in supporting a retail industry? Now, the retail industry in Jersey has been afforded a period of no taxation at all. However, the retail industry is suffering very, very much because at the moment they cannot compete with internet sales. I have experienced that myself. I have bought things off the internet because the local retailers do not have the right business model to be able to compete. So, I think they understand that they have to change but what we do not want to see is more and more of the larger retailers deciding they are going to withdraw a physical presence and just rely on an internet presence to maintain sales because that does have an impact on other areas. Not just tourism, it is about people on the Island enjoying going to town, as we used to call it. I am also concerned certainly at the very valid points raised by Deputy Norton about if we see the larger retailers start to constrict, maybe not disappear altogether but start to constrict, because they are looking at their business model and going: "If I have to pay 20 per cent tax, then I have to restrict my activities, reduce my footprint, if you like. I will still have a presence but I will reduce my footprint." That is going to impact on the smaller retailer who falls outside of the actual net for this retail tax but is reliant to a great extent on the footfall that the larger retailers attract into the area. Perhaps 20 per cent was the wrong move. Perhaps we should be saying to the retail association and industry over here: "You need to accept that you have to pay your contribution to the Island on which we live and you operate." The first step will be 10 per cent but there always has to be an understanding from both sides that that is a potential first step and we will see how it goes. But in any discussions, any form of communication, I think the retail industry have to understand that it is only fair that everybody does pay their fair share of tax. Now, if it transpires through over the next 3 years, say, that the retail industry shows us with evidence - and we understand that evidence and challenge that evidence - that 10 per cent is all realistically they can currently carry until it starts affecting their business model, then fine, but I think we have to be sensible and go at the moment the retail industry is suffering.

[17:00]

Government can do something to help while at the same time maintaining a taxable relationship with the big retailers so that they understand Government has a policy that you, the large retailers, have to make your fair contribution in the form of tax. So, I will be supporting this proposition, whereas before I voted against it.

#### **8.1.12 The Connétable of St. Peter:**

I am standing today, or this afternoon shall I say, as the Assistant Minister for Treasury and Resources rather than a very aggrieved and angry Constable of St. Peter, just so everyone knows



exactly where I am coming from. I feel quite dismayed that this matter is again before the Assembly. We debated this at length just a few months ago, last November. It is just not credible to suggest that States Members did not know what they were doing last November. We really do seem increasingly incapable of agreeing any tax measures even where they are originally proposed by a Back-Bencher, as this was, supported by this Assembly, as this was, and then worked up to a point of implementation over the past year. If I recall correctly, it was the Council of Ministers that argued back in 2016 that they wanted a year to check out key points, mainly about the impact on Zero/Ten, and undertake some economic analysis. Even in the last Budget, it was the Council of Ministers that put the brakes on several amendments to tax one thing or another. This is an extension in the positive rates of income tax affecting just 20 or so of the most profitable businesses in Jersey. Members may recall they used to be taxed at 20 per cent before 2009. How many Members recall prices falling immediately after that 20 per cent was reduced to zero in 2009? So if they absorbed it then, why would they need to put the prices up now? Some of these businesses may well be being taxed at 20 per cent in Guernsey and, as Senator Ozouf said, they are being charged even less in the U.K. He is right, 1 per cent less at 19 per cent. But in the U.K. they also have business rates and they also have V.A.T. (Value-Added Tax) at 20 per cent and they also have other charges as well. But we are being asked to accept that they cannot afford that rate in Jersey. Do any of us really believe that when some of them are paying taxes at those rates in Guernsey and the Isle of Man and in the U.K.? Jersey is a low-tax jurisdiction and I think most of us support it remaining that way, but is asking our most profitable companies to contribute to the future well-being of the whole Island and its people not entirely right? We have rejected so many proposals for increasing revenues. For years, we have heard parishioners complain that people like Boots pay no tax. This tax addresses the concern, and why should Boots in Guernsey pay a different rate from Boots in Jersey? Is aligning our rates across the Channel Islands not going to help retailers? Our corporate tax regime has 3 rates, being zero, 10 and 20. This measure sees retailers taxed at all of those rates depending only on the level of profits they make. Is that not what economists call progressive? Does this not work rather like marginal relief? Companies with profits below half a million pounds pay nothing; when profits reach £600,000 they are taxed at 10 per cent, and only when they exceed three-quarters of a million pounds do they get taxed at 20 per cent. Is it not true that local shareholders get tax credits with their dividends so they may pay no more tax than they ever have? I thought back in 2016 we had agreed with Senator Ferguson to adopt the Guernsey model, which does tax at 20 per cent, subject only to the Council asking for time to review the implications for Zero/Ten and the implications for growth and the economy. Well, that is exactly what we did do. This Assembly has passed a measure that substantially helps deliver sustainable future funding. The Minister has committed to evaluate and review this change in good time, and as far as we can tell the vast majority of those who are potentially affected by the measure have nothing to say about it in public. We have heard from 2 vociferous retailers and their representative body. We have seen another retailer say publicly the measure will not affect their pricing. How many others from those potentially affected have a view? I suppose we do not know how we should read their silence. The *Jersey Evening Post* tell us Tesco and Alliance are not fazed by the tax and it will not affect their prices. I am told that some retailers are really quite supportive of this measure in private. Of course, is it not the role of the Chamber of Commerce to protect the interests and the profits of their members? That is what they are there for. Is it not the role of boards to protect the interests of their shareholders? Yes, that is what they are there for. No, I think it is about time we stuck to our guns on some tax measures. This idea came from our Back-Benchers. Officers have done a good job of adapting the Guernsey scheme for Jersey. The majority of us supported it. I believe most Islanders support it. It does not damage Zero/Ten and it broadly mirrors existing practice in Guernsey where, as far as we can see, it has not brought their sky down. I would like to address some of the points raised by others as we go through. I think one of the things is looking at the sofa, the Treasury sofa. The Treasury sofa has a cushion and we

call that a stabilisation fund nowadays. That is what the sofa cushion does. It is the stabilisation fund and that £32 million is a cushion, albeit in a sofa. Business is up in 2017 by 6.6 per cent. Senator Ozouf admits that himself, excellent news. The number of people out of work is reducing. Senator Ozouf commented about the headline in today's *J.E.P.* with Thomas Cook and Mothercare. Thomas Cook is not a retailer. They do not pay tax. Mothercare have not gone out of business because they pay retail tax in Jersey. I am just trying to read some of my own writing. BHS did not go out of business because it paid retail tax in Jersey, neither did Woolworths and neither did many others. Not one Jersey company has paid a penny piece in retail tax so far. None of the empty shops in St. Helier or anywhere else in Jersey has been caused by the implementation of retail tax. I am afraid, Senator Ozouf, that is just a red herring. I think one of the things ... I am just trying to read my scribble that I have written down. Yes, let us just look at some of the empty shops in town. The one that strikes me is the one in Queen Street, the Next shop. But where is Next now? They have invested heavily in a vastly bigger new store in New Street, so there is good confidence in businesses in Jersey. It is not all bad news. Of course, the one thing that we do tend to forget - we have short memories - is what happened in 2007 and 2008. It was called a recession, when a lot of these businesses went out of business because of the recession, but we are coming out of that. There is new confidence. The fact that, as the Constable of St. Helier said, the Woolworths shop never went on the market, it was scooped up immediately because there is confidence in the Jersey product, and the same going with BHS, 2 of the largest shops currently in the town. Deputy Norton said we have seen the impact already. No, we have not. The tax has not been applied yet. We are the ones that have done it, he said, and caused businesses to close. No, we have not. The tax has not been applied yet. Those were 2 of your comments, Deputy Norton, through the Chair.

**The Deputy Bailiff:**

Those were 2 of the Deputy's comments.

**The Connétable of St. Peter:**

Sorry, Sir. I accept your correction, Sir, thank you. I think one of the things that one tends to forget is the amount of rents. It has been well known for many, many years that the rents charged for these businesses in King Street and Queen Street are some of the major reasons why shops are struggling in those 2 streets, in those 2 main thoroughfares. It is up to the land owners, the shop owners. If they want to fill their shops they need to just reduce their rents and people will come into them. Equally, the parish of St. Helier could help out as well. It is okay, the Constable is going to do some breastfeeding in his Town Hall. It is very good of him to do that, but he could help... sorry, **[Laughter]** he will not personally be doing it, making provision for breastfeeding in his Town Hall. The Parish of St. Helier has had a couple of windfalls recently at the behest of this Chamber, one in the incorporation of Ports of Jersey where there was a massive new income that came through, and all the new buildings on the Waterfront, massive new rates income coming through, and of course the two-thirds of a million pound of rates paid by the States that has come through. How much of that has he put aside to reduce the rates of St. Helier to help his shops to keep his vibrant town centre? There are many other ways that we in Jersey can collectively ease the burden, but equally we must recognise that some of the shopkeepers that are complaining are complaining because they want to protect the profits which they get, especially the increased profits they get after reducing the 20 per cent tax they were paying in 2009.

**Deputy K.L. Moore of St. Peter:**

Sir, may I propose the guillotine movement, please?

**The Deputy Bailiff:**

You are giving notice that in half an hour you would like to move the guillotine?

**The Deputy of St. Peter:**

Indeed, that is exactly what I would like to do.

**The Deputy Bailiff:**

Yes, I will note that. It does mean that you cannot speak, Deputy. I had you down as wanting to speak. No one can propose the guillotine if they have spoken in the debate.

**The Deputy of St. Peter:**

Okay, that is fine, thank you.

**The Deputy Bailiff:**

So are you still wishing to give notice on the guillotine?

**The Deputy of St. Peter:**

I would like to give the half hour notice.

**The Deputy Bailiff:**

Very well, thank you.

**8.1.13 Deputy K.C. Lewis:**

Nothing to do with me, I hope. I will be brief as always. Being a St. Saviour Deputy, I find it very convenient to walk into town from St. Saviour. I started doing something a few years ago while walking into town and that was counting the empty shops, which got so depressing I had to just stop doing it. I think I counted on my particular route 9 shops empty at one time. The Constable of St. Helier does have an excellent town manager but they can only do so much. When shops were not let, I think the Town Manager's Department used to rush in and put up lots of pictures to make the shop look nice, but with the best will in the world it was papering over the cracks. We need to get these shops open and functioning and, as has been said previously, the large stores attract smaller stores. I have always been very concerned with the price of food and food security, but that is an argument for another day. Pensioners who go into the large stores now, they look for the yellow stickers on food, which is marked down at half price or less and they do not hang around very long. They are soon snapped up. I think the Council of Ministers also needs to get a new dictionary. The dictionary quote for consultation is to seek information or advice as opposed to informing somebody, which is to make someone aware. So when we consult in the future we must get information back from whom we are seeking advice to make an informed decision. We are competing with the internet or the large stores and small stores are competing with the internet, so they must remain extremely competitive. For that, again, I will be supporting this proposition.

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

I am afraid I am going to disappoint the people in the gallery. On the radio today, I think it was first thing this morning, I heard that firms are already factoring-in the 20 per cent. Some of them are already charging 20 per cent in expectation of this tax. Now, the reason why I am going to oppose the proposition is that when Zero/Ten came in, all firms in Jersey other than financial service companies and utilities paid no tax. So they were basically 20 per cent better off and they have been for the whole time that Zero/Ten has been in. That was basically 20 per cent more towards their profits and so on. We also have many companies in Jersey charging the same prices that are being charged in the United Kingdom, which includes a 20 per cent V.A.T. rate. Other firms are charging higher figures for shipping into the Island above what it costs.

[17:15]

Now, I brought a proposition years ago to try and make those firms who were charging the equivalent of V.A.T. but pocketing the difference rather than the money going to the U.K., and those who were charging higher than the actual cost of shipping, a proposition to try and tax them because we were losing money through Zero/Ten, yet I felt at the time the shops were ripping off ordinary members of the public. I can remember one shop owner saying: "Yes, it is an extra 20 per cent in our margin." Now, their profits were calculated on a particular profit margin which was quite healthy. All you have to do is look at the sales to see how much comes off a lot of the goods as shopkeepers are trying to sell the things that have not sold over the particular time and the season. You will see they can afford to discount by maybe 75 per cent. So, what I am saying is I was disgusted with the shops at the time who were charging the V.A.T., just as I was disgusted with the breweries and public houses that charged extra money for their beers and their spirits and all the rest of it after this House voted in one particular Budget not to increase the excise duties and revenue from alcohol because we wanted to give the ordinary man in the street basically a bonus or something that would not make their life worse. What happened? They put the prices up almost by the equivalent of what the tax rise would have been. So, I find it very, very hard at times to feel sympathy for some of the retailers with their actions. Again, I think the point that we need to make all the way through is it will only affect the firms who have made £500,000 or more profit. As others have mentioned, there are all sorts of things they can write off against tax and so on. So, I think that it is a reasonable figure. I can remember many, many people going on that U.K. companies should not be paying no tax in the Island because they were hurting local firms. What people did not realise is many of the local firms were paying no tax either. In terms of what Deputy Kevin Lewis just said a moment ago, he mentioned about shops closing as he walked into town from St. Saviour. Well, if you look at Colomberie and the shop closures in that area, it is not so much that shops are not profitable, just the fact that a lot of the finance firms and others have migrated towards the Esplanade. So, with States policies of allowing the International Finance Centre and other things, trying to move everyone down there, we are seeing north of town and areas like Colomberie losing business. We know that a lot of the properties down there are now being converted into flats and other things. There will be some demand for supermarkets. I do notice there are new supermarkets down there to try and cater for the people living there, but it is primarily because of the migration. I will say something else that others have said, and I think it is something we have a major problem with, it is the landlords who can own the properties down King and Queen Street who are charging considerable figures for their leases. We do not know who they are. I suspect that if we did it would probably be a small number of people owning the land down there. They are doing exceptionally well. Perhaps one thing we should try and do to help the retailers is perhaps try and find some way of looking at these landlords, effectively, and see what we can claw back from them. So, I am sorry to disappoint the people up in the gallery who are from the retail trade, but through your past actions I have lost faith in you. When you raised ...

**The Deputy Bailiff:**

Through the Chair, please.

**Deputy M.R. Higgins:**

Through the Chair.

**The Deputy Bailiff:**

You cannot address directly. Deputy, the only way the Assembly can reasonably not expect people to not address you back from the gallery is if you do not talk to them.

**Deputy M.R. Higgins:**

No, I understand, Sir. This place has been a theatre over the years and I was playing to the gallery, so I apologise.

**The Deputy Bailiff:**

It has, but not today.

**Deputy M.R. Higgins:**

Anyway, I will sit down at this point. Unfortunately, I cannot support this proposition. Thank you.

**8.1.15 Senator S.C. Ferguson:**

I seem to have stirred up a real mare's nest with this or a hornet's nest, I am not sure which. A couple of things first. There are a number of people pontificating about tourism shopping. Frankly, as an ace shopper, I have specialised in this for a number of years. If I go somewhere on holiday, I want different shops. I do not want the same shops as we have here. I am sorry, if we are not careful, Jersey will continue to end up like Watford-on-Sea. Anyway, be that as it may. When I brought the original amendment, I also required Treasury and the Tax Department to do a considerable amount of research on tax and the economy. This was in the form of an amendment to the Medium Term Financial Plan that we debated in 2016. Unfortunately, this Assembly did not agree. I wanted things like reconciling and explaining the changes in the number of taxpayers; assessing the income generated from companies trading in Jersey or owned by residents of Jersey; assessing the overall effects on the economy resulting from high levels of immigration; an economic impact assessment of how each income quintile would be affected by charges; and reviewing the changes in accounting treatment of Income Tax to assess the robustness of the tax estimate process. Well, these were not agreed in the Assembly. They are in P.68, amendment 9, 2016, for those who are interested in reading it. If I am re-elected, I will bring a proposition to try and get all this economic and tax information that I wanted under P68, amendment 9. We have had a considerable amount of public angst about U.K. shops which are making profits in Jersey but are not paying tax in Jersey. This proposition originally was in fact on the same basis as the other Crown Dependencies and will only apply to large organisations with profits over £500, 000. One large department store in the Island passes its profits through Luxembourg, so it pays no tax anywhere, apart from this 20 per cent here, providing it is making a sufficiently large profit. That is public information. Frankly, I wonder, looking at the high street, perhaps we should start encouraging use of the American principle of rents, where the rent is proportional either to the turnover or the profits of a business. Therefore, if things are going well the landlord gains from it and if things are not doing too well the landlord also feels the pain. At the moment I do not have enough information, so I am not going to support this proposition, because I feel that it is fair.

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

I am delighted to follow Senator Ferguson. I am pleased that she took some responsibility for this position. I have to say that it was because she brought her amendment to the Budget in 2016, but it was not something that we had not already considered. I will come back to that in a moment, if I may. I have a certain feeling of *déjà vu*, probably leading back to the Budget which is only a few months ago, where we did discuss, of course, at some length, not only the introduction of a retail tax but also a rate that would be applicable. Yet the Chamber of Commerce have clearly been complaining. I am pleased that they are represented here today. They claim it was not fair. They claim there was no consultation. They are not the only ones who are regurgitating what they have said. They claim there was no notice. They claim there was no discussion or time for retailers to plan. They further claim that I, effectively, misinformed States Members. I refute, categorially, all those claims. I will come back to the detail in a moment. Firstly, I would like to refer to the Chamber of Commerce's letter, which was circulated to all States Members in April of this year. In it they claim that they have proved, without doubt, that there was no consultation (a) over 12 months or (b) at all. This, as I have indicated, is simply not the case. Perhaps what they were saying was they did not like the way that Treasury officials engaged on this matter, but that is an

entirely different thing. I should say also perhaps that consultation and the definition of consultation is perhaps for some in the eye of the beholder. But that, again, is another matter. I will explain why I feel that more than enough was done in explaining what was being proposed with this retail tax. I made it clear to Members during the course of the Budget debate the whole process that was followed. The Chamber letter also states that Members may have made their decision based on the assumption that retailers have plenty of notice, discussion and time to plan. Now, let me, if I may, be clear. There was never going to be a consultation process similar to some others. I will use, as an example, the higher education student grant funding. That was a consultation that was relatively concise in time. It ran over a 4 to 5-week period, albeit December and January, not the best time, some may argue, to have such a consultation. There was then a 10-week period before the debate that occurred in this Assembly. But, that was an entirely different type of process and consultation. Why? Well, because the retail tax was only ever going to impact a maximum of 20 or so of the largest corporate retailers. Furthermore, under the Comptroller of Taxes' oath of office, he cannot identify taxpayers and their affairs. I am sure that Members will be familiar with that. As such, even as the Minister for Treasury and Resources I was not able to know who the 20 or so potentially affected retailers were. This in itself limits the ability for a consultation process but it does not mean that engagement with those that are going to be impacted cannot be undertaken. I am satisfied that the limited number of people, the businesses that I am referring to, the 20 or so, were engaged with. The Treasury team from the Taxes Department formally engaged with those retailers. Two meetings were offered as well as one-to-one meetings. That formal process occurred 10 weeks before the Budget debate. It was made clear to retailers by officials at those meetings that any concerns about the retail tax from a policy perspective should be raised by them directly with me as Minister for Treasury and Resources. I should also add that of the 20 or so retailers who were offered the opportunity of engagement, only about half took up that opportunity; only about half of the retailers took up the opportunity to engage. I am not aware that I received any request for a meeting with any potentially affected retailer or any correspondence to that effect. I do believe that the Department received perhaps one or 2 letters, but that was the extent of the engagement. I would have expected, and I have to say I am somewhat dismayed, that retailers and perhaps the lobby groups were not banging at my door in the 10 weeks leading up to the Budget, notwithstanding the fact that this issue had been talked about for over a year. I will come back to Senator Ferguson and the 2016 Budget in a moment, but that is when it was formally dealt with and supported by this Assembly. I had commented also, I should add, in the media on several occasions on the potential for the introduction of a retail tax. I did so in 2015. I did so again in 2016. It was clear we were looking and intending to introduce a retail tax to follow the Isle of Man and Guernsey. It was absolutely clear. The only delay, which I made also abundantly clear at that time, was that we had to ensure we gathered the data to make certain that we did not put at risk our Zero/Ten corporate tax structure. It was in fact probably one of my public statements about the intent to introduce a retail tax that the good Senator Ferguson on my right popped up and lodged her own amendment to the Budget in 2016.

[17:30]

She is disagreeing with that, so it was obviously her idea, but that is great. That is good too. Members will recall that Senator Ferguson's amendment was asking me to immediately introduce an exact carbon copy of Guernsey's 20 per cent retail tax. That is what it was asking in 2016. In fact, we amended Senator Ferguson's proposal with the wording: "Providing this does not pose a risk to the Zero/Ten corporate tax regime." We made it clear that we would need to work on this aspect and would bring it back to the States for the Budget debate in December 2017. That is exactly what we did. This Assembly, therefore, agreed to introduce a retail tax in December 2016. That, aside from anything else, was quite considerable notice of the intent. I would have expected at that point retailers and representative bodies to have started raising any concerns that they may

have had. I, incidentally, have with me a list of all Members who voted in that 2016 debate. It is quite an interesting read. In fact, there were 35 Members voting for. There were 11 not present and only 3 voting against. I have noticed some of those who voted for seem to have done a little bit of an about turn temporarily. I rather hope that my comments will encourage them to hold the line. But I have a lot more to say before I perhaps convince those that are unsure that that is what they perhaps should consider doing. When I said that work had commenced 12 months before and this seemed to be an issue for Chamber in particular, I would like to clarify that I was referring in particular to (a) that we ensure that the Zero/Ten corporate tax regime was not likely to be put at risk - that was a considerable amount of work that the Treasury and Tax Department undertook in that 12-month period - and (b) we started a distributional and economic impact assessment to review the retail tax proposals. I would like to just make clear here that the economic and distributional impact assessment work was something that was above and beyond any undertaking given to Members in this Assembly at the time of the December 2016 debate. However, I felt it was important to understand any unintended consequences that might have resulted from the introduction of a retail tax. It was, in my view and the view of Treasury officials, a belt and braces approach. When it was completed, I am pleased to say, there was nothing in the economic or distributional analysis that gave serious rise for concern. We did not indeed propose a carbon copy of the Guernsey retail tax, as Senator Ferguson had originally asked. Instead we improved it by removing the cliff edge at £500,000 of profit, which is what Guernsey had: £1 over £500,000 you pay the full 20 per cent. Instead we introduced a taper. That was without doubt a much fairer approach, although of course it resulted in less tax revenue being generated. As such, and for the reason of the taper, profits of the largest retailers start at £500,000. They are taxed at 20 per cent only when their taxable profits exceed £750,000. That is taxable profits not turnover, just for absolute clarity. A company earning taxable profits below £500,000 continues to pay nothing. That is the vast majority of retail business in Jersey. I have said many times there are only about 20 who are affected. I should also say that the 10 per cent rate kicks-in at around about £600,000 of profit. It is also worth reminding Members that there are only, as I have said, a small number of retailers impacted, but of those 15 are non-locally owned, so three-quarters of the businesses impacted are non-locally owned. I would just like to pick up on this point, because the matter of how unfair many Islanders - and indeed the media have commented on this fairly recently - believed it to be. To have large businesses operating in this Island with overseas shareholders, who as a result of Zero/Ten pay no tax locally, it was a hot topic. It has been a hot topic and it remained so, I believe, until the Budget in December. The retail tax introduced at that Budget therefore means that that issue has been removed. There is also much debate about the decline of the high street, although the Chamber letter does, curiously, refer to the high street footfall in February being up by 7.3 per cent. That is clearly encouraging, I hope it continues, but I recognise as well that undoubtedly the retail sector has suffered and is suffering a challenging time and has done so for a number of years, especially the small retailers, a point that the Constable of St. John raised. There are certainly some empty shops in town but I am told that generally speaking they get re-let pretty quickly as the economy is performing reasonably well. None of these empty shops, it is probably worth adding, would have been vacated by large businesses with profits of over £500,000 that the retail tax targets. It is the smaller retailers that are being impacted and they are being impacted largely by the internet. They struggle not just in Jersey but, of course, in the U.K. and elsewhere. There is also an argument about the impact of the *de minimis* level, creating an unlevel playing field, especially for small retailers. I know it is a matter that Chamber have felt very strongly about. Treasury have undertaken to review this matter. I believe the Chamber will be supportive of the fact that in recent times I have been sympathetic to this issue. They know that I had hoped to address it at the last Budget and I believe that it should be addressed at the next Budget, whoever is in a position to do that. At this point, I must also make it clear that this retail tax does not solely impact on the high street. All or nearly all the discussion so far this afternoon

has been about the impact on the high street. I would like to put some additional perspective into this debate by letting Members know that fewer than half of the 20 or so retailers, the large businesses whose profits are over £500,000, are on the high street. There are other large businesses within the remit of the retail tax who are nothing to do with the high street in terms of where they are located and where they trade. I am talking, and I have to be careful here, of businesses like garden centres, DIY establishments, retailers of luxury, high value products and so on. The retail tax is not just about food retailers either or the high street, as I have said. I must say that I am also somewhat curious why Senator Ozouf is now suddenly the champion of big retail businesses. I wonder why - I think this phrase was used by Deputy Noel - the Senator has perhaps changed his spots, or the leopard has changed his spots is the right way of phrasing it. I ask because the Senator was Minister for Treasury and Resources. When he was Minister for Treasury and Resources he grappled with the same problems of how to broaden the tax base, as indeed I have done; the same problems of how to tax non-local companies. He answered many States questions on that very subject. As an example, in 2013 he answered a question from Deputy Higgins, who asked the Treasury what they were going to do about broadening the tax base and in particular what they were going to do about including retail. I am in a position to quote Senator Ozouf's answer to that particular question. I quote as follows: "I do not want to throw the baby out with the bathwater, of effectively doing away with £70 million of corporate tax in financial services, for effectively the much smaller revenue which I would like to get but cannot from retailing." It has been a problem and a challenge for Minister for Treasury and Resources, not just the current one but the former one, in order to broaden the tax base and to include other businesses. Well, I am pleased to say that we did find a way to get revenue safely without damaging Zero/Ten or the financial services industry. That was what Members approved in the Budget in December. Any other sectors must be taxed consistently at the standard 20 per cent rate. To introduce the retail sector to the same concessionary rate of 10 per cent for finance is wrong and is inconsistent. It is also open to challenge. The financial services rate of 10 per cent was only introduced to retain the competitiveness of that global industry. Like the other Crown Dependencies, we had to have a special rate of tax to retain that sector in its entirety. It was Senator Ozouf who later, while broadening the corporate tax rate, was able to bring in a limited number - a very limited number - of other sectors. He brought into tax, as has been mentioned by Deputy Noel, fuel importers, mining and quarrying companies, utility companies and property developers and also rental income companies. He did so not at 10 per cent but at the standard rate of 20 per cent. That was the right decision. If it was the right decision for the Minister for Treasury and Resources of the day to have taken, why then is he making a special case now for 20 or so large retail businesses to be different to all other non-finance businesses who are subject to a positive rate of tax? I ask Members: would he have done so if he was still the Minister for Treasury and Resources? If Members vote to reduce the retail tax to 10 per cent today, how will we hold the line in taxing those other sectors that are currently at 20 per cent? It is inconsistent. As an example, large property developers will, I am sure, be the first to knock on the Treasury door and others will no doubt follow quickly. I can tell Members that if all those were to revert to 10 per cent tax rate it would cost millions if not tens of millions of pounds in lost tax revenue. It is inconsistent. It is not the right decision to take. It is worth considering what has also happened since the Budget decision to introduce the retail tax. There is no firm statistical evidence for the limited number of food retailers, those with profits of over £500,000, but food prices, and that is a matter that Deputy Martin was speaking at length about. I always enjoy her speeches. I am going to miss them. I shall have to tune in from time to time; showing great confidence that she will get re-elected. I am sure she will. It is worth noting that Zero/Ten was introduced in 2009. We saw no reduction in food or other retail prices. I think that is a point worth repeating, that when Zero/Ten was introduced in 2009 we saw no reduction in food or other retail price. Some might think this is surprising as businesses suddenly saw their tax rates drop from 20 per cent to zero. On the food retail side, it supports the economic analysis that



was undertaken before the last Budget, which concluded that food retail profit is a small element of the food price. I am looking at Deputy Martin again. The independent economic analysis concluded that food retail prices are small element of the food price. The economic analysis produced in advance has to date proven to be correct. As I mentioned previously, official statistics from Guernsey show no increase in food prices since they introduced their retail tax in 2016. Again, that corroborates the economic analysis independently undertaken and proves the point. It also is demonstrated by the move to Zero/Ten in 2009. Moving to the investment side, we have seen some good news recently. I am annoyed that I forgot my copies of the *Jersey Evening Post* where it has been reported. The decisions to invest in retail in the Island are positive and I welcome them, as I am sure Members do. It is a very different picture to what we were being told at the time of the Budget only a few months ago. Liberty Wharf has been purchased by a large retail group. That shows great confidence and I was delighted to see that. I was also delighted to see that the same retail group has brought in a new food retail offering and announced the reduction in food prices of 5 per cent or more; great news for Islanders and great choice at a lower price. That is what we want to see. This has all happened since the Budget debate when the retail tax was introduced. Another retailer announced its plans to expand into new and bigger premises and the creation of more than 100 jobs in the retail sector has also been announced in recent times.

[17:45]

None of these announcements suggest the retail tax has damaged confidence or indeed investment. We have heard comments about shops that are closed. Yes, there are shops that are closed. That clearly is disappointing. We do tend to see them re-let pretty quickly. It was quoted that a travel agency had shut. I should point out to Members that travel agents are not retailers, so that is in terms of this case specifically relevant. Travel agents, like many businesses, have been impacted by the internet. Mothercare, of course, as has been widely publicised, has got significant debts in the U.K. Their restructuring started in 2014. That is when they announced what they were going to do. Again, it is no particular surprise. Next have invested in larger premises. That does not demonstrate they are not feeling very confident; it rather demonstrates they are feeling pretty positive about Jersey. This Assembly agreed the following in December 2016 and I quote: "From 2018, 20 per cent tax on profit should be applied to all large retailer businesses operating in Jersey." The only condition was around assessing whether or not it was a risk to our Zero/Ten regime. As I have said, the majority of Members of this Assembly voted in favour in 2016. I have the list here. In fact, Senator Ozouf was one of those who also voted in favour. He is top of the list, that is why I happened to spot him even without my glasses on. Senator Farnham, I am sure, who is going to, if he gets a chance, speak in favour again, as he did back in December 2016. I also note on this list, I am looking across at Deputy Norton, that he is also on this list in support. That is the way the debate went at that particular point. I would hope Members would appreciate ...

**The Deputy Bailiff:**

I am sorry, if Members could keep down the background volume.

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

A point of clarification, if I may. It was that the debate that we had on Senator Ferguson's proposition was an agreement in principle and not the actual effect. I think there is a big difference. The Minister is saying ... we are being misrepresented. We are being misrepresented, Sir.

**The Deputy Bailiff:**

Senator, firstly, you have your response at the end of the debate in any event and you can make whatever clarification there you want. That was not, I think, the question at point of clarification of the other Senator's speech. Senator Maclean, if you would like to continue.

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

I would be delighted to continue. I think it was very clear what the intent was in 2016. Members were very clear what they were voting on. In fact, Senator Ferguson was asking Members to bring in a carbon copy of the Guernsey Retail Tax at 20 per cent. The only amendment change to that was that we were going to ensure that Zero/Ten was not impacted. That was absolutely clear. If Members do not want to tax the largest retailers then the choice should be either 20 per cent or zero per cent. I would say that debate we have had. That debate happened at the time of the Budget and Members decided to vote for 20 per cent. They also, because it was allowed, and I was happy to allow that to happen as part of the debate process ... the option of 10 per cent was also debated by Members and rejected. Really, we cannot have this inconsistency of the standard rate of 20 per cent and then financial services the concessionary rate and adding retailer to it but not the other businesses that are taxed at 20 per cent. It is just inconsistent and unacceptable. Yesterday, we approved the higher education grant for students. I was delighted with that. I mention it because Senator Ozouf, when he opened his remarks at the beginning, made it a point that we had additional income. We do have additional income. I am delighted that the draft figures - and they are subject to revision, I have to make that clear - are indicating additional income of £32 million. I think it is important that Members just remember and focus on the fact that of that additional £32 million there are costs which have been incurred which have to be paid for. The higher education grant, there was a big play by Members about the £2.5 million from 2020; that is going to cost and we need to fund it. This is going to help, clearly. We also have the issues of the health charge. The Budget largely dealt with the health charge of £15 million by 2019. But a key part of that was the £5.7 million of the retail tax. There is only £2.8 million going to be left if Members support a 10 per cent rate. We also have to consider the need to replenish our reserves. The Stabilisation Fund, £140 million has been spent out of it. The Strategic Reserve, we have spent £106 million. Income is up. We are controlling costs. That is positive. We are in a much better position. We have to make sure that we just do not keep giving away money unnecessarily. I do not believe that that is the case. We cannot continue to close off valuable revenue sources and keep adding to the cost base. I am going to close now. I would just say that of those costs which I have not mentioned: the waste charge is one; the single parent component, which has not been funded yet; the H.I.F. (Health Insurance Fund), which has to be funded. All of this is a cost. I would urge Members to reject this well-meaning proposition and allow the process to be undertaken. There is going to be a review looking back at this, but all the evidence, the distribution analysis, the economic work that has been independently undertaken, the examples elsewhere in Guernsey and the Isle of Man, all of it points to the fact that this is not going to cause the damage that Members are so concerned about. It is not going to have the impact. We have also seen that within the retail sector with empty shops and such like that rents are beginning to drop a bit, rates are down from the Budget decision by 16 per cent; that is helping with the costs. We have advantages here as well. I am going to stop, but I would urge Members to reject this proposition.

**Deputy J.A.N. Le Fondré:**

Can I have a point of clarification for the Minister, very quickly?

**The Deputy Bailiff:**

If it is a point of clarification, yes.

**8.1.17 Deputy J.A.N. Le Fondré:**

I think it is, Sir. The Minister made reference to the change in food prices, I believe, back in 2009, in his speech. I just wondered if he felt that the greatest change that has been remarked upon about the reduction in costs in 2009 or whether it was the reduction on taxation or whether it might have been the drop in interest rates, which in February 2008 were 5.25 per cent and by March 2009 were

0.5 per cent? Would he think that the fall in inflation was largely due to the cuts in interest rates or the cuts in taxation?

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

I am not sure it is question time, Sir, but I am delighted to answer. It is difficult to say, but what we have seen and what the official statistics show is that food retail prices between Jersey, Guernsey and the U.K. are broadly mirroring themselves and have done over the period of time, so there is no real impact by the changes to taxation, Zero/Ten, this particular retail tax or so on.

**The Deputy of St. Peter:**

Sir, it has been over half an hour since I proposed the guillotine motion. I would like to do so again.

**The Deputy Bailiff:**

Very well. At least 16 Members have spoken in the debate. It is well more than an hour, which is the minimum required, therefore that motion is in order. There is no debate upon the motion. The motion is on the guillotine. If Members vote pour then the debate will come to an end and Senator Ozouf will reply. If Members vote contre then the debate will continue.

**Senator L.J. Farnham:**

Sir, may I just ask how many Members you have listed to speak?

**The Deputy Bailiff:**

I only have 2 Members listed to speak so far, but of course it is always open to others to indicate an intention to do so.

**Deputy E.J. Noel:**

Sir, a point of clarification, if I may? Are we due to finish sitting tonight at 6.00 p.m. or 6.30 p.m.?

**The Deputy Bailiff:**

My understanding is 6.30 p.m., Deputy.

**The Connétable of St. Clement:**

I just wanted to make it absolutely clear, there are quite a number in this Assembly who are going to have to leave the Assembly by 6.30 p.m. at the very latest. Therefore, the debate needs to finish before then. I just want to make the point that if the Senator wants to finish the debate today, his summing up needs to be reasonably sharp, otherwise he will not have a quorum here when it comes to the vote. That is what I am more worried about than anything else, Sir.

**The Deputy Bailiff:**

Very well. As I say, there is no debate upon the proposition, it is simply put to the vote. Is the appel called for?

**Deputy J.A. Martin:**

Please, Sir, the appel.

**The Deputy Bailiff:**

In which case I ask the Greffier to open the voting.

<b>POUR: 44</b>		<b>CONTRE: 4</b>		<b>ABSTAIN: 0</b>
Senator P.F.C. Ozouf		Senator P.F. Routier		
Senator A.J.H. Maclean		Senator L.J. Farnham		

Senator I.J. Gorst		Deputy G.P. Southern (H)		
Senator P.M. Bailhache		Deputy M. Tadier (B)		
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

### **The Deputy Bailiff:**

We then go straight to the summing up by Senator Ozouf.

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

I do not know whether or not whether it is more daunting to have your father in the Assembly or members of your family, particularly one's young niece in the gallery looking down upon one. **[Approbation]** I do appreciate that on day one in the Assembly it was my father that was glaring at me over there. The Constable of St. Saviour is glaring at me ... she is smiling at me. I dare not

look up at the gallery, but I am most grateful. All Members of this Assembly who will have their final day here today will know the importance of the support that they get from their families and that we can only be here with the support of our families. **[Approbation]** I take this public opportunity to thank mine most dearly: my partner, my 2 sisters, my niece and their partners. I am going to be quick, because I need to be sharp like Constable Norman said. I am going to be sharp with some Members and really soft and gentle with others. Deputy Noel, I do not know what to do. I do not know whether to be sharp or just really nice to you. We used to get on. We used to be really good together. We were a great team with the current Deputy Minister for Treasury and Resources, the Constable of St. Peter. He has gone from one side to the other. He was so angry this morning with the Minister for the Environment that he was almost going to go in the back with Reform. I will come back to that in a minute. Deputy Noel spoke of the defence of the 20 per cent. I know he is a good Minister. He wants to abide by collective responsibility. I know he was right that we did not bring forward a retail tax when Deputy Noel and I were in the Treasury. We would never have brought forward a retail tax at 20 per cent. As for the current Minister for Treasury and Resources, he says the standard rate of tax in Jersey is 20 per cent. Twenty per cent? It is zero. I almost did a point of order. The standard rate of tax in Jersey is zero. The special rate is 10 per cent for financial services. Then if there is a really good case that you can do 20 per cent, you do it. Now, he came in on a mandate. I remember his picture. I can see it just now. I remember him being right in the Royal Square. He was an angry man when he started. He is leaving as a happy man, because I know he has got those lovely increased swollen coffers in the Treasury, up to £515 million. I have a few books here which I was going to give out on my last day. It was going to be the economist version of the dismal science. It is called *Naked Economics*. It is quite interesting, because there was a problem with Deputy Noel's speech; the Minister for Treasury and Resources's, if I may say, the Assistant Minister for Treasury and Resources's; and Deputy Tadier's speech. They do not understand economics. Economics, what the book says is: "What you do not know cannot hurt you." Economists explain inquiry information and what we do with it and how we make decisions and when we see what happens. It explores the probability of the rational decisions that happen when you do things. I have to say, the justification of this tax was an in-principle debate by Senator Ferguson. Senator Ferguson loves the United States. Now, she brought an example of the United States. I am really surprised at her, because she is a low taxer and the United States has reduced their corporation tax by 36 per cent to 21 per cent. I would have thought that she had moved on from the worlds of high world tax. The problem with the economic analysis that we based this decision on last November was that it was not consulted on with any person from the industry. I really respect our economic advisers. I do feel sorry for the Minister for Treasury and Resources in the sense - and this is genuine - that I do understand the problem that he could not know who the taxpayers were. I absolutely understand that. I think he has done a valiant job in trying to defend something which he probably could not do anything about. He could not go and talk to the taxpayers. I think it is a bit rich or a bit poor to say that he did not receive any lobbying or he did not really hear any problems. Do we really think that the retail industry last Budget time thought that there was not a problem with this tax? Did we think that everything was fine? Like the Minister for the Environment said this morning that there is no problem with housing. Does he not understand that there is a real problem with the issue in relation to ... which I know the Minister did not ... he has been told that he has not got a problem with housing. But the Minister said he does not have a problem with retail. He does not think there are any issues. The Constable of St. Peter must be looking at his houses in St. Peter and not going and seeing the empty shops that are in St. Peter and in St. Brelade and all the others. He spoke about Thomas Cook not being covered by the tax.

[18:00]

That is the crazy thing about this. This tax is on one level, on one base, one type of shop on the high street and then the other one it is not. It is not fair. As for Reform Jersey, they have an opportunity of delivering on their manifesto, because I have seen their manifesto and it says right on the front page: "A tax system with fairness and sustainability at its core." I will repeat that: "A tax system with fairness and sustainability at its core." Taxes should be fair and sustainable. Yes, they should be fair. There should be the same rate for the same type of business in the same Island. If fairness means 20 per cent on struggling retail, they agree with 10 per cent on financial services and whoopee they finally have got zero per cent. They understand the general rate of tax is zero. Then they will vote against a tax-raising measure which is hurting the very people that Deputy Martin so eloquently and beautifully spoke about [**Approbation**] because she got it. I brought a book for her. I think we have sat in this Assembly for 2,000 sittings. It is called the *Very Best of Punch*. I thought that that was lovely because there are some cartoons in here about retailers having a right old difficult time. Deputy Martin understands it. It is a serious political journal, *Punch*, and it has real good cartoons of typical people, but it is really serious. It is really serious of the consequences of the rising cost of food on Islanders. That is the issue that Deputy Martin ... it is an unusual bedfellow alliance with Deputy Martin and myself. Sometimes we have been at each other's throats and rightly so. It has always been a pleasure to debate with Deputy Martin. We used to sit together over there like 2 naughty schoolchildren. But she has got the nail on the head: it is about food prices; it is about the cost of living. The Chamber of Commerce ... how dare the Minister for Treasury and Resources really tell me that there is not a problem with the cost of living. The cost of living in January went up by 1.26 per cent on food. The Assistant Minister for Treasury and Resources, most of his speech was all about the decisions that were made when the tax was not in. It is not going to be the same speech next year when we have had this 20 per cent tax for a year. Then he will not be able to give that speech, because it will be entirely different, because the full extent of the tax will be having a problem on retail. I do urge the Assistant Minister ... he has been a fantastic Constable and Assistant Minister for Treasury and Resources. I do not think when we would have been together we would have had ... I think we would have had a debate which would have got on to the issues and there are serious issues in relation to what he is saying because I am afraid he is talking about the past situations and not the current ones. I am really worried. This is not a debate for jokes and having levity. There is a serious issue that he spoke about all of the investment decisions that had been taken on the basis of the previous tax regime, not the 20 per cent, and that is the problem with this proposal. It is going to damage the retail environment. If I could just take one issue with the Minister for Treasury and Resources about 20 per cent; there is good reason for the others being at 20 per cent. If we decide to rescind this decision and put retail at 10 per cent, does that mean to say that we are not going to have property developers and extractive industries at 20 per cent? No. They do not pay capital gains in Jersey. There is an environmental detriment to mineral extraction and it is right that they pay 20 per cent and it is a very small number of businesses. You cannot put mineral extractors and hydrocarbon businesses in the same basket as retailers who are suffering. I am sorry, Minister, that is not quite right. I am pleased that we have got these additional monies but I think that we do need to cut some slack for Islanders. There is some difficulty. I was criticised for introducing the marginal rate cut by the Minister yesterday. What happened is it created more tax, not less, as we have seen in the last sitting. If I may say to Deputy Le Fondré, I wish for once I would persuade him. He was almost on the fence saying that he did not ... the only reason why ... and I will try and persuade him because I think I might be able to. He said that it was too late in the day. Well, he has brought a proposition very late on in the day in the last election. He brought a proposition in September for a debate in 2014 - I have got it right in front of me here - about effectively some benefit. It is okay for Deputy Le Fondré, if I may say, to make a proposal to have a debate on something this late on, because he did it and he did it when he brought his proposal for a rebate for G.S.T. and it was lodged in September 2014 and the election was just about 6 weeks later. So I

have had a longer period of time. I would ask him, is he really a tax hiker, because there is a strange alliance. There is an alliance of people who are tax hikers, and I absolutely understand Reform Jersey. I would not expect them to do anything else than to say what they are, which is have high taxes. But really, Deputy Le Fondré and Senator Ferguson and the Minister for Treasury and Resources himself coming in on a mandate of no taxes and abolition of red tape: do they really think that high taxes are the right solution for Jersey? I do not think they are. I do not think they are right for the economy but, most importantly, I do not think they are right for ordinary working people. Now, there are 2 more ... sorry, I think there are 3 more things I want to say. This link between retailers' behaviour and competition; it is very difficult, and I do appreciate this, the fact of being able to precisely put your finger on when retail prices fall because the problem is, as we see with many markets, it is very confusing to work out what price rises are. Can I scotch one myth? Sorry, that was a drink. I would like to tax the drinks industry, but can I scotch one myth about what happened in 2009? Can Members see what happened to inflation in 2009? It plummeted. There was an absolute savage recession, the world's worst. That is when we introduced Zero/Ten and prices fell. Yes, interest rates, as Deputy Le Fondré quite rightly said, but there were issues across the economy and if we would not have brought in Zero/Ten and given the fill-up, the fiscal stimulus to the retail industry, I do not think that as many retailers on the high street would have survived as they did. Therefore, to change the market ... and I am so grateful for Deputy Brée to have changed his mind because I really am grateful. He is not somebody that is easily persuadable but he clearly has understood that we should have consulted and asked for the endogenous factors and the implications of the tax to be better understood both in terms of prices and investment. I would like to bring back if I could ... I would really like to get back to the Constable of St. John who spoke forcefully in favour of this amendment last September and just say to him he is absolutely right. Again, we have not always agreed but he is absolutely right to say that the solution for solving the retail issue is not just this decision. It is a lot more than that. There has got to be a proper retail plan. Well done to the Retail Association and to the Town Planner and the Constable of St. Helier who has done such good work. Clearly it has worked for St. Brelade in relation to this as well but it is not just the small retailer. It is not just the big retailers. If the Constable will consider very carefully Austin Reed and Jaeger and Next he will see that is the concern that I have got. That is why he was right in the Budget last year and I do hope that he will continue with the more sensible decision of the 10 per cent because it is the right decision, I think, for Islanders and those that he will be, no doubt, being re-elected by. I think the time is moving on and Members need to draw this to a conclusion. They know the arguments. I do think we need to stop talking about the punishment that we are going to put on retail. I think there has been a lot of speeches by Reform and others that just think that this is some sort of milch cow that we can just get more tax out of and it is easy. I say to Deputy Noel, divide the amount of tax by the number of households in Jersey and you come out with about £100. Somebody is paying this tax. I do not think it is the mythical shareholder in the U.K. I think it is the ordinary working families of Jersey. If it would have been translated through to a G.S.T. then there would be outcry but because of this mythical situation that nobody really understands who pays corporate tax, you cannot really put your finger on it, whether it is the consumer, the worker or the owner, this tax is landing straight into the pockets of ordinary working Jersey people and it is raising the cost of living and it is raising it to the tune of probably between £50 and £100 per household. That is where the tax is coming from and it is a real problem. So, in summary, there was no consultation. That is an absolute fact. It was not consultation, I understand why, but it did not happen and it should have done. If we would have consulted I think we would not have been having the debate we did then and we would not be having this uncertainty now and we would not be having such concerned retailers. Do not think for one moment that we get debates in the Assembly where people just pop up into the gallery or write to us and say: "Oh, everything is fine." They are genuinely concerned. I have not spoken to one member of the Retail Association, one member of the Chamber of

Commerce who is not genuinely concerned. I appreciate Deputy Truscott, in the remarks that he made, because he was supportive from the beginning and he understands retail and I am thanking him for his support. The high street is suffering, is the second reason, not just in St. Helier but we heard in St. Brelade too. Prices have gone up and there is little support for this continuation of a high rate of tax at 20 per cent. This issue matters for jobs and Deputy Truscott spoke eloquently and the Minister for Social Security and their team have continued the work of the Chief Minister in Back to Work. Is it not marvellous that at the end of this term of office we have got some of the lowest unemployment around and a lot of those unemployment are going into the retail sector? But they are not going to be going into the retail sector if we keeping on losing retail jobs and so that is why he was right to speak from not only a social security position; he understands the issue of prices, he understands the issue of jobs. I think we need to congratulate our retail sector because they have moved away from the minimum wage and they have started employing higher value jobs giving better prospects and that is a really good thing, but let us not take away the opportunity for those young people and those unemployed people to get back into work. Let us give them the boost that they need and the confidence. Finally, it is not good to rescind a decision but when there is a sufficient body of evidence that shows a decision is an unsafe one and the facts that were before the Assembly have changed, for whatever reason ... I am not going to criticise, but the facts have changed. John Maynard Keynes said: "When the facts change I change my mind." When the facts are there in such voluminous volume for Members on the impact of prices, on the impact of investment and on the unhappiness of retailers and the fact that there was no consultation, I would ask Members to search their conscience. We are here to vote on our conscience, and if any Member thinks that that decision last December was safe on the basis of this new information which has been brought in this debate today I would ask them to examine their consciences. I know this is a difficult issue for members of the Council of Ministers but, respectfully, when the facts change they should change their mind and the facts have changed. Well, clearly the Minister for Treasury and Resources does not even know the facts about our corporate rate of tax; it is zero. I will not go on anymore. I hope Members will vote in favour of this because the Treasury can come back with a proper ... they can come back with the legislation, doing a proper job consulting, but the message will go out that it is 10 per cent and that will put slack and put some confidence back in the retail sector. I move, for the last time, the appel on the amendment. **[Approbation]**

### **The Deputy Bailiff:**

The appel is called for. I ask the Greffier to open the voting.

<b>POUR: 24</b>		<b>CONTRE: 24</b>		<b>ABSTAIN: 0</b>
Senator P.F.C. Ozouf		Senator P.F. Routier		
Senator L.J. Farnham		Senator A.J.H. Maclean		
Connétable of St. Helier		Senator I.J. Gorst		
Connétable of St. Clement		Senator P.M. Bailhache		
Connétable of St. Lawrence		Senator A.K.F. Green		
Connétable of St. Mary		Senator S.C. Ferguson		
Connétable of St. Ouen		Connétable of St. Peter		
Connétable of St. Saviour		Connétable of St. Martin		
Connétable of Trinity		Connétable of Grouville		
Deputy J.A. Martin (H)		Connétable of St. John		
Deputy J.A. Hilton (H)		Deputy G.P. Southern (H)		
Deputy K.C. Lewis (S)		Deputy of Grouville		
Deputy of St. John		Deputy J.A.N. Le Fondré (L)		
Deputy of St. Peter		Deputy of Trinity		
Deputy R.J. Rondel (H)		Deputy M. Tadier (B)		
Deputy A.D. Lewis (H)		Deputy E.J. Noel (L)		
Deputy L.M.C. Doublet (S)		Deputy M.R. Higgins (H)		



Deputy R. Labey (H)		Deputy J.M. Maçon (S)		
Deputy S.M. Wickenden (H)		Deputy S.J. Pinel (C)		
Deputy S.M. Bree (C)		Deputy of St. Martin		
Deputy M.J. Norton (B)		Deputy R.G. Bryans (H)		
Deputy T.A. McDonald (S)		Deputy S.Y. Mézec (H)		
Deputy G.J. Truscott (B)		Deputy of St. Ouen		
Deputy P.D. McLinton (S)		Deputy of St. Mary		

**The Deputy Bailiff:**

There are 24 votes pour, 24 votes contre, no abstentions, and therefore the proposition is defeated.

**Deputy G.P. Southern:**

Have we got the ability to say who was absent, missing?

**The Greffier of the States:**

Well, it is fairly obvious. The Constable of St. Brelade.

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

I am very disappointed with that but I thank Members for their contributions and for having heard the debate and no doubt this issue will come back at some future time. **[Approbation]**

**The Deputy Bailiff:**

I should give notification of the Draft Social Security (Amendment 23) (Jersey) Law that has been lodged by the Minister for Social Security. Now, there was one further item on the Order Paper. It seems to me, Deputy Higgins, that was your item. The Assembly did agree to take it but I feel that we have probably run out of time given the strict 6.30 p.m. guillotine.

**Deputy M.R. Higgins:**

Yes, Sir, I fully agree. I am obviously disappointed we did not get a chance to debate it. I will say that if I am re-elected in the elections I will bring it through to the States. If I am not, I hope one of my successors will do.

[18:15]

**The Deputy Bailiff:**

Thank you very much.

**ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS**

**9. The Connétable of St. Clement:**

The arrangement of public business is as per the Consolidated Order Paper with the addition on 26th June of the item which was moved from today's sitting, Project 54 in the name of the Chief Minister. I would have thought that Deputy Higgins's proposition remains live, therefore that should also be done on 26th June along with the items which have been lodged yesterday and today. I will not read them all out but Members will have received those today. Otherwise that would be the proposition for the arrangement for public business. Of course that could be changed by the new Assembly and also, of course, we will be meeting before that on 4th June to elect the

new Chief Minister, or those of us who have been re-elected will be here on 4th June. That is the proposition.

**The Deputy Bailiff:**

Thank you very much. Do Members agree that that is the ... **[Interruption]** yes, that will be arrangement for public business subject to any change by the new Assembly. Before we stand adjourned, could I just say that for those who are leaving the Assembly I wish them an enjoyable rest from their labours, even if only temporarily in some cases, and to those standing for election I cannot, of course, properly wish you success but I can wish you a most enjoyable campaign. Very well. **[Approbation]** The States stands adjourned until 10.30 a.m. on 9th May, Liberation Day.

**ADJOURNMENT**

[18:17]