

STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 25th MAY 2016

PUBLIC BUSINESS – Resumption	3
1. Draft Employment (Amendment No. 10) (Jersey) Law 201- (P.38/2016): amendment (P.38/2016 Amd.) - Article 5 - resumption.....	3
1.1 Deputy S.Y. Mézec of St. Helier:.....	3
1.1.1 Deputy A.D. Lewis of St. Helier:.....	5
1.1.2 Deputy S.M. Brée of St. Clement:.....	7
1.1.3 Deputy G.P. Southern of St. Helier:.....	7
1.1.4 Deputy M.R. Higgins of St. Helier:.....	8
1.1.5 Deputy L.M.C. Doublet of St. Saviour:.....	9
1.1.6 Deputy J.A. Hilton of St. Helier:.....	9
1.1.7 Senator Z.A. Cameron	10
1.1.8 Deputy R.J. Renouf of St. Ouen:.....	10
1.1.9 Connétable C.H. Taylor of St. John:	11
1.1.10 Deputy P.D. McLinton of St. Saviour:.....	11
1.1.11 Deputy S.J. Pinel:.....	11
1.1.12 Deputy M. Tadier of St. Brelade:.....	12
1.1.13 Senator I.J. Gorst:	13
Deputy T.A. Vallois of St. John:	15
Deputy J.A.N. Le Fondré of St. Lawrence:	15
Mr. M.H. Temple Q.C., H.M. Solicitor General:.....	16
1.1.14 The Deputy of St. John:.....	16
1.1.15 Deputy J.A.N. Le Fondré:	17
Deputy A.D. Lewis:.....	18
The Solicitor General:.....	18
Deputy M.R. Higgins:.....	19
Deputy G.P. Southern:	20
1.1.16 Deputy J.M. Maçon of St. Saviour:	20
1.1.17 Connétable J. Gallichan of St. Mary:.....	21
1.1.18 Connétable J.E. Le Maistre of Grouville:.....	22
1.1.19 Deputy G.J. Truscott of St. Brelade:.....	23
1.1.20 Deputy M.J. Norton of St. Brelade:	23
1.1.21 Deputy S.G. Luce of St. Martin:.....	23
1.1.22 Deputy S.Y. Mézec:.....	24
1.2 Draft Employment (Amendment No. 10) (Jersey) Law 201- (P.38/2016) - resumption	27

1.2.1 Deputy S.J. Pinel:	27
1.3 Deputy S.J. Pinel:	27
1.4 Draft Employment (Amendment No. 10) (Jersey) Law 201- (P.38/2016): amendment (P.38/2016 Amd.) - Article 15.....	28
1.4.1 Deputy S.Y. Mézec:.....	28
1.5 Draft Employment (Amendment No. 10) (Jersey) Law 201- (P.38/2016) - resumption	29
1.5.1 Deputy S.J. Pinel:	29
1.6 Deputy S.J. Pinel:	29
1.7 Draft Employment (Amendment No. 10) (Jersey) Law 201- (P.38/2016): amendment (P.38/2016 Amd.) - Article 17.....	29
1.7.1 Deputy S.Y. Mézec:.....	29
1.8 Draft Employment (Amendment No. 10) (Jersey) Law 201- (P.38/2016) - resumption	29
1.8.1 Deputy S.J. Pinel:	30
1.9 Draft Employment (Amendment No. 10) (Jersey) Law 201- (P.38/2016): amendment (P.38/2016 Amd.) - Article 19.....	30
1.9.1 Deputy S.Y. Mezéc:.....	30
1.10 Draft Employment (Amendment No. 10) (Jersey) Law 201- (P.38/2016) as amended	30
1.10.1 Deputy S.J. Pinel:.....	30
Deputy S.J. Pinel:	31
2. Rate Appeal Board: appointment of members (P.41/2016).....	32
2.1 Senator A.J.H. Maclean (The Minister for Treasury and Resources):	32
3. Financial Institutions Registered In Jersey: links to Panamanian Legal Firm Mossack Fonseca (P.42/2016).....	32
3.1 Deputy G.P. Southern:.....	33
3.1.1 The Connétable of Grouville:.....	34
The Solicitor General:.....	35
3.1.2 Senator P.M. Bailhache:	35
3.1.3 Deputy D. Johnson of St. Mary:.....	37
3.1.4 Senator I.J. Gorst:.....	37
The Solicitor General:.....	38
Deputy G.P. Southern:	40
ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS	40
4. Connétable D.W. Mezbourian of St. Lawrence (Vice-Chairman, Privileges and Procedures Committee):	41
ADJOURNMENT.....	41

[9:30]

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

PUBLIC BUSINESS – Resumption

1. Draft Employment (Amendment No. 10) (Jersey) Law 201- (P.38/2016): amendment (P.38/2016 Amd.) - Article 5 - resumption

The Deputy Bailiff:

The Assembly yesterday approved the principles of the law and approved the adoption of Articles 1 to 4. Article 5 of the law has been proposed and seconded and Deputy Mézec has brought an amendment to the law, which has been read, and he will now propose to the Assembly. The effect of the amendment would be the removal of Article 5 of the law and, in the event that the amendment is adopted, there will accordingly be no purpose in voting on Article 5 because it will be removed. If the amendment is defeated then the Assembly will effectively have said Article 5 is to stay in and there will be no point to a vote on it. Again, it will simply fall apart. My understanding is that Deputy Mézec's amendments - and there are more than one - are effectively amendments to be taken as a whole. They seek to achieve in their totality an effect and it therefore might be helpful if Members were to debate anything relating to the principle of those amendments in this, the first debate on the amendment, so that it is not necessary to repeat the arguments for subsequent amendments. Very well, I call on Deputy Mézec to propose the amendment.

1.1 Deputy S.Y. Mézec of St. Helier:

Thank you for that explanation about how this process will work. The purpose of this amendment is very simple in that it simply removes the clauses in this proposed law, which would allow the Minister for Social Security to set a new minimum wage rate based on age. Voting in favour of this amendment is therefore a vote to maintain the *status quo* and continue into the future with a standard minimum age rate paid to all workers regardless of their age. I think the timing for this debate could not be more appropriate because it comes just the morning after we almost unanimously approve the introduction of age discrimination law and in that debate we had several Members express concern at some of the prescribed exemptions in that discrimination law, which some said were too broad. So, I ask Members to consider what message of confusion it sends out to members of the public if we stand up and give all sorts of platitudes about how we oppose discrimination on the basis of age only to then go to bed and forget about it all the next morning and vote to allow age discrimination in the workplace when it comes to how people are paid. I think it is embarrassing, to be honest, that the Government lodged their age discrimination legislation literally on the same day as this Employment Law amendment to introduce a little bit of age discrimination. I think to approve them both without any sense of irony would, in my view, make this Assembly look ridiculous and would vindicate people who are disillusioned with politics out there in the Island. Discrimination in all its forms is abhorrent and while we have been decades behind the U.K. (United Kingdom) on our discrimination law, we do have laws pre-dating the recent anti-discrimination laws to protect people from being treated unfairly on the basis of their race or gender and that includes the current Employment Law, which specifically stipulates that different rates cannot be created on the basis of race or gender and those clauses exist for the obvious reason that any decent member of society knows, which is that a black worker is not worth less than a white worker, nor a female worker less than a male worker. Yet we are being asked to say as a blanket statement that workers below the arbitrary age of 25 - and it is arbitrary because it is just pulled out of thin air - are worth less than those who are just a bit older than them. Their argument is that a younger worker is automatically less experienced and has less ability than an older worker. But the problem with that argument is that, without evidence, it is just prejudice to say that. It is perfectly possible for a younger worker to have far more experience, ability and

wisdom than someone much older than them and to pay them less is a punishment for simply being born later than someone else is discrimination, pure and simple. There is no other word for it. At 24 years old, it is possible to have been in full-time work for 8 years, just as it is possible for somebody to make it into their 30s without ever really undertaking any meaningful training or employment. Some possibly even make it to even later in life without doing that. But, ultimately, I say to those who believe that this a proportionate measure to allow pay levels to better reflect the ability and experience of an employee. There is a great get-out clause; it is called the trainee rate of minimum wage and that trainee rate allows for employers to pay somebody less while they are learning on the job and it applies equally to somebody aged 20 or 40. The deciding factor is their ability, not their age. Now, the evidence provided by the Employment Forum, which I attached at Appendix 1 to my amendment, came from a statement they heard from the trade union they had been speaking to which had negotiated away different wage bands in the businesses where they had a presence and it had not had a negative impact on job opportunities for either younger or older workers but had a beneficial impact on staff loyalty, motivation and therefore productivity, and with lower staff turnover you spend less on training. All the evidence shows that when you pay people properly, you get better results and we all know the saying: "Pay peanuts, get monkeys." I have to say, it is slightly annoying that in both the original proposition and the comments to my amendment, my previous proposition, P.150/2016 on investigating the impact of a significant rise in the minimum wage is referenced as if this move to introduce a discriminatory minimum wage rate was somehow inspired by that proposition. I certainly hope it goes without saying that there was nothing in the wording of that proposition, nor I believe in the comments made during the debate, that indicated that a vote in favour to P.150 was intended to be a green light for this move. I think it blatantly was not and I do not think the Government is acting within the spirit of that proposition by coming forward with this proposal. My proposition was meant to be for the benefit of all workers, not just above a certain age, and I would hope that Members would ... Members know me and I know could have made a pretty safe assumption that that was not something I was intending when I lodged that proposition. But I think the real gist of the point I want to make is that ... and every generation thinks that every other generation had it much easier than them. We have all seen the 4 Yorkshiremen sketch. Yes, my generation has grown up with smartphones and PlayStations, which I will admit is pretty good and I am pretty grateful for that, but I think there is a real, and I think dangerous, underestimation of the difficulties that young people face today. At the end of last year, the U.K. Equality and Human Rights Commission published a report called *Is Britain Fairer?*, which did work similar in nature to what our income distribution survey does here and it did a breakdown of its findings by age and they concluded that young people today faced, in their words: "The worst economic prospects for generations." The stats showed that people below the age of 34 had seen the biggest slide in income and employment since the 2008 crash and now face much higher barriers to achieving economic independence than 6 years ago. They face the steepest drops in pay and employment, had less access to decent housing and were experiencing deepening levels of poverty. I think that that just confirms what we all know anecdotally, which is that young people are living with their parents until later in life. Home ownership is seen as a pipe dream for many people my age and many of us come out of education with crippling student debt.

[9:45]

Most people in this room with degree level education probably did not have to pay tuition fees. I have got mates who got a degree and with it, got tens of thousands of pounds of student debt to burden them just as they are entering their careers. Young people are finding it harder and harder to get on their own 2 feet and I must warn Members that this trend risks being a demographic catastrophe waiting to happen because we as a society need bright and talented young people working hard, paying loads of tax, healthy both physically and mentally, and we need this because we have got an ageing population. The generations in work today will be the pensioners of

tomorrow and we need a workforce to supplant them who are able to pay for them. If you provide them with less stable foundations at the beginning of their working lives, you are preparing to set off a ticking time bomb in the future and ignoring these facts is short-term politics at its worst and it is bad economics. The fact is that accepting, on principle, that young people should be paid less because they are young is to accept the trend that young people will just have to put up with a declining standard of living and I say that we can, and should, be doing much better than that. We should actively be striving to reverse that trend, not accept it as inevitability. A vote in favour of my amendment is a vote to say to the Government and the Employment Forum that we believe in standing up for our young people and want a minimum wage that is fit for purpose for all Islanders. If you do a decent day's work, you deserve a decent day's pay without being discriminated against for something beyond your control. People should be rewarded for working hard and excelling at what they do, not for just getting older, which all of us do. It is pretty easy. Most of us do it at a rate of about 60 seconds a minute, which is on average quite good, I think. Getting old is easy. Working hard should be rewarded and I think we should take this opportunity to say that we are not prepared to accept discrimination in our minimum wage-rating system. We should stick to the principles that we adopted yesterday against age discrimination and we should seek to have a minimum wage that works for everybody, not just sections of society. I make the amendment.

The Deputy Bailiff:

Is the amendment seconded? **[Seconded]** Does any Member wish to speak on the amendment? No one wishes to speak on the ... Deputy Andrew Lewis?

1.1.1 Deputy A.D. Lewis of St. Helier:

I take a slightly different view to Deputy Mézec on this one and I would just like to give Members some other thoughts that they may wish to consider in their deliberations. As you will know, in the U.K. the National Living Wage is being introduced in a similar manner to as has been discussed behind me just now in that it will apply to those over 25. An investigation by the *Independent*, for example, has already found that 16 of the U.K.'s biggest chains will offer under 25s exactly the same rate of pay as the over 25s. So it progresses the whole argument about low wages. If you increase wages for the over 25s, you are increasing wages for a large number of people who are already low paid in the economy, whether that be here or in the U.K. So I believe that the proposition being made by the Minister represents probably our best chance at the moment to put ourselves in a position to speed up dramatically the move towards a living wage for Jersey. Such an opportunity just should not be missed. I would not underestimate the opportunity that this provides us with. Interestingly enough, in Deputy Mézec's proposition, he says that age variation has proved controversial and seems to have been adopted for political reasons rather than economic ones. He is absolutely right. If you want to get a National Living Wage into Jersey, or in the U.K., as has been proven, it is very much a political matter. The Living Wage Foundation in the U.K. is apolitical but if you want to get a National Living Wage in Jersey it becomes a political issue because we discuss the minimum wage here so it is very much, as the Deputy states, for political reasons that given the opportunity in the changes that the Minister is proposing, gives us the opportunity to have an informed debate about it. We lose that opportunity if we do not consider this proposition carefully that the Minister is making. Only a few months ago, the Minister was sticking to a target of achieving an increase to the minimum wage to 45 per cent of medium wage by 2026. That is 10 years to get to what I believe is a living wage. It is too long. This is an opportunity next year to have an informed debate about the possibility of a living wage for Jersey. I say again, the opportunity should not be missed. Another bit of information that you might be interested to know, a survey by workplace analysis, XpertHR, that some of you may know of, in January this year found that among employers who employ staff under the age of 25, earning less than the U.K. National Living Wage, 60 per cent of them intended to implement the £7.20 rate

regardless of age. So what I am saying here is that if you increase the higher living wage, the whole economy benefits, not least more people in the economy end up on higher wages. So this would suggest that, in other words, employers here might act in exactly the same way. If a differential in wage rates determined by age was ever recommended by the Jersey Employment Forum, which is what the Minister is trying to lay the path for. So there could be an argument for a lower wage applying to younger people. It will give them a greater opportunity of securing work and gaining experience in the short term, leading to longer-term higher wages based on experience and skill. We should be doing everything we can to help maximise the opportunities available to young people and this may just be one such action. In the U.K., the T.U.C. (Trades Union Congress) welcome the Government's move to increase the National Minimum Wage substantially and they campaigned for it for many years but they did acknowledge the inequality of young people being excluded from these proposals. So what they said was when it comes to the next review, if discrimination is to be avoided, this is the time where we can shout really loudly about this. But we have achieved something already; we have already achieved higher wages for low pay workers. Okay, it is over-25s and that was from the T.U.C. who have campaigned for higher wages for low pay workers for years, but they accepted in the end that this was a step forward but insisted that when the first review occurred that under-25s would be further considered. Minimum wage bands make it less likely that young workers are priced out of the labour market, particularly if the minimum wage rises for older workers. During the recession - and it is mentioned in Deputy Mézec's proposition - those that bore the brunt of the downturn with typical wage falls of 13 per cent, were those aged between 22 and 29, so we should be mindful of that, compared with falls of about 5 per cent for those over 50. The downside here is clearly that some will view this as discriminatory and I think Deputy Mézec has made his case very clear for that and articulately as usual. He presented that case really well. But the upside is that some employers may prefer young workers, as a result giving them the start that they really need and that should not be ignored. I do not believe that it is desirable to simply transplant systems from elsewhere into Jersey, and I am talking about the U.K. However, the debate in other major economies should give us the confidence to change the way we do things here and this is just that opportunity and it should not be ignored. Although I am a great advocate of a much speedier move to a living wage for all in Jersey, such a large increase in the minimum wage could of course be damaging to our economy and detract us from this possibility and I have vocalised that on many occasions. Therefore it is vital that you raise the productivity alongside any wage increases. In other words, you give businesses time to plan and adapt but, I am sorry, 10 years' time to plan and adapt is too long. People will not make any changes if they know they have got possibly 10 years to change their business model. This is an opportunity to say: "Wake up, guys. Change is coming. You need to change your business model." But the economy is growing so it suggests that there is capacity to raise minimum wage at a much, much faster rate and this will be one of the tools to do it. We should grab it so we can lay the path by supporting the Minister's proposition over the amendment. This will help raise low pay. All sectors, including those that employ the vast majority of low-paid workers could be tackled through a more progressive approach to the minimum wage but here I am not necessarily advocating a sectorial approach to wages but I have been beaten up severely by the farming community and, to an extent, the hoteliers, for daring to suggest we have a living wage. So having a sectorial approach should not be ignored and it is one of the things that should be considered if, as the Minister says, it will provide a fully informed debate based on research and evidence as an when a debate occurs if we have got this aspect within the regulations. So it should not be considered in isolation, the sectorial approach, there should be a strong focus on boosting skills and productivity across the economy. Dare I say it, we should include doing everything we can to assist young people to finance higher education courses, which was the topic of discussion yesterday. The C.B.I. (Confederation of British Industry) and the T.U.C. in the U.K. called for exactly this during the debate about higher wages for low pay in the U.K. Improving the skills

base. If you get young people into work earlier, as early as you can, because employers are employing them because, dare I say it, they may cost a little bit less, but let us face it, they often do because they have no experience and skills at that point. That has got to be good for young people and then in-work training and skills provided to those young people if they are in work. It is much better to be in work on a slightly lower wage, possibly, than out of work. You may also be interested to know that most of the big supermarkets in the U.K. - and here I am talking about Aldi, Lidl, Morrisons, Sainsbury's, Tesco and Waitrose - have all confirmed in recent months that they will have no differential when the living wage comes into place in the U.K. In other words, there will be no discrimination on age. If you are under 25, you will still be paid, by those major supermarkets, the National Living Wage. In other words, having this in there has straight away increased the earning power of a lot of people and it should not be ignored. Finally, if I could just mention that on 17th June, Caritas, who have taken up the mantle on the living wage and are establishing the foundation here and now in Jersey, will be launching the Living Wage Foundation on 17th June at the annual Caritas lecture, which is taking place at the Pomme d'Or, at 12.30 p.m. At that event, Katherine Chapman, Director of the Living Wage Foundation will be speaking and this will be one of the subjects that she will cover, these differentials and the pros and cons of them. Also, Jonathan Cox, Director of Citizens U.K. will also be talking and he will touch on this subject as well. For those Members that are interested, you have had invites to come along and inform yourself further about this whole debate about a living wage for Jersey. The lecture is entitled *A Living Wage for Jersey*. I will leave you with those thoughts. I hope that helps to inform you a little better as to another side to the story, which the Minister is proposing. She is not saying this is what we must do. That is up to the Employment Forum, but they cannot make those sort of recommendations about sectorial differentials or age differentials and a meaningful debate about it unless we make this amendment. So, I would say, Members, I would urge you to consider very carefully your decision here. This is possibly the best opportunity we have had to introduce a living wage for Jersey faster. Not in 10 years, possibly within the next few years, and that should not be ignored so I would urge Members to consider that very carefully.

1.1.2 Deputy S.M. Brée of St. Clement:

This is a very simple amendment and we go back to the question of the basic principle. Do you believe in the minimum wage? Yes or no. If the answer is yes, then why discriminate against a particular age group? There is no logical reason to do so and no evidence to support such discrimination and that is what it is: discrimination. We should be looking at how to encourage young people into working in areas other than just the finance industry. The finance industry is not concerned with minimum wage. They never pay the minimum wage, so this is talking about industries other than the finance industry. Economic growth and productivity is what we continually hear from the Council of Ministers.

[10:00]

Well, I would suggest that our economy needs Government to support and encourage diversification and growth in other areas than just the finance industry. To discriminate, on a wages basis, against people below the age of 25, is sending out completely the wrong message and I would suggest that once again we are seeing a lack of joined-up thinking from the Council of Ministers. To discriminate is wrong; we as an Assembly have already agreed that so why are you going to support discrimination for people below the age of 25? I would urge all Members to seriously consider supporting Deputy Mézec's amendment because we have a Government... we are a Government, we have to send out the correct message to the young people of this Island that (1), we do value you, and (2), we are not prepared to allow discrimination of any kind against anybody.

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

I rise to my feet to suggest that what we have got here is a mistake because what we rely on the Employment Forum for is to receive advice. The Minister makes decisions based on that advice and that advice comes from research. The Employment Forum consults with all the stakeholders involved in any particular decision, takes advice, seeks evidence and then makes recommendations. The Minister then acts on those recommendations ... accepts the recommendations and acts on them and brings, as a result, a motion to the House. The Employment Forum, in its entire history, has yet to recommend a youth rate. This House, having considered the pros and cons on at least one occasion, has voted against a youth rate with evidence presented in the form of a debate. Today, without any evidence from the Employment Forum or anywhere else, we are asked to make an in principle decision that we want to proceed with the possibility of a youth rate. Now, it seems to me that is completely back to front. Any other Minister or any other Back-Bencher coming to this House to suggest a proposition based on a blank sheet of paper would be laughed out of the House. But that is, in effect, what we are doing today and it just seems to me completely back to front. It defies all logic. On a whim, indicate that you wish the Employment Forum to do this ... no. Look at the reason why. Because this lack of discrimination is entrenched in law, not regulations, not orders. We cannot change it because it is entrenched in the law and why is it in the law? Because it is a very important principle and should not be rushed into change. The way we are set up, law takes time. Changing the law takes time. And that is absolutely right that it should. If that means that a decision cannot be made until a year later, until something has been properly debated with the research and the consultation done with the stakeholders, as is normal, then if this House says so, that change can be made, but in appropriate time. If we cannot act now based on nothing then we do not lose an opportunity; we risk making a serious mistake. That is what we do. So this statement: "If the Minister intends to direct the forum to consult on the possibility of introducing a higher minimum wage similar to the U.K.'s premium wage rate for the over-25s, it will be important to consider first whether there is a political inclination to amend the Employment Law to permit different minimum wages to be prescribed for employers of different ages. It is therefore, [says the Minister] appropriate for the Minister to seek a decision of the States before the forum consults." Completely the wrong direction. The Minister must, and should, ask the Forum to consult properly and bring something to the House either recommending a differential rate or not. I believe in the balance of what has happened in the past, I think the Employment Forum would not come out with a proposition that says there should be a youth rate, as it has done in the past. But equally, this House should not be giving the nod to a: "In principle, we are quite happy to do this", at all. So I would absolutely urge Members to support this amendment. If we are to see change and adaptation of this non-Jersey arrangement, then let the Minister come to the House with a researched, evidenced paper that says we should be moving towards a youth rate. We have not done that in the past. The Employment Forum has not advised that in the past. I think we should maintain the *status quo*.

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

I will be very brief. I believe the 2 speeches that I have heard so far that have really convinced me on the way that I am going to vote on this proposition, are those of Deputy Mézec and Deputy Brée. I think the case they have set out is quite compelling. Now, I personally believe that we have done a great disservice to the youth of this Island, the younger people of this Island. We talk, for example, in other debates about housing. What chance has a young person today got of being able to afford a house or even a flat in this Island? Look at the cost. You see it in the *Jersey Evening Post*, you see it ... okay, I will be fair, *Bailiwick Express*, or you see it in various other forums. The cost of housing in this Island is so great. When you look at the range of opportunities for students in terms of employment or younger people in employment, basically you are faced with going into the finance industry, in many cases, if you can get it, if you want to get a decent wage and if you want to get close to getting on the housing ladder, but even people in the finance industry are not

earning sufficient in many cases to afford the houses that we have, even when you take joint incomes into account. I have seen comments in the paper and elsewhere of people earning over £66,000 as a couple, trying to get on the housing ladder and finding it difficult. If you look at job opportunities, as I say, yes, we have seen growth in certain sectors, but if people do not want to work in the finance industry or they do not want to work in agriculture or hospitality, what is there? There is nothing. So many of these young people are leaving the Island to pursue other careers and they are a great loss to this Island. I would ask Members to start looking very closely at all the propositions that we have passed and all the rest of it and think about it, the effect it is having on our youth, who are our future. So I would strongly recommend that people support this proposition and in future look at the legislation and say: "What impact is it having on our children?" I think we should not be passing quite a number of the laws that we are because we are discriminating against them and we are driving them out of this Island. The ones who remain are having to remain with their parents. They cannot afford to get on the housing ladder so the parents ... I always believe that children are for life; well, they are staying a lot longer. **[Laughter]** So anyway, I ask Members to support this proposition.

1.1.5 Deputy L.M.C. Doublet of St. Saviour:

I am going to speak briefly in support of Deputy Mézec's amendment and I want to thank him for it and I hope that under 25s in the Island - if there are any of them listening - see that he is in this Chamber and he is supporting them and I hope that other Members will join me in doing so as well, just as we would for any other sector of society when they need us. It has got me thinking, this amendment. What exactly changes when you become 25? If we allow different minimum wages for younger people then we end up with a mismatch in some of our laws. I mean, at the age of 16, Islanders are legally able to marry and start a family. So if an individual does make that choice to do so, and starts a family say at the age of 18, 20, 23, then why on earth should they be paid less than someone who starts their family at the age of say, 30? They should have equal means to be able to support their family as someone who is older. I just find it utterly bizarre, the notion that we would pay somebody less simply because they are younger. I urge Members just to take a common sense approach on this today and vote in favour of this amendment.

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

Just briefly because I have been sat here this morning listening to some of the speeches and really, at the end of the day, this is all just about discrimination in my view. It is discriminating against younger people and I do not understand, with the best will in the world, how Members can think it is all right to agree to this. I am really, really struggling with this. I was looking around the Assembly and thinking that the great majority of Members in this Assembly are homeowners, barring maybe half a dozen, and we have all benefited from the huge hike in price rises over the last few decades and gold-plated pensions for some individuals as well. I know not for all but in general terms. So I believe our generation, the older persons generation, has benefited to a great deal. But I do not want to make it a generational thing but our Scrutiny Panel has been doing a review into living on low income and it became very obvious to me that the people who are suffering most in this Island are young people. I just do not understand how you would expect ... why a young person of say, 22, 23 or 24, should be discriminated against on the salary bands just because of their age. I mean, if they are doing exactly the same job as an older person they should be paid exactly the same amount of money. Again, I look around me, how many Members here would have left home by the time they were 25? A huge amount of us, I believe, would have left home by the time we were 25 because it was completely different decades ago and we could have afforded to do it. Young people cannot afford to do it now and so I am struggling to understand how anybody can think this is a fair way to treat the young people in our Island. I really am. So I will be supporting Deputy Mézec and, like Deputy Doublet, I thank him for bringing this

amendment today. I think we do need to send a strong message out to the young people of this Island that we do value them and we value what they bring to the economy and to everything in the community and our way of life in this Island.

1.1.7 Senator Z.A. Cameron

Inequalities between the generations are greater than ever and the younger generation today are probably the first generation for some time that is likely to face living at a lower standard of living than their parents. We see the age of first pregnancy increasing significantly, which increases the chance of facing infertility and those women that then have later pregnancies have increased medical complications. Young people are ... I am not surprised that we are seeing rising mental health problems in this generation and they are becoming very disillusioned in politics so I will be voting for this amendment.

1.1.8 Deputy R.J. Renouf of St. Ouen:

I will be supporting this amendment. I consider the Minister's proposition is poor legislation because surely a Legislature ... we, as that Legislature, should not pass legislation without having a clear rationale for doing so.

[10:15]

Surely a Minister, bringing legislation to an Assembly, should always inform the Assembly of the reasons why he or she may consider that legislation necessary or desirable. So I have asked the Minister what is the rationale for this legislation? Why should we choose to specifically discriminate between employees to divide them into 2 camps based solely on their age? What is the principle behind that legislation? Because it seems to me that if there is a principle then the report accompanying the proposition remains completely silent on it. The Minister in her opening speech did not outline any principle and the Minister was unable to inform me when I asked. So I wonder if anyone could tell me why we would wish to do this? In her comments on Deputy Mézec's amendment, the Minister says that later on we can have a fully informed debate based on research and evidence. So the research and evidence is out there but why is it not before us today? Why has the Minister chosen not to share it with us today and asks us to make that decision in a complete void? Why can we not consider the merits of the case for discriminating in the way the Minister suggests? Or perhaps the reasoning is simply that it can be used as a mechanism for reducing the economic impact of any increase in the minimum wage. The sort of argument that Deputy Lewis of St. Helier has put forward. But if that is the reason for introducing this legislation, then the Minister should not be afraid to say so. We can have a debate here and now about the economic considerations that might, just might, justify an act of discrimination. But, yesterday, we told employers that they cannot draw those distinctions in the way that, for example, Deputy Lewis of St. Helier suggested that we might wish to do so. Employers cannot do so in the workplace but perhaps it is suggested we should do so as a Legislature. In answer to Deputy Lewis, it is not the case that we cannot revisit this question and have that debate after the Employment Forum has reported. We can and then we may have research and evidence before us. The Minister, she clearly says in her report, is only seeking to bring in this measure to achieve a timetable of next year. So we are being asked to rush legislation without any basis for its desirability. I do not see this as simply enabling legislation that would allow us to discuss principles at a later stage. We are discussing a principle today. Our Employment Law is a vital piece of legislation, which fundamentally affects the lives of very many people in the Island. If we accept this provision, then we are passing into law a principle that our Employment Law should contain specific measures discriminating on the basis of age. To me, it is deeply ironic that the Minister is suggesting that we do this, to create division on the basis of age, when yesterday, we legislated to compel every

company, every organisation, every employer and every person in this Island to cease discriminating on the grounds of age. Therefore, I urge Members to support this amendment.

1.1.9 Connétable C.H. Taylor of St. John:

It is a curious amendment because in some ways it is premature. The Minister is merely asking for a facility to come back to this Assembly at a future date to discuss the possibilities of changing the law. That is as I understand it. I note the Minister is nodding her head, which I assume means I have got it correct. We have had very good speeches about minimum wage and living wage, which does not come into this legislation at all. That is another debate to be had at a later date. I cannot see anything wrong with what is being ... the Minister is proposing because it is simply saying: "I wish the facility to come back and then it will be debated." That is when the debate will take place. If, at that time, the Assembly disagrees with the Minister and says so, then what we are doing now is just wasting time. I will be opposing the amendment.

1.1.10 Deputy P.D. McLinton of St. Saviour:

Notwithstanding what the Constable of St. John has just said, tactical discrimination is still discrimination. We are all born completely equal on this planet and I do not think we should ever discriminate against anybody because they have made less orbits of the sun than somebody else. This is discrimination whatever way you dress it up and for whatever reason and so, contrary to Deputy Wickenden's idea that there is some sort of Assistant Ministerial whip that goes on, I shall be supporting this proposition.

1.1.11 Deputy S.J. Pinel:

I sincerely thank the Connétable of St. John for his very, very concise description of what this proposition is trying to achieve. Debating 2 propositions in one sitting, one for the introduction of age discrimination and the other, amending Employment Law to permit more than one rate of minimum wage, I appreciate, to some, could be confusing. However, it is not choice, it is timing. In order to effect the age discrimination characteristic on the same date as previous characteristics, 1st September, in previous years we could not have debated this proposition any later. The amendment to the Employment Law is to enable a change to allow for different rates of minimum wage. I assure Members, this is all it does. It could wait no longer if the Employment Forum is to consult on a different minimum wage asked for by a previous Assembly. They started consultation on the existing minimum wage at the end of April. It is a bit of a chicken-and-egg situation. The Assembly directed that the Social Security Department consult on the possibility of the introduction of a premium rate wage for those over 25, the equivalent to the National Living Wage in the U.K. of £7.20 for those over 25. All my proposition is seeking is the agreement of the Assembly to amend the current law to allow different rates of minimum wage. I will not introduce a youth rate that is lower than the current minimum wage. I will not propose a premium rate for older employers if the forum does not recommend it. In that situation, the enabling power simply would not be used and I would proceed as usual to make the legislation for the 1st of April 2017. If the forum does recommend a premium rate, I will bring a proposition to the States for approval later this year. We can debate the matter fully in November with the benefit of the Forum's research. Members do not have to be willing to introduce a higher rate in order to approve my amendment. All I have proposed is that we allow the Forum to consult so that we can look at the evidence later this year. I know that Members value research and we should have the full discussion at that appropriate time. I have to make sure that if the Forum recommends a higher rate, and the States agree it, then it can come into force in April 2017. If there was time to wait for the recommendation before seeking this primary law change, then we would wait, but there is not time to do this. The enabling power should underpin the research otherwise the Forum will be offering to the public an option that cannot be achieved in April 2017. As I said recently in response to

written and oral questions, the decision of the States today will directly affect the scope of the Forum's review. It is not unusual to include enabling powers in legislation that may or may not be used in the future. I assure Members that I will not use the power without the support of the Assembly and the Forum. There really is no downside to empowering this law. I urge Members to reject this amendment.

1.1.12 Deputy M. Tadier of St. Brelade:

The arguments are now, late on in the debate, coming out because I think, ultimately, we have had some very good ... and a lot of consensus up to this point that this is discriminatory and certainly I will be emphasising that point shortly. But the question here... we have had the suggestion from the Constable of St. John and now from the Minister that this is simply something that is quite harmless, it is innocuous and have the ... the Forum can consult on it and then they are not going to do it anyway, and then ultimately it comes back to this Assembly and it is being suggested that we are wasting our time today by debating this. Well, really, the waste of time but also the waste of energy and work and no doubt possibly money comes from consulting on something that this Assembly has no intention or no desire to do and it seems to me quite obvious from the comments that we have heard. I would ask, why would we ask the Employment Forum to look into something that hopefully the States Assembly, and I believe certainly any right-minded person, would instinctively find objectionable and discriminatory. It really does not make any sense that we would ask them to go away and do a piece of work. Add on top of that the fact that previous Employment Forums have also rejected the concept of a differential rate based on age for younger people and that they have got no intention and the evidence is not there because they have never recommended that in the past. In fact they have recommended against that. Where is the real waste of time occurring? I could envisage a situation in the future where the tables have turned and I hope it would not be the case but, you know, sometimes we all envisage dystopian scenarios in the future. I would ask the question, what if we were not talking about under-25s today? What if we were talking about over-65s? Or over 68 year-olds in the future. We know that we have an ageing population at the moment and we know that in a few decades time, a sizable chunk of the population will be in that older category, which may be 65-plus, which is currently the retirement age but certainly will not be by the time we get to that point. You could have a situation where there is a glut of elderly people, the State pension no longer is sufficient to live on, not that it necessarily is already, and people are obliged to work longer because they cannot live off their income. The argument may be made in a future States Assembly: "Well, we need to have a lower rate for the over 65s because otherwise they risk taking all of our jobs." They are not quite as physically competent as some of the younger ones. Why would I want to employ a 68 year-old? Notwithstanding that we have discrimination legislation that we supposedly put in yesterday but of course there were so many carve-outs that, you know, render that useless. We would have a situation whereby there was a debate saying: "We only want to pay in today's terms £4.50 an hour rather than necessarily £6.90 odd." I think most of us would find that completely objectionable and we should also find it completely objectionable that the same is being proposed here, albeit the argument is being said: "Well, we do not really want to debate that. We just want to give them the opportunity to investigate age discrimination." I have yet to hear what the real arguments are for having a different wage for under-25s. I have some sympathy and I can understand the logic of a trainee rate and of course a trainee rate can apply across the board. So that can apply to a 50 year-old who wants to start training as a bookkeeper from a different profession and it can apply to the 20 year-old who perhaps has not been to any higher education who wants to start training, perhaps also as a bookkeeper.

[10:30]

But what about the grafters? What about people who work on the building sites? You know, someone said earlier that not everyone could be expected to work in finance, that we do not necessarily want everybody to work in finance and that we do need builders in the Island. We do not necessarily want to have to rely on importing labour, either temporarily, which may become permanent into our Island, simply because there are not enough of our local Jersey-born people who can go and work on a labouring site. So if you are a scaffolder or a bricklayer or a chippy and you are 24 years old and you have been doing that job, you have learnt your trade, you have maybe been to Highlands and you find that you get a job on the building site, the bricks weigh exactly the same amount and you have to carry them up the scaffolding. If you are a hod carrier, that weighs exactly the same amount even if you are younger. You might be able to do the job slightly better if you are a 24 year-old, I dare say, than if you are 55 and your knees are creaking but you might have made different choices by then but it seems strange that we would be getting into a situation where we are asking the Employment Forum to investigate the fact that we pay a 24 year-old bricklayer less than we would a 26 year-old or a 50 year-old labourer; it really does not make any sense and that is why I think, no, we nip this in the bud. I mean let us not be naive about this. We know how politics works, some of us who have been in this Assembly for quite a while now. We do not give the Minister or the Employment Forum a request to look at something which we do not want to do in the same way that we do not put a referendum out to the public for something that we do not want to do because it all ends in tears and it is a complete waste of time and money. What we do is have political leadership but we also listen to the Assembly and when the Assembly says: "Minister, we do not want you to do this it is discriminatory. You told us yesterday you do not like discrimination and therefore we find it bizarre that you are asking us today to discriminate; it is completely unacceptable." I was a bit perplexed by Deputy Andrew Lewis' speech because I know he has been a staunch supporter of a higher minimum wage, indeed of the living wage. The problem we have got at the moment, the minimum wage is not even the living wage. So if somebody is paid the minimum wage in Jersey who is above 25, that is not even the living wage. There is no suggestion that the higher, significantly higher minimum wage, which we are reviewing, if it ever materialises in the next 10 years, will be the equivalent of the living wage anyway; I hope that it is. On top of that we are saying even though the minimum wage is not sufficient to live on we still want to have an even lower wage for under-25s which is even less than the living wage, if that makes sense. On top of that we have made a decision that we want to make sure that under-25s in our social security system are no longer able to claim benefits in their own right, that it comes under the family component. We are sending the message out, which is probably in the round not a bad message, that if you are part of a family unit and you are under 25 you are expected to contribute to that family unit; and there are individuals there, some may be single parents, some may be together in the more conventional traditional setting, and the child - well they are not really a child, are they if they are over 18 and under 25 - they are expected to contribute to that. How are we asking them to contribute but not even be able to earn the same as their peers who are over 25 year-olds? This thing does not make sense in the round so I would ask Members robustly to reject this, not be taken in by the arguments that we are just asking for something which is technical so that they can look at it and reject it anyway because it is what we do not want to do. That does not make sense. The sensible argument today is to support this amendment and let the Employment Forum get on with the real work of consulting on what it means to have a living wage in Jersey that we can feasibly live on and which businesses in the Island can also accommodate.

1.1.13 Senator I.J. Gorst:

Can I start by saying I think that Deputy Mézec made quite a powerful speech in favour of a non-discriminatory approach and many Members have stood and said they cannot support a change to the Employment Law because for them discrimination under 25/over 25 is of fundamental

importance that they cannot even bring themselves ... the implication will be that they cannot even bring themselves, therefore, to allow the Employment Forum to consult on it, and that is a perfectly ... we see a head-shaking. Let us just understand, the Employment Forum have been quite clear; if this Assembly says we do not want a differential rate - and the Minister has said she will not reduce the current rate for under-25s - if we do not want a difference in rate between under and over-25s they will not consult on it. Why would they because they are being set up to fail? They need to have some comfort that that is what Members want otherwise they will not do it. That is a perfectly legitimate political position to take. It is not aligned with what people do elsewhere but so be it. If we do that, then we say that that discrimination matter is the most important matter and I can understand why Members would wish to take that point of view. But I just ask Members to consider how this process of setting a changed minimum rate or living wage works in practice because I think that is what we need to consider. I have seen it first-hand. I have met, when I was the Minister for Social Security, with the Employment Forum and spoken to them. At that time it was about a conversation I was having with Deputy Southern about moving to 45 per cent and I supported the proposal that Deputy Southern brought forward, and this Assembly, seeing such an unusual occurrence of a Minister working with Deputy Southern, supported it too. But there were many, many employers who did not and challenged me and felt that I was wrong to support a higher minimum wage; and they made that case. The reason I say this is because on the one hand of the argument, which, as I say, was made very eloquently, is the all-important point about discrimination. There is another side to this argument and that is that some of our sectors that we want to see increased jobs in, if we are serious about diversification we should not be undermining those existing historical sectors. We see Members of the party shaking their heads but they know that in sectors like agriculture, in sectors like hospitality, in sectors like retail, every single time the Employment Forum consults on a higher minimum wage they struggle to implement it. They, I have no doubt whatsoever, because they have spoken to me - and I am very grateful for the speech of Deputy Lewis of St. Helier when he said they have spoken to him in his campaign, together with the Living Wage Commission - they have spoken to him too about the effect that a living wage would have on their industry. It is known that a lot of labour in the agricultural sector, for example, which has got many other issues, which affect its economic viability to deal with, employs the vast majority of labourers under 25, maybe slightly above but around that point. They are the ones who quite rightly are going to, when the Employment Forum goes out to consultation, talk about the difficulties that they will have with the introduction of a greater minimum wage, call it living wage, call it whatever you want, in that regard. That is the other side of the argument. How are we going to balance what on the one hand appears to be a discriminatory measure and on the other hand ensuring that we are not pricing really important parts of our economy out of existence? I know what Deputy Southern will say in that regard; I am not sure whether Deputy Mézec will say it in his summing up because he said it before, and that is that we should give them greater subsidies to offset any effect of a higher minimum or living wage. That is a perfectly legitimate political point of view to take. But I ask Members before they cast their vote to consider that issue. My own Deputy said that he would like to have seen the research first. Well, I am sure if he looks over his table he will see that the Deputy sitting next to him has got a whole bundle of research about the various effects and implications on various sectors of living wages or higher minimum wages elsewhere in the world and he is also party to further work that is being undertaken by Caritas Jersey in partnership with the ... I keep thinking it is the Living Wage Foundation, he is going to tell me whether it ... yes, it is, and that is research that is going to be published as well and I have no doubt that the Employment Forum will take that into consideration. If that research says we need a higher minimum wage - we will use that term for now - if this Assembly ... sorry, if the Employment Forum looks at that and suggests, yes, we do. If this Assembly says it wants to do that but recognises at that point that we need a differential. By not accepting this enabling change we simply defer it even longer. That is another result of accepting the amendment. Again, that is

in the hands of Members. The Minister is trying to be helpful to allow Members, first of all, to allow the Employment Forum to do the research in this regard and consult with employers, because I suspect that the agricultural sector would say: “Oh, in principle we are perfectly in favour of a higher living wage but if you do it for us and our sector then it is going to see many people out of business so fewer jobs, *et cetera*.” That is what they are going to say and then we will be left with... it is what they will say. We will then be left with the decision about whether we accept that or whether we stick to this principle of a non-discriminatory approach from an age point of view or whether we think about a sectorial discrimination and that will be for us to decide. So the Minister is trying to enable a broad, informed debate, which, again, as I said, will, I am sure, take into consideration the work that Caritas Jersey are doing. I fear that if we do not reject the amendment, potentially we are cutting out that informed debate. Not only that, we are making and giving ammunition to those who do not want to see a higher minimum rate from those sectors that I have spoken about, all the ammunition they need when it comes to that debate in due course when we all see the work of the Employment Forum in order that we do not move this issue forward, and yet I think that all those people who are making an argument about discrimination are the very same people who would like to see us moving towards a higher minimum wage, a living wage at a faster pace than we currently are. We, in this Assembly, are ultimately going to have to wrestle that challenge to the ground.

[10:45]

But I think I would rather wrestle that challenge to the ground with the broadest possible base of research and information allowing it to come forward in due course and allowing us to implement things in a more timely manner than would be the case if we do not accept this piece of enabling change. Those basically are the components of the arguments before us and I ask Members just to consider that, that yes, there is an issue of discrimination and as I said, Deputy Mézec spoke about that eloquently. But there are other areas affecting important sectors of our economy that we need to be mindful of as we make this decision today. Thank you.

Deputy T.A. Vallois of St. John:

Is it possible that I could ask the Solicitor General a question before I ...

The Deputy Bailiff:

If it is for legal advice, yes, absolutely.

The Deputy of St. John:

Yes, well it is particularly ... the arguments that have been made, if anything are just confusing me more and more with regards to this. I would like some clarification with regards to the law. As I understand the arguments that have been made so far, is that in order to allow the Employment Forum to look at the living wage we have to change the law under the minimum wage and I am not quite sure how that works under the actual amendment. So I was just wondering if the Solicitor General can explain under the ... sorry, I have got it all here. I will just make sure I have got the right one in front of me. It is Article 16(7) of the actual law and then the following Articles, all the Articles that have been changed under the actual part 4 with regards to the minimum wage. Could the Solicitor General explain exactly how those changes allow the Employment Forum to go away and look at the living wage, if that is possible? Because that is the understanding of the argument that has been made so far and I just want to understand how those changes of those parts of the law enables the Employment Forum to look at the living wage.

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

May I ask a further deliberation for the Solicitor General at the same time?

The Deputy Bailiff:

Yes, it might be helpful to the Solicitor General if he heard all of the questions.

Deputy J.A.N. Le Fondré:

He is grinning slightly because I have been quizzing him in the background but I suppose my query, following on from what the Deputy of St. John has just asked, is what presently prevents, in the law that we are debating, the Employment Forum consulting on the differential rates that we have been discussing?

Senator I.J. Gorst:

I just wanted to clarify, I think while the Deputy of St. John's question is helpful, it is not whether the Forum would look at a living wage or not, they are going to do that, it is whether they could look at a differential within that.

The Deputy Bailiff:

I think it is a matter for the Solicitor General, Chief Minister, if advice is to be given. Does anyone else have any questions for the Solicitor General? Mr. Solicitor, are you able to assist on these aspects?

Mr. M.H. Temple Q.C., H.M. Solicitor General:

I will do my best. As I look at it, looking at Article 16(3) of the law, it provides that the minimum wage shall be such hourly rate as may from time to time be prescribed. My understanding is that that is prescribed by the Minister by Order. The amendment that is proposed is an amendment to Article ... in Article 15 of this proposed amending law, there is a further amendment to Article 104, paragraph 5 of the Employment Law, which currently provides that paragraph 4(a), which concerns making provision in relation to different cases, circumstances or descriptions of persons. That paragraph 4(a) shall not have effect in relation to Orders made under Article 16(3), which is the provision I just referred to earlier. So, the Minister, as I see it, currently does not have power to make, by Order, provision for different payments of minimum wage by Order and this proposed amendment is seeking to remove that express prohibition so that the Minister does have power to make, by ministerial Order, provision for payment of minimum wage at different rates to different classes of person. So there is a prohibition in the law at the moment, which this amendment is seeking to remove, and as far as the Employment Forum is concerned - I cannot speak for them - but I suppose I can see that where there is an express prohibition in the law which prevents the Minister from making provision for different payments of minimum wage by Order then I can see that in those circumstances they may think: "Well, the Minister does not have power to do it at the moment so there is no point in consulting on it." But I cannot speak for them.

The Deputy Bailiff:

Thank you, Mr. Solicitor. Very well. Deputy of St. John, did you have your light on to ask the question and then to speak?

1.1.14 The Deputy of St. John:

Yes, please, Sir. On the basis of what I have heard in the arguments, it was confusing me to one point as the understanding was that ... well, where I was getting the understanding from was that in order to allow the Employment Forum to look at the living wage we had to make these amendments. Then looking back to 2012 the Employment Forum were directed by the Minister to look at the youth rates and they came back with a report. They went away and looked at that and came back with a report and recommended not to go ahead with the youth rates. Now, the Minister directed that in 2012 under the current law before it was amended. So if we are asking to just look

at having a living wage possibly, then there is no reason why the Minister cannot direct the Employment Forum to ask them to look at it before we start handing over the powers of this States Assembly to make Regulations to the Minister for Social Security to make minimum wage whatever rate, whether it be under-25s, under-30s, under-40s, under-50s, without any consultation, without any report from the Employment Forum. We are changing primary legislation here to enable the Minister, by Order, without coming back to the States Assembly, without consulting with the States Assembly, without an Employment Forum recommendation in a report determined by the States Assembly; we are basically saying that that is okay. So for the Chief Minister to turn round and say that ... or even the Minister and other Members that have spoken, that we are purely asking for the Employment Forum to look at the living wage. When we are changing the primary legislation and asking for the changes to the minimum wage here, we are having that debate about whether or not we want a lower minimum wage for under-25s or a higher minimum wage for over-25s. We are having that debate because we are fundamentally saying, yes, it is okay to go ahead and do that because it will not come back to the States Assembly because it will be down to the Minister to make an Order, and although under subordinate legislation law in Jersey we are able to annul that as a States Assembly, I do not see the point in allowing it to get that far in terms of having that huge ruckus, in terms of the public interest, why can we not have that discussion here? It is fundamental, as far as I am concerned, of public interest. On that point I completely support Deputy Mézec in his amendment. I gratefully thank him for bringing his amendments and I hope all Members will seriously consider how they vote on this amendment because this is really important.

1.1.15 Deputy J.A.N. Le Fondré:

I think I am very glad that the Deputy of St. John got in the queue ahead of me and for the clarity of the questions. I do feel sympathy for the Minister for Social Security because I think she rather feels between a rock and a hard place. But I want to start by picking up and agreeing with a comment made by the Chief Minister. He made the point that we need to have the broadest possible information as possible and at this stage we do not. I will be quite clear, I will ... I could probably support what will be regarded by some as a discriminatory difference in income or minimum wage or whatever, but I want to know what I am signing up to. I do find that I have to be critical of the Chief Minister, I do not think it is any good to say to the Deputy of St. Ouen, as a Back-Bencher: "By the way, the information you want is on another Back-Bencher's desk right next to you." That is not exactly giving you great considered opinion as to what we are signing up to and it is a bit like the cart before the horse. I do take ... well, originally I took the point about the Employment Forum but I could not see any reason why the Employment Forum could not go out and consult subject to, you know, if the States were to decide what would your views be? I am really glad the Deputy of St. John made the point that the Minister previously has directed them to go away and do it; that just reinforces the issue. I started off and I have been scribbling as I have been going along so I do apologise because I am kind of working my way round, I think it is Article 17 on the main law at the moment. But I pick up the Deputy of St. Ouen's comment; it seems to be poor legislation. I do not like enabling legislation just in case. If it is in the law it is in the law. It is nothing against the present Minister, I always emphasise that, it is always about what a future Minister could do in different circumstances that a present Assembly has signed up to something. Again, and I will probably upset some people here, I do not instinctively have a problem about, subject to here, please, potentially just differences in wage rates at different ages. I take the view that I want people to be incentivised to study as long as possible where practical, to get as good qualifications as they can and then get out and join the workforce, and it depends because it depends on the circumstances. But equally the point has been very well made, what is the difference at the age of 24 versus somebody at 26? Where do you make that distinction? But if it is in the law, and we are putting it into the law if we do not support Deputy Mézec's amendment,

without knowing the consequences. While I accept, I think the Minister has said she will bring the thing back for debate, I am unclear what requires any future Minister to bring it back for debate. It is not about just now, this is a permanent change of legislation. I know the Minister has said: "I will not do X or Y or Z." But enabling the law allows her ... sorry, allows any successor or her at some future date to do that. So, again, I am accepting all the points but it is legislation and you have got to take the legislation as it is writ, as far as I am concerned, and I am definitely not a lawyer but that is the way it looks to me. So on that basis, unless I hear a really compelling argument the other way, I have changed my mind from where I was this morning; I will say that. I did have some discussions, I was of a particular view, I thought there were some safeguards in place; I am now no longer of that opinion because at the moment, unless there is some really compelling argument comes out, I will be supporting Deputy Mézec's amendment, and that is a change in opinion.

Deputy A.D. Lewis:

It was just a point of clarification, if I may. It is just that if the Solicitor General could confirm that the understanding and interpretation that the Deputy of St. John has made eloquently, as she has, is correct or could he add any more context to it?

The Solicitor General:

As I said before, the purpose of this amendment is to remove a prohibition which currently exists in Article 104 of the Employment Law, the primary legislation, and that is paragraph 5 which currently provides - it is a slightly tortuous way of going through it for which I apologise - but it currently provides that paragraph 4(a) shall not have effect in relation to Orders made under Article 16(3) and that is a reference to ministerial Orders setting the minimum wage. So it is removing that prohibition and it does enable then the Minister to make, by Order, a ... it gives the Minister power to make, by Order, different rates of minimum wage set by different cases, circumstances or descriptions of persons. Now, to me, that would encompass a difference made by age; different description of person made by age.

Deputy A.D. Lewis:

If I could just ask a further question. In which case, how was the Minister able in the past to instruct the Employment Forum to consider a youth rate?

The Solicitor General:

Well, there is a trainee rate which is set. I am not clear whether that is distinct from a youth rate.

Deputy A.D. Lewis:

There was much debate about a youth rate, as the Members have said today, and it would appear that the Minister or previous Ministers have instructed the Employment Forum to consider a youth rate; a training rate is something different. So, what is different now to enable her to instruct the Employment Forum to consider differential rates or even sectorial rates?

[11:00]

The Solicitor General:

As I say, I am not familiar in the circumstances in which the Employment Forum debated the youth rate but on the face of it I can see that in the law there is currently a prohibition against the Minister setting a different minimum wage by ministerial Order by reference to age.

The Deputy Bailiff:

Is that a question for the Solicitor General, Deputy Higgins?

Deputy M.R. Higgins:

Yes, it is. Could the Solicitor General say if there is a prohibition on the panel setting a minimum wage at present? That is what you basically said; is that not correct? What is there to stop the Employment Forum looking at any aspect of wages in the law and putting a report to the Minister?

The Solicitor General:

Nothing.

Deputy M.R. Higgins:

So why can they not look at this topic? If the Minister asks or it is the will of the States that we should be looking at something, why can they not look at it and report to the Minister?

The Solicitor General:

I must say I have not ... as I said, I cannot speak for the Employment Forum. I have not read their reasoning as to why they can or cannot do particular reports. But currently in the law there is a prohibition against the Minister setting different rates of minimum wage by ministerial Order. Now, it may be that they interpret that as a basis for why they cannot produce a report on this issue because at the moment the Minister cannot currently set different rates of minimum wage by ministerial Order.

Deputy M.R. Higgins:

Sorry, just again, there is nothing in the law preventing the Employment Forum from producing a report on their recommendations. It does not have to legislate ...

The Deputy Bailiff:

You should direct your remarks through the Chair, please, Deputy.

Deputy M.R. Higgins:

Sorry, Sir. I will just go back through it again. What is stopping the Employment Forum researching this area and coming back with a report to the Minister? The Minister may be prevented from making differential wage rates but there is nothing that I can see that is stopping the Forum from researching this area and coming back to the Minister and then it is for the House to decide whether they accept their research ...

The Deputy Bailiff:

You are straying into the area of making a political comment as opposed to simply asking for legal advice, Deputy. So, the question is, I think, is it not - and correct me if I am wrong - is there anything in the law, that you are aware of, that prevents the Forum from considering any aspect of remuneration even if it is not possible to do that?

Deputy G.P. Southern:

If I may ...

The Deputy Bailiff:

Well, I would rather you did correct me.

Deputy G.P. Southern:

... what is missing from that statement is what prevents, if anything, the Minister asking the Employment Forum to research any topic it likes because that is the key. The Minister instructs ...

The Deputy Bailiff:

I think that is a perfectly reasonable question to ask for legal advice from the Solicitor General.

The Solicitor General:

On that second question, I am not aware of anything in the law which would prevent the Minister from asking the Employment Forum to report on or to instruct the Employment Forum to prepare a report on. In relation to Deputy Higgins' question, again, I am not aware of anything in the law preventing the Employment Forum producing a report other than the fact that the Minister currently does not have power to produce or to set minimum wages by ministerial Order in relation to 2 different age groups, which the Minister does not have currently the power to do.

The Deputy Bailiff:

I do not think the Solicitor General can reasonably help us any further on that particular aspect. I am sure he has gone as far as he is able to.

Deputy G.P. Southern:

Sir, may I, while we still have the Solicitor General at hand?

The Deputy Bailiff:

If it is a legal question.

Deputy G.P. Southern:

Could I ask him a question about the effect of Articles 18 and 19 of the Employment Law, where 19 in particular says: "The Minister may, at any time, refer to the Employment Forum such matters relating to this law as the Minister thinks fit." That seems pretty encompassing to me as to what that impact has in terms of this debate and this amendment.

The Solicitor General:

Looking at Article 18, certainly I can see that does give the Minister power to refer the issue of setting a minimum wage to the Employment Forum for their consideration.

Deputy G.P. Southern:

Article 19?

The Solicitor General:

Again, that seems to give the Minister a broad power to refer matters for consideration to the Employment Forum.

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

First of all, may I thank the Deputy of St. John for quite a helpful intervention in this debate, which I thought was quite good? In particular, outlining that this matter has already been referred to the Employment Forum for them to consider in the past and that the Minister does have power to refer to them again if the Minister deems that to be the case, which is why, when the Chief Minister was speaking, I was shaking my head to disagree with him when he said that the Forum will not consider the matter. Now, there is a slight nuance in language between will not, cannot and chooses not to, and it got me thinking, if only there was another committee set up by the States that looks at pay that has said: "We will not look at differential pay unless the States agrees to allow us to do it. We will not do it. We will not do it. Oh, even though the States have decided to maintain the *status quo* we are going to look at it anyway." Which is why I disagree with the Chief Minister because these committees and panels can do it and of course I am referring to the States Members Remuneration Board because they have said in their last report that they will look at differential pay given the last debate. It is in their last report if any Members want to pull it up and have a read.

So, these panels can choose to look at something. Now, in this particular example, the Employment Forum has chosen that it will not look at - from what I understand from what has been contributed - they will not look at a youth rate, an older employee rate, however you want to frame it. Therefore, there is that flexibility. When the Chief Minister spoke to me he made a very good point about the 'cuckoo in the nest' syndrome which we have with the finance industry versus our other industries but it seemed to me that the argument he was making was more an argument against the minimum wage rather than an argument against a differential rate, which is why I think things are getting confused in that particular argument. Again, I think Members like Deputy Doublet have hit the nail on the head when they spoke, talking about how, whether you are 24 or whether you are 26 it really does not matter, if you are doing the same work you should be getting the same pay. I think that argument is the strongest for me, and not to forget that we do have a trainee rate. So, again, when looking at the whole issues around discrimination it is about merit, it is about ability. It is about those types of things and I think to arbitrarily decide whether someone should get a lower rate because they happen to be under 24 or get a higher rate because they happen to be 26; in my mind, if you are stacking shelves, regardless of that 2-year difference, what exactly is the justification for a different rate for those 2 individuals? To me it does not seem to work on that basis alone and therefore I think, as the arguments have been made, to put this into law without the proper evidence in order to back up the move at the moment when there has already been evidence, as I understand it, considered by the Forum which does not support this move, in my mind it makes me think that we should be supporting Deputy Mézec today and if the Minister chooses to instruct the Forum to look at this matter and they come back with a recommendation which is different to what they have already made, fine and we will consider that. But I do not think we are there today and I will be supporting Deputy Mézec.

1.1.17 Connétable J. Gallichan of St. Mary:

I have rather gone off the boil since I pressed my light, I am afraid. Again, excellent speeches all around; well done, Deputy Mézec, for an excellent presentation. I have seen elements from all sides in this that I can find resonance with and I am one Member, like Deputy Le Fondré, I think, who has seen case... has thought in the past, there are times when a differential rate would be beneficial to all sorts of different areas. I am not going to have that debate now because we are not at that stage. But what I am not convinced of is that I know, not only whether that is a good thing or not categorically, but I do not know whether setting it at the level of 24 is the right thing: yes or no. I realised, as the Chief Minister was speaking, that I really do not know what the question I want to have answered by the Employment Forum is, and that is because we are, to some extent, as Deputy Southern has said, we are doing this the wrong way around. We needed to know where to go and to know which question to ask. Now, just to put the matter straight as I see it, I completely understand why the Minister for Social Security is doing this. She made that quite clear, it is because there has been a recommendation in the U.K. She believes that in the round, when all that consideration is taken on board and considered by the Employment Forum here there may be, this time, a recommendation that we should do the same thing, and if that eventuality happens she wants to be ready to hit the ground running. That is how I see it but I would just like to turn that on its head as well because I am always very conscious when we are debating things here that we need to look at what the outcome of what we do will be, and the outcome will be a sea change in what we consider as an Assembly. Not, in my opinion, what the Employment Forum looks at because I believe that if we instruct them to look generally at anything they will do it. There is a slight difference, I think, between the Remuneration Board... along Deputy Maçon's lines I was thinking exactly the same thing. As past Chairman of P.P.C. (Privileges and Procedures Committee) we will probably be both doing that. But of course the recommendations of the Remuneration Board come and unless we challenge them they are implemented, whereas of course here, we would get a recommendation and then the Minister would consider it or we would consider it on the floor of the

House. So, what are the outcomes? Well, if we go with the Minister's proposal as it stands we are making changes that fundamentally alter what we set out to look at. If we do not make the changes today, if we support Deputy Mézec, there is a downside but the downside is limited because under that, as I see it, if by any chance the recommendation did come to make a higher rate for the older people, we are not talking about making a reduced rate for the younger people, we are talking about keeping that the same and then adding something on for the people above that age. Well, in that case the younger people would be no worse off than they are now and the older workers would be no worse off than they are now but they would not get the increment that the change might afford them for the 6 months or so that it would take for us to put the Privy Council movement for. Now, I look at it on harm and to me that is less harmful than making a change to our legislation without understanding the full facts behind it. So even though I do appreciate that in some circumstances I think I would support a differential rate, I am not at all sure, for example on what we have been given here, that if it was up to 24 years, that I would because for all the reasons that we are discussing ... somebody asked the question when had they left home. I mean, I was married and left home and supporting myself at 19 at a time when ... that is a long time ago. At a time when my income every week was my rent plus £5 and that was tough. But of course I was in a partnership at that time and still am, thankfully, and so we looked at it on its merits. But that was me at 19 it was not me at 24; by 24 I had moved on a bit and there was ... there are lots of things I could say. If this went ahead, would we just be encouraging a lot more casual itinerant labour for younger people who would then move off when they were no longer economically viable? I do not know and I am not putting that ... those words into any industry's head. I am just saying I honestly, truly do not know and I cannot make decisions on things that I do not know. So I do not believe the downside is terrible by not accepting the Minister's word. We cannot legislate for every eventuality. We cannot build it in. I was amazed recently looking at freedom of information requests about what is our strategy for dragon attack and what is our strategy for zombie attack.

[11:15]

But luckily, I discovered the dragon attack, it said something like: "Please see our zombie attack strategy" or whatever. We do not build these things in and that is a ridiculous example but the law as we have it today, I believe, will enable an instruction to go ... a request to go to the Employment Forum: "Would you consider the implications?" I personally, as I said, would like to see it not at 24. I think 24 is too old, if you see what I mean. By the time you are 24 you are established, you are making your way; you should be, and I believe we do everything we can to ensure that people are enabled to be in that position and also, make it quite clear, we are talking about minimum wage here. I do not want our people to be earning minimum wage. There is a whole economic argument here about how we enable businesses to support their workers. It is not simply about saying: "This is the minimum wage" there are lots of things that we need to do. We do not have that research yet; that is the research that I am looking for and I have not seen it. So I am persuaded that on my core concept of not harming our legislation by the outcome I choose, I will be supporting the amendment.

1.1.18 Connétable J.E. Le Maistre of Grouville:

I was not really going to speak but I would like to agree with what the Chief Minister said. Too high a minimum wage or a living wage would devastate the agricultural community, in my opinion, but this debate is not about the level of the minimum wage and it is not even about whether we have a different pay for different age groups, it is about whether we have the ability to or not. I do not agree with Deputy Le Fondré because, technically, a Minister in the future could come out with 2 rates but, of course, that could be challenged in this Chamber. Indeed, proof of that is that the minimum wage, when it is announced every year, is always challenged ever since it has come in, usually by Reform ... or always by Reform.

1.1.19 Deputy G.J. Truscott of St. Brelade:

I hope to bring a bit of clarity. This all started - and I think the department was trying to think ahead, practical as ever - to enable the Minister, because at the moment she does not have the ability without the enabling law, to bring forward any proposition to the Assembly with the recommendations that the Employment Forum puts forward. The Minister's proposition would allow for the possibility of a higher minimum rate for older employees. At this stage, the Minister has not reached the decision on whether there should be a premium rate for older employees and she will not propose such a rate unless the Employment Forum recommends it following consultation and the States Assembly approves it. It is not unusual to approve legislation that includes enabling powers that may or may not be used in the future. It is not necessary to debate the pros and cons or to agree a higher rate for employees prior to approaching this enabling power. Everybody has spoken of the lines being drawn, and I just want to include that in the U.K. age-related minimum wage rates can clearly exist without difficulty alongside protection against age discrimination. A law to protect against age discrimination exists in the U.K. as well as a law that sets out a number of different minimum wage rates for different age groups, so clearly it can exist without everything. So personally I will be supporting my Minister and I am only sorry that it has got to this that, really, come September, the debate on discrimination and the recommendations of the forum and the Minister should have been debated then.

1.1.20 Deputy M.J. Norton of St. Brelade:

Like Deputy Le Fondré said earlier on, I am stuck between a rock and a hard place on this because in some areas of this I have great sympathy with those in the hospitality industry and those within the agricultural industry and those who would be most affected by changes in minimum wage. I know we are not talking particularly of minimum wage today but the enabling of various structures to minimum wage. I think back to the 20 years or so of being an employer at one time or another and I cannot think of one occasion where as an employer I employed people and paid them on the basis of their age; I employed them on their talent, their aptitude, their attitude and I paid them for that. There was no point at which I said: "What age are you? Ah, then I will pay you that amount" nor should you. Why should you? The difference has been outlined strongly and very clearly that were this to come back for a debate in this Assembly... and I think even the Employment Forum themselves have said somewhere along here that it will be important to consider first whether there is a political inclination to amend the Employment Law to permit different minimum wages. I think a political inclination may have been well and truly overstated today, well in advance of any such thing happening in the future. I see both sides on this but a very, very clear argument has been stated in favour of supporting young people and not being discriminatory against them, very clear. It is a message that I think needs to be driven home whether we are talking about further education, whether we are talking about standing up and supporting young people, giving them a chance to move on, growing our own talent and bringing it forward. That is the kind of Island that we should be looking forward to. On this occasion, I find myself congratulating Deputy Mézec for what was an excellent argument, an excellent proposition which I will be supporting.

1.1.21 Deputy S.G. Luce of St. Martin:

I will be as brief as I can. I am not going to support Deputy Mézec's amendment but I sympathise and support the proposals and principles that he comes forward with. We should not discriminate. We do not want to discriminate, and that is absolutely right, but we do discriminate every day of the year. Yesterday, for example, Deputy Southern brought a proposition which discriminated between people in a group of 11 and people in a group of 12. Deputy Tadier only this morning mentioned age discrimination, which we agreed yesterday, and he is quite right, we are not going to discriminate on age but, as he said, there is a long, long list of carve-outs. We try not to but we do discriminate. When we do, we do that with the best knowledge and the best information that we

have at hand but, in this instance, we do not have either. There may be reasons why we would choose to do things differently when it comes to age and wages but we just do not know. It may not be 25, it may be 20, it may be 18, it may be 17; where do we stop? I just do not know. I would ask Members to think very seriously about this. Let us have the information before we make a decision. I understand Members' concerns; this is a chicken-and-egg situation. Do you get the information first and then make the decision or do you make a decision, a fundamental decision that we do not want to discriminate but without information which at some time in the future might change your mind? I leave it there.

The Deputy Bailiff:

Does any Member wish to speak on the amendment? I call upon Deputy Mézec to respond.

1.1.22 Deputy S.Y. Mézec:

Can I thank all the Members who have contributed to this debate; I think it has been well worth having and there have been some very good arguments made on both sides that I have really enjoyed listening to. It is nice when this Assembly has these sorts of debates because we get to hear all sorts of good arguments, which is enjoyable. Can I thank all the Members who have spoken in support of what I have proposed here today. There are 3 speeches I would like to single out, I think, as having made some really good points, and these coming from Members who do not always support propositions I bring forward, would be of course from Deputy Norton, who spoke about his experience as an employer, and I think it is really important that the employer's perspective is given here. We are talking ultimately about employees and what they have, but you have to remember that their wages do come from somewhere and most of those employers... I am not one of these people that just assumes all business people are evil and want to exploit workers. The vast majority of them are pretty decent people trying to make their own way in life and who want their employees to be able to make their own way in life as well. I really enjoyed the speech from the Deputy of St. Ouen, who I thought made some good comments, as also the speech from the Constable of St. Mary, who is not in her seat right now, but I enjoyed her speech and thought she made some good points as well. That being said, of course, there were some points made in this debate which I found a little bit bizarre and struggled to understand. I am grateful that Deputy Andrew Lewis of St. Helier spoke to me before the debate to outline his position, I was grateful for that, and I did not pretend that I am not disappointed that he would end up speaking against it, as we have been working well together opening the Living Wage Foundation in Jersey. I hope that the comments that have been made by other Members of this Assembly will hopefully have encouraged him to change his mind. I think the ethos of the argument he made was about that if you set a higher rate for over-25s then many businesses will not seek to apply that differential, they will still have that one rate across the board anyway. I did attach to my amendment in appendix 2 a graph that I took from the BBC's website which they did when the national living wage was introduced in the U.K. which shows, if you look at it, the national living wage, so the minimum wage premium for over 25s and the standard minimum wage rate for under 25s. As time goes on they are projected to get further and further apart. This is wages stagnating for young people. I would say that if we are going to introduce a higher wage, and that is okay because companies will just apply that higher wage anyway; well, why bother having the lower wage in the first place? Then it is simply a tool for people to use to allow young people's working conditions to be reduced. But I think the central point here, the most important one which is the one that that the Deputy of St. John raised and Deputy Southern also raised too, which is that the legislation - and I have got it in front of me, this is Articles 18 and 19 - says that the Employment Forum can look into this anyway. It does not need the change in legislation to be able to look into it. So if you are one of those Members who is open to the concept of differential rates in the minimum wage but you want to see the evidence, I would say that if we are going to do this properly, the default position must

surely be to accept my amendment and say to the Minister for Social Security that she can still direct the Employment Forum to look at it if she wants; in fact, the comments she lodged to my amendment already say she has provisionally directed the Employment Forum. So the question is: what is the problem? She has already provisionally directed them. Let them carry on. They have looked into this before, as several other Members said, and they came back and said: "No, there is no evidence this would be good for the economy or good for the minimum wage." So let us see if they come back with that same argument again. But the arguments we have already seen lie in the default position that we keep the current structure as it is without discrimination. Deputy Brée in his speech spoke about the fact that there was no logical reason or evidence that suggested discrimination would be an appropriate thing in this context, and I think he is right, but he importantly said it is about sending out completely the wrong message, when the message we should be sending out - especially in the context of the debate we had yesterday with age discrimination - is we should be sending out a message that we value young people. I am 25 years old so I have only just reached the age where I would theoretically qualify for this minimum wage premium. Many of my friends are a year or 2 younger than me who would not qualify for this. Let me be absolutely clear, because, of everybody in this room, I am probably the one with the highest proportion of my social group who is in that age bracket; they will consider this insulting. They will take this as a message that: "The Island's politicians do not value us as much as everybody else." There is no 2 ways about it; that is how they will take it.

[11:30]

When there is so much political disillusionment we really, really should not be sending out that message that: "Because you are too young your opinions are invalid, we do not value you as much in the workplace and we are going to go out of our way to make it tougher for you to get on in life when you are already finding it tough to get on." That must surely be wrong, and voting in favour of my amendment is to rectify the situation and send out the appropriate message. The Minister for Social Security... well, it was mostly the Chief Minister, spoke about the effect on different sectors and, of course, the Constable of Grouville also mentioned, I think he said that the living wage would be a catastrophe for the agriculture industry. The Chief Minister did this thing, which he often does with Reform Jersey, which is that he caricatures our position and then argues against that because it is much easier to build up a straw man and argue that down than arguing against a position someone takes. But there are arguments to be had about Government's attitude to different sectors, whether it is agriculture, whether it is hospitality, whether it is finance or whatever. That discussion should be had, it should be open and frank, and members of the Government, members of the effective political opposition and those industries should have an open dialogue at all times to talk about how we can better break down the barriers that make it so those industries struggle with certain aspects of employment legislation. When there is red tape which is genuinely unnecessary and getting in the way of businesses succeeding, we should be open to breaking down those barriers and getting rid of that red tape. When it comes to businesses struggling to pay their employees well, we should be prepared to open that dialogue and say: "Right, what can we as a government do to help you get over it?" To simply say: "Oh, that is fine, just exploit your workers instead" must surely be the wrong answer, it is the lazy answer. We should be saying we are not going to accept a situation where people just have to put up with poverty wages. We want to get to a situation where poverty wages are abolished and we are going to work with those industries to find a constructive way to achieve that. It might be subsidy, it might not be; it might be breaking down other barriers that might exist. So that, to me, seems to be the constructive way to move forward, and you do not have to discriminate against anyone to get there. So that seems to me to be the best of both worlds. I particularly enjoyed the speeches from Deputy Doublet and Deputy Hilton, who I think made the real emotional case, but it is an emotional case that is backed up by the evidence, which I mentioned in my opening speech, which is that conditions for young people

are getting worse in terms of poverty levels, employment opportunities and pay. Deputy Doublet asked the question: “What changes when you turn 25?” I turned 25 very recently, my birthday happens to be on Boxing Day so I woke up a little bit hung over, and I am told that that lasts until you are 70, apparently. I thought: “Oh, I hope this is not what it feels like to be 25”, but it does not feel any different to be 25; I was just as good a worker 2 days before I turned 25 as I was 2 days afterwards. So to say, because of that arbitrary age limit you have reached, or assessment Deputy McLinton said, how many orbits of the sun you have experienced, there is no logic behind that. As Deputy Brée also said, there is no logic behind it. The argument surely should be about the quality of the work that employee is capable of doing, and that is why a trainee rate satisfies that criteria. It does not allow you to discriminate on unjustified reasons, it allows you to discriminate on justified and proportionate reasons, and that surely should be the appropriate way forward. Deputy Hilton spoke about house prices and pensions and how young people have worse prospects to look forward to later in life on those things. The Constable of St. Mary spoke about her getting married and leaving home at the age of 19. When I think about my parents in this context, my parents left their family homes at 18 years old, they could afford to do that. Neither had a degree. My parents, when they were my age, the age of 25, had a 3-bedroomed house and were planning to have me. Now, me at that age ... yes, I know that is a terrifying thought, is it not? **[Laughter]** But I could not possibly imagine as a 25 year-old now owning a 3-bedroomed house. I am lucky enough to be able to rent a 2-bedroomed flat. I could not imagine owning a 3-bedroomed house. I personally am of the view that I probably will not own a property until my parents die which, thankfully for improving health care, probably will not be for many, many decades to come, which is obviously a good thing. This is something many of my other friends are facing. Most of my friends still live with their parents at the age of 25, 24, 26; what-have-you, so this is a trend which is getting worse and seeing people not achieving their independence until later in life. I say that a States Assembly, and elected Parliament, should be saying: “No, we do not accept that as an inevitability. We want to change that trend, we want to reverse it and say no, let us break down the barriers, let us enable people to get on their own 2 feet as early as possible, be full, contributing members of society” and that is good for the economy, at the end of the day, when you see that. That, I think, is the central ethos here. I am just trying to think if there are any other points that I have missed, because I think many Members who contributed to this debate made some very good points which were very helpful. To reiterate the main point, which is that the Minister has the power to consult on this anyway, she can go ahead and do that, she does not need the change the legislation to do so and, if that decision is to be made in the future, it should be done on a fully-evidenced basis to demonstrate why discrimination is a proportionate way forward. Because our Discrimination Law does have caveats and exemptions in it for when it is acceptable and proportionate to discriminate. We have not had the evidence so far. When the Employment Forum has looked at it previously it has not recommended that this should be something we could do and so I think the default position and the sensible way forward is to keep the legislation exactly as it is. Send a message to our young people that we do value them, that their labour is not worth less than somebody who is potentially just a few weeks older than them because of that arbitrary point of them being 25 years old. I thank Members for their contributions and I ask for the appel. **[Approbation]**

The Deputy Bailiff:

The appel is called for. I would invite Members to return to their seats. If all Members have returned to their seats, I would ask the Greffier to open the voting.

POUR: 24		CONTRE: 17		ABSTAIN: 0
Senator Z.A. Cameron		Senator A.J.H. Maclean		
Connétable of St. Helier		Senator I.J. Gorst		
Connétable of St. Mary		Senator L.J. Farnham		
Connétable of St. Ouen		Senator P.M. Bailhache		

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

The Deputy Bailiff:

Minister, there is now no formal vote obviously on Article 5 because Article 5 has, by dint of the amendment, been rejected by the Assembly in any event.

1.2 Draft Employment (Amendment No. 10) (Jersey) Law 201- (P.38/2016) - resumption

The Deputy Bailiff:

How do you wish to propose the following Articles? I note from the running order, which I take to be acceptable, you are proposing to do Articles 6 to 14 *en bloc* and then deal with Article 15 after that?

1.2.1 Deputy S.J. Pinel:

Yes, Sir, I would, but may I bring the Assembly back to the fact that Articles 6 to 14, which will be proposed *en bloc*, if the Assembly want me to go through each one individually to give a brief description I am happy to, but it is largely about the reservists, it is nothing further to do with the previous debate.

The Deputy Bailiff:

Are Articles 6 to 14 seconded? **[Seconded]** Does any Member wish to speak on Articles 6 to 14 of the law? If no Member wishes to speak, would all Members in favour of adopting Articles 6 to 14 kindly show. Those against? Articles 6 to 14 are adopted. We now come to Article 15.

1.3 Deputy S.J. Pinel:

Article 15 would amend Article 104 of the law to permit different minimum wage rates for different classes of person, subject to the limitations that would have been applied by Article 5. Given the decision of the Assembly to remove Article 5, I intend to vote in favour of the Deputy's amendment.

The Deputy Bailiff:

Article 15 still needs to be seconded, so does anyone second Article 15? **[Seconded]**

1.4 Draft Employment (Amendment No. 10) (Jersey) Law 201- (P.38/2016): amendment (P.38/2016 Amd.) - Article 15

The Deputy Bailiff:

This matter is subject to a further amendment by Deputy Mézec so I would ask the Greffier to read the amendment.

The Greffier of the States:

Page 21, Article 15, delete Article 15 and renumber Articles 16 to 19 accordingly.

1.4.1 Deputy S.Y. Mézec:

Just to say that this is just a consequential thing, further to the vote that we have just had because there are different clauses that appear in different parts of the law, connected all to the same thing. So I move the amendment.

The Deputy Bailiff:

Is the amendment seconded? **[Seconded]** Does any Member wish to speak on the amendment? All those in favour of adopting the amendment kindly show? The appel is called for. I invite Members to return to their seats. If Members have returned to their seats I ask the Greffier to open the voting.

POUR: 33		CONTRE: 1		ABSTAIN: 0
Senator A.J.H. Maclean		Connétable of St. Peter		
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Connétable of St. Helier				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of Grouville				
Connétable of St. John				
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 of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mézec (H)				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Brée (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)				

1.5 Draft Employment (Amendment No. 10) (Jersey) Law 201- (P.38/2016) - resumption

The Deputy Bailiff:

I think we now go on, Minister, to move the remainder of the Articles separately because there are various consequential amendments that flow from them.

1.5.1 Deputy S.J. Pinel:

Yes, Sir. May I propose Article 16? This amends Schedule 1 to the law to specify the relevant date in the calculation of a week's pay in any compensation for a reservist. I propose Article 16.

The Deputy Bailiff:

Is Article 16 seconded? **[Seconded]** Does any Member wish to speak on Article 16? All those in favour of adopting Article 16, kindly show. Those against? Article 16 is adopted. Minister, do you move Article 17?

1.6 Deputy S.J. Pinel:

Yes please, Sir. Article 17 provides a transitional provision so that, when any employees already employed under a contract for 26 weeks or less, when the law changes, the two-thirds rule will continue to apply to that contract. I will vote in favour of the Deputy's amendment to renumber the Articles.

The Deputy Bailiff:

Is Article 17 seconded? **[Seconded]**

1.7 Draft Employment (Amendment No. 10) (Jersey) Law 201- (P.38/2016): amendment (P.38/2016 Amd.) - Article 17

The Deputy Bailiff:

There is an amendment to Article 17. I ask the Greffier to read the amendment.

The Greffier of the States:

Page 21, Article 17. In Article 17, for Article 13(b) substitute Article 12(b).

1.7.1 Deputy S.Y. Mézec:

Yes, I make the amendment, Sir. As the Minister said, this is about renumbering Articles in the law as a consequence of adopting the previous amendment. So let us send a message out to the public that we treat renumbering Articles incredibly seriously as an Assembly.

The Deputy Bailiff:

Is the amendment seconded? **[Seconded]** Does any Member wish to speak on the amendment? All those in favour of adopting the amendment kindly show. All those against? The amendment is adopted.

1.8 Draft Employment (Amendment No. 10) (Jersey) Law 201- (P.38/2016) - resumption

The Deputy Bailiff:

Does any Member wish to speak on Article 17 as amended? All those in favour of adopting Article 17 as amended, kindly show? Those against? Article 17 is adopted. Minister, do you now come on to Article 18?

[11:45]

1.8.1 Deputy S.J. Pinel:

Article 18 takes the opportunity to repeal 3 Articles that are no longer required and were never brought into force. I propose Article 18.

The Deputy Bailiff:

Is Article 18 seconded? **[Seconded]** Does any Member wish to speak on Article 18? All those in favour of adopting Article 18, kindly show. Those against? Article 18 is adopted. Do you move Article 19, Minister?

1.9 Deputy S.J. Pinel:

Article 19 provides the commencement dates. It is important to give employers notice of new legislation and so the rights for reservists and the new compensation awards come into force on 1st April 2017. The other changes would come into force immediately because they are minor and do not require employers to take any action. I will vote in favour of the Deputy's amendment to renumber the Articles.

The Deputy Bailiff:

Is Article 19 seconded? **[Seconded]**

1.9 Draft Employment (Amendment No. 10) (Jersey) Law 201- (P.38/2016): amendment (P.38/2016 Amd.) - Article 19

The Deputy Bailiff:

There is an amendment to Article 19, I will ask the Greffier to read the amendment.

The Greffier of the States:

Page 21, Article 19. In Article 19 - (a) in paragraph (a), for "Articles 13(b) and 17" substitute "Articles 12(b) and 15"; (b) in paragraph (b), for "Articles 2, 3, 4, 6, 7, 8, 9, 10, 12(b), 13(a) and 16" substitute "Articles 2, 3, 4, 5, 6, 7, 8, 9, 11(b), 12(a) and 14".

1.9.1 Deputy S.Y. Mezéc:

Just to use this as an opportunity to thank Members for their support for my amendment previously, I appreciate it and I make this final amendment.

The Deputy Bailiff:

Is the amendment seconded? **[Seconded]** Does any Member wish to speak on the amendment? All Members in favour of adopting the amendment kindly show. Those against? The amendment is adopted. Does any Member wish to speak on Article 19 as amended? All those in favour of those adopting Article 19 as amended kindly show? Those against. Article 19 as amended is adopted.

1.10 Draft Employment (Amendment No. 10) (Jersey) Law 201- (P.38/2016) as amended

The Deputy Bailiff:

Minister, do you propose the amended legislation in Third Reading?

1.10.1 Deputy S.J. Pinel:

Yes, please, Sir.

The Deputy Bailiff:

Is it seconded in Third Reading? **[Seconded]** Does any Member wish to speak in Third Reading? All Members in favour of adopting the legislation in Third Reading kindly show? The appel is called for. I would invite Members to return to their seats. I will ask the Greffier to open the voting.

POUR: 39		CONTRE: 0		ABSTAIN: 0
Senator A.J.H. Maclean				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator A.K.F. Green				
Senator Z.A. Cameron				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy G.P. Southern (H)				
Deputy of Grouville				
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 R. Labey (H)				
Deputy S.M. Brée (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)				

Deputy S.J. Pinel:

May I just take the opportunity to thank the Employment Forum for their recommendations on the 4 issues that constituted most of this proposition. I thank all organisations and individuals who responded to the consultations, and can I also thank Major Nick Spratley for his assistance in relation to reservists, and the former Minister for Home Affairs, Ian Le Marquand, who instigated the request for protection for armed forces reservists. **[Approbation]**

2. Rate Appeal Board: appointment of members (P.41/2016)

The Deputy Bailiff:

The next item of Public Business is the proposition for the Rate Appeal Board: appointment of members - P.41/2016 - lodged by the Minister for Treasury and Resources. I ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion, in pursuance of Article 44 of the Rates (Jersey) Law 2005, to appoint Mr. Clive Borrowman, Mr. Roger Goodwin, Miss Christine Vibert; and to re-appoint Mr. Graeme Marett, Mr. Ian Ridgway, and Mr. Peter Routier as members of the Rate Appeal Board, for a period of 3 years.

2.1 Senator A.J.H. Maclean (The Minister for Treasury and Resources):

This proposition is seeking Members' approval, as has been pointed out, for the appointment of 3 individuals for vacant positions on the Rate Appeal Board, as well as 3 reappointments. Members may be aware that the Rate Appeal Board is established under the Rates (Jersey) Law 2005. Its members are required to hear and determine appeals against rateable values in accordance with the law, and do so without remuneration. As a result of the Appointments Commission guidelines, 3 of the 6 members are not eligible for reappointment as they have reached the end of their maximum term. I would like to take this opportunity to thank those retiring members, Mr. Slattery, Mr. Cartwright, and Mr. Adams for their service since 2006. A recruitment process has now been carried out, which I am delighted to say was successful in identifying 3 more members of our community willing to give their time in public service. I am always very grateful for those individuals who put themselves forward in this way. The 3 new Members I am proposing for the Assembly's approval are Mr. Clive Borrowman, Mr. Roger Goodwin, and Miss Christine Vibert. They are all amply qualified for the role, as Members will have noted from the background profiles outlined in the report accompanying the proposition. Turning to the reappointments, Mr. Marett, Mr. Ridgway, and Mr. Routier have each served for 3 years on the Rate Appeal Board, having been appointed on 6th March 2013. I am delighted that they will continue to offer their service. I propose the nominations.

The Deputy Bailiff:

Are the nominations seconded? **[Seconded]** Does any Member wish to speak on the proposition? All those in favour of adopting the proposition kindly show. Those against? The proposition is adopted.

3. Financial Institutions Registered In Jersey: links to Panamanian Legal Firm Mossack Fonseca (P.42/2016)

The Deputy Bailiff:

The next item is the proposition entitled Financial Institutions Registered in Jersey: links to Panamanian Legal Firm Mossack Fonseca lodged by Deputy Southern of St. Helier, and I ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked whether they are of opinion to request that the Chief Minister, in co-operation with the Minister for Treasury and Resources, as appropriate, (a) directs the Jersey Financial Services Commission (J.F.S.C.) (i) to request the handover of any information held by financial

institutions registered in Jersey about their dealings with the Panamanian legal firm Mossack Fonseca, and (ii) to ask what action the institutions concerned are taking as a result of any significant issues or relationships identified following internal investigation; and should the results of steps taken under paragraph (a) suggest that further action is required: (b) establishes, with appropriate funding, a taskforce, consisting of the J.F.S.C., the Financial Crimes Unit and the Comptroller of Income Tax, to examine any abuse or breach of regulatory standards by those Jersey financial institutions identified in the “Panama Papers” which might jeopardise the Island’s international reputation.

3.1 Deputy G.P. Southern:

It is good to finish up the day I think with something which, it is my intention, sets out to protect the reputation of the Island. It is almost, I would call it, a ‘belt and braces’ request because if Members examine the proposition they will see that parts (a)(i) and (ii) have already commenced. Those 2 issues have been addressed by the Jersey Financial Services Commission and so far it says nothing serious has been found. After that statement should be a comma and the word “yet” because this is ongoing. There were 11.5 million documents released recently, now commonly known as the Panama Papers. They are being trawled through as we speak and it could well be that the conditional paragraph which makes this belt and braces: “Should the results of steps taken under paragraph (a) suggest that further action is required” note that conditionality. If the J.F.S.C. eventually, sometime in the near future, medium future: “We have discovered something that has been happening which we are concerned about” then we should be able to take further action, which is seen by the international community as serious action, in order to protect our reputation, I believe. If we examine the report attached to my proposition we will see that many authorities around the world have taken such action. We have the Geneva prosecutor who launched a criminal inquiry in connection with the Panama Papers, we have had the U.K. Financial Conduct Authority, the equivalent of our Financial Services Commission, has already written to the City of London companies about the revelations. Again, we have done that. The E.U. (European Union) and O.E.C.D. (Organisation for Economic Co-operation and Development) have already responded and tax investigators from 28 countries have met to launch an international inquiry in Paris. Serious action. Above all - and this is the one that I am paralleling in Jersey - the U.K. Prime Minister has already agreed £10 million to fund a taskforce of H.M.R.C. (Her Majesty’s Revenue and Customs) and the National Crime Agency to investigate potential illegality. So the U.K. has covered its back, taken action, funded an inquiry, so it can protect its reputation, the reputation of the City of London. I believe Jersey should be doing likewise if - as I say, if - investigations now or in the future suggest that further action is required. The important thing here, I think (a)(i) and (ii) has already commenced. In the time that this has been lodged that has already gotten underway and is producing results. The question is about (b), is this an appropriate action that we should be taking to protect our own reputation. There it says: “Directs the Chief Minister, in co-operation with the Minister for Treasury and Resources, as appropriate, to establish, with appropriate funding, a taskforce consisting of the J.F.S.C., the Financial Crimes Unit, and the Comptroller of Income Tax, to examine any abuse or breach of regulatory standards by those Jersey financial institutions identified in the ‘Panama Papers’ which might jeopardise the Island’s international reputation.” So, as I say, belt and braces in case something turns up - something nasty in the woodshed - we are ready to act and will act in a serious manner. The Minister produced quite an extensive document saying why he should not be doing anything and how limited the powers of direction are that he has. Once again, whenever these sort of issues come up, and conveniently we have the latest report from MONEYVAL about how our set-up, our regulatory regime is operating. That has something to say, I think, of relevance. For example, in paragraph 12, the power of direction provided to the Chief Minister it says: “A memorandum of understanding makes it clear in paragraph 3.1 that the powers granted to the Chief Minister under Article 12 will only be used when exceptional

circumstances make it necessary to do so in the public interest and there is no intention to use the powers on a regular or routine basis.” I think that is entirely appropriate. These are exceptional circumstances, 11.5 million documents leaked, with indications of extensive contact to at least 2 companies registered in Jersey. I think that is exceptional enough to warrant that the Chief Minister steps in to make directions in order to protect the reputation of the Island, as I say. Protecting the reputation is also part of the J.F.S.C.’s remit. As ever, we are told how well regulated we are, and conveniently the MONEYVAL report is just out and that has a small but important reservation in what it says. It is by and large very positive about our regulatory regime but there are reservations; for example it says here under its recommendations: “Notwithstanding this high level of technical compliance the report highlights a number of areas for further improvement and includes recommended actions to cover both the technical and effectiveness matters, with effectiveness matters dominating.” So it is taking it a stage further from are the regulations in place, have you got the right regulations in place, then goes further saying how effective are those regulations, and there are some reservations there.

[12:00]

For example, under international standards it goes on: “Increasingly the assessment of compliance with international standards focuses on the effectiveness of a jurisdictions framework, or how it works in practice. It is no longer sufficient to simply have a technical framework in place, assessors are looking for evidence that the framework is actually deterring money laundering and the financing of terrorism. Additionally, in instances where this activity is discovered a jurisdiction needs to evidence that it has the appropriate structure and resources to effectively investigate and prosecute such activity, as well as confiscate any proceeds of crime.” A jurisdiction needs to evidence that it has the appropriate structure and resources to effectively investigate and prosecute such activity. I believe that is what we demonstrate with paragraph (b). I believe that in order to protect our reputation internationally we should be accepting this proposition, notwithstanding the fact that we have already started on (a) and (b) and we have found nothing so far, we should have part (b) in place in case we should need it. I think that is a perfectly reasonable stance to take in order to protect our international reputation and I maintain the proposition.

The Deputy Bailiff:

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

3.1.1 The Connétable of Grouville:

Could I ask a question of the Solicitor General? The Council of Ministers in their comments paper at the bottom of page 4 ...

The Deputy Bailiff:

I am sorry, did you second the proposition?

The Connétable of Grouville:

No, Sir, I think Deputy Tadier did.

The Deputy Bailiff:

The proposition has been seconded?

Deputy M. Tadier:

I do not think the Constable is seconding our proposition, we have not converted him quite to that extent.

The Deputy Bailiff:

The reason I ask is that until the proposition has been seconded the debate is not open and until the debate is open a question cannot be asked of the Solicitor General so, yes, you can ask the Solicitor General.

The Connétable of Grouville:

Yes, at the bottom of the Council of Ministers paper, page 4, paragraph 14, it says: “It appears clear to the Council of Ministers that were the Chief Minister to exercise the power of direction as requested it would be in breach of both the position of law and the position in the M.O.U. (Memorandum of Understanding).” Could the Solicitor General confirm whether that is the case?

The Solicitor General:

It seems to me that the Commission Law of 1998 gives independence to the Commission. It only gives the power of guidance to the Chief Minister, which is a discretionary power to be exercised after consultation with the Commission. It is only when the Minister is satisfied that it is necessary, which is a narrow word, and in the public interest that he gives guidance. It does seem to me that the power is vested in the Chief Minister rather than in this Assembly. It is the Chief Minister’s power really and he has to exercise it in accordance with the law and it is for him to be satisfied whether it is necessary and in the public interest. He has given in his comments reasons why it is not necessary to do so, that it is more an operational matter for the Commission. I have to say that it does seem to be an operational matter for the Commission but whether that is a vice on the law is another matter, but it seems to me on the wording it has to be necessary and in the public interest for the Chief Minister to exercise the power. If he were to exercise it other than those circumstances that would be contrary to the law, so I think it is the Chief Minister’s power and it has to be exercised in the circumstances set out in the law.

The Connétable of Grouville:

Sir, I am not sure I am any the wiser, is that yes or no? [Laughter]

The Deputy Bailiff:

Solicitor General, would you like the opportunity to reflect on it and advise subsequently in the debate?

The Connétable of Grouville:

Sir, afterwards I was going to have a point of order. If we are asking the Chief Minister to do something illegal then clearly we should not go ahead with the proposition.

The Deputy Bailiff:

Well the proposition has been allowed, it has been proposed and seconded, it is before the Assembly, so I think it is now for the Assembly to debate. I do not think it is a point of order for me at this stage, it having been allowed, to reject the proposition, Connétable.

3.1.2 Senator P.M. Bailhache:

Sir, the point made by the Constable I think is a good one because it is certainly a point that occurred to the Council of Ministers when they first came to consider this proposition. But, as you have ruled, it seems to me that the answer is that the Bailiff has permitted the proposition to be lodged and, therefore, we are bound to debate it. Presumably the view was taken that it was open to the Assembly to make this request of the Chief Minister, even if in the event the Chief Minister would be very unlikely to comply with it. But that is a matter for the Assembly to decide, whether it is in fact appropriate in the circumstances which have been set out in the report of the Council of Ministers, to make the request that Deputy Southern is requesting the Chief Minister to give the direction. Listening to Deputy Southern it seems to me that he has, if I may say so with respect to

him, misunderstood the functions of the Assembly, the Government and the Jersey Financial Services Commission. Deputy Southern said that he wanted to protect the reputation of the Island but by adopting this proposition the Assembly would be doing precisely the opposite. The Jersey Financial Services Commission is an independent body. Its independence is part of the Island's strength in terms of financial services and part of its strength as an international financial centre because the rest of the world understands that, whatever the Government might want to do in terms of the regulation of financial services, there is in existence an independent body which takes the decisions and has the statutory duty to regulate financial services and enterprises carrying on business in the Island. I must say to Members that travelling around those parts of the world in which we have an interest from a financial services perspective, but in particular in the Gulf countries and in China and in parts of Africa, the independence of the Jersey Financial Services Commission is acknowledged and is a matter of respect. The J.F.S.C. has entered memoranda of understanding with a large number of equivalent organisations in other parts of the world where we have an interest. Such countries recognise and understand that when the J.F.S.C. is carrying out its functions it is doing so as an independent body in a professional and appropriate way. The J.F.S.C. is, I think, very highly respected. One of its senior officers has in fact been seconded to MONEYVAL, which is the international money laundering arm of the Council of Europe, to assist MONEYVAL in the work that it is doing regulating other countries around the world. One would hardly second a representative of the Jersey Financial Services Commission to such a body if the Commission was not a body which was accorded considerable respect. As a matter of fact, the Jersey Financial Services Commission does not have to be told anything by Government or by this Assembly in relation to the undertaking of its statutory duties. It is true, as the Deputy has said, that there is a power of direction in the law which is afforded to the Chief Minister. The comments of the Council of Ministers set out very clearly at paragraph 8 what that power of the Chief Minister amounts to. It is a power: "After consulting the Commission, and where the Minister considers that it is necessary in the public interest to do so, give to the Commission or give in writing general directions in respect of the policies to be followed by the Commission in relation to the supervision and development of financial services and the manner in which any function is to be carried out." The words "general directions" are important. It is not the function of the Chief Minister to identify one particular instance which might be giving the Financial Services Commission concern or in which it might be carrying out some investigation, and for Government to interfere in what the Commission is doing and to tell the Commission what to do. The only function of the Chief Minister is to give general directions in a general sense as to the way in which he would hope or expect the Commission to undertake its duty of supervision. So the proposition of Deputy Southern invites at paragraph (a) the Chief Minister to direct the J.F.S.C. to request the handover of any information held by financial institutions registered in Jersey about their dealings with the Panamanian legal firm, Mossack Fonseca. Members must ask themselves whether they think that is a specific direction in a specific case or whether it amounts to a general direction to the Financial Services Commission. In my view there is absolutely no doubt that it is a specific matter and that the power of the Chief Minister to give such a direction to the Jersey Financial Services Commission would fall outside the terms of the power which the Chief Minister has. What would the F.S.C. do if the Chief Minister were unwise enough to give such a direction? Any self-respecting regulatory body would probably have to go to court and would have to ask the Royal Court on an application for judicial review to strike down any direction that the Chief Minister had given because it would be falling outside the terms of what the statute provides. That would not be a sensible outcome for the Chief Minister to find himself in and I have little doubt that the Chief Minister would think very carefully before he placed himself in that position. The other aspect which I would like to draw the Assembly's attention - and it is set out in paragraph 15 of the report of the Council of Ministers - I said earlier in my intervention that the reputation of the Financial Services Commission is high and it is something that one would want to protect. The Council of

Ministers' report makes it clear that if the Chief Minister were to exercise the power despite the legal issues which would arise, that would probably cause the Island, in terms of international regulatory standards, to be in breach of its general obligations. Financial regulators are supposed to be independent and for a Government or a Chief Minister to exercise the power which the Deputy is inviting the States to request the Chief Minister to do, would not in any sense enhance the reputation of the Island, quite the contrary, it would cause damage to the reputation of the Island in the international community. I invite the Assembly to reject the proposition of Deputy Southern.

3.1.3 Deputy D. Johnson of St. Mary:

I agree wholeheartedly with what Senator Bailhache just said and I would like to make one more general and more basic comment. The proposition, effectively, would undermine the reputation of this Island's finance industry and the effect of its regulatory body. It implies, if passed, that the Commissioners do not already have the necessary powers and authority to do what is proposed in the resolution. I, therefore, very much urge Members to reject it out of hand in that the safeguards, already in place, do exactly what the Deputy seeks the Commission to do.

3.1.4 Senator I.J. Gorst:

We might have gone on slightly longer but I want to respond to some of the things that Deputy Southern said in his opening remarks, if I may, and then I will pick up the general proposition and I might then ask for further clarification from the Solicitor General, if you will forgive me, as I go along. I think the Deputy started by saying that I had produced, or the Council of Ministers had produced, an extensive document saying why we could not do anything and I would say that that is not correct. We have produced extensive comments saying what is already being done and how the approach of the Commission to the issue of the Panama Papers is the correct one; how the Commission is working with the Financial Crime Strategy Group; how the Commission is working with members of the financial services industry; how the Commission has reviewed the Panama Papers recent release; what they have found. The Commission themselves have engaged with the wider public and how that is the correct approach to this particular issue. I think the Deputy also suggested that he believes that these circumstances are exceptional based on what might be found in the future because I think he admitted that there had been nothing that had been found which would be of concern to the Commission but he fears that what might be found in future is so exceptional that I should use the powers in the law. I am not sure that "something that might be" would meet a test of exceptionality in the case that the Deputy is suggesting. He then also mentioned that he thought that it was convenient that the MONEYVAL report was published yesterday prior to us having this debate today when he knows that that is in the hands of the MONEYVAL assessors and not the Government of Jersey and it is, by any means, too important a document to be used in such a way. It does, however, simply reconfirm some of the comments that the Council of Ministers have made in their comment about the very high standard to which the J.F.S.C. (Jersey Financial Services Commission) and those in industry, together with Government, work. While I am grateful to his comments about the positivity of that report and acknowledgement and acceptance of how we handle issues of anti-money laundering and the countering of the financing of terrorism and the acknowledgement in that report that we have a mature approach to those issues, which is what this is all about. It is all about insinuation that there might be something going on in connection to Jersey in the Panama Papers. Let us be clear about that. It is about insinuation and yet the independent assessors say that we are in the top tier of jurisdictions when it comes to dealing with those issues, which is what we would expect. Members will be aware that I made the case in answering questions which the Deputy has written or used as the basis, I think, for his proposition, some of my answers in this Assembly. In briefing to Members I made the case that the approach that was being taken by the Commission is one that I would expect them to take and I believe it is one that I would expect Members to take and it is the

appropriate one if they do find areas of concerns. Members will be aware at the briefing what the Director General of the J.F.S.C. said in regard to lessons learnt. If there is anything that is in breach of law then of course that will be investigated and considered in the appropriate way. The appropriate way is not to provide a report to this Assembly. It is to deal with it with the full effect of the law but if there are wider learning lessons then they will of course be taken in due course. The Connétable of Grouville, I think, asked the Solicitor General to clarify his opinion of the issue of direction and while Senator Bailhache, I agree with everything he said, that the Bailiff has approved this proposition and therefore we find ourselves debating it this morning. I wonder if the Solicitor General could just clarify his answer with regard to, if I were requested, in the words of the proposition, to direct the Financial Services Commission in the regard that the Deputy is asking me to do so, whether that is appropriate and meets the test of the law of what I am allowed to do under the law and under the terms of the M.O.U. I will **[Interruption]** ... well, it is a request to direct. I will complete my speech when I have the answer.

The Solicitor General:

Contrasting the power of the Chief Minister in Article 12 of the law with the Deputy's proposition and particularly focusing on the wording that the Chief Minister gives a direction to the J.F.S.C. to take certain positive actions, including the handing over of information held by financial institutions and then ask those institutions what action they are taking. That is a positive direction that they take, operational action. So looking at the power, contrasting that with a power of the Chief Minister in Article 12 of the law, it does seem to infringe on this power. There is a strong case that it trespasses on the territory of the Commission because the power is limited to ... it is a discretionary power after consultation with the Commission, that is the first thing that has got to happen, but also the Minister has to consider it is necessary in the public interests to do so and then the power is ... that is a further limitation and then going on from that there is a further limitation in that the power is to give guidance to the Commission in writing in respect of general directions in respect of policies that can be followed by the Commission in relation to the supervision and development of financial services in Jersey. So that does seem to be a very limited power to give general directions on policy matters, and contrasting that with the proposition it does seem to be a direction that is sought in relation to, as I said earlier, operational matters. I would certainly not be advising the Chief Minister to take this action if I were to be advising him directly. In terms of, if this action were to be taken, then I do gratefully agree with Senator Bailhache's comments that the Commission would most certainly be advised to apply for leave for the judicial review of this decision and the matter would end up before a court and it would ultimately be for the court to decide whether or not this was an illegal action or *ultra vires* by the Chief Minister and that would then be unfortunate territory for the Chief Minister to be in and the Commission certainly would... while it would be for the court to decide, the Commission would have a very strong case for setting aside a decision of the Chief Minister to do this on the basis that it was contrary to the wording of both the legislation and the court would also take into account the memorandum of operation that is referred to in the comments of the Chief Minister. So I think, as I say, it would ultimately be for the court to decide but certainly the J.F.S.C. would have a very strong case to set aside this decision and I would not be advising the Chief Minister to adopt this course if he were to ask me. Does that assist?

Senator I.J. Gorst:

I thank the Solicitor General for that clarification of the matter. As Members would expect, I would not undertake, should they direct me to do such a thing, without the appropriate advice and I am grateful for the Solicitor General encapsulating that in short form for us this morning. That would then leave me in a very difficult position because on 2 lines of argument, mine is very much that I believe that the Commission is already taking the appropriate action and I think the Deputy

said that in his opening comments, and I am grateful for him doing that, but what we would be doing by approving (a) is asking me to do something that I do not believe that I should be doing anyway and equally is unnecessary because they are taking the appropriate action. Moreover, my concern would very much be along the lines that Senator Bailhache mentioned, that is that the very purpose that the Deputy, in his opening comment said, was trying to enhance our reputation and he feared for our reputation by the head of the Executive issuing such a direction despite the legal advice, we would be playing with our reputation in the international arena and by the international standard setters who would see the Executive, to all intents and purposes, meddling in operational matters from what is, and absolutely has to be, an independent body making its own appropriate decisions in these regards and not for the decision of Government or the decision of a Legislature. I just want to revisit the point of why I have confidence in the Commission, which I am not sure that the mover of the proposition ... I think he said that he does and I hope that he does.

[12:30]

I have confidence because that is what the independent bodies lead me to believe. The I.M.F. (International Monetary Fund), the World Bank and only again yesterday, MONEYVAL who have been and visited practitioners, spoken to practitioners, opened the files, asked the difficult questions around source of funds, around beneficial ownership, about the need for the setting up a company or a structure in the first place, about verification of C.D.D. (Customer Due Diligence) requirements, about authorisation of transactions of various instruments. They have done all that to the n^{th} degree and they say that we are meeting the higher standards and we are in the top tier of jurisdictions. So on top of that we have the O.E.C.D. (Organisation for Economic Co-operation and Development) who is responsible, not only for setting international standards, but for also ensuring that they are reviewed. Members will be aware that a staff member in my department has for many years sat as a vice-chair of the O.E.C.D. Peer Review Group ensuring that we are meeting those standards as well as other jurisdictions around the world and only again 2 weeks ago, on Thursday, we had the Secretary General of the O.E.C.D. saying that Crown Dependencies are exemplary in their upholding of these standards and in co-operation with other jurisdictions. So the evidence is mounting. So it is not just us arguing across the Assembly about whether we are well regulated or not. One might expect that from a different political standpoint but it is the independent assessors who are telling us that we are well regulated, that are telling us that the J.F.S.C. is meeting the necessary standards and doing the work. Of course, at the same time they are saying there are areas where we can improve and Members will have heard the Commission saying that they will work with Government, they will work with the police, to ensure that we change legislation where necessary but Members will also have heard the Commission saying that they were of small detail and there were small changes that do not detract from the fact that the independent assessors have said that we are in the top tier of jurisdictions around the world. That is no differential between small countries and large countries. We are in the top tier and therefore for all those reasons I ask Members to reject, today, the Deputy's proposition. In fact I go one step further, and I appreciate the Deputy will not like me for suggesting this, I wonder if he would beg the permission of the Assembly to withdraw his proposition.

Deputy G.P. Southern:

I have a question I wish to ask of the Chief Minister.

The Greffier of the States (in the Chair):

Is this a point of clarification?

Deputy G.P. Southern:

I wish to ask a question of him. Yes, to clarify a point, I think. Yes, okay. The question is: has the Chief Minister discussed what is proposed in part (b) of the proposition, around funding and

co-operation with other authorities? Has he discussed that possibility with them and are they confident that they have the right funding and the right structure in place?

Senator I.J. Gorst:

As the Commission is already undertaking that review work, they are doing that within their existing resources, so of course they are confident that they can do that work. We have got to remember that the Commission does work similar to this, maybe not always on this scale, day in and day out. We sometimes hear criticism but somebody gave the statistic to me the other day from the Commission; that every working day somebody from the Commission is in some financial services firm in Jersey doing this review work. So they can undertake it within their existing resources. But I would just remind the Deputy, as he said in his opening remarks, he has only put (b) in there for “what if” something else should be found down the line. So it is not that it is needed because they are doing that work. It is for a “what if” scenario.

Deputy G.P. Southern:

If I may before anyone speaks.

The Greffier of the States (in the Chair):

Is this to wind up the debate, Deputy Southern?

Deputy G.P. Southern:

Yes, Sir. Notwithstanding the clear direction from the Solicitor General that part (a) is possibly unlawful and subject to challenge the fact that the J.F.S.C. have already done what is contained in part (a), it is a perfectly logical approach. But in the light of that potential challenge and the fact that the linking paragraph between (a) and (b) suggests that these parts cannot be taken separately, the whole falls together. While I am grateful to the Minister for his offer to withdraw it I will withdraw it in the light of the advice from the Solicitor General and not push it to a vote **[Approbation]** if I may.

The Greffier of the States (in the Chair):

Is it the will of the Assembly that the proposition be withdrawn? If you could show yourselves in the normal way. Thank you very much. The proposition is ...

Senator I.J. Gorst:

Could I thank the Deputy for doing such a thing? Could I also at the same time take the opportunity, I know I did it yesterday at the briefing, but it is not often said and I would like to take this opportunity to thank the J.F.S.C. for all the work that they do on behalf of Jersey. **[Approbation]** It is difficult work. They often get criticised. I know that was not the intention of the Deputy but that is how it has appeared and they are at the front line, together with those working in the financial services sector, to ensure that we do meet the very highest standards and it is in no small part praise to their work that we have the MONEYVAL Report that we had yesterday.

The Greffier of the States (in the Chair):

So the proposition is withdrawn. That concludes Public Business for this meeting. In the absence of the Chairman of P.P.C. I invite the Vice-President of P.P.C., the Connétable of St. Lawrence to propose arrangement of Public Business for future meetings.

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

4. Connétable D.W. Mezbourian of St. Lawrence (Vice-Chairman, Privileges and Procedures Committee):

To note that 2 propositions were lodged yesterday: P.54/2016 was lodged by Deputy M. Tadier, Bailiff of Jersey: cessation of dual role and the appointment of an elected speaker of the States; and Deputy Higgins lodged P.55/2016, States of Jersey Law 2005: proposal to amend bankruptcy provisions. Both of those propositions are due to be debated on 28th June. All other business remains as set out on the Consolidated Order Paper and I suggest to Members that they should put 2 days aside for the business beginning 14th June.

The Greffier of the States (in the Chair):

The States stands adjourned until 14th June.

ADJOURNMENT

[12:40]