

# STATES OF JERSEY

## OFFICIAL REPORT

TUESDAY, 6th MARCH 2018

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[9:32]

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

## **COMMUNICATIONS BY THE PRESIDING OFFICER**

### **1. Welcome to His Excellency The Lieutenant Governor:**

#### **The Bailiff:**

First of all, under A, I am very pleased, as usual, to welcome His Excellency. [**Approbation**]

## **QUESTIONS**

### **2. Written Questions**

#### **2.1 DEPUTY J.M. MAÇON OF ST. SAVIOUR OF THE MINISTER FOR EXTERNAL RELATIONS REGARDING THE MINISTER'S CONTRIBUTION TO THE U.K. GOVERNMENT'S REVIEW OF FURTHER EDUCATION: [WQ.47/2018]**

##### **Question**

Given the announcement of the U.K. Government to review further education, what work, if any, is the Minister undertaking to contribute to this review; and, given the fact that Jersey students have been deemed to be overseas students and have therefore paid higher fees, what work in particular is the Minister doing to prevent this situation continuing in the future?

##### **Answer**

I refer to the answer provided by the Minister for Education in response to Written Question 48/2018, which is worded in the same terms as this question.

#### **2.2 DEPUTY J.M. MAÇON OF ST. SAVIOUR OF THE MINISTER FOR EDUCATION REGARDING THE U.K. GOVERNMENT'S REVIEW OF FURTHER EDUCATION: [WQ.48/2018]**

##### **Question**

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##### **Answer**

As a result of joint representations in the past by the three Crown Dependencies (Jersey, Guernsey and the Isle of Man), the vast majority of our students are treated as if they are home students from the UK and not overseas. This means our students, for the large part, pay the same tuition fees as a student who is resident in England. There are a few exceptions including some specialist arts, dance and music institutions and Cambridge University and Imperial College but the numbers are small. Falmouth and Liverpool university also charge extra rates for some courses.

The one-year review announced by the UK Prime Minister in October 2017 and launched on 19 February 2018 is looking at 'Post-18 Education and Funding'. The terms of reference cover four main areas but they relate specifically to the UK education system and UK funding mechanisms. This means they are not directly



relevant to Jersey, which has a separate education law and different education system and does not have access to the UK student loan.

The terms of reference are:

- **Choice across post-18 education:** Identifying ways to help people make more effective choices between the different options available after 18, ensuring they have access to a genuine range of high quality academic, technical or vocational routes.
- **Value for money for UK taxpayers:** Looking at how students and graduates contribute to the cost of their studies, to ensure funding arrangements across post-18 education in the future are transparent and do not stop people from accessing higher education or training.
- **Access for all:** Enabling people from all backgrounds to progress and succeed in post-18 education, while also examining how disadvantaged students receive additional financial support from the UK government, universities and colleges.
- **Skills provision:** How the UK's post-18 education system can boost the UK economy and deliver on the UK government's Industrial Strategy.

The details of UK review, which is being led by an independent panel, were only announced recently and there has been no opportunity for the relevant Ministers to consider potential submissions.

Irrespective of whether Jersey contributes to the UK Review, our ongoing discussions with the UK Department of Business, Innovation and Skills and with Universities UK will continue as they are the main points of contact in respect of higher education matters, including the level of fees.

### **2.3 THE DEPUTY OF ST. OUEN OF THE CHIEF MINISTER REGARDING THE RATIONALE FOR EXCLUDING PERSONS ADDICTED TO ALCOHOL FROM THE DRAFT DISCRIMINATION (DISABILITY) (JERSEY) REGULATIONS 201-: [WQ.49/2018]**

#### **Question**

Given the principles of the United Nations Convention on the Rights of Persons with Disabilities which the Disability Strategy seeks to endorse, specifically the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities which include those who have long-term mental impairments which may hinder their full and effective participation in society on an equal basis with others, will the Chief Minister explain why persons addicted to alcohol are excluded from the protections proposed by the Draft Discrimination (Disability) (Jersey) Regulations 201-?

#### **Answer**

The draft Regulations do not exclude people who are addicted to alcohol from the protection of the law.

Where addiction is part of, or associated with, a physical or mental health issue, that issue is likely to mean that the person is treated as disabled for the purpose of the Discrimination Law.

For example, dependence on alcohol might stem from depression and anxiety, or it might lead to liver failure or diabetes. In such situations, the person is likely to have protection against discrimination on grounds of disability. This would protect them against less favourable treatment, and employers and service providers would need to take reasonable steps to avoid disadvantaging that person on grounds of their disability.

The approach we have taken to addiction in the draft Regulations is consistent with the UK Equality Act, where addiction is excluded from the definition of disability, but an addict is protected where the person has related impairments.

This was discussed at a public scrutiny hearing held with the Social Security Minister on 1 March 2018, and is explained in the report of the Minister on the outcomes of her consultation on the draft Regulations<sup>1</sup>.

## **2.4 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING THE PROVISION OF PSYCHIATRIC SERVICES: [WQ.50/2018]**

### **Question**

Can the Minister advise what psychiatric services his department currently makes available and whether the level of service provision has recently declined?

### **Answer**

Improving mental health and treating mental illness are two of Jersey's biggest public health challenges. A mental health strategy was launched in 2015, which sets out the vision for promoting mental health and preventing ill health. Significant new investment through P82 has already been made to improve, develop and expand services including, Jersey Talking Therapies, Primary Mental Health Workers working in CAMHS and Education, and the Jersey Recovery College. An increased incidence and prevalence of mental health needs has led to more people accessing mental health services. Mental health is everyone's business and addressing these issues requires a whole system approach. Psychiatric services are integrated across all services and across all ages. I can confirm there has been no reduction in service provision.

### **Child and Adolescent Mental Health Service – CAMHS**

This service provides assessment, diagnosis and treatment for Jersey residents below the age of 18. Development work is ongoing to strengthen mental health services for those aged 16 to 25. Demand for CAMHS has steadily increased in line with more people presenting with mental health needs. The mental health strategy identified the need to respond to emotional and mental health issues early in the life of the problem and two primary mental health workers were appointed in 2016 who work across CAMHS and Education. Young people may require hospitalisation and can access inpatient services for acute mental health problems on Robin Ward or at Orchard House. There are currently two Child and Adolescent Consultant Psychiatrists based at CAMHS supported by two interim part-time Psychiatrists.

### **Adult Mental Health**

Adult Mental Health is a service for clients between the ages of 16-65 and includes:

#### **Acute Inpatient Service**

The inpatient services for working age adults with acute mental health problems requiring hospitalisation are based at Orchard House on the St Saviour's site. This is an accredited inpatient mental health service. Care is provided to people whose mental health care cannot be provided safely in the community.

The unit consists of 17 beds and provides flexible accommodation for people who need high levels of support and clinical intervention to enable recovery from acute illness. An assessment period of the mental, physical

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<sup>1</sup> R.10/2018 <http://www.statesassembly.gov.je/assemblyreports/2018/r.10-2018.pdf>

and psychological needs of the person is followed by appropriate treatment, which may be provided in either hospital or in a community setting.

The Clinical Lead for the unit is a Consultant Psychiatrist who is supported by lower grade Psychiatrists. The other 3 Consultant Psychiatrists in Adult Mental Health have input as Responsible Medical Officers for their patients. Individual support is provided by the nursing staff as well as a group therapeutic programme. Other members of the multi-disciplinary team who provide direct one to one work with patients include Occupational Therapy staff, Psychiatric Social Workers and a Consultant Psychologist.

Advocacy Workers, provided through Mind Jersey, provide support for service users and their families across the directorates. They work closely with the community mental health teams to ensure that on discharge people have, when appropriate, an identified community worker and a package of care is in place.

### The Acute Community Mental Health Services (Liaison Service)

The ACMHS (Jersey Adult Mental Health Services) team delivers a range of clinical interventions for service users and their families in community settings. It provides a single point of entry for all referrals into Adult Mental Health.

The service aims to provide information, screening, assessment and onward referral where appropriate for persons presenting with an acute mental health problem. The team is multi-disciplinary and provides evidence-based interventions in the least restrictive environment. An important function of the team is to act in a “gatekeeper” role.

### Alcohol and Drug Service

The Alcohol and Drug Service provides a free and confidential service to those experiencing problems relating to substance misuse. A range of services is offered including detoxification at home or in hospital, substitute prescribing, counselling and support, needle exchange and training on issues relating to substance misuse.

There is Psychiatric input from Adult Mental Health with two Consultant sessions and two Staff Grade sessions weekly.

### Older Adult Mental Health Services

The Older Adult Mental Health Service is part of the Specialist Services Directorate. The service consists of inpatient and community services.

Inpatient Services come under the responsibility of the Head of Older People’s Services. There are 14 inpatient assessment beds (primarily for people over the age of 65 experiencing functional mental health problems, although the service is flexible in relation to younger people who have needs best met by an older adult team); 11 inpatient assessment beds (for people requiring inpatient assessment for dementia), and 37 continuing care beds (for people experiencing dementia or severe/enduring mental health needs, whose needs cannot be met within independent sector nursing or residential home provision locally due to complexity of need). Day to day general medical input on continuing care units is provided by a local GP practice commissioned by Health and Social Services, which has specific skills and knowledge in care of the older person.

The Older People’s Community Mental Health Services also come under the responsibility of the Head of Older People’s Services. These services include the Community Mental Health Team, the Primary Care Mental Health Team, the Memory Assessment Service and the Hospital Liaison Service. The Memory Assessment Service is accredited through the Royal College of Psychiatrists and Centre for Quality Improvement, Memory Services National Accreditation Programme (MSNAP).

## **2.5 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE CONTRIBUTION RATE FOR EMPLOYERS AND HIGH-EARNING EMPLOYEES: [WQ.51/2018]**

### **Question**

Further to the response to written question WQ.46/2018 on 20th February 2018, which showed that the application of a uniform 6% rate above the current Standard and Upper earnings limits for Social Security contributions from employers and high-earning employees could raise contributions by up to £43 million,, will the Minister inform members of the extent to which the three-year extensive review of the Social Security system has examined, or will examine, the potential for such a change in revenues?

### **Answer**

#### **Social Security Review**

The aim of the Social Security Review is to make sure that the Social Security scheme and the Fund remains financially and socially sustainable in the future, so that it can meet the needs of today's and future generations.

In particular, the number of pensioners is rising steadily and these increases will accelerate over the next twenty years. The most recent actuarial review reported an increase in the costs of pensions between 2015 and 2035 of nearly £100 million a year (in 2015 prices). These extra costs relate to existing workers and pensioners and there is very little variation in these figures when different population projections are considered. As such, changes will be needed in the Social Security Scheme to meet these extra costs.

The Review is made up of a number of projects, which altogether aim to:

1. **Maintain the social security scheme over the next 30 to 40** years as we tend to live longer and as more people reach pension age
2. **Reshape and modernise the protection and benefits the scheme offers** recognising:
  - a. Our society's values and the changes that have and are taking place in how we live and work
  - b. The government's role in supporting people now includes Income Support, which helps households with low incomes according to their situation and subject to eligibility.
  - c. Developments in international best practice in supporting people and protecting people during times when they are unable to work.
3. **Review and improve how people save for retirement** so that they are better able to support themselves when they stop working.

The review will be developed in co-ordination with Future Jersey and the next government's medium and longer term plans. During the review, my department will consider a range of changes to contribution rates and ceilings. This will include possible changes to the standard and upper earnings limits and the percentage rates charged at different income bands. The final options for consideration will take account of all aspects of the review, the overall plans of the States, and the outcome of the actuarial review which will be carried out later this year and published at the end of 2018.

#### **Clarification of contributions estimate**

It is not clear from the question as to the derivation of the £43 million quoted by the Deputy. The following table shows the estimate of the additional income based on charging a 12% rate in respect of all earnings above the standard earnings limit with no upper cap, across both Class 1 and Class 2 contributors with contributions split equally between employees and employers, using the figures in the answer to WQ 46/2018.

This scenario represents a significantly higher contributions liability for employers, employees and self-employed people with earnings and incomes above the standard earnings limit (£4,290 per month / £51,480 per year for 2018).

The estimates quoted in the previous answer assume that individual and business behaviour would not change. This is a reasonable assumption for estimating the impact of a small change in contributions (of say 1% or 2%) on contributions revenue. Larger increases may well lead to behaviour changes amongst contributors and estimates of yields following significant changes need to be treated with significant caution. The figures quoted below do not take account of any likely behavioural changes. In particular there are a relatively small number of contributors with earnings above the upper earnings limit (£170,256 pa in 2018) and imposing a 12% contribution rate on earnings for these contributors may well lead to changes in business structures and activity and a lower yield than shown below.

The estimates provided in this answer are therefore highly uncertain. A more accurate assessment of this scenario would need to consider the likely response to the increases as well as wider social and economic effects.

	<b>Current rules</b>	<b>WQ proposal</b>	<b>Estimated additional revenue, £m</b>
<b>Class 1</b>			
On earnings below SEL			
Employee	6%	6%	0
Employer	6.5%	6.5%	0
Total	12.5%	12.5%	0
On earnings between SEL and UEL			
Employee	0%	6%	16
Employer	2%	6%	11
Total	2%	12%	27
<b>Class 2</b>			
On income below SEL	12.5%	12.5%	0
On income between SEL and UEL	2%	12%	8
<b>Class 1 and Class 2</b>			
On income above UEL	0%	12%	16
			<b>52</b>

## **2.6 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE OVERPAYMENT OF INCOME SUPPORT: [WQ.52/2018]**

### **Question**

Further to the Minister's response to Written Question 41/2018 on 20<sup>th</sup> February 2018, will the Minister advise –

- a) whether she is satisfied with the current level of overpayment;
- b) what proportion of the overpayments are caused by payments being made automatically in advance;
- c) what proportion of overpayments are reclaimed at the standard rate of £21 per week, or above,
- d) what research, if any, she has conducted into the extent to which such reclaims have the potential cause hardship to claimants
- e) what the impact would be of adopting a system of payment in arrears, such as already exists in respect of Short-Term Incapacity Allowance; and
- f) whether the rate at which overpayments are reclaimed is agreed between the Department's staff and claimants or whether claimants are merely informed of what rate will be applied?

### **Answer**

- a) I am satisfied that the Income Support system functions well to support low-income households with small fluctuations in their weekly incomes, and that paying benefit a week in advance helps households who might otherwise need to wait for money to meet essential costs following a sudden drop in income. Paying benefit in advance is preferable to making households wait an additional week when, for example, an employed adult has lost their job and needs to make a fresh claim to Income Support.
- b) There will be overpayments that are created due to the advance payment of benefit. Suppose a claimant receives a weekly payment on Monday for the next seven days and then there is a change in circumstances on the Wednesday of that week. This will mean that 5 days (Wednesday to Sunday) have been paid at an incorrect rate and an adjustment will be needed for these 5 days. This is unlikely to have a large value.

A detailed analysis of payment records would be needed to identify the proportion of claims that fall into this category. Delays in declaring changes in income remain the main source of preventable overpayments. I am satisfied that the Department has taken many steps to make it easier for customers to provide information about any changes in income, and for these changes to be actioned very rapidly. The Department has invested heavily in improving the customer experience and in our ability to deal with customer contact on a "right first time" basis.

We make it clear to each adult member of an Income Support household that they need to tell us about changes in income, and have made it very easy to report these changes over the telephone, via email, or by visiting the Department in person. In early 2016, the number of Income Support desks in the front office was increased and this has led to a considerable reduction in the time taken to process benefit applications and changes to existing benefits. A customer with a change to their entitlement can visit the Department and have the change applied to their claim immediately. This reduces the potential for over or underpayments to build up by making it easier for customers to give us the right information with the minimum of delay and for any queries to be resolved at the same time.

An online form allows the customer the option of informing us of a change in their income, and this is actioned during the next working day. Also, if a customer emails the department any information about changes to their claim, this is generally actioned within two working days.

- c) Approximately 90% of overpayments are recovered at or above £21 a week. A lower level of repayment applies to a minority of claims to reflect the personal circumstances of the household.
- d) As far as possible, a repayment rate will be agreed with the claimant at the time the overpayment is processed. Where a customer is not present to discuss a recovery amount, overpayments are set at a suggested weekly level. The household is immediately notified by writing, and can telephone, email or visit the Department to discuss and potentially negotiate a different repayment rate. A claimant who is concerned at the rate of repayment can seek a lower repayment rate with the department at any time.
- e) Short-term Incapacity Allowance (STIA) is not comparable to Income Support, because it is not designed as a low-income benefit. The majority of people claiming STIA will be absent from paid employment for short periods. Households who cannot afford to wait for payment of STIA in arrears may well make a claim to Income Support to meet their daily needs. A shift to paying Income Support in arrears is likely to create significant difficulties for vulnerable claimants at the start of a claim or following a change in circumstance. The great majority of other Social Security benefits are paid in advance. A change to payment in arrears would require a significant change to existing IT systems. The main departmental business system is due for replacement in the early 2020's and it is unlikely that a change to the basis of payment calculations could be justified in advance of the replacement of the overall system.
- f) As far as possible, a repayment rate will be agreed with the claimant at the time the overpayment is processed. Where a customer is not present to discuss a recovery amount, overpayments are set at a suggested weekly level. The household is immediately notified by writing, and can telephone, email or visit the Department to discuss and potentially negotiate a different repayment rate.

## **2.7 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR HOUSING REGARDING THE RENT POLICY OF ANDIUM HOMES: [WQ.53/2018]**

### **Question**

Will the Minister detail for members the scope which Andium Homes has to set rent levels for new tenants at a rate between 85% and 90% of private sector rents; and the impact that a rent-freeze would have on the business model and revenues of Andium Homes, including the ability to meet its repayment of borrowing, the annual return to the Treasury?

### **Answer**

The requirement for the 90% equivalent market rents policy was well-documented by the Health, Social Security and Housing Scrutiny Sub-Panel (S.R.6/2013) before '*The Reform of Social Housing*' (P.33/20113) was adopted by the States Assembly in May 2013 (S.R.6/2013).

The 90% rents policy provides a sustainable funding arrangement for the delivery of new and refurbished affordable housing. In the case of Andium Homes, the rent it receives is used to pay the substantial return to the Treasury and Resources Department and to fund all its homes and housing-services, including dealing with the maintenance backlog identified as part of the Housing Transformation Programme.

A rent freeze or a reduction in the rent charged would prevent Andium Homes from servicing current loans and delivering the return to Treasury, as well as investing in the development of new homes.

Andium Homes is delivering hundreds of much-needed homes for islanders. The delivery of such homes is not viable if the rents policy is not applied. Furthermore, instability in this area could jeopardise future borrowing arrangements needed to deliver these homes.

Income Support is available for up to the full amount of rent charged on an Andium Homes' property (as long as the household is occupying a property appropriate for its needs), and so any reduction in rent would only serve those who do not qualify for assistance through Income Support.

It should also be noted that freezing rents does not help the poorest members of society. This can only be achieved through Income Support.

A rent freeze would also make new housing schemes less viable and further limit the development of more homes. This would impact supply and, therefore, increase rents.

Effectively any changes would undo the positive principles that the Housing Transformation Programme was established upon.

## **2.8 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR HOUSING REGARDING THE PERFORMANCE OF THE MYDEPOSITS SCHEME: [WQ.54/2018]**

### **Question**

With regard to the MyDeposits scheme, will the Minister –

- (a) provide her assessment of the performance of the scheme in dealing promptly and efficiently with deposit dispute resolution in the private rental sector;
- (b) state what proportion of tenancy deposits are being administered through MyDeposits;
- (c) provide figures in respect of the reported delay in claiming deposits;
- (d) advise what changes, if any, to the original company structure have been made since it was established;
- (e) advise what changes, if any, there have been to the system for administering deposits; and
- (f) state when the performance of the scheme will be formally reviewed and reported to the Assembly and advise what factors will be assessed?

### **Answer**

- a) The performance of the MyDeposits Jersey tenancy deposit scheme is monitored in accordance with approved key performance indicators (KPIs) set out in the contract with the company. The KPIs align with those set by the UK Government for the equivalent schemes operating in England and Wales.

All KPIs in respect of dispute resolution are being met as per the contract with MyDeposits Jersey. All KPIs in respect of telephone response times and responding to customer e-mails are also being met or bettered.

In the summer of 2017, the scheme experienced an unexpectedly high level of demand. This led to a short-term service issue and, following discussion with the Strategic Housing Unit and on-island partner, Citizens Advice Jersey, MyDeposits Jersey addressed the issue by increasing the size of the customer service team responsible for Jersey.



- b) At the end of January 2018, the MyDeposits Jersey tenancy deposit scheme controlled a total deposit pool of £6.8 million, which represents 5,583 individual deposits.

The estimate total pool of deposits in Jersey is £16 million, and feedback from agents suggests that the figure could be as high as £20 million. As the three year anniversary of the scheme approaches in November 2018, there is a need to review the effectiveness of the tenancy deposit scheme. Some of the potential legislative changes are set out in part (f). The proposed landlord license scheme that the Minister for Environment is proposing to establish, will also support enforcement of the scheme.

- c) Delays in returning deposits have arisen where an agent, landlord or tenant have not provided accurate banking details in order to allow the scheme to return a deposit promptly. In all other circumstances, where the release of a deposit has been agreed by the parties, deposits will be returned the same day when requested before 1pm, and the next day when requested after 1pm.
- d) The structure of the MyDeposits Jersey tenancy deposit scheme has not changed since it commenced in November 2015. The operating model has been refined to reflect the needs of customers:-
- Additional staff members have been recruited into the customer service team.
  - A dedicated MyDeposits Jersey ‘hotline’ has been set up for use by Citizens Advice Jersey.
  - A dedicated Business Development Executive for Jersey has been appointed who visits the island on a regular basis (aiming for monthly visits) to develop and maintain relationships with scheme stakeholders.
- e) There have been no changes to the system for administering deposits. However, there have been a number of refinements to the scheme as outlined above.

In addition, there was a change of scheme ‘partner’ after the first year of the scheme. The original partner gained limited traction with local users of the scheme, and it was felt that Citizens Advice Jersey would be a higher profile partner on the island. Citizens Advice Jersey is a natural source of advice and guidance for the scheme and this is demonstrated by the increase in the number of customer contacts with landlords and tenants. In 2017 Citizens Advice Jersey dealt with circa 190 enquiries about the scheme.

- f) The performance of the MyDeposits Jersey tenancy deposit scheme is monitored and reported on a monthly and annual basis against the KPIs outlined above and general feedback. Review meetings are also held to discuss the ongoing financial performance and long-term viability of the scheme.

In addition, regular visits are carried out by the Business Development Executive and other senior directors to engage with stakeholders.

The contract for the scheme between the States of Jersey and MyDeposits Jersey is for a period of five years, with a review planned after the first three years of the scheme. As such, the contract will be reviewed by September 2018. The factors to be considered in reviewing the scheme include the performance of MyDeposits Jersey against the set KPIs and the financial viability of the scheme.

It is also important that a review covers the States’ role in ensuring that the appropriate tenancy deposit protection arrangements are in place, including any legislative changes that might need to be made in order to ensure the effectiveness of the scheme. There are a number of areas where amendments could be made to the Residential Tenancy (Deposit Scheme) (Jersey) Regulations 2014:-

- The introduction of retrospective tenancy deposit protection for tenancies that commenced or were renewed/varied before November 2015.

- The creation of new enforcement and/or incentives to ensure that deposits are protected in the scheme – e.g. a landlord cannot seek the eviction of a tenant if the deposit has not been protected.
- The extension of tenancy deposit protection to non-self-contained rented accommodation, which is not presently within the vires of the Residential Tenancy (Jersey) Law 2011.

These amendments would need to be brought to the Assembly for approval.

## **2.9 SENATOR P.F.C. OZOUF OF THE CHIEF MINISTER REGARDING THE COSDT OF COURT CASES PURSUED BY THE JERSEY COMPETITION REGULATORY AUTHORITY: [WQ.55/2018]**

### **Question**

With regard to the three cases involving the Jersey Competition and Regulatory Authority, references '[2011] JRC181', '[2013] JRC238' and '[2017] JRC 091', will the Chief Minister provide the Assembly with information in respect of:

- a) the breakdown of the direct costs incurred by both the Authority and the States of Jersey, with the breakdown to include an estimate, or the actual cost of resources for the cases from start to finish;
- b) the total indirect costs (for example, officials' and employees' time) incurred by both the Authority and the States of Jersey in terms of manpower;
- c) how the costs described in answer to parts (a) and (b) were funded and who ultimately bore the costs of all of the cases?

### **Answer**

The three cases involving the Jersey Competition and Regulatory Authority (JCRA) are:

- [2011] JCR181 Clear Mobitel v JCRA 22 September 2011
- [2013] JRC238 JT (Jersey) Ltd v JCRA 29<sup>th</sup> November 2013
- [2017] JRC091 JT v JCRA 15 June 2017

a)

#### Direct costs to the JCRA

The JCRA has provided information on the direct costs incurred for each of the cases:

- The JCRA incurred direct costs of circa £142K in relation to [2011] JRC181
- The JCRA incurred direct costs of circa £240K in relation to [2013] JRC238
- The JCRA incurred direct costs of circa £90K in relation to [2017] JRC091 and an earlier related case which was withdrawn by JT. This was offset by £50K that was paid by JT when it withdrew its appeal for the earlier case

#### Direct costs to the States of Jersey

No direct costs were incurred by the States of Jersey on any of these cases.

b)

#### Indirect costs to the JCRA

The JCRA has also provided, where available, the total indirect costs for these three cases.

- The JCRA does not hold information on the indirect costs in relation to [2011] JRC181
- The JCRA incurred circa £55K of indirect costs in relation to [2013] JRC238
- The JCRA incurred indirect costs of circa £15k in relation to [2017] JRC091

#### Indirect costs to the States of Jersey

This information is not available. The States of Jersey does not itemise officials' time against individual cases involving a regulator.

c)

In all three cases both the direct and indirect costs incurred by the JCRA were funded by telecoms licensees through their licence fees.

### **2.10 SENATOR P.F.C. OZOUF OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING LINKS WITH ESTONIA: [WQ.57/2018]**

#### **Question**

Could the Chief Minister set out what actions, if any, have been taken or are planned to be taken, in order to build further links with Estonia, especially in the e-commerce and e-government sectors?

If no actions have been taken, could he explain the reasons why?

#### **Answer**

The Government of Jersey enjoys a very positive and constructive relationship with Estonia. The Minister for External Relations has met the new Ambassador, Her Excellency Tiina Intelmann, on at least two occasions in recent months on official business.

Government of Jersey officials, particularly those in the Jersey London Office, have good relationships with their counterparts in the Estonian Embassy. A delegation visited Tallinn in 2017 to learn about their approach to digital government, and we maintain active contact with the Estonian Permanent Representation in Brussels through our Channel Islands Brussels office.

We are considering how we can continue the development of our links with Estonia and will update Members when decisions have been made.

### **2.11 SENATOR P.F.C. OZOUF OF THE CHIEF MINISTER REGARDING THE CASE REGARDING THE OIL SECTOR PURSUED BY THE JERSEY COMPETITION REGULATORY AUTHORITY: [WQ.58/2018]**

#### **Question**

In relation to the recent case pursued by the Jersey Competition Regulatory Authority regarding the oil sector, will the Chief Minister –

- a) provide a breakdown of the direct costs incurred by both the Authority and the States of Jersey, with the breakdown to include an assessment of the costs likely to be awarded or (if the amount is unknown) the costs that have been claimed;
- b) provide a breakdown of the indirect costs (for example, officials' and employees' time) incurred by both the Authority and the States of Jersey, including actual, estimated and indirect costs set out by quarter since the start of the case;
- c) explain how the costs provided in answer to parts (a) and (b) were funded and who ultimately bore the costs of the case;
- d) provide the names of the lawyers, both locally and from outside the Island, who were engaged in the case and, if there were changes to the lawyers engaged, explain the reasons for those changes;
- e) state the amounts paid to the firms named in answer to part (d);
- f) indicate the materiality of the case that was sought to be resolved; and
- g) provide the terms of reference for the review which has commenced following the Court's decision and indicate the reporting time for the review?

#### **Answer**

- a) and b).

The case referred to in this question concerns the JCRA's decision that ATF fuels had abused a dominant market position. Additional funding of £508,605 was provided to the JCRA. A further £33,965 has been applied from competition law grant reserves held by the JCRA.

Information on the indirect costs to the States of Jersey is not available as officials' time is not itemised in this way.

A key element of the costs are those that may be awarded to the appellant. The costs of the appellant are subject to a settlement process so there is no further information on costs at this time.

- c) The additional funds provided to the JCRA were made by the Chief Minister's Department from its budget, from end of year underspend allocation and from the States Central Contingency.
- d) The JCRA employed Baker and Partners and Ogier locally, and Brick Court in the UK. The local law firm changed because the nature of the appellant's case changed and it submitted new evidence through the appeal process. This altered the nature of the case the JCRA was defending and the nature of the legal representation required.
- e) No further information on costs will be disclosed until the settlement of costs is completed by the court. A final figure for legal fees will be published when all costs have been finalised.
- f) Members can see the arguments of the case by [reading the judgment](#). The question of general proportionality is being addressed by the review.

g) The terms of reference are being developed and will be published when finalised.

[9:45]

**Deputy S.M. Brée of St. Clement:**

Before we move on to Oral Questions I have an apology to make to the Assembly, if that is permitted. During the last sitting of the States Assembly during a speech I made on an unrelated topic I stated that the department - that being the Department of Economic Development, Tourism, Sport and Culture - had changed their mind 4 times in 3 weeks on the Licensing Law. On checking my records this was factually incorrect. While the department had changed their mind I was not correct in stating it was 4 times in the last 3 weeks, and I apologise to the Assembly for inadvertently misleading them.

**3. Oral Questions**

**3.1 Deputy R. Labey of St. Helier of the Chief Minister regarding allowances made under the Control of Housing and Work policy in respect of children made the subject of a care order and placed outside the Island: [OQ.39/2018]**

In respect of children who are made the subject of a care order by the Royal Court but who are placed outside the Island before acquiring entitled residential status, how does Control of Housing and Work policy apply to this period of placement and what allowance, if any, is made if they wish to return to live in Jersey once the care order has expired?

**Senator P.F. Routier (Assistant Chief Minister - rapporteur):**

The policies do not currently specifically cover children who are the subject of care orders. For this reason, last December I asked that our policies be reviewed. Officers reported back to the Housing and Work Advisory Group in February and an update will be published within the next month. I want to make it clear that this will ensure that the time spent outside of the Island by children subject to a care order counts towards them acquiring their entitled residential status.

**3.1.1 Deputy R. Labey:**

Would the Assistant Chief Minister confirm that as anybody who has returned to the Island and tried to persuade Social Security of their qualification to be living and working here, no matter who you are and what your name is, you have to get all the right paperwork? It is important with this issue, is it not, that it cannot be some kind of off-the-record agreement? On the statute, it has to be a matter of absolute record that these children will not be disadvantaged because out of their control they were placed out of the Island.

**Senator P.F. Routier:**

I agree with the questioner wholeheartedly. I think what we are going to put in place is a policy, which will ensure that any children who are in the care of the state, who are placed outside of the Island, will not be disadvantaged.

**3.1.2 Deputy G.P. Southern of St. Helier:**

Can the Assistant Chief Minister be more specific about the action he proposes to take? Will this be a matter of general policy or will it be a matter of statutory in regulations?

**Senator P.F. Routier:**

There are a number of guidelines, which are associated with the legislation, which set out what happens in various cases, not only to do with children in this particular circumstance, and it will be put into the guidelines, which the departments will follow because it will be the policy of the Minister.

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

I have had ample experience with Social Security and other departments over guidelines. Guidelines are open to interpretation and often require the person affected to go in and argue their case in order to show that the guidelines are being incorrectly applied. Will the Minister make this provision statutory so it is automatically applied and nobody is faced with having to argue with an officer in order to establish their rights?

### **Senator P.F. Routier:**

What the Deputy is asking for is probably a complete ... what would be required is a complete review of all of the guidelines, which are associated with this legislation. If we were to go along that route it would be a bigger piece of work. I want to get this into place immediately and ensure that we can assist anybody who is in these circumstances. So the route which I am proposing is that the guidelines will be in place really very quickly and if, in the future, that we need to go further to put it into legislation, that is something that will have to be considered. Obviously, it would be a wider piece of work that would be required to ensure that if we are going to put all the guidelines. But every piece of legislation that comes before this House and is dealt with by departments has guidelines for the departments to work through. So the strength of the legislation is there but the guidelines are there to ensure that the department work to keep within the legislation.

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

So the answer to my question was no.

### **The Bailiff:**

You are being asked to confirm. The answer to the question was no?

### **Senator P.F. Routier:**

It was not an absolute no. At this present time we would have to see how the guidelines are working. But certainly the intention is for us to be able to support ... the origination of this question is that we want to be able to ensure that children who are in the care of the state are not disadvantaged by being outside the Island.

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

Thank you to the Minister. The thought of variations on no fill me with delight.

### **3.1.4 Deputy J.A. Martin of St. Helier:**

Yes, just briefly. I was astounded when I heard the reply, and more so when I heard the question, because I have always been under the impression the guidelines were there. We already treat these children as being in Jersey because they are under a care order from the States. I would like to press the Minister. Firstly, can he find out how many people, if any, this has affected in the last 10 years and what age. And can he tell us where to direct these children, which are now probably young adults, wanting to come back and live in Jersey because I do not want them going to each and every department. I then push him again: is there is one small area that can be done quickly and under regulations and it must not just be policy and a different interpretation in each department. Will he push this through as a regulation and make it statutory law?

### **Senator P.F. Routier:**

Certainly I will inquire within the department about the way we can do this but certainly for speed we need to ensure that anybody today that comes forward is supported in the way we want it to happen. As I said earlier, it will be a matter for further discussion about whether we put all of the guidelines into regulation. That might be a major piece of work which would have to be undertaken, but we would have to look at that very carefully. But with regard to if there were any ... I am unaware

if there are any other previous cases that are out there but certainly if there are I will ask the department to look into that, and if there has been anybody affected by that I will ask the department to get in touch with them directly to ensure that their housing qualifications are upheld.

### **3.1.5 Deputy J.A. Martin:**

The Minister stood up and said this had never been looked at because care orders did not cover children, and so he has found somewhere where the law does not cover and we are pushing him to make this a regulation. Not every other guideline. The Minister's words in his opening answer was this did not ever come up because it did not cover children. So now it does cover children, please can he make it a regulation?

### **Senator P.F. Routier:**

I think what first made us consider this was the outcome of the Care Inquiry. There were some comments within that which actually highlighted this as this may be an issue. But as far as if it had affected anybody at the present time, I am unsure of that. But, certainly, if it requires regulation that will be something for someone to do in the next Assembly. Certainly the process we want to get in place right now is to ensure that nobody is affected and we are making it publicly known and it will be available to anybody who is affected by this, which it will be a handful of people that would be affected. But certainly we want to ensure that they do continue to have their housing regulation.

### **3.1.6 Deputy R. Labey:**

If these guidelines - this and other guidelines - are robust and properly drawn up and fit for purpose, why would it be such an enormous piece of work making them statutory? Do we derive from this that there are grey areas with these guidelines, there should definitely not be a grey area with the particular one we are talking about here, which makes it difficult to put them into statute? But grey areas are areas of difficulty here for the people concerned, are they not? This is where we get into trouble.

### **Senator P.F. Routier:**

With much legislation there are grey areas and that is why there are times when the Minister has discretion and hardship cases are listened to because they do not fit into the details of the existing legislation. The safeguard is having a hardship clause within any legislation and the Minister can have the discretion to work within that. There will always be grey areas but we cannot put absolutely everything into legislation.

## **3.2 Deputy R.R. Renouf of St. Ouen of the Minister for Health and Social Services regarding instances where adult respite care had been provided to clients in hotel accommodation: [OQ.41/2018]**

Is the Minister aware of any instances where adult respite care has been provided to clients in hotel accommodation at times when the hotel was open for normal business; and, if so, on how many occasions in the last 12 months has this occurred, how has it been funded, and what have been the reasons for it?

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

The simple answer to this question is no. There has been no occasion when adult respite care has been provided to clients in hotel accommodation at times when the hotel was open for normal business.

### **3.2.1 The Deputy of St. Ouen:**

Is the Minister aware of how respite is delivered by agency providers, registered providers, who are approved by his department or by the Chief Minister's Department? What standards is he monitoring to ensure that such instances do not happen?

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

In order to be a provider of respite care you have to be approved, as the Deputy said. So you become an approved provider and therefore are entitled to receive payment via Social Security for services that you provide. Whether you become an approved provider or not is a matter for the regulation part of the service, which as the Deputy quite rightly pointed out, more recently comes under the Chief Minister's Department. But I have no concerns about the way that they regulate and ensure that standards are upheld.

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

More specifically, has the Pomme d'Or Hotel been used to provide respite for people in Jersey?

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

Absolutely not.

**3.2.3 Deputy G.P. Southern:**

To the best of his knowledge, can the Minister deny that any deliverer of care services in the public realm has not used a hotel room in order to provide respite care to a family in need?

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

I have been very cautious in my answer. No hotel has been used when the hotel has been open for normal business. However... and I am being very careful here, because I do not really wish to give out information that will identify the family. However, in one case, because of particular circumstances that I am not going to describe, by agreement with the family Maison des Landes was used while it was closed. Our service provided that care in that disabled facility.

**3.2.4 Deputy M. Tadier:**

Is it possible that hotels other than Hotel des Landes, which is obviously a specific hotel designated for those purposes, was used without the Minister's knowledge?

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

I suppose anything is possible but I asked my service and I have been advised that, to their knowledge, no hotel other than Maison des Landes has been used.

[10:00]

I have to stress again, Maison des Landes was closed at that period and they made a facility available to assist us.

**3.2.5 Deputy G.P. Southern:**

The Minister has received assurances from his officers that to the best of their knowledge this mechanism has not been used. Will he return to this situation and ask his officers to interrogate those people responsible for delivering respite care, whether those organisations have in fact used hotel rooms to provide such respite care?

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

I have got a better idea than that: if the Member knows of something tell me and I will get it investigated. I am not going to waste officers' time on a fishing expedition.

**3.2.6 Deputy G.P. Southern:**



No, the Minister knows that it is not the role of question time to bring up individuals to this department. Will he answer the question? Will he go back to his Ministers and check whether those people that are responsible for delivering respite care have not used hotel rooms?

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

No, I have already done that. However, if the Deputy would like to speak to me privately, give me some information, then I will have it investigated.

**3.2.7 Deputy M. Tadier:**

Can the Minister clarify that it is not departmental policy and that he would not be happy with such a practice going on either in rare circumstances or as a general rule?

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

As a general rule, I would not want to see respite happening while the hotel is open but there are different types of respite and people make their own choices. I have no idea what the Members are talking about but I do know that my officers went the extra mile to assist a family by using Maison des Landes appropriately, with the support of ... they had a lot of support from other charities in this as well. So I do agree with people being flexible in order to support our community. But if there are particular issues that the Deputies know about, that I clearly do not know about, my officers do not, let me know and I will have it investigated.

**3.2.8 Deputy M. Tadier:**

Does the Minister believe that this is indicative of a lack of general respite facilities in the Island?

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

No, I do not because the Member is muddling up the fact that people on long-term care, and those are the ones that are generally buying respite care, it is not the only ones but those are the ones generally, get that allowance through the long-term care scheme to use an approved provider to provide respite. Respite comes in many forms. Respite comes in outings for people. Respite comes in ... they are moving into their house while the carers move out and respite comes in residential care as well. It comes in many forms and those many forms are at the request of the carers.

**3.2.9 Deputy G.P. Southern:**

Final supplementary probably, if I may. Does the Minister consider that use by anybody of public funds to deliver respite care by using hotels is poor, inefficient use of the fund?

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

Again, I am in the dark to what the Deputy is on about, but for some people going on a holiday is respite care and if they are supported by carers in having that holiday it is appropriate. **[Approbation]** I am sorry, if there is a concern give me the facts and I will investigate it.

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

I want to try and assure the Minister, it is not the Maison des Landes situation that is the concern here but it is the use of another hotel. I am pleased to hear what the Minister has said in response to the many questions, but does the Minister accept that there is a concern among carers about the provision of respite for them? Does he accept how important it is and how much we should support these carers who save the public purse thousands of pounds annually by looking after their loved ones? We have heard this week that Children's Services are to be inspected by Ofsted, which will include children's respite services. In view of the concerns that have long been expressed about all respite services, including adults, would the Minister support an external inspection of adult respite services?

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

I would be happy to discuss that with the chairman of the Scrutiny Panel. I do understand how important respite care is. As a carer myself for over 30 years, I have personal experience of that, so I do understand how it is important, how access to different types of services are important and that we should not be dictating but supporting families in getting respite.

**3.3 Deputy M. Tadier of the Minister for Social Security regarding what work, if any, is being done further to the recommendation in paragraph 110 of ‘Living on Low Income’ (S.R.4/2016): [OQ.44/2018]**

Will the Minister update the Assembly on what work, if any, is being done further to the recommendation in paragraph 110 of *Living on Low Income* (S.R.4/2016), namely to examine the benefits of a higher level of disregard for earnings income; a separate disregard for second earners; and an annual earnings allowance, which would not affect income support entitlement?

**Deputy S.J. Pinel of St. Clement (The Minister for Social Security):**

My response to the Scrutiny review was published in October 2016. It noted that actions were already planned in this area. I will quote a short section from my response: “The cash limits available for 2017 for income support does allow for some improvements in component levels and all work incentives. Previous Ministers have increased the work incentives from the original 6 per cent to the current level of 23 per cent. This level will be considered again during 2017 and the suggestions provided by the panel will be included in those deliberations.” I am happy to confirm then that in 2017 I considered the benefits of a higher level of disregard and increased it from 23 per cent to 25 per cent. This is the highest it has ever been in Jersey. I can also confirm that this higher disregard is applied to both earners in a household, which makes the system fair and easy to understand. I do not intend to introduce an annual earnings allowance. This would be costly, complicated to administer, and would discourage people from increasing their earnings above that allowance. The current system helps people understand that increasing their earnings will increase the amount of money they have available. Income support now has the highest percentage of adult claimants in work since it began. This shows the incentives are working. I am currently reviewing the uplift for 2018 and can confirm that I will again be considering an increase in the level of the disregard.

**3.3.1 Deputy M. Tadier:**

Specifically on the issue of a fixed sum disregard, does the Minister not agree that there are benefits in incentivising people to do some work rather than no work or some work legally rather than some work on the black market? That if casual work is available, where people can earn a fixed sum per year without having to worry about being found out or informed upon to Social Security, it could be a vital way to get people back into work and cut some of the red tape rather than increasing it?

**Deputy S.J. Pinel:**

Yes, I do agree with the Deputy, and that is why we have increased the income disregard in a lot of areas, but certainly in the earned income and looking at - as I mentioned earlier - increasing it again. Of course on top of the 25 per cent disregard that is already available, there is the additional 6 per cent of earnings contributions, which is disregarded for people who are eligible to pay them.

**3.3.2 Deputy G.P. Southern:**

Is it not the case that the level of the earnings disregard is still very much lower than that which applies in the U.K. (United Kingdom) and does she not consider that upgrading this marker would be of benefit to recipients and help people get into some work?

**Deputy S.J. Pinel:**

Yes, and as I mentioned in my opening remarks, this is why it has been increased from 6 per cent to the current rate of 25 per cent, and we are looking at it again to be increased in the coming year.

### **3.3.3 The Deputy of St. Ouen:**

Does the Minister consider it important that all members of a household who are capable of work should be in work and therefore why is she not considering or will she consider seriously a separate disregard for second earners in a household?

#### **Deputy S.J. Pinel:**

Yes, the higher disregard for a second earner would increase the income in households where there are 2 adults, who are both able to work. This would not help families where a parent is at home looking after a very young child. It would not help families where one parent has a long-term condition or disability and is unable to work and it would not help families where one parent is a carer for another member of the family of the long-term care needs.

### **3.3.4 The Deputy of St. Ouen:**

Granted those exceptions that the Minister has just said, but does she not accept that it would incentivise persons in a household who are not in those sorts of situations outlined but who are capable of working, 2 or more persons, would she incentivise them by giving a separate disregard for those additional persons?

#### **Deputy S.J. Pinel:**

The idea of a second earner is based on the assumption that one partner works full time and the other looks after the children and only works part time. Although income support recognises households who do this many Jersey householders prefer to divide the care of children so that they can both work, and we help by supporting the cost of childcare and the income support for adults.

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

It is really a point of clarification. I understood the Minister to say that the income disregard was applied to both sets of earnings, separately, and therefore a second earner was catered for with their own disregard. But in the answers that she followed up that with it seems to me that she is denying that there is a second income disregard for the second earner and that the income disregard applies across the board to the total earnings of the couple.

#### **Deputy S.J. Pinel:**

The earnings disregard applies to both adults in the household earning.

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

Separately, so that each earner has their own income disregard set at whatever level it is, 25 per cent, and not the collective income of the household at 25 per cent?

#### **Deputy S.J. Pinel:**

Yes, although a second earner can sometimes be working part time if they have got children to look after. The new introduction which will be discussed on the next sitting on 20th March will hopefully include, if it is approved, that the parental leave will include the father or partner being able to share the care of the child and so both parents can work in an alternative situation.

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

Final supplementary from me. Will the Minister return to the House with costings of how much the last raise by 2 per cent in income disregard cost in terms of delivery of income support and if she could also, what would be the cost of having a fixed income disregard in comparison with the

percentage disregard? So what would be the cost of £1,000, £2,000, perhaps £5,000 as an income disregard rather than a percentage?

**Deputy S.J. Pinel:**

That would have been in the last Social Security annual report and when we do consider the uplift in 2018 we will then decide how much the disregard will be increased, which will also produce the cost. But it is a fluctuating situation with people moving in and out of work, people in full-time or part-time work, so it is very difficult to put a complete figure on it because there are not necessarily a standard number of people at any one time.

**Deputy G.P. Southern:**

Could the Minister ...

**The Bailiff:**

You said that was your final one, Deputy.

**Deputy G.P. Southern:**

Possibly, I said, Sir.

**The Bailiff:**

Go on then.

**3.3.8 Deputy G.P. Southern:**

Could the Minister point me - because I am an avid reader of the annual reports - to the pages that give this detail because I have read the report and I have not been able to work out what that figure is?

**The Bailiff:**

Why do you not send the Minister an email? I am sure she will reply.

**3.3.9 Deputy M. Tadier:**

Does the Minister believe that there are sufficient incentives to get people back to work specifically when it comes to the income disregards and can more be done?

**Deputy S.J. Pinel:**

Always more can be done but at the moment the working adults claiming income support has increased considerably from 42 per cent to 52 per cent, which is a great illustration of how much the incentives from the department and the encouragement to get back into work have been successful.

**3.4 Deputy M.R. Higgins of St. Helier of the Attorney General regarding how many cases of alleged corruption in the public sector had been made to him since he was appointed: [OQ.42/2018]**

Will H.M. Attorney General advise how many cases of alleged corruption in the public sector have been made to him since he was appointed, if any, and what proportion of any such cases were taken forward by his department for investigation or prosecution?

[10:15]

**Mr. M.H. Temple Q.C., H.M. Solicitor General (rapporteur):**

The question asked specifically about corruption and corruption is an offence defined under the Corruption (Jersey) Law 2006. It is one of a number of offences that may be committed by public

officials or those dealing with public officials. Under Article 7 of the Corruption Law it is an offence for a public official to act corruptly, which means to do or not do any act in relation to that official's position for the purpose of corruptly obtaining any advantage. An advantage includes any gift, loan, fee or reward. The advantage may be for the public official or for the benefit of any other person. Since the Attorney General took office in May 2015, according to the records of the Law Officers' Department, he has not received any allegations of corruption as defined under the Corruption Law, or indeed any of those other allegations in relation to possible offences under the Corruption Law. He has received allegations of other misconduct in public office, including separate offences of misconduct in public office and perjury, but those are outside the scope of the Deputy's question.

#### **3.4.1 Deputy M.R. Higgins:**

So if a Member of the Civil Service commits perjury in a court or perverts the course of justice, or as you just said, misconduct in public office, do you consider those other things a form of corruption? It may not be the legal definition that you have given but is corruption within the public sector, is that correct?

#### **The Solicitor General:**

They are not offences, as I have explained already, under the Corruption (Jersey) Law, and the Corruption (Jersey) Law was introduced in response to international treaties that dealt with corruption. There are other offences, which I have already explained, such as misconduct in public office and perjury, and those can be committed obviously by those in the public sector. But they are not offences under the Corruption Law.

#### **3.4.2 Deputy M. Tadier:**

Would the Solicitor General state what he thinks the optimum number of complaints about corruption would be in a healthy democracy?

#### **The Solicitor General:**

That is an impossible question to answer. Corruption offences are not routine events such as offences of violence, sex or drugs; they are unusual offences and it is not surprising that we have not received complaints under the Corruption (Jersey) Law. I am aware that in Guernsey one offence has been prosecuted successfully by law officers there in relation to their Corruption Law, but that, as I understand it, concerned an offence that was committed by someone who was not in the public sector. It was in the insurance industry. It is not surprising that there are few prosecutions for corruption offences under the Corruption Law. As I said earlier in my first answer to the question: we have received complaints or allegations of offences, such as misfeasance in public office, and there are about a handful of complaints since the Attorney General took office in May 2015. Allegations of that nature are made but, again, in relation to those sorts of offences, misfeasance in public office and perjury, again those sorts of offences are relatively rare. Again, I think it is no surprise that it is only a handful of offences that have been received in almost 3 years. For my part, I am not troubled by the relatively low number of offences.

#### **3.4.3 Deputy M.R. Higgins:**

I must say, as a layman, who believes that corruption includes the things I mentioned, it may not be part of the definition, but corruption in the public sector is a cancer and it needs to be cut out. There are members of the Civil Service or public service who are engaging in such practices, and I would ask the Solicitor General how many cases alleging perjury and perversion of the course of justice, have been given to his department and acted upon?

#### **The Solicitor General:**

The Deputy has just raised another category of offence, which is perversion of the course of justice. I am not in a position now on the floor of the Assembly to undertake a detailed investigation in relation to that other category of offence. But I repeat my earlier answer that in relation to offences of perjury and misfeasance in public office, there are no more than 5 of those sorts of allegations. Those have been investigated. One is still under the course of investigation but so far we are not bringing prosecutions in relation to each of the allegations of the incidents that have been raised with us. But again that is no surprise because misfeasance in public office, there is a very high test in order to satisfy that particular offence. Again, I repeat my earlier answer, that I am not troubled by the lack of prosecutions for those offences. Although I do agree with the Deputy that they clearly are extremely important types of offending and if there were to be a set of facts or a complaint, which did in the Law Officers' Department meet the evidential test, clearly it would meet the public interest test. But if there were a case in that category then we would prosecute it.

**3.5 Deputy R. Labey of the Minister for Home Affairs regarding the differences between Jersey's gun control and ownership laws and equivalent legislation in the U.K: [OQ.40/2018]**

Will the Minister advise whether differences between Jersey's gun control and ownership laws and equivalent legislation in the U.K. arise from conscious policy decisions and state what measures, if any, are being taken to better align the Island's legislation with the Firearms (Amendment) Act 1997?

**Deputy K.L. Moore of St. Peter (The Minister for Home Affairs);**

The Assistant Minister, the Constable of St. Lawrence, will answer the question.

**Connétable D.W. Mezbourian of St. Lawrence (Assistant Minister for Home Affairs - rapporteur):**

As with U.K. legislation, the Firearms (Jersey) Law 2000 provides for rigorous and thorough checks to be made on those members of our community who wish to possess, purchase or acquire firearms. We do differ to the U.K., in that we certificate air rifles and they do not. Of course we are always conscious and aware of policy developments in other parts of the British Isles in relation to this matter. In fact, the Deputy will be aware that at the next sitting I will be proposing that we bring into force the Export Control Law, P.24/2018, which will allow an order to be made, which will bring Jersey into line with U.K. and E.U. (European Union) standards for the control of exports and this of course includes arrangements for firearms.

**3.5.1 Deputy R. Labey:**

I am disappointed, not obviously to engage with the Assistant Minister, but I would have liked to have questioned the Minister on this issue and I do not know whether it might have been a point of courtesy to ask me if I was happy to have my questions answered by the Assistant Minister or whether that is in the Minister's gift. The Assistant Minister is also a Constable and I would like to have spoken to the Minister on her policies on this issue. But I will continue, if I have to.

**The Bailiff:**

You do not have to, but if you want to, you can.

**Deputy R. Labey:**

The U.K.'s procedure could be categorised as putting up as many barriers as possible to assume the worst rather than hope for the best. There are stringent psychological checks on the mental state and the home life and the history of the individual, any trace of alcoholism, *et cetera*. Is the Assistant Minister saying that our application controls are as stringent as the U.K.'s and if they are not why does she think Jersey does not need to have a stringent legislation?

### **The Connétable of St. Lawrence:**

I certainly would not for a moment say that we should not have as stringent legislation in place in Jersey as the U.K. have, but as Members will know, under the 2000 law, the Parish Constables, as the Deputy has just alluded to, are in the vast majority of cases responsible for the grant, variation and revocation of firearm certificates. In undertaking our responsibilities for granting firearm certificates the law clearly states the Constable is to be satisfied that an applicant is fit to be entrusted with a firearm, is not prohibited by law from possessing a firearm and has good reason to possess, purchase or acquire a firearm or ammunition. We also have to be satisfied that an individual can possess firearms without being a danger to the public. To this end, and as part of a standard application process, the Constable will refer the application to the States of Jersey Police for full background checks, including criminal record checks. We also refer to the applicant's G.P. (general practitioner). In fact, on the application form an applicant self-certificates and answers questions on a number of medical conditions, whether or not they have suffered from them. A lot of those questions are really directed towards the state of their mental health. The Constable refers those responses to the applicant's G.P. to be satisfied that they have advised us correctly on their medical condition. We also meet with the individuals to satisfy ourselves as to their fitness to hold firearms and, of course, security checks are undertaken at their premises to ensure that the firearms they have held are held securely and would not be able to be removed. I think most Constables insist that firearms are held in steel gun cabinets, which comply to British standards. I would conclude that the Constables undertake rigorous and thorough checks to ensure that the public safety is not put in jeopardy.

### **3.5.2 Connétable J.E. Le Maistre of Grouville:**

I wonder if the Assistant Minister would agree with me that target shooting is very much a part of our culture and that provided the safeguards are in place - and I believe them to be so - that it should not be discouraged?

### **The Connétable of St. Lawrence:**

I would agree.

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

I know that the Constable of St. Lawrence goes way beyond what is statutory in terms of checks of firearms from feedback that I have had on the way that Constables deal with these matters. However, there is one thing that concerns me with the application process. With an application form the Constable will know that one has to state the reasons for possessing the firearm and there are usually 3 reasons: sporting reasons, perhaps pest control and maybe it is an antique or family heirloom. Can she tell me what checks are then done to ensure that the reason given for owning that firearm is happening? In other words, do they join a sporting/shooting club, do they attend it? What checks are done to follow up to ensure that the purpose of owning that firearm is happening?

### **The Connétable of St. Lawrence:**

I do not do follow-up checks when I interview applicants for firearm certificates. I establish at the time whether they are a member of a particular shooting club and, indeed, that is something that they put on to their application form anyway. The Deputy mentioned that a lot of people are collectors; that is correct. I believe that a high number of firearms are indeed held by collectors. There is no prohibition unless the Constable puts a condition on to a certificate because we are able to put any conditions that we choose to on a certificate. So if somebody says that they want to hold firearms for the purposes of being a collector and do not intend to use them, the Constable is entirely within their right to state that that is the only purpose for which the firearm can be held. We all decide on every single application the conditions that we wish to apply to that individual.

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

Is the Constable therefore saying that there is no actual follow up to ensure that the reason given that the applicant has given for owning that firearm is the case? In other words, they are members of a sporting club? In the case of owning weapons as heirlooms, as collectors' items, does that weapon have to be decommissioned in order that it cannot fire? If it is a collectors' piece then it is not going to be shot; should that not be the case?

#### **The Connétable of St. Lawrence:**

Certainly with regard to decommissioning a firearm, that is a condition that the Constable would make, having met with the applicant.

[10:30]

I know that many of us do recommend that firearms be decommissioned. The purpose for which members of the public choose to hold firearms are as the Deputy mentioned, be that for rifle shooting, as a collector, or as a member of the shooting fraternity, I do not ... there is nothing in the current 2000 law which says that there needs to be any follow up to ensure that the reason given for possession is satisfied. The Constable makes that decision when they meet the applicant at the time and would not issue a certificate if they were not satisfied with the responses that they receive.

### **3.5.5 Deputy R. Labey:**

Is the Assistant Minister saying that the department's policy is that there is no need to upgrade the application process book on ownership to make it more stringent, in line with the U.K., and what we have in place now is fit for purpose and as safe as can possibly be?

#### **The Connétable of St. Lawrence:**

The Assistant Minister chairs the Firearms Liaison Group, which is a group that was set up prior to the 2000 law being introduced. The Firearms Liaison Group consists of members of the shooting fraternity: the chairman of the Firearms Council and 2 other members of the shooting community, including a firearms dealer. We meet regularly to discuss developments within the shooting community and to discuss developments within other areas of the British Isles, as I mentioned earlier. We work together to consider any necessary changes that may be required. What we have identified is that, for instance, we should be updating the application form to make it a little bit more stringent, which is what we are looking to do with the Comité des Connétables. As the Deputy knows, we are coming to the end of this Assembly. One of my recommendations to the next Minister for Home Affairs is that a review be undertaken of our Firearms Law because it is coming up to 20 years and there is always the need to be aware of changes and developments in other jurisdictions, and while we do our utmost to mitigate any potential mishap over here, I believe that the law as it stands has done a good job on that but, as I said, we should not be complacent, we are not complacent, and my recommendation is that a review be carried out.

### **3.6 Deputy M.R. Higgins of the Chief Minister regarding the number of cases of alleged corruption in the public sector that had been made to him since he became Chief Minister: [OQ.43/2018]**

Will the Chief Minister advise how many cases of alleged corruption in the public sector have been made to him since he became Chief Minister, if any, and what actions he has taken regarding any such claim?

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



While I do not keep a running total, I have over the years met with members of the public who have made such allegations. Alleged criminal offences should of course be reported by the public to the police who have the necessary powers to investigate the matter, and this has generally been my advice in such circumstances.

**3.6.1 Deputy M.R. Higgins:**

As the Chief Minister knows, the police in the past have failed to investigate some of these alleged offences, in fact I say it was cursory, they knew the people concerned and there were no proper investigations. The Chief Minister has seen evidence recently of allegations of perjury, perverting the course of justice and misconduct in public office. I am sure he agrees with me that this type of activity should not be allowed to exist within our Island and I would ask what steps he would say, if the police fail to take action and the prosecuting authorities fail to take action, what we can do next?

**Senator I.J. Gorst:**

There is a whole host of difference between failing to take action and a perception of failing to take action. The Deputy knows that there are processes in place for either Members of this Assembly or members of the public who feel the way that the Deputy has described. We have made great process in publicising those processes, be they about the Prosecution Service or be they about the Police Service, and members can follow those processes.

**3.6.2 Deputy M.R. Higgins:**

When you have virtually exhausted every one of the official routes because people are not taking the action they should do, and I criticise here also the Police Complaints Authority who were absolutely unbelievable in looking at a complaint... said that the person concerned would be interviewed by inspecting officers and nobody came near him, asked to see any evidence, and yet the police dismissed it as not valid. Now, when you are faced with that and we go through the various channels, what is the route? Do I have to stand here and start naming names or do we have to go to the press? We must have some way of trying to deal with these matters. Could I ask the Chief Minister what his solution would be to this?

**Senator I.J. Gorst:**

I know the Deputy is referring to an individual case and it would not be right for me to be drawn on that. He and I have had discussions with officials. I say in my department, we do not work like that anymore, we work in a much more joined-up way, and that process is ongoing and it would not be right for us to consider it further in this Assembly.

**3.7 Deputy M. Tadier of the Minister for Infrastructure regarding the number of concessionary disabled bus passes issued since the implementation of the scheme: [OQ.45/2018]**

How many concessionary disabled bus passes have been issued since the implementation of the scheme?

**Deputy E.J. Noel of St. Lawrence (The Minister for Infrastructure):**

Firstly, may I thank Deputy Tadier for asking this question on what is just over the first anniversary of the introduction of this pilot scheme. I can inform Members that, as of 28th February, there have been 346 Avanchi Access disabled person bus passes issued. This number has grown from the initial 152 that were issued in the first month when the scheme was launched, as I said, on 1st March 2017.

**3.7.1 Deputy M. Tadier:**

It is good to know that hopefully for those 346 people it has made a real difference to their lives and perhaps to their mobility and independence. Can the Minister state how those figures tallied with the expectation, in particular the figure which he provided in terms of cost, had the States been asked to meet the full cost of those bus passes? How much would it cost, for example, for those to be provided by the public purse rather than the individuals? If he does not know, would he perhaps comment on the first part about the take-up?

**Deputy E.J. Noel:**

The estimated take-up figures were based on similar schemes in England and Scotland. We have had substantially less than that and that is probably down to the quite narrow definition that the Deputy put in his proposition to this Assembly, which was approved by this Assembly. My officers are now bringing forward the review of this scheme, which was due to take place prior to the end of 2019, and will be reviewing the scheme in 2018 to see if we can expand the quite tight definition of those who are eligible for these passes. So hopefully by the end of this year we will have a bigger pool of people being able to access this particular service.

**3.7.2 Deputy G.P. Southern:**

The Minister says that the estimates of penetration would be based on the U.K. schemes, similar U.K. schemes, and he has failed to meet that estimate; he said we are on the low side, I believe he said. What would he suggest is a reasonable target to now expect the department to meet in order to meet the need for free bus passes for the disabled?

**Deputy E.J. Noel:**

Deputy Southern is getting a bit confused I feel. The uptake of this service are those people that qualify under the definition that his colleague from Reform brought to this Assembly and this Assembly agreed. We are looking now to expand that definition and for individuals to come forward after we have done that review who may be eligible for this scheme. I would like to take up a point that Deputy Tadier made in his first supplementary. It has made a real difference to those 346 individuals that have the passes and we are still having to make sure that, as our original intention prior to this scheme coming in, to outreach because not all those that have disabilities, a bus service is not necessarily the answer for their mobility issues and we are looking at providing a range of solutions to their mobility issues.

**3.7.3 Deputy G.P. Southern:**

Could I suggest that the Minister disregards looking at alternatives and concentrates on what he has at the moment? What does he think would be a reasonable target to achieve following his changes, his increase in eligibility, which he proposes, during 2018 for example?

**Deputy E.J. Noel:**

There is no target, we are there to provide a service to those Islanders that need it. There are currently 346 individuals that have taken up that service. There is no barrier to individuals apart from meeting the criteria for those bus passes to access that service. We are now looking at, and we have been quite flexible and quite liberal in the interpretation of the narrow rules that were brought to this Assembly, by allowing people who do not quite fit into those rules of an Avanchi Access disabled person pass. But that is not the answer for everybody; having access to a bus service, if you are disabled, is not necessarily the answer to your mobility issues and we are expanding our options to the public so we can meet the requirements of those who need additional services.

**3.7.4 Deputy G.P. Southern:**

The Minister said there is no barrier to seeking to apply for this scheme. Is it not the case that the fee of £15 - I know the Minister might think that incredible - is a barrier to some on top of the cost of

taking the photographs as well, is it not possible that this, in order to make it more accessible to those in real need, should be funded directly by the States and not by the individuals concerned?

**Deputy E.J. Noel:**

No, I do not think the administration charge for processing the application is a barrier. It is exactly the same charge that is levied for those who wish to have a blue badge for their disabled parking.

**Deputy G.P. Southern:**

If I may ...

**The Bailiff:**

Thank you, Deputy. I am calling on the Connétable of St. John.

**3.7.5 Connétable C.H. Taylor of St. John:**

Does the Minister agree with me that, with the uptake we have had, this has been a very great success?

**Deputy E.J. Noel:**

Yes, it has been a success, but we do have some additional budget, we have not used all the budget that was allocated to this, and so we are looking to expand the scheme to try to help more Islanders with their mobility issues. But we have also used the money, as it was in the proposition, to improve access to the buses. We carried out an audit to make sure that bus stops are improving, we have lowered kerbing in streets where we can, and that is all part of opening up the bus network, not just for those that would qualify for the disabled pass, but for all bus users.

**3.7.6 Deputy G.P. Southern:**

We are all fully aware that this Reform Jersey scheme is a success, but we would like the Minister to build on that success and improve the numbers of people eligible, especially among the non-car-owning population who have disability because, while they might be able to afford the blue badge pass, another alternative number of people may not be able to afford £15 for the free bus pass.

**Deputy E.J. Noel:**

For once, I agree with Deputy Southern and prior to this scheme coming into place I invited Deputy Tadier to be part of this scheme and to help us design it. He declined to do so. **[Approbation]**

**3.7.7 Deputy M. Tadier:**

I am glad to hear that revisionist history from the outgoing Minister for Infrastructure. Clearly the Minister forgets that this would not have been done, because it was a promise that the Minister was at risk of renegeing on before the proposition was brought to the Assembly, to get him to fulfil his election promise.

[10:45]

But that is in the past now and we have a scheme, which 346 people are benefiting from. Does the Minister accept that on top of the £15 fee, which can act as a disincentive, and on top of the need to provide photographs and on top of the need potentially to book a G.P.'s (general practitioner) visit in order to get the reference and the signature for that, that it does provide a barrier, especially for those on low income? That it is not a fair comparison to compare it with a free parking disc for somebody who is rich enough potentially to own a car, but for people who do not even have enough money to own a car the bus may be a real lifeline for them, and that for those 346 people the total sum comes to £5,190, which is not a lot of money for the States to pay. The States should and could consider covering the cost of those passes so that they are free so that we can determine what the real need for this service is. Does the Minister agree that we need to increase the numbers, not just in the

eligibility criteria, but by reducing the cost to zero to make it a truly free bus pass, we can ascertain what the latent demand out there is?

**Deputy E.J. Noel:**

I agree that we need to have access to mobility for all those who require it. I would like to refer the Deputy to look at the application forms for applying for an Avanchi Access card, because you do not need to go to your G.P.; we were very, very aware of the fact that we needed to keep the cost down for the individuals. So those people who are eligible for this do not need to get their forms signed off by their G.P., there are other carers and there are other professionals who can certify that they are able to use this scheme.

**The Bailiff:**

That brings this part of question time to an end. We now come to Questions to Ministers without notice.

**4. Questions to Ministers without notice - The Minister for Treasury and Resources**

**4.1 Deputy C.F. Labey of Grouville:**

Why was a U.K. recruitment agency employed to find £200,000-plus per annum jobs for 2 Deputy Director tax jobs for our Tax Department, thus giving a U.K. agency the 15 per cent commission, which equates to about £50,000?

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

The Deputy asks a very good question and at the heart of it comes down to finding the right qualified individuals to fulfil the roles required and that had been tried on a local basis without success, as I understand it, and following that the net was thrown wider to try to attract the right capabilities for the roles necessary. Of course I believe that succession planning is absolutely key and that there must be greater aims ...

**The Bailiff:**

I have to stop the Minister; we are now inquorate. Can I ask Members in the coffee room please to return to the Chamber as we are inquorate? Will you please have the roll call in the electronic way? Please close the roll, thank you. What are the numbers present? We have just had 3 more come back. I will ask the Greffier to reopen because 3 Members have now returned. I can see that there are 28 people even if 3 Members have decided not to press their buttons to show that they are here. Very well, we are now quorate, thank you. The Minister for Treasury and Resources, if you can remember what the question is and what your answer is?

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

I hope it was a good answer. I think I will let the Deputy ask a supplementary, I can see she is itching to do so and I trust that the delay we have had will not count against my time.

**The Bailiff:**

I thought that you would want it to. **[Laughter]**

**4.1.1 The Deputy of Grouville:**

I hope it will not either. Yes, I have a supplementary because the Minister did not answer the question I was asking. I was asking about the U.K. recruitment agency being used, as opposed to the jobs being advertised. Although I welcome his comments that they were advertised locally, but I was asking about using a U.K. recruitment agency for this purpose.

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

That decision was taken in order to try, as is often the case through an agency who have knowledge of individuals who may not necessarily be actively looking but can be encouraged to take up applications for roles that are suitable in specialist areas and that was the purpose for the agency being involved in this case.

**4.2 Deputy G.P. Southern:**

What further investigation, if any, does the Minister have in hand into the Reform Jersey proposal to establish a single rate of income tax at 25 per cent and, if none, why not?

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

I think the Deputy is aware of the review of the personal tax system that is underway at the moment and I think I have said in this Assembly previously that, until that is completed, any proposed or consideration for any changes of the nature mentioned by Reform in the past would not be considered. It is a complex area and the review has to be completed first and I gave the Deputy previously the timelines for that completion.

**4.2.1 Deputy G.P. Southern:**

Does the Minister accept that it is a satisfactory proposal to stop other avenues of research because his officers are too busy doing the personal assessment system? Does he require extra staff and will he come to the Assembly if he does so in order to complete what should be a wide-ranging examination of what is possible and not a limited one?

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

Of course, resources are always a consideration and resources have to be, as Members would expect, targeted in the most appropriate way - funds are not limitless - and if the Deputy is asking whether we require further resources in order to pursue his particular agenda, no, it is a matter of prioritisation at the moment and the Tax Department and Treasury are working on the priorities that they believe the most appropriate.

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

The Minister issued R.17, which is a response to my successful Budget amendment asking him to bring forward a report on the borrowing of the much-needed hospital. Does the Minister really believe, after reading this report, that a public-issued bond is the right way to proceed? Does he really believe what it says in the report that this is not the least most expensive form of borrowing; that this is not a great big equity punt; that this is not a great big interest rate punt, gambling the people the people of ...

**The Bailiff:**

One or 2 questions at a time.

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

... Jersey's money? Does he really want to carry on in trying to effectively mortgage Jersey's future on such a massive equity and interest rate punt for 40 years?

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

This Minister takes professional independent advice and, as the Senator well knows, and following the Budget amendment, the advice was obtained and has been published in the form of an R. I have considered that and I do still believe that the proposed bond issuance is the appropriate way forward.

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

I also put an amendment in the Budget that the Minister should bring forward legislation to put on a proper statutory basis this so-called T.A.P. (Treasury Advisory Panel) advisory group, which I did create, but never did I think it was going to be used for a debt instrument. Could the Minister indicate whether he is now no longer going to take any States approval and that he gives a timetable for when he proposes to issue this reckless public bond in my view.

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

I am pleased that the Senator used the words “reckless in his view” because that is an opinion and of course he is entitled to his opinions. With regard to the Treasury Advisory Panel, which since the Senator originally set it up has been significantly strengthened, including with external independent advisers, and indeed goes out and seeks advice from professionals in appropriate fields, I am satisfied, and of course there were requests from the Senator to put it on to a statutory basis and that was accepted.

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

Could he confirm that he is now proceeding on the basis of issuing a bond and when is he going to do it?

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

Following an undertaking to this Assembly, I have made it clear that, until there was clarity around the budget for the hospital, the budget as Members will know is set at £466 million. Following the planning inspector’s report, the hospital team are working on a new application and they are looking at the cost implications and until those are known and we are satisfied, which we believe to be the case but we have to be satisfied that the proposal is going to be within budget. So until that is done no further work is being undertaken on the bond.

**4.4 Deputy M. Tadier:**

From henceforth will the Minister issue a decree to his Council of Ministers colleagues and his department to stop using the term “20 means 20” and start using the phrase “21 means 21”?

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

No, Sir.

**4.4.1 Deputy M. Tadier:**

Why not? Is that not the truth that the Ministers talk about a headline tax rate of 20 per cent but of course we know from this Assembly that 1 per cent long-term care tax, which it now is, it has been confirmed, is part of people’s tax burden and that it may be going up and we should talk about a 21 per cent tax rate because the days of 20 per cent limits are well gone under this Council of Ministers? Should we not be honest and should the Council of Ministers not be honest with the electorate for the next election and talk about the 21 per cent tax rate that they have implemented?

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

No, I do not agree with the Deputy. Our headline rate is 20 per cent of tax. We have had this debate before and I really do not think there is very much more to add.

**4.5 Senator S.C. Ferguson:**

The Minister is well aware that I have been calling for an overall review of the tax, not just a review of personal tax. Why is the Minister stalling this?

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

I would not dream of stalling the Senator. I have simply made it clear that there is a batting order and we have undertaken to review the personal tax system. That is a process that will take some time, as Members are well aware. Once that is complete then it is the appropriate moment to look at other matters that are linked and related.

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

Supplementary. But as the F.P.P. (Fiscal Policy Panel) say, all these little charges that are being brought in to confuse the issue and add an extra tax burden, you know, they should be being reviewed at the same time. When is the Minister going to stop bringing in ... or the Council of Ministers going to stop bringing in all these little bits and pieces - waste charges, long-term care charges - when are these going to be stopped and we review the whole thing instead of having a sort of Lego-type setup for our tax system?

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

The Senator I assume is referring to the charges that form part of the Medium Term Financial Plan 2015, which were approved by this Assembly. They are yet to be delivered on and in fact that is another matter altogether. The M.T.F.P. (Medium Term Financial Plan) at the time was a package of measures, which included revenue raising. The waste charges the Senator mentions were part of that and, as Members know, have been deferred for now, but are an integral part of ensuring sustainable public finances into the future. With regard to her broader question, as I have said, once the personal tax system is reviewed then that will allow us to consider further work more broadly on tax.

#### **4.6 Deputy J.A. Hilton of St. Helier:**

Is the Minister aware of the unacceptable waiting times being experienced by the public on a daily basis in the Income Tax Department and, if so, what, if anything, does he intend doing about it?

[11:00]

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

I would welcome from the Deputy any specifics that she is referring to in terms of individuals that may have raised issues, and I would certainly pick those up. But that aside, I am aware that there have been delays in the Income Tax Department and I know that the Comptroller has issued an apology in that regard. There have been difficulties with the systems and, as such, it has caused some delay. But the work is underway to rectify the situation and hopefully that will be the case as quickly as possible.

#### **4.6.1 Deputy J.A. Hilton:**

Supplementary. I do speak from personal experience. I have sat in the Income Tax Department myself a couple of weeks ago and so experienced the delay myself. But I am not talking about myself, it is about other members of the public, and I became aware from talking with other people that some of them had been waiting over an hour and I think it is unacceptable that people are being made to wait such a long time for counter service and something needs to be done about that.

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

I was simply asking the question of the Deputy because I thought there might be some particular individual she wished to raise an issue privately about, which I am happy to listen to. I am aware of the problem, it is unacceptable, the Comptroller has issued an apology and work is underway to try to resolve the situation.

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

Could the Minister update Members as to whether we are still on target to balance the budgets by 2019? But another matter is also exercising me: is the Minister concerned about inflationary pressures feeding through to prices in the construction industry and what can be done to contain such inflationary pressures, which is becoming a growing concern?

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

Yes, with regard to balancing budgets by 2019, which was a stated aim at the time of the Medium Term Financial Plan in 2015, Members may recall that plan had a surplus by 2019 of, in round figures, £3.6 million. In the update of the Budget 2018 the latest figures showed a surplus, albeit slightly reduced to £2.4 million. Members will be aware that level of surplus is very small but nevertheless we are still showing balanced budgets. I would though point out, as I was alluding to a moment ago, the M.T.F.P. was a package and it is important that Members recall and remember that we have to deliver on the revenue-raising elements of that package as well, particularly bearing in mind the additional costs that have been voted through in recent times. I think particularly of the States paying rates, £1.8 million recurring, but no revenue source for that. The single parent component of income support that was taken away; that is going to be £2.7 million I think, off the top of my head, recurring from 2019. So we are incurring greater costs and we are not putting in place at this stage the revenue to deal with it. But, as we stand, yes, we are still balancing budgets. So there was a second question, if I may deal with that, and that was with regard to the competitiveness I think of the economy around the construction industry, in particular. I was pleased to see, just as an aside, that the fuel market has been improving with a new entrant. That is very positive. We have seen that and obviously a functioning Competition and Regulatory Authority is important; there is a review underway of that particular area. I am aware in construction of the pressures, inflationary pressures, we can look at markets or areas of construction like cement where we are completely out of sequence with the U.K.; the U.K. £110 per cubic metre for cement, in Jersey we are being charged £260. It is utterly outrageous that those type of differences are occurring here in the Island. It feeds through into all forms of construction and ultimately house prices and something needs to be done.

**Deputy A.D. Lewis:**

Supplementary ...

**The Bailiff:**

No, I am sorry, Deputy, we are running short of time and you also managed to get 2 questions on completely different subjects into one and you are going to suffer for it. [Laughter]

**4.8 Deputy S.Y. Mézec of St. Helier:**

Following on from Deputy Tadier's question about the 20 per cent tax rate, would the Minister therefore like to apologise to Islanders who receive a slip from the Tax Department that says 21 per cent on it, would he like to confirm that is obviously an administration error and offer a refund to those who are paying 21 per cent?

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

No, because that refers to long-term care. The answer is no. Our basic rate of tax is 20 per cent, as the Deputy well knows.

**4.9 Deputy R. Labey:**

I just wondered if the Minister for Treasury and Resources could tell us what has happened to the health charge and if it is planned that it should return? Will we know about that before May?

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



This Assembly decided that a health charge was not a position that it would support and therefore there are no further plans for a health charge, although funding for the Health Service is important. Members will also be aware that budget measures approved by this Assembly, Budget 2018, raised £12.3 million of the £15 million required, so that in the short term has bridged the gap as far as health. But in the future and going forward from the next M.T.F.P. 2020 onwards, further sustainable measures regarding health will need to be considered and put in place.

**The Bailiff:**

Minister, at your request, I introduced an extra 4 minutes of questions for you and we have now come to the end of that part of question time. I am sorry to ...

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

Can I just formally thank you. [Laughter]

**Questions to Ministers without notice - The Minister for the Environment**

**The Bailiff:**

I do not often get thanked. Thank you very much. [Laughter] So apologies to those Members who were not able to get their questions in. We now turn to questions for the Minister for the Environment.

**5.1 Deputy J.A. Hilton:**

How concerned is the Minister at the news recently reported that another farming chemical used by potato growers has polluted one of the feeder streams into the Queen's Valley Reservoir? This comes on top of Handois Reservoir being closed 6 weeks ago, again because of a pollution incident. What extra does the Minister believe that he can do to stop these incidents happening?

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

Chemicals in water courses are a problem that occur at this time of the year, especially in times of high rainfall. We know we have had, as the Deputies have pointed out, instances at Queen's Valley where metribusine caused the reservoir to be closed, and more recently in Handois where the chemical is azoxystrobin, has been detected, which resulted in the closure of that reservoir. In both cases I can tell the Deputy that the offences, if they are offences, are being investigated; certainly my officers are out trying to test and decide where these chemicals have come from. But of course it does not automatically follow that these chemicals are being used illegally or being used by people who are not qualified or machines that have not been calibrated. Certainly in a recent incident it was the result of extreme rainfall, and I am aware that happens at this time of the year. All I can tell the Deputy is we continue to work on these, we continue to rate the particular chemicals that we use in our countryside so that farmers are well aware of the ones they should not use in particular areas. But I would say to the Deputy the Water Plan that was approved in this Assembly in 2016, the details of that are being worked on in the Law Officers' Department and are very shortly expected to come back to the House later on. Somebody will come back to the House later this year with some legal ability to go out and do some work in catchment areas to preclude chemicals being used for certain reasons.

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

The latest F.P.P. report that was issued last week estimates that house prices will be estimated to rise by 3 per cent in each of the next 3 years. House prices, as we discussed in the sitting 2 weeks ago, are inextricably linked with supply. I have noticed that there have been a number of St. Helier developments of refurbishing office blocks being now put forward. What is the Minister doing in

order to actively encourage this regeneration of St. Helier, which was at the heart of the Strategic Plan that this Assembly adopted?

**The Deputy of St. Martin:**

We have various documents, not least the North of Town Masterplan, which identify key sites, which will be used for housing in the future, and I can only agree with the Senator when he says that supply is key here. Members will know that we have rezoned recently a number of sites - greenhouse sites - Samarès Nursery in particular is one that comes to me, and another one at Grouville, which is very near to completion. We currently have 2 public planning inquiries on the go, one of which concerns an area of a field at St. Peter. The public inquiries are there because the applications both go way outside the Island Plan and are using green zone sites, but I do say to the Senator, any sites that come forward for housing are to be welcomed. We know there is a demand, we know the more demand there is the higher the prices go. Supply is the key and I urge the Minister for Housing, she is not here at the moment, but she needs to come to me urgently if she decides that there is not enough supply coming forward so I can then move at her request to rezone even further sites.

**5.3 Deputy G.P. Southern:**

What initiatives does the Minister and his department have to move to renewable energy targets rather than simply content themselves with the low carbon targets?

**The Deputy of St. Martin:**

It is absolutely wrong to say I am content with low carbon targets and not sustainable. This has not been a subject which I have been particularly successful with in my 3 years as Minister, but with the assistance of people like the Deputy of Grouville we are starting to make strides. It is really important that we do start to use more sustainable energy. My department are actively looking at schemes for wind farms where we know the French, just outside to the southwest of our territorial waters, are putting a wind farm. We know there are other possible ways of creating sustainable energy using tidal, using lagoon power. Obviously solar is something which is coming on in leaps and bounds when it comes to technology. Wind, I am sure, is not something we are quite so keen on because of the aesthetics of wind farms, but there are a number of initiatives and my department are actively looking at all of these, including the most recent one, which is extracting the heat out of the ground and turning that into energy.

**5.4 Connétable A.S. Crowcroft of St. Helier:**

I am sure the Minister will agree there has been some progress in delivering the North of Town Masterplan, most recently by Andium Homes' wish to increase the size of the Town Park and provide a public car park on the former Jersey Gas site. But does the Minister agree with me that the land to the west of Bath Street, the large brownfield sites surrounding the former Odeon, is a blight on the area and a waste of precious land, which could be used more wisely? Further, will he undertake to work with the Minister for Treasury and Resources and Minister for Infrastructure to prioritise work on Midvale Road, which is another important part of the North of Town Masterplan?

**The Deputy of St. Martin:**

The Constable will know that I have been in contact with the Minister for Treasury and Resources around the funding for the Midvale Road scheme, the detail of which I have now received on my desk. It is an issue, but it is part of a plan to improve the quality of St. Helier, especially the north of town, for residents in those areas and we do have a great scheme, which we would very much like to implement as part of the Future St. Helier Group working with the Minister for Infrastructure and the Constable. So I will progress that work. But when it comes to the North of Town Masterplan, Members will be aware, Ann Court, Ann Street Brewery, Gas Place, as the Constable mentioned, a BOA warehouse next to Co-op Grande Marche, are key intervention sites, which we have movement

on. But the one really significant key intervention site, as the Constable quite rightly says, is to the west of Bath Street and that site at the moment does not have the benefit of any approval from the Planning Department and I am not aware that the owner of the site is coming forward with anything. I can only agree with the Constable, and I have said this publicly before, I say it again now, I see no greater waste of space in St. Helier than the use of surface-level parking, cars should be parked underground, they can be parked at road level if there are buildings on top, but using a site in town for nothing else except parking a car is a waste of an asset, a waste of a resource, and we must try to do better. We have great pressure on development in town, parking cars on open sites is not the best way to do that, so I thank the Constable for his question, we do have the opportunity in Bath Street to do more retail, office, residential, shopper parking, long-stay parking, but the main opportunity we have there is to improve the public realm. We are making great strides to improve this part of town and that key site west of Bath Street is absolutely key and I would urge, and I have said this before publicly as well, I urge the developer who wants to come forward and discuss with me, see how we can make some progress, I would be only too happy to do that.

### **5.5 The Deputy of St. Mary:**

In the Minister's report on Planning Committee decisions during 2017, the Planning Committee is recorded as having expressed some frustration at the length of time it was taking to review the existing policy in relation to the replacement of historic windows and requested that this be addressed. The Scrutiny Panel has similarly expressed concerns during its period in office. I am pleased to note that the Minister anticipated that new guidelines would be published before the end of the first quarter of 2018. With that rapidly approaching, could he please confirm that is still his target?

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

I am very happy to do that. I apologise to Members for this work not coming forward more quickly. My Policy Department are very hard-pressed by me and I have a lot of priorities, but I am aware that only last week a paper arrived on the desk of my chief officer for review with myself and that is the work the Deputy refers to, and I can assure Members it will be published before the end of Q1.

[11:15]

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

Is there any update on the threat posed by the Asian hornet and are any additional resources being made available this year to monitor and tackle the problem?

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

Asian hornet is one of these invasive species, which we are going to have to get used to seeing, I am afraid. The attempts to keep it out of the Island have failed; it is common now around Normandy and Brittany with thousands of nests being identified every year. It has arrived on the Island last year with a blaze of publicity and my officers in my department were very keen to get out and destroy nests where they could find them. But I have to tell Members that I think we need to get used to having this creature on our Island and we will have to do the best to live with it. There are ways that beekeepers, because it is a great threat to beekeepers, can move forward and where nests are identified in public places and cause a risk to the public my officers will continue to act. We have been to France on to the Continent, taken some advice, trained over there, brought back some new kit that we did not have before, protection and ways of destroying nests, and I can only say to the Constable we are on top of it as much as we are and where we need to act we will. But I think we need also to expect to see these creatures more often, as unfortunate as it may be.

### **The Bailiff:**

Can I say to Members that there are numbers of Members wanting to ask questions; I am not permitting supplementaries, so please frame the real question that you want to ask the first time around and, Minister, perhaps you could try to be as brief as possible in your replies

**5.7 Deputy M. Tadier:**

What does the Minister understand by the term “food security” and how does he assess Jersey’s standards of food security currently?

**The Deputy of St. Martin:**

Food security can mean a number of things, but I guess at the end of the day it is about making sure you have enough food to feed your population. If the Deputy is referring to the possibility for Jersey farmers to produce all the food that the population requires, I think he will find that we may well fall short there. We need imports of food to keep everybody fed and, as regards food security, I think it would be a huge challenge for our local farmers, as few as they are now, to keep the Island fed 365 days of the year.

**5.8 Deputy A.D. Lewis:**

Following on from a question from Senator Ozouf: has the Minister received any formal requests during the life of this Assembly from the Minister for Housing to rezone land to enable sufficient increases in the future housing stock? Has he received any specific requests during this Assembly from the Minister for Housing to that end?

**The Deputy of St. Martin:**

No.

**5.9 Senator S.C. Ferguson:**

I understand that applications are being considered for an offshore bass farm. How will this affect the Minister’s restrictions on private and recreational bass fishing?

**The Deputy of St. Martin:**

The Senator must know an awful lot more than I do; it is complete news to me, and I would be amazed if anybody would want to try to grow fish offshore. We do not have the environment to do it like a Scottish loch where protection for nets would be greater.

**5.10 Deputy M.J. Norton of St. Brelade:**

Talking offshore, I know the Minister will be aware of the offshore wind farm developments in St. Brieuc and I wondered if you could update the Assembly of any work that we may be doing that could be of benefit to Jersey, as we will be seeing these wind turbines 23 miles southwest of Jersey in years to come.

**The Deputy of St. Martin:**

We have commissioned, inside the department, some work to see about the viability of offshore wind farms and certainly that would be the area that, if Jersey were to look, would be the area that we would look, and I am sure we would also talk to our French neighbours about the possibility of potentially working with them if we went that far, but certainly at the moment I can say to the Deputy that it is not something that is top of our priority list when it comes to sustainable energy.

**5.11 Deputy J.M. Maçon:**

The Council of Ministers have put St. Helier as one of their strategic priorities, the North of Town St. Helier Masterplan in 2011; that is when it was adopted by the States Assembly. We know for example the Waterfront Masterplan of course has now been referred back for review being a bit

dated. Is the Minister of the opinion that the North of Town Masterplan should be subject to a similar review given the time that has passed? If not, why not?

**The Deputy of St. Martin:**

It is true to say that the Waterfront Masterplan is something that I intend to repeal and adopt a new interim planning guidance for that area. But it has come to our notice that really what we need for St. Helier is maybe a plan, which encompasses the whole of St. Helier and makes sure that North of Town Masterplan and Southwest of Town Masterplan join up and that we do not have any part of St. Helier, which is not planned for. So, in that regard, I would say to the Deputy the North of Town Masterplan will not be reviewed but we will in very short order be looking at the whole of St. Helier to provide a plan that works well together.

**5.12 The Deputy of Grouville:**

I totally support the stance that the Minister is taking on banning plastics. Does he have a timeframe on this and where Jersey could really lead the way?

**The Deputy of St. Martin:**

The Deputy of Grouville is quite right, we have recently launched an initiative and it is not Government that has launched the initiative, it is very much joint with people like Sheena Brockie, Surfers Against Sewage, and others, and we are aiming for plastic-free Island status. We are very much hoping to announce that officially in June but that will involve, not only Government, it will involve individuals, pressure groups, and the commercial sector as well. I very much hope by that time that we will have a number of initiatives launched that will help to reduce single-use plastic and help to keep also our beaches free from plastic contamination.

**PETITIONS**

**6. Deputy M. Tadier – presentation of a petition on La Moye School pedestrian crossing**

**The Bailiff:**

That bring questions without notice to an end. Deputy Tadier, I understand you have a petition you wish to present?

**6.1 Deputy M. Tadier:**

Yes, and if I could just speak for perhaps one minute to explain what it is about. First of all I would like to thank a constituent of the La Moye area, Garel Tucker, the residents of that area, 157 of whom who do not necessarily all live in that area, but who have a concern about road safety and about the traffic flows along Route Orange specifically outside La Moye School, who are petitioning the Minister to implement a pedestrian crossing, a zebra crossing in that area, and they have signed it with a time deadline for the Minister to achieve that. I fully understand that of course there may be a discrepancy between the timeline that they wish and that of the Minister, but I do thank the individual and the residents for taking an interest in the area and so much so to present a petition to the States Assembly and to the Minister, and I have the said petition here, with a lovely ribbon it has to be said.

**The Bailiff:**

All right, there is ...

**Deputy G.P. Southern:**

Before we get on to business, please, if I may, because it affects business, may I inform Members that I wish to withdraw P.102/2017, Short-term incapacity allowance: lower threshold. I apologise

to Members if they have done preparation on this but I simply have not had the time to deal with the comments from the Social Security Department and therefore I wish to ... I do not consider it a matter of urgency and I would wish to withdraw it.

**Deputy M. Tadier:**

I am not sure if this is the appropriate juncture but I would like to ask whether the Assembly was content to take P.31 at this sitting. The reason I ask is that I think it is of sufficient public interest to put on this agenda and I think also practically speaking we have a relatively short agenda this week but that is not the case for the remaining sittings of this term. I have also spoken to Ministers who have indicated that they would be content for it to be debated at this sitting and it would certainly help me prepare and let people know whether they can expect hopefully a short debate on this issue today.

**The Bailiff:**

Do Members agree to take P.31 at this sitting even though it will not have been lodged for the relevant period under Standing Orders? That seems to be agreed, Deputy, so we will.

**STATEMENTS ON A MATTER OF OFFICIAL RESPONSIBILITY**

**7. The Assistant Minister for Economic Development, Tourism, Sport and Culture - statement regarding the withdrawal of the Draft Liquor Licensing (Jersey) Law 201-**

**The Bailiff:**

There is nothing under J, Personal Statements, under K, Statements on Matters of Official Responsibility, the Assistant Minister for Economic Development, Tourism, Sport and Culture, wishes to make a statement.

**7.1 Connétable S.W. Pallett of St. Brelade (Assistant Minister for Economic Development, Tourism, Sport and Culture):**

If I could just start by firstly acknowledging the apology from the chairman of the Economic Affairs Scrutiny Panel this morning, I thank him for that. I have taken the decision to withdraw the Draft Liquor Licensing (Jersey) Law 201-, hopefully it should have been 2018, which is P.103. Given that this draft law has been a decade in the making I think that both Members and stakeholders deserve an explanation of the events that have led to my decision, the key factor being the status and methodology of ongoing Economic Affairs Scrutiny Panel review of liquor licensing. Several Members will recall in the States in September 2007 when P.117/2007 was adopted that proposition called for a review of liquor licence fees. The States were promised that fees would be looked at as part of a broader review of the Licensing (Jersey) Law 1974 by the then Economic Development Department. That broader review was commissioned on account of the 1974 law being criticised for its complexity, its lack of scope to generate policy guidance, and its inflexible licence category system. Natural tensions between stakeholders were apparent as soon as that work began. Government departments had competing strategic policy objectives, they sought a new law that would in no particular order secure community safety, minimise crime and disorder, protect public health and help tackle harmful levels of alcohol consumption, while also promoting economic activity in the hospitality and the retail industry. Industry, charities, consumers and other stakeholders outside government, also held a range of legitimate views that were just as complex and challenging to reconcile. Public responses to 3 separate public consultations held between 2009 and 2016 have helped to illustrate the extent of that challenge. In early 2012, E.D.D. (Economic Development Department) proposed a meeting of all Ministers with a direct policy interest in alcohol licensing. That meeting led to the formation of the Shadow Alcohol Licensing Policy Group of Ministers and

Constables. That policy group known as the Shadow A.L.P.G. (Alcohol Licensing Policy Group) or the S.A.L.P.G. (Shadow Alcohol Licensing Policy Group), of which I am a member, began formally exercising political oversight of this issue in 2014. The outcome of its work was P.54/2017, which was lodged in June of last year and then re-lodged as P.103 in the autumn, so as to give Scrutiny more time to review the topic. When I lodged the draft law, neither I nor my Shadow A.L.P.G. colleagues were under any illusion that we had achieved a complete consensus position on all aspects of the liquor licensing policy. While we absolutely believed in the draft law, we anticipated a challenging debate that might focus on 3 key issues: what should be the core objectives of the Liquor Licensing Law; how should detailed licensing policy be set and by whom; and thirdly, who should determine licence applications with reference to the detailed licensing policy? For the record, the Shadow A.L.P.G. thought the licensing objectives should be the 5 listed in Article 3 of the draft law. We thought that the States, not the Executive, should have the final say on licensing policy and we thought that there was a strong case for moving the application process out of the Royal Court and into a new Licensing Authority. We wanted to establish whether the States agreed with us; we intended to use the States decision on what is now P.103 to inform the remaining work needed to bring a new law into force. Given the inherent public interest in this controversial topic, we expected that the States, when debating P.103, would want to refer to a report from Scrutiny. Regrettably, we do not have that report. The Economic Affairs Scrutiny Panel has been reviewing liquor licensing for some 14 months. That review has been conducted behind closed doors. I have not been formally called to give evidence to the panel in public on the specifics of the law or the underlying policy. I have no idea how many stakeholders have been able to express their views to the panel because witnesses have all been heard in private session and none of the panel's evidence has been published. The panel has not produced a final report, an interim report, or even a comment on the subject. As a former member of Scrutiny, I have to say that the panel's methodology is not one that I recognise and I felt it necessary to alert the Chairmen's Committee to my concerns. I admit to knowing at least some of the panel's views on P.103 because the panel has been pressing since November for the Shadow A.L.P.G. to agree to a series of amendments. Those amendments include the reinstatement of the existing Judicial Licensing Assembly, albeit in a slightly revised form. While we have negotiated with the panel in good faith, our difficulty has been that we do not really know how the panel has arrived at its views. My concerns regarding the panel's evidence base have only increased since 28th February, very recently, when I attended a Jersey Hospitality Association presentation together with members of the panel. Prior to that meeting, the S.A.L.P.G. thought that the panel had amassed evidence that industry favoured retention of the existing Licensing Assembly and had been working with the Shadow A.L.P.G. on amendment to P.103 on that basis.

[11:30]

It now seems that the industry is less than unanimous on that issue. In summary, I do not consider that it would reasonable to ask the States to debate this complex matter in the ongoing absence of a Scrutiny report. I have therefore withdrawn the proposition. In making that decision, I have also been mindful that the list of Public Business to be worked through in the remaining sittings is extremely extensive. A considerable amount of work has been put into this project since 2014, not just by myself and my colleagues on the S.A.L.P.G., but by external stakeholders. While I regret that this Assembly will not have a much-needed liquor licensing debate during this term, I am determined that this work should not be lost. I have therefore instructed my department to conduct an evaluation on the development of P.103 to factor-in any report that the Scrutiny Panel might publish in its final days and to prepare an options paper outlining proposals that the next Assembly might consider. If you would allow me, Sir, can I also thank my colleagues on the S.A.L.P.G. and their officers for their support and, from a personal point of view, extend my thanks to the 2 officers at E.D.T.S.C. (Economic Development, Tourism, Sport and Culture) for the dedicated and huge amount of work they have put into this draft legislation. **[Approbation]**

**The Bailiff:**

Very well. Under Standing Orders 15 minutes are allowed for any questions to the Assistant Minister. Deputy Brée.

**7.1.1 Deputy S.M. Brée:**

I am quite shocked by what the Assistant Minister has decided to make as a statement, but question I suppose too the Assistant Minister; the department deferred the debate date to 20th March 2018. We are today 6th March. Why has the Assistant Minister chosen to make this statement without allowing time for any report from the Economic Affairs Scrutiny Panel prior to the debate on 20th March?

**The Connétable of St. Brelade:**

If Members wish to go on to the Scrutiny website they will realise that the Scrutiny Panel launched their review I think on 11th January 2017. They were aware of the contents of both the policy, if not the legislation, back in October 2015 and they were certainly made aware of it in October 2016. They had opportunities to review the policy prior to reviewing the legislation and they decided not to do that. Personally I think that was a mistake; it was an opportunity lost, and the panel have had ample opportunity, in my view, since even June last year to carry out a review. That is 8 months. I do not know too many Scrutiny reviews that have taken 8 months or more but that is the choice the panel made. My view is they could have carried out the necessary work they needed to do. Since that time, since June, nothing has been held in public, there have been no public hearings held, and I think what I have set out to the Chairmen's Committee in regards to my views are quite clear; that I do not believe the Scrutiny process has been followed and I am waiting to hear back from P.P.C. (Privileges and Procedures Committee) in regards to what they might think they may wish to do with that.

**7.1.2 Deputy S.M. Brée:**

A supplementary if I may. May I ask the Assistant Minister to answer the question that I asked him, which was why has he elected to make this statement on 6th March when the debate date is 20th March and therefore the Scrutiny Panel may have decided to produce a report very soon? Why has he elected to make this so far ahead of the debate date, that date being the date chosen by the department; they deferred the debate? I would request that he answers the question.

**The Connétable of St. Brelade:**

The panel has been given ample opportunity to provide us with evidence that gives us any confidence they were going to meet that date. As I said in the statement, it is clear, with the amount of work that this Assembly has to do between now and the end of it, that if we are not going to get to a point where we can have an informed debate on this subject then I do not think it is fair to the Assembly that would carry on with it. So I have given the Assembly I think plenty of time to prepare other work. They have had ample opportunity to carry out a review; they have failed to do that. Nothing that I have seen from the officers and the discussions between officers of both Scrutiny and the department give me any confidence that a report is likely to appear in the short term and I am afraid, without that, I do not feel this Assembly is going to be adequately informed in regards to a piece of legislation that is complex. It is as simple as that.

**7.1.3 Deputy A.D. Lewis:**

I have to say that I am hugely disappointed that there is further delay on this. I sat on the original panel that was reviewing the Licensing Law 10 years ago and we are still here today. Now, there is some serious commercial and health issues here that need to be addressed and further delay to me is not really acceptable. Can the Assistant Minister advise as to why we cannot have the debate without the Scrutiny review and if Scrutiny decide then to call in the legislation then they are free to do so.



During that time, the Minister may receive some information from Scrutiny, in which case he can make that decision as to whether to withdraw it at a later stage. I appreciate he is trying to give fair warning of his intentions and I think his intentions are honourable, but further delay on this matter is a serious matter and I know he appreciates that. So is there any way forward in terms of accepting that he continues with the agenda item at the appropriate date and if Scrutiny choose to call it in they can do so at that time?

**The Connétable of St. Brelade:**

As I have said, with discussions that we had very recently with the industry, it is pretty clear there is no consensus over what form a determining authority should take. The S.A.L.P.G. themselves had made a decision to amend the law prior to it being debated. We are now out of time on that and we have to accept that. But it is clear that there needs to be more work done with the industry in regards to what they feel is the right way forward. It was always going to be I think a difficult discussion with industry and we felt or we thought that there was a clear view from industry that they wanted to move away from the Royal Court determining licensing decisions. But some of the evidence that we have seen, even from the panel themselves, suggests that is not the case and certainly discussions we had last week suggest that industry representatives are not happy with the law as it currently sits. We have to have a law that is fit for industry and fit for moving forward. It just will not be and I think there is some work that needs to be done with industry, work we have already started, we have already engaged with both the J.H.A. (Jersey Hospitality Association) and other representatives in regards to what changes they might feel is appropriate but I just do not feel that the law as it is currently drafted, much of it is fit for purpose, I think much of it is ready to go, but I think in terms of the determining authority, which is a key element of the law, we need to make sure that is right for the industry and I am not convinced that there is a consensus in industry that we are going down the right route.

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

I share the Assistant Minister's disappointment and I know how hard he and his officers have worked in order to deal with this issue. The Assistant Minister does not refer in his statement to the parallel issue, which is about the price of alcohol in our licensed premises and he will recall the Budget amendment, which I successfully achieved. While we have heard that there has been good work on petrol, we still have beer prices that are a pound difference in pubs across the Island. Does he think that this delay is going to cause any delay in dealing with the economic side, quite apart from the licensing and other health issues, which his law I thought did a good job on. But I was nevertheless concerned about the cost of living issues, which are real issues, and would he confirm what he thinks about that?

**The Connétable of St. Brelade:**

Pricing is very important, as the Senator is aware; pricing is not included within the draft, in the primary law. I think that is very much a matter for the statement of licensing policy where the statement of licensing policy will clearly set out how any determining authority, be it the Royal Court or be it a new determining authority, would deal with issues such as that. Public health is a very sticky issue when it comes to alcohol and we have to be very careful how we handle that in future. But the Senator does make a valid point; pricing is a key element in terms of potentially bringing down the level of alcohol consumption, but it was clear from the consultation we had 18 months ago that it is a very prickly subject with consumers, as we found out. So we have to be very careful about what route we take in regards to that.

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

Can I ask a supplementary?

**The Bailiff:**

I was just about to announce that there are numbers of Members wanting to ask questions, so I will put you down to the bottom of the list, Senator, if I may, because we only have 7 minutes left and, Assistant Minister, perhaps you could try to be brief in your ...

**The Connétable of St. Brelade:**

I will be as brief as I can.

**7.1.5 Deputy J.A. Martin:**

The Assistant Minister, it is a shame that the law is not coming forward, but I would just like some reassurances from the Assistant Minister that the industry will not have the fees go up until they sort out the issue of the Licensing Law because this is now 10 years, it is now 11 years; I do not agree that it is great that they have been frozen, but does the Assistant Minister agree that it is not good to just raise the fees, which I think was attempted some time back, and will he confirm that this will not happen to the industry until we sort out the main Licensing Law?

**The Connétable of St. Brelade:**

I can confirm to the Deputy that fees will not be increased until we have a primary law and regulations. The fees will be included, as will any new licensing category, in the regulations. It was intended that, if the primary law was adopted by the States, the fees and categories would be included in the regulations. That is a decision that the S.A.L.P.G. made in regards to how the law would be presented to this Assembly and that is how we intend to bring it forward.

**7.1.6 Deputy M.R. Higgins:**

Can the Assistant Minister confirm whether, in addition to delays caused by the Scrutiny Panel, he has also experienced great opposition from the judiciary who did not want to change the Licensing Laws and therefore you have also been delayed through that?

**The Connétable of St. Brelade:**

I cannot confirm that. I have to say that any discussions we have had with yourself and the Jurats through the Licensing Bench have been cordial and been very productive. Clearly it is a contentious issue I think because there are those within the industry that find the current system very amenable and very easy to operate and others that feel opposite. But I cannot say that we have had any real issue with or any real problems with dealing with the Licensing Bench. I think they have been supportive. We had very early consultation with them after the last election and the advice we received was very much how we looked at the Licensing Assembly moving forward. The issue was that the view changed somewhat when I think the decision was made that the statement of licensing policy would not be merely presented to the States as a report, it would come to the States for a debate, so that the Assembly as a whole could decide what the statement of licensing policy was and I think that then changed the view of the Licensing Bench to some degree about how they could deal with future applications.

**7.1.7 The Deputy of St. Mary:**

Does the Assistant Minister not accept that it was at the department's own prompting that they sought further discussions with yourself and the Jurats as to the form the licensing authority or licensing assembly might take; that it was the department that deferred the debate from 20th April to 20th March without any consultation with the Scrutiny Panel, and that the Scrutiny Panel is still awaiting any information that is the outcome of that discussion with the judiciary and without that information could he explain how the Scrutiny Panel can be expected to submit detailed amendments?

**The Connétable of St. Brelade:**

I think the Deputy knows that is not totally correct. The Scrutiny Panel, for some months now, in fact back in November in a letter to us said that they were of the view that the current Licensing Bench should remain. It would have been absolutely inappropriate not to have spoken to yourself and fortunately some of the Jurats in regards to this and that discussion I think was again very cordial and very useful. But it was on the basis of information received by the department from the Scrutiny Panel and its officer.

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

I was trying to marry-up 2 contradictory statements in the lines in the Assistant Minister's statement plus also what he has said. The subtext of a lot of what he has been saying is that it was inappropriate to continue the debate in the absence of a Scrutiny report. Yet in his written statement he says it now seems the industry is less than unanimous on the issue and he has also just said it is clear that more work needs to be done with the industry. That is not Scrutiny's problem. Is that not (a) just an indication of the complexity of the subject, but (b) does it not also mean that there is more work for the department to do before the legislation can be brought to this Assembly in the first place?

[11:45]

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

Maybe I need to reel back to the start of the Scrutiny review. Can I make it clear, and I have made it clear to the chairman of the Chairmen's Committee, the process followed by Scrutiny is just totally devoid of any reality in regard to the current code of practice? I was not allowed to speak to the panel, as is expected at the start of a review, I was not written to. There was no formal announcement they were going to launch a review. There was no public call for evidence. The witnesses were self-selected. I was not afforded, as Assistant Minister with delegated responsibility for liquor licensing legislation, the opportunity to give any evidence in public. There is no public evidence been taken in public. I cannot see how anybody can write a Scrutiny review without evidence. So I have no confidence that we were ever going to get to a point where we could have a debate. I am just trying to be honest with the Assembly and be factual around what happened. People can make their own view, you can go on the Scrutiny website and you can look at what has happened and the fact is we have not had what I would consider to be a fact-based review of this law. It is disappointing. I am not trying to be antagonistic or trying to pick fights with anybody, but we are where we are and I am extremely disappointed that we have not got to a point where we can have a debate on this.

#### **Deputy J.A.N. Le Fondré:**

I did ask the interaction of industry.

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

Sorry, we have had interaction with the industry all the way through this process, the department has been proactive through our officers virtually from day one on a regular basis. I have records of having meetings or the officers having meetings with the J.H.A., Randall's, various other organisations, on a regular basis for feedback. Attitudes have changed close to this debate, as they have on other debates on other subjects, like waste charges, for example, and we are where we are with it. But the fact is we have not had a balanced Scrutiny review on this and it is wrong to go to a debate without a balanced Scrutiny review.

#### **The Bailiff:**

The Connétable of Grouville has just time for one last question if you are quick.

#### **7.1.9 The Connétable of Grouville:**

Could the Assistant Minister tell the Assembly why he does not think the law that he has brought forward is fit for purpose.

**The Connétable of St. Brelade:**

I do not think I said that. I think it is fit for purpose. The fact is, if we are going to debate it, it should be debated on the back of a Scrutiny review to see if independently it is fit for purpose. We all think it is fit for purpose. We all think at S.A.L.P.G. it is a law that can work in every fundamental that is explained within it. But the fact is legislation and policy should be reviewed by Scrutiny and there has been no full evidence-based Scrutiny review. I do not know how many times I need to say it. We need to have a factual Scrutiny review to be able to debate this law properly and we have not had one.

**PUBLIC BUSINESS**

**8. Draft European Union (Repeal and Amendment) (Jersey) Law 201- (P.16/2018)**

**The Bailiff:**

That brings question time to an end on this statement. So we now come to Public Business: the first item of Public Business is the Draft European Union (Repeal and Amendment) (Jersey) Law - P.16 - lodged by the Minister for External Relations. I ask the Greffier to read the citation of the draft.

**The Greffier of the States:**

A Law to repeal European Union (Jersey) Law 1973 and the European Economic Area (Jersey) Law 1995, to amend the European Union Legislation Implementation (Jersey) Law 2014 and for related purposes. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

**The Bailiff:**

Minister, do you wish to propose the Principles?

**8.1 Senator P.M. Bailhache (The Minister for External Relations):**

The draft European Union (Repeal and Amendment) (Jersey) Law, which I shall refer to as E.U.R.A.L. for the sake of brevity, is the first substantial piece of Brexit-related legislation to be brought before the Assembly. The purpose of the Bill is to make the necessary changes to Jersey's domestic laws governing its relationship with the European Union and to provide this Assembly with the powers that are needed for a smooth transition to Jersey's new legal relationship with the E.U. arising from Brexit. It is crucial that the States Assembly and the Government of Jersey are equipped to make timely corrections to Jersey law to reflect the Island's changing relationship with the European Union. E.U.R.A.L. provides for this through the repeal and amendment of 3 pieces of existing primary legislation. The States have already endorsed the Council of Ministers' intention to repeal the European Union (Jersey) Law 1973 when it approved Projet 7/2017 on 15th February last year. As well as repealing the 1973 Law, E.U.R.A.L. also repeals the European Economic Area (Jersey) Law 1995. Both of these laws will become ineffective once the United Kingdom leaves the E.U. and Jersey's existing treaty relationship with the E.U. under Protocol 3 comes to an end. The existing European Union Legislation Implementation (Jersey) Law 2014, to which I will refer as the 2014 Law, provides powers to implement both directly applicable E.U. law in relation to Customs matters and agricultural products and other E.U. laws. E.U.R.A.L. will amend the 2014 Law so that in future the Assembly will continue to have the power to implement E.U. law where that is necessary or it is in Jersey's interests to do so. E.U.R.A.L. will amend and in some respects expand the Assembly's existing powers in the 2014 Law swiftly to implement changes to domestic legislation

where this is necessary as a result of Brexit and bring directly applicable E.U. law into domestic law. It is important to emphasise that E.U.R.A.L. does not itself provide new general laws or powers for Ministers to make orders amending Jersey Law for the purposes of implementing Brexit. In that respect, the Government is taking a very different course from the course adopted by the United Kingdom Government. It will however allow the States Assembly to make regulations that empower Ministers to make orders where that is appropriate and, in that respect, E.U.R.A.L. maintains the critical legislative role and oversight of this Assembly. I would also like to emphasise that our fundamental constitutional relationship with the United Kingdom is not affected in any way by the provision of these powers. While regulations made under the law could be used to implement a wider range of international agreements by secondary legislation than is currently the position, the principal purpose of making these amendments is to enable the implementation of any withdrawal or transition agreement with the European Union that may be struck by the United Kingdom. Any secondary legislation proposed under the law will of course be debated in the usual way by this Assembly. The U.K. has itself elected, as I said earlier, to deal with its withdrawal from the European Union in a rather different way and has elected to transpose all European Union law that has a direct effect in the United Kingdom into U.K. domestic law through a single Act of Parliament that gives the transposed E.U. law a special legal status. The United Kingdom Government will then need to bring forward a whole raft of pieces of secondary legislation modifying the transposed E.U. law to give it proper legal effect in the United Kingdom. This approach represents a complex compromise balancing consistency in the effect of the law and the U.K.'s political objectives for Brexit as a whole. It is difficult to see how the U.K. could have dealt with matters in any other way, given the huge mass of legislation that comes from Europe and that applies to the United Kingdom and that will have to be continued in some form or another when Brexit takes place. Jersey is in a very different position. We have elected to take a simpler more targeted approach, which involves actively selecting those European Union laws, which apply at present, and deciding whether or not it is appropriate to continue those laws in effect in Jersey and to bring them into the body of Jersey law as Jersey legislation. The rationale is that E.U. law in the Island is applicable only in a limited range of circumstances, such as trade in agricultural products, and that enables us to take a much more focused approach than is possible in the United Kingdom. It also means that we no longer have any uncertainty as to what E.U. law applies to us. Protocol 3 is open to different interpretations in terms of what applies and what does not. That uncertainty will go as a result of our approach because every single piece of E.U. law will be subject to debate by this Assembly when regulations are brought forward for consideration. So I will conclude my introduction by saying that there has been active and meaningful engagement on E.U.R.A.L. with members of the Brexit Review Panel, both in informal discussions during the drafting process and on the day of lodging in preparation for the formal review. I should like to thank the panel for their constructive dialogue and confirm that the E.U.R.A.L. Bill has been subject to modifications in the light of the Scrutiny Panel's interventions. So I move the principles of the Bill.

**The Bailiff:**

Are the principles seconded? [**Seconded**] Does anyone wish to speak?

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

I appreciate the need for this legislation and I commend the External Relations Department for ensuring that Jersey's interests are maintained with the United Kingdom when the United Kingdom leaves the European Union next March. Moreover, I understand absolutely that a transitional period, which is almost inevitably now going to occur when the United Kingdom leaves the European Union after 28th or 29th March next year, and that transition is going to require some deftness, some flexibility, for Jersey in order to protect our interests. Nevertheless, I have expressed some concern about the long-term effects of this legislation in the period after any transition and while I understand

and I know that it will be said that it is a theoretical risk, and I am not wanting in any way to prevent the passage of the legislation through the Assembly today, I do want to get an absolutely categorical assurance from the Chief Minister, as our head of Government, and from the Minister for External Relations... and I know the Chief Minister was in London yesterday seeing Mr. Robin Walker I see from press releases, again doing good work ensuring that our relations with the U.K. are maintained. The reality is that the U.K. is leaving the European Union. We had an arrangement, which was a very clever piece of legislation, that meant that we could incorporate on our statute book E.U. legislation, which would be U.K. legislation because as far as the period of time when the United Kingdom was a member of the E.U., then that would have meant any E.U. legislation would be adopted or imposed upon or by virtue of the membership in the E.U. Parliament or Directives or wherever E.U. legislation is made, because there is a variety of different ways that E.U. legislation is made, any E.U. legislative arrangements would be in step with that of the U.K. because the U.K. was part of the European Union.

[12:00]

Now what this legislation effectively allows us to do, and we do not want to go down any rabbit holes in relation to Henry VIII clauses or orders, because I am entirely happy with what the Minister and the Council of Ministers are proposing; that they are proposing some order-making powers but it is ultimately going to be this Assembly that is going to make those regulations. There is an issue of fundamental constitutional importance that must be stated in this Assembly and, in my view, must be dealt with after the period of transition ends and it is this: when the U.K., which is our sovereign state... and we are not a sovereign state, we are not independent and we are part of effectively the British foreign policy remit, and we operate within a subset of British foreign policy, even though from time to time we will have discordance and we will have interesting discussions with the United Kingdom Government, nevertheless we are a U.K. dependent territory. That is not in any way to say that we are subservient; that we are unimportant and that we do not guard our constitutional autonomy to make decisions for ourselves fiercely and we protect them and we should do so. But the reality is that this Assembly will in future, after the transition, be able to enact by effectively a regulation primary legislation, in other words legislation that would normally require a Privy Council approval, and that Privy Council approval is effectively the check and balance to ensure that we are ultimately in step with our sovereign country, the United Kingdom; it means that the United Kingdom will have no say. I need to tell Members that I drafted an amendment to this Bill but because of all of the other issues, which Members will see shortly that I have been having to deal with, I was not able to lodge an amendment and I appreciate that the amendment is probably not necessary at this time. But what I want from the Chief Minister is a recognition of the risk that could occur - and I appreciate it is a theoretical risk - that this Assembly in the future could pass E.U. legislation by regulation, which is not in accordance with British foreign policy. We could do something that might really irritate them and they would have no chance, apart from soft diplomacy, to stop us doing it. That seems to me to be an issue that goes both ways. Let me paint, if I may, 2 potential scenarios: (a) in 2025 the E.U. adopts some sort of new legislation for something, whether it be widgets, whether it be a financial arrangement, whether it be a beneficial ownership arrangement, whether it be a minimum tax rate or something like that, and we are somehow encouraged ... I use the word delicately, "encouraged", I could use the word "forced" because of a trade-off, a "do this and we will not do that to you". We have seen this in relation to things like blacklisting and French blacklisting where we have been in a real difficulty sometimes with the European Union, and I do not think we can guarantee that there is going to be an entirely harmonious relationship between the United Kingdom and the European Union in future. I am somewhat worried that we could become a little pawn in this bigger battle between effectively a post-Brexit United Kingdom, which is not part of the European Union... but we are Jersey and we are important to the U.K. and if the European Union knows that effectively the U.K. can have nothing to say by asking us politely, threatening or whatever reason it is, a trade-off,

to put E.U. legislation on our statute book, we could effectively be placed in a rather unfortunate position, which we cannot then pray in aid our sovereign state for assistance. The alternative is that if an Assembly, which I totally accept democratically will be elected, what happens if my view, and Members will have heard my broken record of the importance that our economy has fundamentally had on being British Jersey as opposed to independent Jersey, everything that we have built on in terms of our economic success is based upon the Customs union between the United Kingdom and ourselves, or earlier the English Crown and ourselves through Royal Charters, everything, whether it be the coal trade, whether it be the agricultural industry, whether it be our cows, our new potato exports, indeed our finance industry, everything is based upon that very subtle long-term relationship with the United Kingdom. We are going to be basically in a position where an Assembly of the future could effectively put the proverbial 2 fingers up to the United Kingdom and be out of step with the United Kingdom and their foreign policy and they will have nothing to say, apart from perhaps something to say, which could be damaging to our economic interests. It is a theoretical risk but I think it is a real risk because effectively what this is, is a back-door way of putting primary legislation, which is out of step potentially with that of the United Kingdom British foreign policy. There is no notification requirement, there is no consultation requirement. I am not saying that there should be a veto, that the U.K. should veto legislation for Jersey, but at least we should talk to them. Now I want to say that I have absolute confidence and I wish to pay absolute appropriate very positive statements about the work that the Head of External Relations and the London Office and the Brussels Office have undertaken for Jersey. **[Approbation]** Thank goodness we made that decision to open the London Office and to create external relations and I know that many Members will know the Head of External Relations and the staff that work within that. Thank goodness we did that because, my goodness me, our interests are so much better served for that and I know that there have been meetings in London yesterday and Brussels today and, day in day out, they are watching out for our interests and defending Jersey's interests. But what we are doing here is something that is potentially unprecedented; we passed primary legislation that requires Privy Council approval. That is not a U.K. Government veto as in a U.K. Government veto in terms of Ministers acting as Ministers of State, they are acting as Ministers of the Crown. We have had that with the previous issues and I am pleased to see that Deputy Mézec agrees with me because he may remember, maybe he was too young to remember... if I may say, he is much younger than I am. But he may remember the arguments that we had with the former Home Secretary, Mr. Jack Straw, in relation to the Finance Bill that mysteriously disappeared in a black hole. Sir, I do not wish to bring you into a political debate but I think that you were one of our Law Officers at the time. We stoutly defended our right to have our Finance Bill passed by the Privy Council and as soon as we told Mr. Jack Straw that, no, he could not basically veto our legislation, it had to go to the Privy Council, there it went and it got passed. But what we are doing here is effectively creating an opportunity for being out of step with the United Kingdom. If we are serious of being British Jersey and if we really think that our cart is best hooked up to the wagon of the United Kingdom, now and into the future, and that our fundamental economic success is based upon British Jersey, then I want the assurance that could not be changed in any way in future by some circumnavigating by certain opportunity, and I want that assurance. I want to vote in favour of this, I am going to vote in favour of this, but I want to have an undertaking that there is going to be a review of this legislation when the transition period ends and that is going to be put and that some sort of arrangement of either a notification, which was originally my amendment, which I know that officials in the External Relations Department have seen, Law Officers have seen, that there is a notification requirement to ensure that we never get into a position that either we can be bullied by the E.U. or that we can do something here that the U.K. might not think is in their interests. Because there is one thing that matters and the Chief Minister operates on the 7 habits, he is a guiding principle in terms of that of which he has discharged his office as Chief Minister and one of them is win/win. When we are win/win with the United Kingdom we both win. When there is something for both of us in the relationship, something in it for Jersey and something

in it for the U.K., then generally speaking we work well. That is the difference between some Crown Dependencies and overseas territories and ourselves, we do win/win. The Chief Minister understands I think what I am saying and I hope that he is going to give me some suitable emolument in order to... some suitable guarantee that after the period of the transitional arrangements, which this legislation absolutely deals with brilliantly that I am going to be not faced with the prospect, in or out of this Assembly, where I would see a departure from being British Jersey.

**The Bailiff:**

Senator, I think you mean emollient and not emolument.

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

Emollient, yes, I could say it in French.

**The Bailiff:**

I was just troubled with the corruption questions we had earlier.

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

Yes, sorry, so some lubricants, some assistance to ensure that we are forever British Jersey.

**8.1.2 Deputy J.A.N. Le Fondré:**

I thought as chairman of the Brexit Review Panel it was appropriate to just say a couple of words. The intention, as we have always understood, for this law is for flexibility. We do not all know what is coming down the line in terms of the legislation and that in appropriate circumstances there may be a requirement to be nimble and this law seems to give it to us. The other practical issue is the issue of the log jam of legislation and, just by way of background, Members will also know that I am the Jersey representative or this Assembly's representative on the British and Irish Parliamentary Assembly and I sit on a Brexit committee there for Ag. and Fish. The point of that is that through those contacts one has had various discussions with clerks in the House of Lords and the House of Commons who are reviewing Brexit legislation. Certainly one of the conversations, and it was a little bit of an eye-opener to me, I should have realised it, was that the U.K. are expecting something like 700 to 1,000 pieces of secondary legislation to come down the line. Now I do not think we are in that territory for us, but we do know that for Ag. and Fish alone I think it is 70 to 80 separate changes will be required at some point. That gives us an indication that there is a lot of volume coming down the line and therefore the approach that the Minister and his team has taken, it is not practical for all that to go up as primary legislation to the U.K. because seriously that will be its own log jam, and at some point all of this stuff has to be in place by a particular date. Within all that lot there will obviously be some issues around the ability or capacity of Scrutiny in the future to deal with the legislation; that will have to be a selective process, there will be some very simple changes that will come through that will not need any looking at, and there may obviously be some other complicated ones, we do not know what those look like yet. So this panel was put together with the point of view of a first step dealing with this particular piece of legislation and then hopefully setting a precedent that panel will carry on, potentially with different members, hopefully there will be some overlap, when the more meaty stuff comes down. Now, I think it is quite important to talk about the practicalities there and I think also we have to be quite careful that, in terms of the U.K., it really would not be appropriate for the U.K. to be looking at or reviewing secondary legislation. As I understand it, it is constitutionally inappropriate, given our particular standing. That is definitely more the remit of the Minister for External Relations and I am sure he will be responding accordingly. Just to finish, what I do want to say, because obviously we have - and we have seen one today - occasionally there are disputes between Scrutiny and the Executive as to process and how things have happened and all that type of stuff. I really want to say and place on record the thanks of the panel to the Minister and I really want to commend the Minister for External Relations and his team, in



particular, for the work that has been done [**Approbation**] in terms of how they have engaged on this, they have been proactive. Most importantly they have allowed time for Scrutiny to take place and they were up on a very tight deadline so they have been very accommodating on that front. When suggestions have been made they have accommodated them and so there are some minor changes to the legislation, which we think have improved things. I will just go back again, I will refer to my B.I.P.A. (British Irish Parliamentary Assembly) experience, and we, as Members, may recall we invited the steering committee to attend for the whole of the British Irish Parliamentary Assembly and they were here in September and we were able to give them various briefings on the constitutional position of the Island, the finance industry and things like that, and they met some of the members of Senator Bailhache's team, and the feedback I had was that they were very impressed. They thought we were very well served with the people we have, so I want to say that as an independent check that certainly from my personal experience, and I think as the panel has experienced, I really do want to commend that team; they have been very good, they have a lot of work to do and in terms of this process I really want to commend them. One is always a bit careful about using words such as "exemplary", but it has certainly been a very good process and Scrutiny has been properly accommodated and it has worked very well.

[12:15]

I think there is respect on both sides on that front and, as I said, I think the team that is in place and the work that has been done has been good. I hope that clarifies that; I really want to put it on record, and I also do have to say a thanks to our officers, all of our Scrutiny officers generally, but in particular the officers who have worked on this because, along with everything else, they have done an exceptional job on the work that has been going on.

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

I just wanted... and I know that the Minister for External Relations will cover this in his closing comments, to respond to Senator Ozouf. He did, although I was not in the Assembly, raise a concern with the Minister for External Relations during questions at a previous sitting and it is a delicate area that he raises. It is absolutely appropriate that we have this provision in this law to navigate the need for amending legislation as the United Kingdom leaves the European Union. It is absolutely right that we have this ability to make these changes in secondary legislation and that we do not need to go through the Privy Council process in order to make these changes because these changes need to be made in a timely manner. In fact, a lot of my discussion yesterday with the Minister was in relation to the need for timely information exchange so that we can ensure that we are aligned with the changes that we need to make to our legislation as the U.K. needs to make to their legislation. Of course policy decisions are needing to be made as we go along and then legislation needing to be changed. I am not sure that the Senator is asking us to ultimately change this provision post the implementation period, nor am I sure that he is asking us to notify post the implementation period the United Kingdom Government. I think what he is asking us is to ensure or at least to give an undertaking, once this implementation period is completed, to review this law and this particular provision to give consideration to its appropriateness going forward. The reason I have put it like that is because you know and Ministers consider that our autonomy is something that must be considered and nurtured. We have had debates in this Assembly where some Members said we did not need to have a decision of this Assembly, but they were missing the point about our constitutional autonomy and our relationship with the United Kingdom, and it was absolutely right that this Assembly made a positive decision to nurture that autonomy. Therefore, I think it is right that there is a commitment to a review. I think that, for my part, there is no doubt that post the U.K. having left the European Union, post the implementation or transition period - perhaps we will use that term because that is better understood by laymen I think - that we would want to consider or continue to consider where our future lies. For my part that future lies absolutely with our current constitutional

relationship with the United Kingdom. There will be, if we take a different view, potential danger for us and I know that Senator Ozouf is concerned about the danger emanating from the European Union in this regard and also the danger of divergence from international standards and the United Kingdom. We discussed with States Members only last week about the future Customs relationship with the United Kingdom and the future Common Travel Area with the United Kingdom and that is our policy objective. But that will require a lot of detailed consideration and once we have an understanding and agreement about the form of that future agreement, again Members rightly said that we need flexibility in that agreement and it is important that we have that. Then ensuring that is maintained and not making changes and bringing into force potential other bits of E.U. Directive or law through this law, which would cause problems to what will be the new relationship with the United Kingdom, if we call it that, will be something that all Ministers and Members will want to keep under consideration. So I think the review is absolutely appropriate but it will be something that needs to be continually considered in light of that new relationship, which we hope will maintain the existing relationship, it will just be the form of it and how it is written down that may change in the future. So I hope that gives the Senator comfort rather than cash, as he seemed to be requesting earlier: comfort. As ever, there are 2 dangers that we will need to be mindful of avoiding, and as ever maintaining our well-nurtured constitutional relationship will be really important into the future.

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

I was not going to rise to speak in this particular debate but I am prompted to by the words of the Chief Minister and I must admit that when I witnessed the Prime Minister of the U.K. delivering her speech recently I got the distinct impression that Theresa May was whistling in the dark and, listening to the Chief Minister's words, I recognise that if anything it has got a bit darker and the whistling is getting louder. While obviously we can have very little influence as little Jersey, closer to France than it is to the U.K., on U.K. policy, and to expect them to do so, to expect us to do so would be unreasonable, nonetheless we were told some time ago that, as a third country, the prospect of removal of our passporting access to the E.U. was not in question and yet, over the last 10 days/2 weeks I have heard that passporting will be abandoned for the city and the U.K. and that is in danger. Further ...

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

I wonder if the Deputy would give way.

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

I will finish, Sir.

#### **The Bailiff:**

He says he is not giving way.

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

Further, as I was asking a fortnight ago, a month ago, what was going to happen under W.T.O. (World Trade Organisation) regulations, because we will have to fall back on W.T.O., and W.T.O. regulations only apply to goods and not services and services is what we do. So I see the prospect for Jersey as being very dark indeed and therefore I do not think I can support this way forward, which is just leading us into a very dark hole.

#### **The Bailiff:**

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

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

I understood what the Chief Minister was saying but I regret to say that I found the other 2 speakers a little more difficult to understand. Perhaps I could say first of all, to start my summing-up in a more positive way, that I appreciate very much the kind remarks of the chairman of the Scrutiny Panel and I agree with him as a matter of fact that the process of developing and delivering legislation, which has led to E.U.R.A.L., has been a very good one in this respect and I thank all members of the Scrutiny Panel for their contributions. Deputy Southern said that the Chief Minister was whistling in the dark and leading us somewhere he knew not where. I am sorry, I do not know whether the Deputy would like to repeat his comments so that I can respond to it, but I am very unclear what his concerns were or are. I will give way if he wishes to say them again but perhaps he does not. Senator Ozouf said a number of things, not all of which I think I sympathised with, but if I have understood him correctly he is concerned that this law is some kind of a Trojan Horse to undermine the constitutional relationship between the United Kingdom and this Island. If that is the fundamental concern then, like the Chief Minister, I can give an absolute assurance to him that there is no intention whatsoever to use the powers conferred by this law to enact secondary legislation to implement E.U. legislation to subvert the constitutional relationship. These are powers, I might remind Members, that we have had for more than 20 years, the power to implement E.U. legislation was first conferred by a law which was passed in 1996 and it was re-enacted in 2014. We are leaving the European Union, as the Senator says; that is quite correct, but the desirability of implementing E.U. legislation, some of it, may very well be important in the future. We know, for example, the Senator knows, for example, that in terms of data protection it is absolutely vital that we have legislation that is consonant with that which is in force in Europe and so in future we might use this law to implement some such legislation. The Chief Minister I hope has given the Senator the commitment that he was seeking. For my part, I think that a specific commitment in relation to this law is not really necessary because any competent Government keeps all legislation under review at all times to see whether the powers that are available, both to Government and to the Assembly, are appropriate for the time. If I were to say very much more I would begin to annoy the Senator and I certainly do not wish to do that so I will maintain the principles of the Bill.

[12:30]

**The Bailiff:**

Members in favour of adopting ... the appel is called for, I invite Members to return to their seats. The vote is on the principles of the Draft European Union (Repeal and Amendment) (Jersey) Law and I ask the Greffier to open the voting.

<b>POUR: 39</b>		<b>CONTRE: 2</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Deputy G.P. Southern (H)		
Senator P.F.C. Ozouf		Deputy S.Y. Mézec (H)		
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				

Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy 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 A.D. Lewis (H)				
Deputy R. Labey (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

**The Bailiff:**

Minister, how do you wish to ... Scrutiny, Deputy Le Fondré, you have scrutinised already.

**8.2 Senator P.M. Bailhache:**

It is an important one, I would like to divide them into 3 if I may, I would like to take first Articles 1 to 3.

**The Bailiff:**

You wish to propose Articles 1 to 3?

**Senator P.M. Bailhache:**

May I propose Articles 1 to 3? Article 1 is the interpretation provision; Article 2 repeals the European Union (Jersey) Law 1973, although some of those provisions are incorporated into the 2014 Law; and Article 3 repeals the European Economic Area (Jersey) Law 1995. I move Articles 1 to 3.

**The Bailiff:**

Seconded? [**Seconded**] Does any Member wish to speak on Articles 1 to 3?

**8.2.1 Senator I.J. Gorst:**

Whistling in the wind, I think I was accused of, sorry, in the dark, I think I was accused of some moments ago from a Member of a party, the chairman of which told both Senator Bailhache and myself several months ago that we did not need to prepare for a Brexit vote; that we were wasting our time. Today, we also see a continuation of that approach. At the last States sitting, Deputy Southern asked me about W.T.O. and I was rather too gentle and kind in my response because I acknowledged what he was saying about one agreement with regard to goods and then I went on to talk about the scheduled works that we were doing with regard to service, but I did not clarify to him that the G.A.T.S. (General Agreement on Trade in Services) is also a part of W.T.O., so of course

there are treaties that deal with services and that is the work that we have been doing in the financial services section of government. Can it really be the case that there are Members of this Assembly that want to put us into legislative limbo where the sovereign state has left the European Union but we have no mechanisms to correct and to change our legislation so that there are no detrimental effects to us or to parts of our economy. I would ask that those 2 Members who voted against this law in principle to reconsider whether that is in the best interests of Islanders. I know that the chairman of the Corporate Services Panel congratulated the Minister and the officials in the department, they have worked with officials right across all of the departments and they are right to congratulate and I congratulate them for working constructively with officials and with the Ministers. I hope that would give confidence and comfort to those 2 Members, who voted against this law. It is absolutely in our best interests, it is in our best interests constitutionally, it is in our best interests economically, it is in our best interests socially, so I ask them to reconsider and follow the lead of the other party member who I can only assume, because he was in the room, voted for it rather than against it.

### **8.2.2 Deputy S.Y. Mézec:**

Just to say that the comments that were made by the Chief Minister at the start of his remarks were completely untrue. At no point have I ever said that the Government of Jersey should be doing no preparation towards Brexit at all. I think it is bad when leaders stand up and say things, which are untrue, about their political opponents, and I think it is part of what causes so much disillusionment in politics, it is just not the right thing to do, I have never said any such thing. Of course the Government should be preparing for Brexit but it is perfectly possible to have differences in opinion on the practicalities of that and to disagree with the Government line is not something that makes somebody a traitor or dishonest or anything like that.

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

All I want to get out of Senator Bailhache's lips is a statement that he really understands, in repealing these 2 Articles, that he really recognises how fantastic the repeal... and while we are repealing these 2 laws and replacing this new one with E.U.R.A.L., but in these Articles 1, 2 and 3, which we are doing, we are repealing 3, we are repealing 2 laws, which have effectively meant that Jersey has flourished, prospered, as British Jersey within the period of time that the United Kingdom was within the European Community and then the European Union. If I may pay tribute to the former Chief Adviser to the States, who I think came up with this idea of this implementation law, he has served this Island with such distinction, as many others have and his successes in the External Relations Department continue to do so, and I join also with the excellent advice that we have had over the years from Law Officers, including yourself, when you were Attorney General, in finding a deft way of finding a way that we can really be this win/win for both the United Kingdom and Jersey and in the period of time when the U.K. was leading in the European Union. I will come back to the comments that Deputy Southern made, which almost sounded like some comments of the sort of doom and gloom that we normally hear from Deputy Higgins about how terrible it is all going to be. I think it is going to be wonderful but I will come back to that later.

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

Can I at this stage elucidate on some of the remarks I made earlier and I hope we can get some clear answers. It is my understanding - correct me if I am wrong - that passporting as a third country was part of the mechanism by which we gained access to the E.U. and I understand that passporting for the City of London is to be taken off the agenda and that other rules will apply. Access will be limited I think, I understand, by this change. Some while back I was talking about the dependence that we have on U.K. civil servants who make sure that U.K. legislation matches the E.U. very carefully and then gives a guide to us as to what we should be doing, but the balance of the weight of expertise in

the U.K. compared to the expertise here is such that we are heavily reliant on what the U.K. gives as guidance and enacts. It seems to me ...

**The Bailiff:**

Excuse me, Deputy, can you relate this to Articles 1 to 3? I can understand how these comments might come in later on and similarly I could have understood Senator Ozouf's speech in relation to the later Articles, but I do not really understand either in relation to these Articles. Could you relate it for me?

**Deputy G.P. Southern:**

I will bow to your advice and I will await the nod when you think it is appropriate. [Laughter]

**The Bailiff:**

Not yet, is the answer.

**Deputy G.P. Southern:**

But, if I may, there is one point I have not made yet that I think is appropriate. We are talking about the withdrawal of the European Union Law and we are given the assurance that will not be an excuse not to come back to this House but to use Ministerial Decisions to change the impact of those laws, for example on rights issues or whatever or on employment issues, in order to not come to the House to seek permission, acceptance of changes that take place and to have those done by M.D.s (Ministerial Decision). That is an assurance, which I am not sure yet I can take at face value.

**The Bailiff:**

Does any other Member wish to speak? Then I call on the Minister to reply.

**8.2.5 Senator P.M. Bailhache:**

Perhaps I can deal with Deputy Southern's point at the appropriate time when he may remake it at a later stage of this debate. But I ought not to let Senator Ozouf's comment pass, he wants me to acknowledge I think that I am British Jersey, but this is a phrase of Senator Ozouf, it is not a phrase of mine. I am proud to be British, I make no qualms about that, but I am also proud to be a Jerseyman and when Senator Ozouf says that Jersey's prosperity has depended upon our British-Jerseyiness, I think that is only partly true. I think our prosperity over the centuries has depended to a very large degree upon our autonomy and it is our autonomy which we are talking about today and have been talking about. It is our ability to take decisions in this Assembly in the interests of the Island. Those interests may or may not coincide with the interests of the United Kingdom or indeed any other country, but that is why we all, as Members of this Assembly, take an oath to uphold and to maintain the law, privileges and liberties, of Jersey and that is something which I think that is important and is something which Senator Ozouf should retain close to the front of his mind. I move Articles 1 to 3.

**The Bailiff:**

Those Members in favour of adopting Articles 1 to 3 kindly show. Those against? The Articles are adopted. Although that clock says 12.40 p.m., my clock, which I have been working on down here says 12.44 p.m.

**Senator P.M. Bailhache:**

Sir, you are inviting me to move the next block of Articles?

**The Bailiff:**

No, I was inviting you to move the adjournment, Senator. But so that we can prepare our speeches, which is the next block you wish to take?

## **LUNCHEON ADJOURNMENT PROPOSED**

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

The next block is Articles 4 to 10. I am content to move the adjournment if you would like me to do that, Sir.

### **The Bailiff:**

So Members will be able to concentrate on Articles 4 to 10 during the adjournment. The States now stand adjourned until 2.15 p.m. this afternoon.

[12:43]

## **LUNCHEON ADJOURNMENT**

[14:16]

### **The Bailiff:**

Minister, you wish to propose Articles 4 to 10 of the Draft European Union (Repeal and Amendment) Law?

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

If I may, Articles 4 to 9, Sir. Yes, I will be brief because I think the introduction to the Bill and my address to the Assembly on the principles probably covered most of what needs to be covered, but Article 4 amends the long title; Article 5 substitutes some definitions; Article 6 contains the repeal of the powers that the Minister for External Relations currently has to make orders directly under the 2014 Law and instead express provision is made for regulations to make provision for any Minister to make orders under the regulations if the States considers that it is appropriate to give those order-making powers. The powers of the Minister for External Relations to make orders in relation to sanctions is removed and a new law to deal with sanctions is in the course of drafting at the moment. Article 7 repeals Articles 3, 3A and 4, of the 2014 Law, which are mainly concerned with sanctions. Article 8 provides for the interpretation of E.U. provisions implemented under the 2014 Law. Article 9 inserts a new Article 5A and a new Article 5B into the 2014 Law to give the Assembly powers to make regulations dealing with deficiencies arising from the United Kingdom's withdrawal from the E.U. and to prevent or remedy breaches of international obligations following the withdrawal. As I mentioned I think in my speech on the principles, no regulations can be made under Article 5B more than 2 years after the repeal day, so there is a sunset provision in relation to those regulations. Article 10 inserts a new Article 6A into the 2014 Law and that I think is as far as I am going at this stage.

### **The Bailiff:**

Articles 4 to 10?

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

Articles 4 to 10, thank you.

### **The Bailiff:**

Seconded? [**Seconded**] Does any Member wish to speak on Articles 4 to 10? Deputy Southern, this is your time.

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

I believe that was in my parlance a nod. Okay, well I will ask my questions then now where I want some explanation of what is going on. We were assured earlier in the year that passporting rights will be maintained for our service industries, the financial services industry, and yet my understanding is that passporting of services from the City of London is being done away with and presumably new arrangements will have to be made to preserve our little corner of financial services. I seek assurance that Ministers will not be using Ministerial Decisions or orders used to change some fundamental factors around, for example, Employment Law or human rights that hitherto have been protected by the E.U. Regulations that we have adopted. Then finally I want to hear something about the alternatives to W.T.O., which cover the movement of goods but do not give access to services, so what is in line for those particular areas?

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

I think it is important to respond to Deputy Southern's remarks. I think that he may be genuinely confusing the remarks that have been made by the U.K. Government in terms of passporting and what we have said on passporting. Passporting is an issue which was going to be an aspiration of the United Kingdom and in Prime Minister May's speech last week effectively the U.K. have accepted that that is probably not likely to be the situation. Passporting has never really been an option for Jersey because we have always had to argue on the basis of being a non-E.U. territory and that of getting equivalence, and we have equivalence in all sorts of different areas. Indeed, I know that Deputy Southern may well think that there is a negative view about the possibilities in the future for the Island, and indeed the United Kingdom in a post-Brexit world, but if I may give him some evidence of why we have reasons to be optimistic and why this legislation and these arrangements do allow us to seize upon opportunities. The first thing to say is that we already have equivalence but the U.K. does not. When they leave the European Union without an agreement, if they were to do so, they do not have some of the equivalent arrangements that we already have. We already have them, and, if I may say, I think that that is one of the reasons why we are seeing such a buoyant resurgence in a number of our financial services areas such as in the funds sector; and we all know of the very large fund that we were very pleased to get into Jersey. There is no accident that that has happened. That means there is confidence that Jersey is going to be able to continue to trade as an equivalent jurisdiction. This is a very complicated issue and I will not speak for very long. But there is an importance that we are not ... and in fact I am in danger of agreeing with Senator Bailhache. We have autonomy, we have had an opt-in and we have paddled our own canoe, in many ways, in the areas of financial services because we have not been an E.U. nation state. We have had to basically earn our stripes in being equivalent and trusted as a jurisdiction that does things properly, with equivalence in terms of regulation, in money-laundering and all these other things. It is that which has basically secured our access into European markets. As the capital and economics report of course showed, in fact Europe, as a market in itself, is far less important to that market which is the United Kingdom. Where the Deputy is right to be concerned, if there is a concern, is that if the U.K. was to somehow lose its own financial position as one of the leading financial centres in the world. Clearly, as a jurisdiction, that has indeed relied heavily on the interflow and exchange of capital between Jersey and the U.K., Jersey being effectively that highly regarded money box, that warehouse of capital providing services and upstreaming into the U.K., as the capital and economics report showed. If the recipient of those resources and those assets in the financial warehouse that I call Jersey, I would call that the finance industry. If that were to be in any way constrained in future, that London would not be the dominant financial centre serving Europe and the rest of the world, then we could see an economic concern. But the one thing that is also important, which is in parallel to this whole issue of protecting our autonomy and our rights to negotiate directly with the E.U. in some issues, is also the international dimension of this. So, if anything, perhaps I would like to see this law allowing us to fast track not only E.U. legislation but protect our autonomy in relation to



having all sorts of other trade agreements, as fast as possible, with the rest of the world because in fact it is to the rest of the world that we will see the greatest growth of our financial services industry in the future. I really do think that these laws and these Articles we are approving do give us that right and that opportunity to move fast and nimble. We have just heard an excellent presentation by Mr. Charlie Parker, our new chief executive, and I think that organising ourselves and playing to our strength, which is identifying opportunities quicker than others; seizing on them; maintaining quality products; being always excellent and keeping in good order with the United Kingdom is the secret of our past success and is going to be the blueprint for our future success. I personally hope that all Members will enthusiastically support these articles.

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

I suppose in this instance I can understand Deputy Southern's confusion because the United Kingdom Government's approach has changed during the course of their public discourse on this particular matter. An issue that was raised by the Lords' E.U. Committee when I, together with my colleague chief ministers, appeared before them last December, that is December 2016, was the almost technical matter of being recognised by the E.U. as a third country, which we are, and they were concerned then with the technicality of whether the E.U. would recognise the U.K. as a third country. But the U.K. has looked at equivalence, they have looked at passporting to see whether they are going to benefit the City's position and be suitable approaches for the City in the relationship with the E.U. They have basically come back or they have decided that the best approach is a bespoke agreement which is neither equivalence nor passporting and we will hear more about that on Wednesday when the United Kingdom Chancellor gives further detail in a speech he is due to deliver. He may also have in mind that we were seeking passporting under the A.I.F.M.D. (Alternative Investment Fund Managers Directive) equivalence provisions from E.S.M.A. (European Securities and Markets Authority). We were one initially of only 3 countries to get through that gateway and then just required a delegated act from the European Parliament to give approval. Of course we know that post the United Kingdom's decision to leave the European Union, currently no further progress has been made in regard to that passporting, not only for ourselves but for others as well, even though they have had a second review of those that have passed through the gateway. But just to set his mind at rest, while not delivering that passporting regime what the European Union did was maintain further into the future the private placement scheme which meant that we were not disadvantaged by the non-progression of the passporting scheme. So I hope that gives him comfort and clarity to where we are with regard to those particular regimes. He knows there are other areas in our economy where we are shown to be equivalent, currently data protection. He knows that when we had the G.D.P.R. (General Data Protection Regulation) debate in this Assembly only recently we worked very closely with the European Commission as well as using independent experts to ensure that that legislation would, once it had gone through our processes of going up to Privy Council, which it now has and I am pleased that it was registered in the Royal Court on Friday, will show itself to be equivalent and therefore we can transmit data around the E.U. as well.

[14:30]

So it is not a one-size-fits-all, it is quite complicated but we are currently in a very good position in regard to those matters that the Deputy raised.

### **The Bailiff:**

Does any other Member wish to speak? Then I will ask the Minister to reply.

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

The Chief Minister and Senator Ozouf have dealt very comprehensively with one of the questions of Deputy Southern and I need say no more on that. Deputy Southern also asked for an assurance that Ministers would not use orders which contravened human rights. I can give that assurance, and

indeed the law itself spells out an obligation at Article 2 of the amended 2014 Law, which provides that, among other things, no order can amend the Human Rights (Jersey) Law 2000. The Deputy also asked about the movement of goods and he will know that the right to exercise freedom of movement of goods to the European Union will fall when Protocol 3 falls away. What will happen after that is difficult to tell at this stage because the short answer is that unless there is some new agreement between the United Kingdom and the European Union on trade, which we are able to adapt for our own purposes, then our exporters will have to surmount tariff barriers when they export goods to the European Union. The only comforting thing, I suppose, is that 88 per cent of the goods that we export from Jersey in fact go northwards to the United Kingdom, and the fact that the U.K. is leaving the European Union is not going to affect Jersey's rights to export produce to the U.K. I hope I have covered the questions raised by the Deputy and I renew the movement of Articles 4 to 10.

### **The Bailiff:**

The appel is called for. I invite Members to return to their seats. The vote is on whether to adopt Articles 4 to 10 of the legislation. I will ask the Greffier to open the voting.

#### **POUR: 34**

Senator P.F. Routier  
Senator P.F.C. Ozouf  
Senator A.J.H. Maclean  
Senator I.J. Gorst  
Senator L.J. Farnham  
Senator P.M. Bailhache  
Senator A.K.F. Green  
Senator S.C. Ferguson  
Connétable of St. Helier  
Connétable of St. Lawrence  
Connétable of St. Mary  
Connétable of St. Ouen  
Connétable of St. Brelade  
Connétable of St. Martin  
Connétable of St. Saviour  
Connétable of Grouville  
Deputy J.A. Martin (H)  
Deputy of Grouville  
Deputy J.A. Hilton (H)  
Deputy J.A.N. Le Fondré (L)  
Deputy K.C. Lewis (S)  
Deputy M. Tadier (B)  
Deputy E.J. Noel (L)  
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. Labey (H)  
Deputy S.M. Bree (C)  
Deputy of St. Mary  
Deputy G.J. Truscott (B)  
Deputy P.D. McLinton (S)

#### **CONTRE: 2**

Deputy G.P. Southern (H)  
Deputy S.Y. Mézec (H)

#### **ABSTAIN: 0**

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

May I move Article 11 of the Bill? This is the Article which names the law and provides for the coming into force on the date or dates appointed by order made by the Minister for External Relations with the approval of the Council of Ministers. This gives the Government the flexibility to respond easily and quickly to changing circumstances. It is not possible to foresee in every respect when or how it will be necessary to bring parts or all parts of the E.U.R.A.L. law into force and to enable the coming into force to be done by order gives the flexibility which is needed to ensure that there is no hiatus in the application of different European Union laws to the Island. So I move Article 11 of the Bill.

#### **The Bailiff:**

Seconded? **[Seconded]** Does any Member wish to speak on Article 11? All those in favour of adopting Article 11, kindly show. Those against? The Articles are adopted. Do you move the Bill in Third Reading, Senator?

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

I move the Bill in Third Reading, Sir.

#### **The Bailiff:**

Seconded? **[Seconded]** Does any Member wish to speak?

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

Can I press the Minister for External Relations again in the Third Reading to give an assurance ... he gave a bland assurance in the preliminary stage of the consideration of this law? He said that all legislation should be kept under review by governments but of course that is absolutely right. Can I get an assurance from him that he will leave a note in his drawer or to his chief executive, no matter whether or not he is going to be back now or not - I do not know; none of us know. But could he please give an assurance that the existence of the ability to pass law, after the period of transition, by regulations when the United Kingdom has left the European Union will be a matter which will be reviewed and considered to ensure that we remain with our autonomy. I do not need him to remind me, with the greatest respect, of my oath of office and I call to mind Walter Raleigh, who I regularly think about, as Governor of Jersey, who was the very individual who went to the United Kingdom, or then the Crown of England, and sought that negotiation to get Jersey and French boats neutrality in the Bay of Gaspé which was effectively our finance industry of the 17th, 18th and 19th century, equivalent, in today's terms, of the finance industry today. It is important, I am afraid. I know he likes to say he is British, well I like to say I am British Jersey. But I want him to say, please, in the summing up that he will commit at the period of the end of the transitional period that the appropriateness of this Bill, which would allow this Assembly to pass primary law that was E.U. law that might not be in step with the United Kingdom and that could therefore cause, in our economic interest, a discordance with our relationship with our Sovereign state will be something that will be looked at. Not rescinded, not subject to a veto, not against our autonomy but looked at to ensure that we continue to have what I believe is the absolute fundamental importance of a constructive win/win relationship with the United Kingdom, which I describe - he can call it something else if he wishes - as British Jersey and it has served us very well. I want nothing to be sent by way of message that we are becoming anything else apart from British Jersey in the future. I would be grateful for that. I am going to vote in favour of it but I want to hear his words to say that he cares about this as much as I do and he recognises the economic importance of that to every man, woman and child now and in future for Jersey. Thank you.

##### **8.5.2 Deputy M. Tadier:**

If you say it then you phrase it enough it probably gets picked up by the media and may end up becoming a hashtag on Twitter. Of course when we hear the words “British Jersey” being floated around the Assembly time and time again this morning, as Senator Bailhache has already picked up himself, I was not sure whether we were having an aviation debate and whether there was a new airline that is about to start a new route to Jersey called British Jersey because of course we used to have Jersey European and then we used to have British European Airways, and that became Flybe. Of course many of us, not just in Jersey but around the world are looking to the U.K. wondering whether Brexit is going to fly at all. I think that is the real question, which is the underlying theme perhaps that has not necessarily been touched on yet and we will wait to see. Of course it may well be that there will be a new U.K. Government in place before Brexit is even a thing. Of course that does not mean that our Government should not be preparing for it and we know that there is good work going on from the individuals who I am sure are up there, I cannot always see them, but someone is down there looking upon us and keeping us safe, which is good to know. What I want to ask the Minister - and I may be pushing on an open door to a certain extent - is whether from what we are passing today, or more generally from Brexit and Jersey’s position in between the 2 big continents, if you like, or the big island that is to the north of us and the mainland which is to the south and east of us, let us get this right, the question that I would ask is are there markets and potentials to be exploited? Culturally, I think we know that is happening already and we are seeing continued good work from different departments and those who represent Jersey culturally but commercially and economically and, of course, not least importantly environmentally. Are there opportunities which Jersey can benefit from? I couch this because I do not think this debate has gone into that territory of pitting an anti-U.K. sentiment suggesting that maybe, which I think earlier on I was interested that Senator Ozouf seemed to be suggesting that this could be a thin end of the wedge in terms of Jersey’s independence plan, that there was perhaps still plans out there to make Jersey independent from the U.K. Although he has not amended it and although he spoke against it in cautious terms, he still voted for it of course. I think it is important to say that there is the ugly head of anti-English and anti-U.K. sentiment that still rears its head in Jersey outside the Assembly and sometimes it finds its way into this Assembly. But there are of course valid questions that are asked about are we too much aligned in some of our policy thinking when it comes to relying on what some would call so-called experts from the U.K., and should we be looking for best practice around Europe when it comes to social policy, when it comes to environmental policy; a new way of doing things that do not inherently always come from the U.K. which does not have the best practice in every regard. So it would be good to hear from the Minister more generally about what the opportunities are about working with Europe, first of all in our right, but secondly, of course, wherever possible still in the relationship with the United Kingdom.

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

If I may return to an issue I have raised before but I have not received an answer on, which was if there is a change in the relationship between ourselves and the E.U., whereas in the past that relationship has gone through the U.K. with its army of civil servants, perpetually on the alert about changes in policy or regulations in Europe, are we going to be seen to have to grow our civil servant body which monitors that in order to stay ahead of the game or to match E.U. regulation? Are we going to see our Civil Service, I do not know, twice or 3 times the size we currently have in order to keep up with what is happening in the E.U. in order of our participation with it?

#### **8.5.4 The Deputy of Grouville:**

Yes, very briefly and I have not known when to speak here; I should possibly have spoken on the principles. But I sit on the Scrutiny Panel so I am in agreement with this proposition totally and I would like to support the chair and his words with the help and support we have had from the department. More holistically, could the Minister state that by bringing this in, the repeals and the

amendments that he can possibly make to the laws coming in or not, could there be an opportunity where we could carve-out more of our own policies with Europe, with France and our special relationships we have with Brittany and Normandy? Thank you.

**The Bailiff:**

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

**8.5.5 Senator P.M. Bailhache:**

Deputy Tadier asked rhetorically whether there were markets to be exploited economically in Europe following Brexit. I think that is an interesting question. One would like to think that the answer is yes but we certainly are learning at the moment that our relations with the European Union are potentially going to be more difficult as a result of the United Kingdom leaving the Union.

[14:45]

I refer of course to the inquiries that are taking place at the moment in connection with the European Union's non-co-operative jurisdictions inquiry. One of the consequences of that, I think, is that we need to - and I have said this, I think, before - develop our relations with at least one other European country to compensate for the fact that the United Kingdom will no longer be at the European table when matters that concern us are being discussed. We clearly need to try to develop our relations with France and, as the Deputy of Grouville suggested, the opportunity to do that may very well lie between increasing our good relations with Brittany and with Normandy and with seeking to use those good relationships regionally as a platform from which to launch a better relationship with the Republic of France itself. One of the consequences of Brexit, which I think is a positive consequence, is that it has led to the creation of a small body in the Ministry of External Relations, with the support of the Council of Ministers, to look at our strategy for developing global markets with those countries which are of potential interest to us which are not in Europe at all. I do think, and of course this is very much - Senator Ozouf will be pleased to take in I am sure - very much consonant with the ambitions of the United Kingdom, which is seeking to do exactly the same thing and to develop strong trading relationships with a number of countries outside the European Union. Our own aspirations are rather more modest and we are looking to develop trading relationships with certain countries in Africa, certain countries in the Gulf and with India, and all those potential relationships are ones which give the possibility, I think, of a great deal of exciting development opportunities for traders and entrepreneurs in Jersey. I am not sure that I can really say any more to Senator Ozouf about the commitment that he seeks. He has had a commitment from the Chief Minister. I repeat that I believe - and I do not think that this is a bland assurance - that all legislation should be kept under constant review for its adequacy and for its relevance at any given time and the 2014 law on European Union legislation is indeed such a law. But it is not in a special category of its own and I think it would be inappropriate for me to leave a note for my successor or any future Minister for External Relations because it would be a matter for the Government of the day to decide whether or not the 2014 law is still fit for purpose. I remain convinced that it lays the foundation for the ability of this Assembly to take what it considers to be appropriate from European Union law and to develop it in the interests of Jersey, and that is exactly what we should do. It is consonant with our autonomy and I believe it is consonant too with the interests of our sovereign state. So, I renew my request for the Assembly to support the Bill in Third Reading.

**Deputy G.P. Southern:**

Sir, I got no answer to my question, I do not believe. I think I was due one.

**The Bailiff:**

Minister, is there anything you wish to add that answers Deputy Southern's question he put to you?

**Senator P.M. Bailhache:**

He did ask a question as to whether we were going to grow our Civil Service in order to keep up with the European Union. I think the answer to that question is no, but it dovetails into a question which Deputy Tadier asked about other relationships and it may well be that we will want to enhance the capacity of the Ministry of External Relations to deal with global trading with countries outside the European Union.

**The Bailiff:**

The appel is called for. The vote is on whether to adopt the Bill in Third Reading. I invite Members to return to their seats and I ask the Greffier to open the voting.

<b>POUR: 36</b>	<b>CONTRE: 2</b>	<b>ABSTAIN: 0</b>
Senator P.F. Routier	Deputy G.P. Southern (H)	
Senator P.F.C. Ozouf	Deputy S.Y. Mézec (H)	
Senator A.J.H. Maclean		
Senator I.J. Gorst		
Senator L.J. Farnham		
Senator P.M. Bailhache		
Senator A.K.F. Green		
Senator S.C. Ferguson		
Connétable of St. Helier		
Connétable of St. Clement		
Connétable of St. Lawrence		
Connétable of St. Mary		
Connétable of St. Ouen		
Connétable of St. Martin		
Connétable of St. Saviour		
Connétable of Grouville		
Connétable of Trinity		
Deputy J.A. Martin (H)		
Deputy of Grouville		
Deputy J.A. Hilton (H)		
Deputy J.A.N. Le Fondré (L)		
Deputy K.C. Lewis (S)		
Deputy M. Tadier (B)		
Deputy E.J. Noel (L)		
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. Labey (H)		
Deputy S.M. Bree (C)		
Deputy M.J. Norton (B)		
Deputy of St. Mary		
Deputy G.J. Truscott (B)		
Deputy P.D. McLinton (S)		

**The Bailiff:**

Can I just announce to Members that a number of other propositions have been lodged: Draft Criminal Procedure (Jersey) Law, P.118, is an amendment lodged by the Education and Home Affairs Panel, the Draft Machinery of Government (Miscellaneous Amendments) (Jersey) Law, P.1, amendment lodged by Senator Bailhache, the second amendment lodged by the Chief Minister, and a pedestrian crossing outside La Moye School: petition and lodgement, as Members will be aware, by Deputy Tadier. Also, an amendment to the Sexual Offences (Jersey) Law, P.18, lodged by the Education and Home Affairs Panel and a second and third amendment to the same ...

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

There has also been a report lodged as well.

**The Bailiff:**

There may have been but I have not seen that yet.

**9. Minimum Wage: amendment of States Act dated 21st April 2010 (P.121/2017)**

**The Bailiff:**

Very well, we now come to the next item of Public Business which is the Minimum Wage: amendment of States Act of 21st April 2010, lodged by Deputy Mézec. I ask the Greffier to read the proposition.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of the opinion to amend their Act dated 21st April 2010 on setting the minimum wage level as a percentage of average earnings by substituting for the words “the minimum wage should be set at 45 per cent of average earnings to be achieved over a period of not less than 5 years and not greater than 15 years from April 2011” with the words “the minimum wage should be set at 45 per cent of average earnings by the end of 2020”.

**9.1 Deputy S.Y. Mézec:**

Members will be glad to hear that I do not intend to speak for too long on this, I think it is an argument that has been had time and time again in this Assembly. So basically what I am asking with this proposition is, as it says, it is essentially to speed up the timeframe for raising the minimum wage to 45 per cent of average earnings. The reason I brought this proposition, Members might recall that I previously brought one similar to this asking for it to be raised to 60 per cent of the median wage, which I thought was a more satisfactory way forward because it is more in line with what the U.K. is doing. But I lost that debate and after the Oxera report on the impact of raising the minimum wage was released the Chief Minister published a statement which said: “In considering the report the Chief Minister, Senator Ian Gorst, said it is clear that a significantly higher minimum wage could bring both positive and negative consequences with many employees benefiting and potentially higher consumer spending but potential job losses and lower incomes for some. Overall, however, this report shows that the States aspiration to achieve a minimum wage of 45 per cent of earnings by 2026 is too slow. I therefore wanted to accelerate the timetable, delivering this change by 2020. This will benefit many workers and support our overall objectives for our economy, population and society. I will be bringing a proposal to the States later in the month to deliver this.” So that proposal, that was said to be brought to the States in a month to deliver this, was not lodged. But we know, with the amendments to my proposition that has been lodged by the Council of Ministers, which I am accepting and urging Members to support, that there is ongoing work that needs to be done to ensure that the interests of the industries that struggle to raise wages are looked out for and that there is a plan for helping those industries rather than just piling on higher wages and risking greater unemployment resulting specifically from those sectors. But I think it is important that the States

makes a declaration that we do intend to speed up the timetable for raising the minimum wage. It is my view that that can be done in isolation of the other pieces of work, but since the amendment has been lodged that is absolutely fine and we will get a commitment for that work to be done as well. But with the election coming up soon I think it is better to have this reconciled and put in the statement of the Government's aspirations here and now so that it is clear. Business will have that certainty that this is where the Island is going in the next few years. The final point - and Members will not be surprised - I think we can be much more radical than this. I think we can be going much further but I am hoping that this will be a non-controversial first step. So I make the proposition.

**The Bailiff:**

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

**9.2 Minimum Wage: amendment of States Act dated 21st April 2010 (P.121/2017) – second amendment (P.121/2017 Amd.(2))**

**The Bailiff:**

There is an amendment in the name of the Council of Ministers. I ask the Greffier to read the amendment.

**The Greffier of the States:**

Page 2 - after the words “the minimum wage should be set at 45 per cent of average earnings by the end of 2020” insert the words, “and, after the words ‘requested the Employment Forum to have regard to this objective when making its recommendation on the level of the minimum wage to the Minister for Social Security’, insert the words ‘; and further requested the Council of Ministers to investigate and propose a programme to deliver productivity improvements in low paid sectors, with outline proposals to be delivered in April 2018, and a detailed plan by December 2018.’”

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

Just confirming, as you could see, who was going to speak to this. It seems it is me. I do not think that I really need to speak to this at any great length. I am grateful to Deputy Mézec for accepting the amendment, I think it clarifies that, while this change is a good and positive change, we must work with those sectors where cost is a constant pressure and it is right that Government does so. It is fair to say we have not been able to bring forward solutions at this point and that is why it puts in this timescale so that we can speed up the work with those sectors, present a detailed plan and offer appropriate support because we recognise their important place in our economy; their important place in our culture; their important place in our environment, and it is right that we are supportive and do not just make these assumptions. Therefore, in the spirit of co-operation, I ask that Members support this constructive amendment.

**The Bailiff:**

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

**9.2.2 Deputy G.P. Southern:**

I am pleased to hear my chairman say that the long story of getting to an increase in the minimum wage is about to draw to an end, I hope with this much shorter target. But I am less impressed by the amendment from the Chief Minister who called it a constructive amendment, I think. I do not think I would have used that particular word. I think I would have used the word “irrelevant” amendment rather because it goes on to say: “... and requested the Council of Ministers to investigate and propose a programme to deliver productivity improvements in low paid sectors with outline proposals to be delivered in April 2018, and a detailed plan by December 2018.”

[15:00]



I say “irrelevant” because productivity growth has been a thorn in the side of this Council of Ministers and the previous Council of Ministers and the previous Council of Ministers before that. We have singularly failed to grow the economy through growth in productivity for the last 2 decades. So while there is no harm in voting for this amendment, there is little chance of it making any real difference to what is going on in the main part of this particular proposal because we have failed for the last 20 years and there is no reason to think that this Council of Ministers has found a new way of growing productivity that it has not already tried and failed with. So do not hold your breath waiting for this growth in productivity in low paid sectors; I doubt very much that it is going to happen. We like to repeat what we have done before with the same result.

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

I worked on both the original proposition and the amendment. This is a real breath of fresh air and change in thinking. It is normalising, as that word was used before, the fact that low wages at such a level should no longer be acceptable. The Chief Minister has publicly said now, on more than one occasion, that he wants to improve the betterment of people on lower wages. That is a major breakthrough and this is an instrument to do it. So I am really excited by that shift, that change in perception of what is the right thing to do with low wages. Yes, some businesses will be affected by this in the short to medium term but the issue of productivity is key and that is why the report of what the Chief Minister says he wants to do is important. But what he must not lose sight of is the fact that by virtue of having low wages makes low levels of productivity a reality. If you pay low wages you have unproductive people. So this is a vicious circle which needs to be broken and this is what will do it. What I hope I do not keep hearing is: “But we must protect the agricultural sector.” Of course we must but there are other ways of doing it through subsidies and other ways that other countries do. That is not to say this will be the death knell to sectors of industry, like agriculture, that depends currently on a low wage model. Those businesses have already put in productivity improvements, agriculture in particular, and they will continue to do more of that and they will be incentivised to do more of it if this changes. But subsidy needs to be considered for that sector because there is only so far that you can go with that sector. We know that because it is a tried and well-trodden path in Europe, which is why they have such widespread subsidies in that industry. The other industry that is majorly affected of course is hospitality; it has not been mentioned yet. But I am sorry we have too many very small hospitality, coffee shop, restaurant type businesses in Jersey. I know that gives us a breadth and depth of choice, which is wonderful, but when we had similar with the fulfilment business we had in Jersey, lots of low level, low paid jobs, it did not add any value to our economy at all and when those jobs went they were replaced with other jobs. So it does happen, it has happened, we have got a history of making it happen. So, what I do not want to see is huge complaints about unproductive businesses paying low wages suddenly disappearing; yes, some will, but the good people in those businesses will be sucked into more profitable businesses and businesses that perform simply better because they are incentivising their staff because the wages are a little bit higher. So, I see this only as a positive and I hope that Members will get behind the Chief Minister’s remarks and those of Deputy Mézec, and agree that this is a really important step forward in having a plan, effectively a 5-year plan, to get to where we need to be, whereas only 12 months ago that plan was 11 years. So this is a major step forward and I would urge Members to vote for it.

### **9.2.4 Deputy S.J. Pinel:**

I support the Council of Ministers’ amendment in its commitments to help the lower wage paying sectors to improve their productivity and ultimately to enable employers in these sectors to pay higher wages. If the Employment Forum is to consider recommending a significantly higher minimum wage in 2019, immediate action will be required from the relevant departments to deliver clear outline proposals by 2018 in April. The statutory process for setting the minimum wage requires the Forum to have regard to the effect on the economy and competitiveness as well as to consult representatives

of employers and employees. It is essential then that when the Forum consults businesses in June this year those employers are reassured that the proposed programme to deliver productivity improvements will enable them to pay higher wages. If they are not reassured the recommendation for significant movement in the minimum wage in April 2019 seems unlikely. That would leave only one year and one minimum wage review to reach the aspirational target of 45 per cent by 2020. I support the Deputy's proposition with the caveat that the Council of Ministers' timetable must be met. Thank you.

### **9.2.5 Deputy M. Tadier:**

First of all, I have a technical point maybe for the Chair. It says on page 2, note 2, that if both the amendment and the proposition are adopted then the Act of the States dated 21st April 2010 would read as follows. My concern is that it adds new things obviously in the past tense. For example, it says in the last part of the paragraph: "... and further requested the Council of Ministers to investigate and propose a programme, *et cetera*." I just wanted to ask if that is the correct way to proceed given the fact that we are only deciding that today. We would be amending an Act which was made 7 years ago and it would suggest, to anyone reading it, that it was made at that given time. I am wondering if that is how it is normally done or whether that is simply by way of illustration.

### **The Bailiff:**

I completely understand the question, Deputy. I think it is only by way of illustration. What the Act of the States will show is that the resolution will have been adopted. So the resolution adopted in April 2010 will stand and then the amendment adopted today, if adopted, will stand and when one puts the 2 together you get the result which is what note 2 looks like.

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

Thank you for that clarification. I think there is, in a sense, nothing controversial about what is being proposed in terms of bringing the target date for the 45 per cent of the mean wage as the minimum wage. My concern is that something is being bolted on here, for some reason, which is the real contentious issue. It is the matter of an in-principle debate, which I do not think we are going to have today, about how do we ensure the viability of what have traditionally been, certainly in recent times, low paid industries, particularly agriculture and also hospitality, which I completely accept is a slightly different beast, to make sure that we can marry those 2 objectives. We have not been given any detail about that so we are putting something on here which, at best, is peripheral, although it does of course overlap, and I suspect it has been put in there to satisfy some people's concerns in those areas. But if I did have concerns and I was somebody who particularly lobbies or has a particular interest in agriculture and in hospitality, I would want to question the Council of Ministers on what they mean by this because I certainly want reassurances from the Ministers that we will not see a dual minimum wage. It must be, and must continue to be, completely unacceptable that we have 2 parallel minimum wages running together. So, for example, a standard minimum wage and then a minimum wage for agriculture or a minimum wage for agriculture and hospitality. Any kind of combination like that I do not think is a starter and I want reassurances that that is not going to happen. Of course, if that does not happen we need to have clarification about the direction of travel. What is meant by: "Ways in which we are going to support the productivity of those industries" because I think we all want to get to a stage whereby whether one is local or coming into the Island to work specifically or to work and set up a family here, that one would like to think somebody can work in any of the key industries and still get a living wage, still pay the bills and do so, wherever possible, without States subsidy. The question that does need to be asked is: what is the plan for those sectors? Is it going to be some direct kind of subsidies? Are we simply saying we will grow the pot? Is it saying that we expect people to be paid more and that there needs to be some kind of different commercial model that operates in those industries, particularly when it comes to the

domain of agriculture? I asked a question about food security this morning for a reason, which is that we really have to get to grips, first of all, with making sure that all of the possible productive land that we have in Jersey, specifically for growing vegetables, whatever kind they might be, they need to be in use and they need to be productive. We know that we have been over-reliant on the Jersey Royal Potato for too long. There has been very little crop rotation in the Island and we have relied on exporting those crops to a market over whose market forces we have very little, if any, control. So we do not set the prices, farmers do not set the prices that are dictated for the crops that are grown and the prices at which they are sold. There is an uncomfortable truth that is not often told, and certainly not before election time, which is that food is too cheap generally, including in Jersey. There is an issue with milk. Of course we know a very clever Jersey way of getting around it is that we say: "You will pay the costs, a fair price for a litre or a pint of milk because that is what it costs to produce it." We need to make sure it is viable and sustainable and we have a mechanism of protecting the milk industry and therefore the dairy farmers in that regard but we do not have that in agriculture. I suspect that we need to look to make agriculture work for Jersey. First and foremost, we need to make sure that more food is sold in Jersey. The way you do that is first of all pay the workers enough to make it productive and make people work in the industry and charge the full price for production of vegetables, *et cetera*, eggs, whatever it is that are sold in the Island, and people will need to get used to paying more for their food. If they are getting paid more anyway, because we have a living wage, and people realise that the basics in life do need to cost a minimum amount then I think that is the conversation that needs to be had. That is the environmental voice that needs to be heard over the next few years in the Jersey context. I think that needs to be part of the wider debate that we have. It is a strange world we live in when you cannot produce a chicken - well, maybe you can - for £3. I went to Waitrose the other day, that is where we learn our politics of course at the counter, and you can buy a discounted chicken, which has been cooked, for £1. It is a crazy world that we live in because I know it did not cost £1 to grow the corn to feed that chicken, to cook that chicken and then to end up ultimately in my stomach. So I think those are the kind of big issues that we do need to look at and it is not going to be that simple. So, yes, of course, let us have a very uncontroversial debate today about getting people up to a decent minimum and living wage but there are some serious questions that need to be asked about the way in which we do agriculture in Jersey. That is before we even touch on the hospitality industry.

### **9.2.6 Deputy S.M. Brée:**

When I first read Deputy Mézec's amendment, it is very simple, it is very easy to understand it sets a target date and a target rate. I was perfectly prepared to support this 100 per cent. You then read the amendment to the amendment brought by the Council of Ministers and I am slightly confused as to exactly which direction this is going in. Productivity, as Deputy Southern has mentioned, has been a problem for this Island for a very long time. How do you increase productivity, particularly in the lower paid sectors? It is very difficult, and yet we are being asked to support an amendment that says: "To investigate and propose a programme to deliver productivity improvements in the low paid sectors." Well, we know that is going to be exceptionally difficult and yet there is nothing in the report that supports the Council of Ministers' amendment to suggest how they are going to achieve this. That concerns me greatly because if we accept the amendment to the amendment and there is no way of finding the mechanisms, the levers to increase productivity in the low paid sector, then does it mean that we will then not be able to deliver the essential point behind Deputy Mézec's amendment in the first place?

[15:15]

I am concerned by some of the wording that is used in the report. There is no direction in the report to give us a clue as to how on earth the Council of Ministers are intending to deliver productivity improvements. That, I feel, (1) is lacking to give us some indication of what levers they are going to

use, but (2) more importantly, does it impact on the ability of Deputy Mézec's amendment to take effect? Thank you.

### **9.2.7 The Connétable of Grouville:**

Quite a lot of points have been made and I will try and pick up on some of them. Deputy Tadier said that he did not want to see a dual minimum wage. I asked a question in here some time ago and currently that is against the law. We would require a law change to have a dual minimum wage. With regard to agriculture which will be about seasonal workers, this is not really work for local people. It is for maybe 4 or 5 months and so I do not think there is enough people locally who could fill these roles, so it is quite a big problem. Of course, the farming community are having tremendous difficulty at the moment getting staff and that is basically because the pound has plummeted against the euro. They have probably had somewhere around a 15 to 20 per cent pay cut so that is why it is not attractive. All those people who think the farmers are very wealthy people and they should just pay more, of course if the marketplace would allow they would pay more and we probably would not be having this discussion. I see nothing wrong in what has happened historically. The Farmers Union is nearly 100 years old and one of the main reasons it was set up was to find labour. It went to Brittany where farmers or people over there were living on subsistence farms, very poor. They came over here in their thousands literally and fulfilled a need for Jersey, and although they were on relatively low wages in Jersey, when they took that money back to France they were doing very nicely out of it. During the great recession of the 1930s the British Government approached the States of Jersey to say: "Well could you source labour from the U.K." because there was a lot of unemployment. There were a lot of poor people and they came from all parts of the United Kingdom, including London, Northern Ireland and all over. I see nothing wrong with this and of course after the Second World War Jersey went back to Brittany and imported a lot of labour for the seasons; same scenario. Then in the early 1970s it started all over again with Portuguese people. They mainly came from Madeira, they were relatively poor and they came over and earned what was, for them, good money. History has repeated itself again with Polish staff who came at the turn of the millennium. That is good for all those people who have, some of them, stayed and made our culture what it is. I see nothing wrong with that practice for seasonal labour. This very subject came up in the Commons last week because the U.K. growers are having exactly the same problem. They are looking to go to the former Eastern Bloc countries such as Georgia where, again, there are poor people who could well do with coming over and earning what, for them, would be good money. I think a few people have said the solution is subsidies to farmers. I do not think they have done the figures. I think they would be quite frightened of what income or little extra subsidies would need to be given to the farming community. So, I do not mind this. I think this amendment is quite good but trying to get the agricultural industry to get up to the levels that we are talking about is going to be very difficult. Incidentally, because of the labour shortages here productivity will go up, no doubt about it. More planters are being used but outwork will go down and that is not a good thing. Thank you.

### **9.2.8 Deputy S.Y. Mézec:**

Just to let Members know the process of how we got here. I was approached by the Council of Ministers relatively early on in this and they asked me if I was prepared to delay the proposition so they could lodge an amendment, and of course I said: "Whoa there, hang on a minute." I wanted to know the detail behind this amendment because I would have been worried that it would be an amendment that would water it down and take away the compulsion to accelerate the timetable for raising the minimum wage. But it was when I read what they were proposing that I saw it and said: "No, I do not think this does water it down." I have heard the concerns made by Deputy Brée and he spoke of what would have been my worry about this otherwise. But my reading of the amendment is that these 2 elements, the acceleration of the timetable and the plan to investigate a programme for

productivity improvements, I read them as separate because of the words: “and further requested the Council of Ministers” so I do not see them as necessarily being dependent on one another. If there is a plan to deliver productivity improvement which turns out to be not quite as good as we might want it to be. That does not say: “Okay, so we scrap the timetable there.” The timetable will still be accelerated, and that is the reason that I am prepared to accept the amendment because I do not think it is undermining what my intention was, which was to make sure we do have a higher minimum wage rate by 2020. I do not want to say that much more, I guess, about the idea of a programme for delivering productivity improvements other than that I do think it is a conversation that is absolutely worth having. The agriculture industry and the hospitality industry are incredibly important for the Island, not just our economy but our way of life, the things we enjoy doing, the food we enjoy eating, the things we like doing when we go out enjoying ourselves. So it absolutely is right that those industries are looked at and protected to make sure they continue to be an important part of our economy and our life. If we are going to pursue economic policies that are potentially harmful for those industries it is right that we look at things in the round and make sure that there are things put in place to mitigate that whenever possible. But I am of the view that it is wrong for people who are working full time to be earning poverty wages, which is why I think it is right that we do accelerate the timetable for raising the minimum wage. I personally want to go much further than this proposition suggests, but that is a conversation for another day. This, I think, is a positive step forward. I am more than happy to accept the amendment and I personally feel comfortable with what it is suggesting and Members I am sure know that if I was not comfortable I would absolutely say so.

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

I would remind Members that there is a balance to be struck. If you increase wages then experience has shown that prices rise, employment falls, and social security payments rise. I can tell you exactly how productivity will rise: mechanisation. You reduce the cost of labour in the total production cost. I am glad Deputy Tadier mentioned Waitrose because like other supermarkets the company has increased the number of do-it-yourself tills, so that the sales per employee will increase, which is a rise in productivity, but it is at the expense of the low paid workers and eventually the taxpayer. As I have said, there is a balance to be struck.

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

I felt it was prudent at this time to talk about productivity with regard to the hospitality industry in particular, which has rightly been pointed out needs to improve and the need needs to be there, as has been stated by many Members already. You may be heartened to hear that work is and has been going on for some time in improving the productivity in the hospitality industry, and there is a long way to go and there is much work to do. However, some of that work has already started and Members may well remember a debate that we had and an approval we had to put a £50 charge on new registered workers that were coming into the Island. At the time I think I stood here and said that that would be money that would be well spent on improving productivity in areas that needed it. That money has been coming in from employees of registered workers throughout this year so far. We have just recent figures that have come out to show us what money has come in and what money has gone back out and where it has been spent, and as we said at that time, it would be spent on productivity. The Department of Social Security in fact, along with other departments, went and spoke to Jersey Hospitality, among many others representing their industry, and said: “If you could improve your productivity where would you spend it?” Mechanisation, yes, computer skills were exactly what they said they lacked and exactly what they needed to improve their productivity to increase what they were doing. Even in hospitality that is what they needed. But they did not have the skills, nor did they have the wherewithal to spend on training; so that is where that money has gone. In fact, the hospitality industry has had double back what it put in so far this year. The courses are full, in fact they are virtually oversold, and they are now trying to work out how they can put

more courses in there so that there can be improved productivity. The feedback we have had already from the industry is this is highly valued, it has been the right decision, and this is just the kind of work of a programme of productivity that we need, not just in hospitality. But I think it is just worth noting that something that we put in place less than a year ago is already having an effect, and it is having a marked effect on hostility and it is something that should be rolled out to other areas.

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

Does any other Member wish to speak on the amendment? If not, I call the Chief Minister.

**9.2.11 Senator I.J. Gorst:**

I thank all Members who have spoken. I do not think there is very much for me to add. I think Deputy Mézec summed it up perfectly in his speech about the timeline being committed to and the need also to do this important work. It is difficult work but it really must be done and this amendment I think gives real impetus to working with these sectors to deliver productivity improvements. Senator Ferguson is right, it will be about technology, it will be about mechanisation where it is possible. I am grateful to the Economic Development Department for the work that they have already started to build on, together with the Environment Department, from post initial conversations that I had with some of these sectors. So it is the right thing to be seeing an increase in the minimum wage, but it is also the right thing to support really important parts of our economy in appropriate ways, and I look forward to doing that. I maintain the amendment.

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

The appel has been called for. I ask all Members to return to their seats. The vote will be on the second amendment to the Minimum Wage proposition, P.121. I ask the Greffier to open the voting.

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

Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy R. Labey (H)				
Deputy S.M. Brée (C)				
Deputy M.J. Norton (B)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

### 9.3 Minimum Wage: amendment of States Act dated 21st April 2010 (P.121/2017) - as amended

#### The Bailiff:

So now we turn to the debate on the main proposition, as amended. Does anybody wish to speak on the proposition?

#### 9.3.1 Deputy M. Tadier:

Thank you for the speakers who clarified obviously that the law prevents any dual minimum wage. I knew that of course, but the point I was making I do not want anyone ... **[Laughter]** I did know that we have been speaking about it previously. I do not want anyone to get the idea that they can come back and make a case for having separate minimum wages and then try and change the law. That is the point I was trying to make. Something I wanted to raise, and I think there is a case for it *per se* anyway, just as a general policy direction from the Minister for Social Security, but it may be something that could possibly tie-in with encouraging people, especially locals, into the hospitality industry and into agriculture. Part of the reason I put my question in about the disregards this morning is that I think it is important that there are more incentives to get people back into work. I am sure I am not the only one who speaks to people who, for whatever reason, are temporarily workless, and that may be due to family circumstances, it may be due to a temporary bereavement, things like that. They look at their circumstances and say: "In order for me to be any better off in real terms and to make the additional effort to go back to work I would need to get a job that earns so much in order to be significantly better off." We do need to think about the level of disregards that we give to people. Perhaps in the short term it may well be that the Minister needs to consider whether it is for 3 months, 6 months or a year, that people have an increased disregard.

[15:30]

So whereas I suspect 23 per cent or 25 per cent is not necessarily much of an incentive to get people back into work, especially if they are working for the minimum wage, if we combine that with a trend which is going more towards a living wage and say: "Well actually for the first 3 months of you going back into work, the first 6 months of you going back into work, you can keep 50 per cent of what you earn." Then that will be tapered out over a period of time while you get back on your feet and before you are back to your usual disregard. I think that could be considered specifically in the context of agriculture and in hospitality. It may well be that if people who have been long term or even short term unemployed could be incentivised to work back in those industries. Again it does not absolve those industries of having to consider what a living wage means and how it is achievable in those industries, but it could be a mechanism by which to get some people back into work who otherwise would not do. I remain optimistic. We often hear the phrase used that Jersey people simply will not do that kind of work. But there was a time of course when lots of different types of people - whether they were Jersey or not - did do that kind of work. There was a time in our Island where it was not uncommon to go into a field and you would have Bretons, French people, along with Jersey people working in the field together and they would be there often speaking in that mixture of

whatever the working languages were of the time. I think that is something which the Minister could look at. I am not going to say it is without its drawbacks of course because we would not want to create a system whereby people did not have a level playing field so people went to work in the industry without being unemployed first and of course there is so incentive. But I think we need to be imaginative about what we do. Of course, as I said at the beginning, there are good reasons why we should increase the disregard anyway, especially on a temporary basis. Get more people into work; make them more independent, less dependent on the State. We know that work in itself is therapeutic but of course people will only want to get back into work if work does pay a decent wage. So I congratulate my colleague, Deputy Mézec, on this and working collaboratively again with Ministers to make ordinary people's lives that little bit better.

### **9.3.2 Connétable S.A. Le Sueur-Rennard of St. Saviour:**

I would like to have the pair of glasses that the last speaker has got, because mine are not rose-coloured. I have to be perfectly honest, if he can pick up a chicken for £1 it means it has not been ethically looked after, so that is not a very good thing for a start. It would not have come from a Jersey farmer; they would have been something that was imported because there are not enough animals here. Secondly, to work on a farm you have got to want to do it. I have been looking for somebody to help me on the farm and I am paying £10 an hour and I had a young gentleman come and said to me: "No point, Mrs." I said: "Why?" He said: "Because I am rained on every day and I can stay home and get something from Social Security." It was Social Security that had sent him, and when he went back he was paid the money and he had refused to do a job. So where is the incentive there? So I have got somebody now and he milks the cows, he comes on his bike, but you have got to want to do it. Even at £10 an hour they will not do it because they will get more sitting in the warm, nice and comfy, watching the T.V. (television) without doing anything. So I need the glasses that you have got, Deputy, because mine are definitely rose-coloured and I have had to work for my money.

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

That is my colleague, Deputy Tadier, told off well and truly. He should have put those rose-coloured glasses on. But today for me it is a joyous one, again, to see something laid down by me more years ago than I care to remember as a principle, with the best I could do at the time through previous States, and to see the idea germinate and come to fruit sometime later; especially in the context where the Jersey minimum wage has been allowed to fall behind that in the U.K. despite the fact that we are a 20 per cent more expensive place to live than the U.K. on average. At the same time as that is happening, here we are making a positive move to increase the minimum wage to levels which are far more appropriate to our costs and which will make a difference to some people's lives. I feel pleased to see this coming through. It has taken a long time but I welcome it wholeheartedly.

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

Just briefly, the best incentive for getting people to work and be productive of course is paying them well. That is, to me, a bit of a no-brainer. Those businesses that do pay their staff very well tend to get better productivity, so this is a great day for them. Also, why should other businesses that are not paying what they should be paying effectively be subsidised by you, the taxpayer, in terms of supplementation and income support having to kick-in? So those businesses that are not paying what they should be paying, everybody else is paying for that. So until we can get the minimum wage towards a living wage so that those people become net contributors in terms of tax and social security do not have to continue to subsidise those businesses, the better. This is a journey towards that. In answer to the Constable of St. Saviour's query about social security, I do hope that somebody from Social Security can speak on this because I am not an expert, but I was of the understanding that if you did not accept a job that was offered to you over a certain period of time your benefits were



eventually cut. Am I right? So I do hope that is being enforced, Minister. I understand the enforcement regime at Social Security is now pretty strong, and that gentleman may well find his comeuppance very soon if he turns the next job down, even if it is on him. I hope that I am not stepping out of order there, but I know where the Constable is coming from. The reason why a lot of Jersey people do not do these jobs is because of our current licensing regime, because they can have the choice to do the jobs that are paying more. Because so many of these businesses, hospitality and agriculture, do get licences so they can employ people that can accept these sort of wages. It is an anomaly in our system. So if you are locally born you have a much broader breadth of jobs that you can choose from. Okay, you might not be skilled enough to do all of them but you do have a choice, whereas if you had to go to a business that does not have licences to employ then they do not have a choice. So it is not a level playing field for the immigrant labour force as against local labour force, so we are not comparing apples with apples. But that is a different debate surrounding population. But this is a good day. Like we had the other day when the States agreed to pay the living wage, this is a great day too. This is a journey we are now on to increasing wages at the bottom end of the income scale, which benefits not just those at the bottom-end but all Islanders, because as has been said many times in this Assembly on this topic already, that trickle-up effect is far more effective than the trickle-down effect. People will have more money to spend in the economy, everybody benefits, and eventually I hope that the Social Security bill, the cost of supplementation, the cost of income support, will reduce. Those businesses that are currently being subsidised in effect will no longer be subsidised at some point in the future. I look forward to that day. I hope eventually we get to that point where we do not have to do as much of that, if any at all.

### **9.3.5 Deputy S.Y. Mézec:**

Thank you to the Members that have contributed to this debate. I think, perhaps against my better judgment, I just want to address some of the points that were made by Senator Ferguson in her speech in the previous debate where she said that the examples of raising the minimum wage show that costs go up and there are all sorts of negative consequences. I quite enjoy hearing that argument because the overwhelming evidence says the precise opposite, and it is something that gives me confidence in this argument that we are on to the right thing. We had Oxera do a report that examined the potential effects of raising the minimum wage. Let us be absolutely frank, the Oxera report did identify potential negative consequences, and I will just remind Members of some of those. They estimated that 400 people would see a decrease in their incomes. They also said that 14,800 would see an increase in their income, so I think on balance that has got to be good. They said that there would be a reduction in profits of somewhere between 0.03 per cent and 0.07 per cent. Not very much at all I think there. They also suggested that there would be a very small amount of inflation, 0.05 per cent, again not very much. But all of that was examining what would happen if the minimum wage was raised to 45 per cent of the average wage today, right now. This proposition is not about that. It is about doing that over 2 years, so in actual fact the consequences will not be anywhere near as bad as Oxera predicted because it would be much more managed than that. So I think that she is just wrong. The examples show that raising the minimum wage, as long as it is done properly, is good for the economy. But the strangest part of her argument is this idea that if you raise the minimum wage it will be terrible because jobs will be lost because of automation and mechanisation. I say that is a good thing. It is a good thing that there is this innovation going on and that there are new and innovative ways of doing things. The nature of work is changing; hopefully the end result of it will be that our lives will be easier because tasks can be done by computers and by machines. The only caveat I would have there is just make sure we do not get to the point where Skynet goes live and we hook up all sorts of military systems to it because Hollywood tells us that that never ends up very well. But before that, that is a perfectly good thing and I think we should be looking forward to that and managing it properly so that we direct people to areas where they can be more productive, and let us let these computers and machines do the stuff that do not need to be done by human beings.

So I thank the Council of Ministers and other Members of this Assembly for their support. I am very glad to see that the arguments made by Senator Ferguson are going out of fashion. This is going to improve people's lives and that is what this Assembly really should be spending all of its time doing. I call for the appel.

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

The appel has been called for. I ask Members to return to their seats. The vote is on the main proposition, as amended, and I ask the Greffier to open the voting.

<b>POUR: 32</b>		<b>CONTRE: 2</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Connétable of Grouville		
Senator I.J. Gorst		Connétable of St. John		
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Peter				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy R. Labey (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

**10. Draft Petty Debts Court (Miscellaneous Amendments) (Jersey) Regulations 201-(P.5/2018)**

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

So we now move on to the Draft Petty Debts Court (Miscellaneous Amendments) (Jersey) Regulations - P.5 - which was lodged by the Chief Minister. I ask the Greffier to read the citation.

**The Deputy Greffier of the States:**

Draft Petty Debts Court (Miscellaneous Amendments) (Jersey) Regulations 201-. The States, in pursuance of Article 1(4) of the Draft Petty Debts Court (Miscellaneous Provisions) (Jersey) Law 2000, have made the following Regulations.

**Senator I.J. Gorst:**

I would like to ask Senator Bailhache to act as rapporteur for this item and the following 2, I think it is, as they emanate from the Legislation Advisory Panel, of which he is Chair.

**10.1 Senator P.M. Bailhache (Assistant Chief Minister - rapporteur):**

This Bill proposes to increase the maximum jurisdiction of the Petty Debts Court, which is currently £10,000, to a figure of £30,000. The amount of the Petty Debts Court's jurisdiction was increased to £10,000 in 2000 so it is now 18 years since the last amendment. The amendment comes about as a result of a recommendation from the Royal Court Rules Review Group, which recommended both that the jurisdiction of the Petty Debts Court be increased to £30,000 - and that indeed consideration be given in 2 years' time to increasing it to £50,000 - and that the jurisdiction in relation to the cancellation of a contract lease where the jurisdiction is set by the rent payable under the lease should be increased from £15,000 to £45,000. I move the principles of the Regulations.

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

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

[15:45]

**10.1.1 Deputy R. Labey:**

I do not suppose I will have any argument with this as proposed. What I do find odd is in terms of amendments to the Petty Debts Court what is missing from the proposition. Why is it still called the Petty Debts Court, which is anachronistic and pejorative? Why do we still have this failure to have a proper small claims system as part of the Petty Debts Court? The U.K. has enjoyed a small claims system for the last 50 years and as part of that system litigants are not expected to employ lawyers and only where there was or is unreasonable conduct could legal costs be awarded against a party. I was directed to a very interesting blog by a local man who explained a situation where he went to buy from a local supermarket some items for a dinner that he was cooking for his mother later that evening, his senior mother. This was in Jersey and no names no pack-drill but the supermarket was undergoing some refurbishment and he did notice that quite a lot of the raw chicken was on a unit of sloped shelves. As a consequence all the juice from the raw chicken had gathered at the bottom of the packets and were beginning to drip down and form puddles below. So he avoided that item but he, wanting to ironically have a healthy meal for him and his mother, he bought some pre-cooked salmon, baked potatoes, salad and just some local strawberries to follow. They had their meal and by midnight both of them are violently ill. He is not so much worried for himself but for his elderly mother because food poisoning can be, we have seen people ... especially if it did come from the chicken, campylobacter is very, very dangerous for elder people. So of course he contacted the supermarket the next day and was told by them that they took incidents like this very seriously and: "Here are a couple of vouchers and we hope you will come back to our store." He said: "Well, if you are taking this seriously surely I deserve some kind of explanation as to what it might have been and some kind of full apology. While I am at it, okay, vouchers, thank you very much, but I think you should pay £100 to a charity of my choosing." In the communications from the supermarket concerned were: "Well we have engaged our lawyers and we have contacted our insurers and they are engaging their lawyers." As a consequence it goes up and up and up. In fact, the guy complaining about his treatment by the supermarket and what happened is an advocate of the Royal Court, interestingly enough. I suppose we have all been there where ... and I remember raising this with the Chief Minister at one of our very first meetings, and I have had an instance where a company who

gave me a quote to ship something over, a water tank that I bought, rang me up and said: "This thing is huge, we cannot possibly ship it for the sum of money we quoted." I went: "But I sent you the dimensions fully, you have got them, right?" "Yes, but this is huge, Russell." I said: "But, yes, you could see it was huge because I sent you the dimensions." "Yes, but we cannot possibly ship it for this." I said: "Well I would not have bought it if it is now going to cost me £350 to ship instead of the £100 you said, I would not have bought the item." "Well, we cannot ship it for this." So all the power is in their hands because they have got the item, I have spent the money on it, now I am having to pay 3 times as much as I was quoted for. So what do I do? So I said: "Well, hang on a minute, I am going to talk to Trading Standards and find out some information about this because I am not sure of my rights here but I do not think I am in the wrong." I put the phone down, rang Trading Standards, the nice people in the market, and they said: "Well, Russell, you are absolutely right but you are going to have to take them to the Petty Debts Court. You are going to have to take them to the Petty Debts Court to get your money back." I had a conversation with Trading Standards and they said: "In the mainland this sort of thing could be sorted out quite quickly either by the ombudsman for consumers", which I always thought we should have had: "or by a cheaper, quicker process in a small claims system." In Jersey a claim lost, even in the Petty Debts Court, can incur many thousands in legal costs and operates as a disincentive. In my situation, and I am sure the guy with the supermarket, I am just not going to bother taking it to the Petty Debts Court. In the Access to Justice Review various reforms have been made to the Royal Court rules, including protecting plaintiffs against bearing the costs of the other side when bringing a claim for personal injuries. Those reforms have yet to be introduced into the Petty Debts Court, and indeed even in the Petty Debts Court there is no cost shield for litigants, even if a consumer is just arguing about their T.V. being defective. The other side could hire a lawyer and the potential costs that the unsuccessful plaintiff might have to be would be a serious problem and is of course a serious disincentive. There is no small claims protection on costs where parties are just expected to deal with cases without lawyers. I am not the first person to bring this up. This has been an issue for years. It seems simple enough, we are talking about amendments to the Petty Debts Court, why is this being unilaterally, why can we not look at the whole thing, why can we not bring in this very sensible measure of a small claims procedure, why is it dragging on so long? I think it is incredibly regrettable. I do not whether to throw my toys out of the pram along with this amendment, which I do not particularly want to do. But I would like some answers on this and some promise of some movement.

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

Well that was a very interesting speech from Deputy Labey, and I am sorry that he did not come and talk to the Legislation Advisory Panel about it. He is quite right of course that the name the Petty Debts Court is anachronistic. I certainly have thought that for a large number of years and have been unable to achieve any change. But the L.A.P. (Legislation Advisory Panel) I am glad to say has been active in this front and about 3 or 4 months ago, I think it was, a recommendation was made to the Chief Minister after discussion with the Magistrate and a whole range of other interested parties, that the name of the court should be changed to the Magistrate's Court, Civil Division. The same Magistrate sits in the Criminal Division of the Magistrate's Court, as sits in the now named Petty Debts Court, so there is no reason at all why the same court name should not be used for the Civil and Criminal parts of the jurisdiction. So that, Deputy Labey, is in hand. So far as the costs of lawyers are concerned, and I do not know whether Deputy Labey has made inquiries in the Petty Debts Court of the procedures that are followed in that court, but I would think it was about 15 years ago that a mediation process was introduced. You cannot compel people to go to mediation; it has to be theoretically at least a consensual matter. But there is, I think I can say, quite strong pressure brought to bear on all litigants who go to the Petty Debts Court to agree to go through a mediation process. The vast majority of them do. There is a judge mediator, who is not the same person as the judge who presides in the Petty Debts Court, a judge mediator will preside over the mediation and

certainly when I occupied another chair I gave instructions to the judge mediator that he was very gently to bang heads together to ensure that time and money was not wasted by fruitless disputes over very small sums of money, or relatively small sums of money. The last time I made inquiries of the judge mediator I was told that 75 per cent to 80 per cent of the claims which go to mediation are settled. It is only a relatively small number that fail to settle and go back to the Petty Debts Court with a report from the judge mediator. The Magistrate, I am quite sure, is very conscious of the necessity to keep the scales of justice balanced as between litigants who do have a lawyer and litigants who do not have a lawyer, and I would be extremely surprised if the Magistrate were to award the legal costs incurred by one side against another side who was not legally represented, unless that party had been completely unreasonable. So I do not think that the system is quite as bad as Deputy Labey might suggest. It is true that there is no named small claims procedure, but the reality is that every case that goes to the Petty Debts Court goes through a mediation process and, as I have said, the large majority of those cases are settled at mediation, to the great advantage of both parties because one of the great things about mediation is that there are no losers. Whether there are all winners is perhaps another matter but there are certainly no losers, whereas if a case goes to determination before a Magistrate then inevitably one party wins and one party loses. I hope that answers at least in part the complaints made by the Deputy, and I maintain the principles of the Regulations.

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

The appel has been called for. I ask Members to return to their seats. The vote is on the principles of the Petty Debts Court (Miscellaneous Amendments) Regulations, and I ask the Greffier to open the voting.

<b>POUR: 33</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Peter				

Deputy R. Labey (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

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

Deputy Le Fondré, this would fall to your Scrutiny Panel?

**Deputy J.A.N. Le Fondré (Chairman, Corporate Services Scrutiny Panel):**

No, thank you, sir.

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

Senator Bailhache, how do you wish to deal with the Articles?

**10.2 Senator P.M. Bailhache:**

Perhaps I might be permitted to take the Articles *en bloc* and so I move all together Regulations 1 to 3, and I invite Members to note that the coming into force date is 9th April 2018, which will give time to the Royal Court to pass any necessary amendments to the Rules and Practice Directions that need to be brought into effect before the new jurisdiction comes into force. I move the Regulations *en bloc*.

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

Are they seconded? **[Seconded]** Does any Member wish to speak on the Regulations? All those in favour kindly show. Those against? They are adopted. Do you wish to take Third Reading, Senator?

**Senator P.M. Bailhache:**

Yes, I move the Regulations in Third Reading.

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

Is that seconded? **[Seconded]** Does any Member wish to speak on Third Reading? All those in favour of ... the appel has been called for on Third Reading of the Regulations. I ask Members to return to their seats and I ask the Greffier to open the voting.

<b>POUR: 33</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				

Deputy J.A. Martin (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Peter				
Deputy S.Y. Mézec (H)				
Deputy R. Labey (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

## **11. Draft Stamp Duties and Fees (No. 4) (Jersey) Regulations 201- (P.6/2018)**

### **The Greffier of the States (in the Chair):**

We now move on to the Draft Stamp Duties and Fees (No. 4) (Jersey) Regulations - P.6 - lodged by the Chief Minister, and I ask the Greffier to read the citation.

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

Draft Stamp Duties and Fees (No. 4) (Jersey) Regulations 201-. The States, in pursuance of Article 3 of the Draft Stamp Duties and Fees (Jersey) Law 1998 have made the following Regulations.

#### **11.1 Senator P.M. Bailhache (Assistant Chief Minister - rapporteur):**

These draft Regulations are linked to the Regulations that the Assembly has just approved. They increase or they create a new category of stamp duty bands for the new jurisdiction of the Petty Debts Court, which will go up to £30,000.

[16:00]

The new band will create a new set of fees for claims exceeding £10,000, but not exceeding £15,000, where the rate will be £150. For a claim exceeding £15,000 but not exceeding £25,000 the rate will go up to £200. For claims exceeding £25,000 but not exceeding £30,000 the stamp duty will be £300. I move the principles of the Regulations.

### **The Greffier of the States (in the Chair):**

Are the principles seconded? [**Seconded**] Does any Member wish to speak on the principles? If not, all those in favour of the principles kindly show. Those against? The principles have been adopted. Senator Bailhache, the Articles?

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

I move the Regulations *en bloc*, if I may, and the schedules attached to it.

### **The Greffier of the States (in the Chair):**

Maybe I should offer them to Scrutiny first. Deputy Brée?

### **Deputy S.M. Brée (Vice-Chairman, Corporate Services Scrutiny Panel):**

No, Sir, thank you.

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

I interrupted that. Have you finished, Senator?

**Senator P.M. Bailhache:**

May I have move the Regulations and the schedule attached to it.

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

Is that seconded? [**Seconded**] Does any Member wish to speak on the Regulations? If not, those in favour kindly show. Those against? The Regulations are adopted. Senator Bailhache, Third Reading?

**Senator P.M. Bailhache:**

I move the Regulations in Third Reading.

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

Are the Regulations seconded in Third Reading? [**Seconded**] Does any Member wish to speak on Third Reading? Those Members in favour of Third Reading ... the appel has been called for on Third Reading of the Regulations. I ask Members to return to their places and I ask the Greffier to open the voting.

<b>POUR: 31</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Deputy J.A. Martin (H)				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Peter				
Deputy S.Y. Mézec (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				



Deputy P.D. McLinton (S)				
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## **12. Draft Postal Services (Transfer) (Amendment) (Jersey) Regulations 201- (P.8/2018)**

### **The Bailiff:**

We now come to P.8 - Draft Postal Services (Transfer) (Amendment) (Jersey) Regulations. I ask the Greffier to read the citation of the draft.

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

Draft Postal Services (Transfer) (Amendment) (Jersey) Regulations 201-. The States, in pursuance of Article 35(2) of the Postal Services (Jersey) Law 2004, have made the following Regulations.

### **12.1 The Deputy of St. Martin (The Minister for the Environment):**

I will be brief. This is quite straight forward, I hope. These Regulations amend the Postal Services (Transfer) (Jersey) Regulations 2006 in relation to conditions concerning premises used by Jersey Post, the postal headquarters at Rue des Pres Trading Estate. The current Regulations prescribe that the premises will be used solely for the purposes of warehousing and that no other business will be conducted without the consent in writing of the Minister for the Environment. Furthermore, the current Regulations state that the premises cannot be leased, sold or otherwise disposed of without the consent of the Minister for the Environment. The Minister for Infrastructure and I both agree that this consent role sits better under the responsibility of the Minister for Infrastructure. It is the Minister for Infrastructure that is primarily responsible for land transactions on behalf of the public of Jersey, as set out in Standing Order 168. Under the proposed amendment Regulations the consent of the Minister for Infrastructure is required instead of the Minister for the Environment. I think this is very simple and straightforward and I urge Members to support the proposition.

### **The Bailiff:**

Is the proposition seconded? **[Seconded]** Does any Member wish to speak? All those in favour of adopting the principles kindly show. Those against? The principles are adopted. Do you propose the 2 Regulations together, Minister?

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

Yes, please.

### **The Bailiff:**

Is that seconded? **[Seconded]** Does any Member wish to speak? Those in favour of adopting Regulations 1 and 2 kindly show. Those against? The Regulations are adopted. Do you propose it in Third Reading?

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

I do.

### **The Bailiff:**

Is that seconded? **[Seconded]** Does any Member wish to speak in Third Reading? Those in favour of adopting the Regulations in Third Reading kindly show. Those against? The Regulations are adopted in Third Reading.

## **13. Draft Signing of Instruments (Miscellaneous Provisions) (Jersey) Law 201- (P.10/2018)**

### **The Bailiff:**

We now come to the Draft Signing of Instruments (Miscellaneous Provisions) (Jersey) Law - P.10 - lodged by the Chief Minister. I ask the Greffier to read the citation of the draft.

**The Deputy Greffier of the States:**

Draft Signing of Instruments (Miscellaneous Provisions) (Jersey) Law 201-. A Law to make provision for the making of affidavits, wills and powers of attorney by persons unable to sign by reason of physical incapacity and make further provision for the witnessing of wills. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

**Senator I.J. Gorst:**

I ask Senator Bailhache to act as rapporteur.

**13.1 Senator P.M. Bailhache (Assistant Chief Minister - rapporteur):**

All matters that come before this Assembly are of course important, but it is only occasionally that the Assembly has the opportunity to approve a law which will have an immediate and obvious and lasting benefit to members of our community and this law provides such an opportunity. The development of the law has been overseen by the Legislation Advisory Panel, which I chair and I am grateful to the panel and to our different advisers. But I would like to mention in particular, although, unfortunately, he is not here at the moment, that the Deputy of St. Ouen has been especially key in bringing forward this legislation and I wish to place on record my thanks to him. **[Approbation]** On 25th March 2014 in a case over which I believe you presided, the Royal Court determined that a person who had been unable to sign his Will, as a result of paralysis of the hands, had died intestate. This was despite it not being disputed that the deceased had had the mental capacity to make a Will and had in fact directed a family friend to sign the Will on his behalf in the presence of a lawyer; that he was unable to make a Will purely due to a physical disability was quite obviously an unacceptable position. I think I should record that the Royal Court in fact found another means to give effect to the wishes of the testator but that need not concern the Assembly this afternoon. Any suggestion that a person who is competent to make a Will cannot do so simply because of his physical disability clearly places the Island at risk of being in breach of the European Convention on Human Rights. The lawyers acting for the family concerned commissioned a report from a Professor Thomas, one of the teachers at the Institute of Law and she wrote a report that has been extremely helpful to the panel and to the draftsman. This draft law responds both to the Act of the Royal Court and to the work of Professor Thomas. The law will ensure that any person who is unable, by reason only of physical incapacity, to sign a Will, a power of attorney, a lasting power of attorney or an affidavit is still able to execute such documents. It also makes it clear the means by which and the conditions, subject to which a person is subject to such a physical disability, may execute the documents. One of the things with which the panel was obviously closely concerned were the safeguards to ensure that a person with such a disability could not be disadvantaged by unscrupulous persons. A testator will have to declare in whatever way in which his or her wishes can be conveyed, that he or she wishes the Will to be signed by another person on his or her behalf. This declaration would have to be made in the presence of 2 witnesses, one of whom must be a qualified witness, usually a lawyer, and be recorded on the face of the Will and dated. Qualified witnesses are set out in the draft law and include a Jurat, a Member of this Assembly, advocate or a solicitor or if the Will is executed outside the Island a judge, magistrate, mayor or barrister. The Will would need to be signed by the person signing on the testator's behalf in the presence of 2 witnesses, who would also each sign the Will in the presence of the other witnesses and of the other person who initially signed on the testator's behalf. The panel was, accordingly, satisfied that there were sufficient protections for the position of the testator to ensure that his or her wishes would be adequately recorded. I may come on to this later on but similar arrangements are made in relation to the signing of the other legal documents, to which I have referred. I move the principles of the Bill.

**The Bailiff:**

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

**13.1.1 Deputy J.M. Maçon:**

The Chief Minister will recall that I put a question to him in this Assembly about whether he supported this and I am glad to see the Advisory Panel bring forth this legislation that he supported. But reading through the report there are 2 questions that I would like to ask the rapporteur: (1) what level of outside consultation happened with the forming of this particular legislation with disability groups and that type of thing because it is not really touched on in the report? Can I also ask, again, with those people countersigning it, we know, for example, we need people to think about end-of-life experiences, Wills, *et cetera* and, of course, the cost of these things are important? While I appreciate a States Member can sign, people who want to countersign one of these things, why, for example, when we are looking at passports of course it could be teachers, it could be a wider class of person, a professionally qualified person, who can also countersign these types of documents, which may make it more affordable for people than necessarily having to go to an advocate or a lawyer, for example? If the rapporteur could just expand on these questions. Again, I am broadly supportive but I would like to know why with just that particular form.

**The Bailiff:**

Does any other Member wish to speak? Then I call on Senator Bailhache to reply.

**13.1.2 Senator P.M. Bailhache:**

I thank Deputy Maçon for that contribution. The consultation that took place, so far as I recall, was with the legal profession. **[Laughter]**

**Senator S.C. Ferguson:**

I am sorry, Sir, it appears to be talking to Senator Bailhache.

**The Bailiff:**

It seemed to talk when Senator Bailhache talks, that is strange.

**Senator P.M. Bailhache:**

I am sure it would sum up much better than me. **[Laughter]** The consultation took place with the Law Society because it is obviously the lawyers who are principally concerned with the drawing up of Wills for execution by members of the public and the panel thought that that was the appropriate body with which to consult. I cannot recall whether there was any wider consultation than that. There may have been but I cannot, at this moment, put my finger on it. Deputy Maçon asked whether a wider class of person should have been enabled to sign and this was a matter that the panel did have a great deal of discussion about. Obviously on the one hand one would like to make it as wide as possible so as to make the possibilities available to the testator as broad as possible and for the reasons given by the Deputy because one would not want to have cost incurred unnecessarily.

[16:15]

Indeed, I seem to recall that the first draft that we saw suggested that the person authorised to sign the Will must be a lawyer but there would also be another lawyer there to witness the execution of the Will. The panel thought that that was unsatisfactory and drew up a class of persons that they thought were generally responsible people on whom reliance could be placed and that is the class of person, which is now contained in the Bill before the Assembly. I do not think that it is unreasonably narrow and certainly it would be possible for a non-lawyer person who would not ordinarily be expected to charge a fee to sign a will on behalf of a person who was disabled in that way. I move the principles of the Bill.

**The Bailiff:**

All those in favour of adopting the principles, kindly show. Those against? The principles are adopted. Senator, how do you wish to proceed now? Scrutiny again, I nearly did it again. Deputy Le Fondré, do you wish to scrutinise this?

**Deputy J.A.N. Le Fondré (Chairman, Corporate Services Scrutiny Panel):**

No, thanks.

**13.2 Senator P.M. Bailhache:**

Sir, perhaps I may take the Articles *en bloc*. Article 1 of the Bill makes an amendment to the 1851 Law on Wills of immovable property to redefine who must witness a Will of immovable property. Article 2 amends the Affidavits (Advocates and Solicitors) (Jersey) Law 1992 to make provision for a physically incapacitated person. Article 3 is the Article that inserts a new Article into the Wills and Successions (Jersey) Law 1993 outlining how a Will of movable or immovable property is valid, even if it has been signed by a person other than the testator. I do not think I need to cover the ground again as to how that would be done. Article 4 inserts a new Article in the Powers of Attorney (Jersey) Law 1995 to allow a power of attorney to be valid when it has not been signed by the donor by reason of physical incapacity. Article 5 amends the Capacity and Self-Determination (Jersey) Law when it comes into force, so that a person can give authority to a lasting power of attorney in circumstances where the donor is physically incapacitated and sets out the procedure to be followed. Article 6 is the commencement Article and provides that the law will come into force 7 days after registration and for Article 5 to come into force either on that date or when the schedule to the Capacity and Self-Determination Law 2016 comes into force. I move the Articles of the Bill.

**The Bailiff:**

Seconded? **[Seconded]** Does any Member wish to speak on the Articles? Those in favour of adopting the Articles kindly show. Those against? The Articles are adopted. Do you move the Bill in Third Reading, Senator?

**Senator P.M. Bailhache:**

I move the Bill in Third Reading.

**The Bailiff:**

Seconded? **[Seconded]** Does any Member wish to speak in Third Reading? Those in favour of adopting the Bill in Third Reading kindly show. The appel is called for and I invite Members to return to their seats. The vote is on whether to adopt the Draft Signing of Instruments (Miscellaneous Provisions) (Jersey) Law in Third Reading and I ask the Greffier to open the voting.

<b>POUR: 37</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator A.J.H. Maclean				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				

Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy R. Labey (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

#### **14. Draft Charities (Jersey) Law 2014 (Appointed Day) Act 201- (P.11/2018)**

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

We now come to the Draft Charities (Jersey) Law (Appointed Day) Act, P.11, lodged by the Chief Minister and I ask the Greffier to read the citation of the draft.

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

Draft Charities (Transitional Provisions) (Jersey) Regulations 201- the States. In pursuance of Article 40 of the Charities (Jersey) Law 2014, have made the following Regulations.

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

Sir, I would like Senator Routier to act as rapporteur for this item and the following 3, please.

##### **14.1 Senator P.F. Routier (Assistant Chief Minister - rapporteur):**

Today we have the Appointed Day Act and the set of 3 Regulations, which will at last bring into full effect the Charities Law. I will just give a brief overview of the 4 and then take each Regulation. The law that was well supported by Members when we put in place an up-to-date modern definition of charity and paved the way for the development of both the public register of charities and the appointment of a Charity Commissioner. Jersey's first Charity Commissioner was appointed in July of last year. Since his appointment he has been busy meeting with representatives of the charitable sector and the finance industry to consult on and engage in the next steps of the process. The Charity Commissioner has recently published his draft guidance, has launched the website and spoken at a number of community briefings across the Island. For my part I recently appointed the tribunal members who will hear appeals against the Commissioner's decisions. In short, things are going fairly well. The next step is to open the registration process and I know some organisations have had

some pre-registration advice and been on to the website and pre-registered. The new register will provide the public with access to information about the charities they support, whether through financial donations or through volunteering activity. People want information about charities to be in the public domain. It builds public trust and confidence in charities, which, in turn, permits those charities to flourish. This Appointed Day Act brings into force the remaining provisions of the law. On 1st May of this year is the day on which entities can begin to apply for registration. Organisations will be able to register online via the Commissioner's website or in paper format, if they prefer. Help is available in person or via the website guidance on how to complete the application form. The Commissioner stresses in the guidance that the process on registration will be as straightforward as possible, subject to the requirements of the law. Entities must make their own decisions about applications to register and the intended charitable activity but the Commissioner will, nonetheless, aim to offer helpful general advice about the registration process; the requirements of the charity test, the duties and the responsibilities of the registered charities and their governors, especially small entities who may feel a little uncertain when coming in to the registration process for the first time. The second date of 1st January 2019 enables only registered charities and certain overseas charities, of course, accepted foreign charities in the law, may refer to themselves as a charity. Also, from that date, 1st January 2019, broadly an entity must be registered as a charity to obtain the relevant exemptions from taxations. I propose the principles.

**The Bailiff:**

You are proposing the Act. Seconded? **[Seconded]** Does any Member wish to speak on the Act? All those in favour of adopting the Act kindly show. Those against? The Act is adopted.

**15. Draft Charities (Transitional Provisions) (Jersey) Regulations 201- (P.12/2018)**

**The Bailiff:**

We now come to P.12 - the Draft Charities (Transitional Provisions) (Jersey) Regulations, lodged by the Chief Minister. I ask the Greffier to read the citation of the draft.

**The Greffier of the States:**

Draft Charities (Transitional Provisions) (Jersey) Regulations 201-. The States, in pursuance of Article 40 of the Charities (Jersey) Law 2014, have made the following Regulations.

**15.1 Senator P.F. Routier (Assistant Chief Minister - rapporteur):**

These Regulations set out the transitional provisions for those entities that were entitled to benefit of a tax exemption before the coming into force of these Regulations on 1st January 2019 and who had applied for registration as a charity and had not had the application finally determined before 1st January 2019. Such entities will continue to receive the benefit of tax exemption for the whole of 2019 tax year of assessment. This will give entities sufficient time to apply and plan before the taxations amendments have effect upon them. I propose the Regulations.

**The Bailiff:**

The principles are proposed. Seconded? **[Seconded]** Does any Member wish to speak on the principles? Those in favour of adopting the principles kindly show. Those against? The principles are adopted. Deputy Le Fondré, does your panel wish to scrutinise these?

**Deputy J.A.N. Le Fondré (Chairman, Corporate Services Scrutiny Panel):**

No, Sir.

**The Bailiff:**

How do you wish to proceed, Senator Routier?

**Senator P.F. Routier:**

I think I can just propose them *en bloc*, Sir, pretty straightforward.

**The Bailiff:**

Two regulations proposed. Seconded? **[Seconded]** Does any Member wish to speak? Those in favour of adopting the regulations kindly show. Those against? Regulations 1 and 2 are adopted. Do you propose in Third Reading? Seconded? **[Seconded]** Does any Member wish to speak? All those in favour of adopting the Regulations in Third Reading kindly show. Those against? The Regulations are adopted in Third Reading.

## **16. Draft Charities (Core Financial Information) (Jersey) Regulations (P.13/2018)**

**The Bailiff:**

We now come to the Draft Charities (Core Financial Information) (Jersey) Regulations - P.13 - lodged by the Chief Minister. I ask the Greffier to read the citation of the draft.

**The Greffier of the States:**

Draft Charities (Core Financial Information) (Jersey) Regulations 201-. The States, in pursuance of Articles 11(3) and 39 of the Charities (Jersey) Law 2014, have made the following Regulations.

### **16.1 Senator P.F. Routier (Assistant Chief Minister - rapporteur):**

These Regulations set out the core financial information that will need to be provided to the Charity Commissioner upon application by all applicants, as well as any financial accounts, if the entity has them. The core financial information is in relation to a given year, the total figures for an entity's total income, its total expenditure, the total value of assets held at the start of the year, the total value of assets at the end of the year and the list with a brief description of assets or asset classes that have not been valued. This information assists the Commissioner in carrying out the charity test and will be publicly available in all cases, other than where an entity is registered as a restricted section because they do not solicit donations from the general public. This improves transparency and assists the public in their decisions in relation to charitable giving. At the same time, the requirements do not impose too onerous a burden on smaller charities. I propose the Regulations.

**The Bailiff:**

Seconded? **[Seconded]** Does any Member wish to speak on the principles? Those in favour of adopting the principles ...

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

Yes, I have had many arguments with the A.J.C. (Association of Jersey Charities) and while the original law was being subject to scrutiny. I am delighted to see that we now are getting to a position where we will have access to the accounts of charities because access to the accounts is incredibly important for transparency and for those supporting the charities to know how their money is being spent and how their donations are being used. I am not incredibly happy about the concept of restricted charities and I hope we look at those more carefully in future because anybody who takes advantage of the tax breaks for charities I think should be publicly accountable. But I am delighted to see this and I shall be supporting it.

**The Bailiff:**

Does any other Member wish to speak? Then I call upon the Assistant Chief Minister to reply.

### 16.1.2 Senator P.F. Routier:

I am grateful for the Senator's endorsement of the process. With regard to restricted charities, this is something that is going to enable the philanthropic world to base their charities here; family charities, who are private charities, who use their own money to benefit other people and that is the whole purpose of allowing restricted charities to be in place. It is an opportunity for our Island to encourage philanthropic giving and if we can encourage people to set up their family trusts here and to use their money in the way they want to do, we should welcome that. I maintain the proposition.

#### The Bailiff:

The appel is called for and I invite Members to return to their seats. The vote is on whether to adopt the principles of the Draft Charities (Core Financial Information) (Jersey) Regulations and I ask the Greffier to open the voting.

<b>POUR: 36</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator A.J.H. Maclean				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy 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 A.D. Lewis (H)				
Deputy R. Labey (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

[16:30]

#### The Bailiff:



Deputy Le Fondré, does your panel wish to scrutinise this legislation ...

**Deputy J.A.N. Le Fondré (Chairman, Corporate Services Scrutiny Panel):**

No, thank you, Sir.

**The Bailiff:**

... and including whether or not the word “to” and it appears in line 3 of Article 2(1), Regulation 2(1) should be “for”?

**Deputy J.A.N. Le Fondré:**

I do not want to scrutinise it, thank you, Sir. If there is a correction I am sure the Assistant Minister will deal with it.

**The Bailiff:**

Do you wish to propose the 3 Regulations, Assistant Chief Minister?

**16.2 Senator P.F. Routier:**

I do wish to propose the 3 Regulations, Sir, and I note your comments and we will deal with that at some stage. I propose them *en bloc*, Sir.

**The Bailiff:**

Seconded? **[Seconded]** Does any Member wish to speak? Those in favour of adopting the Regulations kindly show. Those against? The Regulations are adopted. Do you propose them in Third Reading?

**Senator P.F. Routier:**

Yes, Sir.

**The Bailiff:**

Seconded? **[Seconded]** Does any Member wish to speak in Third Reading? Those in favour of adopting them in Third Reading kindly show. Those against? The Regulations are adopted in Third Reading.

**The Bailiff:**

Before we come on to the next piece of legislation I can announce that I have received a report, R.22, from the Privileges and Procedures Committee: Commissioner for Standards: an investigation of complaint for breaches of the code of conduct for elected Members and the code of conduct and practice for Ministers and Assistant Ministers by Senator Ozouf, and that report should have been circulated to all Members.

## **17. Draft Charities (Tribunal - Restricted Section of Register) (Jersey) Regulations 201-(P.14/2018)**

**The Bailiff:**

We now come to the Draft Charities (Tribunal - Restricted Section of Register) (Jersey) Regulations, P.14, lodged by the Chief Minister. I ask the Greffier to read the citation of the draft.

**The Greffier of the States:**

Draft Charities (Tribunal - Restricted Section of Register) (Jersey) Regulations 201-. The States, in pursuance of Article 39 of, and paragraph 4(3) of Schedule 2 to, the Charities (Jersey) Law 2014 have made the following Regulations.

**17.1 Senator P.F. Routier (Assistant Chief Minister - rapporteur):**

These Regulations make provision as to one aspect of the procedure for appeals to the Charity Tribunal. The tribunal will be able to hear appeals against decisions of the Charity Commissioner in private where the appeal involves a restricted section, entity or applicant. The law envisages that while the Commissioner sees all of the information relating to restricted section entity, that information is not all available to the public. An example of such an entity would be typically by a family philanthropic trust where donations come from family wealth and are not sought from the public and where the family want to preserve privacy and anonymity in relation to their charitable giving. This is specifically permitted by the law and unless appeals on decisions relating to these entities are also in private, the whole point of being on the restricted section is pointless, as the details would then be made public. In all aspects under paragraph 4(3) or schedule 2 of the law, the tribunal may regulate its own procedures, subject to the law. I propose the Regulations.

**The Bailiff:**

Seconded? **[Seconded]** Does any Member wish to speak on the principles? All those in favour of adopting the principles kindly show. Those against? The principles are adopted. Do you wish to propose the 2 Regulations together?

**17.2 Senator P.F. Routier:**

Yes, Sir, I propose them *en bloc*. I am happy to answer any questions.

**The Bailiff:**

I am sorry, I have overlooked Deputy Le Fondré again.

**Deputy J.A.N. Le Fondré (Chairman, Corporate Services Scrutiny Panel):**

No, Sir, thank you.

**The Bailiff:**

I think you have got enough to do, Deputy, at the moment. Seconded? **[Seconded]** Does any Member wish to speak on the 2 Regulations? Those in favour of adopting the Regulations kindly show. Those against? The Regulations are adopted. In Third Reading?

**17.3 Senator P.F. Routier:**

Yes, Sir. If I may just briefly say that these Regulations represent a significant framework for the charitable sector, which I know is eagerly anticipated to be put into place. Once registration begins we will begin to understand the sector much better and no doubt will bring forward further Regulations in order to assist the sector to grow and flourish and to support this vital sector of our community. This is a culmination of a significant amount of work for which I thank all the officers who have been involved in it and that began in 2008 when this Assembly voted overwhelmingly in favour of a proposition calling for the investigation into the establishment of a Jersey Charities Commission, a proposition that was brought forward by Deputy Gorst of St. Clement. I am sure the Chief Minister will have asked that Social Security enjoyed completing some of my work, so it is a great pleasure to be able to return the compliment to complete another welcome initiative from the Chief Minister. I propose in the Third Reading, Sir.

**The Bailiff:**

You will no doubt wish to second that, Chief Minister. **[Seconded]** Does any Member wish to speak on the principles? The appel is called for. I ask Members to return to their seats. The vote is on whether to adopt the principles of the Draft Charities (Tribunal - Restricted Section of Register) (Jersey) Regulations and I ask the Greffier to open the voting. We have done that already. I am so sorry, I am getting carried away. This is Regulations 1 and 2, is it not? I am so sorry, we are voting on Regulations 1 and 2. Greffier, can you reset the ... sorry. We have done 1 and 2. I was enjoying myself so much, Senator, I am so sorry. **[Laughter]**

**Senator P.F. Routier:**

I am glad I was able to give you such enjoyment.

**The Bailiff:**

Let us start again. No, I did not really mean that. **[Laughter]** The vote is called for and it is on whether to adopt these Regulations, the Charities (Tribunal - Restricted Section of Register) (Jersey) Regulations in Third Reading and I ask the Greffier to open the voting.

<b>POUR: 34</b>	<b>CONTRE: 0</b>	<b>ABSTAIN: 0</b>
Senator P.F. Routier		
Senator A.J.H. Maclean		
Senator I.J. Gorst		
Senator L.J. Farnham		
Senator P.M. Bailhache		
Senator A.K.F. Green		
Senator S.C. Ferguson		
Connétable of St. Helier		
Connétable of St. Clement		
Connétable of St. Lawrence		
Connétable of St. Ouen		
Connétable of St. Brelade		
Connétable of St. Martin		
Connétable of St. Saviour		
Connétable of Grouville		
Connétable of St. John		
Deputy J.A. Martin (H)		
Deputy of Grouville		
Deputy J.A. Hilton (H)		
Deputy J.A.N. Le Fondré (L)		
Deputy K.C. Lewis (S)		
Deputy M. Tadier (B)		
Deputy 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 A.D. Lewis (H)		
Deputy S.M. Bree (C)		
Deputy M.J. Norton (B)		
Deputy of St. Mary		
Deputy G.J. Truscott (B)		
Deputy P.D. McLinton (S)		

## **18. Draft Amendment (No. 35) of the Standing Orders of the States of Jersey (P.22/2018)**

### **The Bailiff:**

We now come to P.22, the Draft Amendment (No. 35) of the Standing Orders of the States of Jersey. I ask the Greffier to read the citation.

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

Draft Amendment (No. 35) of the Standing Orders of the States of Jersey. The States, in pursuance of Article 48 of the States of Jersey Law 2005, have made the following amendments to the Standing Orders of the States of Jersey.

### **18.1 Connétable L. Norman of St. Clement (Chairman, Privileges and Procedures Committee):**

Last year we adopted a proposition from Deputy Southern to change Standing Orders in relation to oral questions and the Deputy proposed 2 changes. First, that it may be made possible to circulate this data alongside the answers to oral questions and, secondly, that answers must be relevant to the question asked and that the Presiding Officer had the power to direct that a new answer be provided. The P.P.C. has brought forward these amendments to give effect to the approval of Deputy Southern's proposition. We had already been working on similar change about the direct relevance to answers to questions but Deputy Southern's proposition went a bit further in requiring us to look at a process whereby the relevance of an answer could be formally challenged. Where the Deputy focused in his proposition on answers to oral questions, we are proposing changes in respect of written questions as well to ensure consistency. The first amendment is to Standing Order 12, which relates to written questions. It will be amended so that the answer to a written question must be of direct relevance to the question asked. There will be a formal process whereby Members can challenge the relevance of an answer and, if necessary, the Bailiff will be able to rule that a new answer should be given. If a Member has tabled a question but feels that the answer is not directly relevant, they will be able to apply to the Bailiff by 12.45 p.m. for a ruling. The Bailiff will have until 9.30 a.m. the following morning to make that ruling. If the ruling is that the answer was not of direct relevance to the question the Bailiff will be able to direct the Member answering to provide a new answer. The Member answering will have until 9.30 a.m. on the following day to provide that new answer. More often than not this will mean questioners will have until 12.45 p.m. on Tuesday to refer the answer to the Bailiff. The Bailiff will have until 9.30 a.m. on the Wednesday to provide a ruling and the Member answering will have until 9.30 a.m. on Thursday to provide a new answer, if necessary. Amendments to Standing Orders 63 and 65 are proposed to introduce a similar process for oral questions with notice and oral questions without notice, respectively. Again, it will be stated that answers to oral questions must be of direct relevance and a process will be established to allow for rulings on the relevance of an answer and directions to be given for a new answer to be provided. The Presiding Officer will, therefore, be able to rule that an answer is not directly relevant. If so, they will be able to ask for a new answer to be provided. However, the Presiding Officer will be able to defer making such a ruling until 9.30 a.m. the following day. The Presiding Officer will also be able to request that the new answer be provided in writing. The reason for both of these provisions is to avoid any impasse arising in the Chamber. With the cut and thrust of oral question time it will be best to avoid getting bogged down in arguments about a particular answer. Allowing the Presiding Officer the discretion to defer ruling and to request a written answer should allow for there to be a cooling-down period, if required. If a written answer is requested the Member answering will have to meet a deadline before providing that answer; that deadline will be 9.30 a.m. the following day. If the request for a new answer is made before 12.45 p.m. and 9.30 a.m. on the day after the following day, if the request was made after 12.45 p.m. The amendments to Standing Orders 63 and 65 also make provision for the other parts of Deputy Southern's original proposition; the circulation of listed data,

alongside an oral answer. It will, therefore, be possible for the Member answering an oral question to request that relevant written material be circulated to supplement the answer. They will have to give this written material to the Greffier and the Greffier will then have to circulate it as soon as practical to Members. It will be at the discretion of the Member answering as to whether written material is circulated. Some consequential amendments to Standing Order 160 are also proposed. Standing Order 160 deals with the production of Hansard. At the moment Standing Order 160 only allows for written material circulated during a debate to be included in the Hansard. That will be changed to include any written material circulated during a meeting, so that any written material circulated alongside an oral answer could be included, even if it is distributed after the meeting. While mentioning Hansard I should advise the Assembly that, as a policy decision, we have asked the Greffier to include within Hansard material that is circulated outside of the meeting but which is of direct relevance to the proceedings. It is not uncommon, as Members know, for Ministers to circulate material after a meeting in relation to a topic raised during questions without notice. We do not need a change to the Standing Orders for that material to be included in the Hansard but it is something people see, as agreed, should happen as a matter of policy. I propose the amendments.

**The Bailiff:**

Are the amendments seconded? [**Seconded**] I am not aware this draft is contentious but, clearly, it confers extra powers on the Bailiff. If any Member wants me to retire and ask somebody else to preside, I will do that. Otherwise, does any Member wish to speak?

**18.1.1 Deputy G.P. Southern:**

Just briefly and I am very pleased to see, obviously, this particular set of amendments come through. The intention is to have, if you like, a parity of arms that we go through several hoops in asking questions in order to get a formula that is right and relevant. I think, increasingly nowadays, Ministers manage to get away with giving an answer, which is on the Bakerloo, when you want the Circle Line; it comes down the Bakerloo, answers a different question. Certainly I think it will depend, this new system, on requiring a little bit of self-discipline on behalf of those people, usually Back-Benchers, asking questions of Ministers, that we do not challenge everything, it might be tempting to do that but that would weigh us down. Certainly, it would be my intention to talk where I had dealt to the Chair, either the Greffier or the Bailiff, to try and get an understanding of what the thinking was and how that relevance criterion is being assessed, so that I, certainly, and we, as Back-Benchers, become more practised in what is allowable and what is not and what counts as relevance. It will be an important step, I think, along the way to achieving a balance if we were to get better quality answers that address the question, if we possibly can. I am wholeheartedly in support of this set of amendments and the other amendments, which is about the supplying of information or a table in order to get an answer to a question that requires to be only 75 words long.

[16:45]

Sometimes, not always, but sometimes the best way to do that is to put a little table there and ask for a combination or ask for further details, please fill in this table and that that is perfectly clear. It can be done in 75 words, whereas the longer version going through that, please tell us about this, this, this, this and this, which is not appropriate but the table might be. I think, again, that that increases or is likely to increase the efficiency with which we work if we can ask the right questions. Asking the right questions gets the right answers.

**The Bailiff:**

Does any other Member wish to speak? I call on the Chairman to reply.

**18.1.2 The Connétable of St. Clement:**

I am simply grateful for Deputy Southern's comments and maintain the proposition.

**The Bailiff:**

The appel is called for and I ask Members to return to their seats. The vote is whether to adopt the Draft Amendment 35 of the Standing Orders of the States of Jersey and I ask the Greffier to open the voting.

<b>POUR: 34</b>		<b>CONTRE: 3</b>		<b>ABSTAIN:</b>
Senator A.J.H. Maclean		Senator I.J. Gorst		
Senator A.K.F. Green		Senator L.J. Farnham		
Senator S.C. Ferguson		Senator P.M. Bailhache		
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

**19. Housing: prevention of discrimination by landlords against tenants with children (P.31/2018)**

**The Bailiff:**

We now come to P.31 - Housing: prevention of discrimination by landlords against tenants with children, lodged by Deputy Tadier and I ask the Greffier to read the proposition.

**The Greffier of the States:**

The States are asked to decide whether they are of opinion - to request the Minister for Housing, in consultation with the Minister for Home Affairs, to bring forward for approval the necessary

legislation to prevent discrimination against prospective tenants who are domiciled with, and have legal custody of, a child under the age of 18 years.

### **19.1 Deputy M. Tadier:**

First of all, if I can just thank the Assembly for agreeing to take this today. Hopefully, that was a practical thing to do, as well as acknowledging that it is an important issue that we can discuss today and move forward. Members will know that I am not one to lightly ask for deadlines to be moved; it could easily have been put on the agenda but, as I said, we have got heavy agendas coming up. I would also like to thank the relevant Ministers of the departments, which really, I suppose, could be called the corporate parents or certainly which have oversight for social policy, that they have agreed to what is, ultimately, an in-principle decision today and, of course, we will need to come back on the bones and Members may stand up and say: "Of course, the devil will be in the detail." I welcome that because what it does, it enables this Assembly to carry on in the vein that it has been over the last months and years of prioritising some social legislation and policy, especially in regard to families and children. We are often not singing always from the same hymn sheet but I think when there are things that we can agree on and we may, ultimately, differ on some of the delivery but I think it is good to have a starting point where most of us, if not all of us, recognise that there is a problem and that we want to find a way to resolve it. Of course, that problem is to do with housing. I am not suggesting it is easily solved and, as the Ministers have said in their comments: "Legislation in this area will not, by itself, solve the housing issues experienced by families in Jersey." I think what it will do is that legislation always provides a backstop and it sets a principle saying that this is the kind of rights and responsibilities that we want to instil in our citizens and that this is what you can expect. It is, essentially, in one sense, a consumer issue, consumer protection but it is also much more than that. Because, of course, properties and accommodation are not simply assets, although sometimes they might seem like that or be portrayed like that by some people simply as assets. Of course, they are places where people need to live and it ties-in, I think, with the spirit of looking at minimum standards and access to housing. I have certainly been moved by a wide variety of individuals. It is not something that affects solely people in lower-income quartiles. It is something that can be difficult for people right across the board. We know that we have a complex and difficult housing system in Jersey. We have an unqualified sector, in particular, where I understand that many people, as I have said, irrespective of their earnings can find it very difficult to find suitable accommodation with children. If you add on top of that when there are marital difficulties, relationship difficulties and, unfortunately, break-ups that do happen, it can be very difficult in certain circumstances when somebody needs to find accommodation with their child or with their children often at short notice. I thank the Ministers again for taking this issue seriously and running with it. I do want to put on record, I think, one of the comments, first of all, from somebody who explains their difficulty as a young Jersey mother, a young Jersey family in finding suitable housing in the Island. She said: "A few years ago my husband and I returned to Jersey, pregnant and searching for a home, ready to give birth to my first baby. It was so depressing how many landlords saw my belly and said we would not be allowed to rent because of the noise of a new baby. So, where exactly are new families supposed to live? If that is not enough, they put children in the same sentence as pets in adverts. Seriously, is my baby in the same category as a dog?" She then goes on to say: "When I have won the lottery and own my own property my advert to rent will be families only." There has been this idea and some very strange arguments, which I want to touch on, largely on social media but there, of course, has been the occasional lawyer who has entered into the ring saying: "Of course, we could not possibly touch landlords' rights and force them to rent to children because it might make them remove their properties from the market." We will look at that argument in a moment. I think that it is an issue that there has been a false argument set out where it is landlords on one side and tenants on the other and I do not accept that dichotomy. I might have mentioned recently that I got an email from a couple, it is an unusual email because they said: "We wanted to become buy-to-

let landlords. We had some money.” I think they were probably looking for some kind of investment for their retirement and they said: “We wanted to buy a flat, specifically to rent to somebody we knew who had a child.” But were prevented from doing that because the flat is a share transfer and that particular block has a policy; I am not sure if it is a legal prevention from having children in that block. The flat that they wanted to buy specifically to rent out to somebody with a child, they felt that they were prevented from doing that because of the type of property that it was and that seems particularly perverse. We also know that there are landlords out there who do not want to restrict their properties and yet when they sign up to an estate agent or a letting agency moreover they have an automatic presumption that there will be no pets and no children on there but the children thing is, of course, what we are focusing on today. Then they have to go back to the letting agency: “But hang on a minute, I did not say that I did not want any children. You have just applied that without asking me and I am quite happy to have children in this area.” You get the strange scenario, I am not sure if it is apocryphal but I am sure they exist when people have said: “There is a property that is being advertised, it says it is in a great catchment area, it is 2 or 3 bedrooms but they do not want any children.” Again, that is probably a scenario where the letting agency has just put that on, copied and pasted it, where it is obviously completely ludicrous. I think that kind of practice needs to be looked into, first of all. I think just having the debate is probably helpful because it brings the practice into question. I have also heard the argument saying: “Why should we be forced to let to children?” Ultimately, it comes down to the human-rights argument about the disposal of one’s property; that you should be able to dispose of it in its own way. But I make the case that when it comes to other discrimination, when it comes to who you can and cannot rent to, perhaps the Solicitor General might want to comment but it is not absolutely necessary. I presume that in the law and certainly in the spirit of the law we would not want people to discriminate against individuals on the basis of gender or on the basis of race or sexuality, for example. I think it would be quite unpalatable these days if a landlord said: “I am quite happy to rent to a heterosexual couple but I am not happy to rent to a homosexual couple.” If they said: “I am quite happy to let to an ethnic person of a certain nationality but not to other nationalities” or if: “I am quite happy to let my bedsit to women but not to men” I do not think that would be acceptable, either legally or certainly not morally in this day and age. But when it comes to children, of course, it is much more fundamental than that because it is about the right to family life and it is about the balancing of those rights in there. Of course, we know that the States can intervene when it comes to those presumed human rights because they are not absolute in these cases; they can be interfered with. I like the phrase that was put into the Discrimination Law, I think it was to do with age, which is to talk about if it is a proportionate way of achieving a legitimate aim, something to that effect. I think that this very much is a proportionate way of achieving a legitimate aim, that we should not discriminate and that we should make sure that discrimination against families and against children is not to be permitted. I do not know why anyone out there would want to discriminate against children. I have listed a few ideas in my proposition saying that one might be to do with noise. They might say: “Well, children are noisy.” I mean, we have all had to be children at some point in our lives, presumably, and that is maybe one thing that we all have in common in this Assembly and in society. Of course, children can be noisy but I think we accept that they are not necessarily the only tenants who could be noisy. I mean, you do not have to be a family with children to experience those kind of problems. There is also this idea that children might cause damage and I make the point that, well, when you put your property on to the rental market, you have to give up something of that. If you want to keep it in a pristine condition then you could do that. It is a bit like a sports car. I suppose if you have a car which you want to keep for yourself and it is a prized treasure, you might keep it locked up in the garage, polish it every week and not use it or use it sparingly for yourself. If you want to have rental car, you might buy a Ford Fiesta, make sure it is serviced every year, rent it out and keep it in good nick and make sure that it works properly and that there might be the occasional bit of wear and tear that goes with it, and I think most landlords accept that. Clearly, children are not the only ones who can cause damage to properties and it is unfortunate,



of course, when you hear of instances of bad tenants causing lots of damage, but I think by and large most damage in a property is caused by wear and tear and, of course, there are deposits that are taken for that particular purpose, often quite hefty ones considering that often the tenants do not necessarily have a lot of disposable income in the current market. A month's rent can be quite a lot for individuals to cough up. Then I think perhaps the only argument which does hold some credibility in this area is that properties might not be suitable for children and think I have mentioned that specifically in my proposal. I am not suggesting that anyone should be renting out death traps for children. I mean, first of all, properties should not be death traps in the first place and if you have balconies, *et cetera*, which could potentially be problematic then that needs to be considered more widely as to whether they should be rented out. But it may well be that there are certain properties which are not suitable for children. One thing that obviously springs to mind are bedsits. A bedsit in a lodging house which is already covered under the law has a maximum number of inhabitants of that part and it can obviously only take one person usually and seeing as children cannot rent property in their own right, one would presume that children would not be renting properties or families would not be renting properties that were not suitable in that regard. I also do not buy the argument that for some reason landlords are going to be so venal or - venal is not the right word - that they are going to be cutting their noses off to spite their faces and say: "I would rather lose £30,000 a year [or whatever the figure is] rather than rent this property out to somebody who happens to have young humans living in the place." It simply does not make sense to me. I do ask Members for their support. I fully acknowledge that there will be details that need to be looked at when this is brought back and I hope that we have Council of Ministers who will equally be supportive of this, if not more supportive when the time comes back.

**The Bailiff:**

Is the proposition seconded? [**Seconded**] Open to debate.

[17:00]

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

I am not going to please Deputy Tadier and probably not please other Members of this Assembly but there is the type of proposition that is generally well-intentioned and the type of proposition that this falls within this category. Well-intentioned but putting a Band-Aid, to use the American idiom, a plaster over the real problem. The real issue in the housing market in Jersey, which was well and truly debated in the last session when we discussed the arguments in favour of a social housing regulator, was supply. Children, families with children, individuals, elderly people, young, old, they cannot access the type of access at the right affordable rent with the appropriate circumstances because there is an inadequacy of supply. This is the kind of feel good Band-Aid that simply makes politicians feel better and, at the end of the day, the politicians that will vote in favour of this, and I will not, will go home and think: "You know what? I have done something really good for children. I have done something really good for families." Will this proposition bring one more unit of accommodation to the market? Not one. In fact, what it will do, it will stop people bringing their properties to the market and I can see people now wagging their head in objection. Let me give you an example, and before I do so I should, of course, like the last debate declare an interest as a landlord. So everybody else that is a landlord had better now declare their interest and say: "I am a landlord and I have to declare an interest because this will affect me." So I declare an interest.

**Deputy M. Tadier:**

Point of order. Is it correct that all landlords need to declare an interest, or only landlords who discriminate against children in their properties?

**The Bailiff:**

I think it is a genuine point of order, which is rare. My ruling is that if the Senator is the landlord who is not going to let his property to children then he has a financial interest but otherwise he has no financial interest

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

The point is, I register an interest in being ambivalent because, of course, I am a landlord through an arm's length company as my declaration of interest shows, who has had happily children in properties that I have rented. But the issue is that this is going to affect all landlords because it is going to be a requirement that you do not know whether or not you are going to have this imposition imposed upon you. So I would encourage everybody that is a landlord, or is a tenant, who has an interest in putting this in place so that they have a right to a tenancy that they might not otherwise have had. I am going to argue against this proposition and certainly I have no thought for one moment that Members of this Assembly before an election are going to go with me and vote against this. But I am going to explain some realities to Members; 3 of them. The first one I have made. If you want to fix the housing market and if you want to improve the lot of people in housing that wish to be tenants then you need to increase supply. We need to do what the Minister for Housing wanted us to do, which was to regulate social housing providers in a proper and proportionate way. But you need to give those housing and social housing providers and those people who are on particularly low incomes who are needing support who cannot operate in the market, need to basically have an ample supply of affordable homes within our well-run housing social providers as such as Andium, Christians Together, Jersey Homes Trust, *et cetera*. The private sector also plays their part and they must be encouraged to play their part more but simply by putting restrictions on them, they are not going to play their part. They give Members an idea and there are, for example, many elderly people who have adjoining units, who have perhaps a carer home, a carer flat, or an apartment or something, maybe some lodgings within their home that they decided to rent out as a separate unit, and it would be perfectly possible to have children within it. But because they are of a certain age and they require peace and quiet, and they are entitled to a peace and quiet because they are master or mistress of their household, it is not appropriate, in my view, for the heavy hand of the law to come forward in future and say: "You must have children." In fact, if anything, you are going to prevent a well-functioning housing market. There are elderly people who simply do not want to have the wonderful noise of children that other people would celebrate, and certainly I have enjoyed having children. But there are others who do not and what is the right of the States to do? What is happening here? What the States is doing is it is trying to fix a problem by imposing a restriction on landlords that we have created because we have not put enough supply into the market place. What a crazy situation. Moreover, I invite the Minister for Housing or some other member of the Council of Ministers who has obviously thought about this, to say and to explain how on earth this is going work. If we pass this, I look at this: "To request the Minister for Housing in consultation with the Minister for Home Affairs to bring forward for approval the necessary legislation to prevent discrimination against prospective tenants who are domiciled with or have legal custody of a child under the age of 18 years." How on earth are you going to prove it? If I am a landlord and I put a property on the *Jersey Evening Post* or *Jersey Insight* or one of the local housing agencies, I am not going to be able to say: "No children." Quite right. It should not say no nationality, no disabled, no all the rest of it. Quite right. Discrimination should not be there. This is a practical issue. But when the list of prospective tenants comes forward, how on earth is the disgruntled family person with children going to take action against the landlord for apparently discriminating against them for having selected them as opposed to the no children couple or to the couple that has an elderly relative or some situation like that? It is just completely unenforceable and it is sending out some sort of message that we, the States of Jersey, we the Legislature, can somehow impose these rules on people and think that they are going to be effective. This is a different approach that, if I may say, the mover of the proposition and I have generally to economics and to markets. If there is a problem with people not having a

plentiful supply of affordable housing, it is a supply problem. You do not put more regulation and more red tape around it. Of course there should be appropriate discrimination in discrimination laws about religious matters, about people of colour, about disability people and those are issues that are rightly embedded in discrimination legislation but not within some sort of other provision in terms of some sort of arrangement whereby where putting some sort of preventative mechanism into a housing regulation. It is just absolute nonsense. It is not going to be enforceable. It might make us feel better but it is not going to work. Moreover, how much is it all going to cost to prove all of this? It is just a waste of time when the time should be spent on creating this additional regulatory requirement, and I am not against discrimination laws. I agree with them, all of them, but in the right place. But if we are going to spend some time on putting some more red tape in, why do we not just divert that energy into helping the Minister for Housing and the Minister for the Environment create more units? That is going to be the thing that is going to solve the issue for families not being able to find affordable accommodation for rental in the private sector, not this fiction of a rule. I asked the Minister for Housing in the coffee room, and I hope she does not mind me saying so, where is the evidence anywhere that this works anywhere else? I think I have been told it exists somewhere in Ireland or in a couple of states in America. I would be very interested, I have not found anywhere that this is actually working in somewhere that has a functioning housing market that has not gone in this sort of feel-good world of a local state legislature passing legislation just because it feels as though this is the right thing to do. The only issue that matters to me in terms of improving the lives of Islanders in terms of prices and affordability and availability of accommodation is supply side. What we should have done is regulated the social housing providers. They are the ones that should have this imposition in terms of not being able to say no to various different people. Absolutely, that is right but that has been thrown out. Now what we are trying to do, this is a backdoor version of another regulatory approach that Deputy Tadier was trying last time is that we are going to regulate all private sector landlords. I say it is a very well-intentioned idea but unfortunately it is not going to work. If any Member can persuade me in their remarks why it is going to work, that it is going to cut the cost of housing, that it is going to provide more units of accommodation, then I will vote in favour. If any Member can have any evidence to answer me those 2 questions I will change my mind, and I look forward to the rest of the debate but we should not be doing fiction and we should not be promising things we cannot deliver on.

### **19.1.2 The Deputy of Trinity:**

I hope I can persuade the Senator but I very much doubt it because he has very set views and I understand that. Everyone in Jersey must have a good quality and secure home that they can afford and where we identify on issues that impede on people's ability to access appropriate accommodation such as landlords not letting to families with children we need to take appropriate action to secure the effectiveness of the housing market for everybody. Of course, a lot of good landlords who quite often let accommodation to tenants with children and they also offer good quality and secure homes, but they should be the rule not the exception. Before today at a recent meeting I was told by a so-called professional landlord that families with children were the States problem. I find this view unacceptable. I think it pays to the worst stereotype of a landlord but I do reiterate there are some very good landlords. Yes, the States must support families to access good quality homes but the private sector has its role to play, too. As with all tenants, not only with families, landlords can protect themselves against the risk that a tenancy might encounter problems. As we know, they should take a deposit, should have references, do regular inspections and if necessary use the legal avenues available to them to enforce the terms of a tenancy. This is good practice and it typifies the qualities of a good professional landlord. So the principle behind this proposition is fundamentally sound and one that I am inclined to agree with. But also a bit of a health warning. It should be not seen as an answer for all the housing problems families in Jersey face. Again, I reiterate the most important thing in the housing sector is supply. I have said this time and time again. But nevertheless

it would send a clear message that landlords must not be able to turn down families with children without reasonable grounds. I can therefore give assurance to the Assembly that if this proposition is adopted it will be actioned. Legislations will be brought forward at some point in the future. So I have spoken to the Chief Minister, the Minister for Social Security, the Minister for Home Affairs and at this present moment in time it would appear it could be best achieved through amendment to the Discrimination Law.

[17:15]

But first there is quite a journey for this to take. It would need to be considered with consultation within the broader framework of the Children's Plan as this is where the action will be given the prominence it deserves and then reviewed by the Ministers of the Community Policy Group. There are practical issues we would need to consider. For example, how we exempt certain specific types of accommodation such as over-55s housing but we must find a way around it. There will also be reasonable boundaries. There are clearly some properties that will not be suitable for children and never will be for reasons of overcrowding or lack of certain facilities, and legislation will be able to account for that. If we can introduce legislation to protect against this practice and temper the potential for unfair and unjustifiable behaviour then it will benefit families in Jersey significantly. I support the proposition.

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

When I first heard this proposition I had a similar view to Senator Ozouf. I thought market forces should prevail. However, I did a bit of research into this and Members may be a little bit surprised to know that across the United States under the Civil Rights Act 1968, amended in 1988 but known as the Fair Housing Act is fully enforced. It ensures that it is an offence to refuse to rent or sell housing to a family, to discriminate against a family, to make housing unavailable, to set different terms and conditions for families, to advertise in a discriminatory way. How often do we see an advert saying: "No dogs. No pets. No children." Putting children into the same category as pets. That is simply outrageous and the Americans, who you might think would be so commercially hard-nosed, you would think they would take the view: "No, market forces prevail." But no, in the United States, perhaps one of the most commercially driven countries in the world, they have an Act that says: "No. You cannot discriminate against families seeking housing." When I read that I changed my mind. On the back of what the Minister for Housing has said as well, it is simply wrong that we should discriminate against families when it comes to a basic human right, which is housing. The Americans regard housing as a basic human right although not all of their citizens live in particularly good housing. We have far better regulations than they do with regard to that and I am very grateful for the Minister for the Environment pushing that through even further recently. But to discriminate against families when we have such a small housing stock, I am sorry, it is unacceptable. The supply of housing in Jersey is a big issue. We have spoken about that quite a lot recently. I was very interested to hear from the Minister for the Environment when asking the question in question time and I was a bit concerned about this that during this session of the Assembly, the last 3½ years, not a single formal request has come from the Housing Ministry to rezone land. I do not know the reason for that and I know the Minister for Housing has a real passion for creating housing so I do not know why that is. But there is clearly a bottleneck there somewhere and the Minister for the Environment is ready to do stuff but the Housing Ministry is not coming forward with suggestions and sites. So I do not know what that is about. But all the time we have a small housing stock we cannot discriminate against families. Even if we did, we should not but if we had sufficient housing stock we would not need to. But I would like to allude to a comment made by Senator Ozouf, and he is quite right, concerning policing. I do not know how they do it in the U.S. (United States). It is a big country. I cannot believe they capture every person that flaunts this law but it is an understanding that you cannot do that. However, if you are renting some accommodation, you have complied with the

advertising standards, you have not put: “No pets, no children, no whatever”, you have a list of prospective tenants that come to see your house and you can bet it is probably going to be a long one because there are not enough houses in Jersey suitable rent particularly for families, so who do you chose? So is it the first person that rang you, that came to see it? Is it the person that is likely to be the most credit worthy? How do you choose? And then are you going to be accused later of taking the person that is more credit worthy simply because they do not have dependent children? It is a reasonable criteria to use as a business. You want people that have good credit ratings and perhaps a young family might not be quite so credit worthy. Should you be prosecuted as a result of that? I would hope not but we do not know. So the detail in this is not there but the principle is right. The principle that the Minister for Housing alluded to is absolutely right and should be contained in our Discrimination Law in the same way it is in the Bill in the U.S. So that goes right back now to 1968, the Housing Act in the U.S.A. (United States of America) says you cannot discriminate against families. It is a basic human right to have housing and you cannot discriminate against families. You cannot discriminate against race, colour, religion, sex, nationality, disability or family status and it goes right up to children of the age of 18. That is a civilised country. Maybe not in all respects but in housing it is and it is illegal to do otherwise and it is forbidden as well to advertise anything that suggests otherwise. I changed my mind a little bit on this. I cannot support the notion that Senator Ozouf was suggesting and I feel that Members should observe good, clear common sense and conscience. We know that young families when they are in the rental market in Jersey find it very difficult to find suitable accommodation, and then sometimes that accommodation is barred to them as well because those landlords will not take families because they have a choice. There is queue of other people out there waiting and that is why the supply chain has to be improved quickly. I know that Ministers are doing something about that but not enough. In the meantime, we cannot discriminate against young families. It is the totally wrong thing to do and I would recommend to Members that they support this proposition.

#### **19.1.4 Deputy S.Y. Mézec:**

I am pleased to follow Deputy Lewis who I think made the case very persuasively there and he is absolute right to reference the Fair Housing Act in the United States because I think that just goes to show, for all the reasons that he outlined, that we are not asking to do anything extreme or outrageous here. This is something that is perfectly normal in other countries. It is just a fair expectation that when you are renting property you expect not to be discriminated against for something unjustifiable, and I think the last word is the key one there. Unjustifiable. If there are perfectly good reasons why somebody should not be renting a property then fine, let us hear those reasons. No problem. Nobody is going to want to force a family to rent a property that is unsuitable for them when they have young children there. Nobody would want to do that. If a landlord can demonstrate that there is a problem with the property that they are renting that means it would not be suitable for children there is going to be no argument there. So I think any opposition to this, I just cannot understand where it is coming from. But the argument that has been brought forward by Senator Ozouf is a complete red herring; this idea about supply. There are so many fallacies in it, is difficult to know where to start. He says that the only thing that is going to sort out the problems in Jersey’s housing market is by increasing supply. What happens if the private sector builds a thousand properties in the next year, they are all taken up by investors who say no children? How has that helped anyone’s situation there? That is, of course, possible under the current law. So that would be increasing supply for certain prospective tenants but not others. I also do not like this idea that there should somehow be a different standard in social housing. This idea that if you are somebody with a family, your default option is social housing rather than the private sector. I just find that a bit weird because we say that private investors are allowed to discriminate. I just think that is wrong and really I think what we should be looking for is a convergence of the housing markets we have in Jersey because we do not have a housing market, we have housing markets. There are properties you cannot rent if you have children. There

are properties you cannot rent if you have not your housing qualifications, *et cetera*. I think that is something that needs to be looked at in Jersey. We have X number of properties on the market but they are not available for X category of person and supply is not really helping there. So I think to open up these markets and make it so more people are allowed to rent them I think is one way of fixing the problem there is with supply without having to build extra homes. But we are going to be building extra homes anyway and what good is it without a proper population policy underpinning it. That is the other area where Senator Ozouf's argument is completely flawed. We build all these properties and then the same number of people move into the Island. Again nobody is better off. That is the point of this proposition; it is about making families' lives easier and is not that something that this Assembly should be looking to do more often? I think of people I know who have got children, some people who I know very well, who I know have had an absolute nightmare when they have had to leave a property for whatever reason, sometimes not their fault and have really struggled to find an appropriate place to live in and to find letting agents or landlords who are willing to even hear them out in the first instance. I know one person very well who is a single mother, incredibly hard-working, very good at her job, has the most well-behaved toddler that I have ever met in my life. In fact it is hard to believe that this toddler is related to me, she is so well behaved; it is very surprising. I cannot understand why it is inappropriate for that single parent and that toddler to rent any property unless it is dangerous, unless it is not fit for purpose, in which case there are a whole other bunch of questions that ought to be asked there. That person I know has had difficulties trying to find new places to live in, difficulties that, frankly, she does not deserve. She does not need that hassle in her life because she is hard-working, she is contributing to Jersey's economy and doing a great job raising her child. Why should that person suffer discrimination for those reasons when that child is not a burden to anyone, is not at risk of damaging a building, has a very responsible parent that would take care of any mess or any noise, if there was any anyway? I think that discrimination 99.9 per cent of the time is clearly unjustified and I just cannot fathom why anybody would want to justify discrimination in our society. It is just a perception that families are somehow higher risk than anybody else. There are all sorts of negative perceptions that could be applied to other categories of people. It is not justified. If you want to take part in a market to try and make money then you have to play by the rules of that market and to introduce this as another rule is completely proportionate. Senator Ozouf said there would be difficulties with it being enforceable. I think there are 2 points to make there, the first is that it is no less enforceable than any of the other discrimination laws we have, so that is an argument for just abolishing discrimination laws to say that it is unenforceable. But the other one is that when the law changes on something and people know that the law has changed, it does change people's behaviour. One example I remember was my grandmother, who, when she was a passenger in a car, never wore a seatbelt until the day it became illegal not to, in which case she wore it every day after that, knowing that it was the law she changed her behaviour; did not necessarily agree with it but that was that. Letting agents, when and if this law is passed, will no longer advertise properties as a default option that children are not welcome there. Deputy Tadier referred to it in his speech, an example that I am also aware of, of a landlord who went to put his property up for rent, approached a letting agency and then a few weeks later checked the advert and the letting agency had unilaterally included a clause that said: "No children", even though he had absolutely no problem with children being able to live in that property. The argument about it being not enforceable, I think, is another red herring. These arguments about supply are simply illogical, they do not make sense. This proposal will make families' lives better at the end of the day and make life easier for people who are doing nothing wrong, just want to get on with their lives. How can that possibly be wrong?

#### **19.1.5 Deputy P.D. McLinton of St. Saviour:**

In defence of children, I have been very fortunate to have a hand in raising 5 children on this beautiful Island. For my first 3 children we had to spend some time in rented accommodation; it was always

a struggle to find it but, mercifully, we managed to. The worst it got was occasionally we got a bit of crayon and we drew a little stick person on a bit of wallpaper but it is okay, I have re-wallpapered that. What else might have happened? Yes, there were the occasions where just maybe we scuffed the walls with our shoes and what have you but I gave that a lick of paint.

[17:30]

There was once or twice when there was a stain on the carpet and I did put a bit of furniture over the top and hoped landlords did not notice but they did and they took it out of my deposit. But that is as bad as it got. Children are not armed with kanga hammers, hard hats and told to go wild. **[Laughter]** This is not the way it works in a family, unless, of course, the landlords' families were different and still have something to fear. But this is not the way the real world works. I wanted to draw attention to this sentence because I think it is important. Some landlords may say: "Why should we be forced to let to families with children?" If you took out the words families with children and replaced that with people from France or people of colour or homosexuals, there would be outrage. But for some reason families with children we go, aha and we let that one ride. I do not understand that in a modern society. Senator Ozouf's arguments: ludicrous. It is a shame he is not here to hear this stuff. He has made his argument and he has run away and I do not understand that either. Saying this is not a problem, housing market is a problem. Yes, they are both a problem and we are addressing one of the problems here. This is about discrimination, plain and simple. Of course, landlords may have a good reason not to rent to families with children and I say that is fine if you can fully evidence the reasons not to; balcony, danger, my elderly mum in the next room who needs a bit of peace and quiet. If you can fully evidence the reasons for not doing so, then please do so. In the report, by the way, that excellent piece, the line: "They put children in the same sentence as pets in adverts." Really, that should make you shudder somewhere deep inside. For some reason for years we have accepted that. It has just been no children or pets, I used to read those adverts to try and find housing for my family. If putting children at the very centre of this Assembly's policies moving forward is important, then all Members simply must support this proposition or risk being judged to be supporting discrimination. **[Approbation]**

**The Bailiff:**

We have hit 5.30 p.m. I have 2 Members so far wishing to speak. I assume we have 3 Members wishing to speak. I assume that the Members would like to finish this debate tonight.

**19.1.6 Senator S.C. Ferguson:**

It was Mark Twain who said: "No man's life, liberty or property is safe while the Legislature is in session." I think we have a session here where we are dictating to people how and why they should let property. A blanket proposition is not appropriate. There may be perfectly good reasons for no children and no pets. I was talking to an agency principal last week and she was saying she cannot, in all honesty, let her fourth-floor flat with no lift to a family with 2 small children. How are you going to cope with the buggy? There is health and safety and the fire precautions, leaving buggies in the main hall; it is not appropriate. It is like you get a family with a child who want to rent a bedsit and that, again, is totally inappropriate. You should not do those sort of things. I think Senator Ozouf did forget the corollary. It is not just increasing supply; the other side of the equation is perhaps reducing the demand. Where is our population policy that we have been promised for? I do not know. I have written so many Scrutiny reports on population policy; it is incredible. The other thing, I have had a number of constituents who have had noise problems with flats. If you have a laminate laid on the floor and you wear high heels, then the people in the flat below have a dreadful time, it is the ... it is absolutely appalling. It occurs to me that perhaps we should be casting the odd brickbat at the Minister for the Environment to review the building specifications so that there are not sound problems because normally sound is the biggest problem if you are letting property. They managed

to have sound-proofed apartments in 1880, so why on earth can we not build them now? I do know because I had an apartment in New York when I was at college there and we used to be able to have a party for 30 or 40 people in a one-bedroom flat, which was fairly noisy, and the people above, the people below and the people either side did not hear a thing. **[Laughter]** They were not but we did pop up though just to see if we could hear. I do wonder, have we got the statistics on how many people are going around looking for flats and how many flats there are available on the market? It is this sort of thing. But, as I say, it is not just supply, please remember the corollary: demand. Also, as I say, I do not feel you can just take a broad-brush approach, as you have done with this proposition, and say: “You have got to provide evidence that it is not suitable for various categories of tenant.” It is about the democratic republic of Jersey. We are really resorting to dictatorial matters. I will not be supporting this.

**19.1.7 Deputy S.J. Pinel:**

I will be brief. As the Minister for Housing has explained, we have discussed and agreed that it is likely to be more appropriate to amend the Discrimination Law, rather than any legislation that falls under the Minister for Housing. Having said that, I agree with the proposition in principle and I am happy to work with the Ministers for Housing and Home Affairs to try to reach an appropriate solution. It is likely to be possible to amend the Discrimination Law so that a refusal to let a property to a tenant with children is direct age discrimination by association. It would then be down to the landlord to justify why a particular property is not available to families with children; for example, there may be health and safety reasons. Before amending the Discrimination Law I would first consult with stakeholders, including the Jersey Landlords Association. We might also want to consider the scope of the provision so that a second parent, who has shared or part-time parental responsibility, is also protected against discrimination when renting property. I am happy to undertake this work within the broader programme to support families and children under the children’s planning process.

**19.1.8 The Connétable of St. Saviour:**

I like what I have just heard from the Minister for Social Security. I think that would be a way forward. Because I feel that the law to make people rent out would be really awful; I find that a bit discriminatory. But also today one of our own here has a family and is finding it very, very difficult to find somewhere to live and has been turned away from many apartments and many homes. It is a bit of a shame because they are getting desperate and extremely worried. I do not think they should. They have been to have a look at places and estate agents have said: “You can have a look” and then when they get there they say: “No, you have got children, got a little toddler.” That has made me think today here, I do like what the Minister for Social Security is saying but I would like something to move because, as I say, we have one of our own who is desperate for accommodation. The accommodation is there but the fact that they have got a child: “No, I am sorry, you cannot.” I will be voting for this, although in my heart of hearts I am sad because I feel that common sense has not prevailed. Landlords have said no and that is the end of the story. So we have to try and help these people because this particular person, who is one of us, one of our family here, cannot find anywhere to go to and I find that very, very sad in an Island like this. It is okay to say we should put the supply in. There have been a lot of alterations and a lot of homes built in different areas here and yet none of them have been for first-time buyers because they are all for people with money. I find that very sad. So I will be voting for this because, as I say, we have got one of our own here, one of our own family who is working here, and cannot find anywhere to go with his family.

**19.1.9 Deputy G.P. Southern:**

As briefly as I can. It was nice to have the experience again of listening to Senator Ozouf with his classic obfuscation that the proposition before us is the wrong proposition. A classic way not to



argue what is in the proposition but to pretend that it is about something else; in this case supply and demand. We can fix that problem, that is what we should be doing, rather than putting this little plaster on a part of the problem again. Absolute specious nonsense. What we have got here ... he then went on to talk about the unenforceability of the policing. But he is ignoring the fact that what we have got here is a piece of discrimination. We have adopted a Discrimination Law concerning age and we have seen it protecting from compulsory retirement at the far end but here we have - what do we have? We are talking in one department about the rights to family life, about family friendly legislation in employment, and here we are and we are concerned about protecting the rights of children and the right to family life and here we are saying: "But it does not apply to housing." That fundamental element of a decent life does not apply to housing. What sort of indicator is that giving? I come back, as several speakers have already done, but I think it is worth repeating, that what is being proposed as a result of this broad-brush approach - let us deal with this problem - is a case about reasonable grounds. If you have reasonable grounds then of course that is perfectly logical that you should not want children there for health and safety reasons or whatever. Anything less than that, I think, is discrimination and I feel it is going against the tide that this House has started out on of making family life and making a child's life a better experience than hitherto. So I would urge every Member to vote for this proposition.

**19.1.10 Deputy S.M. Brée:**

This seems to have polarised arguments. On the one hand we have the issue of discrimination. Is it discriminatory to prevent families with children renting your property? The argument put up against it is choice. It is my choice. It is my property. That does not hold water because the whole point about discrimination is you should not be allowed to discriminate against people. But I think this goes deeper.

[17:45]

It recognises the problems we have with our housing market. Not just supply. Not just who can rent who cannot but the structure of how we, as a Government, are going to deal with the pressures that there is already - and growing - on our housing market. The proposition itself is very, very simple. It is asking this Assembly: do we believe it right to allow a private landlord to discriminate against families or single parents with children? That is all this is asking. The devil is always in the detail. But all this proposition is doing is saying: do we believe that that situation should be allowed to continue? If we do not then let us try and look at the legislation we could use to alleviate the problems that young families or single parents are having at the moment. A lot of consultation will need to take effect. A lot of work needs going into this to ensure that those landlords, private landlords, who do have legitimate reasons for going: "My property is not suitable for children" have their voice listened to and that they have a right to put forward a report on the property that will be judged on its merits, so there is a lot of work to do. But essentially, this proposition, to take it right back to its basics, is about discrimination. We as an Assembly have already agreed that discrimination is wrong. Gender discrimination is wrong. Age discrimination is wrong. Race discrimination is wrong. Are we going to continue to allow another form of discrimination to continue? Or can we do something about it? I believe we can as long as we consult with the private landlords who feel that their property is not suitable for young children. So it is down to us to work with them, to build a system that does not discriminate against private landlords. It allows them a certain element of choice, a certain element of here are the reasons. But essentially, we have to support this proposition because if we do not we are going to be sending out completely the wrong message that everybody out there who is struggling to find even nearly suitable accommodation for themselves, that we support families, young children, single parents, but we have to be willing to work with the private landlords to make sure this solution is a long-term solution and an effective one.

**19.1.11 Senator I.J. Gorst:**

Just very quickly. I think the last speaker reiterated sensible points about reasonable grounds. Not every property is suitable for children. We have to accept that, and that is quite clear. I should also declare that I am a landlord although there are currently children or a family in that property with children. This is only part of the issue. Senator Ozouf is right to say that supply is fundamental and it is not correct for others to suggest that it is not, because it is. But this is also an issue. If too many people are finding without reason they are not being offered accommodation if they have got children or if they are expecting children, then that issue has to be addressed. I take great comfort from the words of the Minister for Housing and the Minister for Social Security of the proportionate careful approach that they are going to take to this issue, liaising with the Landlords Association to try to find solutions. Any solution should rightly be in a Discrimination Law and I do not think anywhere else. But I think there is a lot of consultation, careful process work that needs to be undertaken before we solve the underlying problem, which we must commit ourselves to doing.

**The Bailiff:**

Does any other Member wish to speak? If not, I call on Deputy Tadier to reply.

**19.1.12 Deputy M. Tadier:**

I will try to sum up before 6.00 p.m. and although I know we have stayed a little bit longer we can console ourselves in the fact that we are not back here tomorrow and that we will have completed the agenda this evening. I am sure we have all got things to do anyway. It has been a wide-ranging debate. It has been largely supportive and I think that is because the Ministers in question ... it is an interesting point to note that the comments were not issued in the name of the Council of Ministers. I am not sure if that is significant but it still is generally a collective position that is assumed for now in collective and ministerial responsibility, but I am certainly grateful to the 3 Ministers, I think it was, that put their names to the comments and also to the words of the Chief Minister in supporting this. I think he has crystallised some of the unfounded fears that some people have tried to put into this debate, perhaps not so much in this Assembly but when it has been debated, in particular, on social media. No one is saying that we are going to force landlords to rent properties that are unsuitable for children. Similarly, I do not think people are going to be clamouring to rent properties that are unsuitable for their children. If you have toddlers and the only way you can get them up the stairs without a lift is in a pram you are probably not going to want to rent somewhere like the top floor at Les Marais or the equivalent in the private sector, if that does exist. Obviously, the top floor of such an equivalent in the private sector would probably be very expensive anyway and it would probably have lifts. So we are dealing with very hypothetical situations often. What this is saying is that do not discriminate against families with children. I will just add at this point, it is in a couple of days that we are noting some of us marking International Women's Day. This is not just an issue about families and children. This is a feminist issue at heart. Because it is often predominantly women who end up having to try and find accommodation, especially in situations where there has been a family breakup. But of course it is not just about that but it does affect women specifically and women with their children. That has often been my experience dealing with constituents who have faced issues in this area. I will be interested to find out what the reasons are, what the caveats are that will be put into the discussion and the consultation and ultimately the law, about what an unsuitable property is. I can imagine people saying: "Well, my property is not suitable for children because it has got loads of damp so we would not want children breathing in loads of damp." Obviously, that is not a sufficient reason. There might be other reasons which we need to look at and I am fully aware that I have mentioned it in my report. Senator Ozouf, who is now back in the Assembly. For a minute I thought he had popped out to evict some children from his property [**Members: Oh!**] but he is back now and he has told us that he has children in his properties, which I am very pleased to hear about. It is not something that he would practice himself, which I am glad to hear. But the arguments that he came out with were touched on by my colleague, Deputy Mézec,

are against the Discrimination Law, *per se*, because he is making this argument ... essentially, he is saying what is the point in having laws that you cannot enforce? How are you going to prove that somebody is being discriminated against? It is exactly the same as what you do in any other domain. If there has been discrimination against somebody in the workplace on gender, or if there has been discrimination in a shop based on sexuality or race, of course you cannot prove it in every case. There needs to be evidence and there needs to be a high test. But of course where there is a pattern of behaviour and where perhaps a landlord has 10 properties, and every time a family goes to the landlord and is refused from renting what might be a 2-bedroom property, and it seems to be that there is a pattern that has built up, then that will be a case for the tribunal, to be looked at under the Discrimination Law. I am very pleased to hear that the Ministers are looking to not create new legislation but making sure that this is dealt with in the Discrimination legislation. It is something I raised at the time. I did ask about age discrimination. When we brought it in why we were discriminating and putting carve-outs for property in there - very broad carve-outs - which talk about premises which have no place. To simply say that the answer is to have more properties, to build more, completely does not recognise the situation. A comparable analogy would be to say there is a problem with restaurants in the Island and we know this is a real problem. We have had people that have come to us. The Chief Minister knows this, somebody with a guide dog gets refused entrance to a restaurant and this happens on several occasions. Or somebody with a wheelchair goes into a restaurant and they are not made to feel welcome, even though there is space, even though they can get into the restaurant, they say: "Sorry, we have not got a table for you" and it is because they are disabled and it is because it is too much of a problem to put that person in there. Often it is due to ignorance because in many cases there is not a policy in that restaurant. Of course, the argument is not to have anti-discrimination legislation. The argument is to build more restaurants, Senator Ozouf. We build so many restaurants in the hope that one day there will be enough restaurants for that person to go into with the guide dog. No, we do not do that because that is completely ridiculous. You say to restaurants: "You cannot discriminate" and we enshrine that in law to say that you will not refuse people into restaurants if they have a guide dog or if they are disabled, on the basis of their disability. That is the sensible way to do it. It seems to me that fundamentally what it boils down to in this Assembly and out there sometimes, thankfully they are in the minority, it boils down to unchecked libertarianism, libertarianism of the right it has to be said, that people do not want the state to tell them what to do. They do not want to tell them what to do with their own properties or how they should behave. It always surprises me how many libertarians of the right end up in Government or in politics when they do not like the concept of legislation. They are opposed to legislation *per se* often but then they want to be legislated. I think most of us do not fall into that category. We want to be in this Assembly. We want to be giving back to the community because we want to make the Island a better place. That is certainly Reform Jersey policy, is that everything we do seeks to make people's lives better, simpler and easier. That is where we are coming from and I know that is where many other Members are coming from. I have got points that I need to get round, and I am halfway round my page. So the seatbelt argument is a valid one. We did have some light distraction there. We had comments about America. On the one hand we have Senator Ozouf suggesting that there are only 2 or 3 states in America which might have anti-discrimination legislation but we know, from what we have heard from Deputy Andrew Lewis, my colleague, Deputy Mézec, that is a federal principle enshrined in their constitution that you cannot discriminate. Even in hard-nosed America, as it has been suggested, with its free market capitalist system, they still recognise that not everything can be solved by the free market and not everything can be solved by just building more housing. So of course, Senator Ferguson had a completely different experience, so when she had the 30 or 40 people round in her apartment but none of her neighbours, we are told, she said: "I knew that ..." I started to think of Schrodinger's Cat where she said: "Well, I popped upstairs to see if I could hear myself downstairs and when I got upstairs I could not hear myself and therefore I know that I must not have made any noise." For her follow-up trick she is going to tell us about the time she knocked

on her own door when she was canvassing but there was nobody there so she left a card saying: “I called today but nobody was at home.” The lights were on but there was nobody home. Now when we look at fourth floor flats and the disability strategy, of course you are not going to go on to ... the point I am making is when you have a top floor flat you do not have to rent it out to somebody in a wheelchair. So if somebody says: “I would like to rent that out and there is no way of getting up there” that does not mean that we do not discriminate against people with disabilities. It just means that we are sensible about it. It means that we have a basic principle which says you cannot discriminate against people with a disability but of course you are not going to force people with a disability to rent a flat out on the top of Les Marais. I think we have established that principle. I do make the proposition. I thank those Members who have spoken. I do ask Senator Ozouf to change his mind on this one because I think if it was being brought by someone else he would not be opposing it. I think he would be hopefully supporting it. It is taking us in the direction that we want to move in with the 1,001 Days policy with all the good things that we are doing with the Children’s Commissioner that we have recently appointed, and I look forward to the new legislation and the amendments being brought to the Discrimination Law. I ask for the appel.

**Senator P.F. Routier:**

May I ask the Deputy to consider the comment he made about Senator Ozouf? I think it was totally inappropriate the comment he made. **[Approbation]**

[18:00]

Would he consider withdrawing that comment about him leaving the Assembly to evict children. I think it was absolutely inappropriate. I think it was a masterclass in how to lose votes and in fact I am considering not voting in favour because of those comments he made. But I have thought about it and I am going to vote for children, but I am not endorsing anything that the Deputy said.

**Deputy M. Tadier:**

I notice I was not pulled up by the Chair but if I caused any offence I apologise in particular to Senator Ozouf. It was meant in jest and I did clarify that of course he does have properties where he rents to children, so I will be happy to take that back. I am also happy for Senator Routier’s support for the proposition. We are here to debate the proposition not personalities. I accept that.

**The Bailiff:**

The appel is called for. I invite Members to return to their seats. The vote is on the Housing: prevention of discrimination by landlords against tenants with children and I ask the Greffier to open the voting.

<b>POUR: 35</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator P.M. Bailhache		Connétable of St. John		
Senator P.F. Routier				
Senator L.J. Farnham				
Senator I.J. Gorst				
Senator A.K.F. Green				
Senator A.J.H. Maclean				
Deputy S.Y. Mézec (H)				
Deputy S.M. Bree (C)				
Deputy S.J. Pinel (C)				
Deputy R.G. Bryans (H)				
Deputy R. Labey (H)				
Deputy P.D. McLinton (S)				
Deputy of Trinity				
Deputy of St. Peter				

Deputy of St. Ouen				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy of Grouville				
Deputy M.R. Higgins (H)				
Deputy M.J. Norton (B)				
Deputy M. Tadier (B)				
Deputy K.C. Lewis (S)				
Deputy J.M. Maçon (S)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy G.J. Truscott (B)				
Deputy E.J. Noel (L)				
Connétable of Trinity				
Connétable of St. Saviour				
Connétable of St. Martin				
Connétable of St. Lawrence				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Brelade				
Connétable of Grouville				

## **ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS**

### **20. The Connétable of St. Clement (Chairman, Privileges and Procedures Committee)**

Firstly, P.P.C. had organised a workshop tomorrow lunchtime, assuming we would be sitting tomorrow, on Members' facilities. Because now we will not be sitting we have decided to postpone that workshop until a fortnight's time, and we will fix a date during one of the next sittings. As for the arrangement of public business: first, the next sitting, which we have already agreed, will start on Monday, 19th March at 2.45 p.m. for questions and statements and then continue with Public Business at 9.30 a.m. on Tuesday, 20th, with continuation days on 21st, 22nd, 23rd and, if necessary, the 28th and 29th. The States will sit until 9.00 p.m. on each of those days if necessary, as we have already agreed. The other change, it has been requested that Projet 18 - Draft Sexual Offences (Jersey) Law - be moved up the Order Paper to the third item of business. This is at the request of the Attorney General who has to be out of the Island on Wednesday, 21st, and I hope Members will agree to that. That is the arrangement of public business as per the Consolidated Order Paper plus of course all the amendments that have been lodged today. The meeting of 9th April, we have already agreed that we would start the sitting at 9.30 a.m. on Monday, 9th April, continue at the latest until 6.30 p.m. on Tuesday, 10th. I think Members will see from the Order Paper that the amount of business that has been put down, there is no way we are going to get even close to finishing all of that. I did suggest that the Council of Ministers might like to look at the items that are down there and see if they can prioritise but the reality is after the first item on the 9th we are then moving to Private Members propositions, which indeed might take some time as well. So I would suggest there are only going to be 2 or 3 items of Council of Ministers' business, which we are going to be able to complete on that day and the rest will have to be moved to June. Looking forward to 26th June, which is the next sitting after that, again as per the Order Paper plus the proposition lodged today by Deputy Tadier, La Moye School pedestrian crossing - Projet 61. That is the proposition for future business.

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

I wonder if the chairman could perhaps advise why on 19th March it is a 2.45 p.m. start and was consideration given to a 9.30 a.m. start?

**The Bailiff:**

Can we just bank that for a minute?

**20.2 Senator I.J. Gorst:**

The issue rightly has been raised about good order in the Assembly with so many propositions and legislation to be considered. The chairman and myself have considered this, I have not had time yet to consider it with the President of Scrutiny. It seems to me from the Order Paper that we may indeed get through with the extended days the business on the 20th, albeit some of those are waiting on Scrutiny reports and are detailed legislation, and need to have appropriate time for debate and consideration in the Assembly. I think it is a fair point to suggest that we should not rush that legislation at those sittings but I do think it looks as though it is possibly manageable. It certainly is not manageable the sitting of the 9th and 10th and I, as the chairman indicated, undertake to consult with Ministers. We will have to have a ruthless prioritisation and then I will speak to the President of Scrutiny and those Back-Bench Members who have got propositions down for that point and try to have some agreement that we can present to the chairman to present to the Assembly at the next States sitting. We know that we are not going to get it all considered and it will just have to fall for the next Assembly to consider, and that is Ministers, Back-Benchers as well. We will just have to find an appropriate short number of either laws or propositions that can be approved. But even then, some of those pieces of legislation require appropriate consideration and require appropriate debate.

**20.3 Deputy G.P. Southern:**

I would just like to ask of the Minister for Social Security whether in relation to my proposition family friendly policy implementation, she has yet to have published or finalised her report on which the amendment that she has lodged by proposition is based because it seems to me absurd to be debating that in the absence of the evidence that she says is coming in her report as to why her amendments should be carried?

**20.3.1 Deputy S.J. Pinel:**

I can respond to the Deputy. The report will be published next week.

**Deputy G.P. Southern:**

We will have a week to consider it, will we? That is enough for family friendly legislation, is it?

**20.4 Deputy J.M. Maçon:**

I am conscious that there have been some last-minute things lodged in the name of the Minister for Home Affairs. At the moment my Scrutiny Panel is working very hard to complete work already down for debate and I wonder whether it is appropriate now to ask whether P.38 should be deferred until after the elections or whether that should be at the next sitting because my Scrutiny Panel will not have time to scrutinise it?

**20.5 Deputy J.A.N. Le Fondré:**

If it helps Members, the Chairmen's Committee are in the process of talking to each other to just assess whether there are any pieces of legislation that individual panels think warrant additional scrutiny or scrutiny, given the capacity of everything that is happening at the moment. Once I have got a clear picture, some information is still outstanding until roughly Wednesday or Thursday, I think it is, we will obviously report back to Members and hopefully after liaising with the Chief Minister as well.

**The Connétable of St. Lawrence:**

May I say that the Home Affairs Department is prepared to defer P.38 until June, if that helps.

**Deputy J.M. Maçon:**

May I thank the Assistant Minister?

**The Bailiff:**

I wonder if it is perhaps an opportunity for me to say something from the Chair. As the Chief Minister has said, the Assembly is facing a very large number of pieces of primary and secondary legislation and amendments. When I did my last count I thought there were 28 pieces of new primary and secondary legislation and to that point, 7 amendments lodged, and there have been some more since then. This is not straightforward legislation. Some of it is very important legislation. It is legislation relating to the criminal law, some to fundamental rights of subject, some fundamental to the democracy which the Island enjoys. We all know that we have had discussions in the past about the legislative process. The extent to which scrutiny of proposed legislation can take place sensibly and I think we all know in this Chamber that there have been many occasions where in the last couple of sessions very large number of pieces of legislation have been put forward for consideration by the Assembly. But I have to say this is the most extreme example that I have come across in my 18 years in the States of a very crowded agenda. It is not good for the making of law. I care passionately about the law. I am a lawyer and I care passionately about it. The process of making law has got to be a fair and reasonable business so that Members who are looking at proposed pieces of legislation have the chance to look at it carefully, to talk about, consider it, to ask questions about it. To have so many pieces of legislation, really quite big pieces of legislation, come forward in this way seems to me to be quite undesirable. What I was going to suggest to Ministers was that between now and the next sitting they really look very hard at whether it is necessary, urgently, to bring that particular piece of legislation forward. If the legislation has been drafted as clearly as it has, it can be picked up by the next Government and brought forward. If no one wants to pick it up then probably it is not a good idea to pass it anyhow. On the face of it that would seem to be the right way forward. We would, no doubt, all of us have different views about which of these particular pieces of legislation could wait. I am very grateful to the Assistant Minister for Home Affairs for making the concession already made about explosives. I hope all Ministers will look at that between now and 19th March and discuss obviously in the Council of Ministers with a view to having a more rational approach to business over the next 2 months. Perhaps I could also add that those comments go not just for Ministers but also for private Members who are bringing proposition. We all know there is an election coming up, we all know that it is helpful to have a discussion about important points of policy so that the electorate will know what is being proposed and it can be relevant to the election which is coming up. Again, private Members, Back-Bench Members might want to look at whether or not it is really essential to have their proposition debated in time. One would hope that those representations might be made to the chairman of P.P.C. and there could be some consensus reached as to how we can sensibly accommodate what is honestly not a very manageable agenda. The idea that anyone is going to be giving much consideration to what may be important propositions or pieces of legislation at 8.00 p.m. is honestly fanciful. Nobody is going to do that. I want to make those points because it seems to me they are relevant for Members to consider and I hope that it will be thought about before next time. Can I just also say, chairman, that I see that one of the items on the agenda for April is the proposition of the Minister for Economic Development, Tourism, Sport and Culture in relation to Licensing (Amendment No. 19). Do I have that wrong, I thought that was to do with the Royal Wedding? In which case it might be important to get it right at the very top of that agenda because otherwise we may be having a debate as to whether to extend hours a month or so after the wedding has taken place.

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

I was going to propose that that be taken at the next sitting, because it seems to me that there is no reason why that should be delayed, it is in the public interest that a decision is made that we deal with that at the next sitting rather than putting the Assistant Minister for Economic Development ... I would just ask if the States would agree to put it to the next sitting rather than the sitting afterwards so he is not in that position.

**The Bailiff:**

Do Members agree? Very well, we will take that particular proposition at the next sitting.

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

I was going to make a supplementary point, if I may. There are some Members who will not be here in the Assembly after the elections. There are some Members that have declared and some Members have not. There are some Members that might have propositions that may be before the Assembly at which they will never knowingly have the opportunity of debating again and maybe the chairman could take that into consideration in the formulation of business.

[18:15]

Just to make those observations without anybody taking anything from what I say as to my own intentions.

**The Bailiff:**

You were going to respond, Chairman, to the Minister for Treasury and Resources about starting earlier on the Monday instead of 2.45 p.m., starting at 9.30 a.m.

**20.7 The Connétable of St. Clement:**

Yes, and can I also respond to Senator Ozouf because, in all honesty, none of us know if we are going to be here in June. Can I say how much I welcome the comments, Sir, that you made yourself? The reason, Senator Maclean, that we are meeting at 2.45 p.m. on Monday, 19th is that we have 2 visits that morning from 2 primary schools, year 5. All of the primary schools' year 5s have the opportunity of coming into this Chamber and learn about the political set up in Jersey and to have their own States sitting and their own debates. Two were postponed last week because of the Commonwealth Youth Parliament, which I must say was a tremendous success, and I thank Members for the support they gave the C.P.A. (Commonwealth Parliamentary Association) Jersey. It would be quite wrong to put these young people off again. We did agree at the last meeting that we would not do that. We have arranged for 6 full days plus extra hours to try and complete the business. That is the reason for it and I maintain the proposition.

**Senator A.J.H. Mclean:**

May I just thank the Chairman for that clarification. I knew there was a good reason which is why I did not make the proposition to change it without first seeking his clarification.

**Deputy J.A. Martin:**

Just a procedure matter, because I think we did go through a lot last time and I probably could have had a word with the Chair but I have started some confusion. I know we are starting on the Monday at 2.45 p.m. and we agreed to sit every evening until 9.00 p.m. that sitting, is that included on the Monday? People are not sure. There is something going on Monday evening and then people are saying: "Are we not sitting until 9.00 p.m.?" so I was just wanting that cleared up, please.

**The Bailiff:**

As I understand it, Monday is for questions and public business will commence at 9.30 a.m. on Tuesday. The States now stand adjourned until 2.45 p.m. on Monday, 19th March.



**ADJOURNMENT**

[18:17]