

# STATES OF JERSEY

## OFFICIAL REPORT

### THURSDAY, 6 DECEMBER 2012

<b>1. Draft Social Security (Amendment of Law No. 4) (Jersey) Regulations 201- (P.101/2012): amendment (P.101/2012 Amd.) - amendment (P.101/2012 Amd.Amd.)..3</b>	
1.1 Deputy J.H. Young of St. Brelade:.....	3
1.1.1 Deputy J.A. Hilton of St. Helier:.....	5
1.1.2 Senator F. du H. Le Gresley:.....	5
1.1.3 Deputy G.P. Southern of St. Helier:.....	6
1.1.4 Senator P.F. Routier:.....	6
1.1.5 Deputy J.H. Young:.....	6
<b>1.2 Draft Social Security (Amendment of Law No. 4) (Jersey) Regulations 201- (P.101/2012) - as amended.....8</b>	
1.3 Senator F. du H. Le Gresley:.....	8
1.3.1 Deputy G.P. Southern:.....	8
1.3.2 Connétable P.J. Rondel of St. John:.....	9
1.3.3 Deputy M. Tadier of St. Brelade:.....	9
1.3.4 Senator P.F. Routier:.....	10
<b>2. Income Tax: Report on Personal Income Tax Assessments (P.106/2012).....11</b>	
2.1 Deputy G.P. Southern:.....	12
2.1.1 Senator P.F.C. Ozouf:.....	12
2.1.2 Deputy R.G. Le Hérissier of St. Saviour:.....	14
2.1.3 Senator S.C. Ferguson:.....	14
2.1.4 Connétable D.W. Mezbourian of St. Lawrence:.....	14
2.1.5 Deputy J.M. Maçon of St. Saviour:.....	15
2.1.6 Senator P.M. Bailhache:.....	15
2.1.7 Deputy J.H. Young:.....	15
2.1.8 Senator I.J. Gorst:.....	16
2.1.9 Deputy G.C.L. Baudains of St. Clement:.....	16
2.1.10 Deputy E.J. Noel of St. Lawrence:.....	16
2.1.11 Deputy J.A.N. Le Fondré of St. Lawrence:.....	17
2.1.12 Deputy M.R. Higgins of St. Helier:.....	17
2.1.13 Deputy S.G. Luce of St. Martin:.....	17
2.1.14 Senator L.J. Farnham:.....	18
2.1.15 Deputy M. Tadier:.....	19
2.1.16 Senator P.F. Routier:.....	19
2.1.17 Deputy G.P. Southern:.....	20
<b>3. Draft Alternative Investment Funds (Jersey) Regulations 201- (P.109/2012).....21</b>	
3.1 Senator A.J.H. Maclean (The Minister for Economic Development):.....	21

3.1.1 Deputy R.G. Le Hérisier: .....	22
3.1.2 Senator S.C. Ferguson: .....	22
3.1.3 Senator A.J.H. Maclean: .....	23
The Deputy of St. Martin (Chairman, Economic Affairs Scrutiny Panel): .....	24
3.2 Senator A.J.H. Maclean: .....	24
3.2.1 Deputy R.G. Le Hérisier: .....	24
3.2.2 Senator P.M. Bailhache: .....	25
3.2.3 The Connétable of St. John: .....	25
3.2.4 Senator A.J.H. Maclean: .....	25
<b>4. Draft Financial Services (Amendment of Law No. 4) (Jersey) Regulations 201- (P.110/2012) .....</b>	<b>27</b>
<b>5. Commissioner of Appeal for Taxes Office: appointment (P.116/2012).....</b>	<b>27</b>
5.1 Senator P.F.C. Ozouf (The Minister for Treasury and Resources): .....	28
5.1.1 The Connétable of St. Lawrence: .....	28
5.1.2 Senator P.F.C. Ozouf: .....	28
<b>6. Jersey Heritage Trust: appointment of Chairman (P.117/2012).....</b>	<b>29</b>
6.1 Deputy P.J.D. Ryan of St. John (The Minister for Education, Sport and Culture): .....	29
6.1.1 The Connétable of St. John: .....	29
6.1.2 Deputy J.G. Reed of St. Ouen: .....	29
6.1.3 The Deputy of St. John: .....	29
<b>7. Draft Financial Services (Amendment of Law No. 4) (Jersey) Regulations 201- (P.110/2012) - resumption .....</b>	<b>31</b>
7.1 Senator A.J.H. Maclean (The Minister for Economic Development): .....	31
7.1.1 Senator P.M. Bailhache: .....	31
7.1.2 Senator A.J.H. Maclean: .....	31
The Deputy of St. Martin (Chairman, Economic Affairs Scrutiny Panel): .....	31
<b>ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS .....</b>	<b>33</b>
8. Connétable A.S. Crowcroft of St. Helier (Chairman, Privileges and Procedures Committee): .....	33
8.1 Senator A.J.H. Maclean: .....	33
8.2 Senator B.I. Le Marquand: .....	33
<b>ADJOURNMENT.....</b>	<b>34</b>

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

[9:30]

### **1. Draft Social Security (Amendment of Law No. 4) (Jersey) Regulations 201-(P.101/2012): amendment (P.101/2012 Amd.) - amendment (P.101/2012 Amd.Amd.)**

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

Very well, we resume the debate on the Draft Social Security (Amendment of Law No. 4) (Jersey) Regulations. The Minister had proposed Regulations 16 to 18 as amended by his own amendment. We had rejected the amendment of Deputy Southern. We come therefore to the amendment to Regulation 17 in the name of Deputy Young and I will ask the Greffier to read the amendment.

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

In the substituted paragraph (1)(b) of the inserted Article 54(C) for the words “has attained the age of 57” substitute the words “has attained the age of 55”.

#### **1.1 Deputy J.H. Young of St. Brelade:**

Now that the decision is made to withdraw the Survivor’s Pension, I think today’s debate, which will hopefully be a short one, is how to implement transitional arrangements to phase out that withdrawal and in particular to minimise adverse effects on those who fall within the group of people who are close to but not at retirement age. Perhaps, unlike Deputy Southern’s amendment yesterday, I think I would like to emphasise that the proposal is not to protect permanently all persons who reach the age of 55. The proposal is, the amendment has the effect if it is approved, that those who are at the age of 55 as at the date of the implementation, which I assume will be 1st January 2013, that group of people - I think the experts call them a cohort of people - will be the ones who have their entitlements under the pension scheme protected. So therefore that protection will phase out each year. People in the group will reach retirement age and they will have pensions in their own right and there will not be, I think unlike yesterday’s debate, any suggestion of new entrants to the protected group. Of course, the purpose of this is to ease the life-changing effects, if it is possible to ease the life changing effect of losing a loved one, I suppose it is more to ensure that the dreadful personal effects are not made worse by financial worries and the limited time that those people in that group have left to reorganise their lives. Of course, you know, like most people, people make life plans together; share hopes and dreams, and sadly, a number find them ended with the unexpected loss of a loved one. The problems that the survivors then face is that at the age of 55 plus, there will not be enough time, even if they were to secure work, to be able to build up private pension bases and there would be - and I think this is absolutely realistic - less prospect of re-entering successfully the job market. Particularly if the survivor has made lifetime choices of being a home maker, never having worked and brought up their children and is facing entering the job market at a very difficult time. I think there is evidence that supports the choice of 55 as where that date comes. I know, having worked in a law firm, and I spoke to a partner of the law firm I used to work for this morning, a family law partner, and said: “What is the situation, for example, of women over 55 who have not worked in divorces?” and the advice I got is that the courts will - and this is case law I was told - will base their judgments on the fact that it is that women of that position - particularly women, I will come to that in a minute - are unlikely to achieve any sort of job. In the case of divorce, those ex-husbands are almost certain to be required to pay maintenance. But of course, if there is no husband around, in the case of a bereavement, then there needs to be something in place to recognise that that group are going to find particular difficulties. So I think that certainly is one element for making the case for the cut off being right at 55. Of course the reality of it is that most are women. Looking at trying to assess the impact - and

I am grateful to Senator Le Gresley who gave me access to his officers and they have given me excellent information - I am told that 40 people each year suffer a bereavement and make claims for pensions. Of those, I asked how many who are over 55 can be expected to be... a rough 41 is the estimate. So each year there are 41 over 55, of which 34 are women, 7 are men... and that if my amendment is passed and as I say this protection will be for this particular cohort of people that will phase out... it is estimated that over the course of the 10 years, in fact it is 10 years and 8 months, because for this particular group the pension age will be 65 years and 8 months, for this group, for the youngest ones. For the ones closer to 65, obviously it is a lot closer to 65, but the maximum length of time is 10 years and 8 months. There will be 199 people who are bereaved who will receive the protection if my amendment is passed. That compares, I think the estimates that there are about 670 people of this age group who are effectively homemakers at the moment. Of those, 199 are likely to face bereavement and their benefit will be protected. Looking to the cost, obviously I have looked closer at the Minister's own amendment and I think the Minister's amendments... after I had meetings with him and he did take on the board the points that I am making. Obviously in his judgment 57 is the right cut-off point and clearly that is for financial reasons. I have been advised that the protection I have outlined on my amendment will mean that the savings we have anticipated to make from this withdrawal of benefits would be reduced by a total over the 10 years, 8 months of £4.5 million. That compares with the Minister's own amendment of between £2 and £2.5 million over 8 years. Of course the reason for the difference is that some of the people are being paid for a slightly more period of time and there will be slightly more people falling within the cohort of protected entitlement at 55. I tried to work out what does that mean on an annual basis. So obviously, if you take the straight average, which is the only easy way of looking at it is that obviously over 10 years, that is £450,000 a year, where on the Minister's proposal, which is over 8 years, it is around £300,000.

[9:45]

I think there is no question that my amendment has got an extra cost, if you like, but really what I am saying is that the savings that we would have made will be reduced by those amounts. I think you have to compare that with the whole benefit of the policy that we discussed yesterday. This proposal withdrawal will save £3.6 million annually and that means the total saving over this period will be £36 million. So what I am saying is, rather than take the full £36 million, I am saying that there is an overwhelming case in my view for protecting this cohort of people and accepting that in order to have fairness and equity in these matters for this particular group, that saving would be reduced by some £4 million over the whole 10 years. So I believe that my amendment is the right one. This is obviously a question of balance. I do not think that the case is as strong, for example yesterday we rejected one for 50. I think the case becomes much stronger and in fact overwhelming at 55 and I do not think there is any substantial difference in the type of people that fall in this group between 55 and 57, as the Minister proposes. Now, I will just close with one thing. The Minister yesterday stressed that there was logic in 57 and I think it sounded very persuasive because he said: "Well, this ties in with the end of women being entitled to retire at 60 and also fits in with the changes to retirement age." Last night I looked that up very, very carefully and I thought: "Well, what are the rules about retirement at 60 for women?" and the situation is there that if women entered the Social Security Fund, i.e. entered employment before 1st January 1975, then they are entitled to retire at 60. And of course, in any event, if they are entitled to retire at 60, under my proposals, we would be paying them less benefit because they would get a pension in their own right at 60, so effectively that reduces the cost, if you like. But even so, just following the Minister's point about the logic, at 75, that means 37 working years until January 2013, which means that the only people there that would fall within that group would be those that started work at 16 or 17 and I think that is the minority for those groups. I think it is likely that that will not be the norm. So if they were 18 and above before they started work, that is not going to present any

problems. Looking at retirement age, I think it is simple. All the people in this group will be affected by the pension increase change, which will range from 65 years and 2 months to 65 years and 8 months. So the youngest ones will be retiring at 65 and 8 months, the oldest ones in that group will be 65 and 2 months. So I think it does not really make a vast amount of difference in the scheme of things. I think the question is it is a point of principle. If we are making a major change to save money, I personally think that there were some inadequacies of the structure of the benefits but it is too late for that. We have decided now to withdraw them. It is how now to set the rules so that we can look after this particular group of people that in different circumstances, the courts would recognise have special needs. The last point I want to make is that I do not think it is right to put that group into the income support system. I think there is a question of equity and fairness in society and so I make the amendment.

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

Is the amendment seconded? [**Seconded**] Does anybody wish to speak on the amendment? If no Member wishes to speak, I...

**1.1.1 Deputy J.A. Hilton of St. Helier:**

Just briefly to say I think Deputy Young has put his arguments forward very well this morning and I do support this amendment. This is a group of people who traditionally, probably on the advice of Social Security opted out of the system and into the red card system and I think at this stage in their lives it would be very, very unfair to penalise them for that. As Deputy Young pointed out this morning, to enter the job market at 55 plus is extremely difficult indeed and realistically, most people would find it very, very difficult. So I do support the amendment this morning. I think it is absolutely right and I think 55 is a fair age for this to take place. Thank you.

**1.1.2 Senator F. du H. Le Gresley:**

I need to correct a few things that Deputy Young has said so that Members are absolutely clear what we are discussing today. Deputy Young made reference to ongoing savings of £3.6 million per annum. That will not be achieved in the 10 years that he is proposing to protect people aged 55 and above at the moment. Those savings will only be achieved once all the current recipients pull out of receiving Survivor's Pension, either by reaching their pension age, remarrying or cohabiting. So the saving is a long term saving, it is not all going to happen within the next 10 years. He also made reference to the fact that some people can have their pension at 60 and of course he was absolutely right what he was quoting about the time when people were fortunate enough to start their contribution record and qualify for a pension at 60. That is ladies, of course. But just to clarify, when we were calculating the likely cost of my amendment and Deputy Young's amendment, we did take into consideration the people who would qualify for a pension at 60, so the £4.5 million cost, which is a one-off cost, does take into consideration women who might reach their pension age at 60. In response to Deputy Hilton, there is a misunderstanding about the women who elected to take the Married Women Election. The misunderstanding is that they are currently not required to pay social security contributions if they are employed. They have what is known as a red card. However, once they lose their partner, they will be required, as the law says at the moment and always has done, to commence paying social security contributions. This is exactly the same as what happens when people get divorced. In the case of a widow, she of course will qualify for, as all people will, the Survivor's Allowance and for that year they get social security contribution credits. But after that year expires, widows and widowers, if they are not already... and one would expect a widower already to have a blue card and be paying contributions, but if they elected to take the Married Women's Election and had a red card, they would have to change to a blue card and pay contributions like everybody else. Now, if, for whatever reason, women of that age decide not to find work because they have other income, they are still liable for Class 2

contributions and those cost up to £5,667 per annum, although you can get a small income relief. So it is perhaps not fully understood that this group of women who have the Married Women's Election, they will, after the Survivor's Allowance period expires, have to pay social security contributions and therefore it is most likely that they will wish to seek work. So the reason why 55 is probably not a good age to start because after they reach the age of 56, they may have a pension at 60, but they have still got 3 years of paying social security contributions and therefore they will have to find employment. So if they choose not to find employment, they will be liable for Class 2 contributions and, as I said, the maximum there is £472.25 a month. That has always been the position; nothing has changed. We are not changing anything with what we are proposing today. So really, it is very much a choice the Members have today. You can go with 55, with Deputy Young. We know the cost is going to be a one-off hit of about £4.5 million to the fund. But let us not confuse the issues here. Working women and working men will, after the first year of Survivor's Allowance, have to pay social security contributions in whatever form that they can do that, whether it is by working or by electing to pay as a Class 2 contributor. I leave it entirely to the House to decide. I believe that my amendment of 57 is pitching at about the right place but it is entirely for the Members to decide.

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

I am grateful to the Minister for his last contribution because I can think of no better reason for voting for Deputy Young's amendment than the words that the Minister for Social Security has just used when he says they will be liable to pay over £5,000 a year in Class 2 contributions and I know what will happen. They will be getting the letter every 3 months saying: "You owe us this much money." What a hassle to put somebody through who has lost their spouse. Let us vote for 55 and protect the largest possible group from the vagaries of our system and having to deal with it in this particular way. I would support Deputy Young's amendment wholeheartedly. Please spare these extra 2 years. It does not cost very much. The savings will be made in the long run; there is no problem about that. Let us spend an extra £2 million protecting this group of people.

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

I just really wanted to pick up on what the Deputy has just said. That he did not want to put married women through another 2 years of having to receive letters on a quarterly basis. This will still happen of whichever years we go for. So it is not going to save them that at all.

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

Does any other Member wish to speak on the amendment? Very well, I call on Deputy Young to reply.

### **1.1.5 Deputy J.H. Young:**

I would like to obviously thank Deputy Hilton and Deputy Southern for their support. I listened carefully to the Minister's response and I am grateful again for the additional information he has given us. I think I might ask the Assembly's forgiveness for thinking that the annual saving was basically what the proposal was intended to do now. It is not a figure I picked up from my head, as it were, it is a figure that I took from the Minister's report. So if it is true that savings of £3.6 million per year is not going to be achieved until 10 years' time, so therefore I think I have interpreted what I thought was written in the Minister's report. We clearly know that is not the case. Now, on the question of the... and I am grateful for the Minister confirming that his own calculations, which I have used, in the loss of savings that I advised the Assembly, take into account those people within this group who will be able to retire at 60. So obviously I accept that. The major issue, I think, is this question of liability for contributions. I accept there is a problem here. When people lose their jobs, at any age, they are faced with letters from Social Security, requiring them to pay, I am not sure of the figures, it is at least £1,000 a quarter and I know it scares

the life out of people. Not only are they not in their job, but they are trying hard to get work, but they are faced with this, as they see it, hassle and they say: “What do I do?” and of course we have a Social Security system that does not even allow any people to make up short falls in their pension. The system does not even tell you whether you have got a short fall. I will tell you when you find out if you have got a short fall, when you are about to retire. And if you say: “Oh. Oh dear. What has happened? My husband or my ex-husband or my loved one...” “Oh, there is a gap in the pension record here, you are going to be ...” you say: “Oh, okay, can I pay it?” “No, you cannot.” “Can I pay added years?” “No, you cannot.” There is no opportunity in a pension scheme for people to pay additional contributions and plan their financial lives, as there is in other places in the U.K. Even after retirement you can buy 6 years of added years. Yes, it will cost you but you can do it.

[10:00]

There are all sorts of flexible arrangements in other places and of course, here, we have a pension scheme that requires you to have 45 years of contributions in order to receive a pension. So I think bringing this element in is true; it is a fact, so I do not think this is a case for not protecting this group. It is a case for reviewing that arrangement properly for everybody. Because what would somebody do in this group? Senator Routier has told us, and I am sure it is correct, that if we protect them, they are still going to get these letters. Well, the best they could probably do is struggle and go out and get a minimum wage, if they are lucky, and I do not know what the number of hours a week you get to get your social security contributions, I think it is about 8 hours a week or something, 12 hours, if you get a job. It is why lots of people try and take that sort of work, purely because of that liability, because there is no other way of paying the contributions. So I think those are arguments again for pointing to review, but I think the overriding thing for me - and I am grateful for the Minister’s amendment that he does recognise the principle - is we disagree on where the appropriate cut-off is, the threshold. I think I am inclined to follow the practice of the Jersey Family Courts who recognise that in the event of divorce and breakup of families, for this particular group of women, because it affects mostly women, 55 is the right age. I ask Members to support my proposition and I leave it to the Assembly.

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

The appel is called for on the amendment of Deputy Young. I ask Members to return to their seats. The Greffier will open the voting.

<b>POUR: 30</b>		<b>CONTRE: 15</b>		<b>ABSTAIN: 0</b>
Senator A. Breckon		Senator P.F. Routier		
Senator P.M. Bailhache		Senator P.F.C. Ozouf		
Connétable of St. Helier		Senator S.C. Ferguson		
Connétable of Grouville		Senator A.J.H. Maclean		
Connétable of St. Lawrence		Senator B.I. Le Marquand		
Connétable of St. Mary		Senator F. du H. Le Gresley		
Connétable of St. John		Senator I.J. Gorst		
Connétable of St. Ouen		Senator L.J. Farnham		
Connétable of St. Brelade		Connétable of Trinity		
Connétable of St. Martin		Connétable of St. Clement		
Connétable of St. Saviour		Connétable of St. Peter		
Deputy R.G. Le Hérisssier (S)		Deputy R.C. Duhamel (S)		
Deputy G.P. Southern (H)		Deputy E.J. Noel (L)		
Deputy of St. Ouen		Deputy of St. John		
Deputy of Grouville		Deputy S.J. Pinel (C)		
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				

Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy T.M. Pitman (H)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

**1.2 Draft Social Security (Amendment of Law No. 4) (Jersey) Regulations 201- (P.101/2012)  
- as amended**

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

The debate therefore resumes on Articles 16 to 18 as proposed as amended by the Minister and now as amended by Deputy Young. Does any Member wish to speak on any of those Regulations? If not, I put the Regulations as amended. Those Members in favouring of adopting them kindly show? Any against? They are adopted. Do you propose the Regulations in Third Reading, Minister?

**1.3 Senator F. du H. Le Gresley:**

Yes, Sir. I would like to say a few words, if I may. I would like to congratulate Deputy Young on winning his amendment. As I said, it is very much about a personal choice and I have no difficulty with the decision we have made today. I would just say that in his summing up he expressed concern about the fact that people have to pay contributions, *et cetera*. I can inform him that next year we will be doing a piece of work on introducing different classes of contributions, as opposed to just the 2 classes we have at the moment, and this would take into consideration the issues of people with very low incomes and perhaps having a different class for people who are in that position, and also looking at the issue of being able to buy contribution credits, if you like, to top up their pension. **[Approbation]** All these matters are on my agenda, along with all the other things that I am expected to deliver and will deliver in my time in office. I would like to close... because, as I am sure Members appreciate, a lot of work goes into producing this type of proposition. I would like to thank the team at Social Security, the policy team, and particularly the policy director who has put in an enormous amount of work, not only helping me bring this proposition but assisting Members who brought amendments and I think her work in particular should be recognised in this Assembly today. **[Approbation]** The essential thing for me as Minister for Social Security is to protect the Social Security Fund for the long term. It is about protecting the old age pension, not just for the current generation who are receiving it but for future generations who are currently paying contributions and those who will start when they leave education. I thank the House for the support I have had today. We have made a difficult decision. I believe it is in the best interests of the Social Security Fund and the long-term future and stability of our benefit system in Jersey. I propose the amendment and seek Members' support and ask for the appel.

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

The Regulations are proposed in Third Reading. Is that seconded? **[Seconded]** Does anyone wish to speak in Third Reading?

**1.3.1 Deputy G.P. Southern:**



Despite the minor relief of seeing the exemption, the protection put in place for those over 55 who would be most affected by this change, nonetheless this overall change in benefits is, I believe, a breaking of contract between the Social Security Department and the people in general. There are thousands of people out there paying contributions now who may some time in the future become widowed and they may have thought that they were paying for a benefit as a result of that. That will become unavailable to them. The contract has been broken. With the amendment, it is a little better because it is not the entire group of people who have made this contract to pay in social security year after year for a set of benefits should they fall on hard times. This benefit in particular has been taken away. It is merely cost cutting; that is what it is about. It should have been phased in over a 40-year period, or whatever it required, so that contracts were kept. That is not happening and therefore I will be voting against this particular proposition for those reasons.

### **1.3.2 Connétable P.J. Rondel of St. John:**

It will not be the first time Social Security will have broken contracts with the people who make contributions to social security. We have seen it over the last several years with the Treasury now able to dip into the funds of people who have paid into this so-called ring-fenced fund and I, like the previous speaker, will not be supporting this. Any contract that is being broken was put in place in good faith all those years ago by Mr. Philip Le Feuvre and Mr. Venables, both of whom brought it through the States, to protect the people of Jersey. Since then we have gone down the road in this Chamber, by the majority, of dipping into money that does not belong to the Tax Department but it is going there to bail out issues because the Treasury have not been able to balance their accounts. So what do they do? They dip into funds like this ring-fenced fund of Social Security. I will not be part and parcel of breaking a contract that was put in place roughly 60 years ago by our forefathers, which has seen the Island well served by the social security of the day. I will not be party to another criminal act.

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

I remind Members we are debating in the Third Reading, so briefly.

### **Senator F. du H. Le Gresley:**

Sir, I think you should ask the Constable to withdraw that remark. This is not a criminal act. We are making a law today. We are not committing a criminal act.

### **The Connétable of St. John:**

I will not withdraw any of those remarks.

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

You are entitled to express a political opinion which may or may not be shared by others.

### **1.3.3 Deputy M. Tadier of St. Brelade:**

I have been pulled up for less, but I am sure that was metaphorical from the Constable of St. John. I do have some sympathy, first of all, for the position of Deputy Southern. I think it is quite right that those who have entered into a contract will not have that reneged on and a phased-out approach would have been much better. Nonetheless, I also agree that the current system is unsustainable and I think it is overly generous taken as it is. What I think this shows is where the priorities lie. We talk about it is going to have a massive impact on people one way or the other, and I quite agree that people should not necessarily go on receiving this benefit indefinitely and, at some point, once they have had a transitional period to adjust their lives, they can go out and perhaps seek work. But that is where the rub lies because we know that, first of all, there has been a downturn in the market and we know that also it is very difficult for those who are towards retirement age if they have to work, perhaps for the first time in many years, to be able to compete on a level playing field in the

job market. That goes for both men and women. It is not going to be easy for a 55 year-old, 57 year-old or 59 year-old woman to be able to find work in a bar, for example, when one is competing with the young *Poussins* as we might say. Similarly, that goes for men who are competing in other areas of the job market. The problem is we do not have a discrimination law in place yet and even when we do we will not have that first part of the discrimination law which deals with age discrimination and that, I am told from J.A.C.S. (Jersey Advisory and Conciliation Service) and other entities, is the most important part. It is not the race element, which is also very important, it is the age part. What kind of message does this say when a government for purely financial reasons - let us be honest, this is part of the C.S.R. (Comprehensive Spending Review) - is saying: "We need to make significant changes here to the social benefits structure but we do not even have the safety net in place yet because that can come later." We would not accept that in other areas, and if we remember the debate we had yesterday about the 1(1)(k) system, we have this idea that we need stability. We do not just go making changes when we have not got the relevant facts in place first and we have not seen how this is bedded in. We have done exactly the opposite in this particular case. We do not have the safety net in, we do not have the Discrimination Law and the element that deals with age, but we are willing to press ahead with the financial part, so it is just to highlight that point. We need that. We should have that in place first and there are double standards being peddled here because there is no stability for those contributors of many years within the Social Security Fund.

**1.3.4 Senator P.F. Routier:**

Deputy Southern accuses this Assembly of breaking a contract with the Island population. I would hope that he would see that as the community changes around us we should do our very best to improve our contracts with the population. I believe that what is being proposed this time for the whole of our population is an improvement in the contract terms. I would hope that we would not just sit on our hands and see the Island's circumstances change around us and not react to that. There are times when we need to refocus and relook at what we are doing and make it better for our community and for the community as a whole. I do not think the Constable of St. John will ever let go of the issue of money being used in moving across to Health, but that decision was made because it was to improve the primary healthcare of our community. That is what the social security funds were collected for, for the primary healthcare of our community, and that is what Health have been using it for. I urge Members to really think hard about supporting this proposition because it is an improvement on the contract we have with our community as whole.

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

I call on the Minister to reply.

**1.3.5 Senator F. du H. Le Gresley:**

I thank those who have spoken. I do not agree with some but there we go, that is life. We have had to make tough decisions. Today is a tough decision. I was not elected Minister for Social Security to be particularly a nice guy. I knew I was taking on a tough job and I will continue to make the decisions that I think are right for our community. I think I have asked for the appel before but I will ask for it again.

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

The appel is called for and the Regulations in Third Reading. If Members are in their designated seats, the Greffier will open the voting.

<b>POUR: 40</b>		<b>CONTRE: 3</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Connétable of St. John		
Senator P.F.C. Ozouf		Deputy G.P. Southern (H)		

Senator A. Breckon		Deputy of St. Ouen		
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (S)				
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 G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

## 2. Income Tax: Report on Personal Income Tax Assessments (P.106/2012)

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

We come now to P.106/2012, Income Tax: Report on Personal Income Tax Assessments, in the name of Deputy Southern. I will ask the Greffier to read the proposition.

[10:15]

### The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion to request the Minister for Treasury and Resources to present to the States a report examining in full the case that personal income tax assessments should apply to individual earnings and not, as currently, to household earnings, and to

do so no later than 30th September 2013 so that the report is available in time for proposals and amendments relating to this issue to be lodged for debate in the Budget 2014.

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

As that P.106 was announced, I glanced across the Chamber at the Minister for Treasury and Resources and he rolled his eyes somewhat at me and I rolled my eyes back. I think perhaps both of us are getting tired of this particular issue because it is one that keeps coming back and I won't stop to ensure that it does come back. I will tell you why. Not quite a year ago, 31st January last, I brought a proposition asking the Minister for Treasury and Resources to bring forward for approval the necessary legislation to set up personal income tax rather than household income tax. This time I have come round, a year later, and I am saying: "Please bring us a full report on what that entails so that both the Minister and I and Members of this House can know what it would involve and what it would mean moving from household income tax, married couple, where the person responsible is always the husband, which effectively sets up a potentially discriminatory system." We have just heard from Deputy Tadier that we must look to the forthcoming Anti-Discrimination Law, we are moving on that front, and here is the prime example of potential discrimination where a wife is treated effectively as the lesser partner of the husband for income tax matters. Most countries in the world treat tax as an individual basis. I think we should be treating it as an individual basis. The Minister for Treasury and Resources says: "But I am rolling out an enormous amount of changes" and he lists 6 in his response, none of which says: "We will examine the possibility in detail of moving over to personal taxation rather than household taxation in the future." All I am asking Members to do today is help the Minister for Treasury and Resources prioritise his vast range of things that he has got on in the next 2 to 3 years and come forward in 9 months, 10 months' time with a full report saying: "This is what it would look like, this is what it might cost. These are the benefits and these are the disbenefits of proceeding with individual taxation" and we can make up our minds whether in the long or the short term we wish to go in that direction or not. All I am asking for is that we should have at some stage in the future an informed debate and not wait for 2 to 3 years for the Minister for Treasury and Resources finally to get round to telling us what the ins and outs of personal taxation would be. So it is a simple request. I am asking Members to please help the Minister for Treasury and Resources prioritise and say in a world where we are moving into anti-discrimination laws this is the most prime example of potential discrimination where a wife is treated as an appendage of the husband in our tax law. Surely the time has come to change that, to get in line with the rest of the world and change that situation. I maintain the proposition.

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

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

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

I do not think the Tax Department can be described as one of those departments - there are many good departments in the States of Jersey - that does not take on a huge agenda of work and deliver the reforms that we have been undertaking in the Tax Department over the years, and I will not bore Members but the introduction of I.T.I.S. (Income Tax Instalment Scheme), 20 Means 20, G.S.T. (Goods and Services Tax), collecting revenues, which has one of the highest compliances in the world. We ask an enormous amount of our Tax Department and I state publicly how much I appreciate the work that they do in terms of serving and collecting tax. Indeed, tomorrow, of course, is the last day that tax will be collected from a number of people so it is worthwhile just reminding people that they need to pay their tax by tomorrow at 5.00 p.m. unless they get a 10 per cent surcharge. The Tax Department is now moving on. They are moving on to deliver a further massive reform agenda, as my comments set out. We want to move to online self-assessment. We

are dealing with, and indeed some of our staff have been working on, a more simplified explanation of the system of exemptions and marginal rates. But there is only so much that we can do over a period of time. I have made it absolutely clear that we are committed to doing and introducing independent taxation but it is not something that can just be done overnight. It is a huge piece of work and requires almost complete rewiring of the tax system. I can agree almost with half of what Deputy Southern is doing but what he is asking me to do is bring forward a report and therefore a proposal to bring in independent taxation with proposals and amendments. That is what it says. Sir, I am not giving way. It is quite clear that if the Assembly passes this then we are going to be under an obligation in order to bring this next year and we just cannot do it. I am not going to say to the Assembly... I am not going to over-promise and under-deliver. I am committed to bringing in independent taxation. This is something that is a very high priority in what we are trying to do and we are making progress on this issue. It is not simply a system that we can just turn on a few buttons in the Treasury and move from a system of joint assessment to independent taxation. There is a huge amount of corresponding implications and consequences of doing that and we are going to have to do an awful lot of work on this. It is going to take 2 or 3 years, let us be clear. If we can accelerate on that programme we will do so and no amount of scolding by Deputy Southern and this Assembly passing effectively an in principle decision requiring us to do something is going to change the work that we can do. We cannot simply just turn all our attention to this issue and deal with all the other issues. Yesterday Deputy Noel took forward through this Assembly some very detailed and complex legislation on avoidance, which he did extremely well. Now the Tax Department is having to deal with that. We have got a huge reform agenda and we need to pace ourselves. Independent taxation is going to come but independent taxation cannot come with the existing paper system that we have. It simply cannot be done. I accept independent taxation. I would remind the Deputy that any couple, whether they are a married couple or civil partners, can elect to have a separate system of taxation if they wish. We certainly encourage people to do that but we could not do it for every single civil partner and married couple with the current system. We will produce a report and we will bring forward legislation to do it but I simply will not accept a proposition which raises the expectation that I can do something in Budget 2014 with amendments. I simply cannot do it and it is unfair to ask the Tax Department to do so. I am expressing again the fact that we are going to do it. We will work within the period of time but I cannot simply have the Assembly accept a proposition and a demand on us that we simply will not deliver.

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

Sir, may I seek a point of clarification from yourself? I am looking at the interpretation of the proposition. My interpretation of this was that this is for a report to be produced on something that effectively can be done anyway by August or September of next year. It is not asking for legislation. It is saying in time for a date such that if someone wants to bring an amendment in the future and that person has to make a judgment as to whether it is going to be accepted by the States or not. It is not asking the Minister for Treasury and Resources to do legislation or anything along those lines. Is that correct, Sir?

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

As you say, Deputy, the proposition is clearly not in itself introducing or seeking to introduce independent taxation. It simply says a report must be produced by September, but understandably the Minister is concerned about the expectation in the last line that says: "... in time for proposals and amendments relating to this issue to be lodged for debate in the Budget 2014." Those amendments could relate to a later year, could relate to the future.

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

That is my problem. I cannot do that and I will not raise expectations that we can introduce independent taxation in Budget 2014.

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

I do not think the proposition is saying that.

**Deputy G.P. Southern:**

It is not saying that. It says give us a report.

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

Why is the proposition saying “proposals and amendments relating to this issue”? I will not and cannot bring forward proposals which can be amended on independent taxation in the Budget next year. I cannot do it.

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

On a point of clarification before I proceed, I think the Minister said 6.00 p.m. for the submission of income tax. He might wish to clarify that. Secondly, I totally agree with the underlying sentiment of Deputy Le Fondré. I think the Minister doth protest too much. He is absolutely right, it is a phenomenally hardworking department, it has brought in an incredible range of legislation, but I am sure if a gun was put to the Minister’s head and he was told: “If you do not do this by X because the U.K. (United Kingdom) Government will impose some sort of sanction on the Island” it would be done. That has been the history of our response at the top of Government for the last several years. On the notion that it simply cannot be done, my view is there is absolutely no issue in presenting a report if the report consists of saying: “Look, the logistical issues are so great that there is no way we can produce it in time for this Budget. I hereby outline these issues, I hereby outline the kind of research that is going to be needed to deal with them and we are going to go away and work on them” I think people would be happy. I do not see the inevitable connection between producing a report outlining the issues and the fact that this report will be the basis for amendments of the forthcoming Budget. I simply do not see that connection. It can easily be broken by the Minister producing a report saying: “These are the pros and cons, these are the research implications of pursuing them and these are the realistic deadlines. I hereby lay this in front of the States.”

**2.1.3 Senator S.C. Ferguson:**

I suppose I have got beyond the stage of having a vested interest in this but hope springs eternal. **[Laughter]** I am curious. Has the Minister for Treasury and Resources got a rough idea of the cost of making this change? It seems to me that it could well reduce the tax burden on the household, so perhaps somebody would enlighten me as to whether there has been some work done on this and whether it is going to increase or reduce the tax collected.

**2.1.4 Connétable D.W. Mezbourian of St. Lawrence:**

I was not going to speak on this but I was surprised, I was alarmed, I think, to hear the Minister say: “I cannot accept a demand of the Assembly.” I wrote the words down as he said them because I was alarmed to hear a Minister standing up and saying that so vociferously to the Assembly, the duly elected representatives of the public. Whatever the proposition, I was concerned because we are all entitled to bring propositions. That is the recourse that we take to achieve changes that we think should be made. Whether I agree with the proposition or not, and I will not commit myself at this point, I am alarmed to hear the Minister use those words because I think it sends out warning bells to us all. It is quite clear we cannot demand but the proposition requests, and that is the wording I understand of all propositions along these lines: we request the Minister. If it is the will of the Assembly to request the Minister then the Minister, I believe, is duty bound to go away and

attempt to fulfil that request. I believe Deputy Le Hérissier has just made it clear that if the Minister is unable to do that he can come back with a report stating the reasons, the implications. But it is very worrying, and I notice that the Minister turned around and smiled at me. Perhaps he does not recall using those words or stating them so vehemently but I am sure others will have been as worried as I was to hear them.

[10:30]

#### **2.1.5 Deputy J.M. Maçon of St. Saviour:**

I understand the concerns of the Minister for Treasury and Resources but he is talking in a sense about a hypothetical situation which could possibly occur in the future should X, Y and Z happen. I appreciate we are a bit on rocky ground when it comes to these debates and I do appreciate that Standing Orders discourage this type of thinking. However, the point that I do want to make is, first of all, as has been said, this is requesting a report. The concern is that something might be lodged which might affect the Budget. If there is something that is lodged in the Budget debate we should request the Minister to detail it and there is nothing stopping the Minister then counter-amending that and saying: "Right, the time frame which this was to come in cannot be done by the Treasury Department." That's acceptable that it could be done in this year or in this year, in which case what is the problem? It just means that the Minister for Treasury and Resources has to be a bit more proactive and productive and we know what a great Minister he is for those types of things. So I do not see the problem this is this is requesting a report and, if anything does come up, there are means and there are mechanisms to deal with it.

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

I am sure that the Constable of Lawrence is right in saying that if the Assembly makes a request to the Minister for Treasury and Resources, the Assembly is entitled to expect that he will do his best to comply with it. Despite the slightly dramatic language of holding a gun to the head, I did not interpret the Minister for Treasury and Resources as saying in any way that he would not comply with the request of the Assembly, he was simply asking the Assembly not to make that request and that seems to me to be an entirely reasonable proposition. It seems to me that this proposition of Deputy Southern is much ado about nothing. Married couples are perfectly entitled and civil partners as well are perfectly entitled at the moment to request to have separate treatment. I can only say that when I got married nearly 30 years ago almost the first thing my wife said to me was: "Here is my income tax return, will you please take responsibility for it and pay my tax in future." I expect there are many Members in this Assembly whose spouses would feel the same way. This will come to be dealt with in the proper time in due course and we should not waste the time of the Assembly by prolonging this debate.

#### **2.1.7 Deputy J.H. Young:**

I have just a brief comment. I find it difficult to understand why it is not reasonable to have an early report. After all, we have adapted our law already for civil partners and a particular point I noted was that in the Minister's comments the kind of priorities of the tremendous amount of work that he has got in progress say that the number one priority is online filing for personal taxpayers, initially with agents to 2013 or something. Well, I am really puzzled. Obviously, if you look, what comes first, having the base of personal taxation first or computerising what is now? That strikes me as the wrong way round and that we should really look at the principles of personal taxation first and then once we have sorted that out - because there are things to sort out - I would suggest then that we look at online filing. So I think I query those priorities which are put forward as a reason for not doing what the proposition asks for. Just to add one brief comment, I know that the fact of joint assessments presents all sorts of problems and is certainly in family law matters, in

divorces and so on, a big scope for argument about having a joint tax basis. So I am really struggling why we cannot have a report.

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

I am not sure if this is a parliamentary phrase but it appears to me that the Minister is damned if he does and damned if he does not. He is often accused of doing too much. In this instance, where he is trying to be open with Members and considering his workload it is being suggested that he could just get a little bit more efficiency out of this department and do this piece of work as well, he appears to be in a no-win situation. I think he has read the Deputy's proposition and taken it at face value because on the one hand, yes, it quite clearly asks for a report to be given no later than September of next year and the Minister could simply come forward with a report explaining all the difficulties. What he has tried to do is explain the difficulties this morning and in his comments because the suggestion then goes on to say: "Well, have him produce the report, the report should be in such a way that amendments can simply be made to next year's Budget so that this can all be sorted out." The Deputy, I see, is shaking his head but it does quite clearly go on to say: "Amendments relating to this issue to be lodged for the debate in the Budget 2014." So I am a little bit at a loss to understand how the Deputy now thinks that is not the case. The Minister has been quite clear that he does not want to over-promise and under-deliver and I have to say that unfortunately in this Assembly we are guilty of often doing that, saying: "Oh, okay we will do it" and then we are not able to do it and timelines get missed and then Ministers and departments get criticised for not meeting timelines. Sometimes Ministers have to be quite clear about what is and what is not achievable because the report, while it might be quite simple, the actual issue and getting to a position where we can amend to have individual returns in places for everyone is not that simple and, as the Minister said, it is quite an administratively difficult and lengthy process. I cannot necessarily agree with Deputy Young with regard to e-enabling for filing and paying. I think that is rightly a priority and that is part of what modernisation is based upon. There are a lot of functions and activities that we carry out now which can be e-enabled using the internet and we should be prioritising that. I am sure that the Minister, if the States approves this today, could produce the report but I think we should be in no doubt whatsoever that we will not be able to be in a position to lodge amendments to achieve what the Deputy, I think, is the thrust of his amendment and the Minister is simply being clear and fair with the Assembly. It is, of course, the right of the Assembly to decide and to request.

### **2.1.9 Deputy G.C.L. Baudains of St. Clement:**

From the Chief Minister's speech which I follow, I am not quite sure if I understand the proposition before us in the same way that he does, because reading the last couple of lines it is said: "A report is available in time for proposals and amendments relating to this issue to be lodged for debate in the Budget of 2014" but it does not specify who might be lodging the proposition or the amendment. So I would have thought, and the way I read it is that the report would be available so that other people might have the information that they require in order to address this issue. It is not asking for the Minister for Treasury or anybody else to do any work other than to provide a report. That is the way I see it.

### **2.1.10 Deputy E.J. Noel of St. Lawrence:**

As many Members have already spoken, it would be possible to produce a report by September next year. I would not know whether it would achieve very much because we are being asked to produce a report that could be used to set out proposals and amendments for next year's Budget. I just know that the department does not have the capabilities to do such a report. Yes, we could bring the half-finished report but then we would be criticised for doing that. I do wonder what the real reason is for this proposition in front of us today and I think Deputy Baudains sort of alluded to



it. In the first line of Deputy Southern's report he refers to the introduction of a higher rate of tax and I believe that this is what this report is about; it is about to open up that debate again.

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

I do not think, Deputy, you can make accusations of the real reason. Deputy Southern's proposition is very clear. I do not think to say the "real reason" is imputing proper objectives.

**Deputy E.J. Noel:**

All right, sorry, I will change my words. A possible reason might be to start the process of introducing a higher rate of tax. If we were ever to go down that route we certainly need more than a year to consider it.

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

I must say, given the day of the week, *et cetera*, I do think it is a bit of a storm in a teacup. At the end of the day we are talking about something that could be produced in the course of 9 months. I have no issues with the principles of producing a report. It goes back to the overall principles. You can defend the right of somebody to speak but you reserve your own right to disagree with them when the subject matter comes back. As far as I can see we have already been told and we should know that people can elect to be independently assessed anyway, so what would happen if tomorrow - it is not going to happen - everybody decided to be independently assessed? Surely what we should know is what the impact of that would be. What I would also be interested in, if such a report is required at some point, is what is the impact on married couples and civil partnerships compared to where we are now? But at the end of the day it is in the hands of the Assembly at any point of any proposition that came as a result of any report at the time of the Budget. There is nothing to stop Deputy Southern or whoever wanting to do some amendment in the Budget next year anyway. But proposing this, it is in the hands of the Assembly at the time to judge the merits of any such proposition. If that proposition is unrealistic then we reject it. It is in the hands of any proposer to think about the mood of the Assembly and to turn around and say: "It would be completely unreasonable to do it before 2014 or 2015 but if I set the principles up for 2016 then it might work." Now, I also heavily emphasise I do not necessarily agree with making it a default position or not, I do not really mind but I have no issue with a Member bringing a request to a Minister to provide information on a 9-month timescale. That is the only way I am working on it. The wording in the proposition says: "To do a report no later than 30th September so that the report is available in time." That is the emphasis as far as I am concerned. It is not saying that the Minister has to produce legislation and all the rest of it. It is down to the Assembly at that point to make any decision as to the reasonableness of any amendment at that point. I am not saying I would support such an amendment, what I am saying is that I am very happy to support, in this instance, what appears to be a reasonable subject and I really think we should get on with it.

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

Just very briefly, I would like to follow on from the Constable of St. Lawrence. I must say I am concerned by what I have just heard over the last, say, 15 or 20 minutes or so. First of all the Minister for Treasury and Resources is basically saying: "It is not on my agenda. It is too much work and we do not want to get on with it." Then we hear from the Assistant Minister for Treasury and Resources saying: "Well, we could produce a report" and all the rest of it but it almost sounded half-hearted. So it is almost as if the Ministers now are deciding, well, we are not really interested in what the Assembly is interested in or their agenda. We have our agenda, we are going to drive it and even if we produce reports they may be lacklustre reports, we will not put any real effort into it." I really do think that the States should reassert its role and hold the Ministers to account.

**2.1.13 Deputy S.G. Luce of St. Martin:**

I think some people are missing the point here. The Minister sets out the list of priorities and if we are serious about getting value for money from this Assembly, getting more for less or at least more for the same, I think we should prioritise number one, which is online computerisation using digital technology which allows us then to move on to 2 and 3. This would produce some real benefits; some real benefits for both the public and the civil service. While the Minister could quite rightly produce the report next year, what is the point of producing work which is unnecessary when those people could be doing something far more constructive?

[10:45]

**2.1.14 Senator L.J. Farnham:**

I am just prompted to speak on something Deputy Noel raised about there perhaps being an underlying motive to increase the rate of tax, which I believe there is. Before you ask me to withdraw that, I am just reading the Deputy's proposition P.23 of 2011.

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

We are not debating that proposition. [Laughter]

**Senator L.J. Farnham:**

No, Sir, but I am reading it, nevertheless, and in the report it clearly states that it became clear that the option to introduce a higher rate of income tax for higher earners was impractical in terms of individual responses, because one aspect was a consideration, which was considered unfair, which was a possible inclusion of joint incomes. I will not go on but it is all clear there in the report of P.23/2011. This is the underlying strategy behind this proposition, I believe. Now, moving on to what this proposition asks for, I was hoping that the Minister for Treasury and Resources could have said: "I can do this report" but I believe that he cannot. He does not want to over-promise and promise something he cannot deliver in the timescale; perfectly reasonable.

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

Can I just ask a point of clarification, because you have criticised my Assistant Minister and others for making a point about the higher rate of tax? In the report there are 6 references. I am asking why is it not possible to forward the arguments to say that this is about a higher rate of tax.

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

I criticised your Assistant Minister for using the words "the real reason", not for commenting on Deputy Southern's report.

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

But there are 6 references to a higher rate of tax in the report.

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

To say that there is a "real reason" for a proposition is imputing improper motives. The proposition says what it says.

**Senator L.J. Farnham:**

My alludement to it was the Deputy's strategy. I presume it is acceptable.

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

Does any other Member wish to speak? I call on Deputy...

**Deputy M. Tadier:**

Sorry.

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

You were out of the Assembly, Deputy, so you have just come in on time. Deputy Tadier.

**Deputy M. Tadier:**

I did it deliberately, I was listening downstairs while preparing my oral questions which have to be in by 12 p.m., if any Member wants to get their oral questions in.

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

Deputy, will you please address the debate?

**2.1.15 Deputy M. Tadier:**

I was just explaining why I was out of the Assembly but I will continue. I think there is a more fundamentally underlying problem that we have today which has been emerging since the inception of Ministerial government which is who controls the States Assembly? Who is responsible for decisions? Because yesterday we had the Minister saying: "I am the servant of this Assembly." He said that during the Budget debate and we also get this from Ministers who say: "This is not my policy, this is your policy so do not come and blame me when the policy does not work out." But who brought the policy here in the first place? The Ministers went off as they are charged to do under our new Ministerial government, they go away and form a policy as best as they can, they cobble a few bits together, make some carve-outs for their friends who have recently got elected, they change their own politics, do U-turns and then they bring something back to the States which hopefully is relatively coherent, and we still live in hope on that. Today we have a very simple question. We should not be debating whether or not the Minister has the capacity to deliver this within the next year. He is big enough and beautiful enough to do that for himself. What we should be arguing today is: is this desirable for us to do? Do we want to charge the Minister to go off and do it and is what Deputy Southern asking reasonable? I was listening and it is quite true - and I think Deputy Le Hérissier put his finger on it - that we are making too much of this. This is entirely fine to do within a year. It is, as I would call it, a scoping document; it is to decide... I think we all generally agree that there are issues and inequalities in the way that we currently tax married couples and unmarried couples who live together and may be just as much in love or not, who for example, do not get those benefits. I think it is generally accepted that we need to move towards single, individual taxation which the Minister is already on board with. This simply gives the Minister a drive. The Minister is conflicted to come back here and say: "I do not want to do this. We are already working on it." It is to say: "Well, Minister, we think it should be much more of a priority for your department" which is very hard-working, not the most under-staffed department of all the Ministerial departments, I do not think either. So let us put this back in context. This is about taking responsibility for this Assembly and if we do not want to do this that is fine but let it be a political decision on the basis that it is not a priority for the Assembly. But I think that this is something that needs to be done quickly and when the Minister comes back if the report still needs fleshing out in future we can do that and then we can all hopefully scrutinise it, work together and come out with a good piece of legislation. But this is a priority because taxation does affect everybody on a yearly basis and I would hope that the Minister, once he gets the steer from the Assembly, will divert the resources that he needs to and it will not be that much of a problem.

**2.1.16 Senator P.F. Routier:**

I really just wanted to focus on what a number of Members have talked about this morning and that is something which is in the report. It opens with the line that refers to a lodged proposition P.23, income tax reduction of a higher rate, and it goes on further down to say, at the bottom of the page, on page 3, at the penultimate sentence: "In short the introduction of a higher rate of tax is

impossible without being discriminatory under our present system.” To me this proposition is a cloak to bring in a higher rate of tax and I just hope that Members recognise that, that when they are deciding on whether to support this proposition that they keep that in mind.

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

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

**2.1.17 Deputy G.P. Southern:**

With all this talk of hidden agendas and cloaks I feel like Machiavelli. Oh dear, what a fuss about very little. I remind Members, and thank you to those Members who pointed this out time and time again, this is a request to the Minister for Treasury and Resources to present to the States a report examining the full case that personal income tax assessments should apply to individual earnings and not as currently to household earnings and to do so no later than 30th September. That is what it says. It does not ask the Minister to bring a proposition, it does not ask him to bring legislation, it asks him to bring a report. In the words of Senator Ferguson: “Enlighten me; would this be a benefit or a disbenefit? Enlighten me.” How many Members around here are saying: “Yes, I would like to know more about the possibilities, the complexities, the pros and cons of moving to individual taxation? I do. I just brought a proposition to raise the pension and the Minister came back and said: “Oh, we cannot possibly do it immediately. I can do it by April.” What is wrong with that? Perfectly in agreement and we just got through that in about 20 minutes less than it has taken us today to ask the Minister of Treasury and Resources to bring us a report. The question is does this Chamber want some more information on that option so that it can make its mind up in a rational way about that as an option for the future going forward? I would have thought that they would. I certainly do and that is all that is being asked here. There is nothing Machiavellian about it. One of the options, which was debated in the Fiscal Strategy Consultation Paper, was the potential for raising more through income tax. We decided not to do that but to go for an increase in social security contributions. That is a rational debate. One of the issues that came out was that raising more through income tax potentially is discriminatory in terms of the household and who is responsible for the tax. Whether going to personal income tax is a viable option and in what timescale is not at issue here. Come back, Minister, and tell us what the pros and cons are, what the timescale is, what the complexity is and let us make our own mind up about that some time in the future but give us that information. Surely this House is entitled to ask the Minister to bring to us some further information in a reasonable timescale and that is what this proposition does. I maintain the proposition and call for the appel.

**The Bailiff:**

The appel is called for then in relation to the proposition of Deputy Southern. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 18</b>		<b>CONTRE: 26</b>		<b>ABSTAIN: 0</b>
Senator A. Breckon		Senator P.F. Routier		
Senator S.C. Ferguson		Senator P.F.C. Ozouf		
Connétable of St. Clement		Senator A.J.H. Maclean		
Connétable of St. Lawrence		Senator B.I. Le Marquand		
Connétable of St. Martin		Senator F. du H. Le Gresley		
Deputy R.C. Duhamel (S)		Senator I.J. Gorst		
Deputy R.G. Le Hérisier (S)		Senator L.J. Farnham		
Deputy G.P. Southern (H)		Senator P.M. Bailhache		
Deputy of Grouville		Connétable of St. Helier		
Deputy J.A.N. Le Fondré (L)		Connétable of Trinity		
Deputy M. Tadier (B)		Connétable of Grouville		
Deputy T.M. Pitman (H)		Connétable of St. Peter		

Deputy M.R. Higgins (H)		Connétable of St. Mary		
Deputy J.M. Maçon (S)		Connétable of St. Ouen		
Deputy G.C.L. Baudains (C)		Connétable of St. Brelade		
Deputy J.H. Young (B)		Connétable of St. Saviour		
Deputy S.J. Pinel (C)		Deputy of St. Ouen		
Deputy R.G. Bryans (H)		Deputy J.A. Hilton (H)		
		Deputy of Trinity		
		Deputy K.C. Lewis (S)		
		Deputy E.J. Noel (L)		
		Deputy of St. John		
		Deputy J.P.G. Baker (H)		
		Deputy of St. Mary		
		Deputy of St. Martin		
		Deputy R.J. Rondel (H)		

### **3. Draft Alternative Investment Funds (Jersey) Regulations 201- (P.109/2012)**

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

Very well. We come next to the Draft Alternative Investment Funds (Jersey) Regulations 201-, Projet 109/2012, lodged by the Minister for Economic Development. I will ask the Greffier to read the citation.

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

The States, in pursuance of Article 2 of the European Communities Legislation Implementation (Jersey) Law 1996 have made the following Regulations.

#### **3.1 Senator A.J.H. Maclean (The Minister for Economic Development):**

The Draft Alternative Investment Funds (Jersey) Regulations 201- make changes which are necessary to enable collective investment schemes connected with Jersey to continue to be marketed into the European Union from July 2013. The draft Regulations are essential to accommodate changes to enable Jersey to sign an international agreement. This is as a result of the Alternative Investment Fund Managers' Directive passed by the European Union. It is proposed that the draft Regulations are made under the European Communities Legislation Implementation (Jersey) Law 1996. The legislation will enable the Jersey Financial Services Commission to enter into an international agreement. This, in turn, will allow the Jersey funds industry to continue to market into existing markets from July 2013. Jersey has approximately 2,000 funds with a net asset value of funds under administration in the region of £200 billion. There are over 200 managers or investment managers and 50 depositories or custodians based in Jersey. Not all of the funds held in Jersey will be affected by the Directive but a significant number will, possibly as many as half. The aim of the Directive is to create a comprehensive and effective regulatory and supervisory framework for alternative investment fund managers within the E.U. (European Union). The Directive imposes requirements on member states of the European Union to regulate the activities of the managers of and depositories to alternative investment funds. For the purpose of the Directive a fund has a broader meaning than under the Collective Investment Fund (Jersey) Law 1988. This means that arrangements which are not currently treated as funds in Jersey law may be within the scope of the Directive. As Members will be aware, Jersey is, of course, not bound by E.U. Directives, however, a significant number of funds in Jersey market into E.U. Member States. One of the requirements of the Directive in relation to the marketing of alternative investment funds into Member States is that the Commission must have entered into co-operation agreements in relation to regulatory matters with the regulator of the Member State where it is desired that the

fund is marketed into. E.S.M.A. (European Securities and Markets Agency) is co-ordinating the signing of memoranda of understanding between the regulatory authorities of the various Member States of the European Union and the regulatory authorities of third countries which wish to conclude M.O.U.s (Memorandum of Understanding) with the regulatory authorities of the E.U. Member States. In the formation of this legislation my department has worked closely with the Commission, Jersey Finance Limited and the Jersey Funds Association. Based on current information received by the Commission it is understood that these legislative changes will provide the regulatory regime required for the Commission to sign the proposed M.O.U. The aim of the Draft Regulations is to provide the Commission with additional regulatory powers in relation to a significant group of Jersey funds. These powers relate to the regulation and supervision of C.O.B.O. (Control of Borrowing (Jersey) Order 1958) funds and unregulated funds. These are powers which the Commission currently has in relation to other funds which are alternative investment funds.

[11:00]

The effect of the Regulation is that the Commission will have the powers it needs over all funds which are to be marketed into Europe. These powers are needed to enable the Commission to sign the international agreement with E.S.M.A. Although their timetable has slipped, it is expected that E.S.M.A. will start the process of signing the M.O.U.s within a matter of weeks. Of particular note is that due to the significant effort of the Commission, Jersey is in the first wave of countries to discuss signing the agreement which could, of course, give us a competitive advantage over our competitor jurisdictions. It will be important for the Commission to satisfy E.S.M.A. at an early stage of talks that Jersey has an adequate funds regulatory regime in place to address the requirements of the directive. The Draft Regulations before Members today seek to put in place a regulatory regime which will make the jurisdiction compliant with the directive and allow the Commission to sign the M.O.U. with E.S.M.A. The industry has been consulted and supports the proposals. Officers from Economic Development Department and the Commission also discussed the Regulations with the Economic Affairs Scrutiny Panel on 3rd October at a meeting. I should note to Members for completeness that these Regulations are only the first part of a package of 3 sets of legislative changes which it is envisaged will be necessary relating to alternative investment funds up to 2015. These include amendments to various regulatory laws and in particular the Financial Services (Jersey) Law 1998 to accommodate other changes arising from this Directive. Further changes will be necessary in relation to parts of the Directive, which will come into force as from 2015. The Draft Regulations in front of Members today are important pieces of legislation for the financial services industry in the Island. They are also an example of how the Island has, in this instance, been quick to adapt to the developments contained within the Directive which appears to present the funds industry in the Island with real opportunities. I propose the principle of the Draft Regulations.

**The Bailiff:**

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

**3.1.1 Deputy R.G. Le Hérissier:**

Could the Minister outline what specific complaints have indeed been forthcoming which have led to this situation and could he indicate to the House whether by implementing this law or if we were to implement it, it will indeed lead to an increase in business and why does he believe so.

**3.1.2 Senator S.C. Ferguson:**

Just a query. This is purely for the European Union. I wonder if the Minister will just confirm whether this will make these particular funds more viable on a worldwide basis as well as just for Europe?

**The Bailiff:**

Very well. I call upon Senator Maclean to reply.

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

Just to clarify Deputy Le Hérisssier's question, I think he did say "complaints". It is not a matter of complaints at all. This is an E.U. Directive, which means that we have to comply and this involves a small segment of funds within the Island, basically Unregulated and C.O.B.O. funds. It has nothing to do with complaints. It is a matter that the funds industry needs to be able to continue to market these funds into Europe. To be able to do that, they need to have a suitable regulatory regime. That is what this is all about. In regard to Senator Ferguson, this is worldwide. Funds from America and the Caribbean, anywhere, have to comply with this European Directive. The point I was making about the fact that Jersey has moved relatively quickly here, we are in the first phase. We could well get a competitive advantage over, for example, the B.V.I. (British Virgin Islands) and the Caribbean jurisdictions by being in that first phase. I maintain the proposition.

**The Bailiff:**

The appel is called for in relation to the adoption of the principle. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 42</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Deputy G.C.L. Baudains (C)		
Senator P.F.C. Ozouf				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisssier (S)				
Deputy of St. Ouen				
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 T.M. Pitman (H)				

Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

**The Bailiff:**

Very well. Now, this matter falls within the purview of the Economic Affairs Scrutiny Panel. Chairman, do you wish it referred to your panel?

**The Deputy of St. Martin (Chairman, Economic Affairs Scrutiny Panel):**

No, thank you, Sir.

**The Bailiff:**

Very well. So then we turn to the individual Regulations. How do you wish to take this, Minister?

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

There are 4 parts, 48 Regulations in total. I would like to take it *en bloc* but I would just say that I will make a few brief comments on each of the parts and then take it *en bloc*. Part 1 sets out the objectives of the Regulations, namely to make provision in relation to the European Directive. It also includes a number of interpretation provisions and introduces the new definition of an alternative investment fund in Regulation 3 and of a principal person in Regulation 4. Part 2 deals with the certificates. This is Regulations 7 to 10. This part deals with the requirements for a certificate under the Regulations. The Regulations require an alternative investment fund entity to hold the certificate issued by the Commission. The Regulations further provide for provisions for the issue, refusal and cancellation of certificates. That is under Regulation 7 and the ability to impose conditions on them in Regulation 9. So part 3 is the decision making and review area. This part deals with, as I have said, decision making and reviews in relation to certificates granted under the Draft Regulation. Provision is made for notice to be given to the applicant upon a refusal of a certificate or conditions being imposed. That is covered under Regulation 11. Similarly, provision is made for a delay in conditions taking effect to allow the appeal to the Royal Court which is under Regulation 13. Part 4 is miscellaneous. That is the main bulk. The part deals with the various miscellaneous provisions which relate to the information sharing provisions and investigation and enforcement powers. That is all 4 parts. I am happy to take any questions Members may have on individual Regulations. I maintain the Regulations.

**The Bailiff:**

Very well. Are Regulations 1 to 48 in the schedule seconded? **[Seconded]** Does any Member wish to speak on any of the individual Regulations?

**3.2.1 Deputy R.G. Le Hérissier:**

I should have possibly raised this at the principle stage but it does relate to this incredible wad of Regulations which the Minister has so manfully and with great aplomb summarised but I wonder has he had any complaints. He talks of rushed consultation or fast consultation with the industry at this seminar. Has he had any complaints from the industry, which I get on a regular basis from one



or 2 people, about the weight of regulation and the complexity and so forth? Has he had complaints and if so how...

**The Bailiff:**

I have to say, Deputy, that relates to the principle.

**Deputy R.G. Le Hérissier:**

Yes. In relation to, for example [Laughter], part 3 where there is a very detailed enumeration of contraventions and how these contraventions would be dealt with, has he had any complaints?

**3.2.2 Senator P.M. Bailhache:**

I join with Deputy Le Hérissier in congratulating the Minister on summarising some quite complicated financial services legislation for Members. There is one small question that I would like to put to him in relation to Regulation 9 which deals with the grant or refusal of certificates. Regulation 9(7)(d)(i) provides that: "The Commission may refuse to grant a certificate on the grounds *inter alia* that the applicant or any person employed by or associated with the applicant for the purposes of the applicant's business has been convicted of (i) an offence under the law of Jersey or of a country or territory outside Jersey involving fraud or other dishonesty." That does seem extremely wide in the sense that if an employee has been, assuming it is an employee, a person employed by or associated with the applicant has been convicted of pinching apples as a juvenile and dealt with for that perhaps many years ago might give rise to the refusal of a licence and I wondered if the Minister could say whether or not the Rehabilitation of Offenders Law would be taken into account so that minor or trivial offences of that kind could be ignored by the Commission when it came to consider whether or not to grant a licence or certificate.

**3.2.3 The Connétable of St. John:**

Within these Regulations, given we have been getting so much bad publicity from the United Kingdom over recent months and years, are the United Kingdom fully on board with this? I know they are a member of the European Union, *et cetera*, but do they think they should be getting this business instead of us? The Minister may be able to answer that because if we adopt things and we are going to be kicked in the shins yet again by the United Kingdom, we need to know about it at this time.

**The Bailiff:**

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

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

I will be as helpful as I can to Deputy Le Hérissier with regard to his concerns about regulation and the industry. I should point out that the proposals here are to deal with 2 sections of the funds industry as I have mentioned, C.O.B.O. and Unregulated. All the rest of the funds industry is already subject to identical Regulations that are contained so all we are doing is sweeping up those that were not in those 2 specific areas to meet the requirements of the Directive. I am interested that the Deputy says he has had complaints. I would be very happy to hear what those are and would happily support such complaints with a representation to the Commission if that was appropriate. Certainly the industry, as far as this is concerned, is fully on board. There was a seminar. There were more than 150 practitioners who attended. Quite simply, if we do not do this, they will have strict limitations in the ability to market their funds into Europe. This is essential unfortunately. This is a Directive from the E.U. It is not something we have chosen to do but we have to move in order to allow the funds industry in the Island to have the flexibility to continue to market their products into Europe. It is as simple as that and I hope that satisfies him but I would be very happy to hear more from him. As far as Senator Bailhache is concerned, he raises a very

valid point. As I have just said, this is nothing new in terms of the vast majority of our funds industry in terms of the way that regulation is undertaken. I think the heart of what he is driving at is have we got the balance of regulation right? Is it too heavy-handed and do we need to address it? Well, the majority of our funds industry is regulated in this way currently. All we are doing is sweeping out those 2 elements of unregulated funds that do not already currently exist. If we need to look further at ways in which we can have a lighter touch, a more appropriate regime as he referred to, then that is a matter outside of this particular proposition but the point is taken and noted and I think is one certainly that should be raised at a separate point. As far as the Connétable of St. John is concerned, I think I have covered the point really with what I have already said. No, this is not going to cause the U.K. any concerns at all. In fact, this is increasing regulation if anything. I am sure anybody sitting in the U.K. or elsewhere would say this is a perfectly reasonable and responsible thing to do. After all, the E.U. brought in this Directive to improve regulatory oversights of such structures and we are simply adjusting to allow ourselves to continue to operate. It is as simple as that. I maintain the Regulations.

**The Bailiff:**

All those in favour of adopting all the Regulations on the schedule, kindly show? Those against? They are adopted. Do you propose the Regulations in Third Reading, Minister?

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

Yes, Sir.

**The Bailiff:**

Is that seconded? **[Seconded]** Does any Member wish to speak in Third Reading? The appel is called for then in relation to the Regulations in Third Reading. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 41</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Deputy G.C.L. Baudains (C)		
Senator P.F.C. Ozouf				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisssier (S)				
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 T.M. Pitman (H)				
Deputy E.J. Noel (L)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy of St. John				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

#### **4. Draft Financial Services (Amendment of Law No. 4) (Jersey) Regulations 201-(P.110/2012)**

**The Bailiff:**

We come next to the Draft Financial Services (Amendment of Law) (No. 4) (Jersey) Regulations, Projet 110/2012, lodged also by the Minister for Economic Development and I will ask the Greffier to read the citation.

**The Deputy Greffier of the States:**

Draft Financial Services (Amendment of Law No. 4) (Jersey) Regulations. The States in pursuance of Articles 4(2) and 42 of the Financial Services (Jersey) Law 1998 have made the following Regulations.

[11:15]

**The Bailiff:**

Yes, Minister, do you wish to propose the principles? **[Aside] [Laughter]**

**Deputy J.A. Hilton:**

Can I suggest we move on to the next proposition and come back to it to give the Minister time to organise?

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

My apologies. Could I have a moment?

**The Bailiff:**

Do you agree with that suggestion?

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

Yes, thank you.

#### **5. Commissioner of Appeal for Taxes Office: appointment (P.116/2012)**

**The Bailiff:**

Do Members agree then to take the next one and we will allow the Minister to gather his papers. So then we consider next the Commissioner of Appeal for Taxes Office: appointment, Projet 116/2012, lodged by the Minister for Treasury and Resources and I will ask the Greffier to read the proposition.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion in accordance with Article 10 of the Income Tax (Jersey) Law 1961 to approve the appointment of Mr. Craig F. Leach as a Commissioner of Appeal for the Taxes Office for a period of 3 years.

**5.1 Senator P.F.C. Ozouf (The Minister for Treasury and Resources):**

Always happy to come to the assistance of my friend, the Minister for Economic Development. The appointment of Commissioners of Appeal is an important matter. The Income Tax Law allows for the appointment of up to 12 Commissioners of Appeal. There are currently 6 Commissioners in post and I would like to take this opportunity of recognising the service of the now Jurat Blampied who, following his election as a Jurat, no longer can serve on the Commissioners of Appeal for Tax. Jurat Blampied served 9 years as Commissioner of Appeals and I wish to publicly thank him and all the Commissioners for the honorary service which they give to the Commissions of Appeal. The process of a new applicant was carried out by advertising in the media. There were, on this occasion, I am pleased to say, 2 applicants. Interviews were held overseas by the Appointments Commission and I am delighted that Mr. Craig Leach has gone through the procedure and is recommended for appointment as a Commissioner of Appeal for a period of 3 years. His particulars and C.V. (curriculum vitae) are attached to the report and I ask Members to support the proposition.

**The Bailiff:**

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

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

I have no idea what the 41 Club is and I wonder whether it is pertinent to being an Income Tax Commissioner. Perhaps the Minister will advise me.

**Senator L.J. Farnham:**

When the Constable reaches 41, she might find out. [**Members: Oh!**]

**The Bailiff:**

Does any other Member wish to assist? Very well, I invite the Minister to reply.

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

Senator Farnham exceeds his reputation in terms of sweet-talking [**Laughter**] and obviously we are nearly at Christmas and that is a good thing and I would like to sweet-talk the Constable of St. Lawrence by saying that I know what the 41 Club is. I would just be a member of it if it was an age thing. I do not know what it is but I am sure that it did not cause any difficulty to the Appointments Commission. I will try and find out what it is for the good Constable and revert to them but I would just remind the Connétable that there is a process that goes forward with examining it. She raises a good question and I am afraid I cannot answer it but I will later. So I make the proposition.

**The Bailiff:**

All those in favour of adopting the proposition, kindly show? Those against? The proposition is adopted.

**Deputy E.J. Noel:**

I would just like to enlighten Members that the 41 Club is an extension of the Round Table.

**The Bailiff:**

Thank you.

**Senator L.J. Farnham:**

I wonder how you can extend a round table. [Laughter]

**6. Jersey Heritage Trust: appointment of Chairman (P.117/2012)**

**The Bailiff:**

Very well. We will move on now to Projet 117, Jersey Heritage Trust: appointment of Chairman lodged by the Minister for Education, Sport and Culture. The Greffier will read the citation.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion to appoint Mr. Clive Stanley Jones as Chairman of the Jersey Heritage Trust for a period of 4 years with immediate effect.

**6.1 Deputy P.J.D. Ryan of St. John (The Minister for Education, Sport and Culture):**

I think the report to this proposition carries most of the information that Members might want but very briefly, the current Chairman of the Trust has already served 4 years and we are proposing that he continues for a period of a further 4 years, making up the maximum of 8 years in which one individual can serve as the Chairman. Mr. Jones, as I say, has been an excellent Chairman in the previous 4 years in our opinion. We have also consulted other Ministers at the Council of Ministers and also internally and we are assured, having spoken to the Appointments Commission, that they have no problem with this appointment. So I leave it to Members. I hope it will not be contentious and if there are any questions, I will endeavour to answer them.

**The Bailiff:**

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

**6.1.1 The Connétable of St. John:**

In seconding the proposition, it is a pleasure, as a former trustee of the Jersey Heritage Trust, to have continuity within that particular Trust because they do some sterling work on behalf of Education, Sports and Culture. I was there as a States Trustee in the days when T.T.S. (Transport and Technical Services) or Public Services and the Arts were all as one and I think the work that has been carried out is well worthy of having continuation.

**6.1.2 Deputy J.G. Reed of St. Ouen:**

I would like to also fully support this particular individual continuing in his role. I was very fortunate for 3 years to work very closely not only with Mr. Jones but indeed the board of the Jersey Heritage Trust and, in that time, I found them to be excellent individuals with great experience who serve this Island in a totally voluntary capacity and I would urge Members to unanimously support the re-election of Mr. Clive Jones.

**The Bailiff:**

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

**6.1.3 The Deputy of St. John:**

I would just like to thank the 2 Members who have spoken in a supportive way and like to maintain the proposition.

**The Bailiff:**

The appel is called for then in relation to the proposition of the Minister for Education, Sport and Culture. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 43</b>	<b>CONTRE: 0</b>	<b>ABSTAIN: 0</b>
Senator P.F. Routier		
Senator A. Breckon		
Senator S.C. Ferguson		
Senator A.J.H. Maclean		
Senator B.I. Le Marquand		
Senator F. du H. Le Gresley		
Senator I.J. Gorst		
Senator L.J. Farnham		
Senator P.M. Bailhache		
Connétable of St. Helier		
Connétable of Trinity		
Connétable of Grouville		
Connétable of St. Clement		
Connétable of St. Peter		
Connétable of St. Lawrence		
Connétable of St. Mary		
Connétable of St. John		
Connétable of St. Ouen		
Connétable of St. Brelade		
Connétable of St. Martin		
Connétable of St. Saviour		
Deputy R.C. Duhamel (S)		
Deputy R.G. Le Hérisier (S)		
Deputy of St. Ouen		
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 T.M. Pitman (H)		
Deputy E.J. Noel (L)		
Deputy M.R. Higgins (H)		
Deputy J.M. Maçon (S)		
Deputy G.C.L. Baudains (C)		
Deputy of St. John		
Deputy J.H. Young (B)		
Deputy S.J. Pinel (C)		
Deputy of St. Mary		
Deputy of St. Martin		
Deputy R.G. Bryans (H)		
Deputy of St. Peter		
Deputy R.J. Rondel (H)		

## **7. Draft Financial Services (Amendment of Law No. 4) (Jersey) Regulations 201-(P.110/2012) - resumption**

### **The Bailiff:**

So now we return to the Draft Financial Services (Amendment of Law No. 4) (Jersey) Regulations, Projet 110//2012. The Greffier has read the citation. Minister, are you ready to proceed?

### **7.1 Senator A.J.H. Maclean (The Minister for Economic Development):**

I am ready to proceed. It is very small and hopefully uncontentious. The principles of the second set of Draft Regulations before the Assembly are in relation to the Alternative Funds Managers Directive. The Draft Financial Services Amendment Regulations insert additional definitions into the Financial Services (Jersey) Law 1998. Now normally these amendments would be made as a consequential amendment in the Alternative Investment Funds Regulations. However, those Regulations just passed by the Assembly were made under the European Communities Legislation (Implementation) (Jersey) Law 1996. The powers in that law do not allow changes to be made to the Financial Services (Jersey) Law 1998 so these additional Regulations have been drafted and I now present them before the Assembly. I propose the principles of the Draft Regulations.

### **The Bailiff:**

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

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

I do not really wish to speak about the principles of the Regulations except to this extent and it is to ask a question of the Minister, which he may not be able to answer **[Laughter]**, concerning the title of the Regulations: Financial Services (Amendment of Law No. 4) Regulations. Why do we need the words "Amendment of Law" which seem to have crept into this title when there are numerous laws which have been amended by Regulation in the past where these words have not been included? Lawyers can be verbose and use too many words but Law Draftsman are usually an exception to this rule and I hope that the Minister might take up with the Law Draftsman the question of whether, certainly for the future, these words are necessary. I say that particularly because the Ministry of Justice is encouraging the Island to bring into primary legislation in appropriate cases provisions which will allow the laws to be amended by Regulation and therefore not need the sanction of the Privy Council so that there may be, in the future, many more examples of laws where there will be the power to amend by Regulation and it just seems to me a rather clumsy way to express the title of Regulations and unnecessary. I do not know why it cannot be called the Financial Services (No. 4) (Jersey) Regulations or (No. 5) (Jersey) Regulations and so on. So I make the point and I hope that the Minister might take it up with the Law Draftsman.

### **The Bailiff:**

Are there any other non-verbose... **[Laughter]** Very well.

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

I clearly thank Senator Bailhache for his comments. What I would say to him is that the Law Draftsman fall under the Chief Minister's Department and it might be an idea **[Laughter]** **[Approbation]** if he had a word with the Chief Minister and exerted some influence with regard to his views. I maintain the Regulations.

### **The Bailiff:**

All those in favour of adopting the principles, kindly show? Those against? The principles are adopted. Deputy of St. Martin, do you wish this matter referred to your Scrutiny Panel?

### **The Deputy of St. Martin (Chairman, Economic Affairs Scrutiny Panel):**

No, thank you, Sir.

**The Bailiff:**

Do you, Minister, then propose Regulations 1, 2 and 3?

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

Yes, *en bloc*, please.

**The Bailiff:**

Are they seconded? **[Seconded]** Does any Member wish to speak on the Regulations? All those in favour of adopting the Regulations, kindly show? Those against? The Regulations are adopted. Do you propose them in Third Reading, Minister? Are they seconded? **[Seconded]** Does any Member wish to speak in Third Reading? The appel is called for in relation to the adoption of the Regulations in Third Reading. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 41</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Deputy G.C.L. Baudains (C)		
Senator P.F.C. Ozouf				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisssier (S)				
Deputy of St. Ouen				
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 T.M. Pitman (H)				
Deputy E.J. Noel (L)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				



Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

## **ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS**

### **The Bailiff:**

Very well, that concludes Public Business and now we move on to the arrangement of public business for future meetings and I invite the Chairman of P.P.C. (Privileges and Procedures Committee) to propose it.

### **8. Connétable A.S. Crowcroft of St. Helier (Chairman, Privileges and Procedures Committee):**

Arrangement for future meetings is as set out under M on the Consolidated Order Paper with a number of exceptions. First of all, some additions to 15th January: P.129/2012 Ratification of the Agreement for the Avoidance of Double Taxation in Relation to Singapore; P.130 Draft Taxation Regulations; P.131 Starter Home Deposit Loans Scheme; P.132 Draft Limited Liability Partnerships (Amendment of Law) (Jersey) and P.133 Draft Income Tax Amendment. We have also P.108 of 2012, Jersey Appointments Commission: Appointment of Commissioner is to be deferred from 11th December to 15th January and I also understand that the Minister for Economic Development wants to defer the Tourism Shadow Board from the next meeting to 15th January, that is P.113/2012.

[11:30]

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

If I may, just by way of a very brief explanation to Members with regard to deferring the Tourism Shadow Board, P.113/2012, Scrutiny are reviewing this and in the interests of allowing their review to be concluded, I have agreed that I would defer it for that purpose.

### **The Bailiff:**

Very well. Any observations, Senator Le Marquand?

#### **8.2 Senator B.I. Le Marquand:**

In the light of the excellent progress which the Education and Home Affairs Scrutiny Panel is making in doing further scrutiny in connection with P.92/2012, I was just a bit concerned that P.92/2012 is still languishing on 19th February and obviously next week will be the last meeting before Christmas to move things. I wondered if the chairman is in a position to indicate when he hoped that his panel would be in a position to provide a further report. Perhaps it might be possible to move the debate further forward if that can conveniently be done. I am not trying to rush the panel but it seems to me that is a practical approach.

### **The Bailiff:**

Are you able to assist, Deputy Maçon?

#### **Deputy J.M. Maçon:**

Not so much, Sir, because either way, despite the fact that the States referred it back to Scrutiny, Deputy Martin then gave the undertaking that she would have the debate in February and it is her proposition and she has the right to have the debate when she wishes, as I understand it.

**The Bailiff:**

Yes, I think the question was when you thought your Scrutiny Panel might be in a position to produce its report.

**Deputy J.M. Maçon:**

I beg your pardon, Sir. As I said earlier in the week, we hope to report back before Christmas which means from our side, the debate could take place in January but again that is not necessarily totally within our power.

**The Bailiff:**

Very well, so we will leave it there for the moment. It is a matter for you to discuss with Deputy Martin it seems to me. Is there any other matter anyone wishes to raise? So do Members agree to take the Public Business on 11th December and succeeding dates as set out and as amended by the Chairman? Very well, thank you. So that concludes the business of the Assembly so we will now close and reconvene next Tuesday.

**ADJOURNMENT**

[11:32]