

# STATES OF JERSEY

## OFFICIAL REPORT

THURSDAY, 22nd MARCH 2018

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[9:30]

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

**PUBLIC BUSINESS – resumption**

**1. Draft Trusts (Amendment No. 7) (Jersey) Law 201- (P.23/2018)**

**Senator I.J. Gorst:**

I wonder if the Assembly would be agreeable to me taking the Draft Trust Amendment as the first item this morning. I will unfortunately be needing to leave the Chamber later.

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

That is P.23, Draft Trusts (Amendment No. 7) (Jersey) Law 201-. No objection I think, Deputy? Okay, so I think in that case if that is agreed we will move straight through to the Draft Trusts (Amendment No. 7) (Jersey) Law 201- lodged by the Chief Minister - P.23 - and I ask the Greffier to read the citation.

**The Deputy Greffier of the States:**

Draft Trusts (Amendment No. 7) (Jersey) Law 201-. A Law to further amend the Trusts (Jersey) Law 1984. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

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

Members will be aware that the Trust Law is one of the foundational pieces of legislation for our financial services industry and it has, over its life, served our Island and that industry well. But it is only right that these laws are reviewed, updated, improved, and that we allow them to respond to modern life. These amendments are, in light of that, evolutionary, not revolutionary. They have been the subject of the Trusts Working Group. They have also been the subject of public consultation and I am also very grateful for the consultation with Scrutiny as well upon their changes. So there are a number of changes, which I will just briefly touch on before we get to the Articles, which may hopefully expedite the passage of this law. There are amendments, which recognise now that there are more legal entities in existence, for example limited liability partnerships rather than just simply the traditional company structure. There are amendments, which confirm what is the case already, but are clarificatory in their nature, for example around a presumption that a trust comes into immediate effect when it is created. There are amendments around requests for information from a trustee and how they should be dealt with. There are amendments around improving the indemnities for changing trustees together with powers, which clarify and widen how trustees can deal with income and capital, and of course there is an amendment, which gives extra power to the Royal Court to vary trusts as well. I maintain the amendments in principle.

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

Are the principles seconded? [**Seconded**] Does any Member wish to speak on the principles? If not, those Members in favour of the principles kindly show. Those against? The principles are adopted. Deputy Brée, this would fall to your panel?

**Deputy S.M. Brée of St. Clement (Chairman, Economic Affairs Scrutiny Panel):**

No, we do not wish to call it in.

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

Chief Minister, how do you wish to deal with the Articles?

**1.2 Senator I.J. Gorst:**

I will take them *en bloc* if I may. I have just, as I said, briefly outlined what the amendments are and I will endeavour to answer any questions that Members may have arising from the amendments.

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

Are the Articles seconded? [**Seconded**] Does any Member wish to speak on the Articles? If no Member wishes to speak on the Articles, all those in favour of the Articles kindly show. Those against? The Articles are adopted. Third Reading, Chief Minister?

**1.3 Senator I.J. Gorst:**

If I may, I thank all of those people who have been involved, officials in my department, as I have said the Trusts Working Group, Jersey Finance Limited, and of course I thank again Scrutiny for their constructive engagement in these changes as well.

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

Is the Third Reading seconded? [**Seconded**] Does any Member wish to speak on Third Reading? All those in favour of adopting the draft law in Third Reading kindly show. The appel has been called for on the Third Reading of the Draft Trusts (Amendment No. 7) (Jersey) Law. I ask Members to return their seats and I ask the Greffier to open the voting.

<b>POUR: 36</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mézec (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				

Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				

**2. Family Friendly Policy: implementation (P.129/2017) - as amended (P.129.2017 Amd) - paragraph (c)**

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

So we now move back to Family Friendly Policy: implementation, which is P.129, lodged by Deputy Southern. There is also an amendment from the Minister. Am I right in thinking, Deputy, that you would wish for the proposition to be read with the second of the amendments from the Minister, the one that affects paragraph (c)? Is the Assembly content for that to happen? Looks like it. In which case I ask the Greffier to read the proposition as amended by that second amendment.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion to request the Minister for Social Security (a) to bring forward proposals to the States to implement the recommendations made by the Employment Forum in its report issued on 15th December 2017, *Review of Family Friendly Employment Rights*, in accordance with the timetable set out in Section 3, page 6, of that report; (b) to bring forward proposals to the States to extend the period covered by Maternity Allowance under the Social Security (Jersey) Law 1974 from 18 to 26 weeks, with effect from September 2018; (c) to review the level of disregard provided for income for Maternity Allowance for mothers in receipt of an Income Support award and, if appropriate, to amend the Income Support (General Provisions) (Jersey) Order 2008 accordingly.

[9:45]

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

May I warn Members to watch out for an outbreak of co-operation and positive agreement in some cases on this particular project. Just briefly to say, if Members will look at the lodging dates, they will understand the reason why we are doing this in this way, it is my proposition and the Minister's amendment, not the other way around, which you might normally expect, because I lodged on 29th December when the Minister was still considering where she was going to go with her reaction to the recommendation about parental leave and finally lodged on 13th February. I was concerned that I give her a little indicator in the right direction for this particular proposition. The content of this proposition and the amendments boil down to 2 questions for the moment; the 2 issues are what should the length of maternity leave be and the vital issue of who pays. I wish to explore that during this debate. The proposition says: "Implement the recommendations made by the Employment Forum in its report in accordance with the timetable set out in section 3, page 6, of that report." On page 6 we see: "The forum's recommendations in this report are presented in a phased approach with recommendations for changes to the law in September 2018 and in September 2019. The forum has selected these dates based on advice from the Social Security Department as to the earliest that changes are likely to be made to the Employment Law if its recommendations are accepted. The forum understands that law changes would have to be adopted by the States in March 2018 in order to come into force in September 2018. The forum is conscious that this gives only 5 months' notice for employers of the confirmed legislation and the recommendations for the first phase to reflect that short notice period." So careful consideration has been given, the timing has been consulted on, and, as we will see, and I will argue later on when we talk about the amendments or the second amendment, it is very time-base critical. In summary that timetable says: "Recommendation 1: the forum recommends that the period of statutory maternity leave should be increased in 2 stages, to 26 weeks from 1st September 2018 and to 52 weeks from 1st September 2019." We note on page 9 of



the report from the Employment Forum: “An extension to the maternity leave period was supported by the majority of respondents across all categories of respondent.” In fact it was 84 per cent, including 92 per cent of employees saying: “Extend the period” and 62 per cent of employers saying: “Extend the period of statutory parental leave, maternity leave.” The most popular choice of a maternity leave period for all categories of respondent, including 58 per cent of employees and 44 per cent of employers, was 52 weeks. So the numbers are quite a departure from what we have done in the past, we are up to 26 weeks and intending to go to 52 weeks. Further, and we come to the second question here, not just how long and who pays, recommendation 2 is on exactly that, paid maternity leave: “Recommendation 2: the forum recommends that, from 1st September 2018, 6 weeks of statutory maternity leave should be paid by the employer at 100 per cent of pay.” Understandably that is the key point. There is an argument about this and we will look at that now, shortly. But I start first by quoting the employees’, if you like, side of this argument and I quote from N.A.S. (National Association of Schoolmasters), the teachers’ union, N.A.S.U.W.T. (National Association of Schoolmasters Union of Women Teachers): “The Union believes that a key determinant of the take-up of maternity leave is whether it is paid at reasonable-earnings replacement levels, and that better levels of pay, coupled with at least 52 weeks’ maternity leave, are needed to ensure that low-income families have an equal opportunity to take time out to care for their children.” Further on from Unite, the Union: “If the argument is accepted that there are societal and economic benefits in extending maternity leave, economic reality will mean that unless the extended maternity leave is complimented by an improved maternity pay regime, only the more affluent will be able to afford to take the extended leave.” So it is a critical issue, you need to be able to take that leave for the sake of your baby and yourself, but the key factor in having to return is how do I support myself while doing so. On the other hand, the other side of the argument, and I do not know if everybody received this letter from a very disturbed employer who did not sign his name, and normally I am loathe to quote anybody who does not sign their name, but nonetheless on this occasion I will make an exception, and he says: “What people need to realise and fast is that what the States of Jersey is proposing is nothing like what is offered in the U.K. (United Kingdom). Like many other developed nations it has a comprehensive maternity/parental leave programme, which offers parents up to 33 weeks’ allowance at 90 per cent of the average weekly earnings or £140 a week, whichever is lower. However, the massive difference is that in the U.K. the employer can claim back up to 103 per cent from the Government. Why? Because most modern and responsible Governments accept the fact that, while maternity leave is a good thing, it places significant administrative and financial burdens on businesses and employers.” So the secondary question becomes about from who pays is, should it be the Government who support the scheme, or is it solely reliant on the employer? That question I think needs addressing and, to a limited extent, my proposition does address that. That is the argument. That is the reason for my part (b), which is about the argument of who pays. Now we are in a situation where at 18 weeks maternity leave at the rate of £209 is paid by our maternity allowance. I am suggesting that, if we are accepting that should be extended to 26 weeks then it seems logical to me, for the short term, to do at least, to extend maternity allowance to that length of time. That is not to say that is going to be the ultimate solution of who pays and where the balance is, but for the moment it seems logical, if you pay 18 weeks at that rate, you could and should pay 26 weeks having extended that period rather than leave it empty. To my mind that makes sense and would help, it is a first step in terms of reviewing how are we going to afford this, which is a completely different issue. The cost of that, we have already found out through asking questions of the Social Security Department and the Minister, is some £1.5 million, so it is a relatively smallish sum in terms of the overall budget. At that point, with agreement on part (a) with the Minister, agreement on part (c) with the Minister, I open the debate on my proposition in (b), which is: “To bring forward proposals to the States to extend the period covered by Maternity Allowance under the Social Security (Jersey) Law 1974 from 18 to 26 weeks, with effect from September 2018.”

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

Is the proposition seconded? [**Seconded**] There is an amendment still, the first paragraph of the amendment from the Minister for Social Security, and I ask the Greffier to read that amendment.

## **2.2 Family Friendly Policy: implementation (P.129/2017) – amendment (P.129/2017 Amd.) - paragraph (b)**

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

Page 2, paragraph (b). Before the words “to bring forward proposals to the States” insert the words “to review the results of the public consultation *Living today: Thinking ahead* undertaken in 2017 and, if appropriate,” and delete the words “, with effect from September 2018”.

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

I would like to thank Deputy Southern for agreeing to accept the second half of my amendment. This relates to part (c) of the Deputy’s proposition and the income support available to a new mother. The effect of the amended proposition is that the department will review the support available to low-income families following the birth of a new child. Members will recall that there are already 2 changes in the pipeline to provide extra support for low income parents. I will be lodging Income Support Regulations in early April that will include a new family supplement, which will be paid to all low income families receiving income support. This will provide an extra £260 a year to any income support family that includes a child. Later this week we will be debating a separate regulation, P.28/2018, which will provide all single parents receiving income support with £40 on top of their normal income support components. These new components and the existing support will be reviewed that support for a new parent in a low income household is appropriate. Part (a), as the Deputy has mentioned, of Deputy Southern’s proposition has already been fully addressed by P.27, which was lodged at the beginning of February and will be debated later today. That leaves us with the first part of my amendment, which relates to part (b) of Deputy Southern’s proposition. This part of my amendment puts the request for a longer period of maternity allowance in the context of the overall Social Security review. My amendment addresses 3 key concerns with the Deputy’s proposition: (1) we are in the middle of a major review of the Social Security scheme and it is too soon to start making changes, which will add to the cost of the scheme; (2) there is no funding provided to cover the cost of the proposed extra benefits. Also, there is no plan to provide support to other parents who are currently unable to claim maternity allowance. My amendments will allow time for all these issues to be considered properly. Looking in detail at each point, it is too soon to make changes to maternity allowance. The overall Social Security review started in 2016 and is on schedule to produce options for discussion in 2019. The Deputy is a member of the Health and Social Security Scrutiny Panel and he gets regular updates on the progress of the review. The review includes public consultations on various aspects of the Social Security scheme. Benefits paid to parents are an important part of the scheme. The current Law was written in 1974 and it is important that we reflect changes in society and in the range of benefits that are provided.

[10:00]

For example, the States has recently voted to allow same sex marriages to take place in Jersey. Same sex couples often start a family through adoption. At the moment we cannot pay a weekly allowance to an adoptive parent. This is just one of the issues that we need to address during the review. Last year, we issued a public consultation on some of the social security benefits including a large section on maternity benefits. The results of the consultation were published last week. They show that there was strong support for keeping a contributory and non-means-tested maternity allowance. There was also strong support for strengthening the eligibility conditions so that employees would have to make contributions for a longer period before being eligible to claim benefits. This would reduce the number of people who would qualify to receive a maternity benefit and help to limit future costs in this area. The question on the length of the maternity allowance gave a mixed response.

Roughly half of the respondents suggested that the period should be extended, however they were equally matched by the same number of people who thought that the period should be shorter or stay the same as now at 18 weeks. As well as maternity, we have already looked at pensions and bereavement benefits and in 2018 the department is looking at incapacity benefits. All these different areas then need to be considered together before we make decisions about which benefits need amending. In particular we need to think about the contributions needed to pay for the growing cost of pensions as well as any other changes to benefits. All these options need to be explored this year so that they can inform the decisions next year with the next M.T.F.P. (Medium-Term Financial Plan). The second point is that Deputy Southern has not made any suggestion as to how the extra weeks should be paid for. Maternity allowances are funded from the contributions collected from contributors. At present this can be paid for 18 weeks. Deputy Southern's proposition suggests that the maternity allowance should be extended to match the leave entitlement under the Employment Law. The Employment Law proposals include 26 weeks' leave to be introduced in September 2018. But the 26-week period is only designed to remain in place for one year. In September 2019, the proposal is to replace this with the right to 52 weeks' leave. Sorry, Sir, would the Deputy please have the courtesy to remain quiet? As Deputy Southern states, extending maternity allowance for 26 weeks would cost the fund £1.5 million extra each year. But extending maternity allowance to 52 weeks would cost the fund more than 4 times this figure, this would cost up to £6.5 million extra each year. He has not offered any plan to meet any of these extra costs. We already know that the cost of pensions will increase significantly over the next 20 years by about £100 million a year in today's money. It will cost much more money to run the scheme in the future and we need to plan carefully for that. That is the purpose of the review. The review will explore increasing contributions; we will look at increasing contributions for higher earners and increasing contributions from employers as well as an increase in the main rate. As an example, doubling the level of extra contributions levied on higher earners would increase contributions by about £7 million a year; this would just cover the extra cost of a 52-week allowance. The department is currently preparing an actuarial review of the Social Security Fund, which will help put these various options into a long-term context. This will be published at the end of this year. Increasing the cost of maternity benefits is just a small part of the extra costs that the fund will face in the coming years. We need to balance the needs of parents, contributors, and pensioners, before we ask the States to commit to higher contributions and extra expenditure. Finally, Deputy Southern has done nothing to address the unfairness of the current system. I have already confirmed that any change to maternity allowance should acknowledge the wider role of parents these days. At present a maternity allowance can only be claimed by the mother of the baby, it is not available to a partner who gives up work to be the main carer of the baby. It is not available to a parent who adopts a baby. It is not available to a parent whose baby is born through a surrogacy arrangement. When changes are made to the allowance, we need to take account of the different ways in which families are formed today. Officers are already working on these areas and all of these ideas will be included in the overall outcomes of the Social Security review next year. I urge Members to accept my amendment and allow the department to continue the important Social Security review. I propose the amendment.

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

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

**2.2.2 Deputy G.P. Southern:**

Yes, and I do apologise again to the Minister for letting my reactions be verbal rather than silent. It seems to me that the Minister is arguing against, not my proposition, but against the report, the Family-Friendly Employment Forum's recommendations, which deal with exactly what she says I am not dealing with. A whole series of recommendations that go to 22, a qualifying period of flexible working, breastfeeding rights, paid adoption leave, surrogacy, which she mentioned, taking parental

leave, paid parental leave, leave shared with grandparents even, paid maternity leave, they are all there. It seems to me the Minister cannot legitimately say: "I accept part (a) in accordance with the timetable set out in section 3, page 6" and to implement the recommendations, the recommendations are all there. It is not a question of me or of her saying I have not dealt with those costs. The fact is we have a full year to implement the recommendations in terms of the 52 weeks and devise a new scheme, we have a year's breathing space, this says: "Start 2018 and we have got a year to look at 2019." I am not suggesting that my temporary solution is the right one. We can find a way, find the balance between employers and employees, what level, to whom, all those issues can be dealt with. What the Minister does not acknowledge is that the timing, according to her own department, says this needs to be passed by March 2018 in order to be implemented, the first stage, in September 2018. That is what the recommendation is. Is she for that or against it? Because she is saying: "Oh no, we need to review all of this." Well how long does the review take to come out with the answers? That delay takes us beyond March; we will end up not doing it. You cannot support part (a) and then support the amendment because that puts a time delay on it. How long does it take to review? Oh well, we cannot meet our deadlines then. This surely, to say we cannot do this part until we have done the whole means that we never get around to doing any parts, I am afraid, because we are always waiting for the next bit of the review. So when she refers to part (c) she has not mentioned that the reason why part (c) is in there, and we have agreement on this but I just want to mention it before moving on to the main problem, is that without a disregard for maternity allowance built into income support, and these are the poorest, least well-off, of our society, without a disregard being built into it, and it is not there at the moment, there is absolutely no benefit in claiming maternity allowance because every pound that you get, £209 of it if you are on a full benefit, every pound that you get will be taken off your income support. So with one hand you claim family allowance, but you lose through income support. So unless that is fixed, part (c), then there is no benefit in maternity allowance, it is just a piece of paper. This is the single most important step, I would argue, and I have been arguing it for some years now, is that this is the most important thing you can do for babies and mothers in our society according to our wish contained in 1,001 Days. You cannot get a more direct way of implementing 1,001 Days saying: "We will change things for the better for our families and for our children." This is the critical time and if you have a system for maternity leave and parental leave, by all means that will be coming, maternity leave, then that is the single best way of making their futures better. To say that we should review and that, hang on, we do not know which way we are going exactly, we do, it is very clear. When we are warned: "Well, hang on, we have taken £1.5 million from the Social Security Contributions Fund", that fund is very healthy. We heard only last month about how healthy it is, and we are talking £1.5 million out of a fund of tens, hundreds, I do not know how big it is, but it is big, £1.5 million is a small amount. We are not saying that has to be multiplied, we are not saying there has to be £14 million or £9 million the year afterwards, we are saying that gives us time to sort out the second stage, which we have supported in the first part. So let us have a look at what it is we have to review. The report, as the Minister said, that came from CHE Consultants on this aspect of the whole benefit scheme is here. She says it is massive, this review, in fact it is not. The effective pages are 28 to 38, it is 10 sides, most of which is taken up by pie charts. They are very clear pie charts, they indicate exactly what the opinion is on this. So do you think we should continue to pay a contributory weekly parental allowance online and on Facebook, online 76 per cent yes; Facebook 81 per cent yes. Overwhelming commitment to parental allowance, maternity allowance in this case. This is a critical question: "How long should we pay a weekly parental allowance for?" Online survey: 18 weeks, as now, 48 per cent, almost half; biggest other element, more than 18 weeks 42 per cent, so a total of 90 per cent saying at the same rate or the same length or longer. Again on Facebook 52 per cent, so a majority saying for more time, greater than 18 weeks, with 35 per cent saying 18 weeks as now. "Who should get a parental allowance?" Now this was mentioned by the Minister, are we talking about means testing? What is the response of the public? 87.1 per cent, it should be available to anyone if they have paid their

contributions as now. 11.6 per cent in favour of means testing, it should only be for those on low income. So overwhelming support for what we are doing and the proposal to extend what we are doing. Here comes the crunch, but it is not vital to this particular proposal, it is important for devising the longer-term solutions that we have got at least a year to start on, as of now: “How long do you think someone should pay contributions before they can claim this grant or this allowance?” They are talking about allowance.

[10:15]

Yes, there it is, let us have a look, 15 months, as now, you have to have contributions for, 25 per cent, 26 per cent. Extending it further to 2 years’ contributions, 30 per cent. Onwards to 5 years’ contributions before you are eligible for maternity allowance, let us think about it, in 5 years that you do not still qualify for maternity allowance, what does that do to your economic status, what does it do to your household budget? It wrecks it. 34.6 per cent. So some move to say you should contribute more in order to have this for longer, in order to have this benefit, but that needs to be resolved, and can be, it is not impacting on this particular proposal. How long do you think someone should pay contributions? On Facebook it says no change, 45 per cent, increase the period, 54 per cent, so a marginal you have to pay in longer to take out. Then finally, or penultimately: “Do you think we should pay the same one-off grant for every child in the household?” Not affected by this. Pay the same amount as now, 59.6 per cent, one payment for the first child and a lower payment for other children, 31 per cent. Okay. But we are talking 10 sides, that is the sum total of consultation we have done on this particular family benefit. The amendments that we have got in their part (b), their amendment (b): “To bring forward proposals to the States to extend the period covered by Maternity Leave ...” Sorry, that is mine. To review before we do that puts in a delay, will make the timetable we have accepted, the 2-stage, 2018 and 2019, impossible to achieve and is the wrong move and is not supported by what the people want in this survey. So I am very clear on this, we should support all 3 elements of my proposal without any amendment and that is a safe and proper and best way forward. In particular, it is the best way forward to put some concrete action into 1,001 Days that affects these newborns and their parents and their mothers in particular and their circumstances. So I am opposed to all these amendments.

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

I must applaud Deputy Southern, but you do not go anywhere near far enough. All parents should have at least 1,001 days’ maternity leave because that complies with the 1,001 Days agreed in this Assembly, fully paid for by Social Security. It always rains on the weekend and so, for a family to be able to spend quality time in the sun, every family should be entitled to choose a Bank Holiday once a week, 50 weeks of the year. Social Security should pay for at least 2 weeks fully paid, all expenses paid, holiday in the sun for every family. To solve the issue of financing it, we will give a grant to the Minister for Treasury and Resources to install a new printing press in the dungeons of Cyril Le Marquand House to print £20 notes. Problem solved. We have to face reality and reality is the Minister is doing her job, she is having the review, and she will come back in due course with all the thorough checks and balances in place. I ask for some Members to get real and I urge Members to support the amendment.

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

I am also concerned about the burden on small businesses, which are 75 to 80 per cent of all the businesses in the Island. There are other sectors of the population, which we also need to take into account, but particularly the small businesses because there are incidences in the U.K. of women taking up jobs and within a few days claiming that they are pregnant and will require maternity leave, obviously with the stringent regulations covering employment you cannot just say: “No, we cannot do with you”, you are stuck and then you have to cover the maternity leave. Another point made by

the Minister was assessing the overall position of all the demands on the Social Security Funds. It is not equitable unless the demands of the whole population are considered. Obviously, I have a particular interest in the arrangements for older people through my extracurricular activities with Age Concern, but what about the people who choose not to have a family, either by necessity or choice, they are going to be taxed more heavily in order to pay for this. Is this fair? The businesses, when the dust settles and if we happen to have the tax system with regard to businesses changed, well certainly the owners of the small businesses under the current system will have to pay more. Is this really fair? The Deputy speaks of the results of the consultation. Has there been an adjustment for those who do not have a computer, especially with the Facebook and other surveys, because there are quite a few people in this Island who do not have computers, who do not want a computer, or who cannot afford a computer. There is sterling work going on to try to remedy this but it is a fact. Those people will still be paying tax to support the 1,001 Days. I say that the Minister should be supported in her quest for equality and I will be supporting her amendment.

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

I cannot let some of the comments made by Senator Ferguson, the only female Senator in the Assembly, go unchallenged. I do question where women's rights are going sometimes when we hear senior politicians standing up and trotting out this kind of pub talk that we hear, it is akin to when people say to us, even though we know the facts are, for example, that foreigners cannot claim benefit until they have lived in the Island for 5 years, we still hear people telling us in the pub or in the supermarket: "Oh, but they have only been over here for a year and they are automatically claiming housing and they are claiming benefits." Sometimes you have to bite your tongue or other times you challenge them and say: "That is not true, they cannot do that, we have a 5-year rule and they need to have contributed to society." You can argue the merits of that. We always hear the examples, like a woman gets a job and a day later she says: "I am pregnant" and then she leaves the job. Does that happen in reality? We never hear of a bachelor going into the workplace and saying: "I have just got a new job." But the bachelor of course, they get a new job and then a day later they have broken their leg, they claim they have broken their leg on a skiing holiday, that is very convenient, is it not? I am sure they have broken their leg on purpose in the same way that the woman has devised to get herself pregnant and to have to look after a small baby and all that entails for the rest of her life, and not just for the 1,001 days, but probably for the 7,000 days it takes it to get to university age. So I want to disassociate myself from those comments. But let us build some consensus. First of all, are we all signed up to the 1,001 Critical Days Policy, and it is called "critical days" for a reason and it started before birth of course, it includes the days preceding, during the pregnancy. The answer to that is yes, by and large most people, if not all in this Assembly, agree that the 1,001 Days programme is the correct thing to do. The second question is, do we agree that the current maternity and paternity leave provisions are satisfactory and sufficient as they stand? Most of us, if not all of us, agree that it is also the case that they are not sufficient. So the third question then is of course do we agree that the package that is on offer needs to be enhanced? Again the overwhelming response to that is yes, it does need to be enhanced. Now this is the rub, it is easy to stand up and make the slightly fatuous and comical comments and they are taken in good jest of course from the Constable of St. John to say that, well, if we have all signed up to the 1,001 Day Policy, why do we not just give everybody in Jersey who is a parent 1,001 days off and then pay for it fully from the Social Security Fund? Because that is not what is being proposed here; what we are asking and what we are saying is that, given the fact that we have agreed to those first 3 points and that we have built that consensus, the bottom line is who pays for it? Now, is the Constable of St. John happy for small businesses in the Island to effectively be picking up the bill for the enhanced package, whether that is 26 weeks or 52 weeks? I do not think it is right. My colleagues at Reform Jersey do not think it is right. We think it is important to support small businesses because they simply cannot afford it. To talk about that Social Security are going to have to pay for this, well I ask the question: whose fund is it anyway?

Who does the fund belong to? How does it come into existence? It is not the States money. We are not somehow asking Government and the States to give away its money; this is people's contributions that they have paid into the system. It has been paid in by the employer already from their contributions and it has been paid in by the employee. If of course they are self-employed they have probably paid both of those contributions themselves in some cases. The States and the Social Security Department is simply the agency for distribution of those funds. So when we talk about this fund sitting there, and Deputy Southern says it is going to take £1.5 million in the short term of a fund that has the money and is capable of paying it, that is the contributions that people have paid in anyway and if they are not getting those contributions they are being short-changed. Senator Ferguson asked about what about single people, how do they benefit from it? There are probably lots of benefits, financial, to not having children and being a bachelor or being a single woman, you are probably going to end up richer financially, but society does not necessarily benefit. We recognise the fact that we have cross-subsidies, that is how the tax system works. I, for one, do not resent paying social security contributions or taxes that I do not necessarily see coming back to me because I know it helps other people who need that money and most right-thinking people, and hopefully a lot of people who took the survey, also recognise that fact. So we cannot have it both ways. If we say yes to the first 3 points we cannot say that we do not think it should be paid for from Social Security and we do not think small businesses or any businesses should pay for it, because ultimately that leads us to the resignation that we do not do anything and that you should not have kids unless you are rich. I suspect that there are probably some people in this Assembly who believe that, they believe it is not the States job to organise provisions for your children, if you want to have children make sure you are capable and have the wherewithal financially to do it. That is a reasonable political position to have but it is certainly not one that I have or which I think the mainstream of the public also share. So now it comes back to the amendment and the bottom line is let us make a parallel here, it is okay for the Minister for Treasury and Resources in election year to come out with a policy saying: "You know what, fund higher education and we will fund it for most people", and where did that idea come from; did you hear it from another political party? It sounds like an interesting idea. But of course it is funded, it is not fully funded, so he said: "I have got some money for that, got a mechanism of raising half of it, a couple of million, still going to be £2 million short but do not worry about it because we will find it from underspends and we will work something out in the future." That is okay for the Minister for Treasury and Resources to do that. That is okay for that to be a policy that the Council of Ministers, those who are standing, can take to the electorate and say: "Well at least we are doing something."

[10:30]

But, guess what, we have not all signed up to a 7,000 day-plus critical days, because that is roughly when the 18 to 20 year-olds kick in, because that is much further down the line. We have signed up to a 1,001 Days policy. So, while I appreciate that the Minister herself has probably been on a journey and that she is doing the review, I do not think that the review solves anything, we are already in that position where we know that something has to be done. What Deputy Southern is asking for here is simply the difference between 18 weeks and 26 weeks. So remember the 1,001 days that we are talking about that we have all signed up to, at the moment there is an allowance for 126 of those days; that is about 10 per cent of what we are looking at. Deputy Southern is asking for 182 days in total, which is 26 weeks, to be covered. So we are really arguing over less than 60 days here, a 60-day continuation, to get to that aspiration of what we have all signed up to in the 1,001 days. It does not need further review. What we can do is agree to this very simple amendment today, extend it from 18 to 26 weeks now; that is something which we have the ability to do as politicians. We are in here to make decisions. We do not need to constantly be reviewing things, we can make decisions that ultimately will benefit the people that we are here to represent. Surely that is what we are here for. If we can make a difference and we know it is going to be improved and improve the life of people

that we represent, and the money is in the pot and we know that it is in the medium and long term there are options that can be looked at. We all know that it is completely unacceptable in the long term that there is a cap on Social Security when in the future the Minister for Treasury and Resources, now that he is going, has said: "By the way, taxes will have to go up, now I am not standing for election anymore, taxes will go up." We know that social security contributions will go up if we want to have a correspondingly humane and socially democratic model that is coming forward. I am going to leave the comments there but obviously when you speak early in a debate you cannot always pre-empt what other people are going to say, so I know that Senator Ozouf is going to stand up and give a lively and passionate speech about why Deputy Southern is wrong and why his friend the Minister is correct and that we should delay this and this has not been well thought out. But it has been thought out. This is one of the propositions I do not think can be accused ... there cannot be any accusation that Deputy Southern is saying that the facts are not there. It is the forum's recommendations. The Minister is the one asking for delay even though the facts are blatant. The review, the delay period, is not going to achieve anything. Of course, yes, there is much more to be done, the Minister is right, we do need to look at paternal leave, I personally think that there should just be parental leave, which can be taken as the couple wish, they can just divide it up as you wish. If you are single you can have it all, if you are in a same sex or in a mixed sex couple, as one could say, then you decide how to do that. But that is not what we are talking about today. That can be looked at over the next period so I do not think we need to prevaricate, let us get behind this, it is something we can do, which will make a real difference to the lives of people and will do so in the near future rather than kicking it into the long grass.

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

What a pleasure to follow Deputy Tadier. I do apologise for not being here at the start of the Assembly sitting, I was en défaut and the reason why I was en défaut is that I was attending a Fintech conference organised by Digital Jersey, Jersey Finance, J.F.S.C. (Jersey Financial Services Commission) and the Government, and I was so interested in the presentations, there was a Q. and A. (question and answer) and I could not resist asking a question at the end of the presentations by the various different presenters and I asked whether or not Jersey was doing enough in the Fintech world. You may ask what has this got to do with this amendment. Well I will explain. The world of work is changing, it is going to change absolutely dramatically. The effects of blockchain, robotics, A.I. (artificial intelligence), sometimes I need to explain things to the Constable of St. John. A.I. is not artificial insemination, just in case he thinks it is something else. I just say that because he clearly got 1,001 Days wrong. I do not think anybody is saying there should be parental leave from the moment that you, I do not want to get too graphic about it, but the moment of conception to the day that you have a child. It is 1,001 days from conception to birth, and so the Constable of St. John shows again he does not really understand. I know he is on the side of the Ministers, but really we just do need to raise our game here, maybe we need some artificial intelligence to sort of raise our game. What I do know is that the world of work for the future is going to be absolutely vital to have women in it in much greater numbers in terms of being thought leaders, in being some of the engineers, we need role models, female role models for engineers, tech people, and I ask Members how many female role models can they think of in terms of being an engineer or a Fintech or a tech leader? There are not that many, most of them are men. So we need to create a workplace of the future which allows women who have children, and they do, and they should be given affordable appropriate rights. But, at the same time, and Deputy Tadier, maybe just 10 seconds, because he loves this quote, I know, he has left, I know the problem is that Reform ... the problem is that other people have said it, socialism, you run out of other people's money. You have to make it to spend it. You run out of it and this is a good pre-election debate anywhere where people can strut their stuff and say which side of the political game they are. Ronald Reagan also said, just to wind up Deputy Tadier in a polite way, about this sort of amendment is Government was of the view that could be



summed up in a few short phrases, if it moves tax it, if it keeps moving regulate it, if it stops moving subsidise it. Ronald Reagan and Margaret Thatcher were not perhaps the political icons that Deputy Southern would want to hear, but there are certainly some elements of truth in both of those remarks. I am sorry I did not hear the Minister for Social Security propose her amendments but I will be absolutely supporting it. I say to Deputy Tadier and the Reform Party, it is not because the Minister for Social Security is my friend, everybody in this Assembly is my friend, I have been really enjoying talking to people in a way that I perhaps have not done in recent days. Everybody is my friend and I do not think that either the Social Security or I or anybody else votes, and to suggest that we vote because we are friends, it does not quite work that way. I vote against my friend in various different debates. It is not right to say that; it is inappropriate. But this is simply one of those things, Deputy Southern is bringing forward a proposition, yes, it has merit in terms of rights for maternity leave, which must be modernised, we must be creating the opportunities for a modern female working environment, which has rights and responsibilities where they can take time out for child care, *et cetera*. There is a huge amount to do. But it has to be done proportionately. Again, I go back to that Fintech issue. I asked the question at the end of the Fintech conference: “Is Jersey doing enough?” Just so that we are clear, because I know Assemblies, and I have been at the end of quite a number of them, they pat themselves on the back and say: “We are doing great.” We are doing great, our public finances are very good, our Social Security revenues or that fund, which Deputy Southern is talking about, has swollen enormously because of some really good decisions of the past and some really smart investment decisions, which are all looking after themselves and making hundreds of millions of pounds, which means that we have got a better secure future. But we cannot for one moment be complacent. The world of work, the workplace of the future, is going to be dramatically different in the next Assembly and the next Assembly’s time afterwards. The competitors are moving ahead in terms of their competition. If we start putting unaffordable restrictions on the labour market, which is simply out of kilter with our competitors, then we are going to fall behind. We have already fallen behind a bit, if I may say, in Fintech and we need women in this. I agree with the Minister for Social Security’s amendment. I will not speak in the major debate again but I will be supporting the Minister for Social Security, not because she is my friend, but because it is the right and proportionate thing to do and it is sensible. There has been a huge advancement of maternity rights and others, there needs to be more, but it needs to be done in a way that is affordable and does not effectively mean that we are creating a workplace, which ... nobody talks about how to get more business here, we just talk about spending more and putting more restrictions on, we have been doing that an awful lot and I hope that the next Assembly is going to spend as much time focusing on regulating the existing business, like former President Reagan said, and about growing it. Because, my goodness me, we do not spend enough time, we spend enough time spending more money, but we do not spend enough time making more money and getting ahead. Deputy Vallois is shaking her head, maybe she is shaking it in agreement, but the reason why we can afford things and good social benefits and social security is we have a successful economy, but you have to not be complacent, you have to grow it and focus on it. As much effort needs to be spent on that sort of debate as this sort of debate and then you will create a successful economy. Strong growth with strong social welfare; that is what you need and that is the winning formula that has worked for Jersey for decades.

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

I will try my very best to be brief. I am rather tempted to ask to move to the next speaker so that we can progress with this debate because I am sure Members will somewhat see that this amendment is a very sensible way forward. But I just could not help thinking about yesterday and reflecting on the bloody nose that I received, in parliamentary terms, in a speech because I dared to agree with the Scrutiny Panel on a major piece of legislation. But what came through loud and clear in that speech, and many that I shall not forget for some time, was that we as an Assembly have to deal with facts

and we have to do things properly. So let us just remind Members of their positions of yesterday. The Minister absolutely reminded people that this proposal is not costed from Deputy Southern and a review is underway, so we should absolutely support the amendment. 1,001 Days is going extremely well and the fact that Members talk about it so freely in the Assembly means that they absolutely understand the importance and the reasons why we back it as an agenda. The taskforce has completed the majority of its actions. Baby Steps Universal programme is underway, a perinatal mental health programme is going to start very shortly, and we have many commitments and the Minister has already committed to following the Employment Forum's recommendations. But the Employment Forum themselves put forward their excellent recommendations but they said it needed to be done in a phased approach because it is asking a lot. So I shall sit down and ask Members to support the amendment.

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

I have to take a deep breath. The Minister who has just spoken says we keep mentioning 101 Days because we are so proud of it. We are practically past 101 Days when this started and I want to know where the ... sorry, yes, the 1,001 Days, I want to know where the money was costed there. We have had this trotted out, we keep having this trotted out, Baby Steps is nearly starting, well the babies who were promised the 1,001 Days are now starting school. My theory is I do not always support Reform but when I hear rubbish spoken and when I am told here and passing massive pieces of legislation because of what we did to children and the Independent Care Inquiry, you cannot have it both ways. My theory is first do no harm, do not wait until you have damaged these children, you take their mums away from them when they are only 4 or 5 months' old when an extra 6 weeks will make a difference. Yes, and Senator Ozouf is now shaking his head with me in agreement. You cannot have it both ways. This might not be costed, we have not costed the 1,001 Days, we have let mums down and we are still doing it. It is not great that we will still be taking children into care, looked after, because they are not nurtured enough. It is not the 1,001 Days, I was on Health, I went with the Minister, the Deputy of St. Peter, with Brighter Futures and it is under 2 years, the damage you can do to a child under 2 years by neglect, you can take the next 15 years of their life repairing. This is a small move and it might not be costed, it can come out of Social Security or, as Senator Ferguson I think made the mistake thinking it is going to come out of small employers, it is a circle. I am not stupid enough to know that we do not have a printing machine at Cyril Le Marquand House, but you cannot have it both ways. Do not keep ramming down my throat and other States Assembly Members that these are children, children, children-first priority. You have moved mountains, social workers, bringing them in, you have changed policies overnight so their spouses and their children can work if they are over 16, this amount of money, this amount of weeks, it is indefensible. It has to be given.

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

Sorry, Deputy, we have just lost our quorum. He has just left. I would ask Members who are outside the Assembly, if I could ask Members who are in the coffee room to come on through please.

[10:45]

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

Maybe they ought to go back to school and learn to count. I always count and make sure there are 25.

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

I will ask the Greffier to call the role electronically so if you could open the voting buttons now please?

Senator P.F.C. Ozouf

Senator I.J. Gorst  
Senator L.J. Farnham  
Senator S.C. Ferguson  
Connétable of St. Lawrence  
Connétable of St. Mary  
Connétable of St. Martin  
Connétable of St. John  
Connétable of Trinity  
Deputy J.A. Martin (H)  
Deputy G.P. Southern (H)  
Deputy of Grouville  
Deputy K.C. Lewis (S)  
Deputy M. Tadier (B)  
Deputy E.J. Noel (L)  
Deputy of St. John  
Deputy S.J. Pinel (C)  
Deputy of St. Peter  
Deputy R.J. Rondel (H)  
Deputy S.Y. Mézec (H)  
Deputy of St. Ouen  
Deputy S.M. Wickenden (H)  
Deputy S.M. Bree (C)  
Deputy T.A. McDonald (S)  
Deputy of St. Mary  
Deputy G.J. Truscott (B)

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

Thank you very much. We did finally get 26 so we can continue. Deputy, I am sorry for the interruption.

**Deputy J.A. Martin:**

Yes, well I probably needed that to calm down. But I just really, really, before people stand up and speak against Deputy Southern and say this is a socialist thing, his heart is in the right place, he is thinking of the children. If you have not had children or you are a father, obviously you have been through people, that first 3 or 4 months you are in a total haze, you are just about getting into a routine and then you are thinking: "Oh, I have to go back." If we can give more time, and I am not saying this, I know mothers who want to go back to work, they might be in the industries, they probably could not live on £209 a week anyway, you know, but the mothers who really want that few extra weeks with their babies, you cannot have it both ways, so I will leave it there, I have said it all, please, what I want to say. I cannot sit here, but I will not make us inquorate, and listen to any more speeches that are hypocritical because you cannot have it on one idea that we are now all for children because of ... but we will not do this for their parents because the parents affect every child that is born in Jersey, and I cannot emphasise enough it is the first 2 years, and it is the first few weeks, then it is the first few months, then it is the extra few weeks that will affect that child. I am not saying this, this is well-documented, we all know it, the Deputy of St. Peter knows it, Deputy Pinel knows it, we were all ... I am not sure if Deputy Pinel was there, but we were all at this conference and it is anywhere you look you know that this is right. The more you can help children under 2 years and above it will work and it is a bit like Deputy Tadier says, how come we have found millions suddenly because it is a ministerial agreement for the other end? I am not saying we do not need it, but other people have been on about it for years. But please, please, please, think about this, the money is there; Deputy Southern is asking for an interim period to look, and it has already been looked at, it

has been consulted on, and yes, there will be people who do not want it, but what are we here for? We are here for the generations of people to come in Jersey and this is who it will affect. I want somebody to stand up and start putting some money where their mouth is on the 1,001 Days and this is a little step towards it.

### **2.2.9 Deputy T.A. Vallois of St. John:**

I was not going to speak and then I heard Senator Ozouf and I could not help but put my light on. I found his speech quite condescending and this is not about a 'them and us' situation, this is not about whether Reform are a bunch of socialists. No one person in this room owns an issue. This is about the issue of people who we all represent and the fact is that this is not just about the children, you have to support the families that surround those children as well. Some are more vulnerable than others. The issue is that what tends to happen, what I tend to hear, and it goes back to the arguments I was making yesterday about prejudices, when you hear of certain actions of minority groups abusing certain types of the systems and then people come in here and think that everybody works the system that way and therefore we could not possibly look out for the vulnerable in our society. Economic growth, the change in the way that the world is going, yes, we all know that. We all know that. How long has this Assembly been talking about the ageing population? But the fundamental question we have to ask ourselves is what is Social Security? What is it there for? I mean it states on the document here that: "Jersey's Social Security Scheme helps to protect contributors at times when they may be less likely to be able to earn a living." Social Security is not a fully-funded scheme, contributions are not saved in individual pension pots, instead the contributions collected in a year are used to cover the costs of the benefits paid in that year. In particular, each generation relies on the next to pay for their Social Security pensions. So let us move on to the demographic challenges, shall we? In 2035 we are going to have the number of people over 65 in Jersey increasing from 17,000 to 28,000 while the number of people under 65 will stay the same or increase slightly depending on the level of net immigration. Let us talk about immigration, shall we? So if we do not invest in our younger years, if we do not invest in the children, if we do not invest in those families now, bearing in mind 2035 is only 17 years away, so you think about it, if you were to invest in these early years now, and maybe that should be on future people's manifestos, have a little machine down in the bottom of Treasury that prints out money as the Constable of St. John is suggesting, but that is not the case. What we are discussing here is we have a huge bubble coming up here and what we are not doing is recognising that the families and the children in our society need that support and investment, we need to be grown-ups and discuss the best way to do this. I am not saying I will not support the Minister for Social Security, I recognise this issue of having to find costs, but sometimes, as I am sure we are going to hear from the Minister for Treasury and Resources at the next States sitting, we need to make the change because we need to help people because the system that we have at the moment is not right. That is the argument that is going to be made on student finance, we all know that. So I am going to make exactly the same argument here, this system is not right, we are not supporting these people. I hear everyone talking about children and I really think we have to start considering children are not on their own, there are people around them that support them, there are the parents, and the world that we live in today, the cost of living today, is so much more than what it was. There are more women working in society in Jersey than what there is in Europe. So the female role model argument, I was going to stand here and say, Senator Ozouf, I was going to compliment him about the Common Investment Fund when he was Minister for Treasury and Resources, the Common Investment Fund, that has brought in extra money into the Social Security Fund. So it is not about me standing here being nasty about what ... this is not about personalities, this is such a serious issue. I will be supporting the Minister for Social Security's amendment but I am not doing it because I do not agree with what Deputy Southern is saying, and I would not vote against the Minister for Social Security's amendment because I agree with what Deputy Southern is saying. This is the point, is that I am willing to hear what the results are. Deputy Southern read out some of the results of that survey

and we have a pretty good idea where it is going, and so I agree with Deputy Martin - I am glad I followed Deputy Martin - is that we have to stop being hypocritical here and saying that one particular policy that is not sustainably funded, we can agree with, well we might not agree with it, but we can agree with and then we have to have it all properly costed when it comes to the States. Members have to realise as well Deputy Southern is a Back-Bencher, he does not have a department, he does not have accountants sitting behind him putting all the numbers together, and if there was a bit more coalition between working between the Back-Bench and the departments, of bringing schemes together that are costed properly, sustainably, and maybe even phased-in, in an appropriate way, then that is probably the best way to go instead of having these silly arguments about who is right and who is wrong.

#### **2.2.10 Deputy S.M. Brée:**

I shall be very short. Over the past 3½ years we have heard from our current Council of Ministers the importance of the 1,001 Days Policy, the importance to support the needs of children, which I totally agree with. What this does, what Deputy Southern is attempting to do, is to support the parents as well. Because a child is not a human being in isolation; those first few weeks and months, and being a parent myself I know how it was, sleepless nights... but anyhow that horror I have forgotten. But it is really, really important to support, not just the mother, but where there is a father as well, support the parents. Perhaps the message that I would like to send to the Council of Ministers is now, now is the time to put your money where your mouth is. Now is the time to give that support that you have been talking about for the last 3½ years at least. Deputy Southern, while it is not the most perfect proposition, he is exactly right in what he is attempting to do, which is to support all mothers in the early weeks and months of their child's life, because those are the most important weeks and months, not only for the child, but for the parent as well. To try to put off doing this, awaiting the results of yet another study, seems to be the *modus operandi* of our current Council of Ministers: "We cannot do anything because we have not had the results of our study yet." I agree the study that is being undertaken is going to look at all areas of our Social Security system, is it supporting the right people? Is it delivering the right benefits to those in our society, which need support the most? I agree with that. But this is a concrete piece of support that we can offer now to support our claims as an Assembly that we support the 1,001 Days initiative and we recognise the needs of the child. Why are we arguing about this? Let us support Deputy Southern's proposal because it is concrete, it is real, it is deliverable, and it will target benefit to the people who need it the most.

#### **2.2.11 Deputy S.Y. Mézec of St. Helier:**

Holding back there. I am sorry to be so negative but there are contributions in this debate, which have reminded me of what I hated so much about Jersey politics when I decided I wanted to stand for election to try to do something about it, because there are too many people who are more interested in talking about doing something rather than doing something. One of the things that inspired me to want to work with Deputy Southern is that he is often the very first politician in this Assembly to be the one to say: "Right, put your money where your mouth is and bring that proposition to achieve something." That is what this debate on this amendment is about. It is about whether we throw something into the long grass again, do not take action now, and wait for apparently some more evidence that we need to decide that parental leave arrangements in Jersey right now are inadequate and that there is going to need to be some funding to make them better. Do we really need to waste that time to come to that conclusion? It strikes me as utterly ridiculous. I suspect that there will be many members of the public who find that notion ridiculous as well, but here we are in this Royal Square bubble and we still manage to find time to make that debate. There have been some clichés used in this debate, but I think they are pretty good clichés, so let us keep on using them.

[11:00]

This idea about putting your money where your mouth is, absolutely, what this proposition is about. The word “hypocritical” has been used, that is absolutely appropriate here because it is no good to talk about how wonderful the 1,001 Days initiative is unless you are prepared to make the structural changes so that families can benefit from it. That is what we are talking about, we are talking about do we want ordinary families in Jersey to benefit or do we want to throw it into the long grass? I personally got into this job because I wanted to do my part in helping improve life for ordinary Islanders, so this is an absolute no-brainer for me, and I just find it so weird that people find convoluted reasons to oppose making life better for Islanders. It really is so weird frankly. The contribution from Senator Ozouf was particularly enjoyable, he used this wonderful, I think it was a quote from Thatcher, the problem with socialism is that you eventually run out of other people’s money. It is a great quote that, is it not, it is wonderful and we get grins on the other side of the Assembly from politicians who spend £4,000 a day on media advisers, who sanction £13,000 on business class flights to South Africa, because of course, yes, it is socialists who always run out of other people’s money. This should be a bipartisan issue here because it is about making people’s lives better and comments like that, they demonstrate an economic bankruptcy in the ideology of people who believe that sort of nonsense. Good parental leave is good for the economy because it is good for our economy for families to be getting by, to be able to have money in their pockets to spend in the local economy, to not be stressed when they are at work wondering how they are going to cope when they have that child. So this idea that there is negative economic consequences, well of course there would be negative consequences if we piled everything all in at once and we were not prepared to make allowances for those who are going to struggle with it, but we do not just say: “Well it is too difficult so we are not going to do it” we say: “Okay, let us have the discussion, let us find those solutions, let us make sure those small businesses can cope with it.” One of the ways you do that is by everybody pooling in together, using the Social Security system to do that. That is exactly what it is for. I thought the contribution from the Constable of St. John was particularly amusing, his contributions are usually amusing and I do not always agree with them, and today was one that I did not because he described this society that offers all of this free stuff and I could not help but think he was basically describing Scandinavia, the happiest countries in the world, where people pool in together and people get decent services, they enjoy life, they have time off with their kids, very rounded societies, and they constantly top the league tables whenever organisations like the U.N. (United Nations) do research into which are the happiest societies in the world. So heaven forbid we could be more like the happiest societies. My favourite comment of course was his about the machine in the basement in Cyril Le Marquand House printing all this money. It is called quantitative easing, it is a perfectly legitimate economic tool to be used in responsible and appropriate circumstances. So the idea that providing some sort of economic stimulus by making life easier for people, having appropriate funding mechanisms in place, none of this is extreme stuff, none of it is inappropriate, this is something that is going to happen at some point because we are lagging behind the rest of Europe and there will come a point where ordinary middle-class people in Jersey will say: “This is no good, we want to enjoy our lives, we want to enjoy the time with our family and make sure that our kids get the best start in life possible”, and they will not be prepared to put up with it any longer and they will push and push for the political solutions to that. So rather than waiting until people get angry about it or there is more cynicism and people being negative about Jersey because of us being behind other countries on this, why do we not just get on with it because it is going to happen at some point anyway, we are behind these other countries, there is nothing wrong with saying we should have better parental leave provisions in the Island, given how inadequate they are now. So let us cut the nonsense and just get on with it, reject this amendment, support the proposition from Deputy Southern, and vote to make the lives of the people you represent easier. Is that not what we are meant to be focusing our time on in this Assembly?

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

It is always quite interesting how we can be strongly divided when largely we are in agreement but that is the nature of political debate, make your speech very strongly that this is absolutely the right and the other side is wrong. I just want to pick up on a couple of points that have been made. One of the great long-term decisions that Assemblies before this one and before that have made is in regard to the Social Security Fund contributions and benefits. We know that previous Ministers for Social Security increased the contribution rate before it was needed so that we reached the break-even rate later and later. It was Deputy Vallois that said the work that Senator Ozouf did when he was Minister for Treasury and Resources in creating the Common Investment Fund meant that the Social Security Reserve Fund grew at a greater rate than we were predicting earlier, which meant and means that there is more money in the Social Security Reserve Fund and a greater annual spend in there. So Social Security is, as Members know, but sometimes the public forget, is separate from Income Support, is not tax-funded other than the supplementation element, and supplementation is put into the Social Security Fund to uplift low earners pension rights when they retire. It is, as Deputy Mézec said, a pooled benefit and, as much as possible, related to what you put in is what you get out. Having said that, perhaps I can be blamed for making the first changes to that scheme where we said that we were going to ask some people to pay a little more into the scheme, or businesses, to create a greater benefit. In this Assembly, we are very good at spending, we like to spend because we feel as though we are making Islanders' lives better. That is good, we should be about making Islanders' lives better. But what we do not always do with the spend is be quite upfront and tell those Islanders who are going to have to contribute more to make others' lives better what the cost is going to be. We do not have that joined-up debate. Historically, we have always, always, always had that with the social security contribution levels and Reserve Fund, we have always done it in a mature grown-up way. We do not do that largely when we are asking people to put their hand in their pockets and provide tax. We do a bit here, we make a change there, but we do not make that great connection between money that you put in and the benefit to Islanders. This is why we are not so apart, despite the contributions, because across this Assembly virtually every Members thinks we are going to need to pay more and for longer for maternity allowance. We go one further than that, we think that those families who have adopted should also have an allowance to allow for those same benefits that Deputy Martin so eloquently talked about when she was talking about the work that she had seen with the Deputy of St. Peter. The work that the Minister is undertaking, the consultation that she has started, has stayed in that tradition of looking at the equation of the fund. I could not recall whether Deputy Southern was a maths teacher when he was teaching, I seem to think perhaps he did do some of that, I might be wrong there. So he knows as much as any of us about equations and you do not just have one side. The Minister is simply saying she accepts that on one side of that equation, I think she accepts it and Minister after Minister, we have discussed it around the Council of Ministers' table, accepts that one side of that equation is going to have to go up. But that equation still needs to work and she is simply saying in the great tradition of Jersey Social Security: "Let us make that equation work, let us be open with the public about we do want to give benefits and at the same time we are going to have to ask you to pay a little bit more." Now, Deputy Southern, if he was moving this proposition, or this amendment, I know now what he would come back and say, he would say that there is room in that equation to increase employers' contribution up to the new upper ceiling, and he is right, there is room there because that level is not equal throughout those limits. He has not used it today, but he would have done if he was coming back at me; he and I have been in here and we have had these conversations before. He is right, there is room there. But we cannot just say: "Okay, we are going to use that room for this benefit" because that is not what is on the table today. That room, which is at the heart of what the Minister has been doing, in following that Jersey Social Security long-term thinking tradition, may also be required for those older members of our community into the future. Because what this fund is about is trying to provide the right benefits to contributors at the right times in their life. So when we come to do the other side of that equation, we come to see where the headroom is in those contribution levels, I have no doubt that we will be

wanting to pay more in this area, but that will then offset the other areas that we might want to use that money in as well, and we know we have to use that money in preparing for the ageing population. That is why we have got £1.5 billion in the Reserve Fund, or £1.8 billion now, goodness me, I wish every £300 million was quite so easy to just conjure up. So £1.8 billion now, so we are in a very good strong position to be able to make these decisions and to make sure we remain in this Jersey long-term social security advantageous position. I could go on and talk all about the consultation and the number of people that have responded, what members of the public thought, their desire to see increased contributions or not, all of that, but I have no doubt the Minister will do that as she sums-up the amendment. But for my part, what Deputy Southern is trying to do, the principle is absolutely right, but the decision must be made in the long-term Jersey Social Security tradition, which is exactly what the Minister, with her amendment, is asking Members to do.

[11:15]

**Deputy G.P. Southern:**

May I ask for an opinion from the Chair - I think it is a point of order - could the Chair or the Solicitor General tell me what the net effect is of accepting both the paragraph (a) as not amended and (b) as amended? The first one says: "To implement the recommendations of the Employment Forum", which says: "Extend maternity leave to 26 weeks from 1st September 2018" and yet the amendment to (b) now reads: "To review the results of the public consultation *Living today: Thinking ahead* and, only if appropriate, to bring forward proposals to extend the Maternity Allowance from 18 to 26 weeks." Is it not the case that the combination of those 2, as amended, are contradictory, one stops the other? Because if you are reviewing you cannot be doing and that puts a delay in and we are told that, unless we pass this today, unless we pass action today, we cannot meet the September deadline.

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

Paragraph (a) refers to all of the recommendations of the Employment Forum's report. It is a request to the Minister to bring forward proposals to implement those recommendations in accordance with the timetable set out in the Employment Forum's report. Paragraph (b) is only about the maternity allowance. So is the suggestion here that the Employment Forum recommendation for the maternity allowance conflicts with ...

**Deputy G.P. Southern:**

With the net effect of paragraph (b) as now amended, which says: "To review."

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

To me that would have been a great debating point to make in your speech. It is not really a point of order. If the 2 things conflict that is the kind of thing that you would expect to come out in the debate and the Minister would need to address that at the end to explain her view. She has been requested to do something so she will need to clarify how these work together to make it a viable request.

**Deputy G.P. Southern:**

I hope the Minister does address that particular question because I believe the one negates the other.

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

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

**2.2.13 Deputy S.J. Pinel:**

There has been some confusion in this debate, starting with Deputy Southern referring to parts (a) and (c) of his proposition, both of which have been agreed. We are not discussing that. There has also been mention of small businesses by 3 different contributors: Senator Ferguson, Deputy Tadier



and Deputy Southern. I think that is probably a debate for P.27, not this debate. My amendment is to allow us to continue with our review of the consultation, which we have done, which was released last week, as everybody knows. What we are discussing here is part (b) of Deputy Southern's proposition, which is to bring forward proposals to the States to extend the period covered by maternity allowance under the Social Security (Jersey) Law 1974 from 18 to 26 weeks with effect from September 2018. We are discussing increasing the maternity allowance of £209 a week for an additional 8 weeks. That is all. We are not discussing the effect on small businesses; this would be paid by Social Security at a cost of £1.5 million, as has been made very clear. I do thank everybody for their contributions, especially, as always, the Connétable of St. John, and Senator Ozouf and Deputy Moore, thank you very much, and also for the reference by Deputy Moore and Deputy Martin for the 1,001 Days. Again that is not really something to do with this debate, it is certainly affiliated to P.27, which is the Social Security Department's proposition for implementing some of the Family Friendly recommendations of the Employment Forum and what Deputy Southern was just asking, the implementation of the forum's recommendations will be done in full, as I have already said, but over a period of 2 years. It is not possible to do it all in the one year. The reason for having this debate now is to allow employers and goods and services to implement these changes that we are going to ask in P.27 in good time for implementation in September 2021. They do need notice to be able to do this, but that is merely to increase the maternity leave from 18 to 26 weeks, it is not to increase the allowance, hence Deputy Southern's proposition and my amendment is just to say: "Give us time to look at this consultation", which contains no recommendations at all from the Social Security Department. We need to be able to have time to analyse the results. If the results say that we must increase the maternity allowance further than the 18 weeks then that will be brought forward to the States, but it is irresponsible to come forward with a non-funded, non-costed, and the costings came from Social Security analysis, but we cannot implement something without a proper analysis of the review, which is what we are asking for. If the review dictates that is what we should be doing then of course we will bring it back to the States for consultation. But to interrupt the review at this stage would be totally irresponsible of the department and myself. So the review is well on track to be finished when we said it would be and, as I say, it would be irresponsible to increase the cost of the benefits without having the funding to pay for it and without also analysing the possible implementation of this allowance stretching to 52 weeks, which would be an additional cost of about £6.5 million. This is not being looked at until we have analysed the review results and I certainly would urge Members to accept the amendment today to give the next Minister time to complete the review properly and put in place a sustainable funding package for pensions and benefits that will need to be paid for in the coming years. I maintain the amendment and ask for the appel.

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

The appel has been called for on the amendment, it is the first paragraph of the amendments lodged to Family Friendly Policy: implementation in the name of the Minister for Social Security. I ask Members to return to their seats and I ask the Greffier to open the voting.

<b>POUR: 29</b>		<b>CONTRE: 6</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Connétable of Trinity		
Senator P.F.C. Ozouf		Deputy J.A. Martin (H)		
Senator I.J. Gorst		Deputy G.P. Southern (H)		
Senator L.J. Farnham		Deputy M. Tadier (B)		
Senator A.K.F. Green		Deputy S.Y. Mézec (H)		
Senator S.C. Ferguson		Deputy S.M. Bree (C)		
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Martin				

Connétable of Grouville				
Connétable of St. John				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				

### **2.3 Family Friendly Policy: implementation (P.129/2017) -resumption - as amended**

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

So we now return to the main proposition as amended and the debate is open. Does any Member wish to speak on the proposition?

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

I came to this proposition today with the amendment hoping that we could all leave with a good feeling that we had come here and done something, but I cannot really be enthused, although it is a good proposition and it goes to hopefully doing something in the long term. I mean how long do we have to wait to look at this? The Ministers talk about this 1,001 Day policy and they bring forward propositions saying: “Oh, but, you know, we can give a year away, we are going to work towards giving a year’s maternity leave” for those who can afford to take a year of unpaid leave of course. How many are there out there in society that can do that? I have been really disappointed that now, as amended, this proposition, which should have said: “Yes, we can now afford to pay an extra 8 weeks to those people who really need it” of their own money because it is a contributory benefit and we do have the money in the bank, we have just decided to delay this proposition again. If you want change, and I am talking as much to people outside the Assembly as to those inside, because talk is cheap and we want people in this Assembly who commit to action and doing the right thing, there is of course a quicker way to get real change and the public will know what way that is, because we could be waiting interminably for a review to go on. We know ultimately what the problems are at Social Security and with our tax system, is that you cannot fund a humane modern society that we want to be on a shoestring. My Deputy, Deputy Mézec, my colleague, talked about the inherent hypocrisy that comes from people who say one thing and do another or say one thing but yet do nothing to do what they can do within their power. What we have in this Assembly, and people in here and outside talk about this illusion of consensus politics. Ultimately, we are in here to make binary decisions, certainly when we vote, and you can either vote with your policy and with your beliefs or you can vote against them. I know 6 people clearly who are not all ranting socialists, because of course it is only socialists who want better conditions for people in our Island and real humane policies. I do not think that is true. What we have seen here being brought and argued by Deputy Southern, is saying if you want to have a proper system, we know that there are limited

options ultimately, we know that social security contributions, or rather the pool and the take from contributions, will need to increase if we want to have, not even a gold-plated maternity leave and maternity system, just the basics, we do not want people struggling in their day-to-day life. If we do not want children ending up with real problems later on, because it is going to cost money basically, and we have missed an opportunity here for that small 8-week period. What that means, by having a discrepancy between what the Minister is proposing in terms of leave, but ultimately unpaid leave, but not having the 8 weeks to fund that extra period means that women, by and large it will be women, but perhaps also in couples, they will have to go back to work 8 weeks earlier than they would have until the end of this review. So we are just delaying that. That is 8 weeks where a parent or parents could be spending time with their child rather than having to work maybe for poverty wages, it has to be said, but we do not know about that. We will reap the consequences later on; we see that in our school system, we see it in the criminal justice system, where we pick up the costs. If a child has not been loved and nurtured properly and had sufficient time to spend with its parents in those early years, we know that there are consequences statistically for some of those people. Not only does it have an emotional and a very human cost on those individuals and their families, it has a very expensive price tag, which far exceeds the £1.5 million, which we could have allocated today. Of course we all have to support this, but it is not with great enthusiasm, because it is really a missed opportunity today and the message should not go out in any self-congratulatory style that we have done something really big and wonderful here. What it should say is that we have a Government here, which prevaricates, which says one thing, does another, and that we need a new Government with a new vision and that Government can be changed on 16th May, a Government of action and not of hypocritical words and delay.

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

Deputy Southern, you have spoken already, it is your proposition. Does any other Member wish to speak on the proposition?

**Deputy G.P. Southern:**

It is my proposition. I get ...

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

Deputy Southern, you get to speak at the end.

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

I just want to ask a point of order more than anything. I was listening to Deputy Tadier and to a certain extent I agree with what he is saying, but reading the proposition as it was before it was amended, because it asks to bring forward the proposals under the Social Security Law, so as my understanding is, in terms of being able to lodge anything now, it would not be delaying anything, so it would have to be lodged after the elections in May anyway, so it would not really delay it. So really what the Minister's amendment is doing is saying it is up to the next Government to bring the changes to the law forward really. I am sorry, I just wanted to understand that, whether that is the case.

[11:30]

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

That is a contribution to the debate really rather than a point of order. The words now say: "To bring forward proposals to review the results of the consultation and, if appropriate, to bring forward the proposals to the States." So whether there is a delay depends on how quickly the Minister would have brought forward proposals if the amendment had not been made compared to now, given that the instruction is to review the results of the public consultation. It is entirely in the hands of the

Minister really as to when all these things are going to happen. It would have been before; it will be now. There is an extra step, which is to review the results of the consultation. That is my understanding of the amendment that has been made.

**The Deputy of St. John:**

I get what Deputy Tadier is saying. I am assuming that what he is saying is the Minister should have lodged something now, before the end of this term, so that is for the next States Assembly to debate it. I agree with him that the States need to take action and I get sick and tired of the hypocrisy as well, but I just wanted to understand exactly what it was that Deputy Tadier was trying to get at when he was talking about the delay, because I did not quite see that with that change in the amendment.

**Deputy M. Tadier:**

Is it a point of clarification? Because I am happy to clarify, if need be, but I do not want to make a second speech.

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

You have been asked to clarify. I think what the Deputy was asking was not really a point of order for me. She is asking for you to clarify this point about the delay, so briefly, if you have something you could say.

**Deputy M. Tadier:**

Thank you for the question. I think the Chair has summed it up quite clearly. It is that what we were debating under Deputy Southern's proposal is something definite, which was to bring forward a proposal to the States to extend the period covered by maternity allowance under the Social Security (Jersey) Law from 18 to 26 and a definite decision from the States that that is the right policy. To endorse that step would have obviously given a clear instruction to the Minister as to how she should act and ensure order, preferably. Now what we have got is simply: "Let us put this out to review. Let us see what it says, review the results of the public consultation" which we could have done as an Assembly just now and that it provides an extra step, an extra hurdle, if you like, a step which could trip us up and can only cause delay. It cannot bring it in any quicker. That is the point I am making. Of course you could say I am making that too late, we have had that debate, but I am saying I am not enthused about it as it currently stands, because it is not particularly anything to trumpet about.

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

Deputy, do you want to speak or continue your speech?

**The Deputy of St. John:**

No, I just thank the Deputy for clarifying what he meant.

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

Does any other Member wish to speak on the proposition? If not, I call on Deputy Southern.

**2.3.3 Deputy G.P. Southern:**

Despite defeat over one amendment, the second amendment that was accepted by me will go through, so Members can walk away from this debate if they support what we now have with the satisfaction of having helped those people on income support to achieve greater income following the birth of a child, because at the moment the 2 allowances cancel each other out; what you gain from one benefit, you lose from your other benefit. That is a good move and I urge Members to support what we now have. Having said that, I want to just point out what we have effectively done in terms of the vital question of who pays. What we have said is who pays? Employers are going to pay because instead

we are going to extend the period of paid leave from 2 to 6 weeks. Employers, including some irate small employers, will have to feel that burden. By adopting the middle amendment, (b), we have said rather than and contribute some more from the Government, we have said: “Do not contribute any more from the Government until you have a thorough, good review and sometime down the line, work out how you are going to do it.” What we have said, and I say it because partly - only partly - there is an election coming up: “Yes, and employers will pay more and Government will not pay more.” That is a nice healthy position to take, if you wish, but expect some flak from the small business community, who will be saying: “Oh, typical. What a Government, spend our money, they do not spend their own.”

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

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

<b>POUR: 30</b>	<b>CONTRE: 1</b>	<b>ABSTAIN: 0</b>
Senator P.F. Routier	Deputy R.G. Bryans (H)	
Senator P.F.C. Ozouf		
Senator I.J. Gorst		
Senator L.J. Farnham		
Senator S.C. Ferguson		
Connétable of St. Peter		
Connétable of St. Lawrence		
Connétable of St. Martin		
Connétable of Grouville		
Connétable of St. John		
Deputy J.A. Martin (H)		
Deputy G.P. Southern (H)		
Deputy of Grouville		
Deputy of Trinity		
Deputy M. Tadier (B)		
Deputy E.J. Noel (L)		
Deputy of St. John		
Deputy M.R. Higgins (H)		
Deputy J.M. Maçon (S)		
Deputy S.J. Pinel (C)		
Deputy of St. Peter		
Deputy R.J. Rondel (H)		
Deputy S.Y. Mézec (H)		
Deputy R. Labey (H)		
Deputy S.M. Wickenden (H)		
Deputy S.M. Bree (C)		
Deputy M.J. Norton (B)		
Deputy T.A. McDonald (S)		
Deputy of St. Mary		
Deputy G.J. Truscott (B)		

**3. Assignment of a long lease (sale) of the Royal Yacht Al Fresco area by the States of Jersey Development Company: rescindment of Ministerial Decision**

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

We now move on to a proposition from the Constable of St. John: assignment of a long lease (sale) of the Royal Yacht Al Fresco area by the States of Jersey Development Company: rescindment of Ministerial Decision. Constable, you have an announcement, I believe?

**The Connétable of St. John:**

I have, Sir. I would like to withdraw the proposition, but I would like to address the Assembly and make a brief statement.

**Senator L.J. Farnham:**

I may have an interest in this, so I will step out of the Assembly for this.

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

He is not proposing the ...

**The Connétable of St. John:**

I am not proposing it. I am just making an ...

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

He is withdrawing it, so he is just going to tell us why he has withdrawn it.

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

The reason for this is that I do not want the Assembly to think there are behind the scenes deals. I like to be open and transparent. Following discussions with the Minister for Treasury and Resources and his officers, I am able to report I have reluctantly come to an agreement. Briefly, I had 2 concerns. The first was that the States of Jersey Development Company was selling the Weighbridge Square, when in fact it was only selling a lease for a small area of al fresco dining. However, this has raised serious issues which need to be addressed. Had the land been passed to Jersey Property Holdings, as I believe P.73 clearly states, then Jersey Property Holdings would be liable for the maintenance of the square, but due to an outdated law, the Parish of St. Helier would have received the income from the square. This would not be beneficial or fair to the taxpayer. P.73 is poorly worded and the Minister will come back to the Assembly on how the remaining properties listed in appendix 5 of P.73 will be handed back to Jersey Property Holdings. My second concern is that the property owned by arm's length organisations can be sold by Ministerial Decision, which differs from how property is sold by Jersey Property Holdings. When Jersey Property Holdings wishes to sell a property, a report is produced, which is circulated to all States Members, giving 15 days for Members to ask questions or lodge a proposition, should any Member wish to do so. However, if for argument's sake Ports of Jersey were to sell the steam clock and the surrounding area, it could do so with just a Ministerial Decision, which would not be circulated to Members. This is an anomaly and it must be addressed. The Minister for Treasury and Resources has undertaken to do so. On this basis I am withdrawing my proposition, P.17. Thank you. **[Approbation]**

## **4. Draft Financial Services (Amendment of Law) (No. 5) (Jersey) Regulations 201- (P.19/2018)**

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

The next proposition is the Draft Financial Services (Amendment of Law) (No. 5) (Jersey) Regulations 201-, lodged by the Chief Minister, P.19, and I ask the Greffier to read the citation.

**The Deputy Greffier of the States:**

Draft Financial Services (Amendment of Law) (No. 5) (Jersey) Regulations 201-. The States, in pursuance of Article 4(2) of the Financial Services (Jersey) Law 1998, have made the following Regulations.

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

These draft regulations will help streamline the regulatory requirements for Jersey private alternative investment funds that are structured as Jersey companies. As Jersey private alternative investment funds are an investment fund that is marketed to no more than 50 professional investors within the E.U. (European Union), alternative investment funds - or A.I.F.s, as they are otherwise known - are often structured as either companies, partnerships or unit trusts. Where a Jersey private alternative investment fund is structured as a Jersey company, it is required to obtain 2 certificates from the J.F.S.C. before it may be marketed to investors located in an E.U. member state, one pursuant to the Alternative Investment Fund (Jersey) Regulations 2012 in its capacity as the investment fund and one pursuant to the Financial Services (Jersey) Law 1998 in its capacity as the manager of the fund. This is because the company's board of directors are responsible for the management of the company. Under the Financial Services (Jersey) Law 1998, all principal persons of a Jersey company authorised under that law must seek prior approval of the J.F.S.C. In the case where a Jersey company is authorised under the Financial Services (Jersey) Law to act as a manager of an alternative investment fund, it is considered that the requirement to seek prior approval from the J.F.S.C. for all shareholder controllers to become principal persons of that company is too much of a burden and not necessary, given the obligation for each director of the company to seek principal person approval from the J.F.S.C. The prior approval from the J.F.S.C. often takes several weeks and the on-boarding of investors into the Jersey alternative investment fund often needs to happen more quickly than that. These regulations will turn off that requirement. The draft regulations do not remove any of the company's obligations under the Jersey anti-money laundering regime. These regulations have been circulated to the trust industry and the J.F.S.C. and they are all very supportive of this happening and it will help streamline the mechanism, so I propose the principles.

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

We are, I think, inquorate. I am just quickly checking. It would be helpful if Members who are outside came back into the Chamber. Could we have the roll called again, Greffier? If Members could press their buttons, please. It does not matter which one.

Senator P.F. Routier  
Senator P.F.C. Ozouf  
Senator I.J. Gorst  
Senator L.J. Farnham  
Senator A.K.F. Green  
Connétable of St. Peter  
Connétable of St. Lawrence  
Connétable of St. Martin  
Connétable of Grouville  
Connétable of St. John  
Deputy of Trinity  
Deputy K.C. Lewis (S)  
Deputy of St. John  
Deputy J.M. Maçon (S)  
Deputy R.G. Bryans (H)  
Deputy R.J. Rondel (H)  
Deputy S.Y. Mézec (H)  
Deputy S.M. Wickenden (H)  
Deputy S.M. Bree (C)  
Deputy M.J. Norton (B)

Deputy T.A. McDonald (S)  
Deputy of St. Mary  
Deputy G.J. Truscott (B)

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

I am afraid the result of that is that the Assembly is inquorate and therefore I think I am required to suspend for 5 minutes.

[11:43]

**ADJOURNMENT**

[11:51]

**The Deputy Bailiff:**

As we have suspended, we begin by taking the roll call by electronic means. Would anyone press any button - provided it is one of your buttons - in front of them to indicate that they are present?

Senator P.F. Routier  
Senator P.F.C. Ozouf  
Senator I.J. Gorst  
Senator L.J. Farnham  
Senator A.K.F. Green  
Connétable of St. Peter  
Connétable of St. Lawrence  
Connétable of St. Martin  
Connétable of Grouville  
Connétable of St. John  
Deputy of Trinity  
Deputy K.C. Lewis (S)  
Deputy of St. John  
Deputy J.M. Maçon (S)  
Deputy R.G. Bryans (H)  
Deputy R.J. Rondel (H)  
Deputy S.Y. Mézec (H)  
Deputy S.M. Wickenden (H)  
Deputy S.M. Bree (C)  
Deputy M.J. Norton (B)  
Deputy T.A. McDonald (S)  
Deputy of St. Mary  
Deputy G.J. Truscott (B)

**The Deputy Bailiff:**

Thank you. Very well, we are ...

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

May I just make a point though, because while you hear other Members when you are out of this room in the coffee room, you do not hear at the moment yourself speaking? It makes life difficult for people to know when to come back, because they cannot hear you, Sir.

**The Deputy Bailiff:**

Senator, can I ask, you are not the first person that has mentioned that sometimes it is difficult to hear the President speak, and is that a common ...



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

When we went in quorate, I came in and said the same to the Greffier, that we could not hear anything that the Chair was saying in the coffee room.

**The Deputy Bailiff:**

Clearly, we need to make some sort of adjustment to the microphone then, because clearly I did hear yesterday that there was, from time to time, difficulty hearing what the President said.

**Deputy M.J. Norton:**

I think what it is, Sir, is that they turn the speakers down when some people are speaking in the coffee rooms, but they should remember to turn them back up again perhaps.

**The Deputy Bailiff:**

That does presuppose that they have not turned them down because I am speaking, but let us ...

**Deputy M.J. Norton:**

More importantly, you cannot be heard on the BBC either at the same time, so that is also a problem.

**The Deputy Bailiff:**

Very well. I am not going to make any observation about not ... the only thing that is important of course is that I am heard within this Assembly and indeed in the coffee room. I will endeavour to speak up in the intervening period. If I appear that I am shouting at the Assembly, it is purely for that reason, at least for the remainder of this session. Senator, did you conclude moving the proposition?

**Senator P.F. Routier:**

Yes, Sir. I proposed the principles and we were just about to look for a seconder.

**The Deputy Bailiff:**

Are the principles seconded? **[Seconded]** Very well. Does any Member wish to speak on the principles? All those in favour of adopting the principles, kindly show. Those against? The principles are adopted. This is a matter for the Economic Affairs Scrutiny Panel. Does your panel wish to call this in?

**Deputy S.M. Brée (Chairman, Economic Affairs Scrutiny Panel):**

No, Sir, we do not.

**The Deputy Bailiff:**

Very well. How do you wish to deal with the matter in the Second Reading then, Senator?

**4.2 Senator P.F. Routier:**

They are very straightforward, Sir. I just propose them *en bloc* and if anybody wants to ask any questions, I am happy to answer them.

**The Deputy Bailiff:**

Are the 2 Articles seconded? **[Seconded]** Does any Member wish to speak on the Articles? All those in favour of adopting the Articles, kindly show. Those against? The Articles are adopted in the Second Reading. Do you propose the matter in the Third Reading?

**Senator P.F. Routier:**

Yes, please, Sir.

**The Deputy Bailiff:**

Is it seconded in the Third Reading? **[Seconded]** Does anyone wish to speak in the Third Reading? All those in favour of adopting ... the appel is called for. I invite Members to return to their seats. If Members have had the opportunity of returning to their seats, I ask the Greffier to open the voting.

<b>POUR: 34</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator A.K.F. Green				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

**5. Draft Discrimination (Disability) (Jersey) Regulations 201- (P.20/2018)****The Deputy Bailiff:**

We come now to the Draft Discrimination (Disability) (Jersey) Regulations and I ask the Greffier to read the citation.

**The Deputy Greffier of the States:**

Draft Discrimination (Disability) (Jersey) Regulations 201-. The States, in pursuance of Articles 5 and 47 of the Discrimination (Jersey) Law 2013, have made the following Regulations.

**5.1 Deputy S.J. Pinel (The Minister for Social Security):**

Disability has always been a key issue for me and so I am pleased to be able to bring this Regulation to the States, fulfilling a promise I made when I first became Minister for Social Security. These draft Regulations are the latest step in 5 years of reform to introduce important new protections against discrimination for people in Jersey. At each stage we have consulted and received widespread support from across the Island. By taking this step-by-step approach, we have ensured that employers and businesses have been able to adapt with a minimum of disruption. Eliminating discrimination creates a better environment in society, not just for employees and customers, but for businesses and service providers as well, the vast majority of whom will want to do the right thing anyway. Today we are looking at disability discrimination. Extending this law is one strand of the disability strategy launched by the Chief Minister last year. It is important that these Regulations are not seen in isolation, but as part of a wide movement to improve the lives of disabled people across our community and to change attitudes. There are some 35,000 people in Jersey who have a functional impairment, which is a difficulty carrying out everyday tasks due to a sensory, physical or mental impairment. It is important to appreciate that all of us are likely to be affected by disability at some point in our lives, be it personally, a family member, a friend or colleague, so this is a law for everyone. In defining disability, we have listened to representatives of particular groups and members of the disabled community. I would like to thank them for their input throughout the consultation and in the various stakeholder meetings that I have had the pleasure to attend. Our definition is broad and inclusive and avoids some of the pitfalls of the U.K. system, which often requires complicated and contentious medical evidence. Members will have seen the comments of the Health and Social Security Scrutiny Panel, which set out their concern that the draft Regulations exclude addiction from the definition of disability. I am not willing to allow this issue to potentially delay the legislation and so I have agreed with the panel to lodge an amendment to the Regulations that would remove the exception while we review the position. The department would undertake further research and consultation with the Scrutiny Panel, and if required, an exception for addiction may be proposed. My priority is to ensure that the Regulations can come into force on 1st September 2018, as planned, to improve the lives of thousands of disabled people and their carers across our community. I would also draw Members' attention to the duty to make reasonable adjustments. In order to deal with the issues that disability presents, we have to take a slightly different approach than for the other protected characteristics. This is a positive duty to take reasonable steps to change or remove something that causes a substantial disadvantage to a disabled person, whether in the workplace, education, premises or in the provision of services. Our aim is to create a level playing field that allows disabled people to reach their full potential and participate in society without having artificial obstacles and barriers placed in their way. Again, we will come to this in more detail when we get to the Regulations themselves, but these are important differences. Many people think of installing ramps and lifts for access. Improving the accessibility of our buildings is of course important and I hope that we will make some progress on making the States Chamber more accessible, but it is important to stress that many reasonable adjustments can be inexpensive and easy to implement with a little imagination and a problem-solving approach. A good example of this is the recent quiet hour initiative taken up by the Co-op, in conjunction with local charity, Autism Jersey.

[12:00]

This is just the sort of practical and effective, but inexpensive, step that can do so much to improve the lives of disabled people in Jersey. One of the issues that we raised during consultation was the need for businesses to have extra time to ensure that the physical features of their premises are accessible to disabled people. We have proposed that the duty to make adjustments to buildings or premises will not apply until September 2020. Some of those who responded to the consultation made a case for a longer period of implementation, but on balance, I have decided that 2 years is adequate and fair. This new duty should not come as a surprise. We have been planning to introduce

protection against disability discrimination for some years. By the time the legislation applies in September 2020, businesses will have had more than 2 years to prepare for the changes. Improving accessibility is a continuing task. It is not a one-off act with a checklist of changes that must be completed by 2020. We should remember that we are only asking people to do what is reasonable in the circumstances they are facing. There is no reason why disabled people should wait even longer before they are able to enjoy goods and services, employment and education on an equal basis with others. These Regulations are not the end of the journey, but they are an important step along the way. They will play an important part in changing attitudes, combating prejudice and enabling disabled people to play their full part in society. I hope that Members will support the draft regulations. I propose the principles.

**The Deputy Bailiff:**

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

**5.1.1 Senator L.J. Farnham:**

I support the principles. I just wondered if we could set an example and start by looking at this Assembly so disabled members of the community can visit the Assembly and spectate and participate as a Member in the future.

**5.1.2 Senator P.F. Routier:**

This is a day that we should all be celebrating. **[Approbation]** The strategy, which I had the great pleasure of being able to bring to this Assembly earlier this year, was built-up from the ground from the disabled community. The consultation took place by speaking to people to find out what challenges they had in living in our Island and working in our Island and made it very obvious that there were still things that our community needed to do to help them to play a full part in our community. This legislation is another step on that road. The strategy itself highlighted a number of areas where people were finding it difficult to take part fully in our community. The legislation, which will gradually bring into place the requirements for businesses and for bodies to ensure that their facilities are open to all is something which needs to happen, but as a States Assembly, as a States organisation which has responsibility for services, let us not wait for that. Let us get on and do it, because we should be leading by example. Our services that we provide should be accessible to everybody right now, so I encourage anybody who has any influence in ensuring that facilities are open to people that they do an audit, as I have requested in the past, of this Assembly. As the previous speaker has spoken about, there should be an audit undertaken to ensure that people can gain access to this building. I also ask that the Parishes ensure that they are aware of the needs of their community and that their Parish facilities are also available to people with disabilities. Let us be proactive, let us get on with it and let us welcome this legislation and ensure that all people with a disability can take a full part in our community.

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

Just very briefly in response to the Senator, I can confirm that the Parishes are having audits undertaken, to start with on the Parish Halls. If I may take the opportunity to say that I was very pleased recently when the Parish Assembly was held on approving the extension to the Parish church, which will be providing disabled access for all. I do feel that we are in fact leading the way on that and that the Disability Discrimination Law and regulations were mentioned during the Assembly, so when that final decision was made I am sure that it helped parishioners to understand the importance of providing access for all with disabilities to our public buildings.

**5.1.4 Deputy J.M. Maçon of St. Saviour:**

It is an issue which I do want to raise with the Minister on the issue of joined-up government. If the Minister could touch on one of the issues that, as the Planning Committee, we have struggled with,

and it is the aspect of dealing with historic buildings and how sometimes it is a struggle to protect the fabric of a historically listed building and the need to modernise and make facilities accessible for all of our community. I remember sitting on the application when it came to the committee and I was one of the Members that supported the change for the reasons of greater community involvement. But I want to know what work has been done, because it is not the first time that I have stood up in this Assembly and said that if we, the Government, the States, dictate to people how they can use their properties, but then give them no financial support in order to adapt their buildings to facilitate these things, are we not then putting people in an invidious position? Therefore I want to know what thought and what joined-up government has been happening between this particular piece of legislation and the Planning Department, because there is a big issue around historically listed buildings within this Island and how this is going to marry with this legislation. What I do want to say is of course I am very supportive of this legislation and I welcome the Minister bringing it to the Assembly for debate.

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

I apologise, I had nipped out for a comfort break when you had to go inqorate. I was trying to find us. I could not hear anything on the radio or anywhere, so I tried to find us on the web and then it came up that we were discussing this and I had to run back up the stairs, because again we are having the Ministers rewriting history. I absolutely welcome this legislation, but in August 2014, the then Minister for Social Security, Senator Francis Le Gresley, brought an amendment to personal care level 3 for children with severe disabilities. I worked on this amendment to it for children with severe disabilities on personal level 2 with Deputy Southern. He put some extremely good work in with me, but only one of us could obviously bring the amendment. Then, as they say, is it always fortuitous or is it always luck just when you debate something that it happens, because the debate before, after moving it 3 or 4 times, the Assembly decided to give Plémont a few million pounds and then they had the debate straight after on personal care level 2, which was an amendment to 3. The history goes it was won on the day, that most Members realised that the disability between personal care level 3 and 2 was very minute. These were children with severe disabilities. I remember the Deputy of Grouville saying to me: “You have done really well there, very well, Deputy. You have done something in this session.” What did the paper print the next day? “Chief Minister and Senator Routier are going to look into a strategy for the disabled.” Not a mention as why, but am I going to hold a grudge against them? No. **[Laughter]** No, I have to mention it. I am sorry, I am fed up. It is great standing here, I have done it all, people do things, you are totally ignored, but at the end of the day we got what we wanted, myself and Deputy Southern, for families we had been working with and they have been getting their money and they are absolutely ... it has changed their lives, they have been able to move on, because it was basically means-tested and it did get this strategy moving. I do agree with Senator Routier, he did go out to the public, he did talk to them, but would we have still been there if we had not had a Back-Bencher’s amendment? I just put the history straight. We are where we are. That benefit came in on 1st September 2014 and the care level came in 1st January 2015. I thank everyone who found the money, but it was found and we now have a fantastic strategy. It can go further, like Senator Farnham has said. We need to be inclusive everywhere we can. Every time the States especially start to look at refurbishing or building a new building, it must accessible to everybody. If you do not even think of disabled people, just think of somebody with a buggy, pushing babies. It is quite simple; try it, just try it. Sometimes you think did they really make this even family friendly, let alone somebody on a mobility scooter. These are big pieces of equipment. But the Minister, sorry, I had to give him a little bit of a history lesson and I feel much happier now, thank you.

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

Is it appropriate to talk about individual paragraphs or ...

**The Deputy Bailiff:**

We would normally come on when we do that in the Second Reading, Deputy.

**Deputy G.P. Southern:**

I will save my fire then, Sir.

**5.1.6 Deputy A.D. Lewis of St. Helier:**

I absolutely welcome this legislation. I remember as a child the National Year of the Disabled - many of you may remember it - and an awful lot happened during that period in Jersey too, pavements were lowered, wheelchair access was improved, and then nothing for years. We still have not had, I think, another disabled year either, but now we are legislating for it and that is marvellous, but one could say a bit late. I was interested to read that U.K. Act was 1995, the E.U. Act was 2000, so we are behind the curve. But in reading the proposition, the thing that really struck me was just how many people are affected by disability. It is not just those that have the disability, but it is their families that are caring for them as well. There are some quite stark figures: 13,900 people registered as disabled; 51 per cent of Islanders over 85 are disabled in some way; two-thirds of households - that is 35,000 people - have at least one person that has some kind of disability in their midst. I was quite staggered by that. Of course it could get worse ... I say "worse", but numbers could increase because of people living longer, which is wonderful. We absolutely need to legislate for it and I am delighted that we are, but it is about public awareness, which is why I mentioned the Year of the Disabled. That was a really powerful profile-building campaign, to raise the issue of disability. Propositions like this do the same, which is why some of us are speaking about it today and why the Minister has campaigned for this during this term of office, but there is still not enough public awareness, there is still more P.R. (public relations) perhaps to do. Maybe a Minister might like to spend the day blindfolded; maybe a Minister would like to spend a day in a wheelchair and see what it is like to have that kind of extreme disability. Those that have will fully appreciate just how difficult it is in our towns and villages that of course were built for another era. I do hope that public awareness will be raised as a result of this. However, people still do not quite get it. I was at a Parish meeting last night, not even my Parish, but in the Parish of St. Ouen, discussing the refurbishment of the church. There were some key issues there that did not just surround access, but some of them were. They put a ramp in and some people think that is it: "We have got a ramp now, so we are now disabled friendly" and we still have 19th century pews in there. A proposition was being proposed to modernise the church for exactly that reason, access. There are no toilets in the church. Can you imagine a disabled person struggling up through the churchyard up to a toilet out by the car park?

[12:15]

They might be elderly, they might be severely disabled. The Parish voted against it. By doing things like this, it will raise the profile of disability, it will become legislated for. The next time there is that meeting in that ancient church that needs to modernise, for all sorts of other reasons too, people will think perhaps twice before they vote against such progress, because access to public buildings, access to social amenities is vitally important. This legislation will provide that and hopefully advice and consultation as to how to get there too. It is not about beating people up for not doing it, it is about bringing them along with you and making sure that they comply with the regulations and the advice is there. Another thing struck me as well from the proposition. Only 5 people have gone to J.A.C.S. (Jersey Advisory and Conciliatory Service) requesting advice and information on how to accommodate disabled people in the workplace and so on, only 5 people, yet we are told there is upwards of 35,000 people affected by this, yet people have been to J.A.C.S. about other matters concerning discrimination. I think that again is about awareness, so today we need to send out a strong message that this is the way forward, this is how we make things accessible for people and, yes, we are going to legislate for it. I welcome it. It is a really great day, as Senator Routier said,

and progress perhaps a little bit late, but we are there. I do hope Members vote for this, I am sure they will. I will leave it there.

#### **5.1.7 Deputy R.J. Renouf of St. Ouen:**

I rise to speak on behalf of the Health and Social Security Scrutiny Panel. The panel is fully supportive of these Regulations and welcomes them. We received a briefing from the department and have had a look at some aspects of the Regulations without conducting a full review. Members will see from our comments paper that there is one issue which has concerned us and which is dealt with in our comments paper. We support the proposal of the Minister and the suggestion that an amendment which will follow should be adopted pending further consideration, because the issue we have outlined, there has not been sufficient time to look at it, but I will wish to talk to that amendment when it arises and I suspect Deputy Southern, that is the issue he wishes to speak about as well. But in general terms, this is a law that has been long-awaited. I think we can see that the law is comprehensive, but it is not specific, because in essence, the law is saying that every employer and every person providing a service is obliged to take reasonable steps to avoid disadvantage to disabled people. There is nothing too much more specific than that. Of course, in legislation one could not be, because that must cover so many scenarios. When we ask the Minister: "How will people know what are reasonable steps?" understandably the answer comes back that it is a question of working with the department, with the standards that are out there, in part with planning and building control, but it is also having regard to decisions of the tribunal. Ultimately that is where this will be set, so that if there is any doubt over what are reasonable steps to avoid disadvantage, that matter will have to be heard by the tribunal. It is the Employment and Discrimination Tribunal that will begin to set the parameters. At the moment in Jersey, we do not know about those decisions. The tribunal has not sat to determine these sort of things, but the law is based substantially on the provisions of the law in England and Wales and there are decisions of the tribunal in that jurisdiction that can equally help and guide employers and service providers here in Jersey. But perhaps if I might just ask the Minister to confirm and explain what help and guidance is to be made available to employers and service providers to help them adjust and take those reasonable steps. My understanding is that this has been considered by the department and there are means in place to give that advice and guidance, but perhaps the Minister would kindly confirm.

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

Members will be aware that previously I was the Minister for Transport and Technical Services. We did an awful lot of work which is still ongoing now, I am glad to say, making town and parts of the urban areas more disabled friendly, lowering kerbs for wheelchairs and adapting the pelican crossings. Some of the crossings were excellent. If one has a hearing impairment, the little green man will flash or the red man will flash and if one has a visual impairment, there is the beeper which will tell you it is safe to cross the road. If you have a situation where you have a double pelican crossing, one directly in front of you and the other to the left or the right, the beepers are actually removed as not to confuse somebody with a visual impairment as to which way is safe to cross. But if you put your hand underneath the yellow box, there is something resembling a little ice-cream cone called a tactile, so a visually impaired person will put their hand there, so when it is safe to cross, they are told which way is safe, forward or to the right or left. It is very simple, very ingenious. As Deputy Andrew Lewis of St. Helier made reference to, not so long ago we did have some disability simulation experiments. I believe it was Senator Green and Senator Routier, one was put in a wheelchair for the day and another one had a pair of glasses which simulated a visual impairment. It was Senator Green, indeed. That goes to bring it home how much we take things for granted. I think it is well worth creating that experiment again just to bring it home to everybody that we really have to do much, much more. I fully support all the propositions and regulations coming up now, but as I say, we have much, much more work to do.

### **5.1.9 Deputy C.F. Labey of Grouville:**

Just very briefly, as the previous debate centred on costings, I would like to know what costings have taken place for this legislation to come through and, in particular, public buildings and how they are going to be adapted to accommodate disabled people. In particular - and I was speaking with the Minister for Health and Social Security this morning, because I have got a bee in my bonnet about the deaf community and the provisions that are made for them currently - how we are going to adapt all the public buildings, for example, for the deaf community, flashing lights instead of fire alarms and everything else that will need to be put in place. Not only the costings, but if there is some form of timescale in order to make them fully adapted.

### **5.1.10 The Deputy of St. John:**

I stand just to ask a question. We had a public hearing with the Minister for the Environment only last week from the Environment, Housing and Infrastructure Panel and we specifically asked a question surrounding how we will get, for example, social housing providers to provide specially required housing for disabled people or anybody who has an inability to live within the bog-standard housing that we have provided. One of the suggestions was about he is able to do that in terms of the bylaws. I notice that in here there is an exception for bylaws. I would just like the Minister to explain to me whether there is a contradiction here in terms of the Minister for the Environment being able to set out in the bylaws going forward, being able to provide those types of housing and how that works with regards to having the exceptions here. Overall, I think what worries me, especially in the exceptions area of the law, is realising how behind the States are in terms of joined-up strategies, policies, legislation and how we need to move forward into more of a modern-day thinking and about how we need to put ourselves in those people's shoes rather than just thinking about one element of the issue. I would really appreciate if the Minister can just explain this particular area to me regarding the exceptions. I am a little bit concerned about them. I am grateful for the Scrutiny Panel's comments, they have been extremely helpful, so I just want to also add that into the debate. I will just wait for the Minister to respond.

### **The Deputy Bailiff:**

Does any other Member wish to speak on the principles?

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

What I am interested in knowing, and of course a lot of people are saying: "This is a great law, it is great that we are putting in this last point of the characteristics" because we have been talking about discrimination in previous debates during the last few months and I want to ask, where are the people who stand up and talk about red tape when it comes to anti-discrimination? Where are the people who say: "Oh, I am going to be forced now to give a job to a disabled person" or: "I am going to be forced to rent my flat out to a disabled person now because of this legislation that we are putting through"? Where are the people who are asking: "How is this going to be enforced?" because that is what Senator Ozouf and other people were doing only a few weeks ago, when they were trying to justify or put into place obstacles when it came to discrimination against families, young people, age discrimination, if you like. That was the arguments that they were being given. If you pursue that line of argument, they are equally valid arguments to raise in this kind of debate. The interesting thing about the discrimination in terms of disability, it is slightly different from the other 3 characteristics, because it does not just focus on what you cannot do, it focuses on the positive things that you will have to do, both us as a Government and a State, but also individuals and businesses, so there are things which are incumbent on businesses and on the community to make sure that equal access is given. That does not mean simply that you cannot say that somebody cannot come into your restaurant if they have got a wheelchair or a guide dog, which we know is an issue - I have mentioned that before - but it means they have to provide reasonable steps to gaining access, which



of course as Deputy Labey has inferred in her speech, there is a price tag to it and somebody has to pick up that price tag. This is not all about us, of course, and questions do get raised about the States Assembly about how accessible it is to the public. It will be interesting to see if we have any disabled people - obviously disabled, I would say - elected at the next election, how they manage in this Assembly, what provisions are made for them. But we know that as things currently stand, you go into the gallery there, it is very narrow. Some people manage to find their way up there, of course, up a very narrow staircase. If you go up there, you might not have an obvious physical disability, but you may have something that requires you to go to the toilet every now and again for whatever reason. Where are the toilets for the public in this particular building if you want to come upstairs? Do you have to go outside? Do you have to nip across the road to one of the public houses? We have not really thought about it in terms of our Assembly. There is a corollary to that, because of course if the Assembly is not accessible to disabled people, both in terms of the membership, but even more so in terms of the spectatorship of the public, then it is probably not accessible in lots of other ways to lots of other people. It is probably not a welcoming Assembly or something which you would aspire to as a Government and as a States. Of course, in thinking about how we would address this, we also have to be conscious of how the community will also be having similar thoughts about how they will have to adapt their business models or their buildings in order to accommodate. It does ultimately lead to some very difficult decisions. For example, for us, it means that do we value the historic nature of this building? It is relatively new in terms of some other parliaments, but perhaps old compared to some very modern ones. What do we value more? Is it the bricks and mortar, is it the nice polished veneer of the wood or is it do we want to aspire to a new Assembly which is very accessible to all people, including disabled people? Without wanting to speak in clichés, I think we also need to remember that not all disabilities are visible. I think the good thing about this kind of legislation is that it helps to bring forward the debate and understanding within society. Like Deputy Martin said, we are all on the same page today, but that was not always the case.

[12:30]

I tried to find the exact Hansard of it - it is not always easy to find the exact quote and I could not - but I remember it was pretty much within the first ... if it was not the first few weeks, it was certainly in the first few months of the Assembly. The Chief Minister at the time, I and others were asking about anti-discrimination legislation - in 2008, 2009 this was - and the Chief Minister was standing up and saying: "I like to think that we do not really need discrimination legislation at all, because I think that people should just behave properly. I would like to think we can live in a society where it is not needed and everyone does the right thing." Of course, yes, that would be great, but that is unfortunately not the kind of society we live in. If one person is discriminated against because they are in a wheelchair or because they have a guide dog, because they have an invisible illness and it stops them from achieving their potential in our society and achieving their fulfilment and happiness with them and their family, then that is one person too many. Of course we know it is not just one, we know that there are thousands of people out there who are affected. There are exciting things in this law. It is about positive discrimination and I will perhaps speak on that when we come to the Articles. Of course we can get back behind this, but it has been a journey. It was not always the case. It has needed people long before I and many of us were around to stand up and fight for the case for having a discrimination law at all. Thankfully we are at the point of agreeing this final characteristic today. There will no doubt be teething problems, there will no doubt be things that need to be looked into as it develops, but surely a positive day. It is nice to be able to look back after 10 years and see the change that has occurred in this Assembly. It is not all doom and gloom. It has not always happened as quickly as we would like, but it is good to look back and see progress.

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

There have been a few comments about: “This is a great day.” I am afraid that I, in some respects, think what a sad day, the fact that we have to bring in legislation to do what is needed. I have had the very great privilege of driving for Holidays for Heroes and on one occasion a gentleman who was a double amputee raced his children in his wheelchair from the exhibit that we had gone to to the car and he managed to beat his children. He opened the driver’s door, grabbed hold of the roof rail, swung himself into the driver’s seat and when I got to the car I said: “I would love you to drive, but there is a fairly obvious disability here” and he said: “No, not at all. I have got my crutches. I can work the accelerator, I have got the handbrake. It is fine, it is an automatic” and it was that attitude of positiveness that has really stuck with me. It is these people who do have disabilities, through no fault of their own, and yet they make every effort and we should be supporting them because we want to, because we regard them as equals and not because we have legislation forcing us to do so and so. I hope that this will be well-received and I hope that people will make the effort to make this an inclusive society so that everyone is equal and that we treat others in a way we wish to be treated ourselves.

#### **5.1.13 The Connétable of St. Saviour:**

It is a pleasure to follow the Connétable of St. John because he did show us really that the gentleman who was a double amputee was a person with a cup half full and not half empty. I do feel when we have discussions in this Assembly, most of us are told our cup is half empty. We have just heard the Deputy of St. Brelade maligning this building somewhat, but we have a gentleman who is going to be standing in the States who was in the gallery the other day, made it to the gallery, did not ask him if he wanted the toilet - I thought that was too personal - but he made it to the gallery and he is disabled and he was able to do it, because his cup is half full and I think a lot of people need to sit back for a while and say it is half full. If you go to Dinard or one of those French villages, there is cobbles and stuff over there, you get over it and a disabled person will only be too pleased to think that they have done it, because their cups are half full. I think we need to take a leaf out of their book. This is a fabulous law that is coming through, but we need to take a leaf out of their book and if that gentleman who is standing for the States can make it to the gallery here, anybody can.

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

I was not going to speak, but I feel I cannot leave that speech. It is not about making it to something, it is about quality of life and access to things and equality. It is not about being able to, despite all the odds, get up into the public gallery. That is a totally wrong attitude. It is about being sure that people can concentrate on what they can do rather than what they cannot do, but society as a whole supports them in that. Deputy Lewis also made, I think, a very important point about families around that as well. I support this law, obviously I do. I would just like to remind Members, and I think Deputy Tadier might have touched on this, that while we think of disability as somebody who has perhaps got a physical disability or something that we can see, there are a lot of our community that have hidden disabilities. I talk about people with hearing problems, I talk about people with sight problems and I also talk - and I declare an interest as the national chairman of Headway - about people with brain injury who very often have a severe disability that no one else can see. It becomes even more of a disability if they appear not to have a challenge or an issue but then they behave perhaps differently, rather than inappropriately, differently to the way that we might behave in given situations. We are about a society living together and we should not expect people just to cope. We should make it possible for people to fulfil their lives to the fullest potential. Just as we do that and aim to do that for our children, we should allow every member of society to be able to live their lives to their full potential, not just cope.

#### **5.1.15 Deputy S.M. Brée:**

Just a short, if I may, response to both Deputy Tadier and other Members who have spoken. I feel that the Assembly might like to know that today P.P.C. (Privileges and Procedures Committee) has received an initial draft of an accessibility audit that is being carried out on the States Chamber, so we are already working on it. It has not been forgotten about and P.P.C. take this kind of thing very seriously.

**5.1.16 Deputy R. Labey of St. Helier:**

Just to reinforce what the Minister for Health and Social Services was saying, that with any kind of disability legislation one immediately jumps to the conclusion that it is all about people in wheelchairs. As the Minister was saying, many disabilities are unseen. They can be in the head, they can be in the abdomen. Many disabilities one does not realise one is dealing with until the person begins to communicate, in whichever way that they do that, with you. So it is right that we should keep this in mind too. It is no good just patting ourselves on the back because we have installed a wheelchair ramp. As the disability strategy itself says, quoting the United Nations Convention on the Rights of Persons with Disabilities: "The strategy is based on a social model of disability and defines disability as including those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others." That word "barriers" is interesting, is it not, and makes one think? I think, given that, I would just like to urge that people with addictions are excluded from the law currently. I do hope that that is going to be continually reviewed and looked at.

**The Deputy Bailiff:**

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

**5.1.7 Deputy S.J. Pinel:**

I thank very much everybody who has contributed to this part of the debate. Senator Farnham, I think, is very positive and has had his answer from Deputy Brée. I am delighted that the accessibility audit has been received by P.P.C. Thank you to Deputy Lewis for his contribution. He welcomes the legislation but not enough public awareness and, I think from my own point of view, last year of 2 months in plaster, on crutches and in a wheelchair, as was Senator Routier earlier this year, it makes you very aware of the lack of facility of access and travel, certainly around St. Helier. Deputy Maçon, along with the Deputy of Grouville and Deputy Tadier, asked about the access to historic buildings and the costings of making the changes. I will just give an example here that it has always been made clear that disability would be covered by Disability Law, Discrimination Law, and the need to make premises accessible has been known for years now, hence the 2-year lead-in that I discussed in my opening remarks. The duty is only to do what is reasonable, except it is a legal term. If the businesses have genuinely not had time to make the necessary changes, due to funding or planning permission, that is a matter for the tribunal, which will be entitled to take that into account, so that has been taken notice of. It is not possible at all to give anything approaching reasonable costings because every building will be different, every premises, but the reasonableness is accountable inasmuch as if it is a very small café they will not be asked to build in an extensive disabled toilet if there is not room. I hope that answers those questions. Deputy Renouf, as I mentioned in my opening remarks and we will come to it when we discuss number 5 in the Regulations ...

**The Deputy Bailiff:**

It is the Deputy of St. Ouen.

**Deputy S.J. Pinel:**

Sorry, Deputy of St. Ouen. Thank you, Sir.

**The Deputy Bailiff:**

We have had a couple of Deputies referred to by their names. It should have been the Deputy of Grouville not Deputy Labey earlier, and perhaps I could just remind Members of the protocol in that respect.

**Deputy S.J. Pinel:**

The Deputy of St. Ouen asked what would be given in the way of advice in the coming months to businesses, small employers and domestic advice to take the reasonable steps to ensure that they fall within the adjustments to premises. The Jersey Advisory and Conciliation Service has already started on this. In fact, they have been working on this for 6 months now. They give free advice to anybody who wishes to go and see them, training for businesses, and will continue to do so, as will Citizens Advice Jersey, and they have been part of the consultation all the way through so are very well informed as to what is possible and what is not. The Connétable of St. John said it is sad to bring in the legislation. I quite agree, it is very sad to have to bring it in but it is necessary and it applies to most discrimination legislation that employers, or anybody for that matter, with an area of common sense will be already adjusted, apart from the physical adjustments to buildings, to be able to deal with this, as mentioned by my opening remarks about the Co-op with their quiet hour. Thank you to the Connétable of St. Saviour for her positivity and, of course, to Senator Green who mentioned the hidden disabilities that people have, which this concentrates on as well with visual and sensory and audio problems. Deputy Labey asked questions about the addictions to be excluded, as they were, and now part of that is taken out in conjunction with agreement with the Scrutiny Panel and that review will be continued. The Deputy of St. John asked about bylaws and these are included in the process. Any building work or significant alterations in buildings in the past 10 years will have had to follow these guidelines, so accessibility will have already been taken into consideration, and with regards historic buildings there will not be encroachments.

[12:45]

There will not be a glass lift going up the side of Mont Orgueil Castle and if somebody wants to build a wheelchair ramp, for instance, it would have to be built at the appropriate gradient and within the bylaws. If the person or the building cannot comply with the encroaching premises then the wheelchair ramp could not be built. We take great account of the bylaws. I think I have answered everybody. If I have missed somebody out, I apologise. I maintain the principles and call for the appel, please.

**The Deputy Bailiff:**

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

<b>POUR: 36</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator L.J. Farnham				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				

Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

## **LUNCHEON ADJOURNMENT PROPOSED**

### **The Deputy Bailiff:**

Very well. The States stand adjourned until 2.15 p.m.

[12:46]

## **LUNCHEON ADJOURNMENT**

[14:16]

### **The Deputy Bailiff:**

The principles were adopted before the adjournment. I am assuming, Deputy of St. Ouen, in the light of your earlier comments, that you are not calling the matter in for Scrutiny.

### **The Deputy of St. Ouen (Chairman, Health and Social Security Scrutiny Panel):**

No, we are not, Sir.

### **The Deputy Bailiff:**

Minister, how do you wish to take the Regulations? You have an amendment to Regulation 5 in respect of which you will need the permission of the Assembly to deal with that, because that was lodged outside the normal time period. How would you like to take it? Would you like to take them 1 to 4 and then deal with 5 or would you like the permission of the Assembly now to take it as amended?

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

If I could do Regulations 1 to 4, and then 5 separately because I know Members may wish to speak on that, and then Regulations 6, 7 and 8.

### **The Deputy Bailiff:**

Yes, and when we come to Regulation 5 you will indicate whether you wish to take it as amended and the Assembly can either agree or not.

**Deputy S.J. Pinel:**

I would like to take it as amended, Sir, please, if that is all right.

**The Deputy Bailiff:**

Let us do 1 to 4 in that case and we will take it from there. Yes, Minister, you are proposing 1 to 4.

**5.2 Deputy S.J. Pinel:**

Regulation 1 provides that the Discrimination Law is amended by these Regulations. Members have been provided with an unofficial consolidated version of the law, which will hopefully assist. Direct discrimination: Regulation 2 amends Article 6 of the law which deals with direct discrimination. Members will recall that direct discrimination involves treating one person less favourably than another because of a protected characteristic. We want to make sure that employers and service providers are not deterred from making special provision for disabled people and so the proposed new Article 6, paragraph 11, provides that it is not discrimination to treat disabled people more favourably than others. For example, employers might offer a special chair, desk or voice recognition software. Without paragraph 11, such practices could be challenged as direct discrimination against people who are not disabled or against people with a different disability. That would clearly be undesirable. The new Article 6, paragraphs 12 and 13, extends the definition of direct discrimination so that it covers a situation where discrimination arises not from the disability itself but from the consequences of that disability for the way in which someone does their work or uses a service, with a guide dog, for example. A restaurant may refuse to admit a customer with a guide dog because they object to the dog not the customer's blindness. This would be unfavourable treatment of something arising in consequence of a disability and we need to make sure that there is protection. Regulation 3 adds disability to the list of protected characteristics for the purpose of indirect discrimination. This means that the existing protection against indirect discrimination will apply to disability in the same way as all the other protected characteristics. Indirect discrimination occurs where a person applies a provision, criterion or practice that puts a disabled person at a particular disadvantage compared to other people where that cannot be justified. Regulation 4, reasonable adjustments, extends the existing concept of indirect discrimination to introduce a duty to make reasonable adjustments. I have talked already about the importance of this provision, which is central to the new rights. There are 3 types of reasonable adjustments that may be made, which are provided in paragraphs 1 to 3 in the new Article 7A. The first covers any provision, criterion or practice that places a disabled person at a substantial disadvantage in comparison with people who are not disabled. The duty is to avoid that disadvantage. The second arises where the physical features of premises place the disabled person at a substantial disadvantage and again the duty is to take such steps as are reasonable to avoid that disadvantage. We should stress here that the duty is not a prescriptive one. It may sometimes be necessary to install a ramp or a lift but in other cases the disadvantage may be avoided in other ways, such as by rearranging the layout of an office so that there is no need for the disabled person to enter an inaccessible part of the building. It is the disadvantage and the steps to remove it that we focus on here rather than any fixed rules about altering the structure of the building. The third kind of reasonable adjustment arises where the disadvantage to a disabled person results from the absence of an auxiliary aid or service such as where a deaf person is excluded by the absence of a hearing loop. The duty here is to take reasonable steps to provide that auxiliary aid. In deciding whether reasonable steps have been taken in each of these 3 situations that I have described, a number of factors will be taken into account. These include the cost of the adjustment and the financial and administrative resources of the employer or service provider. No one will be asked to make a change that is disproportionate or unreasonable. These

factors will help to guide employers and service providers in determining what is and is not reasonable and will ultimately be taken into account by the tribunal if a complaint is made. I commend Regulations 1 to 4.

**The Deputy Bailiff:**

Are Regulations 1 to 4 seconded? **[Seconded]** Very well. Does any Member wish to speak on Regulations 1 to 4? Very well, those Members in favour of adopting ... the appel is called for. I invite Members to return to their seats. I ask the Greffier to open the voting.

<b>POUR: 32</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator L.J. Farnham				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy R.G. Bryans (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

**The Deputy Bailiff:**

You wish now to deal with Regulation 5, Minister, and you wish to take it as amended. You will need the leave of the Assembly, obviously, for the amendment to be put, so perhaps you would deal with that first, please.

**Deputy S.J. Pinel:**

As I think I mentioned earlier, the Scrutiny Panel with Social Security have agreed to this amendment and I ask the Assembly to agree that it can be taken early in order not to delay anything with the Disability Regulations.

**The Deputy Bailiff:**

Does the Assembly agree to allow the amendment to be taken? Very well. You wish to take the Regulation as amended then, Minister?

**Deputy S.J. Pinel:**

Yes, please, Sir.

**The Deputy Bailiff:**

Do you wish to speak to it?

**5.3 Deputy S.J. Pinel:**

Yes, please, Sir. Regulation 5 inserts the definition of disability into Schedule 1. This is a broad and inclusive definition. If you have an impairment that is likely to last for 6 months or more and that impairment potentially affects your ability to participate or engage in work, education or other activities then you are likely to be disabled under the law and will be entitled not to be discriminated against. This is the issue that was most discussed in the consultation and the stakeholder meetings. I am particularly pleased that our overall approach has been endorsed by many of those who responded. Employers should not focus too much on whether a person has a disability but should look at what they can do to ensure that everybody can participate on an equal footing. Our definition avoids the need for detailed medical evidence about the particular impact of an impairment on an individual. Instead, it focuses on the potential an impairment has to impact on a person's ability to participate or engage in those areas of life that are covered by this law. Regulation 5, as lodged, included an exception so that addiction in itself would not have been treated as a disability under the Discrimination Law. I was satisfied that where people have addictions to the extent that it significantly affects their life then they are very likely to have another health condition that amounts to a disability, such as depression, anxiety or diabetes. The Health and Social Security Panel raised concerns about this exception in its published comment, P.20/2018 Comments. As I explained earlier, I acknowledge the panel's concerns. In order to allow this debate to continue today to ensure that we introduce this long-awaited protection for disabled people and their carers, my amendment would remove the exception for addiction. If an exception is to be introduced at a later stage, the department will consult and carry out further research in conjunction with the next Scrutiny Panel. I am satisfied that the definition of disability as amended provides an acceptable interim position in relation to addiction. It means that a person who has an addiction may be protected against disability discrimination. As with all new discrimination laws, the Jersey Advisory and Conciliation Service and Citizens Advice will provide detailed guidance and training to help employers and service providers prepare for this.

**The Deputy Bailiff:**

Is Regulation 5 seconded? [**Seconded**] Does any Member wish to speak?

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

The Health and Social Security Scrutiny Panel did look at the definition of disability. We did wonder about this exclusion of persons suffering from addiction and we did seek some views from Silkworth, the charity that deals with alcoholism, and the Medical Officer for Health and the Drug and Alcohol Service. The Drug and Alcohol Service has confirmed to us that these days addiction is treated as a mental disorder and Silkworth also regards alcoholism in that vein. However, because of all the work that is landing on States Members' desks in recent weeks, we felt that there has not been sufficient time to do a full review and gather all evidence on that. Of course, one option was to call the matter in to study it within the weeks allowed by Standing Orders but the panel did not wish to delay this important piece of legislation. Our concern was, for example, that somebody who has suffered from



alcoholism might be applying for a job and in some high profile jobs you have to provide a full medical history and it might reveal that that person has suffered from alcoholism but that person may now be in recovery, and perhaps have been many years in recovery, but a potential employer might see that medical history and be reluctant to employ that person, thinking there is a risk. Should there be that sort of discrimination? If the Regulations as originally drafted had remained in, we considered that that would discriminate wrongly. It would put the person with addiction outside of the protections and clearly there could well be ... Silkworth and the Drug and Alcohol Service seem to think that there may well be a risk of people falling outside the protection of the law. We discussed this at length with the Minister and her adviser. It transpires that this provision that was originally placed there is a straight copy from the English legislation but I understand the English legislation dates from the 1990s when there was not the understanding of addiction that there is now.

[14:30]

Therefore, having discussed this at length with the Minister, we agreed that the best course of action is to perhaps take it out for now so that persons with addiction are covered by the law but the department will research the matter further. We are aware, as the Scrutiny Panel, that there have been some submissions made to Select Committees of the House of Commons and that needs to be looked into. A future Scrutiny Panel might well wish to look at this too. I hope it would and work with the Social Security Department to get to the bottom of it and decide exactly what protection should be built in to persons who suffer from addiction. Therefore, I hope that Members will feel able to support this amendment and the new Article as amended.

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

First of all, I think we owe some thanks to the Scrutiny Panel and the members of civil society who have raised this issue, which could have easily been overlooked and it may have even got through today with only some comments but actually been put in the law. I have some experience, as I am sure other Members do, whether it is from constituency work or from personal family and friends experience, about the debilitating effect that addiction can have on people's lives. What is quite obvious is that it is never usually in isolation that somebody who has whatever kind of addiction, be it to, as is listed here, alcohol, nicotine or prescription drugs or to illicit drugs. That has devastating consequences sometimes for them and their family members. Whether it is a disability or not, I think it is something that we could probably talk about for a long time and maybe today is not the forum to do that. Of course, just to add on top of that, sometimes an addiction can be a cause or a consequence of some other perhaps hidden malady, which could be emotional or physical. Sometimes it could be temporary; sometimes it is long term. Often these people are very much marginalised in society because while one is quite happy to say that person has a definite disability... and I think we heard in a speech earlier where people have a disability that is no fault of their own. I think that is a dangerous dichotomy to make because if we start saying: "This person is disabled but it is of their own doing" I cannot see many cases where that might be and this is one of those areas where it could be: "That person has this issue but they have brought that on themselves because they could not cope under those circumstances" or whatever. That is very difficult and I am glad that this has been raised here today. But it does raise the interesting question of just because somebody, for example, has an addiction, be it to alcohol or nicotine, that in itself is not a disability. Somebody can function perfectly well as a lifelong alcoholic, and remember being an alcoholic does not necessarily mean that you are drunk 24/7. It just means that you cannot live without alcohol. It may well be that you need one can a day, but that is just as much an addiction and it could be less of a problem than somebody who is a binge drinker and who drinks very heavily at the weekend and then engages in harmful activities to themselves and to others emotionally. So it is a very interesting conundrum.

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

Would the speaker give way? Just as a point of correction, being an alcoholic does not mean you cannot live without alcohol. Being alcoholic means you cannot live with alcohol.

**The Deputy Bailiff:**

You can ask for a point of clarification of the speaker's speech or you can ask to clarify a comment that has been made about what you have said, but you cannot stand up in the middle and correct somebody as they go along. You are, of course, at liberty to speak in a moment.

**Deputy R. Labey:**

Apologies.

**Deputy M. Tadier:**

Either way I am quite happy to accept the correction and I know it is something that is probably close to my colleague's heart as well. Just as point of order, Sir, I thought that it was okay for Members to give way so if someone wants to give way there is much more latitude for the person interrupting to make a contribution, but that is not under our system.

**The Deputy Bailiff:**

No, there are only limited circumstances in which the ability to give way can take place. It does not enable other people to chip in and contribute. It only works in the limited circumstances I mentioned.

**Deputy M. Tadier:**

Thank you, Sir. I have a disability of my own, which is understanding how Standing Orders work but it does not stop me from trying to invoke them. I think we have probably been watching too much of the U.K. where people do give way all the time, but I do appreciate where the Deputy is coming from. I think that highlights the issue that it is different for different people. Someone might consider themselves to have a problem and, of course, there are alcoholics out there who do not drink at all and that is precisely because they are alcoholics. What is it they say? One drink is too many and 10 drinks is not enough is the adage. When it comes to nicotine, that is an interesting one. If automatically we are saying that people with an addiction also have a disability, that means that somebody who smokes can say to their employer: "I am addicted to nicotine. I need to have 20 cigarettes a day, 10 of which I need to have on your time." It is important that we make sure that the smoker has enough time to go outside while other people are not smoking in order to have a cigarette and that will be in addition to the time that they have for their fixed breaks. We also know that there is another part in the Discrimination Law that allows for positive discrimination, so it is not not allowed, if you like, if you excuse the double negative, to say that you can have positive discrimination for someone with a disability vis-à-vis someone who does not have the disability. I think that is not what the removal of part 7 means. It does not mean that an addiction is automatically a disability. It just means that in circumstances where somebody has a disability and it is linked intrinsically to the addiction then it is not going to be exempt, and I think that is welcome.

**The Deputy Bailiff:**

Just for the assistance of the Assembly, Standing Order 101 provides, under the heading "Interruptions": "A Member of the States may only interrupt the Member speaking in order to raise a point of order, in order to draw the presiding officer's attention to the fact the States are inquorate or if the Member speaking agrees to give way in order to explain any material part of his or her own speech or in order to ask the Member speaking to elucidate a matter raised in his or her speech." It is the ability to interrupt and ask the Member to give way is limited to those circumstances under Standing Order 101. I am not sure that has made it very much clearer. **[Laughter]** Does any other Member wish to speak on Regulation 5?

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

Just briefly, I would like to ask the Minister with regard to alcohol, if somebody was to reveal their medical history and it was to show that they had an addiction to alcohol but are now, as it were, no longer and they were applying for a job, such as a landlord of a pub, restaurant or involved in the liquor trade, where there would be a risk to that individual by taking on that job, would that be described as discrimination or how would that pan out, so to speak? I would like that clarification.

### **5.3.4 Deputy S.M. Brée:**

I think this amendment raises a very important question, which I feel needs further review and investigation. Is addiction a disability or is addiction an illness? Having an illness does not necessarily make you disabled. A lot of people will say that an alcoholic, a smoker, of which I am a smoker, a dying breed, you will be pleased to hear ... the question is that that addiction comes out of an action that you elected to do yourself to start with. There is an argument that, therefore, there are people who have an addictive personality so that no matter whether you drink, smoke, take drugs, you will become addicted to something because that is in your nature. I know there are various studies that have been done looking at this question of whether or not you are born with an addictive personality, to use that term, but I think it does raise a very interesting question of is addiction an illness, which we all accept the impact it has not only on the individual but their immediate family and friends. It can have devastating consequences and impact. I think we need to do more work in this area because it will place possibly employers in a difficult position. They happen to be aware of somebody who comes to them for employment, for interview. They, through making various investigations elsewhere, speaking to people, know that this person is addicted, or they believe they are addicted, they have evidence to point towards an addiction to alcohol, nicotine, illegal drugs. If that potential employer does not offer that person the job, does it open up a claim against: "This is an act of discrimination because I know that you knew I was an alcoholic" or "am an alcoholic." I do think there is such a phrase as "was an alcoholic"; you either are or you are not and continue to be for the rest of your life. It just raises a question in my mind: are we creating a potential problem here that employers would not look to seek to employ somebody with this sort of current addiction? Are we creating a problem by labelling addiction as a disability? The other question I would like to ask the Minister is by deleting clause 7 about addiction to alcohol, nicotine or any other substance, and allowing it to sit within the Discrimination Law, is this not going to create a problem with Her Majesty's Prison over here who have announced that they are intending to ban smoking completely? It does create possibly a problem that if you are addicted to nicotine, this will allow you to bring, effectively, a case against Her Majesty's Prison Service in Jersey going: "No, you have to provide facilities for me to smoke because it is a disability. You cannot discriminate against me." It is these sorts of questions that I think need further investigation before we quite happily go: "We accept addiction is a disability and, therefore, it falls within this discrimination law." I would welcome comment from the Minister as to how she feels that this law will deal with that sort of situation as amended by the Minister's amendment.

### **The Deputy Bailiff:**

Does any other Member wish to speak on Regulation 5? I call on the Minister to reply.

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

I will attempt to get people's titles correct this time. I thank the Deputy for St. Ouen for his question and his panel for their co-operation over this amendment. We have already answered the panel's questions so I do not think there is much further to say on that. I appreciate Deputy Tadier's remarks. The Connétable of St. John and Deputy Brée I think both are asking the same sort of question as to the removal of the exception, which is quite complicated to understand, but that is what we have agreed to do in the amendment so that further work can be undertaken to ascertain exactly what the

questions both ask as to whether an addiction to alcohol, drugs or tobacco is a disability under this Discrimination Law. That is what we have agreed with the Scrutiny Panel and I will urge the next Minister for Social Security to further this identification of where this should lie, together with the next Scrutiny Panel, so that we can come up as to whether our original suggestion that it should be exempted, the addiction to drugs, alcohol or tobacco, should be accepted as a disability or whether it should be included for the reasons that many Members have mentioned.

[14:45]

I think that is as much as I can say at this point other than the promise, as far as I can make it as the current Minister and the current chairman, that we will come back by the end of 2018 with some more research into this. What I did not want to do was have that delay the Regulations upon which so many people depend. I propose the movement of Regulation 5.

**The Deputy Bailiff:**

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

<b>POUR: 36</b>	<b>CONTRE: 0</b>	<b>ABSTAIN: 0</b>
Senator P.F. Routier		
Senator L.J. Farnham		
Senator A.K.F. Green		
Senator S.C. Ferguson		
Connétable of St. Helier		
Connétable of St. Peter		
Connétable of St. Lawrence		
Connétable of St. Mary		
Connétable of St. Brelade		
Connétable of St. Martin		
Connétable of St. Saviour		
Connétable of Grouville		
Connétable of St. John		
Connétable of Trinity		
Deputy J.A. Martin (H)		
Deputy of Grouville		
Deputy J.A. Hilton (H)		
Deputy of Trinity		
Deputy K.C. Lewis (S)		
Deputy M. Tadier (B)		
Deputy of St. John		
Deputy M.R. Higgins (H)		
Deputy J.M. Maçon (S)		
Deputy S.J. Pinel (C)		
Deputy R.G. Bryans (H)		
Deputy of St. Peter		
Deputy A.D. Lewis (H)		
Deputy of St. Ouen		
Deputy R. Labey (H)		
Deputy S.M. Wickenden (H)		
Deputy S.M. Bree (C)		
Deputy M.J. Norton (B)		
Deputy T.A. McDonald (S)		
Deputy of St. Mary		
Deputy G.J. Truscott (B)		

**The Deputy Bailiff:**

Very well. How do you wish to deal with Regulations 6 to 8?

**Deputy S.J. Pinel:**

May I just briefly describe each Regulation and then propose *en bloc*, Sir, please?

**The Deputy Bailiff:**

Certainly, yes.

**5.4 Deputy S.J. Pinel:**

Regulation 6 removes an existing exception relating to domestic work that currently applies to sex, race and age. This exception was originally included so that the law does not interfere in private household arrangements. It was based on a U.K. exception that has since been removed and so we took the opportunity to consult on this as part of the consultation on disability. Cases in the U.K. have shown that domestic servants can be particularly vulnerable to abuse and exploitation and we agreed that it is no longer appropriate to exclude domestic work from the scope of the law. In relation to disability, the tribunal is highly likely to accept that in most cases it is not reasonable to expect a person to make physical alterations to their own home in order to accommodate a disabled domestic worker. Regulation 7 adds the new exceptions relating to disability to Schedule 2 in paragraphs numbered 42 to 47. We already have some general exceptions in the law itself, including for genuine occupational requirements and for benefits provided by charities. These apply to all of the protected characteristics, including disability. The exceptions that we propose following consultation are focused and specific and are in line with the existing Discrimination Law and the approach of other jurisdictions. Paragraph 42 provides that decisions taken by Ministers or the States that are solely about promoting opportunities and providing access to services such as training and job-related services, should not inadvertently be caught as acts of discrimination. We want to encourage such positive measures. Similar exceptions are already provided for race and age. Paragraph 43 provides a narrow exception relating to the duty to make adjustments. Passengers using public service vehicles would still be protected against disability discrimination such as a refusal to transport a guide dog but a passenger will not be able to insist that an accessible car or bus must be provided by that particular service provider. In any case, buses are already required to be 100 per cent wheelchair accessible as a requirement of the current and future bus contracts and by January 2019 all taxis and cabs will be required to be accessible. Paragraph 44 provides another exception, a narrow exception, relating to the duty to make reasonable adjustments. The technical guidelines issued under our bylaws already incorporate U.K. best practice on the accessibility of buildings to meet the needs of disabled people and so this exception cannot be used to avoid providing accessible premises. However, there will be some cases where a particular adjustment is not permitted under the bylaws, such as where a ramp would encroach dangerously on to a public highway. Paragraph 45 provides that the selection of pupils according to ability is not an act of discrimination in relation to schools admissions only where the school has selection criteria based on aptitude or ability. This does not allow schools to discriminate on the grounds of disability generally and there will be a duty on schools to make reasonable adjustments in the way that any selection criteria are applied, for example an accessible entrance exam that gives extra time for children with dyslexia or allows the use of electronic readers for children with visual impairments. Paragraph 46 would allow providers of insurance and financial services to continue to use disability as a factor in assessing risk, calculating premiums and charging for their products but only if it is reasonable to do so based on reliably-sourced statistics and actuarial data. Similar exceptions already exist in relation to race, sex and age. Paragraph 47 provides that disability discrimination is permitted in sport and competitions only to

the extent that it is consistent with the rules of international organisations such as the Paralympic rules. This means that competitors can be classified according to how much their impairment affects their performance in a particular sport. The law already provides similar exceptions in relation to age, sex and nationality. Commencement, Regulation 8, provides that protection against disability discrimination will come into force on 1st September 2018, other than the duty to make reasonable adjustments to premises which will come into force 2 years later on 1st September 2020. I propose Regulations 6 to 8.

**The Deputy Bailiff:**

Are Regulations 6 to 8 seconded? [**Seconded**] Does any Member wish to speak on Regulations 6 to 8?

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

I would just like to ask the Minister with regard to I believe it is the disability admission to schools in terms of ensuring if this was to come into place and having a reasonable policy about how you can challenge such an admission policy with a school and how you determine the types of dyslexia or the areas around diagnosis for schools to ensure that it is fairly applied and that there is a reasonableness to the decision-making in terms of admissions policy.

**Deputy K.C. Lewis:**

Just briefly, I spoke earlier on and I believe I neglected to state that I was a committee member of the Jersey Blind Society, EYECAN. It is a purely honorary post but I thought I should mention it.

**5.4.2 Deputy M. Tadier:**

It does follow on from a point that Deputy Vallois raised, the Deputy of St. John, even, raised. She used to be Deputy Vallois, I remember the day, but now she is the Deputy of St. John, no doubt on to bigger and better things. She raised the issue about, say, if you have got a particular diagnosis. You have got whatever it could be, Asperger's, A.D.H.D. (attention deficit hyperactivity disorder), all sorts of things that do not necessarily relate to intelligence. In fact, they could be that you are a very high functioning person on the autistic spectrum. That is all fine, having these provisions here, but the anecdotal evidence that I still hear today - and I know it was definitely historical - is that you have these children who have got these issues and the parents know about it long before the schools know about it or long before the healthcare professionals have been able to give a diagnosis. They are often banging their heads against the proverbial brick wall trying to get a diagnosis between the various stools of education, health and so on, and then by the time ... they may already be into year 7, 8, 9, 10 before someone finally recognises the fact that they have a diagnosis and it may well be too late for them in those circumstances. I am saying it is great having the protection in the law but unless the corresponding changes are expedited in other departments and that we do see ... I guess it goes back to breakdowns of silos in a sense, unless they are talking to each other, because we have these catch-22s where a school might say: "Sorry, we cannot acknowledge and give you any provision", under this law or whatever ability they have to do that, if they do not first have the diagnosis, so we do need joined-up working here for this kind of policy to be effective in legislation.

**5.4.3 Deputy R. Labey:**

There is, of course, the issue of parents who recognise or suspect that their children might be on the autism spectrum and do everything possible not to have an official diagnosis because if they did so they would have to take their child out of the school that that child is attending. There are children who have gone through their entire education on the spectrum undetected because if they were to have been detected they would have had to leave the school. That is, perhaps, what we should be addressing, that the school should make provision for those children who are on the spectrum and not simply be able to cast them out.

#### 5.4.4 Deputy A.E. Pryke of Trinity:

I am a bit lost about what Deputy Labey has just said. If he is saying that is right, I will look into it, but every child is afforded an education whatever condition or whatever they have. The staff and the heads deal with that and provide the best education specifically for that child. I just wanted to make that exceptionally clear.

#### The Deputy Bailiff:

Does any other Member wish to speak on Regulations 6 to 8? I call on the Minister to respond.

#### 5.4.5 Deputy S.J. Pinel:

I thank Deputy Tadier and Deputy Labey for their comments and I could not agree more that what we need is joined-up working on all of this. Any law with the capacity of this needs to have joined-up working, so thank you. In answer to the Deputy of St. John's question, the exception that she mentions to schools in paragraph 45 provides that the selection of pupils according to ability will not be an act of discrimination in relation to school admissions, as I think has just been mentioned by Deputy Pryke. This is a limited exception that only applies to the application of selection criteria that are aimed at selecting pupils of high aptitude or ability and there will be a duty for schools to make reasonable adjustments in the way in which those criteria are applied. I move Regulations 6 to 8.

#### The Deputy Bailiff:

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

<b>POUR: 38</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator L.J. Farnham				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				

Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

**The Deputy Bailiff:**

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

**5.5 Deputy S.J. Pinel:**

Yes, please, sir.

**The Deputy Bailiff:**

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

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

I would just like to say it is an honour to be in this Assembly to see these Regulations go through. I think it is very important that we look at it this way. This should never be looked at as the able-bodied helping the disabled, handing them down something. This is about equality, this is about a society **[Approbation]** where we can all move through as comfortably as we can do on this Island. It is sad, as the Constable of St. John said, that we have to bring these kind of regulations in but the fact of the matter is that we do, just to live in a society where we judge the person not the disability and that is what we see is vital, in a society where we see somebody in a wheelchair in the street and look them in the eye and smile. Hopefully these Regulations will lead to a world like that. I would just like to say the Assembly has done a wonderful thing today.

**5.5.2 Senator P.F. Routier:**

Just picking up on the comments made by Deputy Martin earlier, she is quite right. A number of Members have been pushing for improvements for people with disabilities in our Island and I would like to thank everybody that has been part of that. It has been a real team effort and I really welcome that, not only in this Assembly but also the community with all the various voluntary organisations who have been working towards this. I should have mentioned earlier that I am a trustee of Les Amis, which obviously supports people with learning disabilities. So it is a great day and congratulations to the Minister for getting us here today. **[Approbation]**

**The Deputy Bailiff:**

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

[15:00]

**5.5.3 Deputy S.J. Pinel:**

I thank all Members who have been so positive about this and also all the people who have taken part in the consultation process with individuals, where it cannot have been easy necessarily, and stakeholders, which has been informative and extensive. There are too many to mention here but they will know who they are. As several Members have said, this is a great day for disability in



Jersey and I am very proud to have brought this to the States. **[Approbation]** Finally, thank you to the team at Social Security, especially the policy principal Kate Morel, who have worked so hard to bring this to fruition. **[Approbation]** I propose the proposition in the Third Reading. Can I ask for the appel, please?

**The Deputy Bailiff:**

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

<b>POUR: 38</b>	<b>CONTRE: 0</b>	<b>ABSTAIN: 0</b>
Senator P.F. Routier		
Senator L.J. Farnham		
Senator A.K.F. Green		
Senator S.C. Ferguson		
Connétable of St. Helier		
Connétable of St. Clement		
Connétable of St. Peter		
Connétable of St. Lawrence		
Connétable of St. Mary		
Connétable of St. Brelade		
Connétable of St. Martin		
Connétable of St. Saviour		
Connétable of Grouville		
Connétable of St. John		
Connétable of Trinity		
Deputy J.A. Martin (H)		
Deputy of Grouville		
Deputy J.A. Hilton (H)		
Deputy of Trinity		
Deputy K.C. Lewis (S)		
Deputy M. Tadier (B)		
Deputy E.J. Noel (L)		
Deputy of St. John		
Deputy M.R. Higgins (H)		
Deputy J.M. Maçon (S)		
Deputy S.J. Pinel (C)		
Deputy R.G. Bryans (H)		
Deputy of St. Peter		
Deputy A.D. Lewis (H)		
Deputy of St. Ouen		
Deputy R. Labey (H)		
Deputy S.M. Wickenden (H)		
Deputy S.M. Bree (C)		
Deputy M.J. Norton (B)		
Deputy T.A. McDonald (S)		
Deputy of St. Mary		
Deputy G.J. Truscott (B)		
Deputy P.D. McLinton (S)		

**6. Draft Stamp Duties and Fees (Amendment) (Jersey) Law 201- (P.21/2018)**

**The Deputy Bailiff:**

The next item is the Draft Stamp Duties and Fees (Amendment) (Jersey) Law - P.21/2018 - lodged by the Minister for Treasury and Resources, and I ask the Greffier to read the citation.

**The Greffier of the States:**

Draft Stamp Duties and Fees (Amendment) (Jersey) Law 201-. A Law to amend further the Stamp Duties and Fees (Jersey) Law 1998. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

**6.1 Connétable J.M. Refault of St. Peter (Assistant Minister for Treasury and Resources - rapporteur):**

This is a simple law change that we are bringing forward to Members today. If agreed by Members, it will amend the Stamp Duties and Fees (Jersey) Law 1998 so that stamp duty and other fees are no longer payable only by means of physical, what I would call 'lick and stick', stamp. The physical stamps are currently sold by the States Treasury for affixing to chargeable documents prior to registering those documents in the Public Registry or with the Royal Court. The requirement to pay stamp duties through the purchase of physical stamps is outdated. We live and work in an increasingly digital world and we need to change our laws to enable us to modernise our government services. The draft law we are considering today will be the enabler for that such change. This law will remove the requirement for stamp duty to be paid by means of a physical stamp affixed to the chargeable document. It will enable the Treasurer of the States to determine the manner in which stamp duties can be paid and, in this way, future proof the law for any new emerging paying options. By agreeing these changes, the Treasurer will in future be able to accept payments via bank transfers and other payment methods. The draft law will be an enabler for digital and online payment of stamp duties. In anticipation of these laws being accepted today, we have been listening to our customers, understanding their needs, and making plans to redesign the stamp duty payment process around our customers. The Treasury, Judicial Greffe and I.S.D. (Information Services Department) have been working collaboratively to develop a solution that meets the needs of Jersey's legal profession. Representatives from a number of Jersey law firms have been helping us review the webforms and feedback on proposed new payment processes. We plan to use an e-form for Jersey law firms to supply us with details of stamp duty payable and enable payment directly into a States of Jersey bank account through BACS (Bank Automated Clearing System), making faster payments for bank transfers. These law changes will remove the need for law firms to visit the Treasury to purchase physical stamps on a Friday morning before coming through property transactions. In cases where stamps have already been purchased in advance, they will continue to be accepted as payment for stamp duty and fees for 2 years following the law coming into force. As I said earlier, the Treasurer can accept any form of payment that he deems to be appropriate, so he could in fact extend that period of 2 years if it were considered to be appropriate. The law change does not increase stamp duties nor decrease stamp duties. It makes no comment at all about the amount of stamp duties as are contained within the proposition. It is simply a matter of changing the legal requirement to have a physical stamp appended to the document. Only by modernising the system by which we administrate stamp duty payments can we bring the payment of stamp duties and fees in line with the way in which our customers make payments and control their finances today. If the draft law is agreed by Members and the Privy Council in the United Kingdom, as soon as the law comes into force the physical stamp will stop being sold and the digital solution will be rolled out. It is important that these changes are progressed. The current arrangements are outdated and in need of modernisation. It is necessary to bring the payment of stamp duties into the modern digital era and to remove the requirement to purchase and affix physical stamps to documents. I make the proposition.

**The Deputy Bailiff:**

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

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

Oh what a brave new world we are moving into. This truly is the end of an era. For however long stamp duty has existed, lawyers and lawyer's clerks have wandered down to the Treasury and obtained little gummed pieces of paper and carried them back to their offices, first in Hill Street and then, as time as gone on, the Esplanade and Pier Road. There is that terrible fear - and I have felt it and so has the Constable of St. Mary - that as junior clerks we were sent down with a cheque from our office for several thousands of pounds and we were handed in return all these little pieces of paper. You would have some £50 stamps and some £25 stamps. You would even go down to 5 pence or they used to be old pennies and then we had a transfer into new pennies. We had to carry all these back and we were terrified we would lose the thousands of pounds that we were carrying. It happened to one poor unfortunate conveyancing clerk who left Cyril Le Marquand House with his stamps and when he arrived back in the office he could not find them and they were blowing in the wind somewhere. That has anecdotally passed into the annals of Hill Street history. I hope the Treasury accepted his story. But this is a fine tradition that has to pass because, yes, we have to adopt these sensible and modern-day methods of paying duty, but it does also mean that poor lawyers are deprived of a skill. **[Laughter]** Poor lawyers indeed, and I did enjoy trying my very best to exercise the skill. It was said by some that the only skill lawyers had is to arrange their stamps in a pretty pattern on the backing sheets of their contracts. We all used to compete with each other as to whether we could make a star or triangle or an innovative shape, because this was really creative and sometimes lawyers just do not have an opportunity to be creative. **[Laughter]** All that is passing in this brave new world. Well, so be it. **[Approbation]**

### **6.1.2 Deputy S.M. Wickenden of St. Helier:**

I think that is going to be the quote of the week, those poor lawyers begging on the streets. No, sorry, that was out of order. I am sorry. When I was reading through this report, of course absolutely fantastic. As the Minister for Digital, I think it is about time to go forward. The next part of is clearly, obviously, tax forms online as part of the Treasury's plan in 2020 and what we are doing with e-Gov. There will be an exciting new thing on e-Gov that will be released tomorrow, so hold your breath, it is going to be good. There was one part on page 4 of this report that I was looking at, which is interesting, which was how this change came to be in the recommendations and it says: "The proposal to amend the law was first suggested in a report dated 18th April 2002, written by Jurat P.G. Blampied O.B.E. and entitled *The Collection of Fees in the Judicial Greffe and the Viscount's Department, and the associated operations* (the *Blampied Report*)." I looked for the *Blampied Report* and I could not find it and I was wondering whether the Assistant Minister could send a link or whether it was available anyway, because I would like it. "One of the recommendations contained in the *Blampied Report* to be implemented by the Judicial Greffe and the Viscount's Department, namely the revision of fees to more fully reflect the cost of providing the service involved ..." This is one of the things where I think we need to look at the cost of housing on this Island, which is stamp duty and fees and the fact that there are so many places, like lawyers, ourselves in stamp duty, estate agents, which is all about a percentage-based cost of a property. I do not think that we could even possibly say that reflects the cost of providing the service. What I would ask is if there is this *Blampied Report* - I could not find it online, but maybe it is me, it is out there somewhere and I just was not checking correctly - could the Assistant Minister please send a link from his department to the report so I can look through it, please?

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

I do not think I can quite top the response from the Deputy of St. Ouen. What I would like to add is that the Deputy of St. Ouen and I and the Deputy of St. Mary and the Constable of St. Martin have been working, as you know, on compiling a report into property transactions in general and you have all had a copy of it. I do hope you had a chance to read it, because in there is contained a number of

other modernisations of property law and I do hope that this is the beginning of a bit of a revolution in the way we convey property transactions in Jersey. So do have a read there. One that I particularly am interested in, as I am sure Deputy Wickenden is too, is digitising the Land Registry because we have that technology available to us now and I do hope that we can get on and do that. Senator Ozouf, when he was on the Legislation Advisory Panel, I think in 1999 or 2001, a long time ago anyway, is minuted as saying: “We need to digitise our Land Registry.” At the time it was impossible because it was too expensive. Now the technology is there. We have proven here that it can be done with stamps. I do hope we can get somewhere with other aspects of conveyancing law. Like I say, that is all contained in the report from the special panel that was set up and I hope that the Chief Minister’s Department takes on board some of the concepts and ideas there and we use digital technology much more greatly in this area of transactions. It is one of the biggest transactions that people of Jersey individually will ever make so the easier we can make it and the cheaper we can make so that it makes housing more affordable, even in a small way, has got to be a good thing for all Islanders. So I welcome this and I hopefully will see in my lifetime a lot more change. This one has been here for a long time and could have changed much sooner, but I welcome it and I would propose it to Members to, I hope, all vote for it.

#### **6.1.4 Deputy D. Johnson of St. Mary:**

To a large extent the last speaker has stolen my lines. I simply wish to congratulate the Assistant Minister for Treasury and Resources for bringing this aspect into modern parlance and express the hope that other aspects mentioned in the sub-panel’s report on residential conveyancing might similarly be investigated and adopted in the not too distant future.

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

I have been mentioned a couple of times in people’s remarks and might assist the Assistant Minister. I was around and we should commend... it is worth remembering a great Jerseyman and the contribution that Jurat Blampied has made to numerous reports in improving areas of Island life, and particularly he not only wrote this report but he wrote numerous reports in relation to the restructuring of stamp duty and fees and most of that ... I do not think the report ever was in the public domain back in 2002 but I can say it was ... I was vice-president of Finance and Economics at the time and I was just looking through propositions. There were numerous propositions that flowed from Jurat Blampied’s recommendations and they were excellently administered by the then Viscount, Mr. Mike Wilkins, and the Judicial Greffe and there is a whole revolution in terms of ... there were 2 types of stamps. It was very amusing to hear the Deputy of St. Ouen’s speech about the games that lawyers played or the competitions that they had. There are, of course, 2 types of stamp duty, as he knows. There are the stamps that are for the actual processing of the court documents, which you know, Sir, and then there is the value stamp duty that is paid for the transactions, and there are 2 types of them. The Treasury has made, over the years, all of those improvements in order to reflect on the basis of Jurat Blampied’s report. I can confirm to the Assembly when I was in the office and the Assistant Minister was Deputy Noel, we made a number of revisions and I think that was the last set of revisions we made. So, of course, all that has been done. Deputy Lewis makes a very important point about the form that is now needed. Yes, it has been long a dream to have a Land Registry, and we had a very interesting exchange and answers from the Deputy of St. Mary in relation to his property transaction report and this is one thing. Perhaps the Assistant Minister for Treasury and Resources could almost say something in his summing-up to say, yes, in his last days as Assistant Minister for Treasury and Resources he is going to write a cheque, with his now outgoing Minister who will be there when everybody is doing the election, to J.L.I.B. (Jersey Legal Information Board). Should I declare an interest, Sir, as a member of J.L.I.B.?

[15:15]

**The Deputy Bailiff:**

I am not sure. I am sure it is an interest that you do not need to declare.

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

You are a member of J.L.I.B., Sir, as well. You chair it, Sir, very well. Jersey Legal Information Board does good work, has been doing a lot of work and is probably the organisation that might do the work to reform the registry. It is all about one word - and we greatly appreciate the remarks of the Deputy of St. Ouen - productivity. That productivity and that time that can be spent with those lawyers trotting into Cyril Le Marquand House and printing and licking their stamps and putting them ... just think about all those hours that could be spent on focusing, on inventing new Fintech projects or doing productive work to make our legal services industry and our property transaction industry more importantly. It is about productivity, it is about efficiency. This one has been rather a long time coming but it is here and we should celebrate it and we should say thank you to Jurat Blampied who recommended this too long ago. I think this is the last bit of his recommendations that is being approved, but we salute Jurat Blampied because he did do an enormous amount to assist the Viscount and Judicial Greffe and the Treasurers of the years for that work. That is all I would say: productivity rules.

**6.1.6 The Deputy of Grouville:**

I realise that this proposition has to do with the physical stamp but I would really like Treasury to apply their minds to the rating of the properties, the value of the properties. Along the lines of other speakers, I think it is not right in this Island whereby we have property prices, we have young people, families, struggling to get on the ...

**The Deputy Bailiff:**

Deputy, we are speaking to the principles as to whether the principles should be adopted of this piece of legislation, not another piece of legislation that is not before the Assembly at the moment.

**The Deputy of St. Grouville:**

Yes, okay, Sir, but I just wanted to make the point that while we are looking at stamp duty, this is to do with stamp duty and I was going to request that Treasury look at the values of property and how stamp duty is applied.

**The Deputy Bailiff:**

That is your request made, Deputy.

**The Deputy of Grouville:**

Well, I wanted to just enhance just a bit because I do not think it has been looked at since 2012 and I think it was Senator Ozouf who brought in the nil ...

**The Deputy Bailiff:**

The nature of the speech on the principles must be on whether the principles of this legislation are adopted. If you wish to argue that they should be or that they should not be, then that is absolutely fine within the parameters, or make observations that it is not before time, but I am not sure you can go any broader than that, I am sorry.

**The Deputy of Grouville:**

No, okay. I just wish the Treasury would have applied their efforts to the value rather than physical stamps.

**6.1.7 The Connétable of St. Mary:**

Just to add my voice to the speech that the Deputy of St. Ouen gave recently. I started out in conveyancing when I left school and old habits die hard. I do mourn the passing of tradition but speaking as somebody who has got some court stamps, because I have been guarding them because I need them for something and because the other day when I was clearing out I tore the envelope in half and only when they fell on the floor did I think: “Oh, my court stamps.” It is about time and it is one of those traditions, sad to see it go but it really is for the best. To encourage the Assistant Minister, maybe we could have an app.

**The Deputy Bailiff:**

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

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

I thank everyone who has responded and certainly the Deputy of St. Ouen. I share some history with him because at the tender age of 16 I was a conveyancing clerk for a law firm in London’s Tottenham Court Road. I did not have a cheque; I had a banker’s draft. I had to go to the bank with a cheque to get a banker’s draft to take it to down to the law court down the Strand to get my stamps down there. So a very similar story but there we are, time has gone past and perhaps fond memories and just leave them at that. Thank you very much for your very entertaining comments. Deputy Wickenden, I cannot help you exactly as to where the *Blampied Report* is but I will ask the officers to have a look for you so you can have a look at it. Deputy Lewis spoke about can we have some property changes not directly related to this but, yes, I agree with him. Unfortunately he is not here at the moment. There is time to look at things and I made a note here when Deputy Lewis was talking, and the Deputy of Grouville had a similar sort of comment and she has made them in the past, that perhaps we need to look again at the amount of stamp duty we are charging, particularly on first-time buyer and low-value homes. That is unfortunately a thing I would like to take on but I will not be here to do it, so hopefully somebody else in this Assembly will take on that challenge in the next Assembly. I thank the Deputy of St. Mary for his congratulations on behalf of the officers doing all the work in the background to this and also your comments about the sub-panel’s report. Thank you for those as well. Senator Ozouf asked me to write a cheque to J.L.I.B. I do not know if they will accept a cheque nowadays but I will certainly ask my Minister whether he can help out with that one when he is back in the Chamber or back in the office. But he is absolutely right, this will stop, as Deputy of St. Ouen was saying, little conveyancers rushing down to the Royal Court on a Friday morning to get their stamps and thus having to provide a cashier in the Treasury office to sell the stamps, so it is going to improve productivity both for the legal firms and equally for the Treasury staff as well. Deputy of Grouville, I acknowledge your points you made and I share them with you as well. Constable of St. Mary, thank you very much for showing me some court stamps. I have never seen the court stamp before but she has them there. I am sure she will show them to any Member who would like to see them, because they are going out. You might wish to keep them, they may become valuable in time. I ask for the appel.

**The Deputy Bailiff:**

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

<b>POUR: 35</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator L.J. Farnham				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				

Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of Trinity				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Peter				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

**The Deputy Bailiff:**

Deputy Le Fondré is not in the Assembly. Does the Corporate Services Scrutiny Panel, Connétable of St. John, wish to call this in? I beg your pardon.

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

No, Sir, we will not.

**The Deputy Bailiff:**

I do apologise. How do you wish to propose the Articles in Second Reading?

**The Connétable of St. Peter:**

As read, please, Sir, *en bloc*.

**The Deputy Bailiff:**

Very well. You propose them *en bloc* but presumably you will take questions as and when, if any come up? Are the Articles seconded? **[Seconded]** Does any Member wish to speak on the Articles in Second Reading? All those in favour of adopting the Articles in Second Reading kindly show. Those against? The Articles are adopted in Second Reading. Do you propose them in Third Reading now?

**The Connétable of St. Peter:**

Yes, Sir.

**The Deputy Bailiff:**

Are they seconded in Third Reading? [**Seconded**] Does any Member wish to speak on the Articles in Third Reading? All those in favour of adopting the Articles kindly show. Those against? The Articles are adopted and the law is passed.

**7. Draft Export Control (Jersey) Law 2009 (Appointed Day) Act 201- (P.24/2018)**

**The Deputy Bailiff:**

We come next to the Draft Export Control (Jersey) Law 2009 (Appointed Day) Act, lodged by the Minister for Home Affairs, and I ask the Greffier to read the proposition.

**The Greffier of the States:**

Draft Export Control (Jersey) Law 2009 (Appointed Day) Act 201-. The States, in pursuance of Article 16 of the Export Control (Jersey) Law 2009, have made the following Act.

**The Deputy of St. Peter (The Minister for Home Affairs):**

Sir, the Assistant Minister will read the remit.

**7.1 The Connétable of St. Lawrence (Assistant Minister for Home Affairs - rapporteur):**

This Appointed Day Act will bring into force the Export Control (Jersey) Law 2009, a law that was approved by this Assembly in April 2008 and, having been granted Royal Assent, was registered by the Royal Court in May 2009. The law as approved makes provision for controls on the export of tangible goods in place of the existing controls under the Customs and Excise (Jersey) Law 1999 and also introduces new powers in Jersey to control trade in intangibles such as technology and technical assistance. It will allow for greater controls on trade in armaments and dual-use items, which can be defined as goods, software and technology that can be used for both civilian and military purposes. This law also allows for the control of the export of items of cultural interest. The law makes provision for the Minister for Home Affairs to make an order to control the trade in and acquisition of goods and technology specified in the schedule to the law if the export or trade of the goods or technology would have any of the consequences mentioned in Article 3 of the schedule, which include an adverse effect on British national security, breaches of international law and human rights and the carrying out of terrorism or serious crime anywhere in the world. As already approved in the law, the goods and technology that would be subject to these controls are military and dual-use goods and the technology to produce and develop them. The Assembly would, by regulations, be able to add or remove categories of goods or intangibles that are included in the schedule to the law. As the report states, the order has now been drafted and can be made by the Minister once this Appointed Day Act has been approved so that the 2 come into force concurrently. The entry into force of the law and the order would ensure that Jersey's export control provisions are equivalent to those as found elsewhere in the British Islands, a position that reflects the long-term policy objectives of the Government of Jersey. No doubt Members will be wondering why it has taken nearly 10 years to bring this forward and that is, of course, a perfectly reasonable question. Put simply, it was not sensible to bring the law into force until the Export Control Order had been drafted and was ready to be made by the Minister. Although the law could have been brought into force earlier, it would have been of very little effect without the order. The drafting of the order itself has not a straightforward process, given the objective of equivalence with the U.K. legislation, which has been amended regularly since the law was agreed in 2008. It is also true to say that, as I understand it, other legislative priorities have taken precedence. However, the order is now ready and can be made as soon as this Appointed Day Act has been approved to come into force at the same time as the law.



One further reason for bringing renewed focus to finalising the order and bringing the law into force is the consideration being given at present by the Government to potentially extending the U.K.'s W.T.O. (World Trade Organization) membership to Jersey as part of our Brexit contingency planning. If it is seen to be in Jersey's interest to extend the U.K.'s W.T.O. membership to the Island, alignment in control on exports will be an important factor in allowing this to take place. In conclusion, the phrase better late than never is what sprang to my mind regarding this matter. However, the entry into force of the Export Control Law is a necessary and important legislative step for Jersey and I ask Members to support this Appointed Day Act.

**The Deputy Bailiff:**

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

<b>POUR: 29</b>	<b>CONTRE: 0</b>	<b>ABSTAIN: 0</b>
Senator P.F. Routier		
Senator P.F.C. Ozouf		
Senator L.J. Farnham		
Senator A.K.F. Green		
Senator S.C. Ferguson		
Connétable of St. Helier		
Connétable of St. Clement		
Connétable of St. Peter		
Connétable of St. Lawrence		
Connétable of St. Martin		
Connétable of St. Saviour		
Connétable of Grouville		
Connétable of St. John		
Deputy J.A. Martin (H)		
Deputy K.C. Lewis (S)		
Deputy E.J. Noel (L)		
Deputy of St. John		
Deputy J.M. Maçon (S)		
Deputy S.J. Pinel (C)		
Deputy R.G. Bryans (H)		
Deputy of St. Peter		
Deputy of St. Ouen		
Deputy R. Labey (H)		
Deputy S.M. Bree (C)		
Deputy M.J. Norton (B)		
Deputy T.A. McDonald (S)		
Deputy of St. Mary		
Deputy G.J. Truscott (B)		
Deputy P.D. McLinton (S)		

**8. Draft Community Provisions (Exports of Dual-Use Items) (Revocation) (Jersey) Regulations 201- (P.25/2018)**

**The Deputy Bailiff:**

We now come to the Draft Community Provisions (Exports of Dual-Use Items) (Revocation) (Jersey) Regulations - P.25/2018 - lodged by the Minister for Home Affairs, and I ask the Greffier to read the citation.

**The Greffier of the States:**

Draft Community Provisions (Exports of Dual-Use Items) (Revocation) (Jersey) Regulations 201-. The States, in pursuance of Articles 2 and 6 of the European Union Legislation (Implementation) (Jersey) Law 2014, have made the following Regulations.

[15:30]

**8.1 The Connétable of St. Lawrence (Assistant Minister for Home Affairs - rapporteur):**

I am grateful to Members for agreeing to bring the Export Control (Jersey) Law into effect. These Regulations are related to that law and the Appointed Day Act we have just agreed. The Regulations revoke the Community Provisions (Control of Exports of Dual-Use Items and Technology) (Application) (Jersey) Regulations 2002 and the Community Provisions Dual-Use Items (Export Control) (Jersey) Regulations 2002. The Export Control Order, which will now be made by the Minister for Home Affairs, provides sufficient powers to cover the provisions that are provided for in the 2002 Regulations. Effectively, the Regulations are superseded now that the Export Control (Jersey) Law can be brought into force and are no longer required. I propose the principles.

**The Deputy Bailiff:**

Are the principles seconded? **[Seconded]** Does anyone wish to speak on the principles? All those in favour of adopting the principles kindly show. Those against? The principles are adopted. This is a matter that falls within the Education and Home Affairs Scrutiny Panel. Deputy Maçon, do you wish to ...

**Deputy J.M. Maçon (Chairman, Education and Home Affairs Scrutiny Panel):**

No, thank you, Sir.

**The Deputy Bailiff:**

How do you want to propose the Regulations, Assistant Minister?

**The Connétable of St. Lawrence:**

*En bloc*, please, Sir.

**The Deputy Bailiff:**

Very well.

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

There is just one substantial Regulation which revokes the Community Provisions (Control of Exports of Dual-Use Items and Technology) (Application) (Jersey) Regulations 2002 and the Community Provisions Dual-Use Items (Export Control) (Jersey) Regulations 2002. The Regulations will come into force at the same time as the Export Control (Jersey) Law. I propose the Articles.

**The Deputy Bailiff:**

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

**8.2.1 Deputy R. Labey:**

I just wonder, for the record, for people listening, if the Minister would like to explain what dual-use items are in this context.

**The Deputy Bailiff:**

Does any other Member wish to speak on the Regulations in Second Reading? I call on the Assistant Minister to respond.

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

As I spoke to P.24/2018, the dual-use items are civilian and tangible goods and intangibles that may be used for use in civilian and military purposes. They include goods, software and technology.

**The Deputy Bailiff:**

Do you maintain the Regulations in Second Reading?

**The Connétable of St. Lawrence:**

I do, Sir, thank you.

**The Deputy Bailiff:**

All those in favour of adopting the Regulations in Second Reading kindly show. Those against? The Regulations are adopted. Do you propose them in Third Reading, Assistant Minister?

**The Connétable of St. Lawrence:**

I propose them in Third Reading and call for the appel, please.

**The Deputy Bailiff:**

Yes. Are they seconded in Third Reading? **[Seconded]** Does any Member wish to speak in Third Reading? The appel has been called for. I invite Members to return to their seats. I ask the Greffier to open the voting.

<b>POUR: 28</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator L.J. Farnham				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Deputy J.A. Martin (H)				
Deputy J.A. Hilton (H)				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Bree (C)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				

**Deputy J.A. Martin:**

Sir, could I just indulge a minute of the Assembly's time, please? I am looking at the Order Paper and fully understand they flow nicely until we get to probably... put it on notice or whatever or ask now if we can take it. I know on Monday we agreed to let Senator Ozouf have his amendment that cannot be discussed until 26th March. I know that has been agreed. My concern is that after we do the next 3 items can we, please, go to P.34/2018? I am a member of the Overseas Aid Commission and I know my chairman is really wanting this in. We are one non-States Commissioner down and we have a 50-year anniversary. Then we have already brought P.36/2018 forward and I have already spoken to the Assistant Minister for Economic Development who is bringing P.49/2018, which is the Royal Wedding Extension of Licensing Hours. Before we get into a massive debate, I would not call them noddies but I am hoping those 2 are accepted. Obviously, we have a short speech and an explanation by the relevant Constable and Deputy but we can literally take them before we take the ombudsman, which is P.32/2018 as amended, so we will go through the Order Paper. I am putting it to the Assembly now because I am not sure where we are after that. We are literally then into can we bring forward health propositions for a couple of weeks, but these are time sensitive and they are very important and, to me, they are not going to take up too much time of the Assembly.

**The Deputy Bailiff:**

Your proposal is we deal with in sequence P.26, P.27 and P.28 but when we get to the end of P.28 you would ask the Assembly to bring forward P.30 ...

**Deputy J.A. Martin:**

No, we do P.30 and then before P.32 we do P.34 and then P.49. We have already done P.36.

**The Deputy Bailiff:**

We do P.25, P.26, P. 27, P.28, P.29 and P.30?

**Deputy J.A. Martin:**

Yes, please, Sir.

**The Deputy Bailiff:**

Then you would wish to bring forward P.34?

**Deputy J.A. Martin:**

And P.49/2018, which is the Royal Wedding Extension of Licensing Sales, which I thought we agreed to take at the beginning of this session. It really is important to industry. I know people think they just need to know but they need to plan. Some people may have to get extra permission from the Bailiff to do extra things. They really do need to know. As I say, I hope they are not going to be too long and I think they are agreed.

**The Deputy Bailiff:**

That is P.49/2018?

**Deputy J.A. Martin:**

Yes, please, Sir.

**The Deputy Bailiff:**

Does any Member wish to speak on that suggestion? Do Members agree on it?

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

I think I do. I just want to make sure that the Deputy is not trying to push my proposition off the grid.

**Deputy J.A. Martin:**

We have agreed to sit until 9.00 p.m. I think we will have a long debate, hopefully, on the Senator's proposition. I am saying these to me are things that are time-sensitive, need to be done and I think we are mainly all in agreement with. I just want to bring them up because we have allowed the Senator to have his amendment that could not be debated until Monday but we have agreed that. Just a bit of leeway is all am asking for.

**The Deputy Bailiff:**

Well, I will not put the matter to the vote unless people wish me to. Very well, we will adjust the running of the order to deal with P.34 and P.49 immediately after P.30.

**9. Draft Financial Services Ombudsman (Disclosure of Information - Amendment of Law) (Jersey) Regulations 201- (P.26/2018)**

**The Deputy Bailiff:**

That brings us now to P.26, which is the Draft Financial Services Ombudsman (Disclosure of Information - Amendment of Law) (Jersey) Regulations and I ask the Greffier to read the citation.

**The Greffier of the States:**

Draft Financial Services Ombudsman (Disclosure of Information - Amendment of Law) (Jersey) Regulations 201-. The States, in pursuance of Article 21 of the Financial Services Ombudsman (Jersey) Law 2014, have made the following Regulations.

**9.1 Senator L.J. Farnham (The Minister for Economic Development, Tourism, Sport and Culture):**

The Office of the Financial Services Ombudsman was established in 2014 and in November 2015 commenced its statutory role of resolving complaints about financial services provided in or from within Jersey. It operates jointly with the equivalent Guernsey office as the Channel Islands Financial Ombudsman and is located here in Jersey. The ombudsman currently publishes a range of information to illustrate its experience of complaints. At the moment the ombudsman can only publish statistical summaries, including the identity of financial services providers, for complaints that have had a determination. These are only a subset of complaints resolved by the ombudsman and would not give the full picture of what is happening in Jersey's financial sector. What happens is when a complaint is heard by the ombudsman it goes through mediation. If that does not work it goes to determination. The Regulations proposed today simply amend the legislation to enable publication of statistical summaries, including the identity of financial service providers for all complaints resolved by the ombudsman. Before they could report statistical information on determinations and not mediations. It was anticipated originally that the majority of complaints would go to determination but I am pleased to report that the majority, about 80 per cent of complaints, are being dealt with at mediation. As I said, this would provide for a more representative view of the ombudsman's experience with complaints and publishing information to this level of detail would also be helpful to inform and consult on the funding approach to the ombudsman. To remind Members, the ombudsman is supported not by the taxpayer but by levy to the sector.

**The Deputy Bailiff:**

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

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

There was a huge amount of concern about the Financial Ombudsman when it was proposed. Industry, it is fair to say, was extremely hesitant about it and it was resisted for some time. It was, I think, former Senator Alan Breckon who brought forward quite a lot of proposals to bring it in. The way that the ombudsman has discharged his functions, together with the board, I would say has been impressive. Regulators and ombudsmen are never going to be loved but the one thing they can hope to be is respected and the Channel Islands Financial Ombudsman is absolutely respected. I have not heard of any aggrieved person who has been through a process that has been through review by the ombudsman. Indeed, the industry too is also, I think, content with the outcomes of their adjudications. I do not say anything because we are not going to deal with it but we have got another ombudsman thing coming later on. I just would remind Members of the huge concern, the fear of the industry that was around, the clamour for people who felt aggrieved that now have somewhere to go. This is a further improvement in terms of the statistics. Having an ombudsman is a deterrent. It promotes good behaviour. It is the adage that prevention is better than cure but where there is a problem you have a cure in terms of the ombudsman. The fact that statistics are going to be produced is going to be an even greater deterrent for good practice and good behaviour within those areas that are subject to the ombudsman. I would also say that I think this ombudsman, the Channel Islands Financial Ombudsman, has a great deal of further work that could be added to their portfolio such as the success in terms of dealing with it, because it is a win for both sides. It is a win for the industry because people have a complaint. It is a win for the regulator because many people saw a financial services regulator as being the place to go but there was no place to go. It is a win for consumers where they have a problem and they feel that they can go and get a professional ... this is a professional ombudsman with a professional board and professionally qualified people dealing with issues and that is why it works. This further extension is a welcome addition and I think can only improve and raise standards in terms of financial conduct and financial advice given by financial services. I think those are quite relevant to this debate but also the one we are having later.

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

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

### **9.1.2 Senator L.J. Farnham:**

Can I thank Senator Ozouf for his very useful and helpful comments? As I said before, it was originally anticipated that far more complaints would go to determination. It is indeed credit to the ombudsman that so many are being sorted out at the mediation stage. I would like to propose the amendment to the Regulation as presented in the proposition.

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

All those in favour of adopting the principles kindly show. Those against? The principles are adopted. This falls within the Economic Affairs Scrutiny Panel. Do you wish to call this in, Deputy?

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

No, Sir, we do not.

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

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

### **9.2 Senator L.J. Farnham:**

I present the amendments as presented. I have nothing to add.

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

Proposed in Second Reading. Are the amendments in Second Reading seconded? **[Seconded]** Does any Member wish to speak in the Second Reading?

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

I wonder whether the Minister could confirm to the Assembly whether or not these arrangements that are put forward to us are in step and identical to that of Guernsey. I know that there were some differences in relation to the operation of the scope and remit of the Jersey Regulations for the setting up of the ombudsman, which were wider than that of Guernsey. It is important, I think, both from a financial services oversight and almost a comparable situation, that they are in step. I completely agree with all of these Regulations but could he confirm that the equivalent is being put forward to the States of Guernsey Assembly and, if not, why not?

[15:45]

**The Deputy Bailiff:**

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

**9.2.2 Senator L.J. Farnham:**

Consistent with the pan-Island nature of this office, the ombudsman has indicated that he would not seek to use these powers until the implementation of a similar amendment in Guernsey and that is currently being dealt with by the Guernsey States.

**The Deputy Bailiff:**

All those in favour of adopting the Articles in Second Reading kindly show. Those against? The Articles are adopted in Second Reading. Do you propose them now for Third Reading, Minister?

**Senator L.J. Farnham:**

Yes, I do, Sir.

**The Deputy Bailiff:**

Are they seconded in Third Reading? **[Seconded]** Does any Member wish to speak in Third Reading? The appel has already been called for but if anyone would like to speak in Third Reading. No. Very well, the appel is called for. I invite Members to return to their seats. I ask the Greffier to open the voting.

<b>POUR: 29</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator L.J. Farnham				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				

Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R. Labey (H)				
Deputy S.M. Bree (C)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				

## **10. Draft Employment (Amendment of Law) (No. 2) (Jersey) Regulations 201- (P.27/2018)**

### **The Deputy Bailiff:**

Very well, we now come to the Draft Employment (Amendment of Law) (No. 2) (Jersey) Regulations lodged by the Minister for Social Security and I ask the Greffier to read the citation.

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

Draft Employment (Amendment of Law) (No. 2) (Jersey) Regulation 201-. The States, in pursuance of Articles 55A(3), 55S(6) and 104 of the Employment (Jersey) Law 2003, have made the following Regulations.

#### **10.1 Deputy S.J. Pinel (The Minister for Social Security):**

I am pleased to present to Members today the first phase of changes to the Employment Law that will improve rights for parents in the workplace. The draft Regulations will bring into force the first phase of changes from 1st September this year. This will provide 26 weeks of maternity, adoption or parental leave to include either 6 weeks of paid maternity or adoption leave or 2 weeks of paid parental leave. It would also give fathers and partners the right to take time off work for antenatal appointments and it would give the right to request flexible working to all employees. Further improvements are intended to come into force in September 2019. This would include 52 weeks of parental leave for all parents and the right to breastfeeding breaks and facilities. When the current family-friendly employment rights were introduced from September 2015 I committed to review the legislation with the intention of extending it. I honoured that commitment by directing the Employment Forum to consult on a number of improvements last year, including longer periods of paid and unpaid parental leave. Following a period of public consultation in 2017 the forum presented a unanimous recommendation to me. I have accepted all of the forum's recommendations for changes to the employment law as I believe that the overall package represents a much needed step forwards. These changes have advantages, both for the economy and for the family unit. As an Assembly, we have committed to supporting children and families from conception through the critical pre-school years as outlined in the 1,001 Days initiative. We are also committed to optimising economic growth. This proposition can help us to achieve both of these aims. The improvements to family-friendly employment rights are expected to enable increased participation, retain skills in the workforce and remove barriers for working parents by giving families more choice and flexibility. I hope that over time we will start to see fathers taking longer periods of parental leave. This should bring a change in workplace attitudes and practices, reduce discrimination against women in employment and encourage gender balance in childcare roles. I had some initial reservations about the impact of 6 weeks paid maternity leave. This is an additional 4 weeks of paid maternity leave on top of the existing right to 2 weeks' paid leave. To clarify, the forum recommended that the employer should pay for 6 weeks of leave, irrespective of whether any additional parental benefits or pay might



be provided by the States as an outcome of the ongoing Social Security review. I am sure that some employers will be concerned about the impact but many employers in Jersey already match or exceed this on a contractual basis. I believe that the recommendation is balanced in view of the cost to business and the time has come to increase employment rights for parents. Our 2-phased approach will give employers more time to prepare. J.A.C.S. will help employers and employees with advice on policies and procedures, template forms, public and private training sessions and the J.A.C.S. outreach service will continue to proactively support small businesses. We have already established in law a right to take a period of parental leave and return to the same job. The current family-friendly rights provided a cautious first step to enable mothers to recover from childbirth, establish breastfeeding and to provide protection against unfair dismissal. The latest recommendation from the forum is a much bolder step. While this will be a significant change for some employers I believe it is vital that the statutory periods of pay and unpaid parental leave are increased as quickly as possible. I hope that Members will support the draft regulations. I propose the principles.

**The Deputy Bailiff:**

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

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

I will just take this opportunity to ask a question because I put a written question in to the Minister for Social Security about the Employment Law. I see that in the foreword of the legislation or in the Regulations she talks about the right to request flexible working. I think there are huge benefits that can happen in terms of flexible working but ensuring that there is the correct support in place because of the number of small, medium businesses that we have in the Island and ensuring that they can adapt and we can assist. I know she has already mentioned J.A.C.S. but it also mentions within the text that the employer has the right to refuse a request on genuine business grounds and I wonder whether the Minister could advise what kind of genuine business grounds those would be. Although I welcome the Regulations ...

**The Deputy Bailiff:**

Excuse me, Deputy. If you go we become inquorate I think.

**The Deputy of St. John:**

Although I welcome the Regulations and I know that we had a debate about Family Friendly legislation earlier I would like to ask the Minister what is the ability ... I know that we are not agreeing what is happening in 2019 for next year within these Regulations but I would like to understand how we are moving to what is more as an equality-type of situation because I know that we keep talking about just the mother and the maternity leave, but I also would like to see some form of flexibility in the practices of the mother and father being able to share that ability for the leave so that if the mother does wish to go back to work earlier that there is flexibility within the law or in the regulations or within the employment practices to ensure that they can share that responsibility.

**The Deputy Bailiff:**

Deputy, I am afraid I retained you in the room improperly. You are able to leave and we will still be quorate. I apologise. Does any other Member wish to speak on the principles?

**10.1.2 Deputy S.M. Brée:**

I mean this is obviously very welcome, recognising the pressures that there are on parents, adoptive parents and surrogacy. The one thing that seems to be missing is a recognition of the pressures that are put on new foster parents when welcoming a foster child into their home. I am wondering whether or not their needs were looked at and decided not to be included or whether or not the possible needs of new foster parents were omitted incorrectly.

**10.1.3 The Deputy of St. Peter:**

Members will have noticed, I am sure, the front pages of many newspapers this morning showed the Duchess of Cambridge, resplendent in green, as she went yesterday to speak to the Royal Society of Medicine to talk to them about the positive impacts of early intervention and parental support and advice and how necessary it is to provide that.

**The Deputy Bailiff:**

I am afraid it is not possible to refer members of the royal family in terms of support for any kind of argument or proposition.

**The Deputy of St. Peter:**

That is quite a good point. Thank you. Okay. So I would withdraw that comment and state that the Duchess was resplendent as she went to address a meeting of the Royal Society of Medicine. This is connected, of course, with the work that we have been doing here for 1,001 Critical Days and Members have made good mention of that already today. Here in Jersey we are doing our bit and I am delighted to see the Minister for Social Security bringing forward these changes to Employment Law because we are behind the curve when compared to other places. We have a great number of working women, a higher percentage here than in many other places, so it is down to us to encourage participation of parents but also to encourage them to work and to be economically active because we need them to be so but also to be productive and to have a good cohesive family life, which is the very heart of these principles. Many enlightened businesses already are focusing on such items and I think they have given feedback about the loyalty that this engenders among their workforce when the people working for a business feel that they are supported in their life as a family, and particularly in those early days when it can be a great strain on a person. I wholeheartedly commend these principles to the Assembly.

**The Deputy Bailiff:**

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

**10.1.4 Deputy S.J. Pinel:**

First to address the question of the Deputy of St. John about flexible working. The forum’s consultation indicated that the right has been very successful; of course, you can already request flexible working in Jersey and in the U.K. Flexible working is seen as a means of enabling employees to balance their personal and working lives while already also having the benefits for employers and many employers in Jersey already offer flexible working to all employees. A day one right might encourage employers to recognise the potential benefits and consider alternative arrangements prior to advertising. Deputy Brée, with foster parents, this is a move as recommended by the Employment Forum for families with new babies and the advance is to include extra time of paid leave and also to encourage paternal leave, 2 weeks of which would be paid, and also to cover the extension of that to adopted and, in the second part of this, and surrogacy parents. Not at this stage to include foster parents.

**The Deputy Bailiff:**

Very well. Those Members who vote ... the appel is called for. I invite Members to return to their seats. I ask the Greffier to open the voting.

<b>POUR: 30</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator L.J. Farnham				
Senator A.K.F. Green				
Senator S.C. Ferguson				

Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				

**The Deputy Bailiff:**

Very well, how do you wish to deal with the Regulations in the Second Reading, Minister?

**Deputy S.J. Pinel:**

I would like to take the regulations *en bloc* but may I just speak to them very quickly, individually?

**The Deputy Bailiff:**

Of course. Yes, absolutely.

[16:00]

**10.2 Deputy S.J. Pinel:**

Regulation 1 provides that any reference to Articles are references to Articles in the existing Employment Law. Flexible working, Regulation 2 removes the 2 qualifying conditions for the right to request flexible working. The right would apply to all employees, irrespective of their caring responsibilities or their length of service with the employer. All of the other conditions would remain, including the right to make one request each year and for the employer to consider and respond to that request. Paid maternity leave, which is Regulations 3, 6, 8 and ...

**The Deputy Bailiff:**

Sorry, Minister, I have to interrupt you. I apologise. I did not ask Scrutiny whether there was a request to call it in and I was not expecting for there to be necessarily but I should ask. It is the Health and Social Security Scrutiny Panel.

**Deputy J.A. Hilton of St. Helier (Health and Social Security Scrutiny Panel):**

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

**The Deputy Bailiff:**

Thank you very much, Deputy Hilton. I apologise for interrupting you but you could arguably have spoken at some length and then it would have been called in, which would have not been satisfactory. So I apologise for that. Thank you very much. Please do continue, Minister.

**Deputy S.J. Pinel:**

Thank you and I thank Deputy Hilton on behalf of the Scrutiny Panel for her response. Paid maternity leave, which covers Regulations 3, 6, 8 and 10. Regulation 6 increases the period of paid maternity leave from 2 weeks to 6 weeks and provides that the employer cannot require an employee to work during that 6-week period but may permit her to work if she wishes. Regulations 3, 8 and 10 make consequential changes to other related Articles. Antenatal, which is Regulation 4, amends the existing right to time off for antenatal appointments. This will enable the partner of the pregnant woman or the father of the child to also take time off work to attend antenatal appointments. Regulation 5 provides that the father or partner is entitled to unlimited time off for antenatal appointments to include up to 10 hours paid at their normal rate of pay. Regulation 7 extends the total period of maternity leave to 26 weeks, including the 6 weeks of paid leave. Adoption; Regulation 9 extends the total period of adoption leave to 26 weeks and introduces 6 weeks of paid adoption leave. Paid parental, Regulation 11 extends the total period of parental leave to 26 weeks and introduces 2 weeks of paid parental leave. Parental leave is available to the father of the child or the partner of the mother where that person expects to have the main responsibility for the child, other than the mother. Regulation 12 provides that the 26 weeks of parental leave can be taken in up to 3 blocks of leave of no less than 2 weeks each during a 52-week period. Regulation 13 provides that the existing arrangements for maternity leave apply in the same way to the new longer period of parental leave. These relate to terms and conditions during leave, notice of intention to return to work early, keeping in touch days and the right to return to the same job after leave. Regulation 14 tells you how to calculate the time limits for making a complaint to the tribunal in relation to these new rights and Regulation 15 makes a transitional provision so that the extended periods of maternity, parental and adoption leave are only available to parents where the expected week of childbirth or adoption is on or after Sunday, 2nd September. This provides a clear cut-off point for employers and employees so that they can be certain in advance about their employment rights. This date has been chosen because a week begins with midnight between Saturday and Sunday and this is the first Sunday after 1st September, just for clarity. Regulation 16 provides for the changes to come into force on 1st September 2018. The forum recommended that the changes should be made in 2 stages with the second change being introduced in September 2019. These draft Regulations will ensure that most of the improvements are implemented as quickly as possible. The remaining changes are more complex and will require primary law, which we intend to bring to the States later this year. I propose Regulations 1 to 16.

**The Deputy Bailiff:**

Are those Regulations seconded? [**Seconded**] Does any Member wish to speak on Regulations 1 to 16? Those in favour of adopting Regulations 1 to 16 kindly show. Those against? The Regulations are adopted. Do you propose the matter in Third Reading?

**Deputy S.J. Pinel:**

Yes, please, Sir, and may I take this opportunity to thank the members of the Employment Forum for their extremely hard work on this piece of legislation last year and preparing this important recommendation, and may I call for appel please?

**The Deputy Bailiff:**

The appel is called for. I invite Members to return to their seats. I beg your pardon. I should ask, is it seconded in Third Reading? **[Seconded]** Thank you very much and does anyone wish to speak in Third Reading? The appel is called for. I invite Members to return to their seats and I ask the Greffier to open the voting.

<b>POUR: 31</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator L.J. Farnham				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy A.D. Lewis (H)				
Deputy R. Labey (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

## **11. Draft Income Support (Amendment No. 17) (Jersey) Regulations 201- (P.28/2018)**

### **The Deputy Bailiff:**

Very well, the next item is the Draft Income Support (Amendment No. 17) (Jersey) Regulations lodged by the Minister for Social Security and I ask the Greffier to read the citation.

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

The Draft Income Support (Amendment No. 17) (Jersey) Regulations 201-. The States, in pursuance of Articles 5 and 18 of the Income Support (Jersey) Law 2007, have made the following Regulations.

#### **11.1 Deputy S.J. Pinel (The Minister for Social Security):**

Yes, I am afraid it is me again. The States voted on 17th January to instruct me to reinstate the single parent component of income support. These Regulations achieve that aim and will provide an additional £40.39 per week for every single parent household receiving income support. The

additional component will be provided from 1st June following agreement on that date with the Scrutiny Panel. Claimants will be notified in writing of the increase as it affects them individually. Approximately 1,200 claims are likely to be affected. The department is aiming to send letters by early May. The total cost of providing this component for the remainder of 2018 and the whole of 2019 is estimated at £4 million. This cost sits outside the Medium Term Financial Plan funding for the department and it will be needed to be met from anticipated underspends within the income support budget over these 2 years. Separately, I will be lodging proposals for an increase in income support component rates in the next couple of weeks. As indicated earlier this year, this will include an additional sum in respect of the first child of every income support household to ensure that all low income families receive some additional help. I propose the principles.

**The Deputy Bailiff:**

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

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

The panel is pleased to see these Regulations coming forward following the debate that we had some weeks ago and it is true that we did discuss the implementation date with the Minister, who explained to us why anything earlier than 1st June was not practically possible and we were able to accept that. Can I just seek the Minister's clarification about the financial implications, estimated at £4 million? Is it the case that that is the cost if each and every claimant claimed and received the full amount of the component of £40.39, and is it not the case that it is to be expected that many of the claimants will have other income and therefore their entitlement to this amount, this benefit, will be reduced by their other income and therefore in reality the cost is likely to be less than that £4 million stated?

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

I am just asking for clarity. On the report it states that: "It will also be available to other claimants who have established a single parent claim since 1st November 2015" and states: "There is approximately 450 claimants in this category." Can the Minister just advise whether that is people who have had the single parent component, lost it because it because of the M.T.F.P. proposition but then because their child has either left education or moved out, or whatever the case may be, that they are no longer currently claiming single parent because they are classed as a single household or single adult component? I just need that clarified.

**11.1.3 Deputy A.D. Lewis:**

Just briefly. I remember when the debate occurred, when the Deputy of St. Ouen brought this proposition. The Minister for Social Security at the time was quite adamant that there was not a demand for this component and that it was unnecessary. I just wondered if she could come back to the Assembly, perhaps somewhat regularly over the next 12 months or even just once, just to give us an update as to what the demand has been for this reinstalled component so we can see whether what she was saying a few months ago was true or not because I am curious to see what the uptake is going to be, similar lines to what the Deputy of St. Ouen was saying. Will it be £4 million? Will it be £2 million? So a report, perhaps 6 months into the reintroduction of this I think could be quite useful to Members to see whether what the Minister was alluding to a few months ago was correct or not.

**The Deputy Bailiff:**

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

**11.1.4 Deputy S.J. Pinel:**

Just for clarification I did say that we are basing this costing of £4 million on the estimated number of lone parents, and it is estimated, of 1,200. Until such parents put in a claim we will not have the exact figure but of course we have to give an estimated cost for what is potentially going to have to

come from underspends. As the chairman of the Social Security Scrutiny Panel, the Deputy of St. Ouen will quite understand how the number of claimants fluctuated by the month so it has to be an estimate of how many people there are and that is also in answer to the Deputy of St. John. It is very difficult to say how many people would be claiming because people move in and out of income support households. They move in and out of single parent households. Children move out of the household so it is a constant update of the number of people who would claim. A thank you to Deputy Andrew Lewis too, and I would happily concur with the next Minister for Social Minister or the department, to give an update after 6 months.

**The Deputy of St. John:**

Sorry, can I just clarify? I was not asking about fluctuating numbers or anything. I just wanted to confirm that how I understood what was written in the report; that those who were receiving a single parent component at the time of the M.T.F.P. decision was taken by the States who may now no longer be taking that single parent component because of changes in household circumstances, would they be able to claim for that period in which they would have received the single parent component if we had not made that decision in the first place?

**Deputy S.J. Pinel:**

I am sure the answer to that is yes. Furthermore, I will get back to the Deputy on it and confirm it.

**The Deputy Bailiff:**

Very well, those Members in favour of adopting the principles, kindly show. Those against? The principles are adopted. This is the Health and Social Security Scrutiny Panel, I assume from what you said earlier, Deputy, you will not be calling it in?

**The Deputy of St. Ouen (Chairman, Health and Social Security Scrutiny Panel):**

No.

**The Deputy Bailiff:**

How do you wish to deal with the Regulations in Second Reading, Minister?

**Deputy S.J. Pinel:**

*En bloc* please, if I may.

**The Deputy Bailiff:**

Yes. They are proposed *en bloc*. Are they seconded? **[Seconded]** Does any Member wish to speak to the Regulations in Second Reading? Those in favour of adopting the Regulations in Second Reading, kindly show. Those against? They are adopted in Second Reading. Do you propose the matter in Third Reading, Minister?

**Deputy S.J. Pinel:**

Yes, Sir. May I call for the appel please?

**The Deputy Bailiff:**

Very well. Are they seconded in Third Reading? **[Seconded]** Does any Member wish to speak in Third Reading? The appel is called for. I invite Members to return to their seats. I ask the Greffier to open the voting.

<b>POUR: 31</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator L.J. Farnham				
Senator S.C. Ferguson				

Connétable of St. Helier				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of Trinity				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy A.D. Lewis (H)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

## **12. Channel Islands Lottery: allocation of proceeds from 2017 (P.29/2018)**

### **The Deputy Bailiff:**

We now come to the Channel Islands Lottery: allocation of proceeds from 2017 - P.29/2018 - lodged by the Minister for Economic Development, Tourism, Sport and Culture and I ask the Greffier to read the proposition.

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

The States are asked to decide whether they are of opinion - to agree, in accordance with the provisions of Regulation 4(5) of the Gambling (Channel Islands Lottery) (Jersey) Regulations 1975, that all monies standing to the credit of the Channel Islands Lottery (Jersey) Fund which have not already been set aside by the Minister, representing 100 per cent of the total Jersey portion of the proceeds of the Channel Islands Lottery for 2017, should be paid to the Association of Jersey Charities for the benefit of the local community and the charitable needs of the Island.

[16:15]

### **Senator L.J. Farnham (The Minister for Economic Development, Tourism, Sport and Culture):**

Deputy Norton, the Assistant Minister with responsibility for this area, will present this proposition.

### **12.1 Deputy M.J. Norton (Assistant Minister for Economic Development, Tourism, Sport and Culture - rapporteur):**



This proposition is, indeed, one of the highlights of the year for me. It is one of the easier propositions that one gets to bring. It gives me an opportunity to talk about the success stories, one of the very big success stories of recent years, as it recommends transferring the Jersey proceeds from the Channel Islands Lottery in 2017 to the Association of Jersey Charities. Throughout my term of office as Assistant Minister for Economic Development, Tourism, Sport and Culture it has been one of the highlights indeed. I reminded Members this time last year - it really was a year ago - that as recent as 2010 the Channel Islands Lottery was in terminal decline with sales and prizes declining and the proceeds were certainly on a downward spiral. The Public Lotteries Report for 2017, bearing in mind the figures from 2010 were £423,000, will stand this year at a record figure. The annual proceeds this year that will go to charity will be £1,399,097. The proposition in front of Members today is to maintain the recent policy whereby the proceeds are given to the Association of Jersey Charities for their distribution to good causes. As Members know, these funds are much needed by the hundreds of good causes in Jersey and the Public Lotteries Report contains a list of good causes supported during 2017 by the 2016 proceeds. Now, without these funds much of the excellent work that these organisations supporting the most vulnerable in our society would simply not be possible. As this represents the last time that I will be bringing this proposition it would be remiss of me not to pay tribute to the single officer who has singlehandedly transformed the fortunes of the Channel Islands Lottery in recent years. The Channel Islands Lottery does not even feature as part of his core role. However, in doing it for the last 5 years he has moved the Channel Islands Lottery from a failure into one of the great success stories, as I mentioned, and even got him nominated as a director of the year. So I would like to pay tribute to that officer because he has worked tirelessly to make sure that it is now where it is so I would like to thank him. **[Approbation]** Both we, States Members and the good causes in the Island should recognise his contribution and I am glad that we do. As in 2017, I will publish a service level agreement with the Association of Jersey Charities once it has been agreed by States Members. The 2016 S.L.A. (service level agreement), which is very similar to this one is already published and Members can see this online. It was published as an R. The association distribute the proceeds against the published criteria on the basis of need and I would encourage good causes, both who are members of the Association of Jersey Charity and those who are not, to apply. I maintain this proposition.

**The Deputy Bailiff:**

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

**12.1.1 Senator P.F. Routier:**

Obviously, this is a good news story but there is just one matter with regard to the service level agreement which I would like to, perhaps, just have a bit of information about. The second bullet point talks about the utilisation of a proportion of the lottery proceeds to provide a development support programme to voluntary and community sector organisations. I just wonder if the Deputy would be able to give us an update on how that is being progressed and if there is any new information on that.

**12.1.2 Senator L.J. Farnham:**

I just wanted to add my thanks to those of Deputy Norton to the officer involved and not only to the officer but to all of the stakeholders in the lottery; the distributors, the retailers in the Island who support it and finally to Deputy Norton who has done a fair bit of troubleshooting in the department over the last 3 years.

**The Deputy Bailiff:**

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

**12.1.3 Deputy M.J. Norton:**

Thank you for those words, Minister. To the Assistant Chief Minister, the good news is that at 2.00 p.m. this afternoon the draft outline of the S.L.A. is under discussion, not only with the Association of Jersey Charities but also with officers. That, I believe, is still going on although I do not know why I am looking at that clock particularly. That is going on as we speak so those details will be published with the S.L.A. and that is ongoing work which is happening to support that particular area that you are talking about. I hope that comforts the Assistant Chief Minister and I thank everyone for their questions. I maintain the proposition.

**The Deputy Bailiff:**

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

<b>POUR: 31</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator L.J. Farnham				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of Trinity				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

**13. Draft Data Protection (Registration and Charges) (Jersey) Regulations (P.30/2018)**

**The Deputy Bailiff:**

We come now to the Draft Data Protection (Registration and Charges) (Jersey) Regulations, P.30, lodged by the Chief Minister and I ask the Greffier to read the citation.

**The Deputy Greffier of the States:**

The Draft Data Protection (Registration and Charges) (Jersey) Regulations 201-. The States, in pursuance of Articles 18 and 46 of the Data Protection Authority (Jersey) Law 201- have made the following Regulations.

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

In January the Assembly unanimously approved the Data Protection (Jersey) Law 2018 and the Data Protection Authority (Jersey) Law 2018. Since then the laws have received Royal Assent. They will come into effect on 25th May of this year. These draft Regulations will make provisions for the registration of controllers and processors with the authority. They also establish arrangements for the renewal of the registration of controllers, registered under the 2005 Data Protection Law. These draft Regulations largely maintain the *status quo*. They keep the key features of the old system while making some slight changes. These Regulations require all data controllers and processors to register, to maintain current exemptions from annual renewal charges, also maintain annual renewal charges at £50 and govern certain administrative matters. Outside of the scope of these regulations, but still relevant, is the one-off registration fee charged by the authority to new data controllers and processors. The authority will maintain this fee at £50 with the parallel exemptions to those described in these Regulations. Members should note that the intention is to replace these draft Regulations by 25th May of next year, 2019, to introduce a risk-based tiered levy which will obviously come to this Assembly for a debate. This will ensure that charges are levelled fairly and maintain Jersey's adequacy with the European General Data Protection Regulation. In the meantime by largely maintaining the *status quo* in respect of registration and renewal these draft Regulations will provide regulatory certainty both to the authority and to the data controllers and processors. I propose the principles.

**The Deputy Bailiff:**

Are the principles seconded? **[Seconded]** Does anyone wish to speak on the principles? Those in favour of adopting the principles kindly show. Those against? The principles are adopted. This is a matter covered by the Economic Affairs Scrutiny Panel. Deputy Brée, do you ...

**Deputy S.M. Brée (Chairman, Economic Affairs Scrutiny Panel):**

We do not wish to call it in, no.

**The Deputy Bailiff:**

How do you wish to propose the Regulations, Senator?

**13.2 Senator P.F. Routier:**

I think it is fairly self-explanatory. The Articles 1 to 8, does what it says on the tin, in my earlier comments. I propose Articles 1 to 8 and the schedule.

**The Deputy Bailiff:**

Are the Regulations seconded? **[Seconded]** Does any Member wish to speak on the Regulations? Those in favour of adopting the Regulations and the schedule kindly show. Those against? The Regulations are adopted. Deal with the matter in Third Reading?

**Senator P.F. Routier:**

Yes, sir.

**The Deputy Bailiff:**

Is it seconded? **[Seconded]** Does anyone wish to speak in Third Reading? Those in favour of adopting the ... the appel is called for. I invite Members to return to their seats. I ask the Greffier to open the voting.

<b>POUR: 30</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator L.J. Farnham				
Connétable of St. Helier				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

#### **14. Jersey Overseas Aid Commission: appointment of non-States Commissioner (P.34/2018)**

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

Very well. Now, in accordance with the decision we took a little bit earlier we now come to P.34, which is the Jersey Overseas Aid Commission: appointment of a non-States Commissioner. I ask the Greffier to read the proposition.

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

The States are asked to decide whether they are of opinion to appoint Mr. Alistair Calvert as a non-States Commissioner of the Jersey Overseas Aid Commission until 20th March 2021, in accordance with clause 7.6 of the constitution of the Jersey Overseas Aid Commission as set out in schedule 1 to the Jersey Overseas Aid Commission (Jersey) Law 2005.

##### **14.1 The Deputy of Grouville (Chairman, Jersey Overseas Aid Commission):**

I would like to ask the States for their approval to appoint Mr. Alistair Calvert as a commissioner of Jersey Overseas Aid and, if approved, he would be one of the 3 non-States commissioners who give their time voluntarily and he will join Deputy Martin, the Constable of St. Martin and myself. Mr. Calvert has the professional philanthropic and business skills we feel will complement the other commissioners on the commission and help us look forward to a more professional aid agency. The

selection process, as the report states, was in accordance with the Jersey Appointments Commission procedures and overseen by the head of the States for H.R. (human resources). Although I must confess it was an extremely tough selection as we received a number of applicants bringing with them very high calibre and diverse backgrounds. In asking the States for approval of Mr. Calvert's appointment I would like to pay tribute to Mrs. Toni Roberts who has served Jersey Overseas Aid [Approbation] for the past 12 years and her expertise and professionalism will be missed greatly. I make the proposition.

**The Deputy Bailiff:**

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

**14.1.1 Senator L.J. Farnham:**

I just wanted to say I fully support the proposition and congratulate Deputy Labey, especially on the recent announcement of the 4-year deal with Comic Relief. I know it will enhance the work that she is doing and the improvements she has made over the last few years and I fully support this proposition.

**The Deputy Bailiff:**

Yes. It is the Deputy of Grouville, however, Senator, not Deputy Labey.

**Senator L.J. Farnham:**

The Deputy of Grouville, yes, I was talking of.

**14.1.2 Senator P.F. Routier:**

I would just really like to add my comments to thank Mrs. Roberts for the work that she involved herself with the Overseas Aid Commission. She was on the commission when I was in the chair and her contribution has been immense over the years and I really wanted to add to the comments made by the chairman. I would also like to just briefly mention about the incoming commissioner. Members will note from the report that he has only recently moved to Jersey and this is obviously a very welcome addition to our community as somebody who has made an application to come here and he is going to be part of our community and is going to be obviously contributing in the way he is able to. So he is very welcome, along with his family, and I am sure he will contribute to the work of the Overseas Aid Commission.

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

A number of Members have said that the Deputy of Grouville should be complimented for the way she is discharging her duties as the chairman of Overseas Aid and in thanking Mrs. Roberts as appropriate and welcoming the new commissioner. I think we are seeing, under the leadership of the Deputy of Grouville, a huge and impressive modernisation of our valued overseas aid work. The profile; the fact that it is now regarded, as Senator Farnham has said, as one of ... and the objectives that she has set in appointing commissioners and the work that they are doing to be nothing short of one of the world's most respected international aid agencies.

[16:30]

Perhaps she would, in time, consider, when she is back in this Assembly, we hope, and back in ... whatever happens after the elections, but perhaps she needs to consider whether or not it is overseas aid because the work that she is doing is properly internationally reflected as international development and the work that she is doing and the professionalisation with her chief executive, who is also a welcome addition to the Island, who is supporting these new commissioners, is impressive. They are doing fantastic work and indeed taxpayers should be significantly reassured by the level of audit, the level of checking that goes on this is ... without in any way saying that the previous work

of the Overseas Aid under Senator Routier and others, which was fantastic, but all things move on and they come of their time and the time now is to become a professional international aid agency but more than that ... and this commissioner will no doubt be part of a period of time where it is not only taxpayers' money but also other money that can be got from the many sources of wealth from philanthropic areas and others that exist in Jersey, such as the Zenex Foundation in South Africa and others. All of this needs to come and be known about and I know the Deputy of Grouville and her new commissioners will be seized upon this issue to improve, effectively, the lives of thousands of people around the world. Many Members will know that I had the privilege of visiting some overseas aid projects and I am very involved, and have been, in the Rwandan area and the Cow Project. This commissioner, I hope, is going to add a wealth of experience in order to really make that fantastic Cow Project, which I do not think many people really knew about a few months ago until the new chief executive ... and the work of the Deputy of Grouville does and all Islanders should be very proud of what our international aid, which is what it should be called, agency does and I wish this new commissioner every success in their term of office.

**The Deputy Bailiff:**

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

**14.1.4 The Deputy of Grouville:**

I am very grateful to everyone who has spoken and all the complimentary words that have been said about the commission and myself. It is not myself obviously. It is the whole of the commission and some very able staff that we have on board now. We are going places, as I keep on saying. We are going places and, indeed, I do feel we are really an international development agency, aid agency, whatever you wish to call it. We can enjoy comic relief. Our relationships now with the R.J.A. and H.S (Royal Jersey Agricultural and Horticultural Society), the Gurkhas, Durrell and so on and this new commissioner will form part of that going forward and I will use this as a good opportunity to remind Members we are celebrating our 50th anniversary this year but in particular the opening of our exhibition next week.

**The Deputy Bailiff:**

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

<b>POUR: 34</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator L.J. Farnham				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				

Deputy E.J. Noel (L)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

## **15. Draft Licensing (Amendment No. 19) (Jersey) Regulations 201- (P.49/2018)**

### **The Deputy Bailiff:**

Again, in accordance with the decision taken a little earlier we now come to the Draft Licensing (Amendment No. 19) (Jersey) Regulations lodged by the Minister for Economic Development, Tourism, Sport and Culture and I ask the Greffier to read the citation.

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

The Draft Licensing (No. 19) (Jersey) Regulations 201-. The States, in pursuance of Article 93 of the Licensing (Jersey) Law 1974, have made the following Regulations.

### **Senator L.J. Farnham (The Minister for Economic Development, Tourism, Sport and Culture):**

In the nick of time, the Constable of St. Brelade will be presenting this.

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

I am not sure whether that is a good thing or bad thing. I invite Members to consider approving what I think is a straightforward amendment to the regulation of the 1974 Licensing Law that will allow Islanders to celebrate the occasion of the wedding of His Royal Highness Prince Henry of Wales - Prince Harry, as many of us know him - and Ms. Meghan Markle on the weekend of 19th May 2018. These draft Regulations would make only a temporary amendment to the Licensing Law (Jersey) 1974 to allow first category licensed premises only, i.e. pubs, to open for 2 hours later than normal on Friday, 18th May and Saturday, 19th May, the latter being the date of the royal wedding. Arrangements for drinking up time will be preserved by the amendment, patrons in public houses could be served alcohol until 1.00 a.m. on the 2 nights in question but they would be required to have left those premises by 1.30 a.m. For the avoidance of doubt, licensees will not be obliged to stay open for the duration of the extension. They retain the right to close early. Other categories of licensed premises, such as restaurants, nightclubs and off-licence premises will not be affected by the amendment. If these Regulations are adopted the Judicial Greffe will publish a notice in the *Jersey Gazette* to inform licensees and the public of the temporary changes to permitted hours. Members may recall that similar temporary amendments have been proposed in recent years. As the report that accompanies these draft Regulations explains, the Assembly agreed to comparable extensions to mark the Millennium Celebrations, the occasion of the royal wedding in 2011 and more recently the occasion of Her Majesty the Queen's official 90th birthday in June 2016. On this

occasion I am proposing an identical amendment to that which the Assembly adopted for June 2016. I suspect that Members might want to ask at least 3 questions regarding these Regulations. Firstly, have I taken into account that the royal wedding and the F.A. (Football Association) Cup final are taking place on the same Saturday? It will not matter to me if Chelsea do not make that final but it is the same day. The answer is yes, I am well aware that the events coincide. Our neighbours to the north are similarly aware and have seen fit to apply a similar 1.00 a.m. extension across England and Wales. Looking closer to home I am advised that the States of Jersey Police and their honorary colleagues were already planning to deploy an appropriate number of officers on that particular weekend. I understand that the police are not unduly concerned at the prospect of policing a royal wedding extension. Second, and notwithstanding the planning already being undertaken by the police, does an extension increase the risk of disorder on our streets? In that regard I refer to our experience on previous recent occasions. Media reports and police feedback indicate that levels of disorder have not increased as a consequence of comparable licence extensions. In fact, on the contrary, anecdotal evidence indicates that patrons might be staying in one place for longer when a temporary extension is in place, which might in turn be reducing the scope for disturbance outside or between licensed premises. Thirdly, Members might ask what would happen if these Regulations were not adopted. Well, individual premises could still apply to the Bailiff for a special licence extension. Given that we could have some 140 first category licence holders we could see quite a number of applications going to the Bailiff's Chambers. That scenario would put the Bailiff in a difficult position. Granting more than a small number of special permits under Article 89 of the law might be seen as tantamount to suspending the operation of the licensing law. It was for those reasons that I suggested to this Assembly in 2016 that it might be a more democratic and sensible solution for Members to decide on this matter via regulations. I maintain that view today. In proposing this temporary amendment I recognise that several States Members might feel uncomfortable supporting the proposed extension when the latest Jersey alcohol profile shows that our collective rate of alcohol consumption ... I do not really like saying this but it does ... it remains higher than the U.K. and some of our European neighbours and I respect that view. I nevertheless believe that the majority of Islanders are capable of raising a glass to the happy couple without drinking to excess. I would like to give that respectful majority the same opportunity to come together and celebrate as those living in other parts of the British Isles. I commend this proposition to the Assembly and I sincerely hope that Members will feel able to support it.

**The Deputy Bailiff:**

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

**Senator L.J. Farnham:**

It was remiss of me not to just remind Members out of ... that I am a director of a licensed premise so I do have a general interest.

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

I was wondering whether or not I should consider amending the proposition because I cannot help the juxtaposition of the other important event that is obviously going to be happening in Jersey on 18th May. I did wonder whether or not there was a case to be made for having longer licensed premises on the evening of the ... and during the night of the 18th in order for either Members to celebrate their success or drown their sorrows. So I did not know whether or not we should have 3-day [**Aside**] ... 16th. Anyway, that will carry on. [**Aside**] No, I have not got the date in my diary. That is right. I have obviously made a hash of that. The most important thing is is that perhaps some Members who said ... and there may be some Members who I know oppose this. There is an interesting issue that we will not be banning alcohol at home. I do not want to wind Members up at all because I have got the next proposition up but, of course, we did have a debate about whether or



not we should tax the off-licence sector and I completely support this proposition. It makes absolute sense to me, drinking in a controlled environment is the right thing but nevertheless the controlled environment of licensed premises is very profitable and they are going to make good money. I hope they make good money. I hope people do not drink to excess but it is a shame that we are not going to be getting more tax revenue out of them because of it but I do agree with it but we should remember that the figures that we have seen from the licensing ... I hope they are going to have some cut-price appropriate drinks. I know that is probably unlawful on the licensing bench but, no, there is an issue about the value for money for alcoholic beverages in licensed premises, which if they cut their prices people might drink less at home.

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

I was interested by the recent alcohol consumption survey. It showed that for a male of my age I was certainly consuming less than the average. This may give me an opportunity to catch up and I would support the proposition.

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

I was just interested by one fairly narrow part of what the Constable said, which is that people who might think that this might lead to further disturbance because obviously in those establishments, which normally shut at 11.00 p.m., they stay open to 1.00 a.m. if they want to and, therefore, more alcohol might be consumed. He said in response that that that is probably the opposite. That staying in one place from 11.00 pm. to 1.00 a.m. means less people spilling out on to the street as they change from one establishment to another and if it is a good thing to do, and that is where the evidence lies for this temporary extension, why not just do it generally? I think at some point we have to look at this. When this 11.00 p.m. drinking-up time was brought in, as far as I can remember, or I have been told, is the legacy from the First World War and a lot of people just do work late regularly but they might not finish work until 10.00 p.m. and that, as I have said, perhaps before they want to go out and have a quiet drink in their controlled environment and a lot of people just want to sit in their local pub perhaps until 12.00 a.m. to 12.30 a.m., have a quite drink, play cards, play darts, whatever it is, rather than being forced to go into what is effectively a nightclub. Then that club shuts at 1.00 a.m. so you go to another club at 2.00 a.m., so let us rationalise it. Of course, there is a separate debate to be had about Jersey's drinking problem but this obviously is not about that. It is about common sense and I would like to see this extended so that we do not necessarily have to tell people that as a treat to celebrate a special occasion you can stay at your local pub for a couple more hours but for the rest of the year you have got to go and do your dinking in a noisy nightclub, which is not necessarily conducive, especially for us older people.

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

Does anyone else wish to speak on the principles? I call on the Connétable of St. Brelade to respond.

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

The issue of home drinking was brought up and I think it certainly would have been brought up during any potential debate on the new Licensing Law where preloading is seen to be an issue I think with many people. There are clearly issues with ... well, not so much issues with the off-trade but what some of the downside or off-trade and the fact that people go buying alcohol, drinking at home. When they are drinking on-licence clearly you can see when people have had too much to drink and the off-trade ... clearly if people are drinking at home we have not got control of that and I understand some Members' concerns around drinking at home. I know the Minister for Health has made it quite clear that there are elements of the current Licensing Law that he would like to see changed in the new.

[16:45]

The Constable of St. John; what do I say? I know him better. I know he will behave himself on those days. Deputy Tadier brings up a good point though. I think being able to stay in one place rather than moving around is more of a European continental drinking culture and something I think that we need to have a grown-up conversation when we get to debating a new law. I think there are opportunities within any new law to look at rules that we can have the specific areas of town or specific areas in the Island, such as St. Oban for example, where maybe we can have a more relaxed drinking culture. That might prevent some of the issues that the Deputy highlights so I think there are opportunities with a new law but we are not here to debate any new law today. We are here to just debate this very small amendment. So I think I will leave it there. I think it is, like I say, a fairly straightforward amendment. I hope people can support it, or Members can support it, and we can all enjoy what I am sure will be a fabulous 2 days later on in the year.

**The Deputy Bailiff:**

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

<b>POUR: 34</b>	<b>CONTRE: 1</b>	<b>ABSTAIN: 1</b>
Senator P.F. Routier	Connétable of St. Martin	Senator L.J. Farnham
Senator P.F.C. Ozouf		
Connétable of St. Helier		
Connétable of St. Clement		
Connétable of St. Lawrence		
Connétable of St. Mary		
Connétable of St. Brelade		
Connétable of St. Saviour		
Connétable of Grouville		
Connétable of St. John		
Connétable of Trinity		
Deputy J.A. Martin (H)		
Deputy of Grouville		
Deputy J.A. Hilton (H)		
Deputy J.A.N. Le Fondré (L)		
Deputy of Trinity		
Deputy K.C. Lewis (S)		
Deputy M. Tadier (B)		
Deputy E.J. Noel (L)		
Deputy of St. John		
Deputy M.R. Higgins (H)		
Deputy J.M. Maçon (S)		
Deputy S.J. Pinel (C)		
Deputy of St. Peter		
Deputy A.D. Lewis (H)		
Deputy of St. Ouen		
Deputy R. Labey (H)		
Deputy S.M. Wickenden (H)		
Deputy S.M. Bree (C)		
Deputy M.J. Norton (B)		
Deputy T.A. McDonald (S)		
Deputy of St. Mary		
Deputy G.J. Truscott (B)		
Deputy P.D. McLinton (S)		

**The Deputy Bailiff:**

This is a matter covered by the Economic Affairs Scrutiny Panel.

**Deputy S.M. Brée (Chairman, Economic Affairs Scrutiny Panel):**

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

**The Deputy Bailiff:**

How do you wish to propose the Regulations, Connétable?

**The Connétable of St. Brelade:**

*En bloc* if I can.

**The Deputy Bailiff:**

Yes, indeed. Are the regulations seconded? **[Seconded]**

**The Deputy Bailiff:**

Does any Member wish to speak on the Regulations in Second Reading? Those in favour of adopting the Regulations kindly show. Those against? The Regulations are adopted in Second Reading. Do you propose the matter in Third Reading?

**The Connétable of St. Brelade:**

Yes please, Sir.

**The Deputy Bailiff:**

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

**Deputy J.A. Martin:**

I am so sorry to just indulge the Members' time for another minute. We have already discussed bringing forward the amendment and we are going to go on and discuss P.32 and then, to me, that is the end of the natural business for today except for 9 items that need to be brought forward from 10th April and it says under every one there: "It will require the Minister to ask the Assembly to debate it at this sitting." This is some substantial regulations. I do not know where we are. We have not been asked yet and I would like to know, and I am really sorry that I have left it when the Minister for Health and Social Services is not here, but can we have some guidance that where we go because we need to plan the evening. Are we here until 9.00 p.m.? Are we going to let these go through? Are we back tomorrow? Because if we let them go through I think we should prepare to be back tomorrow. I know we have agreed that we will be but we have not had the courtesy yet of the Minister even allowing us to have a debate and I do not want to get ... I wanted this debate last night at 8.40 p.m. but obviously the adjournment was called for. Everyone had had a long day. I would like to know where we are going and I am sorry if I am miserable on this.

**Senator P.F. Routier:**

I may be able to help. My understanding is the Minister for Health and Social Services is downstairs with his advisers at the present time discussing ... I think there have been some discussions with the Scrutiny Panel about how to proceed with this. I think he was preparing himself for this debate to go ahead. It is a matter of ... obviously he needs to come and explain to Members clearly his intention but the last I heard that he was anticipating ... the way business was going was that he would have been able to start the debate after the ombudsman debate but that will obviously be for Members to decide obviously. The usher has just gone to get the Minister to represent himself but certainly that

is my understanding of where things are. So, perhaps, if the Minister will get here we can discuss that.

**The Deputy Bailiff:**

I think what you are asking for, just to keep us in a procedural order, Deputy, is that in order that Members know whether they are sitting late tonight, although clearly we will be dealing with the ombudsman issue as the next substantive issue, you would nonetheless wish to know whether the Members are going to give leave to the Minister for Health and Social Services to deal with the matters he wishes to deal with within this current sitting of the Assembly.

**Deputy J.A. Martin:**

Here is the Minister. Thank you.

**The Deputy Bailiff:**

So I wonder, do Members agree that this application is made next so that they will then know whether they are sitting tonight or not?

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

Can I ask a point of order?

**The Deputy Bailiff:**

Yes.

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

Is it possible, just because it might mean that the Minister is here but we could ... we have agreed to sit until 9.00 p.m. but we do have an adjournment. Is it possible to make the discussion about whether or not we are going to take these matters prior to that adjournment almost as a sort of a break in-between the ombudsman debate or not? Unless the Minister wants to go ahead now.

**The Deputy Bailiff:**

It seems to me we have almost reached 5.00 p.m. The time before last we took a break was at 5.30 p.m. It would, if Members wanted to, be open to us to take the break now and the Minister would then be able to marshal his thoughts in order to make the application immediately thereafter and depending upon what the Assembly said we would deal with your proposition, Senator Ozouf, and then depending upon what the Assembly had decided, that would be the end of public business or we would go on to deal with the Minister's application but that is just a suggestion. I am in the hands of the Assembly.

**Deputy A.D. Lewis:**

I feel that we are on a roll at the moment and we did agree to sit until 9.00 p.m. tonight and as the Minister for Health and Social Services is prepared to put the proposition to the States that we undertake his business today I think that would be a very good way to proceed.

**The Deputy Bailiff:**

That is a speech for whether or not we will agree to take it. What I am trying to do is to get to the procedure as to when the application is made.

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

What I would like to do - but I am in the hands of Members and I need to be guided by you - is make the application now with a view to coming back after the break then I think Senator Ozouf will have

his proposition to do and I know whether to get officers lined-up in there because this is a very important law, I know what to do or what not to do.

**The Deputy Bailiff:**

In addition Members will know whether they are going to be debating it as well, which is obviously... that seems to me, if Members agree, a sensible way to proceed, to let the Minister make his application now.

**Deputy J.A. Martin:**

Absolutely. I really would like the Minister to make the application, we have the debate now. If it takes the 30 minutes because you know we can feed into time when we have it. We have a good discussion whether we are going to debate the Minister's proposition. If not we can either carry on and go straight into Senator Ozouf's, because that has been agreed, or we can have a break, come back, do Senator Ozouf and then the Minister's. I think that is sensible.

**16. The Minister for Health and Social Services' proposition to seek the Assembly's agreement to reduce the lodging period for P.42/2018, P.43/2018, P.44/2018, P.45/2018, P.46/2018, P.47/2018, P.48/2018, P.65/2018 and P.66/2018 in accordance with Standing Order 26(7)**

**The Deputy Bailiff:**

Well, I think it is entirely sensible that Members know where they stand in terms of sitting this evening and, therefore, Minister, given that the various things you wish to deal with have not been lodged for a sufficient period would you wish to make your application to the Assembly to take them and take them now?

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

Yes, please, Sir, and I will make in *en bloc* for all of them. There is nothing sinister or underhand about this, which has been implied by a couple of Members. This is simply that I anticipated that with the time that we had allocated that we would get through the Order Paper early. Just put that to one side. About a year ago we went through the primary law for mental health and capacity. So we have done the primary law. This is a law, like quite a few of the ones that we have looked at over this sitting, that have been a long time coming, that are really important, that affect a lot of people and it just seemed to me that if we put the time aside, and this is a really important law for members of our society, we do not have a capacity law at all at the moment and I have got people knocking at my door saying: "When can I make my living Will and my power of attorney?" but the law does not exist to be able to do that. The capacity law will allow that. So all I want to do is to make use of the time that we have allocated and that has a bonus for ... apart from being a bonus for the members of our community that will see the law that they so desperately want to see passed. It cannot come into force until October because there is a lot more work to be done around training of delegates and advocates and all the rest of it but it would also mean that the Order Paper on Monday and Tuesday in a fortnight's time, some other Back-Bencher's propositions, might have a chance of being debated before we go into purdah. So this is just practical. I am entirely in the hands of Members. It is an important law for the community, which is why I would think you would allow it to come forward but it is a matter for the Assembly.

**The Deputy Bailiff:**

Is the application for all of the laws in the main?

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

Yes, because they sit together. Although they are separate propositions they flow together.

**The Deputy Bailiff:**

I will treat this as a proposition to the Assembly to allow you to take all of the laws immediately after Senator Ozouf. Is that seconded? **[Seconded]** Does any Member wish to speak?

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

If I could speak on behalf of the Health and Social Security Scrutiny Panel. We have not conducted a review of this legislation but we have had a briefing from departmental officials and we were grateful for that and in quarterly hearings with the Minister we have asked, from time to time, about the progress of this legislation and tried to keep ourselves generally updated. Our view is that we are satisfied that, like the law, these Regulations have been consulted upon within all those working in the mental health sector and they have come forward after due consultation and we have not learnt about any concerns that would have perhaps prompted us to conduct a full review until, I am afraid, the last 3 days or so or at the end of the last week when some persons working within the sector approached us with a concern about just one of the sets of Regulations. We have held a meeting with them. We have had all sorts of email exchanges. We have also held a helpful meeting with the Minister and his officials to try and work out what the concern was. It transpires that the concern goes back to the original law and is not something that these Regulations really could affect and it is to do with mental health advocacy. It is to do with having somebody to speak for and represent persons who are detained in mental health institutions. The categorisation of who should have access to those advocacy services was settled in the law and so, therefore, trying to do something about the detailed regulation now is not going to change the law. I think from the Scrutiny point of view, therefore, we do not wish to offer or suggest any opposition to what the Minister is proposing. We have no grounds to do so but what we can do is ... I can identify when the time comes, speak a little more about the concerns that have been raised with us in recent days and I hope the Minister will be able to give an assurance that he and his department are going to try and work through the issues raised by the people who have seen us but I do not think Scrutiny intervening at this stage to conduct any sort of review or delay things, to pass out a comments paper, would be of help. I have particularly in mind the fact that another 7 set of regulations, which all seem to be ... everyone seems to be happy with them and everybody in the sector does seem to want to go ahead. As the Minister has said, there are people out there who ... and we, as a legislature, surely want to introduce this law as soon as possible. So I do not want to be the cause of any delay and I do not think that is necessary. But while we have been working on all that and trying to establish how to come to this outcome it has meant that the Minister has not been able to respond and, therefore, that is part of the reason why Deputy Martin, I would say, through the chair, that ... perhaps Deputy Martin has felt the Minister has not been able to say anything. We have had all those discussions. So I hope that explains the situation to Members.

[17:00]

**The Deputy Bailiff:**

Apparently, we have had a time check at 5.00 p.m. for which there is a bill for the Greffier. Thank you very much. Does anyone else want to speak on this proposition?

**16.1.2 Deputy R. Labey:**

Well, it cannot have escaped many people's notice that in this Chamber yesterday the Deputy of St. Ouen did give the Minister for Home Affairs and the Deputy of St. John a very hard time over just this sort of thing; late papers, question marks over legislation, the rush. I think we should be cautious, be very cautious. This is my first time here. I do not really understand the rush to pass the legislation before we go into purdah because 49 people come back here in June and the things continue. If we

have waited this long for this legislation to be passed it stands to reason that it cannot be an emergency because we have lasted this long without it. I do appreciate that it is important but we should not be gung-ho late at night, fatigued, just to pass it for the sake of ticking another box and getting through with it. I think we should be very cautious.

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

I have just an observation from what the previous speaker was saying. If it was not to be debated this time, which I am not supporting in any shape or form because I think it would be good to get on with this, but this could be debated at the next sitting on Tuesday, 10th April, which is going to be very full of other items and we are going to possibly lose things from probably some private Members' propositions off that Order Paper. I mean it is really a choice, as the Minister said at the very beginning, that it is in the hands of the House but it can be done this side of the elections. That is the point I would make.

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

We have had 4 major pieces of legislation go through this week. I certainly have not had the time to read what is being proposed and, therefore, I cannot participate in the debate and I will be abstaining on all the issues when it comes to the vote simply because I can do nothing else. I am a simple man and I have my own capacities and I have reached that. If I have a day or 2 to read and to study it so that I am satisfied in my own mind then I will be able to vote one way or the other but at the present time I will not be able to hold my conscience to a vote and I will be abstaining if we continue with it.

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

I am glad I raised this issue now because I do think it is a good order that we know where we are. Taking Senator Routier's point on board, and I am asking you as the Chair, Sir, if it did go back when it was literally supposed to go back, I see it coming after P.41 because the earliest P number is P.42 and it follows through so we would still get higher education, the future hospital ... this is if we agree to not take it today. I raised this when I saw ... I was very like this, worried, when it was lodged and it was in time for the last debate and then I have been emailing Scrutiny. I have copied in the Minister I think. Then he said: "We will take it Thursday and Friday and we might sit late", and I emailed back and I said: "Well, bring your sleeping bag." Because when he brought the law he literally took us through Article after Article, which was really good but, as everybody knows, the devil is in the regulations. The law is the regulations. It enforces it. I listened to what the Deputy of St. Ouen says and he says: "Other people have looked at it. Industry want this." But at the end of the day if we pass bad legislation, regulation we cannot go out and say: "Well, industry said that was very good. Thank you very much." It literally comes down to a ... I absolutely feel for the Minister. I know. I have spoken to the head of Mind and he put me on to somebody else who I emailed and I have not had an email back. I am just saying, am I ... are you comfortable but then again am I asking the right people because just to go through they have had a meeting. There was an issue and the Deputy of St. Ouen said it was under the mental health capacity amendment but it did not fall under that. It was sort of an outside. We have put aside tonight, I do not have a problem. I think, like Deputy Labey, the Bailiff who sat in your chair when he said: "I give you caution. You are bringing in ... or you could be passing ..." and I just cannot have ... I feel like the Constable of St. John, have I got the recognition? So I am literally not sure where to go. Would I feel more comfortable having another couple of weeks and even Scrutiny, if we do not sit after tonight, get next week in where they could have a rush with the Minister. Iron out some of these things. Absolutely come and say: "This is fit for purpose. This is." I do not expect every piece of legislation to be scrutinised by Scrutiny but to me ... and I was on Health with the Deputy of Trinity and I know, I do know, this is needed. I absolutely do know this sort of law is needed. Do I have the reassurance that these regulations are

correct, right and fit for purpose? Probably 90 per cent, 80 per cent are definitely. Have I got 100 per cent...? No. I am only guessing the 80 per cent, 90 per cent because of the Law Officers. They write good regulation. But nobody has told me this. So I leave it there. I just do not know which way to vote on this. We had the time. We do have the time. We can rush this through in 3 hours and we could sit a bit later tonight. Why not? **[Interruption]** Why not? Or we could come back tomorrow. I really do not know. I proposed this. I just wanted to know where we are going and I wanted to have this say because we have to be sure that when we pass legislation these are the things that make it legal. Regulations come into force. There is an Appointed Day Act, I think, here as well. Yes, the last one, P.66, is an Appointed Day Act. It all comes into force but the Minister said there is nothing going to happen until October and I have looked back at Hansard. When we had the law in September 2016 I asked about the budget to introduce a lot of this. There is not any. There is some to introduce the law but introduce what is in the regulation, there is not any. So if the Minister, when he sums up, I hope he can speak again, because he did not make the proposition, can convince me there is a budget, there is a rush, there is a need and I know people are knocking down his door but they would have been knocking his door down more if he is passing the wrong regulations.

### **The Deputy Bailiff:**

Well, in terms of people sitting in chairs. I am sitting in the Bailiff's chair. He was not sitting in mine **[Laughter]** ... but on a much more serious note, if the Assembly does not agree to allow this to be dealt with then you are quite correct, it will slot into its P number at the next meeting. That is where it will go if the Assembly does not agree.

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

I did tell you this would happen. Here we are, last minute, without sufficient scrutiny and about to let regulations or laws through almost on the bounce because we have not had the time to study it properly and I have seen some awful decisions made in this House, particularly ... and I have never met this before, we have agreed to meet until 9.00 p.m. every night this week. That is a recipe for disaster. We are going to make mistakes and here is one coming up, which matches one that came up earlier, the Draft Discrimination (Disability) (Jersey) Law contained 8(7), which exempted addiction from disability. Effectively, what we found was that the officers, the department, had simply accepted what was in English law and really had not examined it whatsoever. We found that there were concerns about this. When we talked to their expert he said: "Well, it is all right because in effect they go round by the backdoor. If there is any physical or mental disability then they get the award and the exemption falls and you cater for and support that physical or mental disability." As a consequence of the addiction, not for the addiction, but as a consequence of the addiction. Effectively: "It is all right because we go round the backdoor and we will let most of them in." Can you imagine standing there and you are an addict and you are arguing the toss about whether you should be supported by your employer to maintain your work level because you have a problem? Is not going to happen. What is frightening about it is here we are at the last minute and we do not want to stop the flow of legislation going through for its own sake but if this had been 6 months ago it is perfect ... well, it was perfect material for a reference back. You have just accepted this on the nod. You have not done the research, come back, do some more work, bring us the evidence that says: "This is the best way to go" or not and then, maybe, we will accept it. Six months ago, no problem. Reference back. That is our tool. On this one that we are talking about now we have got regulations and there is nothing wrong with the regulations *per se* but serious doubts about the professional practitioners on this ... yes, capacity of the advocates who deal with these people that this is a serious reduction in the scope of the service being supplied. So what do we do? Now, in my younger days I would have seen that coming and I would have said: "Right. What tools have we got to change this?" We cannot. It is not a reference back. I know what it is, it is a stand-alone proposition instructing the Minister to come back and have dealt with the underlying law to suggest that what he



proposes, a major reduction, is safe. I have not got that much energy nowadays, especially since I am doing 12-hour shifts in here so I cannot come back immediately. So now I look at this and say: "Ah, yes, and the Minister now wants not just to have it in a fortnight's time but to have it now even though it is not in time." I look at that: "Well, hang on. In a fortnight maybe we can talk to the department a little more and find a solution which will go through which will be - if we can find the evidence - safe." But at the moment my inclination is to say: "I cannot be sure that that is safe because we have not had time to scrutinise it. This is last minute and we have not got time to do much about it." So maybe I should just vote against. I do not know if that is a bad decision or a good decision quite frankly because I am not aware of exactly ... I am very tired already. Imagine what we are going to be like tomorrow night, folks and then maybe next week. That is what we have scheduled. What are we going to be doing next week? We are going to selling our grans. We are going to be introducing euthanasia. We will be bringing back hanging just to get the meeting over. Just to get home and get us tea. Senator Ozouf says: "Oh, shame. Oh, shame." I have seen it and he has seen it. He has seen any number of bad decisions made by tired people in this House. We do our electorate no favours by pursuing this war of attrition. We are still here, most of us. Well, done. We deserve some sort of medal I think because we are doing the impossible. Let us take care. Let us be careful. Let us not, for example, rush this back to today when we could do it in a fortnight's time with at least a fortnight's consideration of what is the best way forward. We are on dangerous ground, Members.

[17:15]

**16.1.7 Deputy M. Tadier:**

I see it perhaps much more simply; is that we have come to the end of the Order Paper insofar as there is nothing left on it that we are able to take. It has not been lodged for long enough and it sounds like ... it is not as if the Ministers have been banging the table saying: "This is absolutely necessary", making the case so I think ... I do not know if I can propose a counterproposition, is that we adjourn ...

**The Deputy Bailiff:**

No. I think the answer is, if you do not think it should take place after Senator Ozouf's proposition you simply vote against the Minister for Health and Social Services.

**Deputy M. Tadier:**

So I will speak against this and say I do not think we should do this so that we can have the counterproposal, which is that we adjourn and come back on 9th April, because we have come to the end of the Order Paper. Sorry, is there another one?

**The Deputy Bailiff:**

Yes, there is, Deputy. There is Senator Ozouf's ombudsman proposition. At the end of that, if we do not accept the Minister's argument to bring the matters on for this sitting, we are at the end of the Order Paper and the States will stand adjourned once the Future Public Business has been determined.

**Deputy M. Tadier:**

I see that now, so that is P.32 and that is fine because the ombudsman one has been lodged for the requisite amount of time and that should be debated today. I think that is fine and we have agreed to stay here. Once that is done then we should adjourn and come back on 9th April. But the concern that I have is that ever since the Standing Order was changed, and it was right that it was changed, I think, because the quite high bar and the perhaps archaic wording which says if something is in the interests of Jersey, if it is detrimental to the interests of Jersey - wording to that effect - it was not clear enough. It was never the intention, when we changed the wording to say if it is in the public

interest then we can lodge stuff. It has been a matter of course now that things are lodged and put on the Order Paper. This should not even be on the Order Paper by rights, it should not be there. If we wanted to decide to take it we should have decided at the last sitting that this would have been taken today. A case should have been made then so we could all come prepared. We are not prepared and we have been warned, not just by the Bailiff, but by speaker after speaker that it is completely abnormal that we do first, second and third readings all together yet we are willing to do this; you cannot have it both ways. If this law is so important that it needs to be brought forward then it must be important enough to give an adequate amount of scrutiny in this Assembly too, and if it is not that important then it can wait. So, either way we should not be taking it today.

**Senator L.J. Farnham:**

Deputy Southern mentioned tea. I just want to remind Members that pizza is available to help sustain us through the evening at no cost to the taxpayer.

**The Deputy Bailiff:**

Yes, thank you, Senator.

**16.1.8 Deputy A.D. Lewis:**

My understanding is that health professionals have been waiting for this for years so I really do not see any need for further delay. The chairman of the Scrutiny Panel has already said that he does not have a major issue with it bar one small area. Mind Jersey have said much the same, they are content with this. Our own mental health professionals have said they are okay with it too. The officers have spent hours on this and it has been very thoroughly crawled all over. Members have had this for, I think, 4 weeks, they should have had time to look at it. I accept you can always have more time because there is always a big bundle to read but this is something that has been waited on for a long time; we have allocated the time. All the Minister requires from Members is the ability to take it forward now. We have allocated the time. We were expecting to sit late tonight. I am content with that and I would hope that other Members are so we can get on and move forward; focus. We are on a roll, we are focused [**Aside**] ... yes, we are and if Members are focused we can get on and do some good business quickly. I would suggest that the Minister sticks with his proposal and Members support it and we move forward with important legislation that the mental health community want now. They have looked at it thoroughly, the Scrutiny Panel has looked at it adequately. Yes, of course we can scrutinise things more, we can have a legislation panel, we can have an Upper House; we have not got it. We have got what we have got and I think we should be getting on with it tonight and moving forward with legislation that is fit for purpose and needs to be enacted now. Thank you.

**Deputy G.P. Southern:**

If I may, the previous speaker is in danger of accidentally - what is the word - misleading the House because Mind have expressed some reservations about this move. No, you said Mind have given it the go ahead.

**Deputy A.D. Lewis:**

I said that Mind had expressed the same ...

**Deputy G.P. Southern:**

I am on the Scrutiny Panel and we have not had the time to properly scrutinise this issue.

**The Deputy Bailiff:**

I am sorry, that is a second speech that last point. The first point you have made is you have indicated that you think the Deputy has accidentally come close to misleading because Mind have some

reservations. The Deputy has nodded and accepted that is what he said. Whether he intended to say it or not I think that is an issue that is now beyond us. Senator Ozouf.

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

Very briefly, I am sorry my thing beeped because there is no clock but I was trying to limit myself. We have been 25 minutes, I think, debating whether or not we should take this. One of the things with this case is that mental health has been one of those issues that has not been receiving the attention that it should. There must be no Member of the Assembly - I hope that many Members of this Assembly will be writing their manifestos and probably want to get on with that in the period of time and get forward with business - who will not want to have to deal with this on the 9th and 10th. Mental health, for too long, has been the Cinderella service and not been given the legislative and the other areas. We have an opportunity. There are no amendments to this legislation. There may be a proper requirement for explanation by the Minister but I am aware of no amendments that have even been proposed, apart from the helpful intervention by the chairman of the panel, which has nothing to do with the matters before the Assembly it is to do with a primary law that was previously there. We have heard from the chairman of the Scrutiny Panel that, yes, they have looked at it. The Deputy of St. Ouen is somebody, I think, who would be the first to say there is an issue here. This session has passed legislation which has changed things which should have been done years ago. Mental health has been the Cinderella service. We have a suite of legislation which does matter to people; people with curatorships, people with learning issues, people that have issues of mental health, with senior citizens, *et cetera*, living wills and all the rest of it. We have done a lot for young people but this has a lot to do with our senior citizens and creating dignity and mental health legislation that works. It has been done for 4 weeks and I think we should take it and we can give due consideration, I do not think the Minister will say, for himself, I sit next to him. I know he has been saying that there is enormous support for the organisations that are involved in this and this matters to people's lives. We can change people's lives and improve them by improving regulations that have been looked at. I hope Members will support the Minister because we can get on and do some more good like we have been doing in the last couple of days. We are not just here for each other we are here for the people we serve and there are mental health issues in Jersey which need to be dealt with and we can deal with them properly.

#### **16.1.10 The Deputy of St. John:**

Sorry, I am going to speak totally with Members who have stated that we should not take this now and the reason for that is because this is 7 pieces of primary legislation lodged in just under 4 weeks, 2 pieces only 9 days ago. Also we were only advised by the Minister on 15th March that it would be taken at this sitting, so that was only last week that we were advised that it would be taken at this sitting. Bearing in mind all the other legislation that some of us have had to sit on Scrutiny, reviewed, produced comments for and made amendments and then criticised for doing so. Putting in the work to do that on primary legislation and then expected to be told, just because industry and just because the chairman of the panel have had briefings and discussions behind closed doors, that this is all okay. There is something seriously wrong here with the Scrutiny system and with the way that Ministers are working with Scrutiny because I thought Scrutiny was supposed to be open and transparent, so I would have expected at least some form of comments. Even the email from the chairman on Friday stated that it should be debated on 9th April. So, I am sorry I am not going to take somebody's ... because this is serious. Mental health is serious and if it was so important to bring this legislation in sooner then why do we bring it in right at the end of the term, right close to when we are bringing the Sexual Offences Law, Criminal Procedures Law, a raft of different regulations we have brought in behind it. It is for the very reason that I think mental health is important, and I believe that our role as parliamentarians and ensuring that law is done properly, that we should not be rushing this through. This should be scrutinised properly and when I say scrutinised it should be done line by line. Line

by line scrutiny, not just: “Oh, yes, we have had a discussion with this person and it is all good.” I am sorry, I do not agree with that so I cannot agree with it being taken at this session.

**16.1.11 Deputy S.M. Brée:**

I fear we are, as an Assembly, getting railroaded into a situation where we are being asked to debate and vote on very, very important sets of regulations that are going to affect every single person on this Island, whether directly or indirectly, and yet we have no time to consider it properly. I have always thought that Scrutiny needs to look at 2 areas: one is the best interests of the Island. Is this fit for purpose in the sense of will this deliver what the policy this Assembly has agreed to will deliver? But also, secondly, what I call legislative scrutiny. Are there any mistakes in the actual regulations? As the Deputy of St. John said: “Line by line.” Yes, that is how you have to do it. It may take time but we, as an Assembly, rely to a certain extent on looking at when it comes to the debate. At the point of debate we can see something from Scrutiny, whether it be a comments paper, that is fine. But we are being expected to debate ahead of time 7 sets of regulations that are so important that we should be giving it our utmost care and attention, and yet I, for one, do not feel we are being afforded that opportunity because the Minister wishes to railroad it through ahead of the date on which it should be debated. Surely if it is that important then the Minister should show a bit of respect to the rest of the States Members to give us time to look at it properly and to be able to debate it properly. Therefore, I cannot support debating this ahead of time. Thank you.

**The Deputy Bailiff:**

May I respectfully mention that we have now spent half an hour on a debate as to the order in which we are going to take the debates, and could I then, in that context, ask if any other Member wishes to speak on this proposition? I call on the Minister then to respond.

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

Sometimes it appears you cannot do right for doing wrong. This is an important piece of legislation and it is regrettable to me that, all being well, if you do not want to do it tonight we will be doing it in a fortnight’s time. I would have liked to have done it 6 months ago but it is about resources and the law drafting resources. This was a complicated piece of law that was done appropriately with the Law Draftsman. I would like to pick up on a couple of things. I have difficulty hearing and all I can hear is whispering; if people would be quiet, please, so that I can speak it would be very helpful. It may be that Deputy Southern is tired but he did, I think, accidentally mislead the Assembly because he implied that these regulations were about, in one part, the bit that concerned him particularly, about a reduction in service and yet nothing could be further from the truth. This is making statutory provision for something that does not exist other than in a voluntary situation now. The only query that came in 4 days ago was that the statutory provision for advocates will be there for patients who are detained against their will or by order, which is the same arrangements as we have now, whereas the voluntary advocacy service will be there for those who are there voluntarily who can leave at any time themselves. The chairman has said that he wondered if we should not do statutory provision for those people as well. That is all we are talking about. I am in the hands of Members. There is nothing sinister in trying to bring this forward, I thought I was trying to help Members with the management of time. Mind said in their email, again I have to correct Deputy Southern: “Any delay or disruption at this very late stage would be regrettable indeed.”

**Deputy G.P. Southern:**

That is highly selective, they also expressed reservations about this move.

**The Deputy Bailiff:**

I think we will allow the Minister to conclude.

[17:30]

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

Deputy Martin, among other things, implied there was no budget to do the work. There is a budget for this work and I am in the hands of Members. If Members really do not want to debate this very important law that affects so many people and leave it for a fortnight's time and do it then so be it, but I would think it was the right thing to do to make good use of our time to meet the needs of our community, to introduce hopefully regulation. By the way, Deputy of St. John, it is not primary law it is regulation, we did the primary law a year ago. If Members do not want to do that, that is regrettable but I am in their hands and I do not think I can say much more.

**The Deputy Bailiff:**

You maintain the proposition then. The proposition is on whether or not to ... so if you vote pour on this proposition you are permitting these items to be taken immediately after Senator Ozouf's proposition. If you vote contre, then the order of today will end with Senator Ozouf's proposition. I will ask the Greffier to open the voting.

<b>POUR: 17</b>		<b>CONTRE: 20</b>		<b>ABSTAIN: 2</b>
Senator P.F. Routier		Connétable of St. Lawrence		Deputy J.A.N. Le Fondré (L)
Senator P.F.C. Ozouf		Connétable of St. Brelade		Deputy of St. Ouen
Senator L.J. Farnham		Connétable of St. Saviour		
Senator A.K.F. Green		Connétable of Grouville		
Connétable of St. Helier		Connétable of St. John		
Connétable of St. Clement		Connétable of Trinity		
Connétable of St. Peter		Deputy J.A. Martin (H)		
Connétable of St. Mary		Deputy G.P. Southern (H)		
Connétable of St. Martin		Deputy of Grouville		
Deputy of Trinity		Deputy K.C. Lewis (S)		
Deputy E.J. Noel (L)		Deputy M. Tadier (B)		
Deputy S.J. Pinel (C)		Deputy of St. John		
Deputy R.G. Bryans (H)		Deputy M.R. Higgins (H)		
Deputy of St. Peter		Deputy J.M. Maçon (S)		
Deputy A.D. Lewis (H)		Deputy R. Labey (H)		
Deputy M.J. Norton (B)		Deputy S.M. Wickenden (H)		
Deputy P.D. McLinton (S)		Deputy S.M. Bree (C)		
		Deputy T.A. McDonald (S)		
		Deputy of St. Mary		
		Deputy G.J. Truscott (B)		

**Senator P.F. Routier:**

I just wondered if it would be appropriate to break now and have a half an hour break.

**The Deputy Bailiff:**

I was going to make exactly that suggestion to Members, thank you, Senator. It seems to me that now would be the appropriate time to take a half hour break before we move on to what will be the last item of business. Accordingly, we will come back just a whisker after 6.00 p.m.

[17:31]

**ADJOURNMENT**

[18:00]

## **17. Public Services Ombudsman: establishment of office (P.32/2018)**

### **The Deputy Bailiff:**

The next item of Public Business is the Public Services Ombudsman: establishment of office - P.32 - lodged by Senator Ozouf. Senator, you have an amendment, I think you want to take it as amended and I think the Assembly agreed although the amendment was late but it could be taken as amended. Now, it is a long proposition. Do Members agree that we can take the proposition as read or would you like me to ask the Greffier to read it? We will take the proposition as read. Senator.

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

I am very grateful for Members' kind consideration and I have got a clock here just in case there is a failure of a clock elsewhere, just to make sure I do not talk too much because I know maybe Members are not wanting a lengthy debate about this. We have just had a lengthy debate about whether or not to decide matters quickly. Well, a Public Sector Ombudsman, I do not think any Member of this Assembly could say in this debate is something that has been exactly rushed. It is thought that ombudsman derived from Sweden when the Swedish monarch brought forward a proposal for a baron to hear administrative reviews. That was 211 years ago. I am told by the Connétable of St. John, and it must be correct, that in fact it was former Senator Dick Shenton that put it in an election manifesto in 1969 and swept to victory in this Assembly on the back of a promise of setting up a Public Sector Ombudsman. Some Members have asked me what pins I have been wearing this week and I will confess to being rather naughty and wearing a pin yesterday of the old tourism logo, before the flying birds, that had the old tourism logo which I quite liked. There have been quite a lot of summers and winters since then. Today I am wearing the pin of my late father who was in this Assembly when I was. I only say that because I remember him fondly, as Members will, for calling a spade a spade. He was in the States when Clothier was proposed back in 1998 and when the Clothier panel was appointed to set up a panel to consider improvements of machinery of government. They went on to report in the year 2000 when I was here too with my late father and they reported on the importance of there being discussion about Clothier and cherry-picking. In this session of this Assembly we have spoken a lot about the democratic changes of the make-up of the States but when I had more time on my hands since last January, I started looking into some of the other aspects of Clothier and other issues that had not been looked at. Clothier, in his preamble with his eminent panel, quoted Edmund Burke and said: "A state without the means of some change is without its continuation." That was the preamble in the overall Clothier report but they went on to quote Edmund Burke, who made that remark, and said that any citizen of a civilised society should be listened to. Their complaints should be adjudicated on and a remedy supplied if the complaint is well founded. They said it should be understood that an ombudsman is concerned only with dilatory, incompetent or discourteous dealings with citizens' affairs. An ombudsman who tries to review the discretionary decisions of government properly arrived at is not merely risking his own appointment but endangering the institution of the ombudsman. That means that effectively an ombudsman is not something which is interfering into policy and political matters but looking at the executive and the implementation of decisions. The Clothier panel went on to say that in Jersey there was no means of complaint. They of course cited, and I understand, and in no way in proposing this proposition do I seek to criticise, to undermine, to cast aspersions on the work over the many decades of the board of administrative review, which Clothier commented and they, themselves looked at the difference between an ombudsman and a board of administrative review. But Clothier's panel did say, in terms: "We consider the arrangements quite unsatisfactory and we recommend the institution of a proper ombudsman to hear complaints of maladministration by government departments." It is refreshing, if I may say, to hear the new chief executive of the States of Jersey talk about customers, talk about a renewed customer focus in terms of who really matters, which, as we have said, we pass laws here for citizens and we pass law which guides things. We have had an argument about whether or not

we have a law but then we hand over the implementation with resources to an administration. An administration that today, in our budgetary decisions every year, spends, if we take social security and other income support, nearing £1 billion a year. We are dealing with an administration that is implementing policy decisions and in Jersey, unlike other places, and I would draw Members' attention, if I may, to page 17 of my report, which I am not going to go through in great detail because I hope Members have read it and I hope it is pretty self-explanatory. But on page 17 there is a very helpful explanation of what the difference is between an ombudsman and a complaints panel. One of the complaints panels that we have, and indeed office holder, is a salaried professional expert as opposed to unremunerated honorary members. I know that we have a former chairman of the board of administrative review in our midst as a Member of this Assembly today. It is not because you are unremunerated that there is a problem but an expert, as we have heard in the debate brought by the Minister for Economic Development, Tourism, Sport and Culture the revolution that has happened in relation to the existence of the Financial Ombudsman. The fact that there are professional experts that are looking at professional issues such as healthcare cases must be an issue. In researching this proposition I took the opportunity of going to the United Kingdom and visiting and talking with Ombudsman Services in the U.K. and understanding the real benefit to the public sector of ombudsmen in what they do. They often look at themes of complaints. Not every complaint will result in a big inquiry by an ombudsman. They are looking at themes of complaints. If I may just turn to the reasons why I have amended this proposition, and I think some Members might have been confused as to the amendments but if they look at it I can explain very simply in just a couple of words. I was grateful for Members' ability to amend the proposition with notice but all the effects of the amendments were, if Members want to turn to the actual proposition, to effectively make caveats to what I wanted to have which was originally a proposition which would say definitely do this. All I did was effectively put a subject, in part (c), to request the Chief Minister to consult widely on the design of an ombudsman. I put that all subject to the findings of research. There is a lengthy proposition which was not read out because it covers, I hope, all the aspects of work that needs to be done for setting up an ombudsman. Is this something that we need? Well, I think this Assembly, in its last session, and indeed the last 3½ years, has made some really important improvements in terms of the way the public sector operates. We have made huge challenging decisions. We have made and had debates on enormously difficult decisions of where the public sector went wrong in the child abuse investigation, for example. In the areas of all sorts of maladministration, which is far removed. We have put millions of pounds into the Children's Services and many Members like myself effectively relied upon the recommendations of officials to put millions of pounds into our Children's Services so it became a real shock to many of us to find that Children's Services were not up to the standards in which they have. But I would ask Members, is that an issue that necessarily ... while Members and Ministers must take responsibility for their departments, as they will, as I have said, responsibility means the accountability otherwise there is no democratic issue. We do rely upon institutions in order to uncover, look into and deal with people's grievances. I note with great interest, since I started reviewing and looking into this proposition, I have been incredibly impressed by the work of the new Children's Commissioner. For the first time an individual going out and listening and talking to children in an impressive way and I had the privilege of meeting personally over dinner and discussing her work with the Children's Commissioner last week. Uncovering issues that would never have been uncovered, and despite the fact that every Member of this Assembly has constituents and does work day in, day out, dealing with constituents and parishioners' concerns, there were issues that have been hidden in relation to the issues with children. Now, my proposition, in relation to the ombudsman, I hope complements the work of the Children's Commissioner and I hope the Children's Commissioner will indeed be very helpful, if the proposition ultimately succeeds, in having legislation to set up an ombudsman. I can see the Children's Commissioner going to the ombudsman with a series of themes and raising these issues for further investigation because the commissioner is listening. The commissioner is working and understanding, almost providing a voice for those who

cannot. But when you have an issue of a problem, when you do have a problem with the administration, an issue within Social Security, an issue that you are dissatisfied with in relation to an adjudication made by an officer for income support. One of the areas that I found to be a huge area of concern is in the health service. I have not got any statistics in front of me about the amount of complaints that people have made to the board of administrative review on health matters but I know that they are insignificant compared to the ombudsman's complaints that are made by individual citizens in health care. I think people who use the Jersey healthcare system, who are disgruntled or who find it necessary to make a complaint need to go somewhere and they need to go somewhere which is going to receive that complaint and look into it in a professional way, and to come forward with an ability to make recommendations for improvement. It is almost the separation between the political issues that we set as policies and then the implementation of them. There is a big difference and it is an issue which I have struggled with as a Minister and as a Member of this Assembly, the difference between the role of a legislator, the role of a policy maker and that of where one enters into the trying to do the job effectively of civil servants and our chief officers and all those other good people in the public sector.

[18:15]

This is in no way to criticise people that work in the public sector but the fact is that because there is nowhere to go, no effective professional ombudsman service for the entire public sector, I suspect there are people that are disgruntled in relation to the way that they have been dealt with, the way that a health outcome has been dealt with. I know that maybe this is not an issue for the police because they have the Police Complaints Authority, but all of the administration of the way that the States of Jersey has, people have not got somewhere to go. Is this something that is unusual? Well, yes, it is. Not having a Public Sector Ombudsman of any sort in Jersey is unusual. Since Clothier has reported there has been the creation of ombudsmen in a number of other small territories or another set of Overseas Territories. I have cited some of the examples of them in small entities such as Bermuda, Gibraltar and some of the other Overseas Territories. These are ombudsmen that are working, that are improving public sector performance. There are no comments from the Council of Ministers but hopefully the Deputy Chief Minister or the Assistant Chief Minister would effectively explain the Council of Ministers' position on this but I understand it to be supportive with the amendments that I have made. I cite on page 8 a better deal for Islanders. An ombudsman has the capacity of delivering better services for citizens. It is better for the States of Jersey Assembly because it takes out of this Assembly what should be administrative issues which should be dealt with by experts in administration or particular specialities that is frankly well above what we are at a... not above but they are at a different professional level than we as legislators and policy makers. We are not experts in the micro-dealings of complicated health issues of whether or not somebody has received the appropriate treatment at the appropriate time. We are not experts in this and with the greatest of respect to the administrative review panel, they do not have any case workers, they do not have any case officers; they are doing this in their own time with undoubted professional experience. I think the current chairman and deputy chairman are legally qualified but that is a very different issue than having qualified case workers that are used to dealing with administrative complaints and finding solutions for them. That is what an ombudsman is going to do. I have spent a great deal of time and I hope Members have read my report because it is not lengthy but it is quite detailed. I set out in appendix 1 a suggested work programme whereby there is the work programme of how to implement an ombudsman based upon my discussions with and what I learnt from ombudsmen in the U.K. It is a multi-part proposition which is now caveated to being subject to the research and more work that is to be done. But it does give, if Members approve the proposition, which I think, unless other Members think otherwise, is a proposition which really needs to be taken as a whole unless a Member wishes me to address a particular issue but it does basically say yes, we are going to put in place the mechanism subject to some more work. I know that might be difficult



for some people to accept there needs to be more work after such a lengthy period of time. It is 211 years since Sweden has had one. It is more than 50 or 60 years, as far as I can tell, that there has been some sort of ombudsman service in the United Kingdom. Most other countries have got one. It is now 18 years since Clothier recommended. It is really time that we need to get on with this issue. I think that the time when we have a new chief executive, which is focusing on service, is the right time to start putting in place, for the new Assembly, an arrangement whereby matters of maladministration, not policy but genuine complaints, can be dealt with professionally and properly. If Members are concerned about the cost of this I just ask Members to consider (a) the rights of disgruntled individuals that do have their lives seriously affected when they feel that the public sector has let them down. That is an incalculable amount of value to them in their lives, particularly if it is a tragic health incident or if it is a children's service issue. You cannot put a price on that and for any individual who feels that they have been aggrieved or let down in the health service, have lost a relative or have had a health issue, which is going to affect the rest of their lives and they feel that they can never get an answer and never get a resolution as to what went wrong. No amount of oral questions or questions will ever resolve that. I have been extremely struck by looking at the ombudsman reports, particularly in the health service, of how much closure it gives individuals who often have a valid complaint where there has been a systemic serious issue which should have been dealt with by the public sector. Working hard but mistakes made; lessons can be learned and we can improve standards. So, this also of course should coincide with an orderly work with the Legislation Advisory Panel, which themselves have recommended this too. But there has been no proposition to the Assembly to move this forward there has just been talk about this, which is why I have brought this proposition. I do think that there can be the arrangement if the Assembly agrees, subject to bringing this into force. I think that there can be a Shadow Public Sector Ombudsman, that would be a good idea, which is why I have set that out in part (f) but now it is subject too so that there could be a Shadow Public Services Ombudsman. I also say, in part (h) of the proposition, that there is a real opportunity to build on the considerable body of knowledge that exists now in the Channel Islands Financial Ombudsman, a qualified individual, and it is possible. It would be, I think, a potentially great value for money solution and a very professional approach to effectively have an omnibus ombudsman Channel Islands approach in relation to building a public sector and financial service ombudsman for the Channel Islands. We, of course, cannot legislate for Guernsey but if we do it and if we ask the Financial Ombudsman, who I have held discussions with, who is keen - I spoke to the chairman last week - they would be willing to engage in order to undertake a work programme of setting up that on an existing office with existing structures and existing boards. That is why I have put in part (h), that I ask, at the request of the ombudsman board, as described in part (f) works in close co-operation with a view to assessing the desirability of creating a single ombudsman for Jersey for the issue of the public sector and other ombudsmen arrangements. The scope of the ombudsman is dealt with in part (b) that it should be all departments of the States of Jersey and the all-important regulatory bodies as well, but not of the Financial Services Commission because there are separate arrangements that are put in place for that and it would not be appropriate for the J.F.S.C. because they have their own arrangements and they are dealing with a different aspect. I am not sure that I can add more. I do not want to take Members' time up. I think this is agreed by the Council of Ministers now I have amended it. This has been a long time coming but this is one of these issues that this Assembly could say, at the end of the term of office, that we have made progress on something which has been a really longstanding issue. I think it is a matter of improving the public sector and it is the right time to do it with a new chief executive, a renewed reorganised public sector where people can, in this new world of improving service, better value for money, have somewhere proper and professional to go to receive their complaint. I will say one final thing. Not all complaints ... this is not a panacea. An ombudsman, the thing that I have been struck with, they do not look into every single complaint that is made because not every single complaint is justifiable for serious case review, if you like, in terms of resources. There will be a sieving process, there has

to be a prioritisation process. But I have been very struck by the way in which they group cases together and look at trends where they can really make recommendations which have got teeth and can make change. One of the issues with the board of administrative review is they feel they have not been listened to and that is one of the real significant failures. There have been lots of discussions of the board of administrative review and that they have not been listened to and there is some truth in that. I think the professional approach of an ombudsman ... I do not see why there could not be a transition of both a board of administrative review and an ombudsman working together but I do know an ombudsman is required and this is what this proposition seeks to do. I move the proposition.

**The Deputy Bailiff:**

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

**17.1.1 Deputy R. Labey:**

This absolutely has to happen. It is long overdue. Senator Ozouf has made the case very clearly in the last 25 minutes and in his report. It is just part, it seems to me, of our progression of new things happening, of us maturing and modernising. I mean just earlier today we were excited to herald in the new dawn of the Overseas Aid Commission while at the same time paying tribute to what has gone before because without what has gone before what is happening now would not be possible and we will do the same with the administrative review board. But there is something about an ombudsman, about that office, about the independence of that office which will give people with issues, people with a grudge, people with complaints, will give them confidence that their problems will be professionally, independently considered properly. The low-hanging fruit of the Clothier tree, the low-hanging cherries were picked quite early, it has taken us 18 years to get to this one; it was recommended by Clothier. I think Senator Ozouf should be commended for bringing it because it is long overdue. There is something about Senator Ozouf's personality and charisma, I might say, that invites challenge but I hope people will not have too much sport with him on this issue because it is absolutely a no brainer, it is the right way forward and my last bus goes at 7.00 p.m. tonight. I just thought I would mention that.

**17.1.2 The Deputy of St. Peter:**

I am very sorry that I will not be here to take the vote on this this evening because I have to go to the prison art exhibition, which I am opening so I cannot wheedle out of it. But I would like to speak in favour of this because I am sorry that P.P.C. do not see an opportunity to support it. In the position that I have I do receive a great deal of letters from members of the public who have become frustrated. Senator Ozouf mentioned that people often become disgruntled by our system. They become a lot worse than disgruntled, it fills me with sadness sometimes to read the letters and see what happens and the lack of recourse that we do have unfortunately. So I do hope that Members will seriously consider supporting this because I think there has to be a better way to serve the public.

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

I hope Members have read our comments and I hope Deputy Labey will not be upset if I do have some sport with Senator Ozouf because, well, Senator Ozouf started his comments by saying that he cast no aspersions on the complaints panel. I am very grateful for that and I am sure all the members of the panel are very grateful for that. But he brings a proposition which sweeps them away so it is rather a bittersweet compliment. Now why would he want to do that to a group of people who provide a professional and effective service? In fact I would go so far as to say an outstanding service. Not afraid to ruffle departmental or ministerial feathers. As Senator Ozouf said they do not deal with healthcare matters, I suggest he has a look at the annual reports to see the number of healthcare matters that they do deal with. Who are these people? It is in our report but I will remind Members who they are, the members of the complaints panel. The majority of the existing panel have very strong mediation skills and experience. One is a trained mediator who has worked at Relate and

Citizens Advice. Two are highly respected lawyers, one of whom is a Q.C. (Queen's Counsel). Two served in the police force, one of whom with the police complaints and disciplinary division. One is a former chief ambulance officer who served as president of the Jersey Civil Service Association and was regularly involved in mediating between staff, the unions and the employer's side. One was a chairman of the registration board of the British Association for Counselling and Psychotherapy. These are the people who are working for us absolutely free of charge. But we want to get rid of all that experience, get rid of all that knowledge and expertise and replace it with a £250,000 a year ombudsman or ombudsman's office, of course, because I am told we need to have case workers in that office if you listened to what the Senator had to say.

[18:30]

An ombudsman's office who will be able to do no more than the complaints board can do or do do. Senator Ozouf is worried that the Ministers with departments are not listened to. Well, if they do not listen to the complaints board there is no reason why they should listen to an ombudsman because no ombudsman in the U.K. has the ability to make a binding recommendation, they can only make a recommendation. At the end of the day it is up to the elected Members to make a decision on the recommendations made. But of course an ombudsman's office, with all their advisers and case workers, will be a lot more formal and therefore less welcoming to people who have got a grudge against a department or ministry. There will be less ability, of course, in that scenario for the informal resolution, which is a hallmark of the complaints board over the last few years, and they do an amazing job at that. The complaints board is more than capable and if one reads their annual report you will be convinced they are more than capable of carrying out the task that the States have set them. Yes, they do not have an office full of case workers, as Senator Ozouf wants the new ombudsman to have, but they do have the ability to bring in expertise in particular areas when they need it. I commend P.P.C.'s comments to the Assembly. We do not need yet another quango and I ask the States to reject this proposition.

#### **17.1.4 The Deputy of St. John:**

I have to say to Senator Ozouf, thank you for bringing this because I think it is an opportunity to sum up for all of us who have experienced whatever cases we have had, constituent cases or having to deal with service administration during the time in the States, no matter how long that has been, and how we have had to deal with that and what processes we have had to go through, what fights we have had to have in order to get some form of recognition. I think it is quite easy for me to sum up some of the issues that we have. I think one of the big problems we have got is we can have as many boards and ombudsmen and all those things that we like but unless the people here and the people at the top of the Civil Service are listening, nothing is going to change and nothing is going to happen. I say that with a great deal of experience with some of the very serious cases I have had and they are not just to do with health but it has led to health problems for those individuals. So I stand here because I am quite supportive of what Senator Ozouf is suggesting here and the reasons why. One was the administrative redress report that was done by the Law Commission, who have done extensive work and research on all the tribunals we have got throughout our system and how everything is so piecemeal. There are so many different reports and papers and things that are done for a small Island I think it would be appropriate to come from one particular area. I think they have done a fantastic report for anyone that has read it. I think it is quite interesting to read what they have done, how they have gone into the work and what they suggested and recommended. I will go a step further because if Members remember we had an in committee debate on the care of children on the committee of inquiry into what happened for many years in Jersey. I think it sums it up that we have a clear inability to listen but I think it is the fact that we are constantly fire-fighting all the time. We are constantly fire-fighting sometimes very small issues compared to the big issues we have to deal with. The Chief Minister produced a report on 2nd January this year which answered the Law

Commission's report about what he is going to look into or his department are going to look into alongside the Legislation Advisory Panel. I sit as a vice-chairman of the Care of Children Review and I think it is important that I state that we are fully supportive of them looking at this and looking at putting in a public ombudsman because, let us be honest, we are a small Island there are only so many of us. The amount of tribunals that we have across all the different sectors and the serious issues we have with income support. I am not suggesting that the Minister for Social Security is doing anything wrong here, I am not trying to put blame and personalities and things but the system is extremely confusing and a lot of those people that use that system are very vulnerable. Some of the administrative issues that we have in the States, I find there are a lot of barriers and I do hope with what has come out with regard to the chief executive officer - I am not going to say it is the panacea of everything - is going to be wonderful and everything is going to change because I like to try and be cautiously optimistic. But it all depends on who sits in here fundamentally and whether we are listening. I think one of the big issues surrounding this is if Members were to support this proposition, is the legislation that sits behind it and what teeth we give to the people that are doing this work. I know the chairman of P.P.C. has read the comments. I have read many complaints board reports. I have been in front of a complaints board on behalf of a constituent before and they do a very good job. That was at a time when one of the Members in here was at the complaints board and, yes, they do a fantastic job and I am not trying to denigrate them in any way; I would not do that because they are doing the best they can within the system that they are in. I go back to the fact that we are fundamentally in charge of that system, as a States Assembly, and we elect the Government to oversee that system and to put in the action. So, I think I am more than likely going to support this proposition because of the amount of reports that we have seen, the information that I have seen over the years and also the cases that I have had to deal with. The amount of loops and barriers that I have had to jump over during my time just to get what I see as very simple things dealt with. But it is not just down to the administration to deal with their policies and their governance, I think it is very much upon us to make sure our legislation is fit for purpose so that the Members that we expect to carry on their duties can carry them out effectively. I think there is a bigger opportunity here because I was chair of the Public Accounts Committee in the last term and we lost our Comptroller and Auditor General during that time, but we created a new piece of legislation which created a Comptroller and Auditor General that was completely independent. She produced reports regularly and I have to ask Members seriously how many actual reports do Members read of the Comptroller and Auditor General, because one of her remits is governance and governance is a serious issue in the States. It is not just governance of the administration it is governance of how we run things as well. I think we have to pay more attention to these issues and ensure we are trying to create functions that are more joined-up and are effective in producing results and outcomes for the people that we represent. So, I am going to just say that I thank the Senator for bringing this proposition because I think it is an important proposition for us to debate especially on the back of the administrative redress report from the Law Commission and on the back of the Care Inquiry recommendations and the report that the Chief Minister produced on 2nd January about how he is going to address that Law Commission report and how we move forward. That is all I have to say. Thank you.

#### **17.1.5 Senator L.J. Farnham:**

We are on the cusp of huge changes to the public sector and to the services we provide, and hopefully we are going to see improvements. That is not denigrating the services we have because despite our criticisms I think we do have, on the whole, a very good public sector but it can be better. As the previous speaker said, the important thing with this is the law and the rules and regulations that are going to sit behind it. I have read the comments of P.P.C. and they are hard to argue with. But I think we need to aim, moving forward in a modern society, to ensure that it is simple and straightforward for citizens to complain about public services and that our public sector organisations respond quickly and efficiently to the complaints. Public organisations should also use the

information that they receive from the complaints to improve the services. I am not saying that does not happen at the moment but I think there is a huge opportunity here given what is planned for the public sector. I am also encouraged by the work of the Financial Services Ombudsman. I was sceptical, I have to say, about ombudsmen. We were for years in this Assembly, but it has been a very pleasant surprise and, as I said, almost 80 per cent of complaints were sorted out with mediation. Now, whether there will be determination or what sort of determination we would receive from a public service ombudsman, we do not know, perhaps Senator Ozouf could outline some of his thoughts when he sums up. Senator Ozouf, if I am not mistaken, is asking for the Chief Minister's Department or the Chief Minister to go and do a lot of work, consult and come back with a proposal that we can all approve or perhaps amend and agree with at the time. I think for a modern society, with a modern restructuring of the public sector about to begin, the timing is probably quite good.

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

I know that it is going to be embarrassing for Senator Ozouf because he has already had a lot of praise and it is unusual for me to stand up and say: "Well done, Senator Ozouf" but it is something that I know we have talked about in conversation with other Members and I know it is something that the Senator has been passionate about for a long time. I was a bit surprised to hear the chairman of P.P.C., who has been a long-time proponent of Clothier, and how many times has he stood up in this Assembly and we said: "We cherry-pick, all the time we have been cherry-picking and that is what is the wrong thing." I am just reading back through Clothier, it was chapter 9 where he talked, in 2000, that is 18 years ago, he said: "We need an ombudsman in Jersey. The function of an ombudsman would help relieve the States of many minor matters of complaint, at present often the subject of lengthy debate." They are very clear about the recommendations and they tie it in with the other changes that would be proposed to Government. Some of which were adopted and some of which were not. I do not think it is fair to suggest that this is a criticism of the current system of review board, it is called the States Complaints Board but it is also called the Administrative Review Panel. It does not mean that we are criticising them but it has to be said it is an unwieldy process, it takes a long time and we are told, in fact, by the Greffe, whenever we have to say to a constituent who has exhausted all other avenues: "Well, you can go down this road. Remember it is going to be a long process, you are not going to get it resolved very quickly and there will not necessarily be any closure at the end of it. You might find the decision goes in your favour but they do not have any force to make the Minister apologise or change the decision." I think ultimately, remember - I do not want to get the violins out here but I think it has been touched on already - that States Members, certainly Back-Benchers, do not get much administrative support. We get very welcome support from the Greffe staff. We do not have our own offices, we have had our allowances and our pay frozen for the last 5 or 6 years and maybe that is going to lead to recruitment issues for the States Assembly but that is a separate matter. But part of our job is that we deal with instances where the Civil Service either does or is alleged to have messed up in some way or another or they have not treated a constituent properly or there has been some tension between that and it comes to us. You might say: "Well, that is what the job is, that is the bread and butter of your job." But often it is simply a case of us having to be the WD40, if you like, to make the cogs turn when that should not be part of our job really. It should be, first of all, the Civil Service need to be able to treat the public consistently and there needs to be a service level agreement of understanding between the public of what they can expect and what is delivered.

[18:45]

I am not saying that is not the aspiration or the general rule but certainly we often get calls because somebody feels they have not been treated correctly, and you are simply going along to a meeting to make sure that somebody is treated fairly, because they think that you get treated better when there is a States Member sitting with them, or a friend or an advocate, whoever it might be, than when they

are on their own. That should not be the case and we need to change that perception. If it is only a perception then change the reality, if it is a reality in those instances, so that we can concentrate on the policy work. It is something that makes me very uneasy when I have to deal with those grey areas where there are different departments, whether it is what used to be Housing is now Andium, the Social Security Departments. I am trying to say, very diplomatically, that I think my constituent has been perhaps treated unfairly but also do not want to get their hopes up because you never know what both sides of the story are. I just cannot help feeling, instinctively, if it has been recommended time and time again in 2000, if it has been touched on in the Care Inquiry, and again by the Law Society, it is the right thing to do. Having a single point of contact who we can refer our complaints to and say: "Look, could you look at this please or contact him or her directly." They will pick up the phone, send the email, you do not need a reactive process. I think that is the problem we have got with the current system of complaints is that it is reactive. It looks back on what has happened and often by the stage it has dealt with it things have moved on. You need someone who can act independently and impartially who is not in the political arena and who can look at the facts. I think that is the most expedient way to do it having that single point of contact. I think we are making heavy weather of this today. Senator Ozouf has said he has put the amendment in which asked to look at part (c), cost it all out. It has got to be done, it has got to be reviewed and relative but we do not need to delay it any further, this is a perfectly acceptable and laudable proposition and it would be good to adopt this today.

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

I have read the reports on this with interest from Senator Ozouf and from P.P.C., and I listened carefully to what the chairman of P.P.C. said about how lucky we are really to have such eminent people sitting on that board. What we have got to remember is that it is an honorary board, there are 12 people, I believe, associated with it and there is a limit to their capacity. I also do not think that we promote what we have well enough and we do not call it something that is understood. For example, Senator Ozouf referred to it as the Board of Administrative Review. It is not, it has been the States Complaints Panel for some time, and I state my case, there is not enough publicity or promotion about what we have now so we do not know whether what we have is working as well as Senator Ozouf clearly would like it to. Now, there may be a good reason for that, it may be that if we promote it too much it will be too easy to make a complaint and our very honourable lay members simply will not have the capacity to deal with it. Perhaps that is the reason, I do not know, but the Constable of St. Clement was stating, in his report and in his speech, that it is working well. I, like many Deputies, receive a lot of complaints, some we can direct to the right authorities and are handled at a level where it is not escalated, and we all do that. There are times though when you cannot really get to where you want to go and you recommend that they go to the States Complaints Board. I have done it myself I have called it by the wrong name. We do not know what this is called and exactly what it does; it is not properly promoted. That is something we should do first and I think we should experiment and see if we can make it work better in terms of access and profile and promote what it does and do that well. We have got lots of mechanisms to do that now already before we embark on a whole new thing, or do we take what we have got and call the chairman of that the ombudsman and continue as it is with a new high-profile name at no extra cost. Why not? But I would like to also draw Members' attention to the 2 examples that Senator Ozouf gave of Bermuda and Gibraltar. Neither are perfect and neither are we. But in Gibraltar they did a review of the way they did things in their Parliament, a little bit like a mini Clothier review in some respects, in January 2013 they published it. I will tell you what they said about Select Committees and about Public Accounts Committees, and this is relevant because it just shows you the sort of jurisdiction they might be. They are small, nimble and they cannot do everything but in their report, the author of the report, of which there were a number of people involved with it: "We question whether Select Committees would be a realistic possibility given that matters have become so polarised and confrontational in local politics

as to make them unworkable in practice.” Gibraltar did not think they needed Select Committees and they do not have them. With regards to their Public Accounts Committee they said: “We have concluded that there is no need to establish a general purpose standing committee nor a Public Accounts Committee given that opposition Members have every opportunity to examine Government expenditure in detail as well as debating the report and the principal auditor on the Government accounts for every financial year.” Just imagine if we did that here, if we relied totally on the report at the end of the year from the Treasurer. I do not think we would be very compliant. The Public Accounts Committee was thrown out in Gibraltar as were standing committees; they do form Select Committees when they need them though. It is not necessarily a good example. Senator Ozouf is well-intentioned, I think he is absolutely right to bring this and air the issue but let us fix what we have got first if it is really broken, and I do not know that it is. So we have a low-cost option in a small jurisdiction which is basically what Gibraltar was trying to do, and they were criticised by the C.P.A. (Commonwealth Parliamentary Association) and by other associations for not having these standing committees and Public Accounts Committees and they said: “We are too small to have all of these different things we will do it our way.” I do not think it is the best way but that is how they do it. We do things in a certain way because we are small. We have a lot of costs in a lot of things, we cannot create economies of scale and that is why we do things like we do. We have a long tradition of honorary service throughout the Island and this just happens to be an example of it. My good Deputy on my left here, served on that board for a number of years and I am sure he will speak and tell you how that worked; I understand it worked well. My observation is people do not know how to access it because it is not properly promoted. The work that they do and the success that they have, on behalf of the people of Jersey, is not well commented on, perhaps sometimes for good reason. So, what about fixing what we have got first, which might not be broken, before we embark on something new that is untested. I accept that the Senator suggests a shadow board first and that is sensible but we could do that with what we have got at no cost. That is what I would advocate and I wonder if Members would consider that. By doing so one would have to defeat Senator Ozouf’s proposition and a new Assembly would have to bring back something alternative or we simply work with what we have got, make it better if it is broken - I do not believe necessarily it is - but every panel, every board, every committee we have can always do better and promoting these things is one of the things that we are not perhaps as good at as we could be. So those are my thoughts on the matter. I will wait for Senator Ozouf to sum up. I am not totally convinced that what we have is broken, I am not totally convinced we need to spend more money, I think we can make what we have got currently better. That does not mean that we are ignoring Clothier or ignoring the need for this. There were some amendments made to this situation in 2006, on the back of the Clothier report, that were recommended by P.P.C. that did happen, so that board has improved over the last 12 years. So it has evolved a little bit, perhaps it could evolve a lot more. So maybe fix what we have got before we throw the baby out with the bathwater. Those are my thoughts but I am still happy to listen to Senator Ozouf telling me otherwise. For the moment I would be minded not to because I think we can do something with what we have got rather than create something new at extra cost when we are a small jurisdiction. Gibraltar is an example; they were vilified for not having a public accounts committee but, I hate to say it, it does work for them. It is not perfect though but they are tiny, a Parliament of only 18 people. Thank you.

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

I am a member of the Legislation Advisory Panel along with the Deputy of St. Ouen, who I think is going to speak later, and it may be of interest to know what steps have been taken by that panel. I hope I am not breaching any confidences by reading out an extract from an email I have received: “As you are aware, Professor Andrew Le Sueur recently applied, on behalf of the Jersey Law Commission, to the University of Essex for some research funding from the Economic and Social Research Council to support research into developing cost and design models for a public service

ombudsman in Jersey. I am pleased to confirm that Professor Le Sueur has recently informed us that that application was successful. He and his research team hope to begin their work by 9th April. They intend to visit Jersey on 29th and 30th May and publish their report on 17th August, the report being later published by the Jersey Law Commission.” I am not saying against the steps that have been taken or proposition by the Senator, I just wish Members to be aware that steps were already in hand and I think prudence would suggest that we await the report from the Jersey Law Commission before taking matters too much further.

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

I am pleased to follow previous speakers. Yes, I am the Member who other Members have referred to as the former chairman of the board and my experience on the board was of serving with people from all walks of life who really took their role very seriously. It was a great pleasure working with them and trying to help people through situations where they felt they had been let down by various States departments and it can include health. I remember some issues that we dealt with concerning the Health Department and all departments of the States. It is not the case that it is a long process; sometimes it has been, I must admit. But the board also has powers to arrive at an informal resolution and that often worked very well. So the complainant put in a letter to say what they thought had gone wrong, the Deputy Greffier, who was a loyal, very helpful, hardworking servant of the complaints board, would arrange for me, as chairman, to phone the chief officer of the department concerned or a short meeting. We could discuss the complaint, what might be done, where there might have been misunderstandings and most of the time there had been misunderstandings but there had not really been any great fault. There had been a misunderstanding and things had escalated, and when you get a third party in just to point that out, just to sort a way through, then you can arrive at a resolution. We had many instances where you could do that and then the complainants would come back and say: “Thank you, yes, I am now happy.” But of course that did not always work and you had to proceed to a full complaints hearing that meant the complainant putting in a case with all the paperwork they wanted to rely upon and then the department putting in a defence case with all its paperwork and then you arrange a time for a hearing. We all met, sometimes in Parish Halls, sometimes in States offices. Perhaps that is an aspect that might be looked at because is it always necessary to have a formal hearing? I think that, unless things have changed in recent years, it was. Perhaps sometimes a hearing could have taken place on the papers, which would have been quicker. I do not mean a hearing on the papers but a decision made on the papers. So, I do not believe that the complaints panel is ineffective, is outdated. What its problem has been is that not enough people knew about it. I do not think people were aware they were there in many cases. The findings or the comments of P.P.C. have alluded to that and talk about the executive needing to encourage and place a greater emphasis on complaints and the outcome of hearings because it seems to me, as a States administration, we have not clearly signposted a way for citizens to complain. There are the internal processes within each department but the complaints panel has not been held up as the Island’s complaints system. It has been there but rather in the background. Then when complaints are made and the panel makes a decision, as P.P.C. have said, the panel considers that its role, the weight of its findings and the purpose of the law are not given sufficient attention by the executive. So here we have people who have given up their time, often many hours, and have given genuine thought to how service could be provided in a better way to people of the Island and the executive has said: “No, this is the way we do things and it has to be and we cannot change.”

[19:00]

Why not? The Executive has got away with that for too long because the way the complaints panel reports its findings is in an R to this Assembly and we get many Rs, do we not, many reports that come before us and the temptation is to say: “Oh, I will read that later” and we do not get around to it. But if something was to happen it needs publicity. If change was to be made it needs publicity



and it needs a Member of this Assembly to take the report and ask Ministers questions about it but that has rarely happened. Perhaps one improvement that could be made in the complaints panel process is to require Ministers to make a statement to the Assembly whenever they reject the findings of a panel, and then at least something is said, it is not just lodged. Something is said and a Minister can be questioned on it. So perhaps there are ways of ...

**The Deputy Bailiff:**

Sorry, I am afraid we are now inquorate. Could you ask Members to return, please? Yes, we are now quorate again, please do continue.

**The Deputy of St. Ouen:**

I regret the suggestions that the complaints panel should quietly pass away. I think it has served the Island well and it can continue to and can be given an enhanced role if the Executive really wants to promote it as the Island's complaints process. I am sorry that Senator Ozouf's proposition only allows for consideration of the demise of the board and why we cannot have an investigation which would consider whether it still has a role and whether it is the correct process. But no, his proposition does not seem to allow that. What I think we have is a promise that we will enter the bright sunny uplands with a new scheme, a fresh start, and something with bells and whistles that shines and sparkles, but in fact an ombudsman can have no greater powers than, in fact, the present complaints panel because you cannot have anyone who is not elected taking Executive decisions. We, as a complaints panel, always felt it was right that Ministers have a final say. They do not have to accept recommendations but they should be answerable if a finding goes against them. There is not that accountability at the moment. So, an ombudsman would have perhaps a degree of professionalism, but there has been no research yet about how many complaints might be made. Because it is true the complaints panel did not receive a great deal. I do not know the latest figures. I should do; perhaps I should have read the report but it is perhaps no more than 20 a year, though I stand to be corrected. We often felt there were more out there but can they be garnered, can they be brought in, if people are really aggrieved? Can they come in with an ombudsman? I do not know. Why should they not be submitted as complaints anymore if greater emphasis is given to the existence of the complaints panel? I do not believe the case is yet made and I do not feel at this time I can support Senator Ozouf's proposal.

**17.1.10 Deputy K.C. Lewis:**

I will be brief because I do not believe in repeating everything everyone has already said. It has been said that the current panel lacks teeth. Well, there is an easy answer to that: let us give them teeth to do the job. At the moment they are costing approximately £3,000 a year to deal with 20-odd cases per year, which is excellent. We are 9 miles by 5 miles. We are a small jurisdiction and I am very loath to put in place an ombudsman, which would cost, according to Senator Ozouf, between £200,000 and £250,000. What is the ongoing cost over, say, 10 years? It is going to be phenomenal. The complaints panel do an excellent job. As our American cousins say: "If it ain't broke, don't fix it." This is an enormous amount of money to spend because I do not think the case is anywhere near proven. I wait to hear other Members, but I cannot support this.

**17.1.11 Senator P.F. Routier:**

Many of us have over our time received approaches from constituents regarding their issues that they are having to deal with with various departments. In fact, I have received yet another one today of somebody who is concerned about the outcome of something which they have been dealing with within a department, and the process will no doubt go ahead. It was the Minister for Home Affairs who I think said something a little bit different to the Senator's opening comments about there may not be a need for anything to do with the police because they have the Police Complaints Authority. I am not sure I share that view because I have people come to me who are concerned. They have

approached the Police Complaints Authority and do not feel satisfied with the outcome of that process. I think what we need to have is a general review of our system. To me, having read the amended proposition which the Senator has before us, he is leaving the door open for a lot of review to take place before we get to a final decision about having an ombudsman or not. The previous chairman of the complaints board has quite usefully explained some of the issues that they have had about them not being very well known and some of the areas where they feel there is room for improvement. I think there is room for improvement. I do not think anybody can deny that there is room for improvement on the way people can make representations to us about the service that they have received. We need to step our game up with regard to that. I should say that the Senator did come forward with amendments to his original proposition because I know when it was discussed with fellow Ministers there was some concern it was too prescriptive, it was a bit hard line and it was not giving the opportunity for other views to be sought. I think what the Senator has now come forward with, the amended proposition, does leave it in a better place, particularly with regard to paragraph (d) when it talks about: "To request the Chief Minister to consult widely on the design of the proposed Public Services Ombudsman scheme, including with members of the Jersey Complaints Board which was established under the Administrative Decisions Law, in order that the best elements of the complaints panel scheme are retained within the new system." Then at (e) it says: "Subject to findings [that is the important bit] of the research set out in paragraph (c) to request the Chief Minister to bring forward primary legislation to establish an office of a Public Services Ombudsman." It does go on to say to replace the States Complaints Board but it is subject to findings. The findings may not approve that. I would just make that observation to Members. We have had a great success with the Financial Services Ombudsman. It has been really welcomed by our community. I have suggested to people to go to see the ombudsman there, and they might not have had the decision they wanted but they felt they have had somewhere to go and discuss with them. It has been a valve. It has been a mechanism to air their views and to discuss their position with them and to be settled in their own mind of what the position is. I think a position of an ombudsman is a very clear definition of what that is. As the previous chairman of the complaints board has said, people do not know about them. There is not enough publicity about them. The title of ombudsman is very, very clear and I think what is being proposed, now that we have all the amendments which the Senator has come forward with, which is to request to do further investigation and subject to findings, I think there is a safety valve with this. I would hope that we are able to be in a position to support the amended proposition and we can go forward in that way.

**The Deputy of St. Ouen:**

Can I ask for a point of clarification?

**The Deputy Bailiff:**

Yes.

**The Deputy of St. Ouen:**

When the speaker has referred to paragraph (e) of the proposition and the words: "Subject to the findings of the research set out in paragraph (c) ..." it seems to me that paragraph (c) is only research into the costs of introducing an ombudsman scheme, whereas the speech the Assistant Minister gave seemed to suggest that (c) would investigate the merits of retaining the complaints panel, but that is not the case. It is only subject ...

**The Deputy Bailiff:**

I am sorry, that is a point of clarification. It is not for you to make a speech as to what you think it is, Deputy. It is to ask for a point of clarification on the speech.

**The Deputy of St. Ouen:**

Yes. Does the Assistant Minister wish to suggest that (c) is an investigation into the merits of retaining the panel?

**Senator P.F. Routier:**

I have read that as it is before us, but I think if you look at (d) that gives you the comfort that you would be requesting because it is designing a proposed ombudsman service including the Jersey Complaints Board and to come forward with a system that is appropriate for the future.

**The Connétable of St. Clement:**

Could I ask for a point of clarification? I do not think he has read paragraph (d) quite right. Paragraph (d) says to consult on the design of the ombudsman, so this proposition says give priority to an ombudsman, it does not say whether we should have one or not. We do not consult on whether we should have one or not but simply on the design of it.

**The Deputy Bailiff:**

This is a point of clarification that you are seeking from the Senator's speech.

**Senator P.F. Routier:**

I think what I am trying to and I think what the proposer of this proposition is trying to do is to improve what we currently have. The previous chairman of the complaints board has identified himself and I think people are aware that there is room for an improved system for the public to be able to make complaints and to have their views and concerns heard. I believe the reading of this is something which we could be comfortable with. Others may take a different view, I understand that, but there is, I believe, sufficient scope within these paragraphs to enable working together with the members of the complaints board to design a public ombudsman scheme which is suitable for the future. If there is going to be any points of contention between those bodies, that will come out in the design. We will get to a situation perhaps they cannot agree, but I think this opens the door for them to be able to do that, to find a suitable way forward.

[19:15]

**17.1.12 Deputy S.M. Brée:**

I, like many other Members, wish to thank Senator Ozouf for bringing this proposition, but my thanks is probably for a slightly different reason, because I think what it has done is shone a light on an area that we do not deal with very well. By that I mean we have a complaints panel. They are very good at what they do. They are all knowledgeable, expert and sensible people. The problem we have is that when I say we have not dealt with it very well I would go stronger: we, the States Assembly, have let them down. The comments from P.P.C. when talking about what happens: "Rather, the panel considers its role, the weight of its findings and the purpose of the law are not given sufficient attention by the Executive." That is a very polite way of saying that in some very high-profile cases in very recent memory the Minister or Ministers have completely disregarded the advice of the complaints panel and argued against them as if there were some sort of battle going on. Now, for a member of the Executive to argue against the findings of an independent panel of experts, who are doing this in an honorary role, let us face it, I found saddening because what it was saying was, yes, you are a complaints panel but we do not really have to pay attention to you. Senator Ozouf's proposition about an ombudsman is suggesting perhaps that by having a body, an independent body, with experts, costing £250,000 a year minimum would somehow do a much better job and be much more listened to by the Ministers and would have much more power and teeth; it will not. You cannot give an ombudsman powers over a Minister. You cannot give an ombudsman the power to direct decisions of a Minister because that is undemocratic. Where we have let the Complaints Board down is I have spoken to many people who have contacted me as their Parish Deputy about problems they

are having, ranging from Health, Social Security, Planning, whatever it may be and some of them have got to the point where they are pulling their hair out. They did not want to have to contact their Deputy. I am, in a lot of cases, almost the last port of call, which it should not be but that is what happened, i.e. the public of this Island believe that if they go and speak to the department, explain their issues, they will be treated fairly, I think is the word that they are using. When I tell parishioners: “Okay, have you tried going to see the Complaints Board?” “What is that?” has been the answer a lot of the time. We already have a highly efficient, very, very expert group of people but we do not publicise their existence. We do not make it known that, yes, there is an independent body who will look into your complaint. Forget about politicians, forget about dealing with the department, you can go and see them. We do not publicise that fact. We also do not make it a requirement for Ministers to answer in a statutory form the findings of the complaints panel. They can decide to answer what they want. They can decide to completely ignore the findings. I am not saying that any complaints panel or ombudsman should have any kind of directive powers, that is wrong but there should be a statutory requirement when the complaints panel issues a report the Minister has to respond to that, as head of the department against which your complaint was made, within a set period and in full. There is not that statutory requirement at the moment. We, as a States Assembly, already have what is, in effect, an ombudsman but we do not give it the right importance in the work we do. We do not promote it. We do not deal with it properly. An ombudsman is something that the public can understand as a word, i.e. I can go and see somebody who will deal with my complaint, any complaint; I can go and see an ombudsman. The Financial Services Ombudsman is an ideal example but we have already got what is, in effect, an ombudsman. Despite what Senator Ozouf believes, I think that we can do a lot more with what we have, we can promote it more. I would sooner spend £250,000 a year on promoting the hard work of the dedicated individuals we have than setting up some totally independent ombudsman who may or may not be able to carry out the role we have mandated him or her to do. I am afraid I will be voting against Senator Ozouf’s proposition, solely on the fact we can do a lot more with what we have. Let us concentrate on that.

#### **17.1.13 Deputy M.R. Higgins of St. Helier:**

Members probably will not be aware of this but when I worked for the Financial Services Commission I did all the research into the Financial Services Ombudsman and did the drafts and worked with the Law Draftsman to get the law that we were going to bring forward, which was sat on by the politicians of the day and that, together with the Bankers Depositor Protection Scheme, which I also did the work on, also sat upon by the politicians; it was what drove me into politics. I was so fed up that we needed things, we needed them and ... beg your pardon? The point is we are all tired. What I would say is they should have been brought in years ago. As far as the Financial Ombudsman was concerned, there were comments made: “There is no need for it.” It is funny, the industry felt there was a need for it and the reason why was it cut down the amount of time they spent with complainants because the point is you had a procedure and people went through that procedure. If they did not get anywhere, rather than keep on battering on the door of the bank or whatever the financial institution was, they took it to the ombudsman and the ombudsman would process it. They may or may not get the answer they wanted but the anger was against the ombudsman, as opposed to the bank, so they felt they were getting on with it; they were in favour of it. I am in favour of a Public Services Ombudsman. I will be supporting Senator Ozouf with this and I have always been in favour of this. I have met the U.K. ones, I have spoken with them and I have looked at what they have done, I fully did. This is not criticism of the complaints board because I think they have done a good job. Deputy Brée has already, for example, illustrated, he did not name it, the Alwitry case. It was unheard of. The panel came forward with a criticism of the department and then they wrote back, almost without reviewing it, attacking them; absolutely unbelievable. I still hope that goes to court one day and he gets the justice he deserves. Just going on for the moment anyway, we need to raise the profile of whatever body we have. If it is an ombudsman people recognise what an ombudsman is. To deal

with complaints with departments, I think, is absolutely essential because the experience that I have had ... this is why I get frustrated and even Senator Ozouf calls me grumpy at times, I get so hacked off with them; it is unbelievable. I will give you an example, departments are supposed to have complaints procedures that people can go through and expect a hearing and they expect things to be done properly. I have recently been helping a lady who received a letter back, I think it is in the last few weeks, from the head of the Department for Health. What is their title? Chief Executive of Health wrote a letter saying: "Your complaint is being looked into and it was not found to be successful", let us put it that way. There was no explanation of why it came to that decision. It is a joke, to simply say: "We found not in your favour" but not explain why they did not find in their favour is absolutely ridiculous. In fact I know for a fact that it was not even completed. People had not changed their views, so it will move on to the next stage and it will probably end up with the complaints board. It is absolutely ridiculous that departments should be allowed to get away with what they are doing and we need a body with the prestige of an ombudsman. What I would like to see is the people who are on the current complaints board, I would like to see them morph somehow into the ombudsman and give them better resources and to do a better job. What I would say is that I have seen the damage that departments do to individuals. Deputy McDonald and I have been dealing with a number of individuals who have virtually been destroyed by the actions of departments. When I talk about destroyed I am talking about financial destruction, I am talking about, you could say, mental health destruction because anyone who has a grievance and the grievance is not being sorted gets frustrated. They get angry and it really eats at them on the inside and I have seen what it has done to people. We have not got effective measures to help these people and I think it is a crime. I have been going on about corruption, well, some of these cases do involve corruption. Other cases it is incompetence, it is putting up walls, not trying to solve the problem. In the past I have attacked the Minister for Health and Social Services, I am still attacking him because he has not done anything. I have been trying to help a family and he has not done anything to resolve it. When I spoke in the States the last time I said: "Instead of me being on your back all the time, why do we not get together and try and resolve it?" They have done nothing. I am still going round in circles. The person is still going round in circles. I am being passed from the Health Department to the Law Officers' Department, back to the Health Department, no one wants to do anything. How long does it take to release documents to people who seek them? The subject access requests under the Data Protection Law are supposed to ... I think it is 20 days, if I remember correctly. It is over 4 years and it is going back and forth, back and forth. This is absolutely insane. We have got to have proper complaints procedures. We are also talking we are going to now re-modernise the Civil Service. We are doing away with the silos. Let us do away with the silos about complaints procedure. Let us have one common complaints procedure going through the States, not the individual department ones, take it away from the departments, have people independently looking at what it is inside and then have an independent body at the end to review it if it has not been done properly. I challenge whoever is Chief Minister in the next Assembly to bring forward measures on that; it is absolutely needed and I would hope that the chief executive will do it because it will save so much grief with civil servants and different departments and save so much time and money and the people would appreciate it if they did it correctly. In fact there was a comment made by the Deputy of St. John, which I agreed with as well. It is about the number of tribunals we have. It is crazy, the number of people who are working in their own individual silos dealing with a particular area, you can bring a lot back together and save a fortune and a lot of time and effort. I am in favour of a Public Sector Ombudsman and when I said morphing the complaints board into it, I would like the expertise of these people brought into the ombudsman's service and have them with the resources that they need. I shall be supporting Senator Ozouf with his proposition and I would hope other Members would and not just think we do not need it, we have already got a Complaints Board. The truth is we need to move on. There are far more cases that would be brought if we had a body like a Public Sector Ombudsman. They could not cope, they have got about 20, I tell you there will be a lot more and,

ultimately, it will peak and it should get better because the service would be respected and we would get better public service.

[19:30]

**Connétable P.B. Le Sueur of Trinity:**

Sir, could I ask for a point of clarification from the previous speaker?

**The Deputy Bailiff:**

If it is a point of clarification, yes, you can, if he is prepared to.

**The Connétable of Trinity:**

Yes. Could you clarify, please, Deputy Higgins, have you taken these issues that you have just referred to to the complaints panel and had no satisfaction?

**Deputy M.R. Higgins:**

No, they have not got to the complaints body. Some of them involve criminality, so they cannot go to the complaints board. Other cases are still going through the departmental processes. I have the one that I am talking about now that I think we have got to involve Guernsey in it, someone from Guernsey looking at it. Once that one is completed, if it is not satisfactory then it can go to the complaints board but there is a process we have got to go through.

**17.1.14 Deputy M.J. Norton:**

It is a pleasure to follow the happy Deputy. **[Laughter]** Unusual pleasure. I have been listening with great interest to this and getting more and more engrossed into this late evening debate, not that I suggest we do too many more of them. I think it is very healthy that we have a review of anything at any time. It is really important that we look at things and then say: “Do you know what, Deputy Brée made a very, very good case for why the complaints panel is not working and we have got to find out why it is not working and then make it work again?” There is, of course, the alternative of the ombudsman, a tried and tested formula that we know works. We have seen it working not only on our own Island, it has been mentioned with the Financial Services Ombudsman, who has been doing an incredibly good job and has been very, very useful. But there are other areas of ombudsman that are doing just as well. I was looking to see the hearings that we have had for the complaints panel because how many times do they meet? In 2017 they met twice, 2 hearings. Those who have sat on any form of committee whatsoever will know that it is very difficult to get a group of people together at any one time. In 2016 they met twice, in 2015 they met once and in 2014 they met once. We wonder why they do not have many complaints and they do not have that many, as has been said. Is that because we make it so difficult for them to complain? We have heard from other States Members here today in this Assembly how difficult it is to get traction, how difficult it is to get to the point of a hearing, how difficult it is to solve people’s issues. Here we are and I do not think Deputy Andrew Lewis really meant to say it in the way that he said it but he did say, almost jokingly: “What we cannot do is make it too easy, otherwise we will get too many complaints.” Why? Why are we putting hurdles in people’s place?

**Deputy A.D. Lewis:**

If I could just ...

**Deputy M.J. Norton:**

I am happy to give way, Sir.

**Deputy A.D. Lewis:**

I did not, I said that there was a possibility, of course, if you made it easier the current system would not cope with the number of complaints, is what I said.

**Deputy M.J. Norton:**

In that case, I take that, and my apologies if I misinterpreted what he said. In which case, let us just look at that and say let us make it easier by having somebody who can deal with the complaints; that would be another way of dealing with it. Let us make it easier for people to have their problems, their issues, their complaints dealt with; an ombudsman would certainly do that. It may well be that our complaints panel has not been promoted as well as it should be, it may well be the case. It may well be that its light has been under the bushel for a little bit of time. But the ombudsman, for me and the case that has been made by Senator Ozouf so far seems to be a very strong one. The questions, and I am sure the good Senator in his summing up, will want to point this out but I would like to know the difference. What is the difference between an ombudsman and the complaints panel? Because if we can just rejuvenate our complaints panel at £3,000 a year, surely we would be doing that, so there must be a crucial difference in an ombudsman. I would like to hear what that is because that certainly, if it does not already convince me, may convince others. What about the ombudsman in the U.K.? How many complaints have they had? Has there been an uplift in complaints? Have there been more people coming forward because they know there is something there that is going to deal with it? I do wonder and I really genuinely do not know the answer and I listened to Senator Routier with great interest, that he was saying that this was discussed within the Council of Ministers and I wonder why they did not grasp this as a great opportunity because it does seem to me an excellent thing to be doing. We did it with financial services. For me, my opinion is that what we need is something that is fit for purpose. What we need is something that serves the public in the best interest of the public and that, for me, is an ombudsman.

**Deputy S.M. Brée:**

Sir, may I seek a point of clarity from the last speaker, please?

**The Deputy Bailiff:**

Point of clarification, if it is indeed, Deputy, yes.

**Deputy S.M. Brée:**

Deputy Norton spoke of the number of hearings that the complaints panel had last year and the year before, as if suggesting that was the number of times the complaints panel met, is that correct?

**Deputy M.J. Norton:**

I am sorry, I did say the number of hearings held in 2017; I was quoting it from their own report. That is the information that I have in front of me and if I made any other inference around that; that was certainly not intended. There were several more complaints made but the hearings that they held were the ones that I was referring to.

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

I suppose I ought to start by declaring an interest; currently one of my closest friends is a member of the panel; may not be a friend when I am finished but never mind. [Laughter] I jest but it is a pity he is not here. I was thinking one good reason for supporting this would be if it made Deputy Higgins less grumpy, if it made him smile. But, seriously, I have heard nothing tonight that does not convince me that we need to carry out this review into whether we should have an ombudsman, nothing. In fact what I have heard is everybody pointing out this works well and that does not work well and maybe we have not got that right, possibly we could do better. Everything I have heard tonight says that this review needs to take place. I think it is right, this review needs to take place. Someone used the term “shine the light in places where they have not been shone”; that needs to be done. It may

well be that the ombudsman developed in Jersey might be a hybrid for Jersey but we do need an ombudsman. I remember when I first was elected to this Assembly, I think it was Senator Maclean but I do not think he was Minister, I think he was Assistant Minister for Economic Development, giving him a really hard time over the lack of an ombudsman for financial services because they kept talking about it and talking about it and it did not happen; that has been a huge success. I do not know everything about ombudsmen but I do know that, for example, someone with a problem would get support in terms of a case worker to help them make their case to the ombudsman. Deputies, I have done it myself, and Senators and Constables do the best they can to represent their constituents. But there is nothing like a professional case worker to help them put their case together, which would help to get the right outcome. But the right outcome, by the way, is an outcome that allows perhaps the complaint to be upheld or not but allows for learning for the organisation as well; that is the right outcome. I have heard nothing tonight that does not convince me that we need to carry out this review and I urge Members to support this review. We are a mature Assembly or sometimes we are a mature Assembly but we do not have the support system around us. We have an ombudsman in finances but not a general ombudsman for the States. I am sure that when we have got this we will have more people coming forward with their problems. The ombudsman will help them with their problems. Departments will learn and will be better for it. I urge Members to support this review; that is what it says.

**Deputy A.D. Lewis:**

Sir, can I just ask the Deputy Minister to clarify something? He spoke about having a review but on page 2 of Senator Ozouf's amendment it clearly says: "The Clothier Report on the machinery of government and the Jersey Law Commission, that an ombudsman should be appointed to hear and determine complaints." It is saying carry out the recommendations. This is do it, not do a review to see if we need to do it. What did the Deputy Minister mean by his comment?

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

Yes, I am happy to answer that, although I think the Senator who brought the proposition can answer it better. That is what Clothier said, they said there should be an ombudsman. The Senator has pointed that out and he has asked that the Chief Minister consult with appropriate people, I cannot remember the list of people now, consult with them and come back with a plan. That is what we have asked for or that is what the Senator has asked for. Clothier has said that there should be an ombudsman. I am staggered we still have not got one.

**The Deputy Bailiff:**

Does anyone else want to speak on the proposition? If no one else wants to speak, I call on Senator Ozouf to respond.

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

I would like to thank all Members that have spoken and I know that the Constable of St. Clement said that I apparently would cause some sort of an interesting marmite opinions of Members or goaded or responded to the fact because I was bringing it, it might be something controversial. I have to say that, first of all, I am afraid I got the name of the body wrong. I do humbly apologise to the fact that I referred to the complaints panel with the wrong name. But almost that makes the point, is that none of us, including the mover of the proposition, me, knew quite what the complaints panel was for. What I will say is that I do think that I should know better but if I do not know, how many hundreds of other Islanders do not know? Because they do not know and they really do not know. I think, if I may say, this is not in any way ... and to Deputy Brée and to other Members who lament the passing, I say potential passing because I will come back to the potential future opportunity of something that is honorary and good people giving of their time. I have to say that in the current make-up of the complaints board, I think it is fair to say that they are the best ever that we have had.



Certainly, when you look at the range of experienced people that are there, there have been some great members on it. I going to try and get the Deputy of St. Ouen on side on this and he was a great man, he is elected as a States Member. But there have been some great members of the complaints panel and, yes, they are fair but are they really there in their honorary capacity getting under the skin and receiving and welcoming and understanding and working on constantly day in and day out improvements in the public sector? Have I just come along and made this up? Have I just come along and just ... I saw Senator Ferguson nod her head, oh dear. **[Laughter]** She has apparently been to university in the United States, she says and I know that must be true, I know it is true. But around the world you have ombudsmen that are working day in, day out receiving complainants. There are some more adversarial Members of this Assembly who ask questions and Senator Ferguson, it is on her Twitter feed, I think, she said: "She has got a brick in her handbag." The threat of having somebody professional and proper to look into something is really important. I am looking at the report of the complaints panel and the issue of Health has been mentioned and I am looking at the complaints dealt with. Deputy Norton was quite right to revert to the issue of hearings. The numbers of complaints in 2017, there were 18 new formal complaints, 3 that they were dealing with was carried forward from the previous year and 11 were dealt with outside a complaints hearing informally. The complaints by department were 6 Planning, the most; that is a surprise, not; 3 were from the Population Office, not a surprise really; people who are aggrieved of decisions by the H.A.W.A.G. group and others like that; 2 from Social Security, 2 in one year, 2 from Education, one from S.E.B. (States Employment Board), they must be very naughty and, if I may say, 2 from Health; 2 complaints for Health. Deputy Norton asked me what the numbers were in the United Kingdom, not a good comparison and I will deal with some other small territories; 2 complaints for Health, 2.

[19:45]

They are not that good, I am sorry, after what we know about our crumbling health service and the issues that we have got, despite the fact of putting up money and despite all the issues, that is Health and Social Services, by the way. We have just heard of all the issues that we have learned about from the Children's Commissioner that we did not know about and we have now learned that despite this Assembly putting tens of millions of pounds in Social Services, we have some serious issues with children; 2 complaints. In the U.K. and the body in the U.K., I should say, we would be doing a lot better than the U.K. because we would be setting up an umbrella, a Public Sector Ombudsman. There are lots of ombudsmen in the U.K., oddly and curiously in the U.K. there is a Parliamentary and Health Ombudsman and I do not know why they are mixed together. The 2 Governments previously, there is a Parliamentary and Health Service Ombudsman mixed together, I have got no idea why; that is complaints about Parliament, that would be about us. In the U.K., I am looking at their annual report, I wonder, Members, just if they could think about how many complaints there were. There were 22,500 complaints; that is complaints made to the U.K. Health Service. I think that is just England, by the way, I am pretty sure that is England. That would mean 40 in Jersey, 40; 2 versus 40. I am afraid this is not just casual. I am almost astonished to hear, I do not want to say complacency but almost the word of non-understanding of the real issue. The Deputy of St. Peter started this debate by thanking me and saying that she was not here for the debate and talking about sad cases, said there are tragic cases where people are not getting the satisfaction and not getting the redress for the problems that they deserve, that they need to be heard. I know that the complaints panel are great people and I know the Constable of St. Clement, as in his responsibilities at P.P.C., has to defend the complaints board and I am not complaining about them. I know he has to do that and I know he felt he has to do that. But, if I may say ... I will give way if he wishes.

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

The implication was that I was supporting the complaints panel because I had to. I did not say that, I did it because I want to because they are doing a superb job.

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

I do not disagree but they need to be moved on and it may well be a hybrid that we may have. But is it correct to say that a miniscule amount of what we now know about a systemic failure of social services, real issues with the Health Service, that until the Deputy of Trinity came in and started really unpicking some of the real failures within the health service? I was a Member of this Assembly that had no idea about the scale of issues and problems that was in our health service, no idea of the date of the issues until the Minister for Health and Social Services rang me up and said: "Philip, come and have a look at St. Saviour's Hospital, come and have a look at the dreadful state that senior citizens and people with mental health issues were in at St. Saviour's Hospital and across the road." We moved immediately with money, as a result of the Deputy of Trinity's work. There has been the whole issue of the cover-up mentality of Jersey, the pejorative way of the Jersey way. I am afraid Members need to, if I may say, get real as to the real issues. I am grateful for Deputy Higgins' support, we may spar a little and I may describe Deputy Higgins as grumpy sometimes and he is smiling at me, so obviously we are great friends today but that is off the record. **[Laughter]** But I think that some people know that there are some really serious issues in relation to public service administration that are currently hidden. I have no idea quite what is making people absolutely laugh with mirth across the ... I do not know what they are going on about, so I do not really want to know. I am just going to plough on, I am going to just plough on. There is an issue. If I may look at Bermuda, let us look at Bermuda, they have got a Public Sector Ombudsman that does a report that addresses all sorts of things. I commend the work of the complaints panel and what they do, within the limited resources that they are. To the greatest of respect, is it the right organisation? Does it feel right to Members who are not close to the public administration to feel that their complaint is being made to the Greffe? Does that feel right? Does that feel right in terms of ... it is almost like a complaint about a States Member; it is a parliamentary service. The Health and Parliamentary Service is not about decisions of Parliament, it means something completely different; I am not going to go into that. But, effectively, is that really right? When I look at the Public Sector Ombudsman report from Bermuda I look at a staff of 3. The Deputy Chief Minister said something really important and I was listening to the words of the Deputy of St. Ouen, he said they will consider the papers. The reality is is that many people who are aggrieved are so aggrieved, sometimes they are so distraught that they need help from a case worker to put their case together and that is the issue. **[Approbation]** I will not say that it is complacent or arrogant because that is not the right word to use. But people like Deputy Higgins, people that are attracted and I am grateful for Deputy Tadier, people and other Members who receive complaints from people that are really aggrieved with States decisions, they really need help to articulate, to put together their complaint in a way that means that they can get justice when they feel justice is done. One thing that I have not covered is the importance of an ombudsman in relation to the comparison of the difference of an ombudsman and between the ombudsman of court because I maybe should have covered this before. There is a real issue in this Island about how people think that they can get redress and often people with significant resources can take legal advice. I like lots of lawyers, lots of them are friends; I particularly like you, Sir, and the Solicitor General I like a lot. But the reality is is that the legal bills that people on low incomes, they cannot afford it. Then there is the issue of legal aid, as to how that issue works. A lot of people think that the solution to issues is going to court. People can go to court and we know, as we have seen in the recent *C.I.C.R.A. (Channel Islands Competition and Regulatory Authorities) v A.T.F. (Aviation Turbine Fuel)* case that A.T.F. got told by the Bailiff: "No, this is a proper appeal. This is a full merits appeal. We are going to hear this and you are not going to tell us, just because we are C.I.C.R.A., that we are better than you. We are going to really hear this." Hear it did they and so our courts do a great job. But, unfortunately, there is a whole category of complaints that the courts cannot deal with. Courts cannot determine administrative problems and people with healthcare issues like this, they cannot deal with it and an ombudsman is required. I ask Deputy Kevin Lewis, a longstanding Deputy, does he really think in his long experience as a Deputy that there is a

satisfactory arrangement for people for dealing with complaints? I ask Deputy Andrew Lewis, does he really think that there is a satisfactory solution and does he think that the continuation of, effectively, a voluntary body of individuals is the right solution? No. I almost defy any Member of this Assembly to be complacent enough to think that we are better than any other place that does not have an ombudsman. What have we got to be afraid of if there is one? Is it prevention? I am not going to talk about the responses of other people but I have absolutely no doubt and it is the time that I have had outside of being a Minister, when you get outside of that ministerial bubble that you realise the real issues that people have with problems and their complaints, with day-to-day problems and they need somewhere to go. I express the hope that the amended version that I have put forward in this proposition could take the best of the complaints panel because it is not prescriptive. I have got a number of workers here to look into this, could take the best of the complaints panel and put it with a professional case worker ombudsman. Maybe that is not the way, maybe it is just for purely professional but all options are open and that is what this is about. This is about raising standards, making people feel as though they are going to be listened to, the little people listened to, those that are aggrieved, that do not have big wallets for lawyers; that do not perhaps have the education or articulation of writing out a complaint. It is the small, little people that we forget and we have let so down.

**The Deputy Bailiff:**

Can I just mention to Members that a number of Members now are talking quite loudly among themselves and perhaps ...

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

Maybe I should just bring this to a conclusion, yes. **[Approbation]** Yes, I draw it to a conclusion and I hope I have made the case for a review. If I have spoken enough to convince enough Members of this, then that is absolutely fine. I urge Members to support this review. I think we will have made a good decision in the interests of Islanders and also to help the public sector, as Deputy Higgins said, that our public sector might be better off with a complaints procedure that is professional. I wish the complaints panel well in their work in working with an improved system, so that may shine a light and improve their light. I hope members of the complaints panel that are supporting will support this. I move the proposition *en bloc*, Sir.

**The Deputy Bailiff:**

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

<b>POUR: 24</b>		<b>CONTRE: 8</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Connétable of St. Clement		
Senator P.F.C. Ozouf		Connétable of Trinity		
Senator L.J. Farnham		Deputy K.C. Lewis (S)		
Senator A.K.F. Green		Deputy E.J. Noel (L)		
Senator S.C. Ferguson		Deputy A.D. Lewis (H)		
Connétable of St. Helier		Deputy of St. Ouen		
Connétable of St. Peter		Deputy S.M. Bree (C)		
Connétable of St. Lawrence		Deputy T.A. McDonald (S)		
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy of Trinity				

Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy M.J. Norton (B)				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

## ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

### The Deputy Bailiff:

Very well, that concludes public business for this meeting and I invite the Chairman of P.P.C. to propose the arrangements for public business for the last future meeting, I think.

### 18. The Connétable of St. Clement (Chairman, Privileges and Procedures Committee):

Before I do that, could I remind Members that we have scheduled for tomorrow lunchtime when we are expected to meet for a workshop on facilities for States Members? I am wondering if Members could indicate whether they would still wish that to go ahead tomorrow or should it be deferred until another date? All right. I think it seems to be that the noisiest Members want it deferred so we will defer that from tomorrow. There is plenty of time. We will get on with it but we have had a long week, it might be as well ...

### Deputy A.D. Lewis:

Sir, if I may, the third now, I think 3 times ...

### The Connétable of St. Clement:

No, this is only the second time.

### Deputy A.D. Lewis:

All right, twice. Can the Chairman give some indication of when he might want to do it?

### The Connétable of St. Clement:

Can I sleep on that one, please, Sir? Thank you. Items for public business for the next sitting, as per the Consolidated Order Paper and I would remind Members that we are starting that session on Monday, 9th April and sitting until about 6.00 p.m. on Tuesday the 10th before we go into purdah. The items are as per the Consolidated Order Paper, with the removal of P.35 in the name of Deputy Kevin Lewis, which has been withdrawn but with the addition of Projets 42, 43, 44, 45, 46, 47, 48, 65 and 66 in the name of the Minister for Health and Social Services. As I said, we will be sitting for 2 days only.

[20:00]

There are goodness knows how many items on the agenda. We are finishing at 6.00 p.m. on Tuesday the 10th, wherever we are on the Order Paper and it is quite clear that the majority of items on the Order Paper will not get dealt with at that session but that is what will be down on the Order Paper.

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

Sir, just for clarity, could the chairman just tell us what time we plan to finish Monday? Is it 9.00 p.m. or 5.30 p.m.?

### The Connétable of St. Clement:

I am not asking for Members to go on longer than the normal 5.30 p.m. but obviously anyone can make a proposition if they so wish.

**Senator L.J. Farnham:**

Sir, may I also ask, what time the proposed start time is?

**The Deputy Bailiff:**

It is already fixed for 9.30 a.m. I believe that is right, chairman, is it not?

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

Sir, I am not going to ask for this now but obviously I have a proposition and I know that the chairman has previously said that nobody is going to be certain to be here afterwards. But there is certainty that I will not be here and P.62, therefore, will never be debated and it is a matter of public importance that I brought on behalf of a number of individuals. There are a number of Members supporting it. I am not going to ask for it to be pushed up the Order Paper now because I think there should be discussions about whether or not matters should be brought that could be dealt with by the next Assembly, just because that is brought forward or not. The retail tax rescindment is an issue that deals with current year. If it is going to be dealt with at all it has got to be dealt with at the next sitting. I do not know whether or not I can test the mood of the Assembly to push it up the Order Paper or not now but I think I need to do so; not now. But I give notice that I will do so because it will be my only chance to do so. It is a matter that deals with current year issues, which is giving considerable uncertainty.

**The Deputy Bailiff:**

Senator, I think in light of the mood of the Assembly the right time to do it is at the beginning of public business at the next sitting.

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

Sir, can I test the mood of the Assembly and make a proposition that we plan to sit later on the Monday? If we do not need it we can take it away but it does allow us to get some work done and some of us need to make arrangements if we are going to do that. It need not be as late as 9.00 p.m. but could I suggest 8.00 p.m. and if we do not need it, that is fine?

**The Deputy Bailiff:**

You have asked to make it as a proposition, you are entitled to do that, I think, at this stage. Is that seconded? [**Seconded**] Very well, the proposition is to sit until 8.00 p.m. on Monday evening, if needed. Yes. Does any Member wish to speak? Deputy Higgins.

**18.2.1 Deputy M.R. Higgins:**

I think I would support this and the reason is I have a proposition that is down for the following day and I would like to get it on the agenda. I have been asking the States to bring it forward and if we can work on the Monday night we have got a better chance of getting through the rest of the business. I would ask Members to support the ...

**The Deputy Bailiff:**

I would respectfully suggest that we do not need a long debate on this. Deputy Labey.

**18.2.2 Deputy R. Labey:**

We should not even be sitting on 9th and 10th April. It is absolutely ridiculous. This should have been the last sitting of this Assembly. It is absurd. But as it is going to be the 9th and 10th, there are

certain traditions that we have to uphold and do on the last sitting of the States, so that takes an hour or so out. Is there not all the goodbyes? I am thinking of the last night of theatre. [Laughter]

**The Deputy Bailiff:**

There are no prizes, there are no songs. [Laughter]

**Deputy R. Labey:**

No prizes, okay. I think it is absolutely absurd that we have got on the agenda for the 9th and 10th, an agenda that we cannot possibly hope to get through. I appeal to the Deputy Chief Minister to speak to his colleagues about thinning this agenda out because it is absurd to do it. We should not be meeting on the 9th and 10th. We have got to go from the 10th to the Senatorial nominations and on the 11th the nominations for everything else. It is absolutely ridiculous. It is penalising candidates who want to stand again. It is absolutely absurd. It is wrong that we should be doing it so close to nominations, bigging ourselves up in this Assembly, getting the publicity. I think it is absolutely absurd. We must not sit late on the 9th, absolutely not.

**18.2.3 Deputy J.A. Martin:**

I rise absolutely in trepidation to go against my fellow Deputies in District No. 1. But we have an agenda, we agreed it. I do not have a problem, we will finish at 6.00 p.m. on Tuesday and everyone can go down to the Senatorials. I literally think we can sit a bit later on the Monday, why not? We could even make lunch hour a bit less. We have to go for it. I proposed today to move the regulations on health to that sitting. I want everything debated. There was no funny business there. I literally wanted another couple of weeks. It has nothing to do with we should not be sitting on the 9th and the 10th. Yes, after the 10th we should not be sitting and we have agreed that. But I really do not mind sitting a bit later on the Monday. I am sorry to disagree with my Deputy to my right but I think we should do it. We need to be here, do the work. Who knows, you might never get any work after that? [Laughter] Who knows?

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

I cannot believe that we are having a long debate on this. All we are asking for is an extra 2½ hours out of our lives to serve the public. [Approbation] The good Deputy Labey in front of me, he has had since September to bring a proposition to prevent us from sitting on the 9th and the 10th. To do it tonight, I am afraid, is a bit late, Deputy.

**18.2.5 Senator P.F. Routier:**

Just very briefly, I rise to support the staying a bit later. But I was just wondering, I mention this with trepidation, Members have the ability to ask questions on the Monday, I just wonder whether they would consider perhaps making sure that their questions are of value, if they really need to ask them and perhaps they just think about whether they need to lay the questions. I would, with trepidation, suggest cancelling question time but it is entirely for Members' view but I mean we have got a lot of business to do. I would just suggest that perhaps Members think about what questions they want to ask.

**The Deputy Bailiff:**

Question time is a matter provided for within Standing Orders. It is not open to the Assembly unilaterally to cancel it but without removing that Standing Order one would have to suspend the effect of that Standing Order and I would need time to think about how that would work, if that is what ...

**Senator P.F. Routier:**

But, Sir, if there were no questions laid, what would happen? Also, if one question were to last 2 hours.

**Senator L.J. Farnham:**

Yes, Sir, can we please go home now? [Laughter]

**The Deputy Bailiff:**

I am assuming no other Member wishes to speak on the proposition. Senator, would you like to ...

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

I will not anger people by making a long something, I will just say we know what we want to do. I urge people to look at the business we have got to cover and just set it out for 8.00 p.m. on the Monday night.

**The Deputy Bailiff:**

The appel is called for. The vote is on whether or not we sit until 8.00 p.m. on Monday night on the first day of the next sitting, if it is needed. I ask the Greffier to open the voting.

<b>POUR: 25</b>		<b>CONTRE: 6</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Senator L.J. Farnham		
Senator P.F.C. Ozouf		Senator S.C. Ferguson		
Senator A.K.F. Green		Connétable of St. Lawrence		
Connétable of St. Helier		Deputy of Grouville		
Connétable of St. Clement		Deputy J.M. Maçon (S)		
Connétable of St. Peter		Deputy S.J. Pinel (C)		
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

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

On that basis and on the end of a session where I think everybody would agree we have passed more legislation than I think probably any other session that I ever remember, I move the adjournment, Sir. I thank all those that have assisted us.

**The Deputy Bailiff:**

The States stands adjourned until 9.30 a.m. on Monday, 9th April.

**ADJOURNMENT**

[20:09]