

2.2 Deputy G.P. Southern of the Minister for Economic Development regarding the draft Trusts (Amendment No. 4) (Jersey) Law 200-:

Would the Minister provide Members with details of the public consultation that took place in advance of the draft Trust (Amendment No. 4) (Jersey) Law 200-, being debated and adopted by the States on 25th April 2006? In particular whether any responses expressed concerns over powers reserved by settlers as provided for under Article 9(a), and if so, what these concerns were?

Connétable G.W. Fisher of St. Lawrence (Assistant Minister for Economic Development - rapporteur):

A full public consultation took place in relation to the draft Trusts (Amendment No. 4) (Jersey) Law 200-. The consultation paper was issued on 18th November 2004, published on the EDD (Economic Development Department) web site, and was open for a period of 3 months, closing on 18th February 2005. The amendment was also lodged 6 weeks prior to debate before the States. To my knowledge no concerns were raised during that time or during the States' debate on the draft law.

2.2.1 Deputy G.P. Southern:

Does the Minister accept that the powers reserved in Article 9(a) allow the settlor of a Trust to reserve to him or herself the grant of a beneficial interest in the trust property, thereby rendering the trust effectively what is called a "sham" trust?

The Connétable of St. Lawrence:

Could I ask the Deputy to define what he means by a "sham" trust?

Deputy G.P. Southern:

Yes, one whereby you have the appearance of giving away your property to a trust, whereas in fact you retain an interest in that particular property.

The Connétable of St. Lawrence:

No, I do not accept that. The law as adopted by the States allows a settlor to retain some reserved powers to him, or herself. A "sham" trust only occurs if a settlor does not actually settle assets and continues to control those assets him or herself. That is not the case with reserve powers which are restricted in the way specified in the trust deed. So, there is no problem on that. It is a specialist area, and of course it is important that the trust deed is drawn up properly by lawyers who are specialised in this area.

2.2.2 Deputy G.P. Southern:

Furthermore, does the Minister accept that the powers reserved in 9(a) allow, and I quote: "To the trustees; to give directions to the trustee in connection with the purchase, retention, or sale of trust property? To give directions for the trustee for the distribution of trust property, and to restrict the exercise by the trustee of some of its powers of discretions" effectively, rendering the trustee a nominal trustee.

The Connétable of St. Lawrence:

No. A trustee, a proper trustee, is never a nominal trustee. No matter what powers are reserved in the trust deed the trustee has still to act fully in relation to the trust law and his or her duty as a trustee.