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7 Connétable J. Gallichan of St. Mary of the Minister for Social Security regarding information provided to the States Assembly when the Long Term Care scheme was originally proposed: [1(61)]

Following the confirmation to the Assembly on 19th January 2017 that, in at least some circumstances, long-term care contributions are to be treated as a tax, will the Minister advise whether Members were properly informed of that when the long-term care scheme was originally proposed?

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

At the last States sitting the States received legal advice that for the purpose of Article 21 of the Public Finances Law it is appropriate to include long-term care contributions within the definition of taxation used in that Article. This legal definition in respect of a particular section of the Public Finances Law has no bearing at all on the contributions collected to be paid into the Long-Term Care Fund, the maintenance of the fund, or the way in which benefits are paid out of the fund. States Members supported the introduction of a ring-fenced Long-Term Care Fund in the light of an increase in the ageing population and significant increases in care costs that were putting pressure on general taxation. Ring-fencing long-term care contributions into a standalone fund were seen as a very positive step to ensure that we could meet this new challenge and local residents could continue to enjoy a good quality of care when they needed it. In addition to the legislation itself, a detailed proposition covering all aspects of the operation of the new scheme was debated and approved before the new scheme was introduced. As Article 21 of the Public Finances Law is not relevant to the operation of the long-term care scheme this was not discussed at the time. However, I repeat, that the recent legal advice makes no difference to the long-term care scheme itself.

4.7.1 The Connétable of St. Mary:

I thank the Minister for her answer. Of course I am grateful for the other information she has given in written questions today, and of course I do support the scheme, as I am sure most of us do, but it does follow the information that I have had given in my written question 6 backs up the treatment of the contributions as taxation. The thrust of the debate at the time, this was brought up many times. We were told repeatedly it is not a tax, it is a charge. I ask again the Minister, does she think perhaps Members were, albeit inadvertently inadequately, informed about the matter?

Deputy S.J. Pinel:

The law officers have quite correctly applied a legal definition to this question and the legal answer is that any contribution or charge that a Government makes is technically categorised as a tax unless there is a clear link between the amount of contributions paid and some benefit that is provided. As there is no direct link between your contribution record and the amount of long-term care benefits you receive, long-term care falls into this category.

4.7.2 Deputy M. Tadier:

The Solicitor General of course is a lawyer and will give a legal answer. The Minister for Social Security is a politician, so can I ask her a political question? Does she think that politically speaking the long-term care charge, the amount that is paid for that, the levy, is a tax or a contribution?

Deputy S.J. Pinel:

The only definition of tax is concerning the Public Finances Law. The long-term care scheme, as I have repeatedly said, is a ring-fenced fund of contributions out of which benefits are paid. The Minister for Social Security has total responsibility for the Long-Term Care Fund, it is ring-fenced, and it comes under the Long-Term Care Law, which is part of the Social Security Law.

4.7.3 Deputy M. Tadier:

Does the Minister think that the cap on the long-term care fee - we will call it for now - is integral to it remaining in place and if she does could she explain how high that cap could go, while it still remains a contribution in its current form. Perhaps the follow-up answer would also be to include whether she thinks that the cap could be removed at some point in the future.

Deputy S.J. Pinel:

As the Deputy will be well aware, there is a review underway with Social Security at the moment, which is reviewing the whole social security scheme, and the Social Security Fund. The cap that was set with long-term care, the upper earnings limit, is separate. It can be changed at any time. It does not have to rely on any change in the Social Security Fund Law.

4.7.4 Deputy G.P. Southern:

Could the Minister clarify my understanding that there is technically no such thing as a ring-fenced fund in Jersey because the law does not allow it? Even the Health Insurance Fund, which we always refer to as ring-fenced, has been diverted to a wider use than its original intention?

Deputy S.J. Pinel:

There are several ring-fenced funds. The Social Security Fund, which people call the Pension Fund. The Health Insurance Fund is for primary care and it has not been diverted to any other place other than primary care. The Long-Term Care Fund is solely used for long-term care benefits for people requiring that sort of care.

4.7.5 Senator P.F.C. Ozouf:

Having previously been known to say if it quacks and it waddles it is a duck in relation to tax, would she agree that because it is a contribution with a hypothecated or ring-fenced - or what every other way one would like to describe it - fund for the Health Insurance Fund, that it cannot be a fund but a contribution? Would she agree that perhaps the reason why there is some confusion, not in any way to grind the advice legally for the separate definition under the Public Finances Law, that perhaps the reason why people think that this may be a tax is because it is on the marginal rate of tax contribution, which is fairer because of course there is an income free allowed? Maybe if she could say is that the reason why people think it is a tax where it is not?

Deputy S.J. Pinel:

I thank the Senator for his question. I think most of the public think it may be a tax because it is collected by the Tax Office. But all the contributions collected by the Tax Office go into the ring-fenced fund which is long-term care, and it is only used for long-term care benefit.

The Connétable of St. Mary:

I think I have exercised my questions on this but I know the Deputy of St. John has a question, might I give my final supplementary to her?

The Deputy Bailiff:

I do not think you can. You are called upon, you have the right to a final supplementary and I am not sure it is something ... otherwise we would end up in situations where people would be selling their questions. **[Laughter]**

The Connétable of St. Mary:

In that case, I will pass.