

STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 5th JULY 2006

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

PUBLIC BUSINESS (continued)

1.1 Draft Sexual Offences (Jersey) Law 200- (P. 63/2006)

1.1.1 The Bailiff:

In accordance with the decision of the Assembly yesterday evening, we proceed first with the draft Sexual Offences (Jersey) Law 200- and I ask the Greffier to read the citation of the draft.

The Greffier of the States:

Draft Sexual Offences (Jersey) Law 200-. A law to make certain sexual acts offences, to amend the law relating to certain sexual acts and for connected purposes, The States subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following law.

1.1.2 Senator W. Kinnard (Minister of Home Affairs):

Members will recall that this draft law was lodged for debate originally in September 2005 by the Home Affairs Committee and originally set down for debate prior to the move to ministerial government. However, in the light of the large amount of public business that had to be dealt with in the run-up to the Island's elections the matter was deferred. The matter was brought to the States early in its new session as it is a necessary prerequisite for Jersey to comply with human rights legislation. When the Sexual Offences (Jersey) Law 200-, which would have had the effect of equalising the age of consent to 16, was debated by the States on 17th and 18th January that debate was adjourned. The Corporate Services Scrutiny Panel then reviewed the Island's obligations under the European Convention of Human Rights and published its report on 28th March which concluded that the States should approve the draft Sexual Offences Law, but that the Minister for Home Affairs should present legislation to introduce abuse of a position of trust provisions and that these be debated prior to, or at the same time as, the Sexual Offences Law. This latest draft before Members now includes measures intended to protect young people of both sexes from adults who are in a position of trust in relation to them and reintroduces provisions to equalise the ages at which people can lawfully consent to sexual activity. The legislation therefore addresses both the discrimination which wrongly exists in the present law and modernises the law to reflect changes in society and social attitudes since the present legislation was first introduced. The existing law on sexual offences is archaic and discriminatory, much of it originating from the common law of the 1800s. The legislation does not therefore reflect the changes in society, nor the changes in society's attitudes to both the question of the protection of young people and also to homosexual activity. This draft law puts particular emphasis on protecting children and in doing so a balance has been sought between the role of government and that of the individual, their rights to determine their own behaviour, their responsibility and the duty of care. The aim is to change the most outdated aspects of the existing law and make it fit for the 21st century in a way that provides confidence and protection and remains true to the accepted parameters of a free and civilised society. The draft law creates a new offence, as I have said, of abuse of a position of trust where an adult aged 18 or over has sexual intercourse or engages in any other sexual activity, such as touching in a sexual manner with someone under that age, if the adult is in a position of trust in relation to the younger person in circumstances which are specified in the law. In particular, the offence of abuse of a position of trust prohibits sexual activity between those aged 18 or over who are looking after persons under 18 in educational establishments and in various residential settings, or where a person is particularly vulnerable, or the relationship of trust is particularly strong. It prevents the vulnerable person from giving valid consent in such circumstances. To give an example, Sir, a person aged 18 or over is said to be in a position of trust in relation to a younger person where the younger person is living away from home, perhaps in a children's home, or an institution which is regulated by the Health and Social Services Department, or if they are in social care or in full-time education, where the older person is regularly involved in caring for, training, supervising, or in sole charge of, the person under 18. It is obviously recognised within the law that full-time education is a very wide category but that the pupil/teacher relationship is one where the position of trust is particularly strong. Indeed, Sir, teachers are *in loco parentis*, even when pupils are 16 or 17. So the full principles really that we have tried to address in the proposals on abuse of trust are the

vulnerability of the young person, the location, the special influence of the adult and lack of access to other adults. There are also new offences regarding sexual grooming, and these are not dependent upon being in a position of trust. Sadly, grooming children for sexual abuse is not new. Sex offenders have always found ways of gaining the trust and confidence of children and have now seen the possibilities of misusing the internet to befriend children for their own purposes. For instance, there have been very sad cases where sex offenders have deceived children in chat rooms into believing that they themselves are children or teenagers with similar interests and have arranged to meet with them. So, to tackle both on-line and off-line grooming it is proposed to introduce this offence of meeting a child following sexual grooming. This offence is designed to catch those aged 18 or over who have previously met, or communicated in some way, with a child under 16 on at least 2 occasions with the intention of engaging the child in sexual activity. It is intended to cover a wide range of situations, for example, where contact is made through meetings, telephone conversations or, indeed, communications on the internet and where the child's trust and confidence is gained in an inappropriate way for the purpose of a sex offence against the child. This law will enable action to be taken before any sexual activity takes place where it is clear that that is what the offender intends. The draft law also has the effect of making consensual anal sex lawful, whether between 2 males or a male and female from the age of 16 upwards to the same extent that consensual vaginal intercourse is lawful. The current situation in relation to anal intercourse is that it is unlawful at any age between male and female, irrespective of whether or not it is consensual, while in respect of 2 males, it is currently lawful provided both are aged 18 or over and the act is consensual. In terms of consensual anal intercourse between men and women, this ceased to be a criminal offence in England and Wales in 1994, by virtue of the Criminal Justice and Public Order Act 1994 and the view taken at the time in the United Kingdom was that private sexual activity between consenting adults was not a matter for criminal law. The Council of Ministers takes the same view. Consensual anal intercourse between male and female will therefore cease to be an offence in Jersey, thereby bringing our law into line with that of England and Wales. The principal basis for wishing to change the current legislation is because the European Court of Human Rights has made several rulings to the effect that any law that has different ages of lawful consent for homosexual acts and heterosexual acts is, in fact, in breach of Articles 8 and 14 of the Convention. Article 8, which is the right to respect for private and family life reads as follows: "Everyone has the right to respect for his private and family life, his home and his correspondence." It further states that "There shall be no interference by a public authority with the exercise of the right except such as in accordance with the law and as necessary in a democratic society and in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." Article 14, I will remind Members, deals with the prohibition of discrimination and provides that the enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex and other status. When the Human Rights (Jersey) Law 2000 finally comes into force it would be possible for this discrepancy in the age of consent to be challenged directly in the Jersey courts and it is clear from several cases heard before the European Court of Human Rights that our existing legislation would be found in breach of Article 8 and Article 14, making law reform absolutely necessary at that point. I am grateful, Sir, to the work of the Corporate Services Scrutiny Panel in confirming their support for this interpretation of the position under the Human Rights legislation. Also, I am aware that Members will have received over the weekend a long letter from an Advocate Cushen, and, indeed, I am advised that the - as it deals with a lot of legal points - if Members have questions on that particular letter that the Attorney General will be prepared to respond to those in due course. When deciding to lodge this draft law it was noted, of course, that most Member States of the Council of Europe recognise equality of treatment in respect of the age of consent and we did review, in some detail, particularly with the Corporate Services Panel, the issues around the choices that could possibly be made and, of course, the three possible courses of action that were considered to make the law consistent with Convention rights were that (1) to increase the

heterosexual age of consent to 18 years in line with existing law for consensual homosexual activity; (2) to fix the age of consent for both types of sexual activity at another age, for instance, 17 years; or (3) to lower the age of consent for homosexual activity to 16 years in line with the course of action that has been taken in England and Wales, and is most common throughout the countries of the Council of Europe. It is this last option that the Home Affairs Committee, as it was then, considered to be the only feasible option and I do believe that that view is shared by the Members of the Corporate Services Panel. There is further confirmation that this is the correct approach. It is also an approach that we are adopting this law that has the support of the Minister and the Department of Health and Social Services and the Minister and the Department of Education, Sport and Culture. It also, Sir, has the support of outside bodies such as the NSPCC (National Society for the Prevention of Cruelty to Children) Jersey and Brook Advisory Jersey who, of course, are very much involved with the interests of children and young people. So, Sir, the proposals that are set out in this draft law, we believe, set an appropriate balance between the protection of the Island's younger persons and the rights of the individual within the context of the European Convention on Human Rights, so, therefore, Sir, I propose the principles of the law.

The Bailiff:

Thank you, Minister. Are the principles seconded? **[Seconded]** The principles of the draft are open to debate.

1.1.3 Deputy J.G. Reed of St. Ouen:

I would just like to make a few comments because obviously as States members are aware, I have put forward amendments which I will be speaking on in more detail later in the debate. First of all, the Minister states that the accompanying report, or the report regarding the law, suggests that the law needs modernising, or it actually modernises should I say, the existing law to reflect changes in society and social attitude and yet she also states that the existing law is archaic. I would totally agree that the existing law is archaic and I think, in my view, this draft law falls well short of its objectives. I think it is a poor indictment of this government that no real attempt - and I mean real attempt - has been made to review our existing sexual offences law which are still based on 1895 - I repeat, 1895 - and 1938 laws. Why has this not happened? At a time when other places have recognised the need to review their sexual offences laws in detail, what were we doing? Where is the accompanying sexual health strategy that was promised over 3 years ago and groups such as Brook, ACET (AIDS Care, Education and Training) and others have been crying out for? I applaud the fact that not the Minister or the Council of Ministers but this Assembly made sure that this law - or the proposed first draft of this law - was referred back and reconsidered in the light of comments made. However, although there is some protection for children who are in the care of others, there is not full protection for children that one should expect within any modern - and I repeat modern - sexual offences law. There are many issues that still need to be dealt with, not only with the sexual offences law but with aspects of the criminal law. I am aware of concerns being raised, and that have been raised, by Magistrates regarding how they deal with, for want of a better expression, "rent boys". We do not have proper and full protection for our young girls that other countries have within their new and revised sexual offences law. Even the writer - the Minister - acknowledged this in the report when it states that these issues need to be explored further during the consultation period. I would like to ask the Minister - what consultation period? Have I missed something? It seems as though the Minister does not know what consultation is. Consultation, in my view, is that all agencies and all parties are involved in that process, and attention is paid to concerns raised by those individuals. What attention has been given to the views of parents on this subject? What attention has been given to the church, or the views of the church rather, on this subject? Literally none. Our Home Affairs Minister seems intent on dismissing nearly all other views apart from her

own and I think that this is a difficult subject, and I appreciate it is difficult. However, if we are going to be a responsible government, we need to address these issues in a caring and sensitive manner. This Island has a golden opportunity to select the very best parts from sexual offences laws across Europe and, indeed, beyond. This should be supported by an effective sexual health strategy based on up-to-date medical research and information. Sadly, up to now, that has not happened. I ask the Chief Minister; will he give that commitment to this Assembly and to the people of this Island that he will look at this area and address this issue in a full and proper manner? It is suggested that the Education, Sport and Culture Department has supported these proposals but I ask Members to consider how effective our existing sex education and sexual health strategy is when we see, year on year, increasing numbers of young people under the age of 25 attending clinics such as Brook and others. If we are to support our community and provide protection, then let us make sure it is effective.

1.1.4 Deputy J.J. Huet of St. Helier:

I have just got one query on this. If I have understood it correctly, the Minister has said that our children will be protected and this will be teachers and whoever comes into contact with our children. What I am going to query is that recently, I believe, a caretaker at one of our schools, who was grooming a child, got community service. Now, if that is what you call care and protection of my children, I am not satisfied with that. I think that is disgraceful and unless I can be assured it is proper protection - community service - I cannot believe what I am hearing - and we are told in this Chamber: "Oh, it is fine, we will look after your children." Oh, great, you will give them community service. I rarely call that being looked after, Sir. I think it is disgraceful and we should be ashamed of ourselves.

1.1.5 The Very Reverend R.F. Key, The Dean of Jersey:

I will speak on one of the amendments a little later. I, at this stage, just want to say three very simple things and hopefully to be heard clearly on them. I want to quote the Archbishop of Canterbury who, in his latest reflection, has said - and I paraphrase - "There can be no Christian justification or excuse for anything that looks like homophobia." I want to say that quite clearly because I think there is a Christian and ethical moral dimension to that. Secondly, I want to say quite clearly that whatever the law has to be because of decisions taken outside this place over which we have no control, I would be failing in my duty if I did not say that in the Judaeo-Christian tradition and in the scriptures of both the Old and New Testament, marriage is, by definition, heterosexual and that that is seen as the gift of God for the full and fulfilled expression of the Creator's gift of sexuality. What we may have to decide legally in this place for good and sufficient reason - and I have read the comments of the Attorney General and the Minister for Health and Social Services, and I am grateful for both of their contributions which have helped my understanding of these issues - there is a difference sometimes between the church's teaching and what the State may feel it has to decide. I have had conversations with Members saying to me: "We understand the moral teaching and in many ways accept it but on this particular issue we may well have to decide to equalise the age of consent because of the European Court of Human Rights" and I would need to say I accept that quite happily today. May I just say one thing about statistics, because I was genuinely grateful to the Minister for Health and Social Services and, in fact, it sent me scurrying for statistics. Statistics - looking at where we can learn our moral lessons for the sort of community we want to build. I went looking at the comparative abortion statistics across the world, not with regard to the debate about pro life or a woman's right to choose but as an indicator of the moral framework of society and the success of the sex education strategy in place, using that barometer of the number of unplanned pregnancies that receive legal terminations. The statistics are fascinating. 2002 is the most recent year I could find. Russia; the percentage of pregnancies terminated by legal abortions runs at 58.2 per cent. Sweden, often given to us as an example of an

advanced moral society, 25.7 per cent. Texas, 17 per cent. The Netherlands does, indeed, do extremely well at 12.7 per cent. Two places that do even better struck my attention; Greece, where, if you go through any hotel complex, you often find that little chapel just reminding us of a higher authority, and the Channel Islands, 8.7 per cent. All I would ask is that when we look elsewhere for moral guidance we do not forget the success we already have in our integration of church and State as a God-fearing moral framework and in our upholding and building and encouraging of family values in society, and it seems to me it would be a grave mistake if we so fell in love with looking at other places that we threw out what we already have in these Islands. I will say more if called, Sir, on child protection under the amendment. As it is, I simply want to assure Members of the House, as I always do, that when dealing with difficult issues, they have a right to expect not only from me as their Dean but also from the churches of the Island, not the judgment of sitting outside but the encouragement and the prayers of God's people.

1.1.6 Deputy J.B. Fox of St. Helier:

This is one of those questions that there is a requirement that we have been told that legally we have to do to comply with the United Kingdom and the European Court of Human Rights and that it would provide international embarrassment. Well, since that was first relayed to us, I think by the Chief Minister, I found that a greater embarrassment was, in fact, the British Government itself where 9 hijackers have been released because of their human rights, and I find that very disquieting. To me it is against natural justice. Legal justice is not necessarily right in all cases. I should know, I served for 27 and a half years practising it and I believe in moral justice. I did ask the question to the Scrutiny Panel, because they asked if I would contribute, whether that we could not be looking for parallels in ages that would be equally as acceptable and whether this had been considered by the European Court of Human Rights, i.e. 16 years old for one type of sex and 18 years old for the anal other type sex. I have not received a response to that or a reply - it might be something the Attorney General might want to pick up, and I know that we have moved on because I was very concerned about the question of predatory, and I recognise that there is containment in the proposals that we are receiving today on duty of care, etc. But my concern is also to the other types of predatory that might occur which I also asked the Scrutiny Panel to consider. That question, I think, is still open to debate. It has not been answered as far as I am concerned. There are opportunities for predatory when people are not under care and control and I would be interested to hear the Minister's views on that section. I shall be listening intently today. I personally do not believe that there is a necessity for fulfilling these obligations. Certainly in question of embarrassment to the United Kingdom, I think they are already embarrassed because of other things and I would certainly like to hear from the Chief Minister on what his views are on embarrassment in relation to the quirk, if you like, of having a human right that allows a terrorist act to go unheeded.

1.1.7 Deputy A.E. Pryke of Trinity:

I am sure members all agree that this is a very difficult and emotive subject. It is one of great concern to us all. We are being asked to agree to lower the age of consent for homosexuals to 16. Is this the right and suitable age for this responsibility to be given to these young people? Are they, at that age, fully aware of their sexual orientation? There will be some, of course, who are but I would say that there are many who are not and it is a well-known fact that boys mature later than girls. They are still growing up, finding their feet in this world. This is a very vulnerable age and they need to be protected and I very much welcome the abuse of trust law. Sir, at 16, people can marry but they cannot buy a house, rent or vote, cannot buy alcohol or cigarettes. Both said, quite rightly, can damage your health, yet we are being asked to agree the same age they can have homosexual sex. We have a report from the Minister for Education, Sport and Culture that all these social issues are included within the PSHE (Personal Social and Health Education) curriculum but what are the

health implications? As the House is aware, Brook was set up to look at the sexual health of young people under the age of 25. It was a very difficult service to set up 12 years ago. I was one of the founder members and later the Chair. One of its strengths, of its successes, is that it meets the ever-changing needs of relationships and of the sexual needs of young people. Both Brook and ACET are concerned with this proposition as there is a possibility of the increase in sexually transmitted diseases, especially with those who do not practise safe sex. In the report from the Minister for Health and Social Services, he states that there is no evidence to base this assumption. That would be the case if all young people practised safe sex but, as he knows, this is not the case. He will be aware that there has been an increase in sexually transmitted diseases over the last few years. At Brook, they do test and treat young girls for sexually transmitted diseases but they are not permitted to test men, so where do they go? There is evidence which says there is an increase in HIV (human immunodeficiency virus) and sexually transmitted diseases among men who have sex with men. The Minister goes on to look at evidence from France, Germany, Netherlands and compares this to the United States; but why the United States? In health issues, where there is no evidence locally, we compare to what happens in the United Kingdom, or proportionately to what is happening here. In the UK, it is estimated that there are 60,000 people who now have HIV. One third are not aware that they are carriers and they are asymptomatic. These figures come from the Health Protection Agency in the UK. More information needs to be put in place to enable our young people to make an informed choice. We need to ensure that they understand the dangers of unprotected sex and the harm that it can do long-term. Is there going to be a safe sex campaign put into place alongside the proposed introduction of this law? Again, it is well-documented. In fact, in this week's *Nursing Times*, it states that men are reluctant to access health care and it states that gay men are a section of society with specific health needs. They need to have easy access to be able to be tested and encouraged to be tested. Where do they go? And what of education in schools? What are the guidelines? What age do we start educating our young people - young men - on the responsibility that homosexuals need to have if they are to protect themselves? Young gay children and teenagers need explicit information on how to behave safely. We need to look at the practicalities of delivering that information in a way that is safe and well-informed. So what age are we going to start with that? Have these issues been thought through? We must ensure that all these responsible safeguards are in place before this responsibility is given to young people and that the very long-awaited health strategy will be effective and especially well-resourced. I look forward to my concerns being addressed by the Minister. Is caring for a section of our society discriminating?

1.1.8 Deputy I.J. Gorst of St. Clement:

I hardly know where to begin today. Members, as well as myself, will have received several representations from both private individuals outlining their concerns and several organisations. Members have already received scrutiny reports from our colleagues on the Corporate Services Scrutiny Panel outlining the position, as they see it, with regard to our obligations and European Human Rights Convention saying that we have no choice but to accept and to vote today to lower the age of consent. Having said that, we also have before us a report from another Scrutiny Panel discussing the concerns that they have in regard to consultation which has been undertaken and the consequences of reducing the age of consent. Having said that, those concerns and the allegations - if that is what they are - of a lack of consultation have been strongly refuted by the Minister in an email which Members will, no doubt, have seen as well. Members have also been invited, and some have attended, a forum by the Jersey Youth Reform Trust. At that forum, they implored us to reduce the age of consent. Interestingly, however, they also said that they agreed with Brook and the requirement that Brook would have for an increased funding stream. Some Members have written to the European Court of Human Rights to ask them what the situation would be with the current case which is before them, and they have indicated that that case may indeed continue, whatever the outcome of this debate today, because the infringement of human rights was in existence at the time that they started their case at the Court. Members will also have read

numerous articles and reports on this subject, not least of which was the Waterhouse Report. We have received copious amounts of health advice. Unfortunately, some of this advice appears to be contradictory. For example, we read that Brook have grave concerns about the lowering of the age of homosexual consent, and if I might just read their concern. It says: "Once again, we have been warning States Members of the impending epidemic of sexually transmitted infections if Brook is not provided with funding to carry out those tests where young people will access them." However, we read in a report from the Minister for Health and Social Services that such concerns are unfounded. In that same report, Sir, we have a brief analysis of why the Minister believed those concerns are unfounded and we have a number of calculations. However, on looking at those calculations, it appears to me that we have not taken into consideration the fact that, not only are we being requested today to lower the age of consent for homosexual activity, we are also being asked to make anal sex for heterosexuals legal as well and the results of that change, as far as I read it, have not been factored into those calculations, and therefore it is difficult to know which is right and which is wrong. We also have come across the effectiveness of education. On the one hand, we have a belief that safe sex education and a reduction in the age of homosexual consent will lead to a reduction in sexually transmitted diseases. On the other, we appear, in the UK, to have an increased number of cases of sexually transmitted diseases over the same period that the ages of consent were reduced. We also have apparently contradictory legal advice. Interestingly, I note also from Brook's submission to the Corporate Services Panel, the Manager says: "I, myself, have been in the position of referring cases to the child protection team from Brook and have only ever had one prosecution in the 10 years that they have been in that job". I also note at this point, Sir, that in the UK they were only able to reduce the age of consent by the use of the Parliament Act. Lastly, but by no means least, we had an editorial in last night's *Jersey Evening Post* asking us, as Members of this House, to vote today with our heads and not our hearts. If I have discovered one thing during the last 6 months it is - and here I echo the words of a previous Member of this House in his submission to the Corporate Services Scrutiny Panel - that the States have a duty to resolve the entire ambit of sexual offences which, in his view, is a complete mess. I, therefore, request that in her summing up the Minister will now undertake to perform a full review and bring forward any necessary changes and laws in due course.

1.1.9 Senator J.L. Perchard:

Members will be aware that I was a Member - or am a Member of the Corporate Services Panel that undertook a review into the draft Sexual Offences Law 200- that was lodged "*au Greffe*" on 13th September 2005. We concluded briefly that the European Convention on Human Rights is binding in the United Kingdom and Jersey under international law. If the European Court of Human Rights were to find Jersey in breach of the ECHR (European Convention on Human Rights), and the evidence can clearly suggest that it would, then the United Kingdom must ensure that Jersey takes action to rectify any deficiency in internal laws or practices so as to bring them in line with the Convention. As Jersey law currently provides for a different age of lawful consent for homosexual acts compared to heterosexual acts, Jersey is currently in violation of the European Convention on Human Rights and I am sure the Attorney General will confirm that again to the States some time during the debate. It is in breach, as the Minister said, of Article 8 - respect for private life, and Article 14 - non-discrimination. In the event of the Island's non-compliance, and this issue becoming a source of embarrassment in the UK in terms of its relationship with its European partners, the evidence as to whether the United Kingdom would, in fact, or could, in fact, legislate on the Island's behalf is divided but should this be the only reason why we should consider equalising the age of consent? For many years, governments have debated many moral issues, the crucial question always being whether something is right or wrong; issues that test our humanity and our sense of what being civilised is all about. Governments have debated the abolition of slavery, universal suffrage, votes for women, civil rights, racial discrimination, among many complex and sensitive issues. Today, in the States of Jersey, we are debating whether the criminal

law should continue to discriminate between heterosexual and homosexual relationships. This is a sensitive issue of compassion and is an issue of protection but it is also crucially an issue of discrimination. The law at present is discriminatory and has to be wrong. Let us be clear. The issue is about whether a relationship between one human being and another should be a criminal act. It is not about urging people to be promiscuous or urging young people to have sex at 16. It is not a debate about anal intercourse. It is a debate about whether society should judge young people to be criminals because, at 16, their sexual orientation sets them apart from what is perceived to be a majority, or what is probably a majority. We need an equal age of consent to protect young people from injustice and from prejudice. It will protect them from fear and exploitation and by introducing this law we will make them part of a civil and civilised society and strengthen our society for all of us, heterosexual and homosexual. I respect the views of those who take a different view from me on this important moral issue of the age of consent. In thinking of their reasons Members should ask themselves the actual reason behind their arguments. Is it reason, is it principle, or is it prejudice masquerading as principle? Today we have a chance to end the scapegoating. We have a chance, because we genuinely have the opportunity to ask ourselves whether we speak from principle or from prejudice, whether we speak from the knowledge of what is right or we are simply rehearsing old stories and old prejudices. The rule of law, Sir, should be there to uphold our freedom and protect it. Yes, of course we must protect our children and that is why we need an age of consent and abuse of trust and sexual grooming legislation. However, the question we are addressing here today is not whether there should or should not be an age of consent. Of course there should. Today we are debating whether we should continue to use the power of the criminal law to discriminate between heterosexual and homosexual acts, and by doing so terrorise young people and cause terrible damage at a critical age when they are embarking on their first adult mature relationships with another human being.

1.1.10 Deputy C.J. Scott Warren of St. Saviour:

The Minister for Health and Social Services states in the comments that there “are no medical grounds to oppose such a change in legislation.” The ability for young people to access all necessary medical services and advice is very important. I totally support the new measures to protect young people from an abuse of trust and from sexual grooming. I believe that we must ensure that young people receive not only all necessary sex education and information but also continue to receive good - in fact, I think it must be excellent - personal education in schools. Young people need to make decisions regarding their personal lives in full realisation of the importance of self-respect, respect and consideration for others and the importance of emotions and emotional well-being before entering into relationships. It appears that we are effectively obliged to comply with the European Convention on Human Rights. I accept that we must do this but I do feel that the extra safeguards in this law to protect our young people are, therefore, extremely essential.

1.1.11 Connétable D.J. Murphy of Grouville:

There are people better qualified in this House to talk on the moral and health issues regarding this law, so I am going to go back to the area where we started, and that is, how did we get here in the first place. When our predecessors signed up for the Charter of Human Rights did they know they were signing a blank cheque? For that is what we have signed to. We are told that if we do not accept this law then the UK Government, who signed on our behalf, will be so embarrassed that our relationship will be fatally flawed. However, if I can just say that during questioning on the Corporate Affairs Panel the Chief Minister said and I quote: “They have laid down Convention obligations on us which we are obliged to meet. It is up to us domestically to deal with the moral issues, the issues of our security, health and so on.” I would suggest to him that perhaps this is what we should be doing instead of glibly accepting these new laws. I would also at same stage be obliged to the Attorney General to elucidate on the letter from the learned Advocate where he says

in his conclusions: “In my opinion, the cases used in the report to support this conclusion do not do so. On the contrary, they show clearly that in deciding whether Jersey’s differentiation between age of consent for male homosexual activities, on the one hand, and heterosexual lesbian activities, on the other, can be justified.” It goes on from there, Sir. I will not bore people by giving them the whole thing. According to the Chief Minister, it is up to us domestically to deal with moral, security and health issues. Well, why are we being strong-armed by our own government into accepting this law? There has been no attempt by the Minister to allay our fears that this will not happen again. We have a situation where an addendum can be put on to the Bill of Human Rights and we are told that we have to accept it. No debate, nothing, just “Get on with it. You are being told what to do.” Well, as representatives of our people, do we have no input into a law affecting the basic living conditions of our people? I have no doubt that the majority of Jersey people do not want this law and I find the government is not willing to fight their corner. I do not want us to be subservient to any outside body, but I do want us to have the pride in ourselves that we can correctly represent our people, who deserve better than to be told that we cannot do anything for them in a situation like this.

1.1.12 Senator T.A. Le Sueur (Minister for Treasury and Resources):

Our duty in the States covers a variety of activities. Some of it involves passing laws that really, as we saw in the Strategic Plan a couple of weeks ago, are really about what sort of society we want Jersey to have, what sort of society do we want to live in. Legislation must form one part of that; there must be a framework within which we work. But it is not the only framework, and I part company here with the previous speaker when he said that instead of passing this law we should be looking at the moral and social implications. I would say that rather than “instead of”, it is “as well as” passing this law we need to look at the moral and social implications to the society in which we live. I think there is a danger that, in passing this law - and I believe we have no option but to pass this law - we will consider that the job is finished and that will not be the case. In passing this law, we have simply dealt with one aspect of the situation and in addition to that aspect we have to look further into our health strategy as part of our overall social framework. So, I would urge Members to accept, yes, there may be some unease about the content of this law. I think that should be a secondary issue to the fact of what aspirations we want for our society. I believe that this law has to be passed, distasteful as that may be to some, but more importantly, we have to have a proper health strategy for the future involving health and education and all of us. It is not sufficient to say: “Well, that is Health’s problem, or that is Education’s problem.” It is not. It is our problem, a problem for all of us, and we should not be afraid to share it and to bear it. We should not duck it.

1.1.13 Senator F.H. Walker (Chief Minister):

Senator Perchard said this is an issue of discrimination and Jersey, under the current law, is a society which discriminates against a significant portion of our society and we have to change. We cannot stay as we are. We do have to move forward. As the Home Affairs Minister said, we effectively have 3 courses of action; we raise the age of heterosexual consent to 18, we establish the age of consent for both heterosexual and homosexual intercourse at 17, or we reduce the age of consent for homosexual intercourse to 16. It is, following extensive research, only the last option that is feasible. That has been confirmed by the Corporate Services Scrutiny Panel who, in my view, did a thorough job in assessing the position Jersey is in and the options open to us. It is a course of action, whatever the doubts may be and the counter arguments may be, it is the way forward, which is supported by the Health and Social Services Minister and Department, by the Education, Sport and Culture Minister and the department, by the NSPCC Jersey and by Brook Jersey, and I think the Home Affairs Minister will be referring to a letter from Brook when she sums up. So, whatever our personal views, whatever feelings we may have about the morality of it, frankly, whatever the views of the Church - and I could not agree more with the Dean that we have

to protect Jersey's own values and we have to work extremely hard to do so - whatever those views, we are in a position where we are a discriminatory society at this point. We are in breach of Articles 8 and 14 of the European Convention on Human Rights. Here, Sir, and this is the reason I rose at this particular point, I must take issue with the Connétable of Grouville. He is quite, quite wrong to say that we are being strong-armed by the UK government or anyone else in this respect.

The Connétable of Grouville:

Sorry, point of correction, Sir. I said strong-armed by our government. I meant the Council of Ministers, sorry. [Laughter]

Senator F.H. Walker (Chief Minister):

The Connétable also referred to, and implied certainly, that we were being forced into taking this course of action. This simply is not true and I am disappointed that he still holds that view having had a full discussion with him as a member of the Corporate Services Scrutiny Panel. The fact is that Jersey voluntarily signed up to the Convention on Human Rights. We asked to be included; nobody asked us to. We went to the UK government and said "We want to sign up to the European Convention on Human Rights". So, there is no suggestion that we were forced into anything. There can be no valid suggestion that we are being forced into anything now. That is a position we chose to adopt. That is the place we wanted to be and we are there. What we cannot do now is pick or choose. We agreed to sign up to the Convention. It suits us to be signed up to the Convention, in many respects. We cannot say: "Oh well, that is fine and thank you. We want to play your game in those bits that suit us" and then say: "Oh no, sorry, we do not want to play your game in the bits that we do not like." We just cannot do that. Like every agreement, you sign an agreement, and any worthy government honours the agreements they sign. That is, effectively, the position we are in and we went there entirely of our own choosing, entirely of our own choosing. Having said that, I do agree with Deputy Fox about some of the decisions that have been taken in the UK under the so-called, at least, banner of human rights. It is something that I have picked up on. I notice that the leader of the Conservative Party, among many others, a growing number in the UK, has picked up on it. It is something that I agree with absolutely, we need to be watchful and we need to be aware of some, intolerable perhaps, consequences later in the piece. But the fact is we are signed up to the Convention and in this context, certainly, we have to abide by that. We have to honour a voluntary commitment, and it was a commitment that we made. So, can we do more to protect our children in terms of education, in terms of health, in terms of safety? Yes, absolutely, we can and I will give the commitment that was asked for to work with the respective Ministers, the Home Affairs Minister, the Education, Sport and Culture Minister, the Health and Social Services Minister, to do everything we possibly can to bring further protection forward to this House in the shortest possible time-scale. I will give that commitment but in the meantime, even though we will all accept that we can and must do more, that is no reason to reject this law. Because this law addresses discrimination and this law adds to the protection of children. So anyone who votes against this law on the basis that it could be better is actually misguided and is defeating their own principles because they will be voting against a law which does add to the protection of children. To stay where we are does nothing further to the benefit of children at all. So, I do not think that that is a good enough reason, in any circumstance, to vote against this law. We will come back with more. In the meantime this is a good, strong and positive step forward, and deserves the support of the entire House.

1.1.14 Deputy A.D. Lewis of St. John:

I would just like to pick up on a few things that Members have said. There has been criticism that not many agencies were consulted. Well, submissions have been made by the Church, charities; we are in possession of a mountainous amount of information from the debate that took place in the

UK not so long ago. Deputy Reed talked about a rise in sexually transmitted diseases possibly being a result of this. I would like to draw his attention to the Minister of Health and Social Services' report which clearly suggested that other jurisdictions that had more draconian laws actually had increases in this type of sexual diseases. The Deputy of Trinity suggested that maybe it is time that a high profile communications campaign was run to make people more aware of the problems of sexually related diseases and perhaps if the Minister for Health and Social Services does speak today he might be able to answer that question; "Is it time for a high profile campaign, once again?" I, like many, am very concerned as to reputational damage that could be done if we do not accept this proposition. Members have passionately expressed their concerns about everything from sexual health, the protection of minors, and the need to take the moral high ground. However, there has been nothing said, in my opinion, that persuades me that their concerns are valid. Steps are being taken, by way of provision of abuse of trust legislation, to protect the most vulnerable. The Health and Social Services Minister does not have concerns about the deterioration of the health of our young people. Charities with a keen interest in this area have come out and support this amendment. The very people that will be most affected, that being the 16 to 18 year olds, are generally in favour of decriminalising this issue. Some have questioned why we need to change when other jurisdictions have similar legislation still in place. Well, Sir, I suggest that, in this instance, it would clearly be Jersey that is taking the lead in modernising its legislation in pursuit of compliance with human rights legislation. Let us take that lead and let others follow, rather than waiting for a higher court to publicly force our hand. In this debate some Members have spoken of other jurisdictions that have even higher ages of consent and similar laws that discriminate between homosexuals and heterosexuals, but I think the Assembly should be reminded that our concerns are, in fact, with the European Court, not that of Madagascar or Australia, or other countries that have been noted in some of the reports and debates. They have not signed up to the European Convention, we have, as the Chief Minister clearly just stated. It has also been suggested by some that not enough medical evidence is actually being tabled in support of this case. I would like to draw the House's attention to a BMA (British Medical Association) report which states: "There is no convincing medical reason against reducing the age of consent of male homosexuals to 16. In fact, to do so may yield some positive health benefits." The report goes on to say: "If young men are not protected by the law they fear seeking professional advice on sexually transmitted diseases from doctors, teachers, youth workers and social workers, because in doing so they will be admitting to having committed a crime." Criminalising such consenting individuals in this manner would simply be absurd. I would also like to bring Members' attention to an extract from a briefing from the Local Government Association in support of the change of the law when it occurred in the UK. It states: "A wealth of anecdotal and survey evidence suggests that the lives of gay teenagers are difficult and often plagued by fear, harassment and bullying." For young gay men to live outside of the protection of the law and not to enjoy the same rights as their heterosexual peers strikes at the equality and dignity and respect which I believe should be the right of all citizens everywhere, Jersey included, regardless of their sexual orientation. There is no comprehensive data on the number of gay people in the UK. There is no census that has ever asked people to define their sexuality. However, the UK government, using anecdotal and other lifestyle research, suggests that the gay population in the UK is between 5 and 7 per cent of the population. As Jersey has a similar cultural and demographical make-up to much of the UK there is no reason to suggest that it is any different here. Therefore, we, as an elected Assembly, have a duty to represent all groupings of our society fairly and equitably, and the Chief Minister has spoken a lot about that in the recent times, as did the Treasury and Resources Minister a moment ago. We need to work as an Assembly to ensure that we help create that fully inclusive society in our Bailiwick. Let us not fall at the first fence when we are faced with our first challenge in creating such a society. I would, therefore, strongly urge Members to grasp this opportunity, vote for the proposal, and move Jersey forward to where it belongs and not backwards.

1.1.15 Senator S. Syvret (Minister for Health and Social Services):

There are a few different issues and aspects of this debate I would like to address when I speak. As the Dean spoke earlier, I would like to perhaps address some comments towards the comments that he made. He was keen to try and emphasise that there was no place for homophobia in, I take it, his views and in that of the modern Church. Well, I am sure that is a view he sincerely holds but I am afraid the practical day-to-day effect of the kind of views that some people in the Church peddle about homosexuals has, in reality, often a profoundly dangerous anti-homosexual effect. It can give succour to the kind of bigots who can bring harm and even death to people. When preparing for this debate I was reminded of the fact that I can recollect at least 2 murders in the last couple of decades which occurred in Jersey as a result of so-called "queer bashing". A man was killed down at People's Park and another man was killed on a separate occasion, I think in the region of St. Martin. If we encourage the view that there is something somehow evil or immoral about homosexuality you give succour to the kind of thugs that carried out those killings. So, I think we have to be extremely cautious about going down that path. But, in any event, the Christian Church does not have any kind of monopoly upon morality. A variety of other views and philosophies have at least equally, if not a greater, claim to a moral position. Certainly there are some passages of the Bible that condemn homosexuality, but there are a lot of other passages of the Bible, some of which say some quite terrible things, which we tend not to take any notice of these days. Even the Church itself does not take any notice of them. So that, therefore, is proof that we do not have to take literally everything that is written in the Bible. I can quote a few passages in Deuteronomy: "If it is discovered that a bride is not a virgin the Bible demands that she be executed by stoning immediately." Further on in Deuteronomy: "If a married person has sex with someone else's husband or wife the Bible commands that both adulterers be stoned to death." In Mark: "Divorce is strictly forbidden in both Testaments, as is remarriage of anyone who has been divorced." In Leviticus: "The Bible forbids a married couple from having sexual intercourse during a woman's period. If they disobey both shall be executed." In Mark 12: --

The Bailiff:

Senator, what has this got to do with the debate which we are having?

Senator S. Syvret (Health and Social Services Minister):

I am afraid, Sir, it does have a profound amount to do with the debate we are having at the moment because a variety of people, because of supposed Christian views, are going to oppose this law and vote against it. So, we need to be quite clear, I think, just about the robustness of relying upon the Bibles.

The Bailiff:

I think you ought to take care, Senator, if I may respectfully say so.

Senator S. Syvret (Health and Social Services Minister):

Well, I intend to continue, Sir, because I think this material is of relevance. In Mark it says: "If a man dies childless his widow is ordered by Biblical Law to have intercourse with each of his brothers in turn until she bears her deceased husband a male heir". It goes on, Sir. I could quote quite a range of other Biblical passages that contain things about being executed if one dare raise a curse against one's parents, or things of that nature. So, let us be quite clear about this. Huge passages of the Bible have actually been set aside in modern times even by all branches of the Christian Church itself. So, let us be quite clear about that. Moving on, Sir, to the comments of the Health and Social Services Department on this matter, I would point out that the comments that I present to the Assembly in respect of this law were not written by me. They were written by the Medical Officer of Health and the Consultant Microbiologist of the Jersey General Hospital. The 2

people in Jersey who have the most professional view of these things, the most evidenced-based clinical expertise needed to come to the appropriate conclusions and the comments that are presented to this Assembly in the name of Health and Social Services were written by them. Now, clearly some Members of the Assembly think that they are better judges of health matters than Dr. Geller and Dr. Muscat. With all due respect to those Members, I have to say I cannot accept that position and I know who I am going to believe in these matters and whose advice I am going to take, and it will be that of the clinical experts. Some mention was made of the forthcoming Sexual Health Strategy. Yes, that is going to be published and, indeed, it is being worked up in full co-operation with groups like Brook and ACET, and all other relevant stakeholders throughout the community. There may be extra money, probably will have to be extra money, from within the Health and Social Services Department's budget put into the sphere of a more effective Sexual Health Strategy. What we cannot do, though, what cannot be tolerated, is individual organisations seeking to scaremonger in order to try to unfairly and disproportionately boost their own budgets. I have to, with great regret, say to the Assembly that that is very much the view we have formed of the position of both ACET in recent years and of Brook. The phrase that comes into play when looking at these organisations' workings is "mission creep". To give you some illustration of just how "responsible" Brook have been with their budget, I will quote for you a brief email I received from Bronia Lever, the Director of Brook, towards the end of 2004: "Morning Stuart, following my letter to you I have spoken with my Committee and Ian De la Cour as we will need an additional £20,000 to see us through to the end of 2004. We have no money left to pay salaries and rent on 18th December as the additional 1,000 clients have left us with an overspend of money on our services. I hope you may be able to help us out over this month with a view to our ongoing funding being discussed in the New Year." The letter she refers to there arrived in my mail the next day. Now, this is an organisation that spent itself into the very brink of bankruptcy before actually raising issues with the Health and Social Services Department. Now, I would remind Members that we are working under the new States of Jersey Finance Law, and I and my Chief Officer are legally responsible for the monies we spend, taxpayers' monies. Unless we can get a greater degree of responsibility and financial competence from these organisations, neither of us will be able to comply with our requirements under the States of Jersey Finance Law.

1.1.16 Deputy P.V.F. Le Claire of St. Helier:

Sir, may I ask the Minister a question, please, on this?

The Bailiff:

If he is willing to give way.

Deputy P.V.F. Le Claire:

I noticed before in a previous speech that the point was made that Brook, I believe, do not test males for sexual diseases. I just wanted to know if that is the case and why?

1.1.17 Senator S. Syvret (Minister for Health and Social Services):

I think that is the case at present and, where the appropriate clinic for testing males and indeed females as well - where the appropriate clinical base is, is a matter for discussion that is going to, supposedly, be worked up in the Sexual Health Strategy. This is what we were rather hoping for, a much greater degree of reason for operation from these organisations, rather than simply fighting for their own turf in a random and irresponsible manner, spending money hand over fist without consultation with other stakeholders in the field of sexual health as to where the most appropriate and most cost-effective spend of that money is.

1.1.18 Deputy S.C. Ferguson of St. Brelade:

Can I make a comment on the Minister's quotation? During this period I was Chairman of the Charities Grants Panel. The email to the Minister arose after I had apprised him and the Chief Officer of the problems that Brook was having with funding. Therefore, to quote it in isolation, out of context, I think is unfair.

Senator S. Syvret (Health and Social Services Minister):

Deputy Ferguson did stalwart work as a member of the Health and Social Services Committee, in particular in this field, and she apprised us of problems with Brook, as indeed there were one or 2 problems with a number of other organisations. But, I am afraid neither she nor anyone else, until I received that email, told us that this organisation had spent itself to the brink of insolvency.

The Bailiff:

Senator, has this been taken far enough? It seems to me that this is very peripheral to the principles of the Sexual Offences (Jersey) Law.

1.1.19 Senator S. Syvret (Minister for Health and Social Services):

The point I would have to make before moving on, Sir, about organisations like Brook and ACET is that I do not think that they have behaved particularly responsibly in this field.

1.1.20 The Deputy of St. Ouen:

Please, Sir, a point of order. We have got the Health and Social Services Minister attacking 2 groups that actually provide an extremely essential service to our young people of this Island and others, and they do not have the right to respond in this Chamber. I think that it is totally improper for the Health and Social Services Minister to be concentrating on that particular area rather than addressing the real issues of health.

1.1.21 Senator S. Syvret (Minister for Health and Social Services):

That, Sir, is a view I reject 100 per cent. The fact is the views of Brook and, to some extent, ACET were raised by other Members of this Assembly in earlier speeches and I, therefore, have to respond to them. I am afraid the fact is both organisations in their various letters and comments to States Members and public comments have, wittingly or unwittingly, in effect sought to encourage a view of homosexual activity that it is somehow dangerous, and there is something wrong with it, it is something to be embarrassed and ashamed about, something that you cannot go to a general hospital to talk to an expert consultant about, heaven forbid, because that might be too embarrassing. This is a view that has been actively encouraged by these organisations and I am afraid that that is a view that is in direct opposition to the best sexual health strategies and policies that we see in other jurisdictions. I really do hope these organisations are going to start behaving a little more responsibly and working a little more co-operatively with all stakeholders in the field. I believe that we have to adopt the Law today. The effect of not doing so would be simply a gesture. We would have the change imposed upon us ultimately, in any event, because European case law on this matter is very clear. But even if that were not the case I would still be supporting this change in the law because I believe that society has to stop viewing homosexuality as somehow wicked, sinful, and the people who are homosexual somehow have to be regarded as some kind of sub-humans who need re-education or conversion, as one or 2 of the people active in the organisations I have just mentioned would appear to believe. Now, Sir, as I said earlier in my speech, I am aware certainly of 2 homosexual murders in Jersey that were carried out as so-called

“gay bashings”. Now, we in this Assembly have a responsibility to broader society to encourage civilised standards of respect for all people regardless of their race, religion, gender, sexuality, abilities, or whatever it may be. Therefore, we have to adopt a view that treats people as equals. Unless we do that we are maintaining and fostering the notion in society that some people are inferior, inadequate and dangerous in some way, and can therefore be treated with contempt and ill will. We have a greater responsibility. We have to try and move society away from that and for that reason we must support the Law.

1.1.22 Deputy F.J. Hill of St. Martin:

Can I seek a clarification? I did not want to interrupt the Minister when he was speaking but could he just confirm 2 things, or clarify it? Will he confirm that ACET no longer receives any funding from Health? Will the Minister also agree that the funding for Brook has been reduced this year?

1.1.23 Senator S. Syvret (Health and Social Services Minister):

I think ACET no longer receives any funding. Brook took a budgetary cut last year along with all of the other voluntary organisations, independent charitable sector organisations that we fund, because of the requirement for efficiency savings that were pro-rated across all States Departments. Indeed, I would point out that some of the organisations to which I would pay great tribute, like the Citizens Advice Bureau, took a larger than required cut, notwithstanding the immensely great amount of good work they do on behalf of the community. That was a requirement of the cost-saving exercise.

1.1.24 Deputy S. Pitman of St. Helier:

I would like to begin by stating that while I agree that it must be stressed that the role of Scrutiny is not simply a rubber stamp to Ministers’ proposals, the fact of the matter is that the Social Affairs Panel was asked to do a job by this House and this job has now been done. Notwithstanding this, my view is that this piece of legislation should never have gone to Scrutiny in the first place. I have to say, Sir, that still we hear views ignorant of reality. I ask Members of this House who are heterosexual, were you nurtured into your sexuality? Members assume that homosexual boys need protection from their sexuality and still, there is an assumption that gay men target boys for sex. Members also assume a rise in sexually transmitted diseases once this law is in place. Well, the reality is that young people will have sex no matter what the law is. This law should not be about that we feel that we have to meet international obligations. It is not a matter for the Church or should not be about health strategies. It is about recognition and equality only. Bearing in mind that Members of this House are representatives of homosexual men, I ask them to consider these points.

1.1.25 Deputy S.C. Ferguson:

I noticed that the Health and Social Services Minister did not mention St. Paul. The Dean will no doubt correct me, Sir, but there is one that says: “Women should be subservient to your husbands.” Not today. [Laughter] The Dean mentioned the abortion rate. Members may wish to know that much of the drop in pregnancy in young people is actually due to the work of Brook, not Education and certainly not the non-existent Sexual Health Strategy. In my period as Chairman of the Grants Panel I became aware of the excellent work being done by Brook. There is, certainly, perhaps, a problem in that the Minister for Health and Social Services does not seem to be able to accept that a private charity can work more efficiently than Health, but that is a matter for another day. As for the human rights aspect, it is my understanding and the Attorney General may correct me - that this was originally drafted by Her Majesty’s Government after WWII to prevent the excesses of 1939-1945 recurring. Somehow, it seems to have been sucked into the mire of the EU bureaucracy and has resurfaced in its current format, liberally embellished by the bureaucrats. My advice from

senior QCs in the UK is that perhaps we should avoid the Human Rights Law; but, again, an argument for another day. The basis for this law is simply equity. There is a quotation, and again I paraphrase, "I do not agree with your ideas but I will fight to the death for your right to express them". This does not mean that I do not believe that children should not be protected and those that harm them prosecuted. Children should be protected; after all, they are our future. In fact, Members will recall that good and proper treatment of the young and aged is the mark of a civilised society. I would, however, agree with Deputy Reed in his call for the back-up to the Law, a sexual health strategy, a review of education, and all the other antique legislation. I will support this Law on the grounds of equity but, like Deputy Reed, I require proper assurances regarding these underlying matters from the Chief Minister, which I believe he has already given us, although he is not in the Chamber, and from the Home Affairs Minister.

1.1.26 Deputy G.P. Southern of St. Helier:

Briefly, Sir, I hope. Perhaps the words of the Health and Social Services Minister when he started on biblical quotations did not entirely fall on stony ground. I noticed some people their eyebrows were twitching: "Oh yes, interesting." Certainly the Pauline quote definitely received some support around the room. Nonetheless, we have to keep our eye on the main issues here, I believe, and not get distracted into areas which actually are not up for debate today. Whatever attitude we bring to the Chamber, we have to attempt to get a balanced position and I do not believe we started well with some of the speakers today. It is not necessary to bring in health scares and concerns about STDs (Sexually Transmitted Diseases) and AIDS (Acquired Immune Deficiency Syndrome), which obviously are linked to increased sexual activity, left, right and centre. That is not at issue today. That issue can be dealt with, and will be dealt with, elsewhere. Whether it is educational, whether it is a health issue, those can be dealt with. To bundle all of those concerns, which we all rightly have in terms of where society is going, into this debate is absolutely and fundamentally wrong. The issue today is our adherence to the European Convention on Human Rights which, as the Chief Minister rightly said, we voluntarily went into. That voluntary engagement with the Convention is not, as the Connétable of Grouville suggested, being subverted, or changed, or added to. He talked about: "We have got this addendum which has been latched on to it." No, we have got this legitimate consequence of signing up to the Convention to deal with. It was always there. It will remain there. We have to deal with it. What we are doing today is acting to change our law to conform to that Convention. Those rights that we signed up to, agreed to, years ago, the right to respect for private life, that has not changed. We are merely enacting that right in a proper way. The other right, the right to protection from discrimination, again, in moving today in agreeing to this position we will be signing up to put that Convention, our will to do so, into action. That is what we have to do today. I believe we have to do it today. It is not a matter of coercion by anybody; it is the logical extension. If this is what you want to sign up to, and we did, and we still do, then we have to go along this line and enact the proper measures that will bring that about. Not just to give the pious words but to act to bring it about. Of course, it is perfectly possible for this House to reject this amendment and to live with the consequences. We are not being coerced at all, but bear in mind what those consequences will be. It would be a question of this Assembly giving a blessing to the pious wish but not being prepared to act properly to bring it into action. Let us proceed and bring this into action today.

1.1.27 Senator L. Norman:

I shall vote against this draft law, as I would have voted against the original draft earlier this year, but I have genuinely struggled with this issue. I have thought about it. I have debated the issues informally with friends, colleagues and others who have spoken to me about it. I have tried to consider it dispassionately and without emotion but I have failed to do that and I think I know why. It is probably because the issue is emotional, just as sex acts themselves are emotional, or at least

they should be. I listened very carefully to the comments of the Dean this morning but, unfortunately, on this occasion he was unable to help me. But I am content that it is not homosexuality that I am opposed to. That is something which is biological, chemical, or whatever. But there is a difference, a big difference, in my view, between homosexuality per se and permitting 16 year old boys to indulge in anal sex. My own morality, my own conscience, will not permit me to support that and I will not be coerced by the Chief Minister, either, who keeps calling for Jersey to develop its own international identity. That to me means, among other things, deciding what is right and appropriate in Jersey for the people of Jersey, irrespective of the views of people in other places. I do not believe this draft is right and therefore, in all conscience, I simply cannot support it.

1.1.28 Deputy P.J.D. Ryan of St. Helier:

Well, given the subject matter, this is naturally an emotional and probably quite confusing debate for many Members. I think it was Deputy Gorst who mentioned that it is both head and heart that we need to refer to when making a decision on this issue, as well as probably most others that come before us. So I, Sir, am going to concentrate simply on the head side of the debate so at least Members can be crystal clear on the non-emotional, the non-moral issues involved in this debate. That, hopefully, will help them to reach a final conclusion when it is time to vote. I am also going to quote from my Scrutiny Panel's age of consent review. I am going to do that because one of the advantages of writing a Scrutiny review is that you refine the wording and the language and the balance of the review over many weeks. In fact, you end up with a form of words which is probably much better than when you try and write a speech either on the fly while the debate is going on, or even the evening or the week before, because much more thought goes into the wording on a Scrutiny review than otherwise. So, first of all, I would like to just make a comment on the constitutional position, and I am reading from my review: "The Island's independence has developed over the centuries without recourse to a written constitution. The longer that the position exists whereby the UK does not legislate, the stronger in legal terms through convention our independence becomes. In practice the blurred nature of the constitutional relationship has the effect that the UK Government could be less likely to try and impose its will on the Island legally, for fear of either failing to do so or being perceived by others as bullying a smaller democracy. Our long-term allegiance to the Crown in this context is particularly important as this is ultimately the higher authority we could turn to for protection, even theoretically, from the UK Government. This independence in domestic matters is now increasingly being extended to international relationships and, in turn, by developing an international presence and identity in our own right." During our collection of evidence and reference to various States' debate I am going to just refer to something that the Chief Minister said when we talked to him in an evidence gathering session. He was asked what the impact of the Island's international reputation would be if a challenge in the European Court of Human Rights were successful and he responded like this: "Incalculable. Incalculable. The ultimate cost to the Island, not just financially, but the cost to us reputationally and socially would be potentially immense." Senator Kinnard, who was in the same meeting, said: "It would be a constitutional disaster, I would say. It would also be an economic and social disaster as well." Now, Members may think that that is a little bit of shroud waving, that it is a little bit over the top. But, in support of this view my Panel asked similar sorts of questions to 2 other people who I would say do not have any political axe to grind on this. The first one was ex-States Senator Advocate Christopher Lakeman and he said: "The contradiction in approving the Human Rights Law but permitting a challenge before the European Court of Human Rights is likely to figure high on the agenda for those who would criticise Jersey in the international arena." The Solicitor General was asked a question by Senator Syvret in the original States debate and she said: "Could I ask the Solicitor General to expand upon this? Suppose that the UK government did feel obliged due to their commitment to the European Convention for Human Rights to intervene in the Island's affairs and legislate for the Island?" It was a question that would precipitate something of a constitutional

crisis and the Solicitor General responded: “Well, as to whether it would be a crisis I would not like to say. It would certainly give rise to a constitutional test case of very significant proportions.” Now, I am quoting those 2 because, on the one hand I quoted the Chief Minister and I want to balance it for Members against separate evidence from non-political sources so that Members can be clear where we stand on this constitutional issue over the European Court of Human Rights. Just one other side comment and this is going very slightly off the subject, Sir, and I apologise, it will take about one minute or less. It has been suggested by the Council of Ministers that we have an advisory committee on constitutional matters separately to advise the Council of Ministers and the States generally, and I think it is currently with PPC (Privileges and Procedures Committee) for consideration. My view is that that is an essential thing that we do and I would also say that because of our role as the Corporate Services Scrutiny Panel in reviewing constitutional matters I think it would be important that one of our Members should be a party to that advisory committee. So, moving on to our conclusions, again I will quote because it puts the words more succinctly than I can probably say in any speech: “The European Convention on Human Rights is binding in the United Kingdom and Jersey under international law. If the European Court of Human Rights were to find Jersey in breach of the European Court of Human Rights then the United Kingdom must ensure that Jersey takes action to rectify any deficiency in internal laws or practices so as to bring them in line with the Convention. As Jersey Law currently provides for a different age of lawful consent for homosexual acts compared to heterosexual acts, Jersey is currently in violation of the European Convention on Human Rights and is in breach of Article 8, respect for private life and Article 14, non-discrimination. In the event of the Island’s non-compliance and this issue becoming a source of embarrassment to the UK in terms of its relationship with its European partners, the evidence as to whether the United Kingdom would in fact, or could in fact, legislate on the Island’s behalf is clearly divided. It is not clear.” As an aside I would say “long may it remain that way”. A small number of correspondents and witnesses have suggested that the Island could consider denouncing or withdrawing from the European Court of Human Rights and the Convention. Evidence shows that taking such steps is not a valid option. That is what the evidence suggests. Nor is it desirable. Nor is it desirable. In any event this could not be achieved retrospectively and any actions in respect of the current breaches could still be brought before the European Court of Human Rights, as I think we have heard from another speaker. This is the most telling point I would say that Members should take note of: “The Panel considers that having voluntarily asked the United Kingdom to sign up to the European Convention on Human Rights on its behalf, the Island has a responsibility to honour its resultant commitments and obligations.” Just a couple of other comments and then I will close. I think I have made it fairly clear as to where we stand under law and I think that it is important that Members are fully aware of that when they are making up their minds on how to vote on this particular law. Yes, there will be head. Yes, there will be heart. I am trying to clarify the head so that everybody is in a position to make a balanced decision. The witnesses were in agreement that, should the Island not legislate, it may cause constitutional problems in terms of our relationship with the United Kingdom. Ultimately, the Panel recommends that the States approve the draft Sexual Offences (Jersey) Law 200- as currently the Island is in violation of the European Convention on Human Rights. During the course of the review the Minister for Home Affairs advised the Panel that legislation incorporating abuse of trust provisions is now being drafted. We have seen that that has, in fact, happened: “The Panel notes that in the United Kingdom and in the Isle of Man the presentation of similar legislation in accompaniment with the lowering of the age of consent aided the passing of the legislation in those jurisdictions. The Panel, therefore, recommends the States of Jersey follow the same course of action.”

1.1.29 Connétable D.F. Gray of St. Clement:

Sir, would it be in order to make a correction to Deputy Ryan’s statement that the Privileges and Procedures are reviewing the constitutional arrangements? That is purely in the remit of the Chief Minister’s Department and not the PPC.

1.1.30 Deputy S. Power of St. Brelade:

I am another one of these Members who have thought very long and hard about this and it has bothered me deeply. We are talking this morning about reducing the age of consensual anal sex, in my view, for teenagers from the age of 18 to 16, and we are talking about teenagers here, teenagers, 13, 14, 15, 16 in this case, 17, 18, 19. We call them teenagers, pubescent, adolescent, post-adolescent and then young man at some stage. At that age, at 16, we do not allow them to drink, we do not allow them to vote, we do not allow them to get married and we do not allow them to have property rights or to buy property. When I listened to some of the speeches this morning I was brought back to standing outside Communicare last October and last November during the Senatorial elections and during the Deputies elections. I looked at the people who went through the door of Communicare that day to vote. And I called them “middle Jersey”; it is a phrase that some Members use in this House. These members of middle Jersey, they vote, they are conservative, they pay taxes, they obey the rules, they obey the regulations, they love Jersey, they are Jersey men and Jersey women, and they are Islanders and they go to church, not all of them, but some of them. In the correspondence that I have had to do with this since I got elected, nearly all of the correspondence has been opposed to this. I do not know what other States Members have received in correspondence but in my case the correspondence is opposed to this. I heard the excellent speech of the Deputy of Trinity, in my opinion, and I also heard the excellent speech of the Connétable of Grouville and I agreed almost 100 per cent with what they said. I do not intend to repeat it. One of the comments that has been made is that this Sexual Offences (Jersey) Law is incomplete. We heard reference this morning to the fact that ACET does not receive any other States funding, that Brook has now got reduced funding, and the Minister for Health and Social Services made a number of negative comments about both organisations. I do not have direct contact with any of them but, from what I have read, they are well-respected organisations in this Island. This Sexual Offences (Jersey) Law seems to not be in a situation to provide funding for what will be brought forward as sexual health and in that I have a reservation. It brings me back to the Planning and Building (Jersey) Law we passed some short weeks ago when there was no funding for third party appeals. While the 2 are not related, there is an aspect to this Sexual Offences which is not funded. It is another incomplete law and I have a problem with that. I listened to what the Dean had to say this morning and if I look around this Chamber there are those of us who go to church, there are those of us who do not go to church. There are those of us who believe in God; there are those of us who believe in a higher power; there are those of us who do not believe; and there are those of us who are self-professed agnostic, atheist, whatever. We all respect them. I respect the gay community. I have friends who are gay. I could in no way be considered as one of those who was homophobic. The relationship between the churches of Jersey and the States of Jersey is in this Chamber. There is, as the Dean said, the Anglican community, the Catholic community, the Methodist community, the Baptist community; the Evangelical community and the other communities that I cannot mention by name - yes, Judaeo-Christian communities inclusively. There is the Muslim community, who are there every Friday night praying in St. Thomas’ Church hall. There is a relationship, whether we like it or not, between the church and the States. Some of us represent the churches, and some of us do not represent the churches, but it is there. Much as I was unhappy with some of what the Minister for Health and Social Services said about people being homophobic, it is almost the same situation if you refer to the fact that you are a practising Christian, and I find that deeply resentful. So there is a view out there that those of us who profess to be Christian can be bashed as much as those who are gay. As I said, it is a very difficult debate, and I will really conclude by referring to 2 questions, one for the Minister for Home Affairs, if she will indulge me; and one for the Minister for Health and Social Services, if he will indulge me. My first question is for the Minister for Home Affairs, and it refers to the existing legislation, the Sexual Offences Amendment Law (Jersey) 1995, which was registered in the Royal Court that year. It amended the law of 1990 by reducing the homosexual age of consent from 21 to 18 years; the law of Jersey provides the age of lawful consent to homosexual

intercourse as 16; anal intercourse between a male and a female currently remains a criminal offence in Jersey law. There are 3 provisions. The existing law provides that vaginal intercourse is lawful between male and female from the age of 16 upwards, if it is consensual. (2) Anal intercourse in private between males is lawful from the age of 18 upwards, if it is consensual; and (3), anal intercourse between male and female is unlawful, whether consensual or not. I wonder if the Minister for Home Affairs has any statistics or figures which relate to convictions in any of those 3 areas in the last 11 years? My question then for the Minister for Health and Social Services is in his statistics on page 2 of the Health Department's submission, where he refers to paragraph 4. He is talking about interpreting statistics about the number of men who may be homosexual in Jersey about the age between 16 and 18, and he concludes that, roughly in the 16 to 18 age bracket, about 1,440 people are in that group, and about half are men, 720. His department estimates that 10 per cent may be homosexual; that would be about 72; or 10 per cent bisexual, between 72 and 144. Given the reduction in funding for ACET and Brook, can he tell me what discrete facilities are available within his department to deal with a young man who may have had unprotected anal, though consensual, sex, and what facilities are available for him to receive the appropriate testing and/or diagnosis? Where I am at the moment, I will oppose this proposition.

Senator S. Syvret (Minister for Health and Social Services):

Sir, should I answer that question?

The Bailiff:

I do not think it is a proper question, actually, Senator, no. I am afraid members cannot ask questions from people who are not proposing propositions which are before the House for debate.

1.1.31 The Deputy of St. Martin:

I do not have any problem at all in supporting the proposed legislation. I made that clear ages ago. But I also had that proviso. It was a proviso that the Island had the necessary safeguards in place before we dealt or we approved it. I have always been concerned about that we get the 2 sides in every debate. When it is a backbencher bring something to the States, everything has got to be put in place before we can go forward. When a Council of Ministers brings something, or any Committee in the past: "Don't worry folks, we'll do that afterwards." Well, I am talking to you as someone who has that experience, because I know I brought legislation here, and I have had to go through this grilling. Where is it all beforehand? Even though we get some legislation through, as indeed we know with some of the legislation I passed through, we are still waiting for it to come back to the House. So my concern is, should we be going forward with a piece of legislation on the grounds that we have a promise, albeit we have an eleventh hour promise this morning from the Chief Minister, which should have been part and parcel of that report? I think that is, again, one of the weaknesses of this morning, and we have now put ourselves in a dilemma. What we should be talking about is not just about reducing the age from 18 to 16; we are looking at opening up the whole system now, whereby it will be legal for male to female anal intercourse, something which this Island, and the world, actually, has said has not been correct, but again, I do accept the fact that for discriminatory purposes, if indeed, we have to approve it, we will approve it. I do not have a difficulty with that. However, the safeguards are important. There is also an assumption that because we are going to legalise sex it automatically becomes safe. Please, it is not a fact. It is not a fact. We have heard other people talking about the precautions we take, the care we take for our young people about drinking, smoking, driving, etc. Now, again, that is very important. We have got ourselves in a mess again this morning, and really, when we go back to the debate in January, prior to that a memo had been circulated from the Home Affairs Department to the chief officers of

Health and also Education, and it talked about an unorthodox way of bringing forward a piece of legislation. The reason for that was it was felt it had not been prepared. Now, when the debate did take place in January, it was quite clear that ...

Senator W. Kinnard:

Sorry, I must interrupt. The email relates to the unorthodox way in which those individuals were consulted, i.e. through email.

The Deputy of St. Martin:

Well, maybe it would be helpful, Sir, if I read the memo. It says: "The Home Affairs Committee is concerned that steps should be taken to ensure that all interested parties are aware of the proposed change to the law, and would welcome your input in which groups you feel should be notified. Clearly there is a time pressure to have this matter dealt with quickly, because of the desire to bring the human rights legislation into force. I therefore apologise for the somewhat unorthodox way in which I am bringing this matter to your attention for your committees." When we had the debate on the 18th January, we know it was referred to 2 panels for consideration, but really that is one of the problems we had during the debate - similar problems we are having today, except, of course, we have now addressed the issues of human rights and the abuse of trust. However, the other issues about the health issues have not been addressed. The Social Affairs Panel said to ensure that we do not get ourselves in difficulty, bring forward the consultation process so we can work step by step, hand in hand, so we do not need to have this reviewed or scrutinised at the end. That, of course, has not happened; albeit it has happened because of the work that we have done, not necessarily the work that Home Affairs has done. I think it is important to draw Members' attention to the report that came out by Corporate Services, and I do commend them on their report, because they have done a very good report. Its Chairman this morning gave us an account of some of the things that were in the report. I think it is very important that we hear some of the other things he did not say about the report. In his conclusions, or the report's conclusions, page 44 of the scrutiny report, it says: "The Minister for Home Affairs was unprepared at the time of the States debate for the level of unease and concern held by many States Members over the proposed implementation of the Sexual Offences (Jersey) Law, particularly with regard to the age of consent for young homosexuals. The law was presented for debate by the Minister for Home Affairs without the necessary broad consideration of issues involving health, education and protection of groups of potentially young, vulnerable people." Are we the same today? Yes, we are. It also says: "Submissions of this review have shown that there are many interested parties such as Brook, ACET and NSPCC, who should have had a relevant input prior to the debate."

Senator J.L. Perchard:

Point of order, Sir. It does not say "should have"; it said "could have".

The Deputy of St. Martin:

Yes, could have. I thought I read out "could". So let us look at who ACET are. ACET are quite an esteemed body. They are representative, I think, throughout the UK, have a number of notable patrons, including, Sir, yourself, and indeed the Dean are patrons for our Jersey ACET. It stands for AIDS Care, Education and Training (ACET). Now, on 8th February, they submitted a document to myself, with a copy to Senator Walker, Senator Kinnard and Senator Syvret. In there they made a number of observations. But really, to not go through everything, I think it is important to point out some of the things. It says: "This paper summarises concerns of ACET, an AIDS HIV awareness charity, over the risk associated with unprotected anal intercourse and the possible outcome of lowering the age of consent to 16 for men who have sex with men. It presents an overview of the

prevalence of HIV, together with the evidence that sex between men is a major transmission route for HIV in the UK. It highlights the lack of data currently available to map and monitor HIV prevalence and plan prevention programmes in Jersey, and makes the following recommendations for implementation prior to consideration of lowering the age of consent for sex between men.” Can I make it clear that in the Home Affairs report it says that ACET are opposed to it. ACET have never said they are opposed to it. What they are saying is they would like these things in place before approval. Big difference. They have listed 5 things here. One was the urgent need for improved surveillance, including an unlinked anonymous prevalence monitoring broker, coupled with research to establish a better understanding of a sexual network, health-seeking behaviour and risk behaviour of homosexual-bisexual community in Jersey. The re-establishment of a multi-agency group to deliver an integrated programme of sexual health promotion and the development of an HIV sexual health strategy with a positive action plan - have we got that in Jersey? No. A public information campaign, an expanded public health policy by the health education system to warn adults and young people of the dangers of unprotected anal intercourse. A target HIV prevention programme for men who have sex with men, and the promotion of an HIV testing for all sexually active people to improve early diagnosis of the virus and to minimise the risk of infecting others, coupled with a programme that encourages men to have an annual HIV test. The report is quite lengthy, but I think it is important to look at some improvements. The board of ACET Jersey consider it would be irresponsible for the States to pass and enact a change of law regarding the legal age of consent for male sex with males and anal intercourse without the realities of such a change being clearly recognised. “This can only happen through development of a States sexual health strategy, together with a public information scheme and designated resources within the Ministry for Health and Social Services to address both the existing HIV-AIDS situation in the Island and a likely increase in male sex with males information that the lowering of the age will bring. Only when such a costed and funding programme is in place should this proposed change in the law be accepted in the States.” Quite a strong recommendation from an august body who, I would assume, I take it, know what they are talking about. Now also the Health and Home Affairs were informed by Brook, by an email, and I know that other documentation went to them, also pointing out - I think one of the speakers this morning made reference to it - that they feel that they should have the funds to enable young people to be tested. I do not think anyone could dispute that. However, one thing we have got. We know from the reports that we have had from both Home Affairs and Health that ACET and Brook’s concerns have not been addressed. We know we had an assurance from the Minister for Home Affairs; we had an assurance that both ACET and Brook had been fully consulted. What we know is we have got very little existing information given to us about the current problems. In fact, if ACET had not drawn our attention to it, we would not know. The Social Affairs Panel did ask both Home Affairs and Health if we could have any information, but it has not been forthcoming. What is rather sad is that the report we have, which we now hear has come from the Ministry of Health, which I am quite surprised to hear, because certainly in the days of the committee stage, I do not think - and I think the Minister would probably accept - probably a panel or committee would not have accepted this as a report to go to the States. Because really, there is no mention at all of the work done by the Health Promotion Unit. There should have been concerns raised to us about what the Health Promotion Unit did - nothing there at all, and no mention about a sexual health strategy. So here we are; we do not know what sort of position we have in the Island. Have we got a problem, or are we able to deal with it? All we had in the report was that safe sex is all right. Well, we probably know that, but our big concern is how do we deal with unsafe sex. Again, making something legal does not mean to say it is going to be safe. I would also like to take issue with the proposition, which on page 18, paragraph 62, says that the proposition is “a social political decision and not a medical one”. Well, I think all the concerns today are to do with medical. I think most of us in this House probably would agree that we would like to pass legislation. However, those safeguards should be in place. I turn to the actual report itself, on page 8. We have heard about the abuse of trust of volunteers needs to be explored further. Today we are having to debate something where the consultation is still out. We have not had the

result of that consultation, so what is the answer? What is the situation? We also know, on paragraph 29 on page 9, concerns have been expressed regarding the grooming situation. It says in that report there is insufficient time to conduct any in-depth consultation. So what is the answer? Now, we have heard about the human rights obligations, but I think it is very important that I draw Members' attention to a question I quite innocently asked of the Chief Minister about human rights. It almost would seem to be applying to the question, because this is the same date of the debate, but prior to the debate on the Sexual Offences Bill. This was asked in the morning of 17th January 2006. This is an oral question: "On February 8th 2000, which is 6 years ago, the States approved P.197/1999, the Draft Human Rights (Jersey) Law. To date, the law has not been brought into force. Would the Chief Minister explain the reasons for the continued delay, and whether this is having any negative implications for the Island and give some indication as to when the law will come into effect?" Senator Walker's response was: "The delay in implementing the Human Rights (Jersey) Law is because it has been necessary to make significant changes to a considerable number of other pieces of legislation. The final changes to legislation address the requirement for additional court sessions and provide for due legal process in the detention of individuals." No mention there whatsoever about the Sexual Offences Bill. No mention either about the prison rules, which we have now discovered, as a result of a bit of work by scrutiny, there is not human rights behind it. The Chief Minister continued: "It is hoped that the necessary amendments can be made within the next 2 months, and that the Human Rights Law can then be brought into force shortly thereafter. The exact time frame is subject to the States adoption of the amendments, which will be lodged in the near future, and to the Privy Council's consideration of these amendments. I am not aware of any substantial negative implications for the Island. The United Kingdom is satisfied that every reasonable step has been taken to bring the law into effect at the earliest opportunity. I have recently discussed the position with the Lord Chancellor, and I am pleased to report that progress being made by Jersey was noted favourably, and in this respect we are certainly well ahead of both Guernsey and the Isle of Man." So here we have a gun being held at our head. We have got the Chief Minister the very day or the day before the day of the debate saying there are no serious implications if we do not follow this course. Sir, I just feel that we are being asked here today to make a decision without having all the facts. I believe, Sir, the Island has a duty of care. We have heard Senator Le Sueur this morning saying that just recently we have passed a strategic plan which says this Island has to be a caring society. Sir, I accept the human rights obligations, and we have to comply with them. However, what I want to know is is there a problem with sexually transmitted infections? Does one exist in the Island? Is the Health Department in a position to deal with what exists at the moment? If there is an increase - if there is one - is the Health Committee in a position to deal with it? Because we know that the Brook cannot, because they have not got the funds. We know that ACET's concerns have not been addressed. ACET's concerns were reinforced on 12th June when they wrote to both the Chief Minister, the Minister for Health and the Minister for Home Affairs asking that the concerns which they raised in February were addressed. A reply dated 20th June from the Chief Officer of Home Affairs says to Mrs. Ruddy: "The Minister for Home Affairs has asked me to acknowledge your letter on 13th June, 2006, providing comments to the above law. The Minister will take these comments into account when preparing the States' debate on the law." Well, where are they? Sir, we have all those issues not done. Also Health says there is a serious flaw in the presumption that reduction of age will naturally lead to increased spread of sexually transmitted infections, yet in Home Affairs' own report, paragraph 59, it says: "No research is published of the impact of lowering the age of consent." No research been carried out. Sir, we know nothing about the abuse of trust; the matter has not been clarified. The grooming concerns have not been addressed. We have had an eleventh hour assurance from the Chief Minister that safeguards will be put in place, but no guarantee when. Sir, I think a number of Members of the House want to support the proposition, but they cannot support it without those safeguards in place. What I would ask, Sir, is that you would agree that rather than us vote against this piece of legislation, that we move on to the next item, so the requirements of health are then put in place before we come back. Thank you, Sir.

1.1.32 The Bailiff:

Deputy, are you moving that the Assembly move to the next item on the agenda?

The Deputy of St. Martin:

Yes, I move that we move to the next item, Sir, for the grounds I have just listed.

The Bailiff:

Is the proposition seconded? [**Seconded**] Very well. Well, I put the ...

1.1.33 Senator S. Syvret:

Sir, is there not an element of abuse of procedure arising over this matter?

1.1.34 The Bailiff:

Well, as I understand it, the Deputy is suggesting that there is insufficient material before the Assembly on the question of health, notwithstanding the fact that the Health and Social Services Minister has filed a very full report before the Assembly. But if the Deputy of St. Martin considers that there are other aspects of health which are not covered by the report which has been presented by the Minister of Health and Social Services, then it seems to me that it is not a breach of procedure - I make no comment on whether the proposition is a proper one or not; that is a matter for Members. But it does not seem to me that it is not out of order as being in breach of procedure; it is a matter for Members to decide whether they think that the point made by the Deputy of St. Martin has any substance or not.

1.1.35 Deputy G.P. Southern:

Sir, may I ask - again, I think it is a point of order - whether the Member is acting on his own behalf as a private backbencher or as a head of a scrutiny panel, because he made reference, great reference to "scrutiny has found" or "scrutiny has not found" ...

The Bailiff:

Well, I am assuming that the Deputy is moving this in his private capacity. Is that right?

1.1.36 The Deputy of St. Martin:

Yes, Sir. I am the Deputy of St. Martin and also the head of the Scrutiny Panel of the Social Affairs, but I am moving it as the Deputy of St. Martin.

1.1.37 Senator S. Syvret:

Well, I was going to suggest, Sir, that we suspend Standing Orders to enable us to debate the merits of moving to the next item, because we move straight to a vote ...

1.1.38 The Bailiff:

No, as a matter of order a Member has quite properly moved in accordance with Standing Orders that the Assembly moves to the next item on the Order Paper, and I do not feel able to move that proposition out of order. So the vote is for or against the proposition of the Deputy of St. Martin, that the Assembly moves to the next item on the Order Paper. The Greffier will open the voting. If

all Members who wish to vote have done so, I shall ask the Greffier to close the voting. I can announce that the proposition has been lost; 6 votes were cast in favour, 41 votes against.

| POUR: 6 | | CONTRE: 41 | | ABSTAIN: 0 |
|----------------------------|--|------------------------------|--|-------------------|
| Connétable of St. Saviour | | Senator S. Syvret | | |
| Connétable of St. Peter | | Senator L. Norman | | |
| Connétable of St. Lawrence | | Senator F.H. Walker | | |
| Connétable of Grouville | | Senator W. Kinnard | | |
| Deputy R.C. Duhamel (S) | | Senator T.A. Le Sueur | | |
| Deputy of St. Martin | | Senator P.F. Routier | | |
| | | Senator M.E. Vibert | | |
| | | Senator P.F.C. Ozouf | | |
| | | Senator T.J. Le Main | | |
| | | Senator F.E. Cohen | | |
| | | Senator J.L. Perchard | | |
| | | Connétable of St. Ouen | | |
| | | Connétable of St. Mary | | |
| | | Connétable of St. Clement | | |
| | | Connétable of St. Helier | | |
| | | Connétable of Trinity | | |
| | | Connétable of St. John | | |
| | | Connétable of St. Brelade | | |
| | | Connétable of St. Martin | | |
| | | Deputy A. Breckon (S) | | |
| | | Deputy C.J. Scott Warren (S) | | |
| | | Deputy R.G. Le Hérissier (S) | | |
| | | Deputy J.B. Fox (H) | | |
| | | Deputy J.A. Martin (H) | | |

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|--|--|----------------------------|--|
| | | Deputy G.P. Southern (H) | |
| | | Deputy S.C. Ferguson (B) | |
| | | Deputy of St. Ouen | |
| | | Deputy P.J.D. Ryan (H) | |
| | | Deputy of Grouville | |
| | | Deputy of St. Peter | |
| | | Deputy J.A. Hilton (H) | |
| | | Deputy G.W.J. de Faye (H) | |
| | | Deputy D.W. Mezbourian (L) | |
| | | Deputy of Trinity | |
| | | Deputy S.S.P.A. Power (B) | |
| | | Deputy S. Pitman (H) | |
| | | Deputy A.J.H. Maclean (H) | |
| | | Deputy K.C. Lewis (S) | |
| | | Deputy of St. John | |
| | | Deputy I.J. Gorst (C) | |
| | | Deputy of St. Mary | |

1.1.39 The Deputy of St. Martin:

I just wanted to thank those Members who had supported the moving on to the next item. I think a number of States Members are asking themselves “can we take the assurance from the Chief Minister to do something which really should have been in place before the debate?” I think it would make Members have to think about which way they are going to vote, because I certainly have never ever had any intention of voting against it. But I do want those safeguards in place.

1.1.40 Senator F.H. Walker (Chief Minister):

Sir, can I just respond to that? I have given an assurance to the House, and when I give an assurance to the House it is an assurance, and therefore a commitment, and it does not need to be questioned.

1.1.41 Deputy R. G. Le Hérissier of St. Saviour:

I have just had the wind taken out of my sails, partly by my dear friend de St. Martin, but I was going to thank scrutiny, as indeed I still do, for an excellent job, and I thank the Corporate Services

panel. I think it has been an excellent example by both panels. They have worked hard. They have shaken a proposal to its roots, so to speak, and they have forced us to think of questions, and people may fear, Sir, that the Deputy of St. Martin has perhaps been excessive. But he has forced us to think about it; he has taken an eagle and a microscopic eye to the proposals, and I think it is important that they be examined to that detail. I certainly do not agree, I have to say, Sir, with some of his conclusions, but nevertheless I think it is an excellent example, because there is no doubt we got off on the wrong foot with this. Of that there is no doubt. It has been mishandled; I think we were all under this assumption that these things float through because it is perhaps a UK requirement, as the Connétable of Grouville said, and we do not, perhaps, give it the attention it requires, and we do not, perhaps, Sir, take too seriously our so-called autonomy in these situations. So I really thank the scrutiny people for the excellent work that they have done. We have seen this example. Just on a few stray points, Sir, I am really worried about what the future relationship is going to be between Health and Brook and ACET. It is quite clear that there is a high degree, I am afraid, of antagonism there. These are bodies which, by their very remit I think, are there to question our policy, and how are they going to feel, particularly as they in one instance receive funds from us, how are they going to feel about questioning policy, which is their job? It is sad to reflect, Sir, that the genesis of Brook, for example, was a body doing some years ago when it first came into being - and I am sure it is doing it now - to sort of be brave, to go against the grain of social thinking, and to push issues forward - the sort of thing that Deputy Pryke was involved with. I sincerely hope that they feel, Sir, that they can still do that. Indeed, they have to do that. I think people in Health have got to ask themselves very seriously what is going to be the nature of that future relationship, because it does not look terribly happy at the moment, and does not give much credit, quite frankly, to this House if it is allowed to continue. Those people have to feel they can say what they think; they can push policies that may upset the hierarchy, but nevertheless we will give them general support. That is what I wanted to say, Sir. On the issue of the European Court of Human Rights, it has been linked into the European Union; it is not part of the European Union, but it has fed into that issue. Rightly or wrongly, I would say to the Connétable, who I know is very concerned about this, we signed up to the Convention and, I suppose, if we do not like it, we will have to do what Mr. Cameron is postulating in the UK; in other words, see whether a Bill of Rights based in so-called UK roots is a better alternative. But the point is, we signed up to it; we knew the consequences; and in fact until the Human Rights Act comes home - which we think will happen at some point - until it comes home, I think we are going to realise we have got off fairly mildly. Once it comes home, so to speak, I think you are going to see more activity, and then we are going to have to consider how to deal with it. So my view is, Sir, we have signed up to it; I think there are conflicts there, and I do entirely take the views to heart, Sir, of people like the Deputy of St. Ouen, that there is this feeling all the time that if we do not get more rigid about the laws, civilisation as we know it is going to collapse, if it has not collapsed already. That is very sad. Because if you analyse the situation in a more narrow sense and this issue came up, for example, Sir, in the Town Hall meeting - there are laws already on the statute book to deal with some of the issues that are causing people a lot of concern. It is more a question of how well enforced those laws are, rather than focusing all our attention on this particular aspect. Also, Sir, there are strange conclusions drawn from statistics, like Deputy Gorst very tantalisingly left in the air this notion; he tried to say there was cause and effect between a reduction in the age of sexually permitted activity to the spread of sexually transmitted diseases, and quite clearly his inference was that the 2 were somehow connected. There is no evidence of that. Again, we had the Dean - who I must praise for his continuing interventions; it does give us a chance to speak - saying, for example, Holland was doing very well in terms of abortions at 12.7. That is not linked, as might be the inference, to tougher laws, as we know, because Holland for many years put itself forward, although it is going through its own strains at the moment, as a very liberal society. That is linked to the fact that the Dutch have one of the most enlightened, progressive and systematic sex education campaigns for their young people. That is where that comes from. It is not linked per se to tougher laws. So I think we make all sorts of connections that are perhaps the wrong connections because we have got this

general worry that society as we know it is collapsing. Deputy Fox mentioned that; he said he was very worried about human rights and what was happening, if I may slightly stray, with the Afghan alleged hijackers. Well, the problem that occurred there, Sir, was for good or for bad, and for reasons that are obviously too complex to explain here, the criminal case against this group collapsed, and they were basically then put into a free society, and then another rule appeared where you cannot send people back to a society which is dangerous and where there might be, for example, retribution. That was the particular issue there. So it was not an example that the whole Human Rights Act is collapsing around us; it might be, for other reasons; but that was not necessarily the best case by which to illustrate it. That is the point that I wanted to make, Sir, that I think we are drawing awfully general conclusions in looking at a particular case. I think people are right to be worried, but if they are really worried about the Convention on Human Rights, then I am afraid we are going to have to look at other ways of dealing with this situation. Thank you, Sir.

1.1.42 Mr. W. J. Bailhache, Q.C. H.M. Attorney General:

I have listened with interest to the speeches which have been made this morning, and I recognise the strongly-held views of members. Against that background, I was going to add, just before he leaves, that I was delighted to hear the remarks of the Dean this morning as well, because the warning against homophobic responses was, I think, one absolutely rightly made, not rightly made because it was necessary for Members, but because it is a reassurance to the Island community which heard it, and I am therefore particularly grateful for that remark having been made. Sir, a number of Members have said that the ambit of the law of sexual offences is wrong. It is said that “sexual offences legislation is a complete mess”. That was a quote from one Member. That is easily said. Nothing was said to say why it is a complete mess, and I would like to make it plain to Members that I do not agree at all that the law of sexual offences is a complete mess. That is not to say that it does not bear some review, but it is absolutely wrong in my view to make statements such as the “sexual offences legislation is a complete mess” without supporting it with any detail or criticism. As I say, in my view it is incorrect. Reference has been made by a couple of Members, indeed by the Minister, to the letter from a private sector advocate. Members might be interested to know that when the People’s Advocate proposition was lodged about 18 months ago, it was shortly before the Law Society dinner, and one of the lawyers came up to me at that dinner and said: “I think I am going to apply for that job. It is dead easy; you get no responsibility; all you have got to do is stand up and disagree with the Attorney General.” [Laughter] I thought I might apply for it myself. The fact is the Attorney General does have a responsibility in giving advice to this Assembly, and I hope it goes without saying I take that extremely seriously, and in the advice which has been given on the human rights implications of the present state of legislation on this subject matter, there has been a comprehensive review by the lawyers in my department and then a further comprehensive review by me personally, because I wanted to be sure that I was quite satisfied that the advice given to Members was correct. I would like to tell Members that I am completely satisfied that the advice given to Members is correct. Indeed, there is a short summary of it in the report which was filed in relation to the Deputy of St. Ouen’s amendment. Paragraph 8 of that report contains that summary. “Sexual activity falls within the ambit of Article 8 of the convention, concerning as it does a most intimate aspect of a person’s private life”, and there is reference there to 3 of the ECHR cases. Secondly: “Any interference with a person’s sexual life and any difference in treatment based on sex or sexual orientation, would require particularly weighty reasons”, and there is reference there to an additional case. Thirdly: “This is all the more so where a European consensus existed to reduce the age of consent for homosexual relations”, and there is reference there to 2 cases. Fourthly: “Any differences in treatment based on sexual orientation would require particularly serious reasons by way of justification.” Members will see that in many of the cases there is reference to the case of *L&V v Austria*, and I am going to come to that in just a moment. Fifthly: “In the absence of any objective and reasonable justification, the maintenance of a higher age of consent for homosexual acts than heterosexual ones violated Article 14, taken in

conjunction with Article 8.” In the letter which Members have received, there is a review of some of these cases. There is a review of the case of Sutherland, where it is said that the European Court of Human Rights did not actually consider the matter that was before it. That is absolutely right. The court did not consider it, because at that time the United Kingdom had legislated to remove the discrimination, so the court did not have to consider it. The fact is that the UK introduced that legislation following a very strong finding, an unequivocal decision of the Commission, that the UK legislation as it was prior to the amendment did breach the convention. There is nothing, therefore, in that point that is made. There is then a reference to the case of *L&V v Austria*. This is an important case. Important because the court found that the Austrian Government did not offer any convincing or weighty reasons justifying the maintenance in force of the relevant paragraph. The argument was run by the government despite the fact that legislative change was in the offing; the argument was run that the discrimination was justifiable and reasonable for the protection of male adolescents. It was run expressly, and the court rejected it. The advocate then refers to a case of *Zukrigl v Austria* as being an illustration of the instance that the court was prepared to assess whether there was a pressing social need for the interference of rights, and it is worth saying that that particular case is now 16 years old and judicial thinking in the European Court of Human Rights has moved on. The case was considered in *L&V v Austria*, and the reasoning was rejected. Sir, I could go on in a review of that particular piece of advice, which has been gratuitously handed to members, but I really think it is unnecessary to do so. All the problems which I have mentioned before about receiving 2 pieces of legal advice in this Assembly really come to roost when we are faced with this sort of position. Deputy Gorst said that there is contradictory legal advice. Well, if you get more than one lawyer looking at something, there often will be 2 expressions of advice given. In my view, and I commend that to the Assembly, it is the Law Officers’ advice which ought to be accepted, and that should be the end of the day. I had hoped, before this debate, that we might reach the stage where what is a necessary piece of legislation would be embraced by the Assembly; in other words, that Members might come to it willingly, using the heart as well as the head, not as it were dragged kicking and screaming to the point of passing the legislation. I still hope that that might be so, because there is an important message to be sent out to the community, and that is the extent to which I am going to make any political comments today. I do now wish to turn to the effects, the consequences, if this legislation is not adopted. The first is a consequence from my own position as Attorney General. When the Human Rights Law comes into force, as it no doubt will in the next months, the Attorney General will be a public authority for the purposes of the Human Rights Law. As a public authority, it means that I will have to exercise my functions, including the prosecution function, in accordance with the European Convention on Human Rights. That means that I will have to have regard to convention jurisprudence as to when and whether I should prosecute. If the States of Jersey refuses to adopt a piece of legislation, which will leave our existing criminal law in conflict with convention jurisprudence, I will have a very difficult position before me. On the one hand, as a public authority under the Human Rights Law, I should not prosecute, because the convention jurisprudence says I should not, and the States has passed the Human Rights Law to say we are going to make convention jurisprudence, the Human Rights Convention, part of the domestic law of the Island. On the other hand, the States will have rejected a particular amendment which would remove that conflict. Now, I just lay that before Members to say that is an impossible position in which to put any Attorney General. The second thing I wish to say is this. The policy of international personality, developing a greater limited international personality, is based upon the proposition that the Island can hold its head up internationally as being a respectable place in which business is done and which looks after its people. It is an important part of that reputation, of that respectability, that when a jurisdiction says it is going to do something, it does it. It is an impossible position to go into the international community and commit to international instruments and then, when it does not suit you any longer, not to pay any attention to them. The Island has subscribed to the European Convention on Human Rights. I am able to say this to Members because regularly I do, in my dealings with other officials and other Attorneys General in the context of giving mutual legal assistance, the statutory functions which are

imposed upon me, I regularly come up against this question of the Island's reputation. If it were the position that the Island commits to an international instrument and then ignores it because it does not suit it, that would be very damaging indeed. The third thing I wish to say is this, and it tackles relations with the United Kingdom. As I understand it, a case has been lodged against Jersey in relation to the age of consent for gay activity and the absence of this legislation. It is unclear at the moment whether that case will or will not go ahead, and I say that in the context that sometimes cases do not go ahead and they get withdrawn. But if it does go ahead - and it is rare that I give legal advice of this nature in public, but I do not have any hesitation about doing so in this case - if it does go ahead, the United Kingdom on behalf of Jersey will lose that litigation, because our law is not human rights compliant. The consequence of that is that the United Kingdom will be directed by the European Court of Human Rights to ensure that the lack of compatibility of our legislation is put right. It will be the United Kingdom which is given that direction, because the United Kingdom is the sovereign state which has signed up to the European Convention and ratified it with our consent on our behalf. Whether the United Kingdom has legal power then to legislate or not is, as Deputy Ryan said, probably not the point. The fact is that it would leave the United Kingdom in an impossible position where the European Court of Human Rights, an international court, says to the United Kingdom: "Here you are, you have ratified this particular Convention on behalf of one of your territories. We have found that territory to be in breach of the Convention, and therefore you must do something about it." I ask Members just to contemplate for a moment what the position then would be. Are the States then to say: "No, we will not change the legislation"? How would the United Kingdom look in the international community faced with the States of Jersey saying: "We will not implement this legislation" having signed up to a convention with the Island's consent; it has agreed to have the provisions extend to us. It would put the United Kingdom in an impossible position. It cannot, in my respectful view for Members, make good sense to get to that position. So if we get halfway there, and the court has made the order, do Members then say: "Oh, very well, we will pass the legislation. We will climb down"? What has been achieved by that? Absolutely nothing. The right way to go about it is to accept that with responsibility by signing up to the convention comes responsibility with performing it. I perhaps ought to add this. Some Members have expressed reservations about whether the European Convention of Human Rights is a good thing or not. The fact is that the Convention and Convention law is a living body of law. It develops. I have heard you, Sir, from time to time in relation to the Jersey law of contracts say: "Was this frozen in aspic back in 1204?" Well, of course not. The law develops, and European Convention law has developed since the Second World War, since 1951, 1952, when it was ratified, in numbers of different ways, and by signing up to the Convention we sign up to the principle that as the law develops, then we go with it. It is a matter for Members as to whether they feel we should adopt this piece of legislation. To me, that is not really the relevant question, because to me the relevant question is must we adopt the legislation, and while I very much hesitate to tell Members what they must do, I respectfully suggest that we really must adopt this legislation.

1.1.43 Deputy J. Gallichan of St. Mary:

This law deals primarily with addressing discrimination in law, which exists currently, and which, as the Corporate Services Scrutiny Panel, of which I am a member, found in an evidence-based review, does leave the Island open to challenge under the European Convention on Human Rights. Let us not forget that the convention was drawn up in the aftermath of the Second World War, a time when the most appalling abuses had taken place, when people had been persecuted, tortured and murdered on the basis of ethnic origin, religion or sexual orientation. European society took a conscious decision to put measures in place to ensure that this situation would not arise again. The rapid and far-reaching changes that have taken place in society since that time could not have been foreseen, so things that we consider commonplace today were unthinkable then. The convention is modified by case law brought in the European Court of Human Rights, and so it has evolved to keep pace with these changes. It is for this reason that we are still having to consider the

implications of the convention in our legislation today. I would like to echo the words of the Attorney General and remind Members of one of the conclusions that the Corporate Services Panel drew. “The panel considers that having voluntarily asked the UK to sign up to the ECHR on its behalf, the Island has a responsibility to honour its resultant commitments and obligations”. You may say that the discrimination under the current law is minimal and affects only a relatively small section of our community. I say that this is generally how persecution starts. This law simply removes the criminal implications of certain sexual practices in certain circumstances. It does not promote them, and it certainly does not make them compulsory at 16 or at any other age. On the face of it, as lawmakers we have a duty to ensure that the laws we pass apply equally across society, and so my decision should be black and white in this case. However, I do not exist in a vacuum. I have children, and I am deeply concerned about their well-being, not only with regard to their legal obligations, their physical health, but especially, their moral well-being. That makes up part of the toolkit which as a parent I am responsible for providing them with and which enables them to function in society as they grow. The Dean has already stated that we in the Channel Islands have a good moral balance and that we should not necessarily seek outside change on that. I agree. That balance is a relationship between the family, the state, and for some, the church, and it has developed over time. But this law does not seek to undermine that value. However, it also does not seem to add the necessary resources that we need to help educate our children on the physical and the medical implications of the lifestyle that, after all, they will inevitably choose for themselves. I welcome assurances given in this regard by the Chief Minister, and I hope that these will be echoed by the Minister in her summing up, and that she will also give a clear timetable for the introduction of the supporting resources.

1.1.44 Deputy K.C. Lewis of St. Saviour:

If I could have further clarification from the Attorney General, Sir. During a public hearing, an advocate to whom the Attorney General has previously referred was asked questions regarding the ability of the United Kingdom to legislate for Jersey, and stated: “The United Kingdom will not legislate for domestic matters. It would require a major crisis for the United Kingdom Government to request Her Majesty the Queen in Council to intervene, such as the Crown would have to see civil war or similar.” Can I ask for the Attorney General’s opinion on that?

1.1.45 Mr. W.J. Bailhace Q.C. H.M. Attorney General:

As I hear that question, there is quite a muddle of constitutional questions rolled into it. The historical view adopted by some is that the United Kingdom has power to legislate for the Island in the interests of good government, and the question there boils down to whether or not good government extends to the rate assessment in the Parish of St. Martin or whether it is something more important than that. There is authority for the view that good government involves a really serious breakdown of law and order; authority in the sense that Lord Bach on behalf of the Government in about 2001 said that in a written answer in the House of Lords. That would tend to support the view that there would have to be something very serious before the United Kingdom could intervene to legislate. But that is not the only basis upon which the claim to be able to legislate exists. The Kilbrandon Commission had that as a backstop, as it were, in the interests of good government, but Kilbrandon also expressed the view, rightly or wrongly, that the UK had power to legislate for the Islands where there was engaged a breach of an international obligation, and this would be just such a case. So undoubtedly the view has been expressed by no less than the Royal Commission of Lord Kilbrandon in 1973 that if there is a breach of an international obligation, it follows that the United Kingdom has power to legislate. That, of itself, is not as straightforward a question as it might be because it is possible that one could anticipate circumstances where the United Kingdom permits to an international obligation without asking the Islands. Certainly the view which I have expressed in the past, and I express it again today as a

view because there is no authority on the matter, is that the United Kingdom would have no such power to legislate simply because it had adopted, without our consent, an obligation in the international arena. I have described it as a boot-straps argument, that the United Kingdom would have that power to make a commitment and because it has made a commitment to say now we have the power to legislate for you. This is a different case here. This is a case where the international obligation has been incurred by the United Kingdom with our consent. We have agreed to it. We have agreed to the United Kingdom exposing itself internationally to the European Court of Human Rights and there must be a much stronger argument that the United Kingdom would have power to legislate. I would prefer not to express a view as whether it does or does not have that power but it is clearly a much stronger argument. The view I would express is that when you get into these sorts of arguments, if ever you do, there is a really serious constitutional problem with the United Kingdom which would do us a lot of harm.

1.1.46 Senator P.F.C. Ozouf (Minister for Economic Development):

The Attorney General has given some clear reasons why this Assembly has no choice but to vote in favour of this proposition but I would express the hope that Members would not only vote in favour of this proposition for the legal reasons he clearly set out. A caller yesterday to Radio Jersey - it was not actually read out but I found out, very carefully, from the presenter - apparently called in to the Radio Jersey phone-in yesterday to say that Senator Ozouf should not participate in this debate. He should declare an interest. That is, I am afraid, the kind of unfair homophobia that does exist in our Island. I hope it is an open secret of what my own sexual orientation is. I am not ashamed of it. In the past I have not shouted about it, partly because I am concerned about the consequences. I do, however, know many people - and of course, there are probably thousands of people in the gay community of Jersey - and I do attempt at all times to understand what their thoughts and what their feelings are. As a recent *JEP* article clearly said, very thoughtfully reported, it very clearly said that many people are afraid to express themselves and to tell their friends and their family about their own circumstances. Let there be no doubt that there is discrimination. The Police are great. They are really fantastic. They are a model of good discrimination practice. I can also say to Members, as a member of the Community Relations Trust, there is an anti-discrimination promise which has within it a statement saying employers should not discriminate on the basis of sexual orientation. Apparently, it has not been signed up because some people are concerned about that statement. I will certainly be doing some more work to try and understand why that is the case, because it is clearly of great concern that if employers are not prepared to sign a voluntary code of practice to not discriminate on the basis of sexual orientation then there is perhaps a more serious issue than we are aware of. I would say that I was pleased to hear the Dean's comments that he was against homophobia. I am particularly pleased to hear that from him after I received a letter from an organisation called the Jersey Evangelical Alliance. That letter was simply outrageous. It was outrageous, as outrageous as some of the Christian fundamentalists who shouted abuse at a recent event in London. I do not believe such comments are mainstream. I do not believe they are worthy of even a momentary passing comment in this Assembly. I would say to the Dean, though - he did raise the issue of marriage - there is coming forward to this Assembly of the petition on same-sex partnerships and I will be supporting that. It is right that there is, perhaps not in church, but there is absolutely a right to protect the survivor of long-term relationships in all sorts of ways and I hope this Assembly will also be taking that step, which has been taken in other places very shortly. We are law makers; however, I am afraid civil laws do not stop people from being gay. The Bible, or other religious texts, I am afraid, does not stop people from being gay. I am afraid that the law does not stop 16 or 17 year olds from engaging in sexual activities, heterosexual or homosexual. I am afraid that, of course, this debate has centred very much on homosexual matters but it is not only about homosexual matters. This law brings in safeguards. It is an identical law in its form, as I understand it, from that which was passed in the United Kingdom. It was the reasons for those safeguards, as well as equality and all the rest of it, that it has huge support from organisations

whether it be Banardos or from the NSPCC, et cetera. I want to tell Members that it is difficult enough to know you are gay without the message being sent out to young people that they cannot go and seek advice and education about their sexual health. These arguments about whether or not ACET or Brook are the places to go - the Minister for Health and Social Services and I have spoken about this issue and I think he has addressed this Assembly in very clear terms - the services are there for people to get advice. Of course, you cannot get education on something that is illegal and there is clear evidence from other jurisdictions that legalising the age of consent in the way being proposed actually decreases the likelihood of problems in people's sexual health and sexual transmitted diseases etc. This issue is an issue of basic human rights, of basic equality. The Minister for Home Affairs is to be congratulated very warmly for her work and courage and determination. This is an issue that was first of all taken by the Legislation Committee. I saw the Minutes of the Legislation Committee that was not prepared to take it forward. Outrageous comments that had no place in this Assembly. She has grappled with the issue and she has brought it forward and I am grateful and, indeed, this Assembly should be grateful for that. This issue has been put off for too long. It is damaging the Island's reputation. I express the hope that this Assembly sends out a message that this Island is tolerant and against anti-discrimination and is not homophobic and is inclusive and fair. **[Approbation]**.

1.1.47 Deputy P.V.F. Le Claire:

Up until this morning I have been intending to vote against the proposals - in many respects of what is before us today - obviously not the issues of child protection because I would like to see us as strong as possible on that. I have mentioned to Members in confidence that it is because of religious teachings and religious advice and congregational pressure from people in the community who have spoken to me. But I have sat back quietly throughout most of this series of debates and series of examinations we have been having on these issues and I have been trying to understand within myself what the issues are. Could I say from the outset, what has disturbed me greatly is the attitude of some Members that if people vote against this they are doing so because they are anti-gay or homophobic. I can understand people having a moral issue on some of these things, whether it be from their own creation or whether it be from corners of their own lives where this pressure has been applied, such as in mine. I am not a model Catholic and I have, in the past, upset the Church in some of my own actions. I married in a Registry Office. I did not marry in a church, something which made me outside of their instruction and I have to refrain from communion until I have married in a church because in the eyes of the Catholic Church my marriage is not lawful yet. In the eyes of the government my marriage is lawful and in the eyes of immigration my marriage is lawful. Now having a son and everything else, those pressures are obviously amplified within the community and perhaps a disappointment to some of the people in the religious spheres who struggled and have been struggling with me since I was a child at that church to be what they would hope would be somebody who respects human life across the board, and I do. I sincerely do have at my heart a common love for my fellow man and I think that is the biggest, and it has been recognised as the greatest, Commandment. "Love one another as I have loved you. Love your neighbour as thyself." That was the greatest Commandment, we have been told, that Jesus gave us. So, in a religious perspective, listening to Senator Syvret today, I was swung around even more by some of the points that he made from within the Bible. The issues of whether or not one should support this law because one has a moral obligation or one has a religious obligation or one has an obligation from a representative position is obviously one for each of us. I am not trying to persuade Members in my speech today to vote in any way, shape or form on any of the issues. I am, however, in this speech, unlike in most of my other speeches, trying to convey to Members and to my electorate why it is I am going to choose to vote in the ways I believe I am going to vote in the forthcoming decisions we are going to make on these issues. I believe it would be wrong of me to vote against these laws and I am, for the first time, conscious that I face a political and religious conflict where the political, in this context, must take precedence over the religious. We have

inequality and we have recognised inequality. We have discrimination and prejudice which we are trying to address across the board. We recognise that discrimination in the employment arena when women become pregnant and they are then dismissed because of the lack of our protective legislation in this regard. But here, today, we do have an opportunity, albeit a small opportunity, to set right some of the things in our legislation that are wrong. I have listened in the past to debates and Members contributing in debates where, in the Adoption Law, Members were saying how wrong it was to have such an archaic adoption law. I did not comment at the time because it is obviously another embarrassment from a moral perspective and another element of peer pressure in one's life, but I was adopted and my own mother had to adopt me because of our archaic system which made her extremely upset and until the day she died, I am certain in a small way, ashamed. I am very grateful that Members are able to recognise that we have a whole backlog of antiquated laws with limited resources to amend those laws and limited time. Perhaps it has been identified today, quite rightly, that we have a number of laws, especially this one, that need a radical overhaul. Some of them need to begin again from the beginning and it gets to a point where, as we have seen in past debates, we cannot amend any longer. It is beyond amendable. It has to be recreated. I believe that is where we are heading with this type of legislation. I commend the work of the Home Affairs Department and the Home Affairs Minister and I deplore the anti-homosexual rhetoric that has abounded in the community. I applaud Members who have spoken, as Senator Ozouf has spoken, from an informed perspective because when one is informed about something one recognises more of the issues than others who have taken a cursory glance at it or perhaps read up on it for the past few months. I will continue to listen to Member's speeches and I will continue to struggle with the issue at hand to date. I must confess, although perhaps this is not the right place to be doing it, that it did cross my mind to opt out and pretend I was sick, or something. It is such a difficult issue and I have been thinking that for weeks. You know, God, what am I going to do on this debate? But I think we must examine our consciences and my conscience tells me I cannot vote against this today. That does not necessarily mean I will be able to support it in its entirety but I feel it would be completely wrong of me to oppose it. Therefore, I will be supporting it where I can, and abstaining where I am unable, or still in dire conflict with myself. I will seek some more advice over the lunchtime period and I would be happy to speak with Members if they feel this is not perhaps the right approach. I am in conflict and I have struggled with this one more than in any other area of political debate that I have been involved in since I became a politician. I do wish, though, just in finishing before we break for lunch, I urge Members to stop the attitude of the debate where it is those of us on this side of the fence and those of us on that side of the fence. In my view there are many laws in the Island that make people criminals which should not be there. Iniquitous laws and antiquated laws, and we have to change those laws but we are not going to change them if we are a divided Chamber. We are certainly not going to send a message out to the people of Jersey that we recognise and value them all as individuals if we cannot recognise a state of harmony within this Assembly.

Senator S. Svyret:

I propose the adjournment, Sir.

The Bailiff:

If Members agree we will adjourn until 2.15 p.m.

LUNCHEON ADJOURNMENT

1.1.48 Deputy J.A.N. Le Fondre of St. Lawrence:

I will admit to actually dreading this day as I still find myself undecided on the subject and I have been listening pretty carefully to the whole debate. I have to say, when I first thought of entering

the States I never quite expected to be challenged on such wide-ranging matters of principle, especially in January and even now in July. Let me make it quite clear, as far as I am concerned there is no difficulty from my point of view about removing the discrimination towards the age of consent for homosexual acts. Where I have always had a concern is the method being used to resolve the problem, i.e., the solution. I have debated this over and over again with myself, with colleagues, with friends and with some of the people I represent and I probably still do not have a clear view of the whole issue. Indeed, I was slightly confused because we had the opinion of the Attorney General that we have to choose some form of solution to be human rights compliant and we also have the conflicting other legal opinion that was sent to us, I think it was over the weekend. I think that has now been clarified but there is still the so-called overall moral view. Indeed, Sir, we have had a number of letters from - I think it is - 13 churches, including the Rector of my Parish, identifying that, in their view, this is a moral position which should take precedence and that is due to the differences in maturity of boys versus girls at 16. In other words, girls are supposedly more mature than boys at that age. They refer to a study that shows that sexual orientation in boys becomes more certain with increasing age which is, unfortunately, at odds with the comments in paragraph 52 of the reports accompanying the proposition which refers to a BMA statement in 1994, 2 years after the earlier study and the one referred to by the church organisation. So, I think the House has recognised the huge moral dilemma it faces versus a particular legal problem. Where I do have a concern is the process by which we have arrived at today. The January debate was for me quite an eye opener in how to lose an argument. The Corporate Affairs report concludes that the Minister was unprepared at the time of the debate for the level of concern and unease held by many Members and it comments that there are many interested parties who could have had a relevant input prior to the debate. It refers to Brook, ACET and NSPCC as examples, but not exclusive ones. It states the Panel recognises the urgency to comply but on balance this urgency does not override valid, ethical and social concerns which appear to have been superseded in pursuit of the aim of satisfying the principles of non-discrimination. That, I think, is also on the edge of my concern. The original law did not cover the abuse of trust and grooming. It is my understanding that the UK law of the same type did cover all this at the time and, therefore, I wonder why this was not looked at before the first debate rather than being brought in now. I also understand the UK has performed quite a wide-ranging review of all other pertinent legislation to bring it up to date. So, is this something we should be doing and, if so, should it be done before we change anything? That might not be practical. Am I just wanting to delay and defer in order to get that perfect level of information, hypothetical or otherwise? However, the gist of the Minister's recent email to all of us implied there has been a lot of time pressure on the department and this again just tweaks my level of concern as to how complete and how fully the whole thing being looked at in the last 4 to 5 months. This does bring me to the matter of consultation. I have seen very good levels of consultation and I have seen very bad levels of consultation. I note, for example, that Education held a briefing for Members last week which, unfortunately, due to last minute change in my meeting arrangements I was unable to attend. However, Sir, I am not aware of any Member briefings on this subject. I personally would have liked consultation with parent groups at the very least, and while I do not know if there is any friction between Social Affairs Scrutiny Panel and Home Affairs, it is my understanding that Scrutiny have been trying to take a balanced view on the matter but from their report they have not been able to do their consultation and, to be fair, they did request wide-ranging consultation be carried out before the legislation came back to the States. I am concerned the Panel report states that both ACET and Brook replied that neither organisation had attended any meetings or had been consulted by anyone at Home Affairs. They quote the Minister that consultation did not take place in a formal meeting which makes it appear to be more of an afterthought than I would have liked given the seriousness of the situation. I also note the comments on pages 8 and 24 of the report of the proposition concerning having received initial views from the departments most concerned by the impact of the law and would be most grateful if the Minister would clarify whether their views have been finalised or significantly altered since the proposition was lodged. No doubt she will comment on some of the other bits I have raised just

before. I am slightly concerned at the approach in paragraph 32 in respect of homosexual acts between more than 2 people as not being treated as being in private. If the angle on this is that it is discriminatory because more than 2 heterosexuals can do the same things in private, surely we have got things the wrong way round, i.e., assuming I have understood this correctly, is it morally correct that we are seen to be condoning group sex of any persuasion at all? At the end of the day, and especially after the words of the Attorney General, I am a lot more comfortable that, legally, we cannot discriminate. In other words, that there is a problem. My main reservation has been over the solution. Again, I re-emphasise the point that I am not approaching this from a discriminatory angle. My reservation is how we deal with youth as a whole and it has been said 2 or 3 times today, and earlier, is it logical that we tell youngsters they are not responsible enough to drive until 17, they are not responsible to drink until 18, they cannot vote, they cannot buy solvents because we passed regulation to change that, but they are responsible enough to rationally consider that very special gift of creating another life when their maturity and all those other attributes of being young all vary quite considerably from one individual to another. Is this about lust or is it another 4-letter word for love? They cannot even buy the cigarettes to light up after having sex. As a parent, I would be extremely concerned whether the overall age of consent went any lower, for example, because of some form of needing to harmonise with Europe. I do not think, hopefully, it is nowhere near on the horizon but I have heard comments that there are rumours that certain countries would like to see that. So, if I have had all of these reservations why did I not bring an amendment myself? Because I had assumed that we would actually see some wide-ranging consultation, particularly with parents and parent groups. I think we have missed a trick here and we could have gone out and asked people their views rather than just waiting for them to come to us. Again, this is countered by whether this is a practical approach because it has been indicated it will be very difficult to raise the age of consent from 16 to 17 for heterosexuals. That argument probably swung it completely for me, embracing entirely in favour of the whole thing today. Last night I was re-reading the report and read that Cyprus have done exactly this. In other words, they have seized that rather tricky nettle. Again, finally, in my deliberations - and I really do not want to be going against the Council of Ministers - we have been told that it is a matter of conscience. I have listened very carefully to Senator Ozouf and his quite personal and moving speech, and also that of Deputy Le Claire. At the moment, my inclination on this will be to support what I am calling the preamble and to support part 1 of the amendment of the Deputy of St. Ouen. I will listen further in respect of part 2 of this amendment. I will vote in favour of most of the Articles but I am afraid at this stage, Sir, I cannot vote for Article 12, principally because I am not happy with the solution rather than not recognising the problem. I cannot easily vote for that change under those circumstances. Had full consultation been evident, I would have been in a far better position to make that judgment. I do not know whether I will vote against it or just abstain but it will depend upon how the rest of the debate goes. I would like to return to practicality because it is something that does come up from time to time and I believe it was a former President who said: "We should be doing things not because they are easy but because they are hard." I am concerned we have taken the easy way out when there might have been a more optimal, albeit more difficult, solution available and I very much regret that because of this I cannot support Article 12. I would like to re-emphasise that I feel there are anomalies in how we deal with youth as a whole, although it might just be to do with how we all grow up and our varying levels of maturity at 16, 17 and 18. I think we do have to look at this area as a whole, look at it properly, speak to parents and the youth and youth groups, and if this highlights anomalies, these should be addressed and properly consulted upon even if they are difficult solutions. Thank you, Sir.

1.1.49 Deputy G.C.L. Baudains:

I am sorry I was not able to hear all the speeches this morning. I did obviously hear some of them. I am, as I have said the last time this matter came before the House, quite concerned about this. I hope I have managed to lay down my thoughts on this in a coherent manner because I find this new

version of the law just as bad as the previous version only this time it is somewhat more disguised. Most of the first Articles of this law relate to abuse of trust. Only Article 12 goes to the core of the subject. So, on the face of it, those first 11 Articles might seem reasonable. However, when one realises that they all, in fact, relate to the reduction in age of consent to 16 years of age, it all, therefore, has to be taken as a unit. They all hang together, so there is no point in agreeing the first ones and voting against Article 12. So, it was my intention to address the law in its entirety at this preamble stage. Sir, the abuse of trust section I oppose anyway, not because of its sentiment - that is well placed - but because it only comes about because of the proposed changes to the law on sodomy and, anyway, it appears to me that part of it would be practically unenforceable. As to the sodomy issue itself, there are a lot of issues contained in it. I will try and deal with them in some sort of grouping. Lowering the age of consent for sodomy to 16. It has been almost interesting during the debate over recent months on this issue to hear how some people are claiming their human rights are being infringed by the current situation. In my mind, in reality, it is really another example of people abusing human rights legislation, which I will come to in a minute, because the idea that homosexuals are discriminated against is complete nonsense because if anyone is currently discriminated against it is actually heterosexuals currently disallowed from practising sodomy, if that is what they really want to engage in, at any age. Homosexuals can legally do that from age 18 at the present time. I also notice with some dismay, Sir, that the majority of people advocating lowering the age are themselves well over 18, so I do query their motives. For the avoidance of doubt, Sir, I do not have a problem with homosexual people. I know many and I can think of only one that I do not get on with. Their preferences may not be normal in the true sense of the word but that is no reason to discriminate against them. In fact, it is only not so long ago being discovered that the tendency is, or can be, caused by a defective gene. I say "can" because my main concern is that boys may be initiated into that type of relationship before they are fully aware of their sexuality. It is very easy to glibly say that boys are sexually orientated by the age of 16. I happen to agree, as do a number of other experts, it is a known fact that boys do develop on average 2 years later than girls. I am disappointed with the Home Affairs Minister, who I presume, Sir, would have thought better of bringing such a Proposition. I refer to paragraph 52 relating to medical opinion on the report. We all know medical opinion is rather like legal opinion. You ask 12 different people and you get usually nearly 12 different answers. While looking at that report, my eye was drawn also to paragraph 50: "Developing the Island's international personality." It made me wonder which is more important to our Ministers, the wishes of our people or the wishes of outsiders. It makes one wonder about the word democracy. On another matter, I believe in God, although whether that qualifies me as a Christian or not I am not sure. I say that because I hold no brief for the Jersey Evangelical Alliance. However, unlike one or 2 other speakers, I did find their paper made interesting reading, especially regarding the health issues. It clearly contradicts the medical opinion portrayed in paragraph 52 that I have just referred to and I was dismayed to hear some Members rubbish their comments. I presume those Members do have the facts to challenge the details issued in that paper, because the Alliance tells us that child molestation is twice as high in homosexual men compared with homosexual women, and on average 10 times higher than a heterosexual basis. Homosexual men are 46 times more likely to be diagnosed with HIV and more than 56 times more likely to be diagnosed with other illnesses than their heterosexual brethren. There are other details as well there, Sir, which makes one wonder. It goes to the core of whether we are treating like with like. We are told the European Court insists that heterosexual and homosexual - there is not difference. Clearly there is a difference. If those statistics that have been circulated do not convince Members we should be protecting our children instead of exposing them to even further problems in this world, I really do not know what will. This has to be, surely, a powerful argument against lowering the age to 16 which, interestingly, it seems to me, and in light of the Attorney General's comments this morning, which alone would surely qualify as a valid reason for the Island not to have to comply with the law that we are told that we have to. We are advised if there are compelling reasons we would not have to comply. I believe that is a compelling one. The Minister previously suggested, Sir, we could bring amendments before this law was

lodged, if I remember correctly. We could bring amendments if we so wished. But, of course, any amendment that sought to make any meaningful difference to the matter would be ruled out of order as it would almost certainly negate the Proposition. Certainly, that is what happened when I tried to amend the previous version. Sir, in opposing this, I hope I am not going to be accused of not offering alternatives. It is simply not a viable option. A real alternative would require a completely new proposition. Making the act of sodomy illegal for both heterosexuals and homosexuals would remove the present discrimination which, as I have just said, is in favour of, not against, homosexuals, if you are into that sort of thing. Why has not this option been actively pursued? To forward the argument Sir, that 2 men attempting to have sex together have to be allowed sodomy because they cannot couple in the normal way merely, to my mind, shows what an ass Europe is to suggest that they should be treated the same as heterosexuals. It is simply not the same at all. Will male homosexuals next be suing the State because they cannot ovulate or produce children? One wonders how far this human rights nonsense is going to go. I have to say, if 2 men insist on having sexual relations with each other there are alternatives to sodomy. They will have to manage the same as lesbians do, the latter demonstrating that, in fact, there is even a difference between types of homosexual, the same as there is difference between homosexuality and heterosexuality. We must not lose sight that heterosexual sex is a natural practice and homosexual is not. If a man having a partner instead of a woman means there are some things they cannot do, in my view that is their choice. No one is forcing them to choose the same sex relationship. Which brings me, Sir, on to Scrutiny of this subject. I was disappointed that Deputy Hill's Panel did not review the subject from a health perspective earlier on. I believe that was a mistake, although I understand the reasons he has made for that. Certainly, it prevented people such as myself being able to contribute. With regard to the Corporate Services Panel, their performance, in my view, is very disappointing. Unfortunately, there was nobody on the Panel, as I recall, from the Shadow era to guide them. Firstly, I believe, they made the mistake of drawing their terms of reference too narrowly thereby disallowing themselves the opportunity of following certain lines of investigation that so often arise during scrutiny that one may not be aware of from the outset. As a result, Sir, nothing meaningful has really been added to what we heard previously. I had expected them to employ at least one consultant expert in Constitutional law. They chose not to, instead relied our Crown Officers whose advice is available to this Assembly anyway. As a result, many of the issues I expected to be fully explored were not. It therefore comes as no surprise to me that the Panel essentially endorses the Minister's view. They failed to fully research the alternative legislation and alternative means of dealing with this legislation such as withdrawing from the Human Rights Charter. The effect on our democracy or how we would be affected by Britain's renegotiation of the EU's Human Rights Legislation as the UK has suggested it is going to do. The UK has suggested it will form a commission to examine the Human Rights Act because of the problems it is creating.

The Bailiff:

Not the United Kingdom. I think it was the Conservative Party.

Deputy G.C.L. Baudains:

You could be correct there, Sir. Thank you for your assistance. Neither did the Scrutiny Panel, apparently, fully understand the European Union judgments which are frequently used to support this particular case. I found a letter from Advocate Cushen painting a very different picture from the one apparently accepted without question by both the Minister and the Scrutiny Panel. As I said, I was concerned about the Scrutiny Panel's - dare I say it? - failure, because it denied this Assembly alternatives when clearly there are some but they have not been explored. The public do not wish, or my understanding of the public opinion is that they do not wish the age at which sodomy becomes legal to be reduced. It would seem that their wishes count for nothing. It would appear our international personality counts for more than the wishes of our citizens or the health of

our children, and morality and Christian values do not even show on the radar. If there is anything to be salvaged from that Scrutiny review it must be in the comment of the Solicitor General because, on page 23 of the report, we see the offending Convention was extended to the Island a long time ago and the Solicitor General stated, if I might just briefly quote from the report: "I do not think anyone would have foreseen the implications of the case law developments because I think that some of the judgments given by the European Court of Human Rights, and I am not particularly talking about this area, even, would have surprised the original drafters of the convention. Sir, it has developed in a way I do not think anybody would have predicted." It depends how one reads that. I would suggest that indicates that what we did not know where it was going to go when we signed up to it. Does that not give us the right to complain and make our views felt and, if necessary, ask for us to be absolved from, or allowed to renegotiate the terms under which that Convention applies to us. Does it mean that we cannot do a thing about it? If that is the case, then the alternative would be to pull out of it altogether. I think the Island would be a lot better off. I have also, Sir, as you are probably aware, been concerned for some time about the way the previous Policy and Resources Committees have signed us up to this and that with no apparent regard to the future consequences. Well, here is one. We have a major consequence. We are being told we have to do something we do not want to do because we have signed up. Those comments by the Solicitor General, is suggesting - well, my understanding of what she says, that some of the European Court's judgments defy comprehension. If that is what she is saying I would fully agree. I voted against Human Rights legislation when it came before this Assembly, I think I was the only Member to do so, because I could see then the farce it had become. It does not bring people freedom, in fact, the opposite. It brings society to the point of anarchy as the rights of murderers, rapists and paedophiles are put before the rights of ordinary people. I believe we have every right to demand withdrawal from the clauses that are causing us this anguish on the grounds we never intended these consequences when we signed up. We certainly did not expect, at the time, Europe to make as many barmy rulings as it has, which in turn, create a precedent that is not only contrary to the wording of the law. Article 8 allows a State to regulate private and family life for a variety of reasons including health and morals, but we do not seem to hear too much about that. But this is also contrary to the wishes of the population. Given that the human rights legislation in general has become more abused than used, and I have a file full of cases where human rights legislation has created bizarre and ridiculous judgments, often causing a great deal of hardship rather than the caring hand of bureaucracy that was intended, we would not create any problems for our citizens, I believe quite the reverse. Neither would our international personality, in my view, so important to some of our Ministers, suffer. I presume they are aware of the widespread concern about the way human rights issues are currently going. As I have said earlier, the United Kingdom, and you corrected me, I believe it was the Conservative Party, had not so long ago suggested a comprehensive review of all of human rights legislation for this very reason because it had become such a farce. They even considered pulling out of it if necessary, so where would that leave us? We are being told we have to sign up to it and it could be that the United Kingdom pulls out of it. Also, when you consider what the USA and many other countries around the world are doing these days, human rights issues in Jersey, well, they are non-existent. It is a shame that the issue was not fully explored by the Corporate Services Scrutiny Panel because it has denied us that opportunity I referred to, to debate the matter with full knowledge of all the alternatives, because to say there are none leaves us with the only option of throwing it out and then testing the ability of our Chief Minister and others to negotiate with the UK to find the resolution to difficulty it creates. So, if the Panel thought that by giving no option they could encourage those of us who care about what the population thinks, who care about the young children, I have bad news for them. I will not be bullied. If being concerned about how we are viewed by unelected bureaucrats is more important to Members of this Assembly than protecting our youngsters from the dangers associated with sodomy, then heaven help us. I do not believe this is about discrimination, I think it is more about depravity.

1.1.50 Senator W. Kinnard (Minister of Home Affairs):

Before I go into addressing what Members have had to say in the long day, I just want to say that I realise that there are deeply held opinions on both sides of the House and I do, in fact, respect that. I will begin now with the Deputy of St. Ouen. He began by saying that the existing law on sexual offences is archaic, in fact, I think he quoted from my report. Archaic, it is archaic in certain respects and I agree with him that in certain respects the existing law is archaic and that is one of the reasons why I am bringing this draft law before Members today. Because this new draft law does modernise those parts of the sexual offences legislation in such a way as to bring protection but at the same time also, bring the most pressing matters forward in order for us to comply with our commitments under human rights legislation. Also to meet the changing standards and attitudes that have occurred since the original law was enacted. The Deputy also asked whether there should be a review of the existing legislation of sexual offences. In fact, I think he was suggesting that there ought to be. There are certain areas - we have heard from the Attorney General that he does not accept that it is completely archaic and completely outdated, but certainly there are certain aspects that are, in my view too, in need of review. But this is a huge job and, certainly, if we are looking at what the United Kingdom undertook in terms of reviewing its Sexual Offences law which culminated in the 2003 Act, that was quite controversial and remains in certain quarters quite controversial. So, I think, before we were to undertake a review of our existing legislation in this area, I would certainly wish to consult with the Attorney General and perhaps see whether it would be possible for the Law Commission, for example, to be asked whether they might consider it to be a topic for them to be prepared to review our legislation perhaps in the light of the changes that have been brought about in the United Kingdom as a result of the 2003 Sexual Offences Act. But certainly, I do not think Members should underestimate the task that is involved in that. The Deputy also asked about the Sexual Health Strategy and where was that and should we not have that in place, and I think that the Minister for Health dealt with this. The Health comments are very comprehensive and the Minister for Health and Social Services also said that the Strategy will be coming forward very soon and other Members have raised the this as an issue and the Chief Minister has already said that he would be prepared to work with the Minister of Health, the Minister of Education and myself to ensure that the Sexual Health Strategy meets the expectations of Members of this House and I am certainly prepared to give Members that undertaking. Certainly as a parent of children, young people, I am as concerned about sexual health issues to do with heterosexuals as well as anybody in this House and would certainly be prepared to work towards making sure that that Strategy does come forward and meets Members' expectations. The Deputy also made comments about the Criminal Law. He raised concerns that the Criminal Law in his view did not control some of the modern aspects of sexual behaviour that we might see occurring today. Again, this would form any part of any review of sexual offences that perhaps could be undertaken if the Law Commission was minded to do so. He raised issues around consultation, where was this period of consultation? Well, the draft law was lodged for, I think, 6 to 8 weeks and during that time we received further representations from a number of groups including ACET, again from Brook, churches again wrote in, the Dean also wrote in, we had consultation with Health and Social Services, Education, Sport and Culture, the Youth Service and so on as well as a number of individuals who contacted me, individuals who are experiencing discrimination because of their sexuality. I think it is probably worthwhile saying that, in the consultation that took place in the United Kingdom in the run up to the huge changes that took place under the Sexual Offences Law 2003, there was a comment on that consultation process about how successful it had been and they had received 160 responses throughout the whole of the United Kingdom. So, I think, given that a whole huge change, the Sexual Offences Law, received that amount of consultation, this is some of the consultation that I received in response to the Law that I have before you today. I think we must see it in the right context. The Deputy of St. Ouen also said if we are to be a responsible Government we need to address these issues in a caring and sensitive way. I could not agree more. Deputy Huet had some concerns about the scope, I think, of the draft legislation. She had concerns

that it did not go far enough in protecting and caring for young people, and she used the example of a recent case involving a caretaker who, she said, received a sentence of community service. Well, in that specific case, of course, that is a matter for the sentencing authority not for me. But on the general point of the scope of the law, yes, she is correct in that caretakers are not covered by the draft law, but neither are they covered in the United Kingdom law. There is very good reason for that and that is because of partly enforceability, but also there is a balance that was sought to be struck in terms of the balance of duty of care and also the balance in terms of not deterring, for instance, worthy individuals from assisting in schools and voluntary activities and so on. This was worked through and went through two Home Office Working Parties and it also went through a very comprehensive Committee stage. The decision was that as far as the legislation was concerned if it was going to be workable, if there was going to be clarity and it was going to be enforceable, that the 4 areas that are in my report covering this legislation were appropriate. So, we were looking at people who were going to be likely to be most vulnerable, people who were going to be in an enclosed situation, in a boarding school or in a hospital, in situations where they might not have access to other adults. Clearly this is the way that the law was finally brought forward and, indeed, we have followed that process. But what I would say to the Deputy is that within the draft legislation the Home Affairs Minister, in discussion with the Attorney General, does have a power to add categories, as indeed does the Home Secretary, who has a similar power in the UK legislation. She is correct in her assumption, but it is a matter of - is it enforceable, is it workable? The Dean, and I am grateful for his very balanced approach this morning, very realistic approach in the light of the importance of the Human Rights legislation and I am grateful for his words. I am also grateful that he did point out that we are quite successful, as a community here in Jersey, in terms of the way in which we have dealt with some of the issues around teenage pregnancy and so on, and I would pay tribute to an organisation such as Brook in the work that they have done in this area. Again, the Dean mentioned the importance of the Sexual Health Strategy coming forward and I could not agree more and as I have said already, I am more than happy to work with other Ministers to ensure that comes forward appropriately. Again, he talked about the importance of family values. I think most people who know me know how committed I am, as an individual and personally, to family values and I certainly would not want to see those lost in any legislation that I was bringing to the House. I do not believe that this piece of legislation undermines family values in any way whatsoever. Deputy Fox went on to say that he was not able to equate the equalisation of consent. He tried to equate the equalisation in the age of consent to human rights issues and terrorism. Well, I do not think they are quite on the same level, but I would say that the way that if people are concerned about the Human Rights law and the way in which it is being used or utilised, clearly there is an issue that is being discussed in the United Kingdom and I think it would be very interesting for us to watch that, because I suspect what will happen, although we have a Conservative leader of the Conservative Party, saying that he is going to review whether or not to rescind their human rights commitments and bring in some sort of Bill of Rights. Clearly, any Bill of Rights worth the paper it is written on is going to address most of the same issues, if not the same issues as Human Rights legislation, so I would be very surprised to see that that got anywhere at all. But I think we have also heard from the Chairman of the Corporate Services Panel and, of course, from the Chief Minister about the importance of our international reputation in terms of this and I cannot believe that there could be any one subject that could cause most damage to our international reputation as to announce that we were suddenly going to seek to rescind our commitments to Human Rights legislation. I think we heard from the Chairman of the Corporate Services Panel, from all the detailed consultation that they did on this issue, that this really is not a sensible starter. He also said that he believed in moral justice. Well, I certainly believe in that too and that is why I want to do away with the existing discrimination that exists both in the Criminal Law, as it relates to homosexual activity, and in the way it relates to heterosexuals in terms of anal sex. Because it is very important, I think, that people are aware that law does inform attitudes and it does inform practice. While we have discriminatory laws on our Statute books that gives, if you like, the permission to those who would seek to discriminate and those who seek to do worse, to

commit acts of violence and abuse upon others, having discriminatory laws on our Statute books gives them a certain degree of permission to do that and that is why I too believe in moral justice and that is why I am bringing this matter to the House today. The Deputy of Trinity was concerned about 16 year olds and whether or not they were aware of their sexuality and she was particularly concerned, I think, about boys, making the claim that boys somehow mature later than girls. Again, I would draw her attention to the latest research by the BMA (British Medical Association) which has looked at this extensively and, of course, they are the experts in the field, not my view, it is theirs, that sexuality is generally set by the time people reach their early teens. Also they have concluded that there is no justification for giving greater protection to boys than to girls. I have to say as the mother of both boys and girls, I really do not see why we should discriminate and give one group more protection than the others. I think it also sends out the wrong message and suggests somehow that boys, particularly boys who happen to be homosexual, are somehow less capable of looking after their interests or making decisions for themselves than heterosexual young people. Brook does support the proposition, it is not concerned about this legislation and, in fact, other Members have, I think, probably selectively quoted from various letters and media releases from Brook. So, perhaps I will just, sort of, clear this up now, if I may quote very briefly: "Brook fully supports any measures which are proportionate in the interests of protecting young people. Brook in Jersey supports the proposed law and believes its ethical, yet legal stance, is appropriate to the purpose it will serve. In particular, we highlight the concise manner in which the legislation has been created and believe this will assist the Crown in prosecuting sexual offence related criminals. In the day-to-day work of the Centre we see a vast number of young people in separate circumstances, some of which require more intervention than others. We believe that the introduction of this draft law will enable us to more effectively tackle the problems young people face and assist us in creating a better multi-agency protection. The continued need for this legislation is ever-growing. Young gay men continue to feel secluded from the broader mainstream heterosexual community because of the way in which current legislation prohibits sexual activity between them. This inhibits our own efforts to increase the safety of young gay men when they are presented with sexually relevant situations." In terms of the views of ACET, I think I have already mentioned that ACET contacted me and gave me written responses on at least 2 occasions and clearly these were considered carefully and, in fact, I sought verification of the data used by ACET from the health experts in our own Health and Social Services Department. Indeed, in my report I do refer to some of the statistics that are used in ACET and, in fact, some of the statistics used in the reports and information that ACET provided do not support some of the conclusions which they come to. However, my view is that I am not here as the Minister to be a mouthpiece for any particular organisation. The role of the Minister is to ensure that one has the information that is put before one analysed by those who have the ability to analyse it and advise appropriately and that is what I have done. But I would certainly agree, again with the Deputy of Trinity, that the safe sex message is important and it is important for both boys and girls whether they be heterosexual or if

they are homosexual. Deputy Gorst received, he told us, many anti views, that many people who did not want this legislation in place. Well, I received many views on both sides of the argument. There is no getting away from it; this is a contentious issue. Members will have to vote as they see fit and I think this is one of the crunch-points, I think I might mention here as well Deputy Le Fondré who said: "I never expected, when I became a politician, to have to deal with such contentious issues." Well, wake up. This is what you have to do as a politician. You know, you have to make tough decisions and there is nobody there to hold our hands when it comes to a deeply moral and ethical issue like this. It does not matter how many people you consult, how many people who come to speak to you, there is a complete split in a range of views over moral and ethical issues such as this. We are alone in this, we must make this decision ourselves. I think it is very important to make a distinction between: "Are you a representative or are you a delegate?" Now, a delegate comes to this House and supposedly puts forward, or makes a decision, on the basis of what they have been told to do by their constituents. You have got a problem though.

Members have a problem with this one because our Constituency is very divided. So, at the end of the day, we have to do what we have to do in our real role which is the role of the representative of the whole community. Particularly when we are dealing with law, we have to make the right decisions for the whole of the community, not on behalf of a small group and I think it is very important that Members bear that in mind when we come to voting. Deputy Gorst was one of those who did quote selectively from Brook, but I think I probably put Members clear on that. He, again, raised fears about an upsurge in sexually transmitted diseases because of the equalising of the age of consent and because of allowing or legalising -- because, of course, I have to tell you, have to tell Members that it does go on; you know, heterosexual couples do engage in anal sex, whether or not we change the law. But it is about enforceability and the reality is that it is very difficult to enforce a law which would involve snooping around people's bedrooms to see whether or not they were engaging in such activity. It just cannot be enforced in that way. But let us go back to the point about fears being raised about sexually transmitted diseases. I think the Minister of Health has provided comments, and the Health Department has been very clear that they do not believe that there is a straight connection between the lowering of the age of consent in this legislation and an upsurge in sexually transmitted diseases. But, again, I come back to the point. I am very concerned about any rise in sexually transmitted diseases however their cause. For instance, I am concerned about the number of people who go off to places far afield where perhaps they engage in inappropriate activities where there are high levels of sexually transmitted diseases. I am concerned about the whole issue, but that is an issue for another day and we have already undertaken, myself, the Chief Minister and the other Ministers, to work together, as I say, to ensure that the Sexual Health Strategy, when it does come forward, meets Members' expectations. Deputy Gorst also mentioned that the law only came in because of the Parliament Act. I mean, that is a point of detail, but it was really to do with mechanisms because the issue had already started in the Lords, so I do not think we really need concern ourselves with that. He also mentioned that there is a *Jersey Evening Post* editorial about voting with our heads and not with our hearts. I believe and I think I have heard the speeches today where there are many Members who are going to vote both with their heads and with their hearts and I think that there is no disjunction there, I do not think there is a problem. I certainly do not have a problem. I think we can deal with this issue with both in harmony. Deputy Gorst also mentioned that someone had spoken to the Corporate Services Panel about the problems with the existing law on sexual offences. I can tell you who that is, because he will not mind me mentioning him. It was Advocate Christopher Lakeman and Deputy Gorst was trying to use that as a way of saying: "Therefore do not support this law because we need to have a more comprehensive review." Well, I can tell Members that Advocate Lakeman is completely behind me and completely supports this legislation being adopted. I was very grateful for Senator Perchard's views. He is not here, he is not going to hear me compliment him, which is a shame, because I thought he was very clear on both the convention rights and the issues of injustice. Again, I really felt that there was a Member speaking with both his head and his heart and I was very impressed by what he had to say. He talked about principles or prejudice. I would remind Members that the draft law before us today is not making any of the Acts referred to in it compulsory, okay. I am not asking even Members to agree with it. It is about being calm about the fact that what we are dealing with is a piece of legislation which may expose certain attitudes, may expose certain emotions. But at the end of the day the Government has an appropriate role in controlling certain behaviour which is criminal. It does not have a role, I believe, in interfering in the sex lives of couples who are consenting adults in the privacy of their own bedroom. Deputy Scott Warren agrees with the law and of the importance of the responsibilities and I certainly agree with her. The Connétable of Grouville talked about human rights and constitutional matters. Again, I think he has concerns but the Attorney General has made it very clear, and also the Chairman of the Corporate Services Panel, that this idea of somehow we can opt out of Human Rights because it is not convenient really is inappropriate. I do not believe the people of Jersey would find that acceptable. Certainly, it is not a sensible move to try and invoke in terms of our international reputation. He says that the majority of people in Jersey do not want this law. Well, obviously he does not speak

for me and he certainly does not speak for many of the people that I speak to, because they believe that this is an issue about moral and social implications but, yes, they come to a different conclusion to the one that the Connétable of Grouville comes to. He also referred to Advocate Cushing's letter that the Attorney General, I think, dealt with that very comprehensively when he spoke. The Chief Minister again, as I mentioned, was very clear on constitutional issues and I am very happy to work with him and others, as we have all said, and even with voluntary agencies, including Brook, to improve access to the information and the facilities regarding the sexual health of our young people. The Deputy of St. John, of course, made an excellent speech. He said if we do not adopt this law, he was worried that again it would damage our reputation. He is a person who has been a previous Chairman of the Institute of Directors so he, more than most, is sensitive to the issues about what people outside this Chamber, and I do not just mean outside this Island, but outside this Chamber in other walks of life, may feel if we were not to adopt this sensible piece of legislation. He also referred to the effects of discrimination in the law and to the bullying that goes on. In fact, other Members went on to mention the terrible situation where there were at least, certainly in my memory too, 2 murders that occurred purely and simply because of an individual's sexuality and that cannot be condoned in any way. The Church view is divided on the issue and certainly many Members talked about what the churches had to say about this issue. I have no problem with the churches having an opinion on this issue. Certainly the Home Office report, to which I gave every Member the website address, has a long section on the Churches and what they had to say about this issue when it was dealt with in the United Kingdom. The conclusion that the Home Office Working Parties came to was that, although the views were important and should be respected, the views of the Church should not be privileged above any other relevant views in a secular society. That, really, I think, is the only comment I would make on the Minister of Health and Social Service's contribution on this particular issue between Church and State. Deputy Pitman talked about the role of scrutiny and said, in fact, that she did not really believe this matter should have gone to the Social Affairs Social Scrutiny Panel. One of the questions I would have there is that I just wonder how much the Panel worked as a team group or with individuals going off in different directions, but that is a matter for another day. I agree with her, and we have been around all that process, and it is none the worse for that, I am content. Deputy Ferguson talked about the work of Brook which again, much had been done on a number of unwanted pregnancies and I certainly support her on that. She also started off very well I thought, talking about human rights and all, but it slightly went off the point and got into a bit of Euro battering, which I did not think really helped. But certainly the bit I thought she said that we should all listen to is when she quoted that very famous quote, but I think it is worth reminding ourselves of it, when she said: "I do not agree with your ideas but I will fight to the death to protect your right to express them." Certainly, I absolutely agree with that sentiment, because there is no way in which we can seek to protect young people by using the Criminal Law. It in no way assists them. Deputy Southern again drew us back really to the substantive part of the debate, saying all this concern about sexual health is for another day and what we are concerned with here today is doing away with the legal position which discriminates between people because of their sexuality. Senator Norman said that he was going to vote against it. He said he is not against homosexuality per se, but the difficulty with that kind of view is what he then went on to say made it quite clear that he was very much against people who were homosexual expressing their sexual identity and their love and their desire for their partner of their choice. I would say that everybody needs and deserves to be loved, and I cannot find it in my heart to agree with the Senator's approach, which would deny perfectly good people their humanity because of their sexuality. That is something which they do not choose and which they cannot change. I think that, unfortunately, what the Senator had to say displayed not only a lack of understanding, but a degree of inhumanity that I find quite breathtaking. Deputy Ryan, who is the Chairman of the Corporate Services Panel, quoted at length the Chief Minister and others and the law officers that he interviewed during his scrutiny process. The message there was very, very clear; that we are taking steps to bring the Human Rights Law in Jersey into force and to seek to try and withdraw from the convention at this stage is in his words: "Not practical nor is it desirable. It

would cause constitutional problems and irreparable damage to Jersey's international reputation" again, from the Panel's report. Deputy Power said he is going to vote against it. He is concerned for boys between the ages of 16 and 18 years. Again, making this assumption that somehow boys need more protection than girls, again I have addressed that point, I think, he said all the correspondence he had received was anti. Again, obviously I have received correspondence on both sides and I have to take both sides of the argument. But again I say: "Are we here as delegates or are we here as representatives?" There is a very famous quote, I think it is Edmund Burke's. It says: "You do your electorate a disservice if you act as their delegate rather than as their representative." We have a responsibility to make the right decision and we have to make that right decision ourselves. The law is incomplete, he said. Well, I have done what the States have asked me to do. When I came to the House last time Members asked me to include provisions for abuse of trust. That I have done and I have done it in double quick time. I do get the sense that with some Members, it does not matter how many hoops I am going to jump through with this piece of legislation, they are never going to be satisfied. The Deputy of St. Martin, well, what do I say about that? I think, despite everything else that he has said -- well, I am not quite sure, I am very confused because at the beginning of his speech before he suggested that we moved on to the next item, he said he supported the law, because it now contained the abuse of trust provisions which, again, as I say, I have done because the States have asked me to do that and I have done it in quick time. But he then went on to say that he was not happy about the process of scrutiny or the process of consultation and, yet, in the Panel's report it says that they felt that sufficient scrutiny had been undertaken. He went on to say that making something legal does not mean it is safe. Well, I would say that I cannot see how using the Criminal Law against young people to criminalize them can be seen as way of protecting them; it is a real injustice. Again, I suspect, no matter how many hoops I was to jump through, the Deputy may never quite be satisfied that I have done everything that he wishes I would do. Deputy Le Hérisier said that the issue has been shaken to its root and yes, I think it has and it is none the worse for that. I cannot believe that there is any issue that has ever come before this House that has been more scrutinised or has had such a difficult birth in coming to fruition. The Deputy went on to say: "We got off on the wrong foot on this." Yes, I think we did because it was his Legislation Committee where this issue first started and they got cold feet and passed it on to me. So, I could not agree more with the Deputy. But what he did do, and I am grateful to him for, is he demystified some of the misguided use or abuse of the statistics that had been used by Members and for that I am very grateful. The Attorney General, I think, then spoke and gave very clear advice to the Assembly and obviously I will not go over those - very, very clear. He also dealt with the letter from the Advocate Cushing that had been delivered at the 11th hour on Friday, but again his message was very, very clear. The Deputy of St. Mary put us in the context of why we need to change the law and reminded of us of our responsibilities. She also warned about the persecution of minorities and reminded Members that the law does not promote a particular set of behaviours. It does not make it compulsory and laws must be applied equally. Again, I agree with every sentiment in her speech to that effect. Senator Ozouf, well, I certainly admire the openness and honesty of Senator Ozouf and I would like to say I admire the honesty and openness of those other people who have been suffering discrimination because of their sexuality, who have spoken to me in the last several months. I think we should not forget how difficult it is for many to speak out. He also reminded us of the different forms of discrimination and the detrimental effect that this can have on real people in their real lives; this is not an abstract effect. Deputy Le Claire pleased me very much in his speech. I thought, again, he was one of those who was bringing his heart and his head together. He said that he was minded to vote in favour of the law but that he had had a lot of worrying away with his conscience about it. I really think we must not underestimate the extent to which the wrestling with one's conscience, for people who have a deeply held religious conviction, is there and I do respect that. I am very grateful for him for sharing that for us and I do believe that the Deputy can justify his decision to vote for this piece of legislation on moral grounds. He made the points himself. He said the current law is used to discriminate against and to criminalize young people, and to speak negatively about their human need for love and to give expression to that need.

I am paraphrasing perhaps here. Deputy Le Claire also said that he brought his heart and his head to this debate. I hope, therefore, he will feel able to vote in favour and, in fact, he will not be alone because when this matter was dealt with in the United Kingdom, there were a number of Catholic Members, I think there were about 26 and 23, I believe, something like that, 22, 23, voted in favour, so he will not be alone. As I said at the start of this summing up, I do respect the fact that others do hold views and this has made the debate quite difficult for them. But I do hope that the very clear legal opinion and the evidence and the voices and experience of all those Child Welfare organisations, the Minister for Health and Social Services, the Minister for Education, Sport and Culture, together with responsible medical opinion will be given due consideration by Members. Because certainly, when the draft law was last before the States, there are many who said they could only vote in favour of the change of age of consent if it was balanced by new measures to protect all young people. I have done that and I have listened to Members. At the end of the day it really is a matter of balancing those principles, quite personal principles as well. I do believe that the new draft law does strike that balance. Deputy Le Fondré, I think I dealt with him before, raised a number of other points about maturity of girls and boys, but he did admit that recent studies accept that sexuality is generally set by early teens. He asked whether the law has been completely looked at. Again, I would say I do not think any piece of legislation has ever received such close scrutiny as this one has. He also raised the issue, he was concerned about more than 2 people engaging in sexual activity. Again, I think, it is important to say that as a policy point I do not believe it is the place of the law to interfere, as I say, in people's private lives if they are consenting adults where no harm is caused and, again, I think it is impractical to try and enforce a law in that circumstance. He had concerns that the age of consent may be lowered further. Well, I am certainly not in favour of any such a move and I am not aware that there are any moves to do so, and certainly even the organisation, Stonewall, which is an organisation with a particular set of interests, is not in favour of further lowering the age of consent, so I am not quite sure where he got that from. Deputy Baudains, it is a pity he was not here this morning in a sense, because it might have saved him saying quite a lot in his speech, because I think he went over really a lot of ground that others had gone over earlier in the day. So, I do not think I will, therefore, address any specific points there, other than to say that I was not particularly surprised by the fact that Deputy Baudains said he would vote against this piece of draft legislation. I think his views are well known. He voted against the Human Rights law, he voted against the proposal to introduce a law to deal with race discrimination and, therefore, there is a bit of a pattern there. So, I was not at all surprised by him saying that he would not vote in favour of it. I think I have dealt with most of the issues, but I would say in conclusion really, that again we are prepared to work together to deal with the concerns that have been further expressed around sexual health issues involving boys and girls and those of whatever sexual orientation. So, therefore, I would say that those Members, even if they still have some concerns in that particular area, I would hope that they would feel that they could vote in favour of the principle, of the law, because certainly I intend to do all I can to address those other concerns at another time, that they have raised here today. So, I maintain the principles of the law.

1.1.51 The Deputy of St. Ouen:

Just before we vote, would it be possible, certainly for myself and I am sure other States' Members as well, to have a bit of guidance as to exactly the sequence of the way we are approving, or otherwise, this law and what the various votes mean?

1.1.52 The Bailiff:

Members are voting on the principles of the Bill at this stage, Deputy, and if Members are in favour of the principles of the Bill they will vote in favour. We then go on to consider the individual Articles of the Bill and, in relation to some of those Articles, you have amendments which will

have to be debated before those Articles can be approved. Then the Bill will come back for approval and third reading, assuming that Members pass the Bill as a whole. Well, I invite any Member in the precincts, who wishes to vote, to return to his seat. I invite the Greffier to open the voting. I can announce that the principles have been adopted. 38 votes were cast in favour, 11 votes against and there were 3 abstentions.

| POUR: 38 | CONTRE: 11 | ABSTAIN: 3 |
|------------------------------|----------------------------|-----------------------------|
| Senator S. Syvret | Senator L. Norman | Connétable of Grouville |
| Senator F.H. Walker | Connétable of St. Peter | Connétable of St. Martin |
| Senator W. Kinnard | Connétable of St. Lawrence | Deputy P.V.F. Le Claire (H) |
| Senator T.A. Le Sueur | Deputy J.J. Huet (H) | |
| Senator P.F. Routier | Deputy of St. Martin | |
| Senator M.E. Vibert | Deputy G.C.L. Baudains (C) | |
| Senator P.F.C. Ozouf | Deputy J.B. Fox (H) | |
| Senator T.J. Le Main | Deputy of St. Peter | |
| Senator F.E. Cohen | Deputy J.A. Hilton (H) | |
| Senator J.L. Perchard | Deputy S.S.P.A. Power (B) | |
| Connétable of St. Ouen | Deputy K.C. Lewis (C) | |
| Connétable of St. Saviour | | |
| Connétable of St. Mary | | |
| Connétable of St. Clement | | |
| Connétable of St. Helier | | |
| Connétable of Trinity | | |
| Connétable of St. John | | |
| Connétable of St. Brelade | | |
| Deputy R.C. Duhamel (S) | | |
| Deputy A. Breckon (S) | | |
| Deputy P.N. Troy (B) | | |
| Deputy C.J. Scott Warren (S) | | |
| Deputy R.G. Le Hérissier (S) | | |

| | | | |
|-----------------------------|--|--|--|
| Deputy J.A. Martin (H) | | | |
| Deputy G.P. Southern (H) | | | |
| Deputy S.C. Ferguson (B) | | | |
| Deputy of St. Ouen | | | |
| Deputy P.J.D. Ryan (H) | | | |
| Deputy of Grouville | | | |
| Deputy G.W.J. de Faye (H) | | | |
| Deputy J.A.N. Le Fondré (L) | | | |
| Deputy D.W. Mezbourian (L) | | | |
| Deputy of Trinity | | | |
| Deputy S. Pitman (H) | | | |
| Deputy A.J.H. Maclean (H) | | | |
| Deputy of St. John | | | |
| Deputy I.J. Gorst (C) | | | |
| Deputy of St. Mary | | | |

1.2 The Bailiff:

Before I ask the Minister to propose the Articles, on a lighter note, may I just inform Members that the Chief Minister has voluntarily paid a fine of £10 for disturbing the Assembly with his mobile phone. That fine will be held by the Greffier, together with any other voluntary fines, which may be contributed by Members whose mobile telephones interrupt the proceedings, and contributed at the end of the year to the Combined Charities Christmas Appeal. I call upon the Home Affairs Minister to propose Articles 1 and 2 perhaps?

1.2.1 Senator W. Kinnard:

I am prepared to do that. Article 1 contains the usual interpretive material. In particular, there is a definition of “touching” for the purposes of the law and what would constitute touching or any other activity as being sexual by its nature, purpose or the circumstances in which the acts take place. The test is that of what a reasonable person would consider to be so given those criteria. Article 2 creates a new offence of meeting a child following sexual grooming and is the first of a number of following provisions aimed at strengthening protection for children from abuse. The offences in Article 2 are not dependent upon a relationship of trust. Sadly, grooming children for sexual abuse is not new and some of the means, in fact, are new and so this amendment seeks to prevent an offence taking place before any abuse actually occurs. The provisions in Article 2, therefore, seek to tackle grooming both on and offline and are designed to catch those aged 18 or over who have had contact with a child on at least 2 occasions with the intention of engaging the

child in sexual activity. The relevant offences, to which the offence of grooming applies, are contained in the Schedule to the Law and the maximum penalty for this offence is 10 years' imprisonment and an unlimited fine. So, I would like to propose Articles 1 and 2.

1.2.2 The Bailiff:

Articles 1 and 2 are proposed and seconded? **[Seconded]** Does any Member wish to speak on either of those Articles? Well, I put the Articles - those Members in favour of the adopting them kindly show. Those against? The Articles are adopted. I regret to say that I should have asked the Chairman of the Social Affairs Scrutiny Panel whether he wished to have the matter referred back, but I assume the answer is no.

1.2.3 Deputy of St. Martin:

I am just going to toss a coin. **[Laughter]**

1.3 The Bailiff:

Would you like to propose Articles 3, 4, 5 and 6?

1.3.1 Senator W. Kinnard:

They are part of a package of offences, as I have said, in relation to an abuse of a position of trust towards a child. The interpretation, which we come to later, for the position of trust come in the later Article 7 and 8. Really the penalty for the abuse of trust offences is, in fact, a maximum of 5 years imprisonment and an unlimited fine. I think I will just leave it there because I am aware that there are amendments so I just propose Articles 3 to 6 in general.

1.3.2 The Bailiff:

Articles 3 to 6 are proposed and seconded? **[Seconded]** Now, there are amendments to each of those Articles in the name of the Deputy of St. Ouen and I ask the Greffier perhaps to read the first one.

The Greffier of the States:

Page 30 Article 3 in paragraph 1(e)(ii) for the number "13", substitute the number "15".

The Bailiff:

May we take the other 3 as read, Deputy?

1.3.3. The Deputy of St. Ouen:

Thank you, Sir. Before I comment specifically on the proposed amendments I would just like to say a few words on the overall subject. Firstly, I would like to make it perfectly clear that I am not prejudiced, I am not homophobic and I am certainly not misguided. I am a Christian. I am a concerned parent and I am an elected Member of this House. I believe those 3 characteristics allow me to raise these issues. My aim is not also to judge individual sexual preferences. It is solely to ensure that this Government has the opportunity to consider alternatives. The proposed Law not only recognises the rights of the minority, but equally reflects and respects views held by the majority. It has been suggested that laws play a small part in underlying the fact that what is

acceptable or not, but I would suggest that laws are used specifically to guide people as to what is acceptable or not. And, therefore, this law must be viewed in a similar manner. The first of the amendments, and as it has quite rightly been pointed out, it carries through from not only Article 3 but 4, 5 and 6, is to deal with the new abuse of trust legislation. I wholeheartedly support the introduction of this legislation, as I have said before. The purpose of the amendment is to alter the age at which elements of the offences must be proved and to provide greater protection to our young people. When looking at the proposed new legislation, I became aware that although the legal age in this case is 18, I hasten to add, 18, not 16, the law allows a defence to be made that the accused believed that the child was over the age of 18. It also goes on to say that if the child is under 13, and the prosecution can prove the child's age, the accused's beliefs about the child's age will be irrelevant. In my view, this is far too low and does not properly define what is acceptable and what is not. It is, therefore, for this reason that I am proposing that the age be raised from the existing under 13 level to under 15. The effect of raising the age will do 2 things. Firstly, it places greater responsibility on the adult, not just simply relying on the assumption that the child is of legal age and secondly, it will give clear guidance to juries enabling them to make a fair and balanced decision regarding the question of consent. Consent, after all, is an active decision to say: "Yes" not just an assumption that consent has been given. It is also important that this Assembly makes a clear statement that we will not tolerate persons in this particular position of trust that take advantage of the most vulnerable in our community for their own personal sexual gratification. One must bear in mind that setting the age at 15 still allows for what some would describe as a reasonable margin, with a reasonable belief, that that person had reached an age where engaging in sexual activity with a person was lawful. I would also like to add, and States' Members must recognise, that in most cases the person in a position of trust should be aware of the person's age in any event. In summary, if this amendment is accepted it would give, in part, greater protection to those under the age of 15 than is currently provided in the draft legislation. I propose the amendment.

The Bailiff:

Are the amendments seconded? [**Seconded**] Amendments are open for debate. Minister?

1.3.4 Senator W. Kinnard:

I thought I would speak at the beginning, because what is being proposed may appear seductively simple and I think it is important that Members know some of the complexities around this particular set of amendments from the Deputy of St. Ouen. The Deputy's amendments in Articles 3 to 6 seek to substitute the age of 15 years for 13 years. I believe that, although I understand what he is trying to achieve, it would be seriously detrimental to what we are seeking to achieve in the draft law and I will go on to try and explain why. In the provisions in the draft law, there is a strong presumption, and in some circumstances, an absolute presumption that the adult knew or could reasonably be expected to know the age of the child, and that he or she was also in a position of trust in relation to the child. The presumption requires that the burden is placed then on the defence to adduce sufficient evidence to raise an issue as to whether the presumption is reasonable in the circumstances. If an adult was in a position of trust, by reason that he or she was in an advisory role under a Court Order, or having regular unsupervised contact with the child, there is again an automatic presumption that he or she could reasonably have known that they were in a position of trust. These offences of abuse of trust are unusual in that what they are doing is criminalizing conduct which is apparently consensual in general circumstances. Further, within the existing unamended draft law, if a child was under 13, what the adult knew or believed at the time regarding the child's age is immaterial, the offence again is absolute. There is no defence in that circumstance in terms of mistake of a fact in age and consent is irrelevant. Where a child is aged between 13 and 18, again I would say the strong presumption and the mechanism for the reverse

burden of proof is a bar that is already high to clear, and rightly so. But the amendment, I believe, goes much further and leaves no room for an issue to be raised, nor for evidence to be adduced in respect of a genuine mistake in fact of age in cases involving children under 15. The offence we are talking about is serious and absolute, yet many children aged 14 years 11 months often look older and girls, in particular, often dress and wear make up to pass for much older, quite often for 18 years of age. But if these amendments were to succeed, no issue could be raised by the defence in arguing a mistake of a fact in age. The fear of false allegations also increases if the test in terms of age becomes harder. The reason I say that is that at the introduction of the abuse of trust offence into the UK legislation, originally in 2000, it was at that time strongly opposed by the professional bodies representing teachers and by the Youth Service. The provisions then, in 2000, and since re-enacted in the 2003 Act set the age at 13 where consent was not to be relevant to an offence being committed. The age of 13 remained unchanged even through 2 Home Office Working Party reports and a fundamental review of the whole of the UK Sexual Offences Law, and an extended highly contentious passage through both the Lords and the Commons. Historically too, the age under which a child has been deemed to be unable to consent to sexual intercourse has been set at 13 since 1875, having increased to that age after being set at 12 years in 1275 under the first statute of Westminster and falling to 10 years in 1576. The position in Jersey was also that 13 was considered the ultimate age of consent below which no such defence could be relevant. Following on from the introduction of the 1885 Criminal Law Amendment Act in the United Kingdom, the States of Jersey introduce the 1895 loi, the Loi modifiant le droit criminel, and that made a criminal offence to have sexual intercourse with a girl over the age of 13 but below the age of 16 years, and under that law too, Sir, anyone having sexual intercourse with a girl under the age of 13 could be sentenced to life imprisonment. Given the long and largely unchanging legal legacy of 13 as the age below which consent cannot be deemed to have been given, I am certain, that there are compelling legal and practical reasons for not raising it beyond 13. The provision allowing for the possibility that there will be cases where perhaps an individual does have an honest and reasonably held belief in a state of affairs which, if true, render the conduct lawful. The provision that we have in the draft law at the moment is seeking to strike a balance between that of strict liability and, of course, the much criticised approach adopted in the past to some rape cases where defendants had been deemed innocent who mistakenly and unreasonably believed in consent. That is obviously an issue that has been in people's minds during the passage of the 2003 UK Act. But to tip the balance, too far in the opposite direction, as I believe the Deputy's amendment does, would lead I believe, to severe injustices and I say that as a mother, a mother of daughters and a feminist. Abuse of trust is a new type of offence. It is a complex offence and it is wide-ranging in scope. In the debate in the Commons on 28th July 1998, the then Home Secretary, Jack Straw MP, said that although the equalisation of the age of consent was a simple, non-technical issue, abuse of trust was not. May I refer Members, to my report on page 6, paragraph 10, where Mr. Straw - I'll give Members a moment, that is page 6, paragraph 10 - is quoted as follows: "There are complexities in the definition of abuse of trust, in the behaviour which is dealt with, in the interlocking with non-statutory safeguards that are already in place, such as professional codes and in the relationship with current criminal law and carries criminal sanctions." Sir, I believe that to tamper and tinker with the age from 13 to 15 in this circumstance upsets the principles that we have tried to set in this draft law, the principles of clarity, balance and justice to all parties. As it says in that same report, what is clear from an analysis of the development of the abuse of trust provisions is that we must have clarity as to what the offence is and who is capable of breaching it. So, I do not believe that it is adequate to create or extend an offence, which in this case would be a serious criminal offence, if it is unclear whether a person is or is not committing it. It is unfair, I think, to place persons in a position where there may be serious doubt in their minds because it is not so easy to know absolutely, looking at a 14 years, 11 months person, who is trying to pass off as older. You cannot always be reasonably certain that they are younger as you can perhaps more easily in the case of a 13 year old. I submit that the difficulty of 15 year olds in this circumstance is that they can not be so easily identified as under age, and I do believe that this could potentially lead to a problem, not

only of a lack of clarity about the law and how it should apply, but also confusion in the minds of persons subject to the law. In fact, Sir, I think the balance that must be struck here is between trying to obviously protect young and vulnerable people, and I wholeheartedly support that view, but there has to be a balance between the protection of young people and also retaining worthy individuals to work with them without fear of false allegation. Certainly, I can do no better than to report that comment which is in the notes to the 2003 Sexual Offences Law of the United Kingdom which maintains 13 years in its legislation. It also points out in those notes that at the time of the Act there was a groundswell of concern among youth workers. So, people have talked to me about consultation but it seems to me, Sir, that to place people working in education, sport and culture, to place people working in health and social services in a circumstance where they could find much more difficulty in being absolutely certain that they were not going to suffer false allegation and have difficulty in rebutting that, where we have not had an opportunity for them to consult with their professional representative bodies on this matter, considering that there was so much concern around this issue in the introduction of the 2003 Act, keeping the age at 13, I think it would be wrong to make a knee-jerk decision if Members were minded to go with this amendment without that consultation with those professional bodies. The whole thrust of the provisions as currently drafted is to achieve the balance and appropriateness that I believe we are seeking. There are guidelines already in existence in the relevant professions and it is expected that the abuse of trust provisions will act any way, more as a deterrent than to result in a large number of prosecutions. So, I, therefore, question what real ill the Deputy is seeking to remedy with his amendment. A balance must be struck between the role of the State in protecting its citizens, particularly, of course, the young and vulnerable from harm, the need to ensure a fair trial and the interests of justice. I believe that the law as drafted achieves that. I do believe that the law as drafted achieves that fair and just balance and, therefore, I really feel that Members must reject this amendment. If any are minded to vote with it, I say, please, it should not be adopted without consultation with those people who were working in the various fields that who are going to be affected by this legislation. So I do ask Members to reject it.

Senator T.A. Le Sueur:

Yes, just a point of clarification. I did not want to interrupt the Senator in her speech but she was talking in her speech about 14 and 15 year olds. My interpretation of the law is that the amendment relates to people of 13 and 14. It is under 15 or under 13. It would be 15 and 13 year olds, rather than 14 or 15 year olds. Is that interpretation correct, Sir?

Senator W. Kinnard:

Yes, it is. It is just under 15 but I was just using that as shorthand for 14 years and 11 months. Perhaps, obviously if Members are not convinced of some of the matters that I have raised, I wonder whether -- I have not spoken to the Attorney General about his view. This is purely my own view and I wonder whether perhaps at some point he may be prepared to comment. I'm giving him notice so he has time to think about it.

1.3.5 Senator P.F. Routier:

Earlier on today I listened very carefully to the theme of the debate and I have supported the proposition so far. What I have just heard in the debate about the balance that we need to strike between looking after teenagers as opposed to the rights of people who work with teenagers, I really feel that I am probably going to come down in favour of looking after the children as opposed to -

Senator W. Kinnard:

Can I just say that it is not either/or? It is balance.

1.3.6 Senator P.F. Routier:

I recognise it is a balance and that balanced judgment I am prepared to make. From what I have heard from the introduction to this amendment to the Minister's views on the amendment, I am afraid that I am unable to support the Minister and I will be supporting the amendment.

1.3.7 The Deputy of St. Martin:

Those Members who did listen to my speech this morning may well recall this is one of the areas I did suggest to the House that we needed far more clarity before we were in a position to vote for what we are going to go for this morning. Again, I just want to reinforce this is what really has come out now through this amendment, that again, I have got to concur and support what Senator Routier is about. If we are looking after young people, this is one of the key elements that must be part and parcel of it, otherwise we just will not agree to anything less, so I will be supporting the amendment and I ask that the Members do so likewise.

1.3.8 Deputy C.H. Egré of St. Peter:

As the former Vice President of the Home Affairs Committee, I, like Senator Routier, have supported this law thus far but I think that I have heard what the Minister for Home Affairs has said. She has said that we need to strike a balance and I think that is quite correct. I think that when we strike our balance we have to balance the needs of the youngsters against the needs of those who are looking after them. I think that we would be failing in our duty if we did not tilt the balance towards the youngsters.

1.3.9 Senator M.E. Vibert:

I will probably be unpopular but I think that Members are misunderstanding the purpose, point and meaning of this part of the law. Changing the age from 15 to 13 does not give youngsters any more protection than leaving it at 15. It does not at all leave, whether it is 15 or 13, does not affect the protection given the young people. Do not be misled into thinking it does. All the change would do would be to take away any possible defence, a very hard defence, that a person in a position of trust could make that someone who was aged between the 2 ages, under 15, 14 and a half, and it would be a very hard defence, could reasonably believe that person to be 18. It does not mean the children will be any more protected. What it does mean is that a possible defence and it could be a reasonable defence, very hard to prove, will be taken away and it would have to be proved. The emphasis would be on proving and that would be a very hard thing to prove. But, there can be cases where there may be an argument to be made to that effect and that is after the event. Making this offence absolute will increase the likelihood of people in positions of trust being concerned of false allegations. It will also not in any way give more protection to people between those ages. All it will do will be taking away a possible reasonable and reasonable judged, having to be proved defence by another person. I urge Members to really think what it means, not just to go for a simplistic, populist view that this is giving more protection to young children. It does not. But it does make people in positions of trust more vulnerable and it is a very difficult job as it is. We welcome, at Education, this Abuse of Trust law because it puts into law what we have been doing for a considerable length of time in protecting children. Having said that, we need to behave responsibly and think what this means. This does not add protection to young children and it makes a greater difficulty, it confuses an issue and it is not something that we should decide on lightly or decide on a wrongly emotional level. So, I urge Members to think very carefully. It is all very well to stamp feet and to take things on a simplistic, emotional face value. I urge Members to act as States Members and think very carefully about what this will mean if they do take this decision.

1.3.10 Mr. W.J. Bailhache, Q.C., H.M. Attorney General:

In the light of the invitation from the Minister and also some of the comments made so far, I thought it might be helpful if I just go through the offence with Members, so that it is clearly understood what the prosecution have to prove. I'm looking really at Article 3 but it will be a similar thing in relation to the other Articles: "A person aged 18 or over commits an offence if he intentionally touches another person, the touching is sexual, he is in a position of trust in relation to the other person." So, these are all things the prosecution will have to prove. (1)(d) Where paragraph (2) applies: "He knows or could reasonably be expected to know the circumstances by virtue of which he is in a position of trust and either (i) the person touched is under 18 and (A) doesn't reasonably believe him or her to be 18 or over or (ii) that person touched is under 13." So, what the Crown would set out to prove is touching intentionally in a sexual manner and, you know, it could be a slap on the bottom, it could be any number of things - let us not go overboard and think necessarily that we are looking at an indecent assault or something like that - an intentional touching in a sexual manner by a person who is in a position of trust on somebody who is under 18. Really, this first paragraph of the Article should be viewed or read in conjunction with some of the things that followed. Paragraph 3 says: "Where in proceedings for an offence [so where the Crown brings such a prosecution] it is proved that the person was under 18, the defendant, the accused, is to be taken not to have reasonably believed that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it." So, if you look at (3)(1)(e), the offence involved somebody who is under 18 and the defendant doesn't reasonably believe that person is 18 or over or, as it is drafted at the moment, the victim is under 13. What the effect of the amendment does is to say that a person who is in a position of trust and who reasonably believes that the child is 18 or over, and "reasonably" means objectively, reasonably. It doesn't mean unreasonably - reasonably. It means reasonably. It means objectively to a court. The court accepts that the person who has done the touching reasonably believed the child to be 18 or over. What the amendment says is if that child is 13 or 14, that reasonable belief will not matter at all. The law as drafted at the moment assumes that if the child is under 13 - 12 or lower - it would be impractical to think that anyone could reasonably believe the child to be 18. But the question seems to me to be, whether one thinks it is reasonable. It might be reasonable to think that a person who is 13 or 14 is 18 or more. I have to say for my part, I think it might in some circumstances be reasonable to think that somebody who is 13 or 14 is in fact 18. I have in the past defended persons where the victim was under 16 and so the offence was committed because a person under 16 can not consent to the assault. I have seen the complainant at the weekends looking about 21 and yet in court turning up wearing school uniform looking 15 or 14. So, for my part, I am entirely convinced that there will be circumstances where it is reasonable for a person in a position of trust to think that a person who is aged 14 or 15 is in fact 18. So, the question is whether or not Members think it is proportioned, that is it right, whether the right balance is struck, by saying that the defence should not be available where the victim, the person touched is under 13, is 12 or 11, because nobody could think such a person is 18 and that defence should be taken away even where the person could reasonably be thought of as being 18. That is really what the issue is about. Now, I am sorry, it is a convoluted way of explaining it but I hope that it has been explained properly. I do not think if I may say so, with respect to the Deputy of St. Ouen, that this has got anything to do with consent. Consent, on my reading of the legislation, does not arise at all. Furthermore, it is not a question of juries forming an impression and being able to report on issues of consent or issues of belief because if the amendment is passed, the jury of the courts will have no part to play in it because there is then a statutory assumption that the person knew, the accused knew that the victim was under 18. Even though reasonably, he might have believed that he was not. So, it is entirely a matter for Members as I made plain in the report that I filed but I think that it is important that there is a full understanding of the way in which the Article will work in practice.

1.3.11 Senator T.A. Le Sueur:

As both the Minister and the Attorney General have said and in the Attorney General's comments, essentially the issue lies in finding the right balance between the protection of young people and the fairness of condemning a person who is found by the court to have had a reasonable belief. Were the accused or the defendant in this case, the average man in the street, I would be happier to go along with the age of 13 and under. But we are not talking about the average man in the street here. We are talking about a man in a position of trust, or woman. That position of trust is defined in Article 7 which we have not yet debated but Article 7 clearly implies a higher standard of care, a higher duty of care, a higher duty of responsibility than the person who might be out one Saturday night and got carried away. If that person does have that higher sense of responsibility and duty, then I think the law should also reflect that and so I am wholeheartedly behind Senator Routier and others who believe that, while it is a question of balance and there is no absolute right or wrong in this one, I would err on the side of caution. There has been no particular evidence demonstrated to us one way or the other whether 13 was the right age, 15 or 14. Given the fact we each have to make a judgment, and it is very much a subjective judgment, I will go on the side of caution and I will go with the amendment.

1.3.12 The Very Reverend R.F. Key, Dean of Jersey:

The abuse of trust is a subject on which the Church worldwide does not have clean hands and it seems to me that I need to make that abundantly plain. Certainly in the United States, hundreds of millions of dollars are being paid out, rightly, in compensation to victims. It is precisely that shame that leads me to support the amendment for all the reasons that the Treasury Minister has so eloquently outlined. In my previous job, I was responsible for the largest Christian youth camps in the United Kingdom. This meant 3,000 volunteers having to be CRB (Criminal Records Bureau) checked before each summer program. I would sooner lose 1,000 of those or, on this Island, have some Sunday School teachers or altar servers or anything else withdraw their services than to run the risk of another child being abused. If by passing this amendment, we were to send a signal to all volunteers or professionals, including priests like me, in positions of trust, if in doubt, if in any doubt, if in the slightest doubt, don't. That seems to me to be an entirely appropriate signal to send. This is not a matter of sexual preference. This is a matter of child protection and I urge Members to support the amendment.

1.3.13 The Deputy of St. John:

I think we have had some very emotive arguments here. The voluntary sector working with children, particularly in Jersey and other places, struggles to find help and assistance, often because they're worried about things like false allegations. That is, I think, the concern that I have here with adopting this amendment, false allegations. Youth movements do struggle to get the help they are looking for. I would deplore anybody that embarked on the type of activity that the Dean is suggesting, and it has happened in various places around the world, of course I would. We all would. But we must get some balance and perspective here. Bear in mind, the people that are in a position of trust generally will know the age of those children anyway because they are looking after them. They have the records. They have the CRB reports. They know how old those children are. I think we must get this in perspective and not put off people volunteering their time to help with youth groups and so on. They will be concerned about this. I do not know why we are such a higher authority here that we do something different to the UK. When the UK put this in, they put it in for a good reason. It was well researched. It was well consulted with. All the youth groups, the Scouts, the Guides, church groups and so on, they were consulted and that is why it was set at this age. So that we did not dissuade people from helping out with these youth groups and so on. We have not got that information in front of us. We do not know what it is. So, I urge Members not to vote because of some misguided moral direction. They must not do that. There are some reasons why it was set like that in the UK, we do not have that information in front of us at the moment;

maybe we should. Maybe you could make a more informed decision if you had it but do not be going for this amendment because you feel that you do not have that information and you are going to vote for it anyway because of the age that has been bandied about of 13. The law will still protect those children as Senator Vibert has clearly stated. This is not there to help make it easier for paedophiles; this is what we are talking about, to prey on these types of individuals. That is not the case at all. This law will still protect those individuals, so do not be misguided by the age that is being thrown around the Chamber. Thank you, Sir.

1.3.14 Deputy J.A. Martin of St. Helier:

I do not really have too much to add except following on from that speech, I think the Minister for Home Affairs stated that the age of 13 has been “the age of 13” for about the past 200 years. Am I correct?

Senator W. Kinnard:

You are.

Deputy J.A. Martin:

Thank you. Then she went on to say that 13, 14 and 15 year olds, and was backed up by the Attorney General, can look and do sometimes look over 16, 17 and even 18. My own daughter is only 12 and is often mistaken. This leads me to support it even more because girls like to - not boys so much - look older and as the Assistant Minister for Home Affairs has just said, the people looking after these children, and they are all listed here, should already know. I cannot see, I have no understanding why - and I do not think that the Minister is going to get support for this one - but she does not accept this because I cannot see where it is really going to make any difference, except that it will give just that little bit more protection in favour of the child. So, I ask everyone who has spoken that this is accepted by the Council of Ministers. Maybe they would like to discuss that.

1.3.15 Deputy G.W.J. de Faye:

I really think we should reflect quite carefully on this because, in fact, this is a very, very narrow issue. I think many Members here think this is a sort of broad, encompassing point about protection but it is not that at all. It is, in fact, more about the protection of an innocent adult who has a responsibility of care and trust. Now, I have spent all morning listening to numerous Members get up and inform me that girls tend to develop more quickly than boys and some people put a figure of 2 years on that. Therefore, I suggest we should then reflect that if we change this age limitation to one of 15, it seems to me that most Members are automatically expecting that a 15 year old girl very likely bears a pretty close relationship certainly to a 17 year old and very likely to an 18 or 19 year old. This is the issue we are dealing with. It is a fine point of criminal defence in a legal trial and the point is this. If you were the person in trust and you did not have the birth certificate or any other clear means of identification of how old somebody's age is, you do have 2 avenues of behaviour. One is, do not go there, but the other is - as is outlined in this particular Article - where someone genuinely believes that the other party is over 18, that belief can constitute a reasonable defence in law. Unless under this Article as it stands, it emerges in the course of investigation that the young person involved is 13 years or less. Now, I think Members just have to ask themselves is it reasonable to raise the bar, as I think the Minister of Home Affairs indicated, to the age of 15, where I am sure the majority of Members now accept that we would be talking about a young woman or someone who may appear to be a young woman. Is it fair, in fact, to raise the bar to that level and, therefore, leave this very, very fine area of defence almost closed to someone who, in fact, might be reasonably innocent and caught out by a false allegation from a potentially promiscuous young woman? Now, this is the detailed area of legislation we are considering at the

moment. We are not considering an age of consent here. We are not opening up a floodgate of abuse to either under 15 year olds or under 13 year olds. This is entirely about what someone, who innocently gets caught up in a relationship, may be allowed to put forward as a defence. I have to say, I have not made up my mind myself as to whether 15 or 13 is the correct figure and it may just be that the message that the States as a whole wants to send out is - do not go there. However, I think it is important to be quite clear on what we are talking about and also to understand - as I think the Deputy of St. John quite rightly alluded to - the problems that we can create for our youth workers, for our youth services and for people who do work in all those positions of trust, where they suddenly find that the level of responsibility that has now been placed upon them is something they do not wish to continue with. I suspect that the more we load the burden of responsibility on people who are placed in areas of trust and who do work with young people, potentially the more difficult we will find it to recruit people to take those particular positions, and it is my pretty clear understanding that it is a tough enough job to recruit these types of people anyway. Now, I think that has made the position clear enough. It is a very fine line we are looking at and I think Members have to decide where the bar has to be placed.

1.3.16 Senator J.L. Perchard:

I have to admit to being a little confused and I am grateful for Deputy de Faye's comments just now because I think he has helped me a little in coming to a conclusion. However, I wonder, Sir, if I would be able to ask the Attorney General to clarify a point made by Senator Routier and the Connétable of St. Ouen and Deputy Martin that this amendment and to quote, more or less: "Will add further protection for the child". In what way would this amendment add further protection to a child because I am confused?

1.3.17 Mr. W.J. Bailhache, Q.C., H.M. Attorney General:

It is only marginally a legal question, so I suppose the argument for saying that it adds extra protection is that, as the Dean was saying, it is a message to those who are engaged in positions of trust to say: "Where you are in doubt, don't go there." I think that is probably where the extra protection, arguably, would be given. The other side of the coin, I suppose, is that if he reasonably believes the person is over the age of 18, he is never going to ask himself that question anyway. I think that is the difficulty.

1.3.18 Deputy of St. John:

A point of clarification. Am I right in saying we only have one lawyer in the House here? That is the Attorney General. There are no other lawyers here and the Attorney General made a very clear and concise legal presentation earlier on about this aspect of the law. We are not lawyers, the Attorney General is and this is a point of law, not a point of consent.

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

That's because the Attorney himself always makes it clear, he gives his legal view and it is then for Members to take critical judgment on that.

1.3.20 Connétable M.K. Jackson of St. Brelade:

I would just like to allude to the fact that we seem to be going down the route of identification here. Daily, bar staff on this Island are having to decide on whether people are 18 or not and they risk grave consequences if they serve under-age children, under 18, drink. We are talking about exactly the same thing here, and I suspect that I would be minded to support the amendment but I think we will probably have to sharpen up on means of identification and this is, I think perfectly achievable.

The Attorney General:

Sorry, with respect to the Connétable, there is a difference. This offence carries imprisonment for 5 years. The licensing matter carries a fine. It is rather different.

1.3.21 Deputy S.C. Ferguson:

I think we have to remember that we are living in a somewhat litigious time. In a former life, as my colleagues would say, when I was centering one of our big problems were the youth of the Island who would stand there and say: "Don't put a finger on me. I'll have you for assault." Now, this was mainly the sort of 14, 15 year olds upwards. We are dealing with defences in the case of an offence. We are dealing with a situation where you are very much more likely to get a false accusation. My sister is a trained radiographer and on a number of occasions had to appear in court to give evidence in the case of offences against young people. In the event, these happened to be young girls, and as the Attorney General has already said, when these children were brought in to Accident and Emergency, you would have thought they were 25, let alone 21. But when they appear in court in their school uniform and little white socks, you know, they look 10 again. I am concerned that if we raise the bar on this, we are opening a whole can of worms. I urge Members to think very carefully about it and I will certainly not be supporting the amendment.

1.3.22 Senator F.H. Walker:

I came to this part of the debate very clearly of a mind to oppose the amendment and I was minded to accept the points put forward by the Home Affairs Minister that the age of 13 had been the subject of enormous amount of thought and concentration in the UK, and that we, ourselves, if we were to consider changing the age, should embark in careful thought and consultation. But I have to say I have been persuaded to change my mind by 2 speeches which I thought made quite enormous sense. The first one was that of Senator Le Sueur, when he said: "We are not talking here about members of the public. We are talking about people who are in a position of trust and responsibility." The second speech that moved me was that of the Dean, when he spoke really, on behalf of many people who are in a position of trust and those, of course, in the church, particularly in Jersey, when he said: "If they have any doubt, any doubt at all, they should not go there." Sir, I do not accept that this amendment would put those in positions of trust and responsibility under an unacceptable burden. The simple message is: "You are in a position of trust. You are in a position of responsibility. Just do not take any risks and there will be no problem for you. More importantly, there will be no problem for the child and no problem, therefore, for anyone else."

1.3.23 The Deputy of St. Ouen:

Thank you for everybody that has contributed to this part of the amendment. I would like to pick up on a number of points, I think most of which we have covered, so I am not going to spend much time. I would just like to point out that the Articles that I am seeking to amend are not ones of, what I would call, slightly sexual in nature. We are talking about in Article 3, sexual activity with a child, Article 4, causing or inciting a child to engage in sexual activity, Article 5 is sexual activity in the presence of a child and Article 6 covers causing a child to watch a sexual act. These, in my view, are not minor situations of slapping someone on a bottom. They are actual acts that are decided prior to the act taking part. I was rather saddened by the fact that Senator Kinnard felt that at under 13 the bar was high enough. I think we know the views of most of the Members here regarding that particular view. Interestingly enough, we have set the sexual grooming age at 16 and under so hence the reason in part why I thought a 3 year margin - because we are talking for these particular offences at the age of 18, not 16 - that a 3 year margin gave sufficient meaning to the word "reasonableness". There are some that would think more. I would just like to draw Members' attention - we hear many people using many quotes, many letters from many different people and in

part try and, perhaps, emphasise different areas. I can honestly say, with my hand on my heart - and I have not enjoyed it - I have spent a lot of time looking at this subject and found many comments. But I think one worth reading out is this particular one, and it is from the NSPCC and it was written on 22 June 2004. It is titled “NSPCC calls for new measures to clamp down on adult sex with teenagers”. This is in June 2004 in the UK. This is not in some far away country; this is in the UK. The NSPCC is calling on the government to issue guidelines for social workers and other professionals to refer all allegations of adults having sex with under 16 year olds, not 15 year olds, under 16 year olds to the police to look into. This should apply even where the relations appear to be consensual. It says the call comes before the publication of the Bichard report which was, as we know, involving that horrendous situation in the UK and Ian Huntley. It goes on to say: “We must never allow another Ian Huntley to slip through the net. The welfare of children must always be front of mind.” Not the concerns about the adult helper who is obviously recognised as adult and able to understand for himself and recognise and know the laws, for the children that are growing up reliant on others to guide them. I ask Members to support my amendment and ask for the Appel. Thank you.

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

Very well, the Appel is called for. Members are in their designated seats. The vote is therefore for or against the amendments to Articles 3, 4, 5 and 6 in the name of the Deputy of St. Ouen. The Greffier will open the voting. The amendments have been adopted; 40 votes were in favour, 9 votes against.

| POUR: 40 | CONTRE: 9 | ABSTAIN: 0 |
|---------------------------|--------------------------|-------------------|
| Senator S. Syvret | Senator W. Kinnard | |
| Senator L. Norman | Senator M.E. Vibert | |
| Senator F.H. Walker | Senator P.F.C. Ozouf | |
| Senator T.A. Le Sueur | Senator F.E. Cohen | |
| Senator P.F. Routier | Deputy G.P. Southern (H) | |
| Senator T.J. Le Main | Deputy S.C. Ferguson (B) | |
| Senator B.E. Shenton | Deputy P.J.D. Ryan (H) | |
| Senator J.L. Perchard | Deputy S. Pitman (H) | |
| Connétable of St. Ouen | Deputy of St. John | |
| Connétable of St. Mary | | |
| Connétable of St. Peter | | |
| Connétable of St. Clement | | |
| Connétable of Trinity | | |

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| Connétable of St. Lawrence | | | |
| Connétable of St. John | | | |
| Connétable of St. Brelade | | | |
| Connétable of St. Martin | | | |
| Deputy R.C. Duhamel (S) | | | |
| Deputy A. Breckon (S) | | | |
| Deputy J.J. Huet (H) | | | |
| Deputy of St. Martin | | | |
| Deputy P.N. Troy (B) | | | |
| Deputy C.J. Scott Warren (S) | | | |
| Deputy R.G. Le Hérissier (S) | | | |
| Deputy J.B. Fox (H) | | | |
| Deputy J.A. Martin (H) | | | |
| Deputy of St. Ouen | | | |
| Deputy of Grouville | | | |
| Deputy of St. Peter | | | |
| Deputy J.A. Hilton (H) | | | |
| Deputy G.W.J. de Faye (H) | | | |
| Deputy P.V.F. Le Claire (H) | | | |
| Deputy J.A.N. Le Fondré (L) | | | |
| Deputy D.W. Mezbourian (L) | | | |
| Deputy of Trinity | | | |
| Deputy S.S.P.A. Power (B) | | | |
| Deputy A.J.H. Maclean (H) | | | |
| Deputy K.C. Lewis (S) | | | |
| Deputy I.J. Gorst (C) | | | |
| Deputy of St. Mary | | | |

1.3.25 The Greffier of the States (in the Chair)

The debate resumes on Articles 3 to 6 as amended. Does any Member wish to speak on those Articles as amended? If not, I will put those Articles. Those Members in favour of adopting them kindly show? Any against? Articles 3 to 6 are adopted.

1.4 Senator W. Kinnard:

Articles 7 and 8 define the concept of a position of trust and its interpretation for the purposes of Articles 3 to 6. In particular the offence of abuse of position or trust prohibits sexual activity between those aged 18 and over who are looking after children under 18 in educational establishments and in residential settings, or where a young person is particularly vulnerable, or the relationship of trust is particularly strong. There is a power for the Minister to specify certain further conditions that will constitute a position of trust. The term “looks after” is defined in broad terms in Article 8. The penalty, as I said, in the abuse of trust offences is the maximum of 5 years imprisonment and an unlimited fine. Articles 9 and 10. Here we have the creation of the exceptions to the offences in Articles 3 to 6, where if the 16 year old is lawfully married or where a sexual relationship already existed between the 16 and 17 year old and the adult, and is in a position of trust prior to the commencement of the law. For obvious reasons this particular exception will no longer be necessary 2 years after the law comes into force. So Article 11 relates to aiders and abettors, et cetera, and therefore. I propose those Articles 7 to 11.

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

Are the Articles seconded? [**Seconded**]. Does any Member wish to speak on any of Articles 7 to 11?

1.4.2 The Deputy of St. Martin:

Maybe I could just ask the Attorney General, I may need some assistance here. Maybe it would be helpful for Members to look at page 5 of P.63 because this is an area which, again, I raised this morning where it is unclear because we are told that consultation is still in the process but we do not know what the result of that consultation is. If I could draw Members’ attention to paragraph 6. It says: “For example, a young person aged 18, et cetera, is seen to be a position of trust.” It talks about people working at children’s homes, institutions, et cetera. But if we look at paragraph 8, it says: “Those States departments which would be most affected have had sight of the draft law and provided initial views. The indications are that these provisions are generally welcomed but the issue such as position of volunteers as opposed to those performing a statutory function, and also that of young adults supervising children under 16, need to be explored further during the consultation period.” It goes on that the same issues were debated during the development of similar legislation in the UK. Then you can carry on but the point I am coming to really is what was the result of the consultation we had in Jersey, what is the result of it? Also what is the role of the volunteer? Will it mean that someone who takes the Guides or the Boy Scouts or unpaid youth workers, maybe a football or netball coach, or anyone else helping any sort of voluntary section, how will they become engrossed with this particular piece of legislation? I think it is important that Members know what they are voting for before they agree to it. Maybe the Attorney General feels there is a part to play there, or maybe the Minister, but I think it needs clarification, Sir.

1.4.3 Senator W. Kinnard:

I was asked about consultation obviously at the point at which the report was produced. That was at the start of the 6 to 8 week consultation period and prior to the report actually being lodged. Certainly the Chief Officers of Health and Social Services and of Education, Sport and Culture, and also the head of the Youth Service, were consulted on the basis that would they look at the draft law and raise any issues or problems that they saw with the abuse of trust provisions. The response that we had back was that they are content because the guidelines which they already have in place really reflect that position. Clearly, obviously, there has not been consultation on the new change to the law which has been adopted by the States, which has changed the age to 15. I am not entirely sure whether we will now receive any sort of representations. But certainly the response that we had was that they were content with the law as drafted and we received no further representations on that point as a result. In terms of what is covered and what is not covered, there are certain particular areas that are covered and in my report. I make clear the 4 areas that are covered in terms of those that are particularly vulnerable. The location, the special influence of the adult or the lack of access to other adults. That is on page 9, paragraph 21. But to return to the law; I was asked specifically about voluntary groups, and certainly what the law does is it does not in general cover volunteer groups and that is the case as well with the UK legislation. So, for example, it would not cover ACET or Brook but I am aware that they do have guidelines in place in any case. Again, this question was looked at in a lot of detail in the drawing up of similar legislation, both in the United Kingdom and in the Isle of Man, which we have looked at. It was a matter of enforceability and also striking a balance between what is achievable and enforceable, and what is perhaps incapable of being enforced and would perhaps deter genuinely caring individuals from assisting in youth activities. So, in the particular paragraphs it would also cover the YOI (Young Offenders' Institute). In Article 7, paragraph 2, for instance, where it covers people who are in an institution by virtue of a court order or under an enactment. Things like the YOI would be covered there. Then Greenfield would possibly be covered under both education and perhaps also under a court order. Brownies and Scouts, for instance, would not be covered unless they were part of the specific activities of a school. In schools, certainly in the United Kingdom, that is sometimes the case. The Minister for Education would perhaps be able to be more specific on that point. I know that St. Saviour's school has a Scouts group but whether it is part of the activities of the school or not, I suspect not. In which case they would not be covered. It does cover positions of trust in Article 7, paragraph 5, where we are talking about institutions where young people are receiving education. It covers, of course, teachers, teaching assistants and trainee teachers. In Article 7, paragraph 7, it makes reference to the provision of services provided by the Minister of Education, Sport and Culture. So, for instance, swimming instructors or coaches that were employed by Education, Sport and Culture would be covered but those that were from a private capacity or a voluntary capacity would not be. Article 7 again, paragraph 10, there we are dealing with situations where bodies are administered by the Minister of Health and Social Services, where they are assigned specific responsibilities. Something like the Drug and Alcohol Service would probably be covered under that. It covers, of course, foster care and down at Article 7, paragraph 14, there we are dealing with the requirements in post under any enactment dealing with the detention for a criminal offence and subsequent requirements of the court. So there you would have perhaps the Youth Offending Team and probation officers covered by that particular provision. There are, of course, a range of examples that Members could probably think of and we could probably be able to identify which category that they actually belong in. But, as I say, the general point is that there are these 4 specific areas which really are the guiding principles around which the abuse of trust provisions are set.

1.4.4 The Greffier of the States (in the Chair)

Very well. I put Article 7 to 11. Those Members in favour of adopting kindly show. Against? Those Articles are adopted. If you could propose Articles 12 and 13, Minister, then we can come to the amendment?

1.4.5 Senator W. Kinnard:

Article 12, of course, has the effect that it shall not be an offence at customary law for 2 consenting adults, who are both aged 16 or more, to commit an act of sodomy in private. They will no longer be an offence at customary law. It further has the effect that no offence is committed by a person under the age of 16 if the other person is aged 16 or more. The reason being that in the past between dealing with the situation of homosexual couples where the younger person would also be guilty of offence, it did have the effect of preventing in some situations the younger person from reporting abuse in that circumstance.

1.5 The Greffier of the States (in the Chair)

Are the Articles seconded? [**Seconded**] There is an amendment to replace these Articles, the new Article 12. I will ask the Greffier to read the amendment.

1.5.1 The Greffier of the States:

For Articles 12 and 13 substitute the following Article and renumber the remaining Article accordingly. 12. Sexual Offences (Jersey) Law 1990 as amended. In the Sexual Offences (Jersey) Law 1990 (a) in paragraph 1 for the words "18 years" there shall be substituted the words "16 years"; (b) after paragraph 2 there shall be inserted the following paragraph: "2(a). Notwithstanding any provision of law, whether enacted or customary, a person who has not attained the age of 16 years shall not be guilty of the crime of sodomy if the other party to the act has attained that age."

1.5.2 The Deputy of St. Ouen:

I start by saying that proposing to substitute Article 12 is, what I believe, a good alternative and a more appropriate and proportional response to the issue of equalising the age of consent. I start by apologising to this Assembly because it was only barely 3 weeks ago that I suddenly realised that there was a possibility of addressing and equalising the age of consent using existing legislation. Sadly, that had not been raised and provided as an option in any report we had been presented regarding changing the draft Sexual Offences (Jersey) Law and neither had it been in part - and because of that perhaps - flagged up by the Corporate Services Scrutiny Panel. I would like to tell members the reason why I believe we can use the existing legislation to address this issue. It is worth noting that before the 1990 Sexual Offences Law, when it was introduced, the homosexual act of sodomy was illegal in Jersey. The Corporate Services Scrutiny Panel, and Home Affairs in all fairness, have provided us with great evidence that, at that particular time, there were extreme concerns raised by the UK, or should I say the Westminster Government, that our existing laws at the time were not compliant with the European Convention of Human Rights. I think, as we are all well aware, we were summonsed over there, told this is what you are going to do, sent back and did it. They made the point at that time that a law which makes homosexual practice in private between 2 consenting adults illegal was in breach of the European Convention of Human Rights. Subsequently the States introduced a law which legalised sodomy between 2 consenting males as long as they had reached age of 21. It is also worth noting, and reported in the Corporate Services Scrutiny Panel report - and I think in fairness the Home Affairs report - that the UK Government's concerns regarding any breach of the European Convention of the new law was satisfied and the law was subsequently approved by the Privy Council. That was in 1990. In other words, in simple terms, the 1990 law, which addressed the issues raised by the Westminster Government, were addressed by allowing sodomy to be practiced by homosexuals, as long as the act was in private and that adults were over 21. In 1994 the UK again addressed the issue of the appropriate age of consent and reduced the age of consent in the UK from 21 to 18. In 1995, the following year, the law in Jersey was also amended to mirror the age agreed in the UK, that of 18. Supported again by the Privy Council. That is our current law. No one at the time raised the issue that this was in

breach of European Conventions, including the UK. It seems, as far as the Island was concerned, our laws continued to meet the UK's view of the Island's obligations under the Convention of Human Rights as signed up to by the UK Government on our behalf. In November 2000 the UK again amended their sexual offences law, reducing the minimum age of consent from 18 to 16 for homosexual relations. It is, therefore, reasonable - and I believe also practical - to believe that if the Island chooses to address the equalisation of age of consent as shown to be required then we can continue to use the existing law and just reduce the age from 18 to 16 as proposed in my amendment. It is also interesting to note the comment that Senator Kinnard made earlier regarding the law, and the draft law in particular, when she was speaking on the principles. She stated that the new law brings the most pressing matter forward, that of equalising the age of consent. My proposal will do exactly that. As I say, if the aim of this Assembly is to equalise the age of consent then this proposal addresses that issue while utilising our current law. So, does this amendment equalise the age of lawful consent to homosexual acts compared with heterosexual acts? Yes. Does this amendment have the support of the UK Government and the Privy Council? I believe so as both parties supported this law on at least 2 previous occasions. It is worth noting that although the whole of the UK have opted for equalising the age of consent there are separate laws for heterosexual and homosexual activities in Scotland and Ireland. Hence the reason why the Home Affairs Minister only speaks of England and Wales rather than the UK in total. I suggest the same latitude, therefore, should be applied in our case for this Island. Some people might argue that this amendment does not go as far as the one proposed in the draft law and they would be right. The draft law not only equalises the age of consent but allows anal sex to be practiced by more than 2 people at any one time whether homosexuals or heterosexuals. Members must ask themselves, is this a proportionate response to the concerns raised by a small minority of our community? It is my view that there is a major difference in simply equalising the age of consent and extending the lawful practice of anal sex beyond the current boundaries. Am I promoting the fact that a sexual relationship between 2 people is special? Yes. Am I recognising the fact that anal sex is extremely harmful to both men and women? Yes. Am I promoting a more reasonable and proportionate response to the issue of compliance with the European Convention of Human Rights while protecting the majority of our population? Most definitely. There is no principle or rule of law that requires a Member State within Europe to adopt the same provisions in respect of the Convention rights as one another. Indeed the evidence provided in the appendix on page 20 of P.63/2006, the proposition, clearly shows that, although Member States have accepted equal ages of consent, the individual laws reflect different views on what is acceptable and what is not. I do not believe that the UK would force us to slavishly copy their laws as they certainly have not done so up until now and, furthermore, they have not exerted the same authority on either Scotland or Ireland. There are good reasons for this Assembly to clearly state what is acceptable and what is not. The Minister states, in the introduction to the report, that the new legislation modernises the law to reflect some changes in society and social attitudes. It further goes on to suggest that the aim of the law is to change the most outdated aspects of the existing law and make it fit for the 21st century. The Minister might not have noticed that the majority of our community do not want some of these changes. Those same people look to this Assembly to provide adequate guidance and protection coupled with an overall duty of care. They equally look to this government to exercise its right, as is necessary in a democratic society, for the protection of health and morals; and the protection of the rights and freedom of others. Who is supposed to determine what nature a new law is expected to take if it is not this Assembly? If we do not set parameters and support the moral values within our society who will? We cannot absolve ourselves from this responsibility. Any law needs to be, and should be, proportional and this draft law, in my view, is not. If this law is passed without amendments we are allowing our moral values to be eroded still further. Furthermore, we are condoning a sexual practice that is both physically harmful and dramatically increases the risk of infection from a host of sexually transmitted diseases, including HIV for which there no current cure. I would like to concentrate on some of the comments made in support of the draft law. The Health and Social Services Minister, in his report, makes a number of interesting comments. He

claims that this is a human rights' issue and there are no medical grounds to oppose such a change in legislation. Sorry, I apologise, Sir, I realise it was the Medical Officer of Health who wrote this report so I am not directing my comments directly to the Minister. Is this not the same group or department that promotes the raising of the age of smoking from 16 to 18 due to health risks? Is that the same department that recognised that, even in that case, there were human rights' issues? Of course they did not. Quite rightly they promoted the need for greater protection of our young people due to health reasons. So, one has to ask, why has this department now chosen not to take the same stance on this particular subject? One only needs to look at the list of references at the end of the report to see that all the information is years out of date. HIV continues to be one of the most important communicable diseases in the UK. It is an infection associated with serious morbidity, high costs of treatment in care, significant mortality and a high number of potential years of lost life. HIV infection from anal intercourse is 2,700 times greater than that of vaginal intercourse. These are facts readily and freely available from various reputable medical research papers. Anal sex is so dangerous for homosexual men that the UK blood transfusion service will not accept blood from any man who has had sex with another man, even if they have practiced safe sex using a condom. Even condom manufacturers advise against anal sex. Although drug therapies exist to prolong the life of people living with AIDS, it still remains a life threatening condition. Anal sex, especially between men, remains the main - and I repeat the main - transmission route for HIV in the UK. The impact of HIV on the homosexual community has been profound. Eighty four per cent of infections diagnosed in 2003 were linked to men having sex with men. In 2004, this is after the UK changed its sexual offences law promoting the facts of safe sex and health and improve consequences, out of a total of 31,430 cases of men reported as HIV positive nearly 30 per cent - 30 per cent - have died. The report published by the UK Health Protection Agency on 26th January 2006 states that the continuing rise in new diagnoses between 2004 and 2005 were mainly due to a continued increase among men having sex with men. The issue is not simply about testing and prevention. It has to do with transmission. That is taking part in the actual act. In recent years casual sex has become increasingly the norm. However, with it comes consequences. Rising levels in sexually transmitted diseases are directly linked to multiple partners, in the belief that the risks of infection are not high. This is totally wrong. However, this view is understandable when governments, such as ours I hasten to add, choose to dumb down those concerns. It is not only HIV that is on the increase but gonorrhoea, syphilis and chlamydia. These diseases are not just confined to one sector of the population. It is interesting to note that on a packet of cigarettes we have "Smoking kills" but when it comes to AIDS and other sexually transmitted diseases we simply promote using a condom. Comments relating to the spread of sexually transmitted diseases in other countries are equally misleading. Yes, it is perhaps the case that certain countries have better sexual health information and services than others. This is, itself, not the complete answer. Prevention is also the key. Kofi Annan, the UN Secretary General, recently said: "We must make people everywhere understand that the AIDS crisis is not over. That this is not about a few foreign countries far away, this is a threat to an entire generation. It is a threat to an entire civilisation." The Bailiff, patron of ACET, has this to say: "We are facing the threat of a global pandemic which has been described as the holocaust of our day. No country is unaffected. The European Commission issued a warning last September" (I think this is 2004) that Western Europe is currently facing the threat of new epidemics unless governments step up their prevention activities. We cannot afford to ignore the warning. HIV has not gone away. It is an issue which affects us all." That is our very own Bailiff commenting about this issue. An effective method of prevention is to ensure that our children are able to resist the many pressures upon them to become sexually active at an early age. This means clear guidance as to what is deemed acceptable and what is not through appropriate and proportionate laws. I would also like to touch on the comments made by the Attorney General regarding my amendments. As I think he has already said, I am not a lawyer. However, it is interesting to note, as I said before, some of the cases cited by the Attorney General, as he has already acknowledged, have never been fully tested. For this reason Article 8, I truly believe, is open to interpretation, especially when linked to the protection of health and morals or the

protection of the rights and freedom of others. I am convinced that this Article does provide the balance between the rights of a small minority group against the rights of the community as a whole. As I said before, Scotland and Ireland have different laws for homosexuals and heterosexuals although the age of consent is equal. The UK and the Privy Council have already shown that our current laws met human rights' concerns. There is also substantial evidence that sexually transmitted diseases, including AIDS, is a major cause for concern throughout Europe and the rest of the world. It is not just ACET that is telling you that, it is readily and freely available on many websites. Also worth reading; and just to highlight the fact and the concerns that I have with regard to allowing anal sex to be legalised within our heterosexual community - throughout the UK and in Jersey there are a growing number of children and young people becoming sexually active at a young age. They are particularly vulnerable to sexually transmitted infections and HIV. Jersey Brook are reporting an increase in young people infected with various sexually transmitted diseases, together with an increase in attendance at the clinic for the morning after pill. Now, if our sex education is being successful and if we are promoting protection against AIDS using condoms, we have got a large percentage of our population below the age of 25, and in many respects below the age of 16, that are practicing unsafe sex. What message are we sending out when we are going to promote the view that anal sex is an okay practice? There is also a moral element to the argument that needs to be recognised. Presently this government supports the sanctity of marriage and the importance of monogamous relationships between 2 people, not 3 or more. I acknowledge that any burden of proof in maintaining the legislation in relation to the Article 8 Convention lies with the States as a whole, and if this amendment was accepted then challenged this would obviously need to be done. However, we presently do not know that this would be the case. It is, after all, for the States to make that judgment after full consideration of the facts. What are the facts? The facts are that on the one hand we are being told that we need to equalise the age of consent. My proposition does that. On the other, the Attorney General will suggest that it does not meet all the criteria in the Human Rights' Convention. There are equally other ways of doing that. Other countries have successfully maintained that privacy equates to 2 people only. If we support this amendment I am convinced that we are able to introduce the same definition for heterosexuals. I equally believe that other areas are dispensable in that there are serious health issues which are freely and readily available and that can substantiate fully the ability of this Assembly to determine that we do not support the legalisation of anal sex throughout our heterosexual community. I would further like to add that I, in my knowledge - and maybe the AG will perhaps highlight the fact if I am wrong - that at no time has any heterosexual individual supported the introduction of anal sex as a necessary requirement to be legalised. I therefore will propose my amendment and ask that Members consider that this may be a more proportionate response than that proposed by the Home Affairs.

The Greffier of the States (in the Chair)

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

1.5.3 Senator S. Syvret:

Sir, I wonder if I could invite the Attorney General to express a view on this particular amendment as a number of assertions were made concerning whether the case law had been tested or not in the speech by the Deputy.

The Greffier of the States (in the Chair)

I think it is a matter for the Attorney General. He has obviously presented written comments to the Assembly already. It is a matter for you Mr. Attorney. There is no particular question to address other than your general comments on the proposition.

1.5.4 The Attorney General:

I think I probably ought to address the Assembly at some stage. I did not quite hear what the Health and Social Services Minister said if he could repeat it it would be helpful.

Senator S. Syvret:

In his speech the Deputy made some assertions concerning the case law the Attorney General cites in his notes as being untested and I wondered if he had a view on that.

The Deputy of St. Ouen:

Sorry, Sir, before you respond I would just like to say I said “some cases were ultimately untested”.

The Greffier of the States (in the Chair)

Do you wish to take some time, Mr. Attorney? I can call Deputy Ferguson who is waiting to speak?

1.5.5 Deputy S.C. Ferguson:

I suppose I seconded it so that I could then tear the Deputy of St. Ouen apart. I do not usually **[Interruption]** It is a bit like clay pigeon shooting really, is it not? No, the Deputy is somewhat out of date in all that he has been saying. I have just come back from a parliamentary conference and one of the topics we discussed was HIV/AIDS. It was very clear from what was said by all the countries that the HIV/AIDS problem is now not homosexual, it is heterosexual. This is a much bigger problem. The Attorney General’s comments on page 4, point 9, talk about the legal effect of the amendment and that it will criminalise heterosexuals. As the Deputy of St. Ouen says, he is not a lawyer and I suggest that his amendments would have been better if he was. My feeling is that if he wants to amend the law, please can he come back with better amendments. We cannot really start passing something which is going to start criminalising another section of the community, it really is a waste of our time.

1.5.6 Senator W. Kinnard:

Sir, just briefly that I concur with the words of Deputy Ferguson across the Chamber in that it seems to me that most of the arguments that were made just now by the Deputy of St. Ouen are rather going over old ground. The thrust of his speech seemed to be more about sexual health strategies, which we have agreed that we will address, and I believe that he did not really address the significant impacts of the amendment that he has put forward. He certainly did not address really, in my view, the negative legal effects and really the fact that what he is proposing is almost a negating of the proposition in the sense that we will have spent these several months debating this particular issue, scrutinising it, and now, in the Chamber, hours and hours on this matter. Were his amendment, I think, to be successful we would be virtually back to square one because we would still be in breach of Article 8 and Article 14 of the European Convention of Human Rights. So I believe that the Attorney General’s comments put the case very, very clearly and I think that the Attorney General was asked to make those comments on the invitation of Members to perform a human rights audit on this particular amendment. Certainly those comments make it absolutely clear, at paragraph 12 - he will no doubt speak for himself in a moment - that we would, in effect, be right back at stage one with constitutional difficulties and, indeed, it would be I think impossible for the law, if it were to be amended in this way, to actually gain Royal assent.

1.5.7 Deputy G.P. Southern:

I described the Deputy of St. Ouen the other week like some cowboy riding into town to restore law and order and shooting from the hip. I fear today he has gone and spent 40 days and nights in the

desert out in St. Ouen and is returning like some old time fire-breathing prophet and preacher to the pulpit to lash us all about falling morality, appalling standards in all sorts of areas, the decline of morality and fibre in our community. He has done exactly that. However, I must point out that that diatribe, while it might make him feel a lot, lot better to have got off his chest, has got little or nothing to do with the issues facing us today. If he wants to do that speech I suggest he confines himself to the pulpit. That speech does not belong in this Chamber. It did not belong in this Chamber today, and it did not belong in this Chamber today addressing this issue. It is completely and utterly irrelevant. Now, he said at the beginning - and left me with some hope for today - very clearly several hours ago: "I am not prejudiced, I am not misguided and I am not homophobic." I am sorry, but after that speech that he has just given I fear he has shown himself to be, indeed, prejudiced and misguided. His selective use of non attributable quotes left, right and centre, was quite frankly absurd and, yes, I believe in his no doubt deeply felt abhorrence at anal sex and homosexual practices. I felt clearly his prejudice. I believe it was misguided and I believe he showed himself to be homophobic. He kept returning to "if we are to protect moral values, if we are to protect health and morals", et cetera, et cetera. He kept returning to this issue. May I point out, as the Home Affairs Minister said earlier, this may legalise an activity, it does not make it compulsory. Every heterosexual woman in the Island can sleep safely at night. She will not be coerced into anal sex because of this change to the law. That is not going to happen. As Deputy Ferguson clearly and correctly pointed out, for transmission of AIDS today the main source is heterosexual sex not homosexual. This is way out of date. Finally, I believe the Deputy of St. Ouen resorted to the final shroud wave when he said: "And this represents a threat to an entire civilisation." Well, how about that? If we allow this proposition to go through unamended we bring to its knees, we end an entire civilisation. I have a word for the Deputy of St. Ouen: "Oh no we do not." We simply stay within the bounds of the European Convention on Human Rights as we clearly should and, I believe, clearly must. I urge Members to ignore the very fine sermon received but to vote with the Minister for Home Affairs.

1.5.8 Deputy P.V.F. Le Claire:

Sir, I think I am going to vote against this amendment. I was told, when I was looking into different issues, that the vast majority of HIV cases in Jersey have been brought in by sex tourism and people who choose to go to places like Thailand and engage in sexual activities while on holiday, and going on holiday for those purposes. The issues that the Deputy of St. Ouen has raised are obviously for each and every independent Member but I do not agree with Deputy Southern, I do not believe that the Deputy is homophobic and I do believe that he is trying to bring amendments where he feels that they are suited. I think this has been an unfortunate side to the whole series of these events that those Members who have struggled with going along glibly with Corporate Jersey, as has been described in some corners here this morning, are being lambasted and accused of being homophobic or racist or something like that. I do not believe the Deputy of St. Ouen to be homophobic and I do not believe his intentions are driven by that but I do believe his amendment is unsupportable.

1.5.9 Senator L. Norman:

Sir, I think even those of us who oppose the principle of this law can see that this amendment has absolutely no merit whatsoever. It is quite clear from the Attorney General's report that if this Article were to be adopted into the law the law itself would not gain Royal assent. Now that could be regarded by some as a reason to support it but that would be irresponsible. Irresponsible in the extreme. What the Deputy really needs to do, is what I am going to do, is to vote against the amended Article. Sir, I repeat, this amendment has, in my view, absolutely no merit and I would like to test the mood of the House by proposing that we move on to the next item.

The Greffier of the States (in the Chair):

That is a matter for Members, Senator. If that is carried clearly Members will not vote on the amendment but as the Bailiff said this morning, it is a matter that is in the hands of the House. Is your proposition to move to the next item seconded? Appel? Yes, very well, Senator Norman has proposed that the States move to the consideration of the next item of business which would mean that there would not be a vote on the amendments of the Deputy of St. Ouen.

1.5.10 Deputy G.W.J. de Faye:

Sir, could I just ask on a point of order. If we move on to the next item of business does this mean we stay with the main proposition?

The Greffier of the States (in the Chair):

Yes, we effectively go to the next thing and the next thing is to go back to Article 12 and 13 as proposed by the Minister. Very well, if Members are in their designated seats the Greffier will open the voting. The vote is for or against the proposition of Senator Norman that the States move to the next item. All Members have voted. The Greffier will now close the voting. I can announce that the proposition has been rejected 18 votes were cast in favour, 29 votes against. One Member abstained from voting.

| POUR: 18 | CONTRE: 29 | ABSTAIN: 1 |
|-----------------------------|------------------------------|--------------------------|
| Senator L. Norman | Senator S. Syvret | Connétable of St. Martin |
| Senator F.H. Walker | Senator W. Kinnard | |
| Senator T.J. Le Main | Senator T.A. Le Sueur | |
| Connétable of St. Mary | Senator P.F. Routier | |
| Connétable of St. Peter | Senator P.F.C. Ozouf | |
| Connétable of St. Clement | Senator B.E. Shenton | |
| Connétable of Helier | Senator F.E. Cohen | |
| Connétable of Trinity | Senator J.L. Perchard | |
| Connétable of St. Lawrence | Connétable of St. Ouen | |
| Connétable of St. John | Deputy R.C. Duhamel (S) | |
| Connétable of St. Brelade | Deputy A. Breckon (S) | |
| Deputy of St. Martin | Deputy J.J. Huet (H) | |
| Deputy P.N. Troy (B) | Deputy C.J. Scott Warren (S) | |
| Deputy of St. Peter | Deputy R.G. Le Hérissier (S) | |
| Deputy J.A. Hilton (H) | Deputy J.B. Fox (H) | |
| Deputy P.V.F. Le Claire (H) | Deputy J.A. Martin (H) | |

| | | | |
|---------------------------|-----------------------------|--|--|
| Deputy S.S.P.A. Power (B) | Deputy G.P. Southern (H) | | |
| Deputy of St. John | Deputy S.C. Ferguson (B) | | |
| | Deputy of St. Ouen | | |
| | Deputy P.J.D. Ryan (H) | | |
| | Deputy of Grouville | | |
| | Deputy G.W.J de Faye (H) | | |
| | Deputy J.A.N. Le Fondré (L) | | |
| | Deputy D.W. Mezbourian (L) | | |
| | Deputy of Trinity | | |
| | Deputy S. Pitman (H) | | |
| | Deputy K.C. Lewis (S) | | |
| | Deputy I.J. Gorst (C) | | |
| | Deputy of St. Mary | | |

1.5.11 Senator S. Syvret:

I listened with interest to the speech made by the Deputy and I read also his amendments and the accompanying report. I do ask him to pass on my congratulations to Advocate Renouf for another marvellous piece of work although I do not know how he quite finds time to do it all now that he is Procureur.

The Greffier of the States (in the Chair)

Senator, I am not sure it is appropriate to refer to Member's a speech in that way. The Deputy has made his speech. You may have your own views on it.

Senator S. Syvret:

Some Members of the Assembly need to stand on their own 2 feet. Sir, the Deputy said: "What kind of message are we sending out?" and he repeated that in his speech. The message we are sending out by the approach of the Deputy is that sexual preferences, especially among teenagers and the young and, indeed, among adults, are something that might well be shameful and embarrassing and even criminal. Thus something to be kept hidden and not spoken about and be done in secret, and not the kind of thing you could go and discuss with health professionals or your doctor or things of that nature. That is the kind of message we are sending out if we go with the Deputy's remarks. What we, in fact, need - and what the evidence shows from other jurisdictions - is that what is required is openness and transparency in these matters. Comprehensive personal and social education for people, so that they can talk freely with the relevant professionals about these sexual health matters and all of their preferences, and receive the appropriate guidance, advice and medical treatment. The experience of other jurisdictions proves that to be the case. Those that are

more open and more relaxed about these kind of issues so that they can be discussed in the appropriate place have far fewer problems. That is the kind of direction we should be moving in. If Members are not persuaded by that, Sir, I would quote the words of the Attorney General in his comments, which I think it is important for Members to reflect upon. At paragraph 12 he says: "The law officers have a duty to report to the Crown on projet de loi adopted by the States in order to obtain Royal assent. In the performance of that duty I pay the highest regard to the expression: "By the Members of the democratic will of the people of Jersey. Nonetheless I would be duty bound to draw attention to the fact that the adoption of the class 2 amendment of the Deputy of St. Ouen would be very likely to leave the United Kingdom in breach of its international obligations on account of Jersey insofar as the Sexual Offences (Jersey) Law 1990 as amended was concerned. I would thus be unable to advise Her Majesty that such an Act of the States was one to which Royal assent might properly be given." Now, can we even contemplate putting ourselves or the Attorney General in that kind of position? I do not believe we can. This amendment must be rejected.

1.5.12 Mr. W.J. Bailhache, Q.C., H.M. Attorney General:

I have to say that this report which I have lodged with the States caused me a great deal of anxiety. Anxiety because it is the first time that I have been in the position of having to advise Members that if a proposition, a law, were passed I would not feel able to give it support in the report which I am duty bound to make to The Queen. I should add straight away that the fact that I give advice to Her Majesty that Royal assent might not properly be given because I believe they would be a breach of international obligation does not mean that Royal assent would not be given. It may be that the Privy Council would take a different view and that the Secretary of State for Constitutional Affairs would be prepared to put the matter up to Her Majesty and counsel for assent. I say that because it is important that Members do not take the report as being a complete bar. The Attorney General does not have the right, it seems to me, to prevent Members adopting a piece of legislation if Members really are insistent upon adopting it. This is a democracy. I am obviously embarrassed at having to be in the position I am now. But, nonetheless, it is my duty as a lawyer to analyse what is being put forward and then to say whether or not I think it meets the Convention. For the reasons which I have set out in the report, which I hope are clear, I am absolutely clear in my own mind that the proposal of this amendment does not meet the requirements of the Convention and therefore I am duty bound to say so in the report that I give Her Majesty. One of the cases I mentioned was that of *ADT v United Kingdom*. I do not propose to go into all the gory details of it but it was a case which involved an applicant and 4 other men engaging together in acts of oral sex and mutual masturbation which were videoed. The applicant was convicted and the matter went before the European Court of Human Rights. I say straight away that it was not a case involving sodomy but nonetheless the reason that it is of relevance is that it is the occasion when the European Court of Human Rights considered the issue of more than one person being present. The Court made it perfectly plain that in circumstances such as this, the narrow margin of appreciation - a very narrow margin of appreciation - afforded to national authorities in cases of this nature, the absence of any public health considerations and the purely private nature of the behaviour in the present case, the reason submitted for the maintenance in force of legislation criminalizing homosexual acts between men, that is more than one man in this case, in private are not sufficient to justify the legislation and the prosecution. Now, the government had asserted that the applicant's right to respect for his private life could be interfered with in these circumstances because it was necessary for the protection of morals or the rights and freedoms of others. The European Court expressly rejected those contentions. In my report I have made it clear that, at the moment, I cannot see any evidence on health grounds which would justify this interference. I say that for a number of reasons. Partly because the report filed by the Minister for Health and Social indicates that there are no health objections that should be raised, and partly - I have to say - because one would have expected, frankly, that this sort of argument, if it were to be maintained on health grounds, would have been raised in the European Court of Human Rights already. I find it quite astonishing that it has not

been so raised. But to my mind it must be because the health evidence does not exist. Then, of course, there are the additional points which I have set out in the report which are practical points - they are set out at paragraph 11 - which make me think that the health evidence would have to be quite unusual to justify a conclusion that the interference was appropriate. The interference and the right to respect for private and family life. So, I have reached the firm conclusion that because the act of consensual sodomy in private between heterosexuals would remain criminal but homosexuals would not, that is a breach of the anti-discrimination provisions of Article 14 coupled with Article 8 of the Convention. That is one of the effects of the Deputy of St. Ouen's amendment. I also think that the act of consensual vaginal intercourse in private between adults over 16 with more than 2 people present is lawful and the effect of the Deputy's amendment would be that the act of consensual anal intercourse in similar circumstances, i.e. more than 2 people present, would not be lawful. For my part I cannot see how that can be justified in accordance with the convention authorities. So, while I regret to put Members in that position, I have reached the view as a matter of law that I would have to qualify the advice given to Her Majesty in Council.

Deputy of St. Ouen:

Just as a point of clarification, the Attorney General did not answer the issue of why the 1990 law was passed and was recognised as human rights compliant by the UK, and subsequently no issue was raised on 1995. Also he has not commented about the lack of medical evidence is not necessarily the fact that there is not any.

Mr. W.J. Bailhache, Q.C., H.M. Attorney General:

Well, on the latter point, it is not my job to invent evidence or find evidence. The onus of proof is on the State to provide that there is evidence of risks to health and damage to health. It seems to me to be very difficult to do that when the Health Department says there is no such evidence. I, for my part, cannot see how the Island of Jersey could convincingly put up a case that, on health grounds, it was proportionate to interfere with the Convention rights when the Island's own health authorities said that it was unnecessary. As to the changes in 1990 and 1995, I said this morning that the European Convention of Human Rights is a body of living law. Things progress, things move on. The ADT case, which I referred to a moment ago, took place in the year 2000. It is an important decision.

1.5.13 Deputy J.J. Huet:

Just to say that if one does agree with the Deputy of St. Ouen or one does not agree with the Deputy of St. Ouen, we do live in a democratic society and this Chamber gives you the right to speak and I hate to see people letting themselves down by belittling a Member's speech. I do not think that should be done.

1.5.14 The Deputy of St. Ouen:

I am sad by some of the comments that people have made. I am equally sad that the people who have spoken, including our Attorney General, seem to just accept a particular situation rather than consider what I believe is to be serious options. Health issues have changed. It might be that our Health Department is not identifying the problem. It might be that they are choosing to bury their heads in the sand, but the facts are quite clear. People are dying from HIV. They get infected with HIV through intercourse. That is the method. There is no other. People are dying. Now, if you feel, and you want to minimise -

Senator S. Syvret:

The Deputy of St. Ouen is misleading the Assembly. He said as a point of fact: "There is no other way other than sexual intercourse that HIV is transmitted." That is entirely wrong. It can be translated through needle sharing, contaminated blood, there are a whole range of ways of transmitting this disease.

The Deputy of St. Ouen:

I would agree with the Health Minister that there are other ways of transmitting and being affected with HIV. However, there is full proof - full proof - that the major method, the major way, that AIDS is transmitted is through anal sex. The major way the various medical associations and various authorities that are concentrating on this specific aspect of AIDS - and it is an issue which is important. Do we want to see our population be faced with a growing incidence of AIDS and other sexually transmitted diseases? I certainly for one do not. It is not just a case of education because it is not working. Wake up and smell the coffee. Year in, year out, we have an increase in visitors going to Brook and other places. The reason why there is an increase is because of the sexually transmitted diseases. I am not pronouncing judgment on anybody, I am just stating fact. These are facts there, within the local situation, that anyone can access. The Attorney General suggests that he cannot support a particular view. Well, I am sorry, but we are the sovereign body of this Island and, yes, I acknowledge that the Attorney General needs to advise us on legal matters. However, if this Assembly believe sincerely that it is right to take a particular option, I do not believe that we should be felt bound to accept, in effect, a threat by the Attorney General that he feels he cannot support it. I would hope that if this Assembly chose to support my amendment I am clearly convinced that evidence is available to support a proper position with regards to the sexual offences law as amended. I do believe, and as I said before, that UK itself acknowledges there can be differences because Ireland and Scotland have different laws. Isle of Man has retained the right for privacy. Isle of Man has recently introduced it, 2 people only. Why not us? Why do we have to go down this route of: "Okay, let us just open the doors wide and forget about everything else. Let us pretend everything is all right." I for one am not happy with that. I have a conscience. I care about my children, and hopefully my grandchildren, that they will grow up in an Island that recognises their protection. Deputy Southern speaks about the fact that perhaps all women will be all of a sudden prone or coerced into anal sex. Now, he is right. But what is going to happen is we are going to introduce 15, 14, 13-ish young girls into the ability to take part legally in this act. Now, is this what we want? I say no. I put it to the States Members that it is up to them to decide. I do believe that this is an alternative option. It is one that our departments have chosen not to promote. I do not understand why. We have not been given the information. The Attorney General is making various comments, presented to us on one and a half pages of A4, with no supporting evidence and we are just supposed to bow down and say: "Oh yes, Sir, of course we are wrong." I for one believe that this is an option and I ask the States to support my amendment and I ask for the appel.

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

Very well. Members are in their seats. The vote is for or against the amendment to the Deputy of St. Ouen. All Members have cast their votes. call Members to order. I will ask the Greffier to close the voting. The amendments have been rejected; 3 votes cast in favour, 39 votes against and 2 abstained from voting.

| POUR: 3 | CONTRE: 39 | ABSTAIN: 2 |
|-------------------------|-------------------|-----------------------------|
| Connétable of St. Peter | Senator S. Syvret | Deputy J.A.N. Le Fondré (L) |
| Deputy R.C. Duhamel (S) | Senator L. Norman | Deputy I.J. Gorst (C) |

| | | | |
|--------------------|------------------------------|--|--|
| Deputy of St. Ouen | Senator F.H. Walker | | |
| | Senator W. Kinnard | | |
| | Senator T.A. Le Sueur | | |
| | Senator P.F. Routier | | |
| | Senator M.E. Vibert | | |
| | Senator P.F.C. Ozouf | | |
| | Senator T.J. Le Main | | |
| | Senator F.E. Cohen | | |
| | Senator J.L. Perchard | | |
| | Connétable of St. Ouen | | |
| | Connétable of St. Mary | | |
| | Connétable of St. Clement | | |
| | Connétable of St. Helier | | |
| | Connétable of Trinity | | |
| | Connétable of St. Lawrence | | |
| | Connétable of St. John | | |
| | Connétable of St. Brelade | | |
| | Connétable of St. Martin | | |
| | Deputy A. Breckon (S) | | |
| | Deputy J.J. Huet (H) | | |
| | Deputy of St. Martin | | |
| | Deputy C.J. Scott Warren (S) | | |
| | Deputy R.G. Le Hérissier (S) | | |
| | Deputy J.A. Martin (H) | | |
| | Deputy G.P. Southern (H) | | |
| | Deputy S.C. Ferguson (B) | | |
| | Deputy of Grouville | | |

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| | Deputy of St. Peter | | |
| | Deputy J.A. Hilton (H) | | |
| | Deputy G.W.J. de Faye (H) | | |
| | Deputy P.V.F. Le Claire (H) | | |
| | Deputy D.W. Mezbourian (L) | | |
| | Deputy of Trinity | | |
| | Deputy S.S.P.A. Power (B) | | |
| | Deputy S. Pitman (H) | | |
| | Deputy K.C. Lewis (S) | | |
| | Deputy of St. Mary | | |

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

Therefore debate resumes on Articles 12 and 13 as proposed by the Minister. Does any Member wish to speak on either of those Articles as proposed? If not, I put the Articles. The vote is for or against Articles 12 and 13 as proposed and the Greffier will open the voting. All Members wishing to vote have done so. The Greffier will close the voting. The Articles have been adopted: 34 votes were cast in favour, 9 against and 2 Members abstained from voting.

| POUR: 34 | CONTRE: 9 | ABSTAIN: 2 |
|------------------------|-----------------------------|--------------------------|
| Senator S. Syvret | Senator L. Norman | Connétable of St. Martin |
| Senator F.H. Walker | Connétable of St. Peter | Deputy I.J. Gorst (C) |
| Senator W. Kinnard | Deputy R.C. Duhamel (S) | |
| Senator T.A. Le Sueur | Deputy of St. Ouen | |
| Senator P.F. Routier | Deputy of St. Peter | |
| Senator M.E. Vibert | Deputy J.A. Hilton (H) | |
| Senator P.F.C. Ozouf | Deputy P.V.F. Le Claire (H) | |
| Senator T.J. Le Main | Deputy D.W. Mezbourian (L) | |
| Senator F.E. Cohen | Deputy S.S.P.A. Power (B) | |
| Senator J.L. Perchard | | |
| Connétable of St. Ouen | | |

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| Connétable of St. Mary | | | |
| Connétable of St. Clement | | | |
| Connétable of St. Helier | | | |
| Connétable of Trinity | | | |
| Connétable of St. Lawrence | | | |
| Connétable of St. John | | | |
| Connétable of St. Brelade | | | |
| Deputy A. Breckon (S) | | | |
| Deputy J.J. Huet (H) | | | |
| Deputy of St. Martin | | | |
| Deputy P.N. Troy (B) | | | |
| Deputy C.J. Scott Warren (S) | | | |
| Deputy R.G. Le Hérissier (S) | | | |
| Deputy J.A. Martin (H) | | | |
| Deputy G.P. Southern (H) | | | |
| Deputy S.C. Ferguson (B) | | | |
| Deputy P.J.D. Ryan (H) | | | |
| Deputy of Grouville | | | |
| Deputy G.W.J. de Faye (H) | | | |
| Deputy of Trinity | | | |
| Deputy S. Pitman (H) | | | |
| Deputy K.C. Lewis (S) | | | |
| Deputy of St. Mary | | | |

1.6 The Greffier of the States (in the Chair)

You propose, finally, Article 14, Minister.

1.6.1 Senator W. Kinnard:

Yes, Sir, may I propose Article 14 which is very straightforward and also the Schedule to the law.

1.7 The Greffier of the States (in the Chair)

Yes, very well. Article 14 and the Schedule are proposed, and seconded? **[Seconded]** Does any Member wish to speak on Article 14 or the Schedule? Very well, I put the Article and the Schedule. Those Members in favour of adopting kindly show? Any against? The Article and the Schedule are adopted and the law is adopted as amended in second reading. And you propose it in third reading, Minister?

1.7.1 Senator W. Kinnard:

I do so, Sir, and is it my moment to have a few words in third reading or should I wait in case anyone else wishes to speak? If I may, very, very briefly. I just wanted to say, Sir, that the debate today has been long but it has been mostly a good-natured one and I am grateful to Members for that. Also, Sir, I would like to thank Pam Staley the Law Draftsman, for working so hard to bring the abuse of trust provisions to the House in double quick time, and also to the Solicitor General and the Attorney General for their very clear and timely advice, sometimes at extremely short notice. I would also like publicly, Sir, to thank the very many individuals who contacted me with their private history of experiences of discrimination, fear and intimidation, all experienced because of their sexuality. I pay tribute to their bravery in doing so. I believe that today we have embraced this chance to allow those individuals into full membership of our society on equal terms. I think we have used our heads and our hearts wisely today to do good. Thank you, Sir.

The Greffier of the States (in the Chair):

Does anyone wish to speak on the Bill in third reading?

1.7.2 The Deputy of St. Martin:

Of course I am pleased we are going to get through this piece of legislation but I think what we have got to do is to learn from this. Take this as a lesson for the future because really, I think, if we were going to write a report - and I think the Minister of Home Affairs would probably agree with me, to say "we could do better". We are learning, we are in a learning process. We have now got ministerial government, we have now got scrutiny. What we have got to try to do is try to get this understanding, this goodwill, between scrutiny and the ministries because I think we could have done better. Maybe even scrutiny could have, but really a lesson should be learnt from today. There were a number of Members, and I do not want to take anything away from the Minister of Home Affairs, that did vote for the preamble partly because of the intervention by the Chief Minister and also his assurance given. I think that was very good. Unfortunately the Chief Minister did not have the opportunity to expand and explain on how we will implement those assurances. I was one of those who voted against, partly because I had not had those assurances. I said all along that I was always one of those prepared to vote for it provided I had the assurances. So, could I ask the Chief Minister, if he could, just to give us some idea how soon he will address those concerns and will he be producing a timetable? Also, who will address those concerns? I have no pleasure saying this because I have worked with Senator Syvret over a number of years but really I did not think he was really very complimentary today to Brook and ACET. I really must question whether we have every confidence in him being part of that group to try to find a way forward because what I would also ask, is that we get an assurance from the Minister that Brook and ACET will be met with, not just corresponded. That he will meet with them and hear their concerns so they can be addressed. The last thing I ask is that Members be kept updated as far as the progress is concerned. With that I say: "Please give me that assurance and I shall vote for it."

1.7.3 Senator F.H. Walker (Chief Minister):

I think I have already, in effect, given that assurance twice. I will start work immediately with the relevant Ministers. It is impossible at this point because we are dealing with some hugely important issues here. It is impossible at this point to give a timetable until we sit down and study what is involved. All I can do is reassure the House again that this matter will be given the most urgent attention. We accept it as being a hugely important issue. I can do no more at this stage. Can I say, Sir, I have absolutely no qualms whatsoever in working with the Minister for Health and Social Services on this issue. He is an essential part of the team on this and many other issues and he, I know, will work with me, the Home Affairs Minister and Education, Sport and Culture Minister to come forward with the right proposals for the protection of our children. Thought through properly, but come forward with them we will, in an appropriate timescale.

1.7.4 Deputy G.P. Southern:

If I could briefly add to that? Could he, as part of his ongoing research into what we have done today, examine the effects of changing the age on Articles 2 to 6 with the judiciary, the Law Officers and other relevant bodies because I believe we have made ourselves an unenforceable law?

1.7.5 Mr. W.J. Bailhache, Q.C., Attorney General:

It is very unusual for the Attorney General to comment at this stage but this is the second occasion - and I hope the Deputy of St. Ouen is not going to take this as a further criticism but he probably will. This is the second occasion on which a Member, and it was not the Deputy of St. Ouen on the first occasion, has lodged an amendment to a piece of legislation which has caused difficulty. On this occasion I would have felt obliged to qualify the advice to the Privy Council. On the other occasion, on balance, I did not. But it would be very helpful if individual Members who wish to lodge amendments, if they would consult me or my office and put the amendments to us for review because this sort of potentially embarrassing situation might be avoided.

1.7.6 The Deputy of St. Ouen:

Just in brief reply to that, Sir. I did contact the Law Offices and did discuss with them the view and the aims of my amendment. For whatever reason I was not referred to the Attorney General. But I did definitely speak to the Law Officers' Department.

1.7.7 Senator W. Kinnard:

Just to say I propose the law and maintain the law in third reading and thank everybody for their time and their patience and their understanding.

The Greffier of the States (in the Chair):

I put the law into third reading. Those Members in favour of adopting it kindly show? Against? The law is adopted in third reading.

1.7.8 Senator F.H. Walker:

Sir, sorry, I should have said something to this effect on my speech on the third reading but I think it very appropriate and very important that we should recognise the enormous task that the Home Affairs Minister has taken on here. The time she has put into this and the work she has put in in considering the opinions, not only of Members of this House but many other members of the public and the way in which she has talked the Articles and the law through today. I think she deserves the warm congratulations and thanks of the House. **[Approbation].**

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

2.1 Senator S. Syvret:

Before I propose the adjournment I think we need a little discussion about what we are going to do with the remaining business. It seems to be there are 2 options immediately to us; we could come back tomorrow to conclude business on the Order Paper, which some Members have expressed a preference for because I understand there are a number of important meetings arranged for next Tuesday which might be difficult to rearrange were States to come back next Tuesday. I suppose a third alternative is to simply delay everything until the final meeting, before the summer recess. I wonder what Members' views are.

The Greffier of the States (in the Chair):

I think we should seek a steer from the 2 proposers of the 2 items we have outstanding. We have the Aquasplash swimming pool complex, Connétable.

2.2 Connétable of St. Helier:

I am more than happy to take that on the 18th in place of another proposition which is P.62/2006, Provision of Pedestrian Crossings, which is less time critical than the Aquasplash and I would not want to use up 2 slots in the final Assembly. So I would be happy to propose that we take the Aquasplash proposition on 18th July and that the P.62 is deferred until September.

2.3 Senator T.A. Le Sueur (Minister for Treasury and Resources):

I am happy that my proposition should be deferred until 18th July and suggest it be taken as the second order of business after the Island Plan Projet 70 which I know Senator Norman would like to have as the first item. So if that could be the second item I would be happy.

The Greffier of the States (in the Chair):

Well, if Members are content that those 2 items are deferred we can therefore move to the arrangement of public business at future meetings and I call on the Chairman of the Privileges and Procedures Committee.

2.4 Connétable D.F. Gray of St. Clement:

I would like to propose the arrangements of public business outlined on your pink sheets with the addition of P.59 which we have just agreed, this is for 18th July, and also P.62 which is the draft Jersey College for Girls Removal of Covenants. They are to be included on 18th July together with P.89 which is the Waterfront Enterprise Board appointment of chairman and directors. That is also on 18th July. On 12th September we will now have P.60, the Provision of Pedestrian Crossings together with P.88 the draft Road Traffic Amendment, and P.90 the Draft Legal Deposit (Jersey) Law. With that I propose the arrangement for business.

The Greffier of the States (in the Chair):

Are there any proposed comments or amendments?

2.5 Deputy G.P. Southern:

I have been speaking to the Minister for Treasury and Resources today and I learnt, only today, that the Corporate Services Scrutiny Panel was not going to attempt to analyse and investigate 20 means 20, with the result that it means that I wish to bring an amendment to P.58. I have asked the

Minister for Treasury and Resources how time critical this measure is and whether it could possibly go back to September to give any amendment that I bring time for proper consideration.

The Greffier of the States (in the Chair):

It is a matter for the Minister. Are you willing to concede on this, Minister, or not?

Senator T. A. Le Sueur:

No, I am afraid I am not. Just looking at the agenda for 12th September and Members have omitted to observe that the Business Plan is still not on that list. The date of 12th September will rapidly escalate to 12th, 13th, 14th, 15th and thereafter. It is important that we debate this at an early stage. It has been lodged since 19th May and I am not prepared to move the date. We have moved it once already, I am not prepared to move it a second time.

The Greffier of the States (in the Chair):

Deputy Southern, do you wish to formally propose that it be deferred? You are effectively out of time for amendments so it is a matter for you.

2.7 Deputy G.P. Southern:

Yes, Sir, for the sake of argument. Yes, I wish to propose that it is deferred because I think my amendments will result in far better debate for the way forward.

2.8 Senator T. A. Le Sueur:

If I merely say in reply to that proposition, Sir, that of course having agreed this in principle the proposition will still come back in the budget debate, in the Finance law, and it may well be the Deputy will have a chance to bring his amendment at that time.

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

The appel has been asked for. The proposition of Deputy Southern is that P.58 be deferred from 18th July, I assume to 12th September, Deputy. The Greffier has opened the voting. All Members have cast their votes. The Greffier will close the voting. The proposition has been rejected; 20 votes were cast in favour, 26 votes against. Accordingly that matter will be listed for the next meeting.

| POUR: 20 | CONTRE: 26 | ABSTAIN: 0 |
|---------------------------|-----------------------|-------------------|
| Senator S. Syvret | Senator L. Norman | |
| Senator B.E. Shenton | Senator F.H. Walker | |
| Connétable of St. Clement | Senator W. Kinnard | |
| Connétable of St. Helier | Senator T.A. Le Sueur | |
| Connétable of St. Brelade | Senator P.F. Routier | |
| Connétable of St. Martin | Senator M.E. Vibert | |
| Deputy R.C. Duhamel (S) | Senator P.F.C. Ozouf | |

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| Deputy A. Breckon (S) | Senator F.E. Cohen | | |
| Deputy of St. Martin | Senator J.L. Perchard | | |
| Deputy P.N. Troy (B) | Connétable of St. Ouen | | |
| Deputy C.J. Scott Warren (S) | Connétable of St. Mary | | |
| Deputy J.A. Martin (H) | Connétable of St. Peter | | |
| Deputy G.P. Southern (H) | Connétable of Trinity | | |
| Deputy of St. Ouen | Connétable of St. Lawrence | | |
| Deputy P.J.D. Ryan (H) | Connétable of St. John | | |
| Deputy J.A. Hilton (H) | Deputy J.J. Huet (H) | | |
| Deputy P.V.F. Le Claire (H) | Deputy R.G. Le Hérisier (S) | | |
| Deputy S.S.P.A. Power (B) | Deputy J.B. Fox (H) | | |
| Deputy S. Pitman (H) | Deputy S.C. Ferguson (B) | | |
| Deputy K.C. Lewis (S) | Deputy of St. Peter | | |
| | Deputy G.W.J. de Faye (H) | | |
| | Deputy J.A.N. Le Fondré (L) | | |
| | Deputy D.W. Mezbourian (L) | | |
| | Deputy of Trinity | | |
| | Deputy I.J. Gorst (C) | | |
| | Deputy of St. Mary | | |

Senator P.F.C. Ozouf:

Sir, I understand the Chairman of PPC has indicated that there are 3 days debate. Is it possible to fix the fact that we should sit on the Tuesday, Wednesday and any continuation on Thursday. At this time of year I am aware Members organise their holiday plans and it would be appropriate - I am aware that some Members will have made arrangements - I think to finish the business during the course of that week if that is possible to confirm that at this stage.

The Greffier of the States (in the Chair):

I can say from the Chair, if it assists Members, Senator, that is effectively the arrangement already agreed by the States for the dates. Very well, if there is no further business the list is agreed.

ADJOURNMENT

The Greffier of the States (in the Chair):

The meeting is closed and the States will reconvene on 18th July.