

# STATES OF JERSEY

## OFFICIAL REPORT

**TUESDAY, 24th NOVEMBER 2020**

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[9:35]

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

**COMMUNICATIONS BY THE PRESIDING OFFICER**

**The Bailiff:**

**1.1 Welcome to His Excellency the Lieutenant Governor**

I am sure Members will wish to join me in welcoming His Excellency the Lieutenant Governor to the Chamber this morning. [Approbation]

**PUBLIC BUSINESS**

**The Bailiff:**

We come on now to Public Business. I would remind Members that we adhere to the time limits for speeches, which the Assembly approved on 7th October and the Greffier will ring a bell when any Member has been speaking for 14 minutes and then again to signal that the time is up.

**2. Reduction of lodging period.**

**The Bailiff:**

There is one item to which a decision needs to be made about whether to reduce the minimum lodging period. This is the item lodged by the Minister for the Environment, that is the COVID-19 (Regulation of Care - Standards and Requirements) (Jersey) Regulations P.160. Minister, do you wish to make a proposition under Standing Order 26(7), the lodging period would be reduced to allow this matter to be debated at this sitting?

**2.1 Deputy J.H. Young of St. Brelade (The Minister for the Environment):**

Yes, please, I make that proposal. Do you wish me to do it now or do you wish me to wait until the appropriate time?

**The Bailiff:**

It is a matter for you but it may be useful that Members know what business they are dealing with, so let us deal with it now.

**Deputy J.H. Young:**

Obviously I have recently taken on responsibility for this particular Regulation of care because it is absolutely essential we have the separation between the provision of care and the Regulation of it. Of course, I have been given information very, very recently that whereas we previously had in place temporary legislation covering this, which was allowed to lapse. However, the current prevalence of the infection in the Island and, most particularly, our testing programme whereby we are increasing and where we are screening all staff routinely, we do have to prepare for a situation where we may find the staffing standards are affected by the number of tests and, therefore, a number of staff having to isolate. I think this is a matter that since we are having a special sitting on COVID today I ask that Members approve of dealing with it today because I do not think we should be losing time. I have tried to provide the information to Members as best I can in preparation for this. But I do not know if Members want me to say any more but I propose that we waive the lodging period on this item to allow us to discuss it today.

**The Bailiff:**

Thank you, Minister. Is the proposition seconded? [**Seconded**] Does any Member wish to speak on the Proposition? If no Member wishes to speak, then I close the debate and ask for a voting link to be placed in the chat. The link is in the chat, I open the voting and I ask Members to vote in the normal way. If Members have had the opportunity of casting their votes, I ask the Greffier to close the voting.

<b>POUR: 42</b>		<b>CONTRE: 1</b>		<b>ABSTAIN:</b>
Senator L.J. Farnham		Senator I.J. Gorst		
Senator S.C. Ferguson				
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy J.H. Perchard (S)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

The Proposition has been adopted.

[9:45]

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

Senator Gorst voted contre.

### **3. Draft COVID-19 (Gatherings) (Jersey) Regulations 202- (P.157/2020)**

#### **The Bailiff:**

We now move on to Public Business properly, so call the Draft COVID-19 (Gatherings) (Jersey) Regulations P.157 lodged by the Minister for Health and Social Services. The main respondent for the purpose of this debate is the Chair of the Health and Social Security Scrutiny Panel and I ask the Greffier to read the citation.

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

Draft COVID-19 (Gatherings) (Jersey) Regulations 202-. The States make these Regulations under Article 2 of the COVID-19 (Enabling Provisions) (Jersey) Law 2020.

#### **3.1 Deputy R.J. Renouf of St. Ouen (The Minister for Health and Social Services):**

May I first of all thank the Assembly for agreeing to take these 3 items of business on today's agenda with a reduced lodging period? In respect of the COVID-19 (Gatherings) (Jersey) Regulations, these are intended to establish a framework by which the gathering of people can be controlled with the intention of limiting the spread of transmission of COVID-19. It is an enabling piece of legislation which allows Orders to be made, which can specify the number of people who can gather together in specific circumstances. Members will be aware that since the onset of the pandemic there have been attempts to limit the speed at which COVID-19 is transmitted by efforts to keep people from sharing space in close proximity with each other. Initially this was by means of a lockdown, which was the only tool Government had to manage the situation at that time. This was then followed by the Safe Distancing Regulations that required people to keep their distance from each other when outside of their homes and workplaces. Since those measures have been suspended throughout the summer, guidance has been in place which recommends that people do not gather in large groups. This guidance has been followed by organisers of events who have cancelled their plans or made provision for them to be carried out safely. However, we have seen a deterioration in the situation in recent weeks, insofar as concerns of the spread of infection, and we anticipate that winter will be a potentially dangerous time for transmission of the virus. As a result, the Council of Ministers feel that the time has come to bring guidance into legislation. Members perhaps will not be surprised if I said that these measures are brought forward with some reluctance. We are aware that this and other legislation, which has been required during the pandemic, does not sit well within a framework of civil liberties that are usually afforded to citizens in a democratic state. But I would remind Members that like other Regulations, these Regulations, if approved, will come to an end on 30th April next year or even an earlier date, if that was deemed appropriate. But looking at the situation both domestically and internationally, we need to recognise that the Island is entering a dangerous time. If we do not have measures such as these and Government does not have the tools necessary to manage the pandemic, by affecting the behaviour of citizens in a more direct way than guidance can allow, then there is a risk that the situation will deteriorate to a point that a lockdown becomes inevitable. We have attempted in these Regulations to try and balance public safety and personal liberty. While the function of the Regulations is to allow the Government to prohibit public gatherings, they are constructed in such a way to ensure there are safeguards both on the application of the restrictions and on their enforcement. Broadly speaking, the intention is to allow guidance presently issued by the Medical Officer of Health to be brought into legislation. The current guidance provides for 3 sorts of gatherings. The first is a gathering with which the Government will not interfere and the minimum size of this gathering is 10 people and that is hardwired into the proposed Regulations. Secondly, there is a category of gathering with which enforcement officers can interfere if it is being conducted in a manner that is likely to increase the transmission of COVID. Lastly,

there are gatherings of such significant size that no realistic action to be taken to make them safe in respect of transmission of the virus. It being the current intention to apply the current guidance, it would mean that gatherings of fewer than 10 people would not be interfered with under any circumstances. Gatherings of between 10 and 20 people would be interfered with if they had characteristics that might present an increased risk of viral transmission. Gatherings indoors of more than 20 people would be prohibited entirely, unless exempted. The characteristics with which the guidance is currently most concerned are whether or not the gathering is taking place indoors, whether alcohol is being consumed, where singing or shouting is taking place and whether or not participants are engaged in physical exertion which requires them to breathe heavily. The concern about consuming alcohol stems from the potential for unsafe behaviour to occur, although Members should note that gatherings where alcohol is present are not absolutely prohibited. They are simply required to be of a smaller size and guidance will be issued to enforcement officers in respect of how they should exercise their duties when they encounter a gathering with any of these characteristics. The other characteristics of being inside or where shouting or heavy breathing is present, all address the issue of a viral transmission directly. Gatherings inside buildings of 10 or more is of greater concern, as the ventilation is likely to be more constrained than if the gathering was outside. Singing and shouting or physical exertion are of concern because the virus is primarily spread by respiratory droplets which are produced in greater numbers and travel a greater distance when an individual is loudly vocalising or breathing heavily. There is also the capacity in the Regulation to add additional characteristics of concern. As this is a matter which is grounded in medical evidence, the Medical Officer of Health and Minister, we are required to be of one mind when making an Order that would add additional characteristics. The Regulations cannot serve to control behaviour of children under 12. This age is a minimum limit and Orders can provide for an older age if required. However, the current advice and an assessment of the legislation in place in other jurisdictions indicates that the age of 12 is an acceptable cut-off point. The Regulations also allow Orders to apply to those locations in which they are required and this can include private dwellings. Members will recall that Government did not attempt to apply the Safe Distancing Regulations to people's homes but this was felt to be a significantly different and more onerous type of restriction and its application to homes was deemed overreaching and extremely difficult to enforce. However, the suggestion that people should limit house parties to a certain size does not appear to me and Government to be overly intrusive, given the current circumstances. While enforcement of any activity in a private home is always challenging, enforcing group sizes is very different to attempting to enforce distancing of individuals within a dwelling. The terms that might be placed that I proposed are placed in a first Order that might be made under this set of Regulations, if approved. First of all, the Order would apply to all types of public events and gatherings. They would be musical events, sporting events, public meetings, et cetera. I acknowledge that there is an issue that we do need to resolve insofar as concerns of Parish Assemblies or public elections and the Constables have voiced their concern in a comments paper. We have been in touch with some Constables but also with the Secretary to the Comité des Connétables and we are actively considering ways to ensure that our democratic requirements can still be observed. It is possible that, for example, for an election process there may need to be different rules in place; that will be resolved and we are working on that. The gatherings control Order would also apply to private events and gatherings and, as I have said a few minutes ago, that would include parties and other events in private properties; birthday parties, social gatherings, et cetera, no more than 10 in any private dwelling. There is some confusion in some areas about whether gatherings within workplaces would be limited by these numerical limits. This would only happen where the public or a section of the public is invited to attend, for example, open art exhibitions or entertainment events within leisure facilities. Within a workplace, such as an office environment, which is controlled to which in general members of the public have no access and where it is possible for the occupiers of that office or workplace to ensure social distancing and to control the movement of people within it, there would be no need to limit numbers attending. Then I would also propose to limit numbers who might attend spontaneous gatherings of people, for

example, a group of people sitting together where the maximum number of people is exceeded and this is where the characteristics of the gathering will determine the maximum number of people who can congregate. For instance, if those people are sat together to socialise, the risk is low and up to 20 could be present but if they are consuming alcohol, for example, or shouting loudly, the risk might be deemed to be increased and they could be required to reduce their numbers to no more than 10 or indeed to disperse and not return within a certain time. The intention is that any Order that is made would give effect to the current guidance, which Members and members of the public are getting used to, as far as legally possible. That guidance, for the avoidance of doubt, specifies no more than 10 people; that is adults and children inside private homes, unless they are part of a single household of 10 or more. When an indoor gathering is managed in a controlled manner and there is a risk assessment in place, a maximum of 20 people may be in attendance and this might include a catered party, an organised sports event, public events and community and group activities conducted inside a building. Informal outdoor gatherings at present under guidance are limited to a maximum of 20 people, unless the risk factors are present, in which case the limit is 10. Funeral services may take place at the moment with up to a maximum of 40 people, even where they take place indoors. Though I do have to say I am hearing reports of gathering together unsuitably after funerals, and that matter is under review. Finally, outdoor controlled gatherings and events with a risk assessment in place, a maximum of 40 people may be in attendance, so that might include a sports event or community event or similar conducted outside. I hope that is sufficient to assist Members with this debate. It is an unusual Regulation in that it does limit people's movements.

[10:00]

It is not something we would wish to do but it is something necessary, we believe, for the prevention of the spread of infection on the Island and is a necessary public health measure. Members will be aware that far stricter regimes have been introduced in the U.K. (United Kingdom). We want to avoid going to that level and certainly want to avoid a lockdown if we can. So much will depend on members of the public accepting really these limitations if they are passed by the Assembly today. I make the Proposition and look forward to the debate.

**The Bailiff:**

Are the principles seconded? [**Seconded**] I open the debate on the principles.

**3.1.1 Deputy M. Tadier of St. Brelade:**

I take the risk by going early but I suppose that means I do not have to speak later or will not be allowed indeed but I will be listening carefully to all of the debate. This has clearly been an emotive issue and one over which we have been contacted, not even just recently but for a long time. It is understandable that that should be the case. I do have some sympathy for the public confusion in this area and this is not a criticism of the Minister for Health and Social Services or the health officials because I know that it has been a moving feast and that the science, if it does not change categorically, the latest advice as to what to do based on the science and other societal factors, economic, et cetera, can change also as we learn more about the pandemic and about behavioural practices which might be different in different places; just to put that in as an early caveat I think that is important. Clearly, the public have gone from a point at which when many people were asking in the Assembly about masks very early on saying: "Why are we not introducing masks?" The advice was: "The medical advice is we do not think masks make much of a difference", to the point now where we are saying we encourage people to wear masks but we do not want to enforce it. Now to the point where we are saying masks will be compulsory, effectively, in many circumstances. That is a massive shift in policy in the space of just a few months and so it is understandable that the public will be concerned. I am also concerned about the potential for perception, rather than scientific facts. A lot of people I have spoken to are quite relaxed and even want masks to be made mandatory. But it is not necessarily because they think or understand necessarily the science. I think there is a perception of the need for

clarity. Remember people are being bombarded with a high volume of news and information about COVID, both locally and nationally and it is what you get every time you switch on the news. I am not underplaying the risks of COVID but I do not think that there is any risk that they can be underplayed, if you like, because we are having so much information all the time. I think the only risk is that people are getting paranoid about the risk of infection, thinking that there is some kind of apocalypse happening, I do not think that is the case. I think some people want clarity on masks because they do not like going to the supermarket, for example, and I will use the supermarket as perhaps the one example that is most tangible, although it is not the only place that will be covered. People do not like going to the supermarket and seeing other people who are not wearing masks. I will use that as a practical example about what might happen, and of course this is not about whether people like wearing masks but I think we all agree here that this is a very serious imposition that we are putting on people's civil liberties, to say that they must wear a mask in certain situations. Let us say, for example, what used to happen is we would go to our supermarket, our favourite supermarket, and it was a very strict process; there were queues in place, you had to space yourself out, you had someone at the door making sure that you sanitised. That has all gone out the window now. It seems that shops are pretty much a free-for-all, I am talking about supermarkets in particular; there is not the same requirement for social distancing and I do not know why that has happened. I think it also coincides with the fact that the Government are trying to close the stable door after the horse has bolted. I think the one big mistake that this Government has made, and it is the only blemish really because everything else has been great, including the tracing programme and the fast turnaround of tests, is that they left the period of time where the requirement for people to isolate when they came into the Island until their first test result; that was not enforced, that was not a requirement. I think that is the window in which the pandemic has got a foothold in Jersey when it did not need to. I think that there is an element, these are just my thoughts, that the Government is now backtracking and thinking: "What can we do?" Cases are getting rampant, we need to be seen to do something; masks are, therefore, the answer. What happens when you go into a supermarket? I will put on a mask when I go into a supermarket because I primarily ...

**The Bailiff:**

Deputy, could I just ask, this debate is not about mask-wearing? The debate about mask-wearing comes under the next legislative piece and I am not sure that masks, which has occupied a fair amount of your speech, is relevant to this debate. If it is then please do continue but I just wanted to mention that.

**Deputy M. Tadier:**

Yes, thank you, Sir. Sorry, can you just clarify then, I had misunderstood that and I am grateful you intervened? Can you just clarify what the points are I should be talking about on this? I might have missed it.

**The Bailiff:**

This is the Draft COVID-19 (Gatherings) Regulations, which enables the Minister to put various restrictions on gatherings of certain numbers of people. The following piece of legislation is the Draft COVID-19 (Workplace Restrictions), which will include restrictions relating to the wearing of masks and offences, potentially, for not wearing masks in appropriate circumstances. I wondered if your speech dealing, as it does, with masks is really addressed to this piece of legislation but rather to the next.

**Deputy M. Tadier:**

Yes, you are right, Sir. I do appreciate that intervention and you are right, and thank you. I will talk now to that part because it was on my notes anyway and I will speak to masks later. Thanks for the intervention and your forbearance. I do have concerns about the numbers in that case. I cannot figure



out what all this shouting is about. I was bemused listening to some of the speech and what is going to be in the Regulations. I can understand singing, yes, people normally get together perhaps for a group and there will be a group of singers to sing. But I have never heard of communal shouting going on. Is this something that happens in deepest, darkest St. Ouen where the Deputy and the Constable and the people from the different Cueillettes get together and the Gris Ventres have a good shout on a Friday night as loud as they can? I also heard loud shouting, which, at best, it has to be tautological and I do not know if you can do quiet shouting. I am not sure why that needs to be covered. I would have thought there would be a general issue around shouting anyway in terms of disturbance of the peace. But what about loud talking, I guess? My old singing teacher used to say the difference between singing and shouting is that you cannot shout in tune, so that is an issue. I know the Dean is going to speak and I think from the comments I have heard in the media, I do have sympathy for what he is likely to say and what he has said. I am a bit confused about the numbers issue. If I was being tongue in cheek I would say that at least it will not affect the Parish Assemblies because the numbers are limited to 20, which is perfectly plenty for your average Parish Assembly but it does pose a problem for democracy if there are to be more controversial items that need to be discussed. That is an issue for the Parishes to grapple with, I think, and it is something that they need to decide about anyway, even outside of COVID about how they engage in the wider populace, especially in the bigger Parishes. I also find it strange that funerals are allowed 40 but other celebrations, which might be equally important and maybe more positive, if you like fun events, are restricted. I understand why they might be restricted but I do not understand why you would allow more people to attend a funeral. I do not want to make any sweeping generalisations but generally at a funeral it will attract an older demographic by its nature. Clearly, I think that is fairly obvious, it will not be exclusively older people who go to a funeral but older people are also the ones who are most vulnerable. Why would we allow a congregation of mostly older people to gather for funerals when they are perhaps the most likely to suffer from the consequences of COVID? I am also concerned about people not being able to see their loved ones at the end of life before they die. I think it is much more important that members of the family and not just one or 2 can go in and spend the last moments of their dying relatives' lives with them, rather than saying: "Do not worry, you can have 40 if you are going to a funeral". I think that is about the individual risk versus what the States is imposing upon people. I think in normal times a lot of what the Minister has read out there would be very alarming, saying: "We are going to restrict who can meet, what they can do", whether you can sing, between meetings of between 10 and 20 seem to give a lot of leeway for the authorities to intervene and break you up saying if there is a likelihood for the spread of COVID. But of course the people enforcing that law are not necessarily going to be medical experts, they are probably likely in some cases to be police, *et cetera* and they will not necessarily be the ones being able to make medical judgment calls; it would be to do with other issues potentially. There is a lot in here that worries me. What really does worry me is that this could have been done much earlier in the sense that we could have put enabling powers in for the Minister to come back to the Assembly then and tell us exactly what he is doing. There is so much in these Regulations and the ones about masks that do not tell us what is going to come into force. There is a must in there but there is a lot of may about what the Minister may do, he may do this, he may be able to introduce the directions for the type of mask but I do not want to talk about masks again. But even on the question in hand, there is a lot of leeway, a lot of unknowns and I think today in the Assembly we are being asked to pass some very serious laws which we do not know the actual detail about. I have got serious concerns about those. I am going to listen very carefully to the Minister and what the Dean has to say before I can commit to voting for these quite far-reaching legislations.

### **3.1.2 The Very Reverend M.R. Keirle, B.A., Dean of Jersey:**

I would like to begin my speech really by publicly thanking the Minister for Health and Social Services and his team of medical health and States officers and the S.T.A.C. (Scientific and Technical Advisory Cell) for the work that they have been doing to keep us safe and to steer us in the right

direction since the beginning of the COVID-19 outbreak. I agree with Deputy Tadier, that they have done a good job and I recognise that this is by and large a really thankless task. It is also extremely challenging to balance the risks to public health against the need to stimulate the economy and to respect people's freedoms. I get that, I really do. It is really important that we provide the tools to get that balance right. On page 3 of P.157 it states: "With more selective legislation available, Government would be in a better position to introduce less restrictive measures early, rather than blunter and wider restrictions when things have deteriorated." I applaud that and heartily agree. However, I think the restrictions that were announced and came into effect last Friday whereby community gatherings are reduced down to a maximum of 20 people is a blunt instrument. It has led to certain sections of the community and especially, as I sit here representing them, the faith communities around the Island being further constrained and hindered. We have been told by the Minister this morning that this Proposition is grounded in medical evidence but I would suggest it is not with clear medical evidence to back up those restrictions, while at the same time allowing other sectors in the business, retail and hospitality communities to proceed without restraint or with less restraints. In preparation for a radio interview that I gave on Sunday I decided to go to a restaurant for lunch on Saturday. I found myself in the ludicrous position where in a building a quarter the size of my own church 82 people gathered and were served meals. Tracking and tracing was optional. I counted 4 people wearing masks, they were the waiters and only 25 per cent of people bothered to sanitise their hands when they came in and there was little or no sign of physical distancing. The very next day I presided at a service in my own church in a large and well-ventilated building with everyone wearing masks because we insist on it, including myself when I am not speaking, where everyone was physically distanced by at least one metre on separate chairs and where everyone had to sanitise their hands on the way in and on the way out and they exited through a separate door in a carefully controlled one-way system.

[10:15]

But the Government restrictions meant that only 20 people were allowed to gather, whereas a restaurant or café can have any number of people coming through their door 7 days a week because the restrictions declare each group of people entering a restaurant as a separate gathering. I have to say the irrationality of that is completely beyond me, unless I am missing something, unless I am missing some key medical evidence in which this is grounded. I think the question to ask is: could a restaurant open with only 20 people attending in one evening or one lunchtime? Yes, of course it could. But would that restaurant thrive or even survive? No, it would not. That is why the Government has not included restaurants and pubs and shops in its 20-person gathering limit. The Government rightly balances the needs of the economy, the needs for tax revenue against the risks of allowing businesses to have more than 20 people in their premises at one time. But in my view the Government has failed to find a similar balance when assessing the needs of thousands of Islanders to attend worship, and I am not just talking about Christian worshippers here. I have been speaking to other faith groups too. Once you embark on a political decision which affects people's rights, and this is a political decision, you have to be able to justify the interventions and I do not believe that the restrictions do this or the legislation that needs to enforce them. It has been argued by the medical officers that social gatherings, such as places of worship, represent a particular risk, as those who know each other are more likely to breach the restrictions on physical distancing and will mingle. I would like to see the medical evidence for this. In fact I would go as far to say the exact opposite is true, at least in the evidence that I could provide for my own faith community. It is because we know each other that we are careful, that we protect the most vulnerable who gather in this way because for some people it is their one outing out of their house in a week that is otherwise fairly bleak and lonely. It has also been said that the reason this applies to faith communities is that they are filled with old people who are the most vulnerable. I am really sorry but that is simply profiling. Of course our faith communities contain older people, they also contain younger people, like myself and families and children and middle-aged people. But I think what this goes to illustrate

is that decisions are being made without looking at the communities where those decisions will apply; it lacks nuance. The Minister himself in response to my question in the States last week said: “We should not make exceptions because otherwise we would have to allow sports clubs and other groups to be an exception too.” I have to say, with the greatest of respect, going to the local tennis club is not enshrined in Article 9 of the European Convention on Human Rights, although I do recognise that Article 9 does allow for restrictions on those freedoms where public safety is concerned. But even regardless of that, faith communities are not asking for exceptions. What we are asking for is consistency of policy that takes into account more than just the economy and the need for business, retail and hospitality to survive. That balance needs to include in its equation the mental well-being of others, the spiritual well-being of others, the duty placed upon the Government and its Ministers to be proportionate and consistent and not to make assumptions about what a particular community does and how it operates and who attends. To draw on Deputy Tadier’s example, while I applaud the policy to allow up to 40 people to attend funerals on compassionate grounds, what is it that makes a funeral safer than a wedding, where only 20 people are allowed to attend? Are they twice as safe as weddings? Why is it that 40 people can gather in my church on a funeral on a Saturday but only 20 people can gather in the same building with me standing at the front on a Sunday? Is this a compassionate decision? Is it a decision based and granted on medical evidence, as we have been told? Is it because pressure is being applied? Is it a political decision? We do not know. One of the reasons we do not know is that we have not been consulted. We are simply asking for consistency. The Minister has said from Regulation 2(6): “The Minister has power by Order to specify the locations to which gathering controls may or may not be applied.” The major risks are listed as: “The gathering in the building where there may be an issue of ventilation or crowding if singing or shouting is taking place”, as we have heard: “If participants are engaging in physical exertion to the extent that they are breathing heavily.” I do not think I do that often on a Sunday or: “If alcohol is being consumed, as this affects decision-making.” I would argue that none of those criteria apply to faith communities, with the possible exception of being in a building but by and large we have large, well-ventilated and not crowded buildings. In the interests of balance and consistency across sectors and proportionality, the logical and simple solution is to specify that faith community groups do not fall within the locations to which the gathering controls might apply and that there is a consistent figure for attendance across all services and events that might take place. The Connétables are clearly seeking dispensation to allow the meeting of Parish Assemblies and it seems to me that making an exemption there would also be a neat solution to apply to faith communities. We simply ask that the Minister extends this to faith community places of worship, where I would add in my last sentence that there has not been a single cluster of COVID-19 resulting from attending a faith community gathering.

### **3.1.3 Deputy L.B.E. Ash of St. Clement:**

I must say it is an absolute pleasure to follow the speech from the Dean and also does the States Assembly a great service in cutting my speech down considerably. I would like to say that I find the idea exceptionally strange that less people are allowed in churches wearing masks than in a pub or a restaurant where they are not wearing masks. It could actually lead to the absurd situation that if a church was to apply for a restaurant or pub licence, it could admit more people and that is a ridiculous thought, is it not? It is where the law is an ass, as they can sometimes say in your profession. The answer given when I asked the Minister for Health and Social Services, and he was very reasonable and he was very kind with his time, but he said it is difficult, as the Dean said, to make exceptions. But, as he also said, we are looking at making exceptions for Parish Assemblies. If we can make an exception for Parish Assemblies, surely we can make exceptions for people who wish to go to a church on a Sunday. I would urge the Minister to reconsider this.

### **The Bailiff:**

Have you finished your speech, Deputy? You went quiet but you had faded just before then, in any event.

**Deputy L.B.E. Ash:**

It is probably just as well, Sir. Yes, I have finished.

**3.1.4 Senator S.C. Ferguson:**

Yes, good. The need to sort of have this rushed reinstatement of Regulations does rather include a lack of forward planning in that we have an emergency planning in a hurry when a worldwide situation has indicated otherwise, that is one thing. I agree wholeheartedly with the Dean and also with Deputy Ash because it is quite ridiculous to sort of say that we have to make an exception for the faith communities and subject them to stricter Regulations than a pub. Perhaps, to be somewhat cynical, if the churches had a communion service every week, then perhaps that could enable it to be re-rated as a pub, I do not know. The other thing is that it is a discrimination against the old again. As the Dean said, a lot of them only get out once a week. It is an actual act against the anti-discrimination law that is being imposed. I think if everybody gets together and sues the Government it could be quite interesting.

**3.1.5 Connétable C.H. Taylor of St. John:**

I would like, firstly, to thank the Minister for bringing this forward and also to thank the hard work of all the officers involved. However, my position is that this is restricting certain elements of society too much. Nothing has been mentioned about buses. Will buses be restricted to 20 or 19 passengers plus the driver? I suspect that should be looked at and I have not heard anything on it. I know the issue of Parish Assemblies has been brought up and I would request the Minister to make a rapid decision because I have a Parish Assembly tomorrow evening and I must know before then or some time before then, so that action can be taken to facilitate the meeting. I am delighted to have heard the Dean and what he has said, and I have always found it difficult to understand why church and faith organisations should be restricted so harshly. With Christmas coming up one of the most important events in the church, in particular the Christian community, are the Christmas services and if they are to be restricted it means that a significant part of Christmas will not be enjoyed by many people. I think it is important that we allow people to enjoy Christmas as much as possible. I would ask the Minister to examine the Christmas period, the 2 or 3 days over Christmas, as to how we can have as normal a Christmas as possible. Finally, when the Taylor family gathers for Christmas we can be 30 to 35 members in the family; with COVID restrictions not all the family will be able to come over from the U.K., so this year we will be less but it does illustrate that a simple family gathering in the Taylor clan can far exceed legal requirements. I am very privileged to be a Taylor and a member of that gang but I just use it is an illustrative example that families do gather at Christmas, and it is important that families can gather at Christmas, and that if it has to be restricted to 10 it could be invasive. It is with reluctance that I support this proposition but I have severe reservations, and I would like to hear from the Minister about buses, about Parish Assemblies and about church and faith gatherings over the Christmas period.

**3.1.6 Deputy K.F. Morel of St. Lawrence:**

One of the problems I think this Government - to be honest, it is probably every Government around the word - has faced in dealing with COVID-19 is the contradictions in the restrictions that they bring in. If I think back to when we were discussing the safer travel policy, one of the issues we had then was that we were being told that we must not gather, we must not meet up in groups but at the same time the Government is saying it is okay to sit on a plane with 150 other people cheek by jowl for 45 minutes, having mixed in the airport beforehand.

[10:30]

The logic just does not hold up. Unfortunately, the Government has found itself in a similar place today with these gathering restrictions but the logic does not hold up because, as we heard so eloquently from the Dean and from others, you can gather in a restaurant, have a drink, have a bite to eat, talk for hours, not a problem, but go to church and other places of worship where you are almost certainly going to act in a very measured and restrained manner, as is usually the case in places of worship, you are not allowed to do so. It becomes very difficult to be able to support Regulations, which are likely to lead to Orders which entrench such contradictions. I also find it interesting that as far as the public are concerned, and I know all States Members will have received these, we have received dozens of emails, some of them incredibly vociferous in the anger and antipathy towards the wearing of masks. Personally, I have received very few emails with regard to these gathering Regulations and yet from my perspective it is these gathering Regulations which creates a much more difficult question for me, gives rise to a much more difficult question in my head than the mask Regulations. The gathering Regulations reach inside people's homes and that is something that again I feel quite strongly that the Government should not do, if at all possible. I do fear that a consequence of these Regulations is likely to be the possibility that you will have neighbours spying on neighbours. Again, that is somewhere Jersey has been in the past and it is somewhere we never want to go again. In fact, it is these changes in behaviour when we come to P.158 and the masks Regulations, you will see that is mentioned in the comments paper by the Economic and International Affairs Scrutiny Panel because these Regulations are likely to bring forward changes in behaviour of Islanders, and not in a good way in some cases, and this possibility of neighbour spying on neighbour is one of those negative changes of behaviour. I have been approached by faith groups in my Parish and leaders of faith groups in my Parish who have raised the question of these gathering Regulations and places of worship. Again, they cannot see or cannot understand the lack of logic behind the Regulations. We have also seen the Comité des Connétables and they have raised similar questions, which I know the Minister has said he will look to create an exemption. But one of the problems we have with such enabling Regulations is that we do not know the Orders that will come about as a result of these enabling Regulations. So I am finding it very hard to bring myself to support Regulations that (1) reach inside people's homes, (2) have the possibility therefore of having neighbours spying on neighbours and (3) have that lack of logic about them whereby you can eat in a restaurant but you cannot go to church or mosque or synagogue. I think it is really important with regard to places of worship, I know, and I am sure almost every States Member here knows, people for whom that trip to church or that trip to synagogue, that trip to the mosque is such an important part of their weekly life. It is incredibly important for their welfare. I know older people who really, that is the one time of the week that they get out of their house and to be denying them that at this time I think is very dangerous. I think we are only just seeing the fallout, the beginning of the fallout from the welfare and well-being issues that the lockdown brings and these gathering restrictions lead us to a similar place again. I am very worried that people will be denied that opportunity to go out and commune with others in possibly the only way they do every week. I will certainly listen to the debate but at the moment I am finding it very hard to bring myself to support these Regulations.

### **3.1.7 Deputy C.S. Alves of St. Helier:**

I am going to just speak a bit more generally I think because I agree with pretty much everything that has been said up until now, which is unusual. A few months ago we were in a great position with very few positive cases and I feel that now we are not in a good position. We are almost being forced to legislate for things that, quite frankly, I am not completely comfortable with for similar reasons as others have raised today, and especially what Deputy Morel has just raised with his speech. Ultimately, all of this could have been avoided if we had made isolation compulsory while people were waiting for their test results from the very beginning, the virus just would not have resurfaced in the community. Hiding behind the reasoning that the decision not to impose the compulsory isolation was based on medical advice was, in my opinion, used as a way to avoid making tough decisions and was flawed from the very beginning. Medical advice on an unpredictable virus is in

its nature not accurate and quickly out of date because it is based on data that has been collected in the past. At the end of the day no one can predict the future and that is why it is advice and not predictions. Also, using the excuse that was not proportionate at the time and not thinking long term or into the future has now led to us having to implement measures which are very restrictive and viewed by many of the public as not proportionate or balanced. It is with great reluctance that I will be supporting this Proposition and the others that will be presented today because I recognise that we have to put these measures in place to stop the virus from spreading further. However, it is my view that this Government has been careless in allowing things to get to this point when all of this could have been avoided and we could have been almost back to normal within the Island.

### **3.1.8 Deputy L.M.C. Doublet of St. Saviour:**

I am pleased to follow the previous few speakers and especially the Dean. I had a conversation with the Dean this week because following his speech at the last sitting I was really concerned about how faith communities I think are being misunderstood. Sorry, can you just give me one second, I am just having a problem with my speaker. Can you hear me okay?

#### **The Bailiff:**

Yes, we can hear you, Deputy.

#### **Deputy L.M.C. Doublet:**

Okay, sorry, apologies. In terms of faith communities, and the Dean mentioned the European Convention on Human Rights, in fact, I do not think that faith communities are being given the ... I am not sure what the word is. I think special treatment should be given to faith communities because in many jurisdictions, not in ours unfortunately, but in many jurisdictions religion and belief are protected characteristics. An activity which involves expressing a deeply-held religious or non-religious belief is viewed as different to an activity such as socialising in a restaurant. I find it deeply problematic, as others have stated, that we are restricting faith activities to a different level that we are restricting socialising activities and I think in fact it should be the other way around because of the nature of religion and belief in human rights law. I am not sure if I am going to be supporting this legislation today and that is just one of the problems that I have with this. I would like the Minister to comment on that because I think that part of the legislation should be reviewed. I think that the Dean and other faith leaders and, indeed, leaders of non-religious belief groups alike, should be consulted about this and a way should be found to safely, and I think the Dean described all the safety measures being taken, to safely accommodate people expressing their deeply-held beliefs. The other problem that I have with this legislation is around the part about children. But before I talk about the problem I do want to say thank you to the Minister because I do think it something to be celebrated that children under 12 cannot be prosecuted with this legislation because the previous legislation along these lines that we had, parents of children could be prosecuted and I think children themselves, and that was just not right. But I am disappointed because when I questioned the Minister on this legislation, it was a few days ago when we had a briefing, and I think it was maybe just before this was lodged, I asked the Minister about children and whether they would be exempted from these gathering requirements and what age of children would be exempted because I know different jurisdictions around the world are exempting different ages of children because of the fact that children transmit the virus to a far lesser extent than adults. The Minister professed that children under 12 would not be included in this legislation but that is not strictly true because when I analysed it, yes, children under 12 will not be prosecuted if they are part of a gathering that is larger than 10, but they are still included in the numbers. I would like to know why they must be included in the gathering numbers on the same level as adults when we know that the science shows us they are not transmitting the virus to the same extent. I think some further work should have been done to determine perhaps not necessarily the age of 12 but it could be a different perhaps lower age of children that would be exempt from the gathering numbers. I know in the U.K. there is a campaign

underway to exempt children under 5 from the gathering numbers, so why have we not considered something like this? We could even consider a lower age. We could consider under-ones, so just infants, because of course an infant is not going to be making contact with people in the same way, an infant is likely to be attached to its primary caregiver. I am disappointed really that that kind of work has not been done because we know from some of the evidence coming out, particularly from groups such as the Best Start group over here, that actually children and parents of young babies are having a particularly hard time at the moment. Because when you have a baby it is a very isolating experience anyway but at the moment it is particularly isolating and there is not the same availability of things like baby groups. But if infants were exempted from this, then those groups could go ahead without any additional risks and with all the necessary mitigations. I am disappointed that those considerations have not been made and I would like the Minister to comment on that, please. Specifically I would like to know if there is a scientific reason why children have not been exempted from the numbers and why children of specific ages have not been and whether there is any opportunity to revise that, please. The other issue I have, and Deputy Tadier, in his very unique style, touched on this when he mentioned singing and shouting had been put alongside each other in one part of the legislation. I saw this and I am deeply concerned about this view that singing is an inherently dangerous activity.

[10:45]

Those Members who have read the report attached to my Proposition, which is mostly about singing in schools, will see that I am in touch directly with a representative of the team of researchers that are doing the research in this area. I did that because I was not confident that the evidence that the Minister is using to base his policy decisions on around singing was complete. What I have been told by these researchers who are experts in this area is that, yes, singing is not an inherently risky activity, where the risk lies is in the volume of the activity. Why do we have in this legislation singing and shouting next to each other? Singing is a type of vocalisation just as speech is a type of vocalisation. Shouting describes the volume of a type of vocalisation, it describes the volume of speech, so the 2 are not really comparable. If the Minister was going to be consistent really he should have put something like “loud singing and shouting” because just singing at the same volume as speech, the research shows that singing at the same volume as normal speech does not add any risk. I find it strange that the Minister has just put singing in that part of the legislation given that the science shows that singing is not inherently risky. I would like the Minister to explain that, and not just to me, but I think he needs to explain that to all of the Islanders to whom singing is such an essential part of their lives. If we are developing legislation and it is touching on these areas, we need to make sure it is based on sound science and I am not sure that this is. Perhaps what I would like to request the Minister is that if there is guidance to be developed under this legislation, that guidance should specify intervention only if loud singing is taking place which would be at a volume on a par with shouting, which would be adding more risk. Those are 3 issues I have raised there and I think, given that there are so many holes in this legislation, I am not particularly inclined to vote for it at the moment because there are so many problems with it. Unless the Minister can address some of those issues perhaps in the guidance or commit to changing some of these things, then I will not be supporting this legislation at this time.

### **3.1.9 Deputy R.J. Ward of St. Helier:**

I know everyone says it but I am genuinely pleased to follow the speakers that have gone before. It is because this has really become a very intelligent debate and it is such a good thing to happen and so necessary around these Regulations. I came into this debate really thinking that I will be supporting, and I looked in detail at the Regulations. But then I have looked into them again, and I am not going to perform some sort of forensic overview of all the little detail, I will spare people that, but I think I have got growing concerns, and I do understand the difficulty that the Minister faces. We are in a very difficult position. We have been here a number of times on the Island. We are at

this point, this pivotal point where things could change quite rapidly and we have to take some form of action to stop that happening, so that is the context within which I speak, and I think it is important to say that, but there are some areas that I must point to. What I have written on my notes here in capital letters so I do not forget to say it is that there are too many unspecified areas, and this is one of the concerns that I have whenever we bring legislation. It is about the control of people's behaviours and their right to behave in particular ways and we need to be very careful. So much of it is open to interpretation and when you have that interpretation there is a real requirement for trust that that interpretation will be made correctly. I am not entirely sure people in Jersey have the level of trust that is required because we have all been through a difficult time and there have been decisions that have eroded that trust, so we need to be aware of that. I will give you some examples that I must raise. The first one that jumped out at me was the idea of engaging physical exertion that requires heavy breathing. I was pleased to see that we did not get a double entendre from Deputy Ash, so I will thank him for that, but I do think, does this mean that gyms, for example, will no longer be able to admit more than 10 people? Now I may have missed that in the Regulations and, if I have, then I am surprised because I have gone through this in detail and it is therefore not obvious as to the implication of that. That is one of the unspecified areas, for example, that we need to get right before we pass this legislation. There are other areas so, for example, the drinking of alcohol. If there was a group of 10 people and one person has a small glass of wine, does that mean the entire gathering could be considered to be consuming alcohol because it is consumed within that gathering? This is not me just being a pedant. This is, I think, very important that we understand because we are going to ask people to police this for us. We are going to ask people to understand the nuances of this legislation in order to go out as a society, interact with people and police these Regulations, and I think if we are going to do that they need to be very, very clear. Private events of more than 10 people in any private dwelling, policing inside people's homes is going to be difficult and I share the concerns that were raised. I cannot remember who said, I think a couple of people may have said, about the action of neighbours, for example, and what that could create and it could create bad feeling. I also must point out that there were so many concerns here that transcend any political camps that people may be in and it is very pleasing, that is why this debate is good. I too have had contact from faith groups in my constituency, there were quite a number, and I did email the Minister my concerns on 16th November. I do agree with the points that were made by the Dean in terms of those gatherings and there does seem to be a real inconsistency and a strangeness, I think I might call it, to the way in which these Regulations have considered that when there is, I have got to say, a commercial interest, there is more of a consideration given than where there is as a societal and a support interest. We have been through a difficult time, we all have, and I think for many their faith is very important to them at this time, even more important than perhaps normal. I think anything we can do to allow that support to happen needs to be addressed and these Regulations do not address that, they are blanket Regulations that seem to merge these different gatherings together and I think we have to be very careful about doing that. The response I got to my email was that there was really not a lot we can do about it for faith groups but I think that does need to be addressed. It is one of the areas that is making me really consider whether I can vote for this piece of legislation today and these Regulations. Finally, and I will make this point again, we are reliant on people following the Regulations. We cannot police every household, we cannot police every single gathering, we are relying on people's goodwill and we either bring people with us in order to follow these Regulations or we create a battle that we cannot win, and that is not the type of society that we want. I think that more work needs to happen on these Regulations and there needs to be more detail in them. If the Minister could answer some of those areas, and I think this is the place to do that, in this debate, in this forum, in this public forum to create the reassurance that is necessary that people will have. That is about everything I have to say but I thank everybody for their involvement today.

**The Bailiff:**

Do you have a point of order, Deputy Tadier?



**Deputy M. Tadier:**

It follows on from the number of concerns that have been raised, including to do with churches and faith groups but not exclusively, and I would like to propose a reference back under Standing Order 83 if that is in order.

**The Bailiff:**

That is not a point of order and that is a request for a reference back.

**Deputy M. Tadier:**

Sorry, it is just because it is one of the Standing Orders, that is why I said that. I just wanted to ask if the reference back is in order and I would like to make that.

**The Bailiff:**

If you will bear with me a moment, please. Yes, Deputy, it is covered by Standing Order 83, a Member of the States may propose without notice on a proposition that the proposition be referred back in order that further information relating to it can be provided to the States or any ambiguity or consistency in information relating to it which has already been provided can be clarified. So what is the further information or the ambiguity that you are seeking to have dealt within this, Deputy?

**3.2 Draft COVID-19 (Gatherings) (Jersey) Regulations 202- (P.157/2020) - reference back**

**3.2.1 Deputy M. Tadier:**

There are a couple of points. One specifically is under Article 7 where it talks about “subject to exemptions”. I would say that the Assembly does not know what those exemptions would be and probably the Minister does not necessarily know either. I would like to know more categorically after the reference back, when he comes back, if this is successful, what those exemptions would be in reality. I would also like to highlight the inconsistency that has been raised about the gathering numbers and whether it is reasonable to exclude and limit numbers in such a way, in particular for church and faith groups, but also for gatherings whereby there is lots of space, for example, and people can be distanced safely and whether wearing of masks might be an option but they are being prevented from doing so *vis-à-vis* much smaller, compact areas which people can transmit the disease. I think the issue is to do with how the groups like faith groups are going to be affected and the inconsistency in terms of numbers at funerals versus weddings, for example. I think the Minister needs to provide more information on that.

**The Bailiff:**

So you would like to know what the exemptions will be, or at least what they are likely to be under Article 7, and for further explanation relating to what you say are inconsistencies in the gatherings of different groups of people? Is that a fair summary, Deputy?

**Deputy M. Tadier:**

Yes, Sir.

**The Bailiff:**

Very well, did you wish to make any other points relating purely to the reference back before I ask whether it is seconded?

**Deputy M. Tadier:**

I think that is it, maybe a seconder would be helpful. **[Seconded]**

**The Bailiff:**

It is seconded. Very well, I open debate on the question purely of whether or not there should be a reference back to address the questions raised by Deputy Tadier.

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

I think the States is getting ahead of itself. What we are debating are the Regulations which is essentially giving the Minister the power to bring in control Orders. We have not yet had the control Orders, or debate of the control Orders, so we do not know some of the things that Deputy Tadier is asking about. What we are doing is essentially enabling the Minister to bring control orders and, secondly, to give the enforcement officers powers to make directions if a gathering is in contravention of a control Order, thirdly, to state that if a person wilfully disobeys the Order then they will be liable to a fine up to £1,000.

[11:00]

Again, it is giving the enforcement officers power to stop the contravention and to disperse people when he gives the direction to do so, so the powers will be contained in the directions. The other thing that Members need to understand is that if we do not like the Orders that the Minister brings forward, as some Members have said, if, for example, it does not give the degree of religious freedom or for singing groups, whatever, then they can ask for those Orders to be brought before the Assembly and rescinded by the Assembly. I believe we are getting ahead of ourselves here. I do believe that Ministers should have the power in general to control gatherings but, as I say, the detail comes in the Orders and if we do not like them we can object to them and we can modify them or amend them. Therefore, I think we are getting ahead of ourselves with a reference back. I think we should pass this particular piece of enabling legislation and then get down to the detail and debate that at that time.

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

Deputy Higgins effectively stole my thunder of what I was going to make but I would like to elaborate a bit on that. I think Deputy Tadier's reference back is a mistake to bring that. I think we need to continue with this debate because this debate is about the principles of the legislation, it gives the power and then there is work to do to sort out those anomalies and the situations. I was delighted to hear the Dean, an absolutely fantastic speaker. I agreed with every word of it because I have shared those experiences myself where I have been unhappy but nonetheless we need the tools. We are in a situation where we are asked today to approve Regulations to give us the tool to be able to get control of this situation and it is really important. If we do not and we send it back, where we will be left is in the current unsatisfactory situation where the only power we have for gatherings at the moment, and Members may have forgotten, I think, we amended the Statutory Nuisances Law which we had changed at the early stage of the pandemic to give the power to - guess who - the Minister for the Environment to serve a notice, an abatement notice on where a situation is likely to be prejudicial to health. From what I have been told, I can tell the Assembly now, those arrangements do not work well. It would be a mistake to halt this debate, we need to be able to go ahead and decide on the merits of what is proposed for us today, giving the tools to do the job properly. It is only for a short time, thankfully we have the cavalry of the vaccine coming, so these should be short term and I believe that we should cut it. I have a lot more to say on this substance. I am not going to support the reference back, those issues can all be answered exactly as Deputy Higgins has covered. I have no need to repeat that but, please, this is an important debate. It is the first time we are allowed to take stock at a critical point of where we are as an Island and our community, so please do not support the reference back.

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

It strikes me that we are not ahead of ourselves. This reference back is perfectly logical in the sense, I believe, that we are about to pass Regulations which enable the Minister to do all sorts of things by

Order. We should always be careful when we give Ministers the right to form Orders because we will not see them again. They will get tabled, they will be done and dusted. We are giving tremendous power to Ministers to do as they see fit and not to get this material, these Regulations, these Orders back before us so we can decide whether they are the right and correct actions or not.

**The Bailiff:**

Deputy Martin. I apologise that I took you out of order then.

**3.2.5 Deputy J.A. Martin of St. Helier:**

No, it was quite helpful because I was going to say I thought Deputy Higgins had said mainly everything and then we had Deputy Southern's voice of doom and about what Ministers are going to go and run off and do. Everyone who has spoken so far in the main debate has said that they have had some good conversations with the Minister for Health and Social Services. The Minister for Health and Social Services is a reasonable person but we are in ... the numbers are going up and we have this to go back for more information and come back when? This is a special sitting of the Assembly to pass some Regulations to allow the Ministers to make some Orders. Again, Deputy Higgins got it completely right, we can rescind it if we do not like it. We have not got time, and the Assembly can believe what they like about how we got here, we are here and we do not send this back today. You make decisions. If you really cannot support the Regulations, do not support them. Do not play games today. Please do not support this reference back so that we can get on with the debate and I will leave it there.

**3.2.6 Deputy K.F. Morel:**

First of all, I want to start by agreeing with Deputy Martin. The Minister for Health and Social Services is a very reasonable man and has shown himself throughout this crisis to try and act in a proportionate manner at all times and that is something which does reassure me. I do have a difference of opinion in that, yes, Ministerial Orders can be rescinded but I would ask Members to question themselves and think, in their time as Assembly Members, how many Orders have they seen rescinded? The truth is, Orders get signed and they get fairly quickly forgotten about; in fact, very often we are not sure that they have been signed and brought into power at all. I think one of the things that I found difficult while undertaking scrutiny of P.158, the next item on the Order Paper, was that so much of the Regulations and Orders seem to be a work in progress. I think it is only right therefore to ask the Minister, please show us what you intend to do with these powers because we are handing large powers to the Minister through these Regulations. I do not believe that asking for that information is in any way wrong or moving too soon. It is perfectly reasonable to understand how the Minister is going to enact the powers that would be given to him under these Regulations. While fully supporting and understanding that the Minister has ... in fact, he has shown such good faith throughout this period of crisis that he has indeed brought legislation for both propositions to this Assembly to weaken some powers that we gave him earlier on in the crisis. I noted that at the time and I was very grateful that he did so. It is not so much that the Minister is likely to act beyond his powers or try to push that, for me it is that sense, as I was discussing previously in the main debate, of trying to understand the logic of that which the Minister aims to do and try to understand where he sees these powers leading him to act. With that in mind, I think it is entirely right that we ask for that information upfront rather than waiting for Orders to be signed which, if they are signed at a particular time it then takes at least 2 weeks to bring them back before the Assembly in any case, so I do not think it is asking too much that those Orders, or at least the intent of those orders, are provided to us in advance of us voting on these Regulations.

**3.2.7 Deputy K.C. Lewis of St. Saviour:**

Very briefly, I will not repeat things that have already been said, I am totally against this reference back. Things are moving very, very quickly, that is why we are here today. We must put this to one

side. If Members are not happy with it, then by all means vote against it, but not a reference back. As I say, things are moving very, very quickly now and we must pay attention to the best advice we can from the Health Department.

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

In relation to the exemptions, which I think was part of the rationale and the reasons given for asking for this to go back for further information, I just would, I am sure the Minister for Health and Social Services would say the same, remind Members that this is purely enabling. The exemptions could refer to a category of people or a category of gatherings but they are designed to be flexible, they have to be flexible, but the starting point will always be the medical advice at the time. I think as Deputy Alves mentioned earlier, the situation is fluid, it is changing, so you could not be too prescriptive of the exemptions but I would just remind Members that the starting point always has to be the medical advice, so the most appropriate exemptions can be made at the time. The aim today in asking the Assembly to agree all of the Regulations is so that the Island can avoid further lockdown and the very negative impact that would have right across the whole community. I know that many of us are uncomfortable with supporting these measures and are supporting them on the understanding that they will hopefully be for a very limited and short duration, but the sooner we introduce them, the sooner we can get through this together. I would urge Members not to support this but to agree today so we can carry on protecting Islanders as we move forward.

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

This reference back, although it sounds plausible, really is not. We have made a lot of changes since March to how our Islanders can live their lives and are being really proud of how they have acted and where we are today is because of the hard work and the staunch following of rules from our Islanders. But all along whenever we have made these changes, and some of them have been quick, we have tried to give as much information as possible and as much notice as possible to the Islanders so that they can be aware. It has been frustrating at times, certainly with dentists and hairdressers and the likes, that things did not move fast enough in certain ways, but when we have made these decisions we have always made them by giving as much time as possible to get people to know what the new changes will be. There will be no change with these Regulations. They may be by Order, it may be talking about making the Orders happen like this, but there is no way I could see the Minister for Health and Social Services deciding to make an Order without giving due notice to the people so the changes can be listened to, we can go on the media and the radio. If that notice has been given to the people, then it is being given to States Members. If States Members do not like it, Orders can be rescinded, there can be a proposition to bring it in. As soon as that proposition is lodged, the change cannot happen until it is debated. So these are the rules that we have set within our Assembly and within Standing Orders, so it is not like anything is going to happen via stealth and the rules will be changed in any way that is not going to be notified, so that Assembly Members can make the decision whether they think it is right or not, they can speak to the Minister for Health and Social Services why the decision was made. This reference back is wholly unnecessary and more about politics than it is about trying to get a right outcome. I ask Members to refuse this reference back. If you do not like what is going on, vote against it, but the idea of a reference back just seems unnecessary and more politics.

### **3.2.10 The Dean of Jersey:**

I hope Members will forebear with me speaking far more frequently than I would normally do so. As someone who has spoken in this debate, I do understand the time constraint and the goodwill of the Minister for Health and Social Services who has worked so hard towards this. There is part of me that would like to see a reference back but I think it would be helpful to have an understanding from the Minister for Health and Social Services that the inconsistencies that I have drawn attention to in my speech would be addressed. As Deputy Wickenden has just said, I think it is the consultation

beforehand, because speaking as a faith leader one of the deep frustrations that we have experienced is that there has been almost no consultation before guidelines have been given. I think on that basis I would like to see the conclusion of the debate but it would be helpful if we have had some words from the Minister for Health and Social Services that he will review the inconsistencies in order that more consistent Orders can be applied.

### **3.2.11 Deputy K.G. Pamplin of St. Saviour:**

I just want to draw Members' attention in this debate about the reference back to the Scrutiny Panel's comments that we provided to Members, the Health and Social Security Panel, and forgive me if I just read them.

[11:15]

I quote: "It was advised that due to the proposal to hold a requisitioned meeting on 24th November 2020, there was a chance that the Order would not be finalised before the debate. However, the Minister assured the panel that he would provide them to the panel as soon as they were available." What I am saying, and hopefully will hear from the Minister for Health and Social Services in this reference back, I am sure he is listening and gathering his notes, that the Scrutiny Panel play a very important role of gathering those Orders which we will then of course, as a Scrutiny Panel will, review them. It is not normal times because, as we demonstrated in Scrutiny back in March and April, we worked ever so quickly and if necessary brought amendments when we saw fit. I just hope that brings some reassurance to the Assembly. Quite rightly, it is speaking from the heart on these matters but Scrutiny will have to step up and, in the face of the Minister for Health and Social Services, those orders will be scrutinised. As others have mentioned, we, on hearing the conversations, could bring something back to the Assembly, so I just hope that is helpful for Members.

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

By its very nature, a reference back is around the actual debate, so I will speak very carefully. I feel like saying something unparliamentary. I cannot explain to you how frustrated, how annoyed, how tired, to some extent, how bored I am of COVID-19 and the effect that it has had on our community and of course wider. It has taken people's lives, surely the highest barrier. It has meant that families have been rent asunder because our children have not been able to see in person their grandparents or their more distant relatives. It has meant and it will mean that some Islanders have lost their jobs and will lose their jobs as the recession that it has caused takes our community. It is with that background that the Minister brings forward further measures to help. Those measures that he is bringing forward are about protecting people's lives and protecting people's livelihoods, the 2 policy aims of everything that this Government has brought forward during this pandemic. They are difficult because the other thing that this virus has done is driven a coach and horses through accepted democratic processes and Islanders' freedoms. We in this Assembly have had to make incredibly difficult decisions around curtailing Islanders' freedoms and, I really felt, as Deputy Morel spoke about, reaching into Islanders' homes in effect with legislation in a way that we have never had to do before. These 2 pieces of legislation ... and we will come to the other one which I will feel even more strongly about, but we will get to that one later, hopefully today, carry on in the same mould. We firstly start looking at the health advice, and the Minister has brought forward these changes having considered that health advice. But let us be absolutely clear, the decisions are political decisions based on a range of advice and at its basis that health advice. There is little use in us looking back and asking necessarily had we made a different decision at a different point, would we be in this situation now? We can do that but all of those decisions down the line were based on the health advice at the time. That health advice, one of the great frustrations that we feel is, has changed over time as health experts and scientists have learnt more and more about the virus. Yet, some days it feels as though we know very little about it, even though we have been learning over the last several

months; take masks, for example, the next piece of legislation that we will come back to. In making these decisions, as painful as I find them, I am holding intention to policy outcomes. and that is to protect Islanders' lives while allowing them basic freedoms but, equally, and this is quite tricky because we do not yet see the full implications of this, protecting Islanders' livelihoods. Therefore, is it reasonable, is it appropriate at this time today, not reference it back and not going for further information around how the Minister may or may not make his Order. Because I agree with what others have said, the Minister will have listened because we have had these conversations about how we should deal with the faith community issue. But I have got no doubt he will have listened because he, like me, we do not just want to go to church on a Sunday morning where there are 40 of us all beautifully social distanced and washing our hands, we want to get back to the point where we can welcome everybody into our faith community on a Sunday morning. He will have listened and he will consider when he is making that Order but he will not make the Order until the legislation is in place. Therefore, it is not reasonable for him to go back and review the legislation; what we should be doing is asking him to confirm, as I am sure he will, that he has clearly heard the tone and the tenor of this debate and can he deal with some of the inconsistencies. Because this is another thing that the virus has done, it has meant that some of the proposals that we have brought forward, they have not been very logical and that has been really, really tricky because on the surface they do not necessarily look logical. It is only when you step back and you think about how the virus is transmitted and the circumstances that it could be transmitted and be efficient - I think is the health word - efficient transmission, which is exactly what we do not want, we want inefficient transmission and we want environments that are inefficient. We know as we are entering winter and we come to the end of autumn, the virus in internal spaces can transmit much more efficiently. If there are more of us in those internal spaces where the air circulation is internal, then the transmission will be more efficient and therefore will be greater and therefore more people will get the virus. We do have processes in place, testing, tracking, tracing, we are going to see more people with the virus. But if our processes work, and they are working today, and I think that they can continue to work, if we give the Minister this ability to make these workplace Orders, and then when we get to it, the mask Orders, that will allow Ministers and allow this Assembly to make sure that a complete lockdown of the Island, a complete lockdown of people's jobs and a complete lockdown of education will not be necessary, but we cannot be completely certain. But I am absolutely committed, as I know the Minister is, to taking every measure short of that complete lockdown to protect Islanders' lives, that is their health and their livelihoods. Now the Minister is going to be, I believe, reasonable and he is going to need to be flexible because I do not want us to be living in a community where on Christmas Day we have got law enforcement individuals being tipped off by neighbours that you have maybe got 12 people around the Christmas lunch table or even more. So all of the issues that Members have been raising about delivering this law proportionately, those issues are not addressed by a reference back, they are addressed by the Minister listening and those other competent authorities Ministers advising him when he has the Order drawn up, acting reasonably, proportionately but having those 2 aims at the forefront of his mind. I know he will. He is in an incredibly difficult position because around those ministerial tables he has got the advice of officials from various angles but he has equally got Ministers that challenge that health advice and that officials' advice and then he has to make his decision. We do not envy him that job but I, for one, believe he is the right person to make those decisions. I believe he will do it appropriately, carefully, in a balanced way in order to get us through this terrible, terrible, terrible pandemic that we would not wish upon anyone. So, it is not the right time to reference this back, to go back over old ground that I think we probably all agree on. The right time is now for us to ... and I hope Members do not kick out this legislation, I really do. Because the tools then available to the Minister and the competent authorities Ministers are very, very few. Very few. Without these workplace measures, without the next mask measures, the next step is a lockdown. I will tell you, as I was preparing this morning, getting ready, my daughter walked into the bathroom in her school ... there was a case of COVID-19 yesterday in the year above her. She said: "Daddy, I really, really do not want us to go into lockdown again. I want to be able

to go to school. I want to be able to do all of the things ...” she did not say this but she said that. I said: “Darling, I agree. I do not want us to go into lockdown either” but I know that without these measures, we will be there. But despite all of this frustration I believe that by taking these measures we give ourselves and we give the Minister the very best chance to avoid it and we can get through those days, those weeks, those months, until we can see a vaccine and we can have reasonable numbers of vulnerable Islanders vaccinated and we can get into the new year. But we need to keep sticking together. We need to keep making decisions, which are difficult. To some extent, that means that we see an infringement on our personal liberties. Because, just over the hill, the next step without that is an even greater infringement on our personal liberties. So I really ask Members not to reference this back today, to allow the Minister to make the Order and to continue to work together as a community to see off this terrible, terrible virus.

### **3.2.13 Deputy G.C. Guida of St. Lawrence:**

I wanted to step back a little bit from this Proposition and certainly from the reference back, but I was not certain when to intervene.

[11:30]

But the speech by Senator Gorst goes my way and I will follow it on. Yes, we are tired, we are becoming emotional. It is not just us in the Assembly, it is the whole population. We are also becoming impatient. This was expected. There is only so long that you can keep the pressure on those things. But we need to take courage. We are in a very, very different place from where we were 9 months ago. Nine months ago we were considering exactly the same things on an unknown virus for which we had very little idea how it would proceed. But most importantly, and that is very, very different, we had no idea what the future would bring. We did not know whether those measures were for the next 2 months, one month, or for ever, or whether we had to completely adapt our lifestyle to try to survive something. This is very, very different. Today, 3 vaccines out of 140 are days from certification. They are already being distributed. We can see the end of this, it is in sight, it is there, we know it is ending. We know that we have won over it and that it is ending. There are 2 things to think about now. First of all, we also know that the second wave that is happening now is more serious than the first one, so we need to deal with it. But, very importantly, because we know that there is an end to it, all the damage that happens now is on us as a population. Any death happening in the next few weeks is our fault. We cannot say it is nature, this virus, we will have to live with it for the next 100 years, and that is just it. No. If we manage not to have contagion in the next few months, weeks, if we manage not to have contagion in the next few months, that person will be safe because there is a vaccine. So I am going to tell you, do not vote for the reference back, vote for these powers because they are necessary. Do not follow them, go beyond them. Think that every contagion that you say is in the next few months has a reason, it will not ever happen again. It is not something that you avoid for a week and then it happens the next. No. Any person that you save in those 2 or 3 months will be saved for ever. It is on us. So do not vote for the reference back and vote for all these powers. They are needed in the next few months. Please take courage.

### **3.2.14 Deputy I. Gardiner of St. Helier:**

I feel that it is one of the saddest days that I experience as a States Member. I feel very, very, very sad today. Back in July we saw almost zero cases, a few cases. For a while, our community did not have any transmission. I absolutely agree with the previous 2 speakers, it is a terrible disease, we are in a very difficult place now. Why I am so sad because we could avoid it. I agree with Deputy Martin that saying: “This is where we are now.” Yes. This is where we are now. We could have freedom on our Island and could enjoy meeting friends and family and could enjoy that our grandchildren will be with grandparents. But we are not there. Everybody is talking about proactive. What we are doing today is reactive. The proactive should be back in July/August when we could have different legislation. But what to talk about, this is where we are now, and we did have time

for the Scrutiny to fix these inconsistencies. I would like to ask the Minister, it is really important for me to hear from the Minister, what is the plan going forward to address these inconsistencies? For example, if we are talking about children, in England it looks like children under 5 are counted for indoor gatherings but not counted for outdoor gatherings. In Wales, when you meet people you do not live with away from your home, it is a maximum number of people but it does not include children under the age of 11. Gathering for their faith, I have really been moved today and I am grateful for the info in his speech because it does feel wrong. So what I would like to understand from the Minister, his plan to take it forward. Because, personally, I do not think we have time to wait for another week unfortunately. I would rather discuss these laws months ago when we were not at Emergency Sitting because we have run out of time and we again need to go forward. But currently, probably with the really hard heart, I need to understand what I am supporting. I understand that we need to go forward and we need to protect the community and we do not have much choice as the disease is developing very quickly. At the same time, I would like to have a reassurance from the Minister how he is going to address these inconsistencies.

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

I said in my opening speech, and I will say it again, what is intended to be contained in the Order that I would make would reflect the existing guidance that we have and the guidance that was produced in consultation with the public health team and approved by the acting Medical Officer of Health. We have had guidance on gatherings that has been operating for months now. The guidance throughout the summer, the basic thresholds were 20 people or 40 people. The present guidance is for those thresholds to be reduced to 10 and 20. I did not hear any clamour from States Members when that guidance changed. Indeed, I have not heard much from States Members about the previous guidance, which of course was a limitation on our freedom of Assembly, but it is guidance. What this legislation does is to introduce enforcement measures and to enable us to put the guidance into legislation. If Members do not want to legislate then we can continue with guidance. But it is the case that there is community transmission of the virus in our Island and it is the case that many of those cases arise from people gathering together. It is a known fact that gatherings *per se* are a vector for transmission of the virus. It does not matter whether there is a particular age demographic or a particular activity, gatherings *per se* can spread the virus. As we come into winter when there is increased risk of viral transmission because of temperatures and because people tend to spend more time indoors, then we are at greater risk. That is why the guidance changed. But, without enforcing it, we are going to see, I believe, increased transmission and we will not be able to do anything about it if people persist in flouting the guidance. So, States Members, you will have to consider, if constituents get in touch with you and express concerns about gatherings that they see or hear about, you will have to explain why we decided to leave it only as guidance and not to be able to put in the sort of enforcement measures that exist in all other jurisdictions in Europe. You heard about the U.K. complications of the rule of 6. We want to avoid complex rules. The guidance is suitable for our Island. It is appropriate I believe. It is not too hard to follow. But it does need some thinking through by people. So the enforcement of these measures is what we are trying to achieve here. It is pointless this Assembly asking for a reference back to ask me what is going to be in the Orders because what is going to be in the Orders is the current guidance. But of course we could make an Order on day one and it might change the next day. So why do you want to ask me now what is the order going to be? If medical advice changes, we would change our guidance. If we have this in legislation and medical advice changes, we will change the Orders. That is a perfectly proper way to proceed. The Regulations and order-making powers under them are a proper and accepted legislative position, especially for an area of complexity and which is fast-moving, where it not possible for the 49 Members of the States Assembly to legislate for such detail that might be needed to be introduced quickly, there are order-making powers. But I want Members to consider how those Orders are made. Because Deputy Southern suggested I could do what I like and everyone is stuck with it and there is no control on me whatsoever. Absolutely not the case. If I can refer Members to Regulation 2(3):



“Before making a gathering control order, the Minister must (a) consult the Medical Officer of Health and the Council of Ministers and (b) be satisfied that it is necessary and proportionate having regard to the foreseeable risk of the spread of COVID-19 in Jersey to make the order.” So Orders will only come forward on the basis of what is necessary and proportionate to address the risk of spread. In that, I am going to rely on the acting Medical Officer of Health and I trust all Members will do so. Because we have received excellent advice thus far in all the months we have been struggling with this. There will also be a role for the Scrutiny Panel. So I have said at a meeting yesterday with the Scrutiny Panel, we were very pleased to tell them that we would of course show them the Orders. But that does not mean to say, and I am sure no Member would expect, that Ministers must submit Orders to Scrutiny Panels to scrutinise ahead of time. Because sometimes urgency arises and it is necessary to make an order. It is the job of Ministers to make an order based on what they are advised is necessary and proportionate, after the review by the Council of Ministers, as set out in the Regulation. May I remind Members that the Assembly’s power to discuss the Orders arises in the power to rescind that Order as soon as it is lodged. So that is the failsafe. But I will, wherever possible, if it is not a matter of immediate urgency, consult Scrutiny and seek their views. I maintain, I hope Scrutiny might agree, a close relationship and conversation with my Scrutiny Panel and I have appreciated their advice and I want that to continue.

[11:45]

The Dean has asked me to address the inconsistencies because Members’ concern seems to have arisen because of the objections of faith groups, which have arisen just in the last few days. I would remind Members that faith groups have been operating under previous guidance, which restricted their numbers. I did not hear from them at that time. I absolutely acknowledge that the reduction to 20 does have a great effect and it is not something that anyone has any pleasure to introduce. But there is a logic and there is a consistency, which I can explain, perhaps not for this reference back debate, but when we get back to the main debate. So these are not haphazardly introduced Regulations. There is that logic around gatherings. Because, I can go into a little bit of it, gatherings of people in a restaurant, which is often quoted as the example given by the faith groups, gatherings of tables, people on tables in a restaurant, should be regarded as separate gatherings. They are socially distanced. The tables should be separated. They come and go at different times and they commune only with themselves and not with neighbouring tables. Members may disagree and the faith groups have said that does not happen in restaurants. The reason it does not happen in part is because we do not have the enforcement measures. That is what I am trying to introduce here. The most important part of these gatherings Regulations are the enforcement measures. We are enhancing our enforcement teams because we know that there have been cases of transmission in hospitality venues. We want to be able to enforce that to a far greater and better extent to keep the population safe and to keep people attending those venues safe. But what people see as the inconsistency is in fact consistent because it is about methods to curtail the spread. It is not about the numbers of people in the space. The church and faith groups will say: “We can be very well spaced in our premises.” The difficulty is that those people do come together at the same time for a common purpose, they do know each other. They are likely to want to exchange news and chat to each other. Even if the services or gatherings were well-controlled, they then will largely exit the building as a group and congregate in the car park or on the street because they know each other. That applies to any other grouping. That applies to sports clubs, to social clubs, and this is my difficulty. Because, as a churchgoer myself, I have great sympathy with the arguments put forward by faith groups. I would love our churches to be filled and I would love people to be able to attend and not worry about spreading the virus or catching the virus. I would love to be able to grant the churches an exemption because I know they have been very well-behaved and they have made marvellous efforts to clean the premises, to enforce social distancing, and to ensure they operate safely when they were required to under the 40 limit. My difficulty arises, and I hope the faith groups, and Members may assist me here, if I was to make an exemption for faith groups, then how do I answer the sports clubs who

might want to meet in their spacious venues who say that they can achieve social distancing, they have all the precautionary measures in place and they will do exactly what the faith groups are doing also? How do I say to somebody, no, they cannot hire the R.J.A. and H.S. (Royal Jersey Agricultural and Horticultural Society) or they cannot hire Fort Regent or the spaces in Les Ormes or the bowling club that some of us States Members have had the pleasure of attending? They are lovely big spaces. You can easily fit 40 or more people socially-distanced in there and have all the measures in place saying that you will be able to achieve an element of protection. You can if that is what it comes down to. We will have to say that, if everybody wishes to have those sort of exemptions, then they would need to be exempt it seems to me. Because how can I exempt one group because they are well-behaved and because we want to favour them? I have said to my public health team yesterday that I want to meet with the Dean and faith groups, and we will try to get that meeting in this week to discuss them. Not necessarily to negotiate, but I want them to understand my position and I do want to understand their position in case I have failed to do so already. They might say it is a matter of human rights. They did not say that when we imposed the restriction of 40 people on them. No one did in fact. That guidance was well received. I do not think it is a matter of human rights because we are still permitting worship to take place although with reduced numbers at any one time. There are allowances for public health emergencies such as this. Again I say it gives me no pleasure to restrict people in this way but we are dealing with a public health emergency where gatherings *per se* are a risk to transmission. Gatherings, from all international evidence, of whatever nature, have been shown to increase the risk of spread. So, if the Dean chooses, and other faith groups, I will meet with them. I cannot hold out any promises at the moment unless we can find some magic formula, which suggests that we can justify a difference in faith groups that are different to other groups who want to assemble. So, on the reference back, Members know it will be this guidance that has been in place. That is what will be reflected in the Orders. But bear in mind that medical advice will change and I may have to change the order. I do not see any point in referencing back, having a further debate, when the very next day after the debate the medical advice might necessitate a change of the Order. It is up to Members to decide whether they wish Ministers to have the means of addressing spread in the community. If they do not wish Ministers to have that tool to do that, then Members will have to answer to their constituents and to our test and trace team when they are overwhelmed by the clusters emerging and the spread in the community and they say: “Minister, why can people not go out and stop these things happening?” and I will have to say to them: “I am sorry, the States Assembly did not want that to happen and it means we are at greater risk of more serious measures, including a lockdown.” These measures are trying to avoid that and I hope Members will accept that I will exercise them within the constraints set out in the Order. I am not going to exercise them capriciously. I am going to exercise them on medical advice. I will speak with faith groups. I will find a way to address the democratic process of Parish Assemblies. I will consult on that. The reason I cannot display an Order for Members to consider straight away is because my team have been under incredible pressure. I was emailing them past midnight last night. It is a small but very valuable, very competent team, who have had an amazing amount of work to do. There has been so much work going on in the last fortnight around vaccines, which does not come before the Assembly, but we need to get so much in place to ensure that we get a vaccine delivery. I am not necessarily making excuses, but just to explain that the absence of something in writing and the Medical Officer of Health’s formal guidance that he might give to enforcement officers is being prepared. It will be available to States Members. But it has just been physically impossible, I regret, for me to ask the team to get that ready for today. But it is important I believe to have brought this debate today because what we are discussing is enabling provisions, enabling the Government to protect Islanders. I hope Members will give me that opportunity by rejecting the reference back.

### **3.2.16 Deputy R.J. Ward:**

A couple of things to mention. I am unsure as to whether to support this reference back for the very reasons that have just been said. But I want to say a couple of things about that. First of all, it has to

be recognised that it was because this was brought as a reference back by Deputy Tadier that we have had a little more in-depth discussion over what the Orders may mean. There was a little more clarity from the Minister there. I will say that the emotive arguments we all understand because we have all been through them. We all understand those emotive issues that come with the terrible situation that has arisen in the past and we are trying to prevent. It is not simply about whether we trust the Minister or not. I do not think anyone is, I certainly am not, entering into that personal debate over the character of anybody. I am saddened too a little, as with Deputy Gardiner, in the debate at times. Because it was such a good debate and we were having such a good discussion over the implications of this and what it means and people's concerns, about faith communities and what it means for people's day-to-day lives. I would like us to get back on to that. But it does not mean that we just dismiss things. We have to refer to this. We regularly vote on Regulations and the terms come later. We know that. But there is a slight difference here, it is that there are civil liberties involved. We may well be removing some civil liberties from people with these Orders and that does not sit easily with any of us. That is one of the issues that we face here. The personal comments about being a prophet of doom or whatever was said, they are unnecessary and they do not add to this debate. So let us move on from those. I am pleased to hear the Minister give some reassurances in his last speech. I would have liked at the beginning to have had that model of the Orders that we face will be effectively the Regulations that have been there without any enforcement so far. It would have given us a greater context. I will just finish by saying that. It is this part of the debate that has given us that context. So I think it was necessary and we need to be very careful when things are brought to this Assembly in the way that they have, which is effectively we are being told: "You can talk about the reference back but in the end it will be better either to just vote against everything or accept everything." But that is not the point and that is not the complex and detailed argument that some of us want so that we can justify this decision to our constituents and to ourselves and to the wider community. Then we get the buy-in that is necessary that I talked about in the last speech that I had. We cannot ride roughshod over people. We need to bring them with us in these circumstances, particularly when people face real difficulties and may face difficulties with the enforcement of these Orders. That is all I have to say on that at the moment.

### **3.2.17 Deputy S.G. Luce of St. Martin:**

I will be brief. I am going to support this reference back because I think it is important that we agree these principles and we move on. I cannot say I have been impressed by the Minister's speech during this short debate on the reference back because I think he has been missing the point. The point is around the ability to go into a café in town today where there might be 40 or 50 people and not be able to go into a church on Sunday.

[12:00]

The point is about being able to go into a restaurant with your family and sit at 2 adjacent tables but not be able to take those same people to your home. The point is around protecting the public, as the Minister says, and in both those cases that I have just said I would think there is better protection for the public in churches and in people's homes than there will be in cafés and restaurants. But I do think it is important that we get on, we allow the Minister to come forward with these orders, and only at that point that we can get them under scrutiny, get them changed if necessary. But I would urge the Minister, the very recent changes to guidance, which he says he will bring in as an order, are the ones that are causing people concern.

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

One of the things that is bothering us all is what is the evidence of hotspots in faith groups? My particular area, with 40 we can cope with limiting the numbers. But what is happening with 10 is that churches and chapels feel the discrimination differential has now been unfair to those in the ...

**The Bailiff:**

Sorry, can I interrupt you, Senator, Deputy Tadier has a point of order.

**Deputy M. Tadier:**

I apologise if this is incorrect, but I thought Senator Ferguson may have already spoken in this part of the debate.

**The Bailiff:**

No, Senator Ferguson has spoken in the main debate. She indicated a desire to speak on the reference back but then withdrew it, so she has not yet spoken.

**Deputy M. Tadier:**

My humble apologies. I got confused. Sorry, Senator.

**Senator S.C. Ferguson:**

I am speaking for my particular church. We do not have the evidence of the hotspots in faith gatherings. The smaller ones, particularly those where the predominance of the attendees are in the older age groups, the smaller churches have said: "We can cope with 40 but if the majority of the population is over 60 it is unfair to limit it to 10 people." So they have stopped having services because of the unfairness of trying to sort out who is coming to church this week. If they do not have a computer it is even worse. So we do need evidence of how things are being assessed and where the assessment is coming from. What is the evidence?

**3.2.19 Senator J.A.N. Le Fondré:**

It has been quite an interesting debate and quite a useful debate. For fairly obvious reasons, I will not be supporting a reference back. I was not going to speak because I thought Deputy Higgins and Deputy Young had got it absolutely spot on. These are enabling Regulations. Obviously, as it has been already stated by a number of speakers, the detail comes back in the Orders, which any Assembly Member can call in. The Minister has spoken to that. But also, just really to reiterate what Deputy Pamplin stated and what is in the comments from the Scrutiny Panel, which is saying that the Minister has assured the panel that he will provide the Orders to the panel as soon as they are available and before they are finalised. The point is all of this, in ways that Senator Gorst has most eloquently expressed, is the challenge that we continue to face. Part of that is, always in a period of uncertainty, looking ahead and trying to anticipate a trend in numbers from where we are today and how we can change that trend. That has always been the strategy we have been following almost since day one in February and March. That is about lives and livelihoods. Again, as speakers have said, we have the complexities of the issues around the Statutory Nuisance Law. We went into lockdown, we came out into safer distancing, and we have the guidance. What this then does is allows us to say, we have had the guidance, we have had informal guidance around gatherings for a long time, and obviously we have been strengthening up on that guidance to date. Many people are respecting that. The problem we have, as we have seen for example over half term and Halloween and fireworks night, is the fact that there are groups that do not and decide that they know better and they have parties. That is continuing the spread of the virus through the community. So the community as a whole, and I applaud the comments from certain Members who have said we have gone through this with the community or many of the community and have combatted the problems of COVID-19 together. We could not have done it without the community. But, equally, there are some members of the community who do need to know that, if they breach the guidance, there is an enforcement mechanism behind it. We can only do that through legislation and through the Orders. Very much in the hands of the Assembly, but as I think Senator Gorst said, and it is a reality, if we do not get the enforcement measures in place through the Orders that we are talking about and the other pieces of legislation we are debating today, the risk that we then eventually end up in some form of lockdown just increases. It is all about time as well. As I said, it is trying to anticipate where we are in 3 weeks' time. It may well be that the evidence we are facing today does not demonstrate that on-Island. But

we are also looking at the experiences of other jurisdictions and seeing where those trends go. That is why this legislation is needed. I do not support the reference back. I would urge other Members not to, if that is possible. We do need, in my view, to allow the Minister to try to have the enabling legislation in place. But obviously he will be working with Scrutiny and I am sure, as we have heard, he will be taking on the comments that have been made during both the reference back and the main debate.

**The Bailiff:**

Does any other Member wish to speak on the reference back? If no other Member wishes to speak, then I close the debate and ask Deputy Tadier to respond.

**3.2.20 Deputy M. Tadier:**

That was probably a longer debate than I thought. It probably highlights the complexities and also the strong feelings that we have around getting to grips with this pandemic. The first point I want to make is that I do take offence when there are comments, which are made, such as that this reference back is more about politics rather than the right outcome, which Deputy Wickenden said. Politics is about the right outcome, Deputy, and it is about making decisions with all the evidence, and the relevant evidence that we have before us. We have also been told, and the Chief Minister again reiterated his belief at the end, that this is enabling legislation only. Someone else earlier on said it was purely enabling. The issue here is that we do not know what it is that we are enabling because the Minister himself perhaps does not fully know, although he has an inkling. The point is we are being held with a gun to our head yet again under the auspices of COVID saying that we have to do something. We have to allow the Minister to act. The concern I have, and it is valid also for the next piece that we are going to be looking at to do with masks, but I am not going to propose a reference back on masks, but I think the thing needs to be seen holistically. We are going to get constituents coming to us, either as individuals, as a member of a family, as a faith group, or as a secular group, a sporting group, entirely possible. Some of these groups, especially at this time of year, might only in effect meet once a year as a proper group. We are telling the Minister he has the right to make decisions about whether or not those groups can meet and how many of them can meet, so as to make their meetings non-feasible. Politics is about that balance. I was pleased to hear Senator Gorst's speech, which I think was respectful. He did not personalise his speech like some sought to do. It was very heartfelt and passionate. But the point is that this is about balance. So when we make decisions we have to go back to our constituents. As far as the public are concerned today, we, the States Assembly, are making these rules today that will be enforced. So the technicality of saying that these are just enabling to allow the Minister to do what he sees fit is not how it will be seen. We cannot abdicate that responsibility from ourselves. So when somebody comes to us, either on the phone or at the supermarket with their mask on, and says: "Why did you vote for this part? I do not get why you are allowed to have people can sit across each other at homes and talk to each other for as long as they want in a restaurant without any masks on and they can cause that transmission potentially. But in a vast church or in a big opera house or an art centre they are not allowed to necessarily enjoy their usual fellowship." We have to be able to give an answer to that. We cannot simply say: "I do not know, it is not my problem, we just passed enabling legislation and it is for the Minister to do." So I think where I disagree with Senator Gorst is that he says: "Do not worry, we can trust the Minister for Health and Social Services because he is a reasonable man and he will listen to what is being said." But the Minister is being quite candid with us and said: "It is not that straightforward. I have to follow medical advice. If the medical advice says that people cannot go to church or they cannot go to a singing group or they cannot go to their bowls club, then I have to pass that one. I do not really have any say in that." But the point that the Dean was making is that these are not just medical decisions. These are political decisions. These are economic decisions. These are sociological decisions. Because, while the threat of COVID is ever present, the threat is not just a medical one, as we know. It is a psychological one. It is the absence of not being able to

see our loved ones and our friends, especially during these dark periods, physically dark because we are approaching the winter solstice as well as perhaps metaphorically dark. Those people who might only have a few years left to live, we do not know when our time is going to be called, are being told: “No, you cannot see people. You have to isolate. You have to shield.” We have absolutely no idea exactly what it is we are passing. So rather than being told: “Vote for the nuclear option”, which is vote against these Regulations if you do not like them, that seems extreme. When in fact what we can be doing is saying to the Minister: “There is an ordinary sitting next Tuesday anyway, there is added information that we are seeking”, which includes exactly what the exemptions will be, what you might do for faith groups and potentially non-faith groups who can show that they can allow their congregations and their clubs to meet safely and distance in a controlled manner, in a much safer way than other environments that your department is permitting. So we know what we are voting for and we would have those assurances in place. I understand the complexity about sports clubs, *et cetera*, and I will not make my quip about how you decide whether or not people can partake in certain ball sports or not, depending on the contact. That would bring down the tone of the debate at this point. But this is about us making an informed decision. Saying that this is purely enabling is not quite right. We are making far-reaching decisions today and I know that there are other libertarians in the Assembly. I happen to be a libertarian of the left. I am not an absolute libertarian. I do not take it to an excess, but I think that fundamentally we have to be able to justify all the decisions that we are making. The idea that we would call in an Order from the Minister because we do not like a certain aspect of it again is a nuclear option. How would we react if a Member said: “I want further clarification so I am going to bring an Order back to the Assembly”? Presumably, that puts the Minister in a really difficult position because he should really wait until that order has had the debate. We do not know when that debate might be. It depends when the Order is made. Then we have that uncertainty hanging over our heads. Again, a difference in message potentially going out to the public about what is acceptable and what is not, when it could just be simply something that the Minister can come back with in short order.

[12:15]

We know there is flexibility in all this. The Minister made the sensible decision to allow weddings, which took place last weekend, to continue with 40 people attending, even though it technically should have come in earlier, because he did not want to cause the disruption. So these things are not simply medical decisions. These are also political decisions that need to be made. Common sense. My concern is that common sense does not feature as the prime motivator for the medical advice. That is not a way of having a go at them. It is saying that we cannot expect them to look at the wider implications. That is for politicians to look at. They give medical advice. Similarly, there will be other people giving advice, other officers looking at wider implications about sociological and economic factors and how that might come about. There is reason for a reference back here. This simply means that we could debate it on Tuesday. The Minister can go away and have the conversations with the likes of the Dean. I do not think these are new issues that have just been raised recently by faith groups. Indeed Deputy Doublet, not necessarily from a faith-based point of view, has raised issues time and time again about singing. A lot of these groups once again are going to be deprived of their social interaction, which I would say is going to cause great harm to them, possibly more harm than this, because it is definite that they are experiencing this, rather than the risk of physical contraction of COVID. Those are the points that we need to balance and it is absolutely right therefore that we make decisions in an informed way and we know exactly what we are voting for. At the moment we do not know what we are voting for and it would be remiss of us to do that without the extra information. So I maintain the reference back.

**The Bailiff:**

I ask the Greffier to put a vote in the link. A vote pour is a reference back, contre is to continue with the debate. I open the voting and ask Members to vote in the normal way. Members have had the

opportunity of casting their votes. I ask the Greffier to close the voting. The reference back has been defeated.

<b>POUR: 9</b>	<b>CONTRE: 35</b>	<b>ABSTAIN: 0</b>
Senator K.L. Moore	Senator I.J. Gorst	
Connétable of St. Martin	Senator L.J. Farnham	
Deputy G.P. Southern (H)	Senator J.A.N. Le Fondré	
Deputy M. Tadier (B)	Senator T.A. Vallois	
Deputy L.M.C. Doublet (S)	Senator S.W. Pallett	
Deputy K.F. Morel (L)	Connétable of St. Helier	
Deputy S.M. Ahier (H)	Connétable of St. Clement	
Deputy R.J. Ward (H)	Connétable of St. Lawrence	
Deputy C.S. Alves (H)	Connétable of St. Brelade	
	Connétable of Grouville	
	Connétable of St. John	
	Connétable of Trinity	
	Connétable of St. Mary	
	Connétable of St. Ouen	
	Deputy J.A. Martin (H)	
	Deputy of Grouville	
	Deputy K.C. Lewis (S)	
	Deputy M.R. Higgins (H)	
	Deputy J.M. Maçon (S)	
	Deputy S.J. Pinel (C)	
	Deputy of St. Martin	
	Deputy of St. Ouen	
	Deputy R. Labey (H)	
	Deputy S.M. Wickenden (H)	
	Deputy of St. Mary	
	Deputy G.J. Truscott (B)	
	Deputy J.H. Young (B)	
	Deputy L.B.E. Ash (C)	
	Deputy G.C.U. Guida (L)	
	Deputy of St. Peter	
	Deputy of St. John	
	Deputy M.R. Le Hegarat (H)	
	Deputy J.H. Perchard (S)	
	Deputy K.G. Pamplin (S)	
	Deputy I. Gardiner (H)	

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

Those voting pour in the link: Deputy Morel, Deputy Doublet, Deputy Alves, Deputy Tadier, Deputy Ahier, Deputy Ward, the Constable of St. Martin, Senator Moore.

### **3.3 Draft COVID-19 (Gatherings) (Jersey) Regulations 202- (P.157/2020) - resumption**

#### **The Bailiff:**

We know resume the debate on the principles. The next listed to speak is Deputy Young.

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

There are a couple of points I wanted to make and I will reduce my speech because a lot of the discussion on the reference back was really on the substantive issue. The first thing I want to say, and this is really important, is that the initial period of our handling COVID was absolutely

exemplary, as indeed the period of preparation that meant that we have developed this really excellent test, track and trace system. I want to put on the record a tribute to all those people, all those civil servants, all those experts and how they have worked incredibly hard. From the reports that have come to me from staff that have been seconded to that contact tracing team, a very, very stressful one. I know people have had to take time out because of that and we have seen now how the volume of work has now increased as a result of the high level of infection that we now have. Yesterday's numbers were 162 and we got contact there - over 1,468 contacts - I cannot imagine what it must be like to keep track of all of those. I do remember hearing reports on Radio 4 that in any test, track and trace system there will be a point where infections grow to a level that the number of contacts and so on in our community become impossible and impractical for that to continue. I make that point because we are in a situation where we do have to be sure and confident that we have the regulatory tools to do what is necessary as soon as it is necessary to try to contain the situation from becoming worse. If we can do that successfully, then we can get to the point where the vaccination programme begins and we can really start to move back to normal. Of course, there is also a period now that we can learn lessons. All the things that Members have said about there needed to be a balance and proportionality in decisions are absolutely right. But it is equally true that we are learning as we go. Fortunately now we have the experiences of other societies, and particularly the experience in the U.K. where things sadly seem to have gone very, very badly wrong with their national lockdown. One hopes very much that they can turn things around. Of course also we have seen our very closest neighbours in Guernsey and, not so near, but in the Isle of Man, who adopted the same approach, who have managed to run an elimination strategy by effectively making it plain that they closed their borders down then rigidly enforced their border controls with isolation, compulsory and very firmly implemented. They have done that successfully. Of course we do not know whether that was the right thing to do, any better. We know what the cost has been to our approach. We do not know what the costs are going to be in Guernsey. But of course what we do see is that the cost in our society of the things that we cannot now do are very severe. Particularly as Christmas approaches, which is a very special time for everybody. We look longingly, and I saw last night on Channel Television, we saw the great festive around the Christmas tree in our sister Island. So we learn because hindsight is a wonderful thing. We have to be adaptable. We have to be flexible and make changes. Of course why did we go a different route? I did hear a previous speaker speak of the Ministers got it wrong. As you know, I would have preferred myself - my personal view - was to have a tighter strategy, a tighter control on our borders and have compulsory isolation. But the decision was made by us all as an Assembly. It was an Assembly decision that made that decision and as a democrat I go along with that decision. I do not think there is any point in trying to assign blame or anything of that, it is just pointless. But we do need to accept the fact now, we are where we are, and we just have to make sure we keep matters under control so that we contain that local infection at least to the levels that they are. Of course we have this issue about what tools do we have now? I make no apology for repeating this. It is tucked away in the States document, the P.157, it is tucked away in there on page 5, it tells us that we do not have a proper law in place at all for this. When we went through the emergency legislation in March or April, what was done, a sticking plaster piece of change was made to a law that was really never intended to try to deal with health risks and gatherings. That of the Public Health Nuisances Law. For my sins, I as Minister, am responsible for. Of course there is a power there that we adapted to say that: "If the events were of such size or duration, which was held in such circumstances in relation to potential contamination or infection with COVID-19, as to be prejudicial to health." So that was written in there. Of course what I am told, there have been cases that have been referred to the Attorney General where abatement notices have been served on premises. I am not putting blame here, but it is obvious that hospitality industry is the one that is most effected, suffers the biggest risks of social interaction in hospitality premises, and it is also higher incidences, I am told, of where those infections occur, a higher incidence than in other places. But therefore following the rules is important. We have had a situation I believe where we have been lax, and I have had the same experience as the Dean in going into a hospitality premises,



which I very much enjoy, and seeing exactly the same elements. Nobody using the registration system. I even heard people say: "I am not going to fill it in, I do not want to isolate." Nobody wearing masks. A huge amount of activity. I think really we have to give the Minister, as we move now into a very, very dangerous period, where we are told if we do not have these tools in place we are going to have to face the prospect of a lockdown, which nobody wants. I totally trust the Minister. It is a dreadful job for him having to make these judgments. But thankfully they are not for ever. We are talking about a period, a short period while these extraordinary powers get us through the difficult time of the winter. So we also need as well to be sending very clear messages to the public. We are at risk of really mixing those messages, a bit like the U.K. when what they did is on the one hand they said: "Let us have economic recovery and let us give everybody vouchers and discounts to go out and enjoy themselves. Well that proved to be a great idea, did it not? What does it do? It led to an increase in infection. So that is the sort of thing not to do. I know we are going to have a debate later on masks. I will point to this issue about what I think is culture. I remember travelling, because when we used to be able to travel, how much I miss travel, going through Gatwick Airport and around about the time of February, I think it was, and seeing lots of visitors coming in from the Far East and indeed travelling on aircraft. When I went up to Iceland I see people from the Far East there. They were all wearing masks, all of them. Of course I wondered, ask ourselves is that really necessary? Because we did not know anything about the virus then. But now we know because their culture is that they were looking after each other. Doing that, caring for other people. I think that is an example of cultural change where we all have to adapt. That means going out into gatherings.

[12:30]

So instead of finding reasons: "How can we get around this?" One hears this all the time: "How can we get around this? How can we avoid it? We have a restriction on 20 people. Let us go into a pub and we will split on 2 tables and then we will say we will not talk to each other." But of course you really end up doing it. Of course I have seen plenty of reports like that. I absolutely applaud the Dean's intervention. That speech was so, so important. But unfortunately the Minister has the job of making these judgments and I am delighted that there is going to be that dialogue. Because I just do not think the situation that the Dean describes whereby you can have a hospitality association with a very large number of people associating, possibly with drink in that situation, while people in faith groups are subject to not an equivalent level. So fairness, I am hoping the Minister can arrive at. One final comment. Ironically, I spoke earlier about at the moment the Environmental Health team tell me - despite the fact they are trying - the current law, and if we do not approve these Regulations, under the statutory nuisance is not really working well. We adapted it to do a job. It does not work. I can tell the Assembly I have been after amendments to that law to do the job properly for a long, long time. I am really hopeful, when we get back to normal, I can get that done. That is the kind of irony that illustrates we have to do things because of the pandemic. But they are one-offs. So the discussion we had about the Orders, I do believe the Minister - looking down - has in the powers, if we approve the principles, which I really hope we will, the regulatory tools. I know that Members do not like giving powers where you have to have Regulation. I know that. But it is necessary and we have Regulation for the greater good. That is what it is, it is for the greater good of society. So I am 100 per cent supportive with these Regulations. The Minister made an absolutely right decision to bring them forward. I know before he brought them forward he did ask me and I thought the situation is building up such that, even though there will be people unhappy, for the greater good of society I believe the majority will take them on board, understand why they are there. I am sure the Minister will do his absolute best to apply them fairly and proportionately. But most of all to control the infection during this high-risk period. I will leave it at that. I will be supporting the Regulations.

### **3.3.2 Connétable D.W. Mezbourian of St. Lawrence:**

My Rector wrote recently to the Minister for Health and Social Services voicing his personal concerns about the restrictions on numbers attending church services and his words were effectively

echoed by the Dean when he spoke to the main Proposition. When speaking to the reference back, as I understood it, the Minister said he had not been contacted by faith groups when initial guidelines were put in place. Having spoken to my Rector, I know that the concerns of faith groups have increased the longer the restrictions have remained in place. Of course, notwithstanding the promise of effective vaccines on the horizon, there is no doubt that all of us are worried about the impact we are facing by restrictions, both in the short and long term, and not least of course upon our physical and mental health. We have heard Members today already voicing their own concerns with these proposed Regulations and the possible or likely Orders that, if the Regulations are approved, may then be made. We have heard the Minister himself in his opening words refer to his reluctance in bringing forward these Regulations as they impinge on our civil liberties. That of course is an issue, which we all recognise, which we all have deep concern about, and with which we must grapple when making our decisions. But I wish to speak principally to the undoubted impact upon Parish Assemblies, which are the best examples of grassroot democracy in our Island. I hope Members will have had the opportunity to read our comments to this Proposition. The Comité has been in dialogue for some time regarding the conduct of Parish Assemblies. We welcome today the words of the Minister that, following our approach, officers are working to ensure that the democratic process can be observed. Parishes have been and are seeking to comply and to make extra arrangements if necessary by holding Assemblies over several rooms and venues to allow them to be held where all participants can hear, can be heard, can participate and, importantly, can vote. Of course that was difficult enough with the limit of only 40 meeting indoors plus 10 customer-facing. Clearly, we are concerned with the new guidelines to reduce those numbers to only 20 plus 5. The problems that they give us are compounded as this year most Parishes have elections to their Roads Committee, which can of course be contested. Indeed, I have experience of that as the Roads Committee elections held in my Parish in December last year were indeed contested. Elections could be managed in groups of 40 plus 10 this year, given the size of the premises that we have available to us. We are further constrained with these elections as under the Loi (1914) Sur La Voirie, these elections must take place in December. However, I welcome today the words of the Minister that he is working to ensure the democratic process can be observed and that, in his words, it will be resolved. The Constables welcome the opportunity to work collaboratively with officers to ensure that resolution through constructive dialogue. In closing, I cannot emphasise enough that the Constables are unequivocal in their view that we must ensure, perhaps above all else, that even during this pandemic our democratic process must remain unhindered.

### **3.3.3 Connétable M.K. Jackson of St. Brelade:**

I am pleased to follow my fellow Connétable. Like others, I do understand the motivation in bringing forward this legislation, which is clearly driven by the rise in COVID cases that we are presently experiencing. I believe the difficulty we have as a legislature is in striking that balance between economy and health. It is regrettable, in my view, that some what I might describe as hospitality outlets have chosen to flout the guidelines presently in existence. St. Aubin is a hospitable corner of my Parish and my Honorary Police team are still having to explain to certain establishments that karaoke is not acceptable. The response has been that: "It is only guidelines so we do not have to comply." The result is that sadly the actions of a few will affect the activities of many and that is why I would perceive we are here today. My experience at my Parish church last Sunday was that there was sufficient space for a greater number of parishioners to come in. But some were having to be turned away due to the Regulations. In this light, could the Minister expand on Regulation 4(6) of the proposed Regulations regarding gathering control orders in his summing up? My observations are that it is, in reality, difficult to regulate generally the church attendance scenario. Perhaps it would be better left to those administering the service or gathering perhaps based on the size of the building and arrangements in place. We have numerous churches and places of worship in the Island of all different sizes and I suggest that it is difficult to prescribe numbers for them all. Personally, I, like several of my colleagues, am reluctant to hold a Parish Assembly if there would be a risk to the

health of my parishioners. Once again, I can make provision to comply in terms of the necessary social distancing, mask wearing and hand sanitising routines. But number control, in my view, is best dictated by physical space. Regulations from the Minister regarding numbers is therefore probably difficult to be too accurate on. So, in conclusion, I look forward to the Minister's summing up before deciding on which way to vote with this Proposition.

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

Like other speakers, I do appreciate the need for these enabling Regulations and I do put some value on the common sense approach adopted by the Minister. I have no real concerns on that aspect. There is one area where I do question whether the Regulations could have been in better form. On first hearing of the Regulations I had assumed that, as far as children were concerned, they would not be counted in the number of 10 for gatherings. The Regulations do not quite say that. Whatever practical orders might come in, we are left with the situation that the Regulations, taken in isolation, would prevent a gathering of a family at Christmastime. Taking my own family as a not untypical example, I have 4 grandchildren under the age of 5, 2 under the age of 3 months. If we accepted then their parents and myself, my wife, we would already reach our level of 10, meaning that another son who lives with us could possibly not attend. I appreciate that is a technical or theoretical problem, but I think there will be people organising their Christmas festivities who will want certainty as to who they are allowed to invite. I invite the Minister in his summing up to give some categorical assurance that either the children under a certain age will not be counted or something to that effect, which will provide that assurance to residents.

#### **LUNCHEON ADJOURNMENT PROPOSED**

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

The time has come where Standing Orders require me to ask whether the Assembly wishes to adjourn over the luncheon adjournment or continue. The adjournment is proposed. [**Seconded**] Very well, the Assembly stands adjourned until 2.15 p.m.

[12:42]

#### **LUNCHEON ADJOURNMENT**

[14:16]

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

Does anyone else wish to speak on the principles?

#### **3.3.5 Deputy J.H. Perchard of St. Saviour:**

I will be speaking in support of the proposal but with some frustration and, therefore, have a need to put my position on the record. I maintain the view that an elimination approach, which means aiming for zero, would have resulted in stricter restrictions in some areas but greater personal freedom internally. As we have witnessed in other places, this approach has resulted in a sense of more stable and more consistent internal activity without oscillating between us being open and closed or in school or out of school and so on. That is because a control and suppress approach leaves us closer to the knife edge of extreme measures, because our case numbers will inevitably be higher. However, the elimination approach was not given a mandate. Only 5 other Members supported my proposal to pursue elimination: Deputy Doublet, Deputy Gardiner, the Constable of Grouville, the Deputy of St. Martin and Senator Moore. Elimination, which is not the same as eradication and simply means aiming for zero new cases, was rejected by a huge majority of the Assembly in favour of suppress and control. Why is this relevant? Well, because this Proposition exemplifies the consequences of that decision. By its nature and by its definition, suppress and control was always going to result in an oscillation between being more and less restricted. Suppress and control is a well-known reactive approach, not a proactive one, and as such anyone in favour of it is in favour of legislating more

fluidly with Regulations coming and going and changing. The types of restrictions that we are now faced with are appropriate and should not be surprising to anyone supportive of a control and suppress approach. If you look at how suppress and control is being managed elsewhere we can see that mask wearing and gathering controls and other methods of control change in severity regularly. That is what most Members signed up to when supporting this approach back in May. My personal view is that public confidence and understanding is improved by rules that are clear and do not change, but that was not upheld so we must move forward doing the best that we can under the approach that was adopted. I will support this Proposition because since the suppress and control approach was mandated I have felt that we have needed to take more action, more urgently, to protect the vulnerable. For the first time we heard the Minister for Health and Social Services talk last week of being proactive in implementing restrictive policy rather than waiting to reach certain thresholds or case numbers. To me that language was welcome, albeit frustratingly late in the year. If these Regulations on gatherings serve to control and suppress the spread of the virus, as we are told they are, then for the sake of the vulnerable members of our community - the people who are most at risk of serious illness or death from COVID - we should adopt them as we head towards winter. Having said that, I do have several questions I would like to put on the record and that I expect to be answered by the Minister for Health and Social Services as these Regulations are brought into force. The report to the proposal states that advice from the Medical Officer of Health will inform the enforcement officer and question in more detail about what risks apply and how they should be weighted. I think it would be helpful if the Minister was able to outline how that works in practice and by which process an enforcement officer obtains advice, particularly in the case where the advice comes from the Minister for Health and Social Services and not from the Medical Officer of Health, as is stated later on when it says that the guidance may come from the M.O.H. (Medical Officer of Health) or the Minister. What specific factors will be consistently assessed by the Minister in those situations where he is to provide such guidance to enforcement officers, and on what grounds is the minimum set at 10, and what factors are included in the calculation of the minimum value? Given that enforcement officers who are assumedly not medically trained will be tasked with deciding whether or not to disperse a gathering, and given that this will require a degree of assessing medical risks posed to those who are gathering, how will they be supported and trained to ensure that their decisions are consistent and informed? What would trigger a change to the minimum and maximum values? If they were to change, what plans are already in place to protect and support businesses who may find they have a sudden wave of cancellations and other losses as the result of a change to the minimum and maximum values? Do schools count as private or public spaces? If neither, what is their classification? What other places are exempted due to being neither a public nor a private space? Will enforcement officers be given the right to disperse groups from private dwellings? I think that point has been covered by previous speakers. Something that I want to talk about in more general terms is the reference made in the report to the Regulations to children and young people. In the report there is a survey that is referenced as evidence for the concerns of children and young people and I would like to just talk about that more widely. The data that is provided in the survey that is referenced as evidence in the report shows that of the 1,393 responses given to the question: "Are you worried?" 35 per cent of children and young people said they were concerned for others, with over 80 per cent of those responses being specifically related to being worried about family illness. The same graphs show that only 8 per cent of the responses of young people and children in this survey were that they were worried about life not going back to normal and unknown quarantine length. However, in the report to the Regulations it states that: "Many children expressed concerns about their life not returning to normal and, in particular, that there may be another lockdown." However, there is no data in the survey that backs up that statement. Page 14 of the same survey shows that when asked: "If you do not feel safe, why is this?" most responses from children and young people were: "Catching the virus" or: "Having a key worker in the family." The point I am making here is twofold; firstly the statement in the report to these Regulations that this survey shows children are particularly fearful of a second lockdown was poorly put together because the survey does not back that up. I then have to

ask, why are we using the voices of children to make politically-driven statements? Secondly, this demonstrates a huge disconnect between the anxieties of children and young people and the way that we are trying to present them when we bring forward such legislation. We need to get a grip on this, and fast. Throughout the pandemic students, particularly those taking exams, have not been proactively reassured. We have got to stop thinking of teenagers as party animals who are just moaning about not being able to hang out with their friends. Here are some of the qualitative responses to the question of what they are worried about. First a student says: “My mum is a front line worker and I am scared that if she gets corona she might die.” Another says: “I am scared. I do not want to die. I miss my nana and poppa. I miss school.” Another says: “I am worried about family members getting the virus, in particular parents and grandparents, and dying as a result.” Another says that they are worried that: “My mum will get it and die. If she dies I do not have anyone else as it is just me and her.” Many other children and young people site their deteriorating mental health and frequent comments are made about exam stress and uncertainty. We have to be gentle with these young minds. When we enforce new Regulations such as this gathering Regulation we need to address young people directly and not reprimand them for wanting to socialise, but to explain the rules, the risks and the rewards of abiding by the guidance. They need to feel protected and safe and they need to understand why we are doing this to them. I hope that when these Regulations come into force there will be campaigns targeted at our children, teens and young adults to communicate with them in the ways in which they need to be communicated, on platforms where they will see it, at times of day when they will see it. We have to take everybody with us when introducing new rules and that includes dealing gently and fairly with our young people.

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

I start with the interesting issue that we first met some 5, 6 months ago when people rather were shocked by the thought of COVID enforcers coming around to their house and closing down a party or a gathering because it had too many people there or it was breaching rules. That seemed to be quite a shock at the time that somebody could come on to private property and enforce the rules that we are managing by. But make no mistake, I think the Minister has clearly expressed that these Regulations are about enforcement and, yes, enforcement officers will be able to come into your home and close down your gathering, your party, because it is over 10 or whatever, and that will be the case. So if we are voting for this, and I think it is worthwhile voting for it, bear in mind that this is what you are voting for. Please do not start making complaints later down the road when things are looking tough that you were not aware that this was going to happen because it is.

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

I will be brief. I absolutely understand what Deputy Southern is saying, and previous speakers this morning, about what we are doing and is it not a shame that we have to be doing this. I would say the majority of people in Jersey have been brilliant but I think, like human nature, they are suffering from COVID-fatigue. I know people have different views; I think we have done so well through COVID, people think it is something now going on over there, over in the U.K. and they have not really grasped our numbers going up. Do you think that we want to do this? Do we want to knock on people’s doors and say: “You should only have 10 and we think you have got too many in this gathering”? Of course we do not but we have to have these tools because we are 49 Members of this Island, we are trying to govern for approximately 110,000, and people say to me: “I think you are doing this okay and this” and I am saying: “Well, it is not all us.” If we do not get the buy-in from the public we cannot achieve and stay where we are; we want to see the numbers going down. I think it is a sad day that we have to be where we are today but I fully support what we have done along the lines.

[14:30]

Time will tell whether we should have done X, Y and Z. Some of these people that have followed different rules to us might have a different knock-on longer on their economy, their mental health, everything else. I do not know. It is too soon to tell. But, as I say, we do need to do this. It is a shame. I do sympathise with Deputy Perchard; I do not see it as all youngsters, I see too many in my age, at the middle age, out. They have not seen their friends for a while, it is not under the influence but they are having a nice hello and a little cuddle. What do they not get? Social distancing is thinking where do you know your friend was an hour ago? Were they shaking hand with someone who did have COVID? So it is about taking people with you but it is just reminding us. I am sorry that we have all got a bit of fatigue, it is still there, it does not discriminate unfortunately against the Parish Hall or a gathering in a church, and I know the Minister will be sensible on those things. But there are other ways to do that; I heard the Dean speak. Then there were gyms mentioned. I go to classes now that can only have 15 where they used to have 30. Can we not have 2 worships on a Sunday if you cannot get the 40? I do not know; there might be physical reasons why they do not want to do this. But to me it is a shame. Deputy Southern, I think we all absolutely know what we could be passing today, and we need those few tools. I know our enforcement have not gone with a heavy hand, but if they need to they will.

#### **The Bailiff:**

Does any other Member wish to speak on the principles? If no other Member wishes to speak on the principles then I close the debate and call upon the Minister to respond.

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

I thank all those Members who have spoken because this is a debate of importance; this is a measure which does restrict civil liberties, the sort of things that in normal times we would be horrified at doing. But I do want to remind Members that we are dealing here with a pandemic and countries around us have adopted far more stringent measures on limiting people's freedom and freedom of assembly. This is an attempt to avoid those stringent measures by putting something in place now which would enable us to get a better control. Of course when you try to introduce such things that do impinge on people's lives in such fundamental ways - and worship is one of them - it is difficult, and it is difficult sometimes to show an equal approach throughout all sectors. But, as I tried to say in the debate on a reference back, there is logic and a consistency to looking at gatherings because gatherings are how the virus spreads. It just loves us to be close together and mingle, to use a phrase that is very common in U.K. legislation. So there is a justification or a rationale, agree or not, for what we are seeing in a properly conducted restaurant, which has its tables duly distanced and has the occupants of those tables as separate gatherings leaving at separate times and not mixing with the other gatherings in that restaurant. In that sense there is a distinction between a gathering of a faith group which comes together at a regular time for a common purpose and are known to each other, and it might be understood that despite their best intentions they want to chat, they want to catch up on news. It has been the case that in other parts of the world - though fortunately not in Jersey - churches and other faith venues have been a venue where infection has spread. So I have said I want to meet, and I have asked my office to arrange a meeting with church leaders, including the Dean, to try and find a way through this. I cannot now give any guarantees or assurances because we are faced with that issue if we make that particular exemption, which has been suggested today, then why would it not apply to other groups who similarly have large venues and can achieve physical distancing and can achieve a good means of controlling the people visiting them or taking part in their activity; why can they not be exempted. That is my difficulty which I am willing to try and resolve with all concerned. If we cannot find a logical way of distinguishing faith groups then perhaps we just have to say that we make an exemption for faith groups because the Dean sits in this Assembly and the Dean has been able to make his case to this Assembly, which seems to have been supported by many Members. But I am not sure if that is the reason why the Dean has this special place in this Assembly, because it should not exclude other groups making similar representations

and we have to try and achieve a fair result. But that is for discussion and I am sympathetic. I would love to ensure that public worship can continue beyond 20, but we will need to work that through. I am grateful for the Dean's contribution. I would just like to say though, those who have argued for exemptions for faith groups have compared the bad behaviour that they see in some restaurants, and that does not seem to me to be a reason to go against advice and to increase risk in one venue because other venues are not observing guidance. If Members are to approve today's legislation, and in particular the legislation which follows on workplace restrictions, then our enforcement officers will have the powers they need to go into those restaurants and to enforce the Regulations in the way we want them to, and put an end to what we have been seeing in some, but not all, hospitality venues. Reference has also been made to the limit of 40 for funerals and I have to accept that was a decision made on compassionate grounds because a funeral is a unique event. Church gatherings are ongoing; they happen weekly, there is a repeated risk there. We discussed funerals among Ministers; we thought at that time it was the right decision, but that is under review and it is not necessarily the case that it will remain at 40 and that can change under this legislation if approved. Connétable Taylor asked whether buses would be covered. No, not by the gatherings legislation because buses are deemed workplaces and the workplace restrictions Order would govern how buses are arranged insofar as concerns infection control. He and other Members have spoken about Christmas. These Regulations or Orders are designed to be flexible and there is a Christmas working group, or I think its proper name is a winter events group, which is working away in government at the moment to plan what we might do over Christmas. Because we do want people to, as much as possible, enjoy themselves over Christmas of course, but to be protected and mitigate the risk of spread. So we are trying to work out ways and that group will be reporting to Ministers shortly and then we will have a public discussion on how Christmas might look. But it is not necessarily the case that these strict numerical limits will be fixed for Christmas because they can be changed, and if there is reason to change them they will be. I am going through notes I have here. Deputy Doublet spoke about the European Convention on Human Rights. I do not believe that is in play here. She spoke specifically in the context of faith groups and, as I said, I will consult with faith groups. She was also concerned about children under 12. They cannot be guilty of an offence if they gather together but they are included in the numbers of people that might be asked to disperse. The Deputy was disappointed at that but if they were to be excluded it would require an enforcement officer to first of all find out the ages of any persons in a group which might approximately look to be around 12. That is impractical, I think, and there is no real reason why those children under 12 cannot be included for the purpose of calculating the number in a gathering. The gatherings will be a maximum of 10 or 20, or 40 if outside, and that is far better than many other jurisdictions where we are hearing of either complete lockdowns or far fewer numbers. The Deputy also was concerned about reference to singing. The intention is that any Order will follow the current guidance, but I am due to meet with the Deputy and the Deputy Medical Officer of Health to discuss the issue of singing and, in particular, the Deputy's Proposition which I understand she would like debated next week. Deputy Ward thought there were too many unspecified areas, and indeed that is of course the worry of many other Members, but I have to say again this is like so much legislation in which the States are asked to give enabling powers because we cannot specify in advance what might be needed. So Orders are put in place in order to have that specificity that is needed when the time comes. The Deputy was asking if one person is drinking wine in a gathering will that be dispersed, but that would be permissible if the enforcement officer looking at that gathering thought it was otherwise well conducted. It is a matter of degree. The Medical Officer of Health will be giving guidance to enforcement officers around that. Deputy Perchard asked particularly around that guidance, how flexible it can be and what it is informed by. What happens is that the public health team in Government meets daily as a daily analytical cell, and it receives information coming in from the border testing, from test and trace systems, from enforcement officers, from the police service, and they analyse each day how we should respond, what changes should be made. They track and analyse how the virus is spreading throughout the community and what needs to be done, and bring forward recommendations on a daily

basis for the detailed management of this pandemic. All that information will inform those who are out there looking at gatherings and will be deciding whether they would need to disperse a gathering. The guidance to them would be updated as often as necessary by the Deputy Medical Officer of Health. So one can see there is a wonderful flexibility in that. The first guidance is being prepared and will be shared with the Scrutiny Panel and Council of Ministers and the like.

[14:45]

I was grateful for the Connétable of St. Lawrence for her measured approach on the Parish Assemblies issue, and I confirm that I will welcome the discussions with the Connétales and their secretary and we can resolve exactly how to ensure the wheels or democracy still turn, while at the same time trying to ensure maximum protection. Connétable Jackson recounted his experience in St. Aubin of venues correctly saying that what Government is saying is only guidelines at the moment and they do not have to obey. That is our concern. That is why we need to legislate for this and create those enforcement measures. He also spoke about church numbers and asked, I think, how I was going to resolve that. Again I wish to try and resolve it without creating those difficult exemptions and saying that the faith groups are in that privileged place where they have an exemption and other compliant groups may not have that same exemption. We must find some way of coming to an understanding over that. The Deputy of St. Mary spoke about his Christmas party and I do hope he has a wonderful Christmas with his grandchildren. As I said, there is that winter events steering group and we hope that that will report shortly on measures that we might be putting in place over Christmas. I think that brings me to Deputy Perchard's speech, and I do respect Deputy Perchard for the view she has consistently expounded about the strategy that ought to be adopted. It is the case of course that we rejected the strategy she proposed because we followed advice. None of us can say at the moment what might have been the better course of action; it is still far too early. Whether we will ever be able to get a definitive answer to that is perhaps doubtful. But we have followed the advice that was given to us by professionals and I would never wish to have done otherwise. Deputy Perchard has acknowledged that we are doing the best we can under the approach adopted by passing these Regulations and I do agree with that. She asked me about powers to enforcement officers, which I think I have dealt with. She asked me about schools. Primary schools in particular have their own guidance and ways of working which this gatherings legislation is not intended to apply to. This legislation will apply to children over 12 but outside of their schools. Schools have their guidance which has been worked through with the Minister for Education and they are operating within that. Deputy Perchard asked me what grounds were there to fix a minimum number at 10 persons. There was no special scientific advice I believe that 10 is safer than 11, but a number has to be fixed and we looked at the problems the U.K. was having with its rule of 6 and thought that we did not wish to go there. A family group of 10 is very unlikely in Jersey, if there are any such we can make a particular provision around a household of 10 or more members. Deputy Perchard spoke about communication, which I wholeheartedly agree is important, and there has been extensive communication around guidance by our communications team. But in particular I will pass on the Deputy's concern for communicating to children and I will make sure that is understood, and I hope that there may be contact between the Deputy and our comms team with any ideas they may have. Deputy Southern pointed out that really if Members chose to vote for this they are voting for control. Yes, that is the case. Members are voting to legislate for current guidance to be enacted; but must also bear in mind that Orders that come forth might well be changed, and that will depend on the medical advice and will need consultation with the Deputy Medical Officer of Health and the Council of Ministers. It is intended to respond of course to the situation that we find ourselves in, which is dynamic and might change day by day, certainly week by week. We do need these sorts of measures if we are to try and maintain the reasonable position the Island finds itself in and avoid an escalation of cases and the potential for a lockdown. So I do hope that Members will understand the need for these Regulations and give them their support. I thank Members and I call for the *appel*.

**The Bailiff:**



Thank you very much, Minister. I ask the Greffier to put a link into the chat. I open the voting and ask Members to vote in the normal way. The vote is on the principles of the Regulations. If Members have had the opportunity of casting their votes I ask the Greffier to close the voting. The principles have been adopted.

<b>POUR: 43</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst		Deputy S.M. Ahier (H)		
Senator L.J. Farnham				
Senator S.C. Ferguson				
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

**The Deputy Greffier of the States:**

Deputy Ahier voted contre.

**The Bailiff:**

Deputy Le Hegarat, does your panel wish to call this in?

**Deputy M.R. Le Hegarat of St. Helier (Chair, Health and Social Security Scrutiny Panel):**

No, thank you.

**The Bailiff:**

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

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

I would like to propose the Regulations *en bloc* but perhaps if I may be permitted to just say a little something about each. There are only 4 Regulations. The first is the usual interpretation provision. The second describes the gathering control Orders, which will give effect to the restrictions on gatherings, and these will follow the guidance of the Deputy Medical Officer of Health and initially the order will reflect that guidance in place at the current time. Before making any such Order I am required to consult with the Medical Officer of Health, but also the Council of Ministers, and to be satisfied based on advice that the Order is necessary and proportionate. Members will see that paragraph 4 of the Regulation lists those characteristics of a gathering which are considered to be of a particular concern, and this reflects the current medical understanding. There is a provision to add additional factors should that become necessary, but the barrier to doing so is unusually high and it requires the agreement of the Medical Officer of Health rather than simply consulting the officer. As I have said, gathering control Orders cannot affect children under 12. Regulation 3 gives the power to enforcement officers to disperse a gathering, together with the capacity to issue a direction requiring that people do not return to the area within the specified time. It contains safeguards considered necessary to ensure that this power has the minimum effect on civil liberties, and such a direction must be minimally disruptive, made for the minimum possible time, and affecting the minimum possible area. Where a direction would have the effect of stopping somebody returning to their home or reaching their workplace or accessing education or medical treatment, then it can be treated as disregarded which means that no offences can flow from breaching it. Again this is intended to protect civil liberties as far as possible by ensuring that nobody is restricted from going about their normal business by such a direction. The Regulation also provides that additional categories of people can be designated as enforcement officers in the same terms as already permitted by the Screening Assessment and Isolation Regulations. There is no intention at this time to expand the meaning of enforcement officer, however, these Regulations have been written to accommodate any further deterioration in our situation which might lead to a reduced capacity to police this and other legislation resulting from, for example, significant sickness among the police force, or any other reason. Finally, Regulation 4 makes the usual arrangements for citation commencement and expiry and Members will note that these Regulations expire at the end of April next year, in line with our decision in September to extend the COVID legislation made earlier this year.

**The Bailiff:**

Are the Regulations seconded in Second Reading? **[Seconded]**

**3.4.1 The Connétable of St. Brelade:**

A few points on the Regulations, if I may. With regard to 2(7)(b) it refers to: "People generally or on a particular description of people, or as different requirements for different descriptions for people." Should there not be a named person, is what I would ask the Minister, in that case? Moving on to 3(2)(a), should this be in writing if it is more than a period of a few hours? Because as a matter of practicality it would be useful to have a form which is issued so that everyone knows exactly what is expected and when it expires. This form maybe should be in paper format and given to the person

who, if they contravene, may be committing a criminal offence. Then the Order should be valid with some sort of service unless refused by the person on whom it is being served. It would then become down the line evidential in court should the need arise. With regard to Regulation 3(3)(b), wilfully fails to comply is an interesting word and it is a question I would perhaps ask those more expert than myself in these situations. It is told that using the word “wilfully” is hard to prove and maybe the Attorney General could advise Members on whether it is acceptable to use that sort of terminology in this situation and how it might be proved in court. With regard to 3(4)(a), “reasonable” is once again a difficult word to interpret and I wonder how the Minister might, shall we say, expand on shorter than reasonable. I speak after consultation with my Centeniers who obviously are the people on the ground floor who will have to deal with these things and the outcome of any Orders that may be agreed in due course.

**The Bailiff:**

Thank you very much, Connétable. Do you have the question specifically for the Attorney General? You touched on it in your speech but if you ...

[15:00]

**The Connétable of St. Brelade:**

Yes, if he could give Members some interpretation on 3(3)(b) and the word “wilfully”. Is he able to give more detail on how the word “wilfully” could be taken through to a court situation where proof would be needed?

**The Bailiff:**

Mr Attorney, are you able to assist?

**Mr. M.H. Temple Q.C., H.M. Attorney General:**

Yes, I just caught the question. I think it was in relation to Article 3(3)(b) and the meaning of the word “wilfully”. Is that correct?

**The Bailiff:**

Yes.

**The Attorney General:**

“Wilfully” is a standard term that is used in court in terms of assessment of a defendant’s intention in relation to a particular offence, so it is a term that the courts are well used to dealing with. Broadly it equates to intentionally but that is not assessed by reference to subject of intention of the defendant. So it is not sufficient for the defendant to say: “Well I intended to do X when I was doing X.” The court is not confined by the defendant’s subjective expression of his or her own intention. It is something that the court can assess for itself by reference to all the evidence that is presented towards it in terms of whether or not the defendant intentionally - or deliberately is another word - failed to comply with the particular direction that would be given in this case.

**3.4.2 Senator L.J. Farnham:**

I did miss the very beginning of the Minister’s speech introducing these Regulations so if he has covered it I apologise, but I think in Regulation 2, I think paragraphs (1)(b) and (2)(b) mention is made to the period of time for which Orders will be in place, and this states that the Order can end no later than 31 days. I think that was previously 14 days and it is increasing to 31. I just wanted while putting that on record - and I am sure Members have noticed it - just for the Minister to confirm. I know we worked very closely together on this. This does not necessarily mean that an Order will be in place for 31 days and it will be, when it is made, agreed and put in place for the appropriate

time. The same applies to the next Proposition and so I will not mention it again, I just thought I would put it on record now.

### **3.4.3 Deputy R.J. Ward:**

Just a couple of things. I think Constable Jackson mentioned Regulation 3(4)(b)(ii) about the time, 3 hours or shorter as is reasonable. I just wanted to know what is meant by “is reasonable”. Could it be a period of 5 minutes later? I think detail like that is important. The other one is Regulation 2(3)(a), it says: “Before making a gathering control order the Minister must consult the Medical Officer of Health and the Council of Ministers.” I get the concept of consulting the medical officer because there is specific medical information that will be requested. I just want to know what “consult the Council of Ministers” refers to. Is it more informing of the decision that is made so they are aware of it, or is a vote taken for agreement or not? Is that a majority vote, if that is the case, or is the intention for it to be unanimous? I think that is important because when we talk about consulting the Council of Ministers we are talking about discussing with those who pass legislation and, therefore, I think people need to know what that consultation means in detail. There was another detail, and I have scrolled through it and I cannot remember what it is now, but it might have to be in the form of a question for the Attorney General, if I remember what it is. It was just those 2 details really, and I think that is just about it.

### **3.4.4 Deputy M. Tadier:**

I have got a question about Article 2(4) in particular, and something that is worth noting that I mentioned earlier is that there are certain parts of this where a lot of it is left to chance saying that there will be exemptions but it does not specify what the exemptions are. But here in 2(4) we have got some very specific examples under (4)(b) of conditional prohibition where there are no fewer than 10; so 10 or more. It talks about if the gathering is inside a building, consuming alcohol, singing or shouting, and engaging in physical exertion that requires heavy breathing. I am a little bit bemused, as I said earlier, but this is a new point as well; so the shouting and singing, I do not know how that is going to be enforced. I also do not know about the shouting because I think people can expressly get together to sing so it is perceivable presumably if there is fewer than 10 people who get together for a party or just for a singalong in a private residence that is okay, but if there are more than 10 that is not okay. But I still do not get this shouting thing because presumably it is just going to be an intermittent problem so one person at a party might shout on one occasion, and I am wondering if that is then going to constitute a complaint from a neighbour who is going to say: “There is something going on next door, they are shouting and there are more than 10 of them.” I am not sure what was in the head of the Minister or the person drafting this as to why that was put in, so I need some clarification from the Minister around that point. I am also slightly bemused about the inclusion of alcohol in this. I know that alcohol has an impact on behaviour but it seems to me that you could have quite a rowdy party of 9 people where a lot of alcohol is being consumed; you might have a gathering of 10 people or more where the consumption of alcohol is just much more peripheral and it is not the main purpose of the event. Indeed you might have 9 Methodists there all drinking fizzy water and milk and you have one person drinking special brew; would that constitute this particular clause being engaged? I do have that general concern that I think Deputy Morel raised earlier about, are these types of Articles going to lead to some of the less savoury aspects of human nature where neighbours are going to be seeking to grass neighbours, people who maybe have a grudge running, are we going to see police-time effectively being wasted by things which should ultimately be left to people making the right decisions with guidance. I would be happy if the Minister can speak to that. I do not feel the need at this point to ask the Attorney General or the Solicitor General.

### **The Bailiff:**

Thank you very much, Deputy. Does any other Member wish to speak on the Regulations in Second Reading? If no other Member wishes to speak then I close the debate and call upon the Minister to respond.

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

I thank Members. Connétable Jackson asked in Regulation 2(7)(b) whether that would allow a specific named person to be identified. That is not the intention of these Regulations; it is to prevent gatherings of groupings of people and they can be identified by means of a characteristic they share or it can be very general. But I think it would be wrong if we were to say they apply to one specific-named person, because that would be some sort of antisocial behaviour legislation which this is not; this is public health legislation and not policing legislation. As to whether an enforcement officer might provide a written notice of his or her requirements under Article 3(2)(a), wherever possible that could be done and it might be an idea if enforcement officers were issued with a standard pro forma. But also it should be considered that the enforcement officer would be addressing a group of people and if he had to write out a dozen, 15, 20 little chits to give to each of them that might be difficult while this gathering was continuing and perhaps getting more excited about the presence of an enforcement officer trying to disperse them. So there are practicalities to consider here, which are not at all unusual in the world of policing because a police officer will give directions to people from time to time, and if there is a flouting of that direction any one of us might be charged with refusing to obey the orders of a police officer. It does not depend on the issuance of a written notice as to the precise nature of the order that we were given. So this is nothing new but we can certainly look at whether it is possible to have a written pro forma. I think the Attorney General has helpfully dealt with the point about wilfully. It is a word in regular use and of course this legislation is considered by the Law Officers' Department prior to lodging. The Connétable and also Deputy Ward spoke about the use of the word "reasonable" and how a direction may be disregarded because it was unreasonable. That would be a decision for a court to make. If somebody was charged with refusing to obey those directions and contested it and wished to make the case that it was unreasonable for any of the reasons set out in Article 3(4), which could be that the time they were required to stay away was too long, or because it prevented them from attending home, or anything set out there, then the judge would be able to declare that the direction given was unreasonable and, therefore, they would not be guilty of an offence. That is how I understand it would work. Senator Farnham spoke about the provision in the legislation that these orders would be renewed every 31 days. This is simply an administrative measure because at the moment ... when we come on to the next debate it is an amendment to workforce Regulations, those workforce Regulations are presently in their 13th extension, and it is the same document that keeps coming back to me every fortnight having to be prepared by officers, passed in front of the Deputy Medical Officer of Health and the situation remains the same. But it is possible to change the 31 days and I would certainly do that if Senator Farnham was concerned in his ministerial capacity about the initial 31 days or continuing periods of 31 days. It can be shorter and so I intend to work with the Senator to ensure that we retain that flexibility that he wishes to have. Deputy Tadier was asking about shouting; how it might be enforced if it was an intermittent problem.

[15:15]

I would refer him to Regulation 2(8)(a), which stipulates that the gathering control order that imposes a conditional prohibition, which is what he is speaking of, may disapply any one or more of the clauses (i) to (iv) in paragraph (4). So an enforcement officer coming along and seeing a grouping of a dozen people can consider whether they need to be dispersed or whether they are not infringing any of those criteria being inside a building, or consuming alcohol, or shouting. If he hears one single shout I do not imagine the officer would consider taking a more severe action, but if he hears repetitive shouting coupled with any other behaviours then he might wish to take action. So that flexibility is built in and it has to be because we cannot legislate in Regulations for every situation

that enforcement officers might come across, and this is perfectly usual in legislation that requires policing. So they are given that discretion which will be exercised on the basis of guidance which will be provided by the Deputy Medical Officer of Health and that guidance has the capacity of changing depending on the situation we are in in the Island and how serious or otherwise the situation might be with regard to the spread of infection. So I hope that might have answered those enquiries and I propose the Second Reading, Sir.

**The Bailiff:**

The Connétable of St. Brelade has asked for a point of clarification. Are you prepared to give way?

**The Deputy of St. Ouen:**

Yes, Sir.

**The Connétable of St. Brelade:**

I thank the Minister. Going back to Article 2(7)(b) probably in a scenario whereby the enforcement officers walk past a pub, shall we say, there is lots of noise coming out and there is a large group of people up to the requisite number, the normal process would be that they would address the licensee who would take action against what was going on. There does not seem to be provision in these Regulations to do that and I just wonder if the Minister would just outline how he would perceive that were to be dealt with.

**The Deputy of St. Ouen:**

Whatever powers are in existing legislation would of course remain. So the licensee is responsible for the good conduct of licensed premises and the police officers could of course approach the licensee and take whatever action those police officers think necessary under the Licensing Law or other legislation. This set of Regulations deals with gatherings which would mean that powers are given to control a gathering or to disperse a gathering and they would not be used to enforce any measure against a licensee or any one particular individual.

**The Connétable of St. Brelade:**

I thank the Minister. That is helpful.

**The Bailiff:**

There is a further point of clarification raised by Deputy Ward.

**Deputy R.J. Ward:**

I do apologise to the Minister if he has answered this and I missed it but my sound cut out so if I may ask, I did ask regarding the nature of what “consult” means in 2(3)(a) with the Council of Ministers and I wonder if the Minister can answer that and, again, I apologise if he did answer that.

**The Deputy of St. Ouen:**

It is for me to apologise because I missed that and I do apologise to the Deputy and the Assembly. “Consult” means just that. We have ministerial government which means that it is the Minister who is responsible for the final decision but there is a legal requirement to consult. That does not mean that it is a Council of Ministers’ decision. It does not mean they have to vote on it but I have to ensure there is a consultation with Ministers. Of course, the way we work is that if it is immediately apparent to me that there is disagreement among Ministers and some or all of them do not like what I was proposing, then we would quickly arrange a meeting of Ministers to deal with the issue. So I am not going to insist on my own way when I know there is unhappiness among ministerial colleagues. We would always attempt to resolve that by full consultation and attempting to achieve consensus. I hope that helps.

**The Bailiff:**

Yes, very well. You have asked for that to be put to the vote. Deputy Tadier has asked for Article 2 to be taken separately. He has asked for Article 2(4) but that is not possible. It obviously cannot be a sub-provision but Regulation 2 can be taken separately. Minister, that is his right so do you therefore propose Regulation 1?

**The Deputy of St. Ouen:**

Sir, I have a difficulty in that it seems to me if Article 2 is taken separately and defeated, then Article 3 falls because it does depend on Article 2 being carried. Otherwise, if I do not have the power to make gathering control orders, they cannot be enforced under Article 3.

**The Bailiff:**

That must be correct in fact.

**Deputy M. Tadier:**

I was just going to say the issue I have is with Article 2(4) and obviously it is my judgment call whether or not the objection I have to 2(4) is sufficient to not vote for the whole of 2 but this is for me to register some dissent and it is not going to mean that Article 3 falls. So I would ask for that to be taken separately if it is technically possible even if it is not logical.

**The Bailiff:**

Article 2(4) cannot be taken as a separate provision. Article 2 can theoretically but the Minister is right. If Article 2 is not passed, then the whole of the separate provisions effectively fail.

**Deputy M. Tadier:**

I understand that, Sir.

**The Bailiff:**

So, accordingly, a vote against Article 2 is a vote against the entire legislation. So it does not seem to me to be appropriate to take it simply to register a dissent which of course you have now done in what you have said.

**Deputy M. Tadier:**

Yes, that will not be recorded in the vote, Sir, so if it can be taken theoretically if possible, I ask for that. Otherwise, I would ask for 2 and 3 to be taken separately. That said, Sir, we often take paragraphs that are consequential separately in other debates and if one part of 2 falls, then ...

**The Bailiff:**

The position is that under Standing Orders, a Member is entitled to ask for a separate statutory provision to be taken separately. Accordingly, it can be taken separately. The effect of it appears to me, as the Minister suggests, which is that a vote against 2 is a vote against what is in effect the legislation as a whole but I think we must do that, Minister, because it accords with Standing Orders.

**The Deputy of St. Ouen:**

Very well, Sir. I think if Members voted against Regulation 2, I would have to withdraw the Regulations in their entirety.

**The Bailiff:**

Yes, but we have to move Regulation 1 first so could you please, Greffier, put a voting link in for Regulation 1? The vote is on Regulation 1 and I ask the Greffier to open the voting and Members to vote in the normal way. If Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. Regulation 1 has been adopted.

<b>POUR: 46</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator S.C. Ferguson				
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy J.H. Perchard (S)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

Regulation 2, Minister?

**The Deputy of St. Ouen:**

Yes.



**The Bailiff:**

I ask the Greffier to open the voting. The vote is on Regulation 2. If Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. Regulation 2 has been adopted.

<b>POUR: 41</b>		<b>CONTRE: 2</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst		Deputy M. Tadier (B)		
Senator L.J. Farnham		Deputy S.M. Ahier (H)		
Senator S.C. Ferguson				
Senator T.A. Vallois				
Senator S.W. Pallett				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M.R. Higgins (H)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy J.H. Perchard (S)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

**The Deputy Greffier of the States:**

Deputy Tadier and Deputy Ahier both voted *contre*.

**The Bailiff:**

Regulations 3 and 4 together, Minister?

**The Deputy of St. Ouen:**

Yes, Sir.

**The Bailiff:**

I ask the Greffier to post a link for Regulations 3 and 4 together. Could people please not indicate a vote in the chat until the link has been put up and I have opened the voting? I will not be able to count anything above the voting link. The link has been posted. I ask the Greffier to open the voting and Members to record their votes in the normal way. If Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. The Regulations have been adopted in Second Reading.

<b>POUR: 43</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator S.C. Ferguson				
Senator T.A. Vallois				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy J.H. Perchard (S)				
Deputy R.J. Ward (H)				

Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

Do you move the matter in Third Reading, Minister?

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

I do, Sir.

**The Bailiff:**

The Regulation is seconded in Third Reading. **[Seconded]** Does any Member wish to speak in Third Reading? Did someone indicate in the chat whether they wish to speak?

**3.5.1 The Deputy of St. Martin:**

These Regulations have been quite a while coming to us. Some of us have been asking for them for quite some time. The Minister has repeatedly answered questions about that and I am grateful to officers and the Minister’s team and indeed the Minister himself and his Assistant Minister for bringing them forward. It has obviously been quite challenging to get them before us but I do say to the Minister, now he has them in place or is about to have them in place, he has the ability to do things by order.

[15:30]

I have to say to him that I have been disappointed by some of his answers this morning where I see faith groups and families pitted against restaurants and cafés and consistency always has to be the way to move forward here. I just say to the Minister in thanking him and his team to please try to be consistent. Please try to come back with some fair answers as to why 20 people in a 400-seater church are worse than 30 people in a 40-seater restaurant but I leave it there. I am grateful to the Minister and I will say no more.

**3.5.2 Senator S.C. Ferguson:**

Would the Minister please confirm to the Assembly that he will report back to us next week after he has met between now and next week with the faith groups and just confirm the sort of conclusions? Obviously, perhaps we can give the Dean permission to comment on the discussions. We would like just to sort of keep this thing running so we know why and what the evidence is.

**3.5.3 Deputy J.H. Young:**

Just a request I think for the Minister to periodically give us a report of information of how these new Regulations are going in practice, in particular where we have hospitality locations that are not complying. I would like to have at least a regular flow of information so that we can judge their effectiveness because I think it is really important at that time that these are implemented very effectively.

**3.5.4 Deputy K.G. Pamplin:**

Just to be brief and to say thank you yet again for our Scrutiny officers who, in very short order, helped both the panels that I sit on prepare 2 comments papers for Members, which I think have proved yet again very helpful to Members and the Ministers in bringing forward their proposition. So I just want to again to thank our Scrutiny officers for working against the clock and also pay tribute to the law officers and the members of the Minister’s office in this short time period.

**3.5.5 Deputy M.R. Higgins:**

Very briefly, I just wanted to thank the Dean for his comments and I must say I agree with much of it and what other Members have said. I would like to welcome him now as a full Member of the States as he has now made a political speech and we can ask him questions in future.

**The Bailiff:**

I think you have always been able to ask the Dean questions within his competency and in accountability to the States of Jersey, Deputy.

**3.5.6 Deputy M. Tadier:**

I think something that has not come up in the wider debate and I think is relevant in Third Reading is that it is important to see how these powers will be enforced. I think up until now, there is something good about having a law in place rather than just guidelines because it is clear. Something that was very frustrating to me - not necessarily in an Assistant Minister capacity previously but generally - was something around, for example, busking and singing, *et cetera*, where the guidelines were recommending something but not in law. Of course, those who enforced in this example, which was the busking, felt compelled to do what the guidelines said and make their own choices in that. So I think there is an aspect of having clarity in the law which is going to be welcome for everybody. Something I would like the Minister and all Ministers to be aware of, and something we maybe should try and record as best as we can, is the way in which different groups are going to be affected by these restrictions that we have just passed today. I do not think anyone has really spoken about it but, for example, those who live in inner St. Helier, those who from perhaps a different ethnic and cultural background may have ways of congregating and socialising and that may also be simply due to their living arrangements whereas the only place they can meet and socialise is out on the street. Those of us who might live in the leafy country Parishes who are lucky enough to have garden spaces and invite friends to our places might be exempt from any intrusion of the States. So this law will affect people differently where people are simply trying to do their best to enjoy a relatively normal life doing the best they can to also mitigate the circumstances of COVID. I would not want to see people overly criminalised especially if it turns out that we find that people from certain areas and backgrounds are being more engaged by this law than others. That may be an unintended consequence. I do take the Minister at his word when he says that there will be proportionate policing as well as proportionate powers being used in this. I think that is really important to make sure that no part of our community is in any way demonised or disproportionately feels the effect of this law for just trying to go about their ordinary daily life in extraordinary circumstances.

**The Bailiff:**

Thank you very much, Deputy. Does any other Member wish to speak in Third Reading? If no other Member wishes to speak in Third Reading, then I close the debate and call upon the Minister to respond.

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

I thank Members. I do note Deputy Luce's comments. I will always attempt to be fair and we must try and achieve that balance of harms that we have spoken about on many other occasions. On reporting back to next Tuesday's States Assembly, as suggested by Senator Ferguson, there are formal procedures in a States sitting. I am not sure that I will be in a position to make a statement and Members may ask questions of course but I will at least provide Members with email updates on just how we might be resolving these issues. When we get to the stage of being ready to issue an Order, I will send that around with explanations as to what further discussions have taken place. Deputy Young was suggesting to periodically give information on how the legislation is being implemented and I will attempt to do that as well. Of course, I am regularly called before Scrutiny Panels in which these things are discussed but I will attempt to ensure a wider dissemination of information. To Deputy Tadier, I would agree we do not want to create a police state so we will not

overly criminalise. The Orders themselves must be proportionate and I fully expect policing to be proportionate, and I think we have seen that in the way that officers have responded to incidents in the past few months but so much of this depends on our community responding. I do hope that Members will encourage constituents and parishioners to really get behind public health measures to ensure that we can continue to protect Islanders and keep the worst of this virus away from us. I thank Members for their support.

**The Bailiff:**

Thank you very much, Minister. Could we put a voting link please into the chat? I will ask the Greffier to open the voting and Members to vote in the normal way. If Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. The Regulations have been adopted in Third Reading.

<b>POUR: 44</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst		Deputy S.M. Ahier (H)		
Senator L.J. Farnham				
Senator S.C. Ferguson				
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator S.W. Pallett				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				

Deputy J.H. Perchard (S)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

**The Deputy Greffier of the States:**

Deputy Ahier voted *contre*.

**4. Draft COVID-19 (Workplace Restrictions) (Amendment) Regulations 202- (P.158/2020)**

**The Bailiff:**

The second item is the Draft COVID-19 (Workplace Restrictions) (Amendment) Regulations lodged by the Minister for Health and Social Services, P.158. The main respondent for the purposes of the debate is the chair of the Economic and International Affairs Scrutiny Panel and I ask the Greffier to read the citation.

**The Deputy Greffier of the States:**

Draft COVID-19 (Workplace Restrictions) (Amendment) (Jersey) Regulations 202-. The States make these Regulations under Article 2 of the COVID-19 (Enabling Provisions) (Jersey) Law 2020.

**4.1 The Deputy of St. Ouen (The Minister for Health and Social Services):**

These are amending Regulations to a pre-existing set of Regulations, the Workplace Restrictions Regulations. The changes provide for a requirement that customers wear masks in retail and some other premises, enhanced data gathering arrangements for contact tracing purposes and also to establish a new enforcement regime intended to ensure that breaches of the requirements imposed by Orders under these Regulations can be dealt with in a more effective manner. The Regulations will allow Orders to be made to require members of the public to wear masks in certain workplaces, and this requirement is in line with that introduced in other jurisdictions and is intended to assist in slowing the transmission of COVID-19 between people in these workplace environments. Now Islanders have been advised by the Medical Officer of Health to wear masks since April this year and there does appear to have been some level of response from the public to this guidance but the use of masks has been inconsistent and it is clear that not everyone has chosen to follow this guidance. The sight of masks has been rare for most of this year I think, although since the number of cases has started to rise over the past months, there does appear to have been some increase in the number of masks being worn. While this is heartening, the Council of Ministers does not feel that it is appropriate to continue to rely on a purely voluntary arrangement, not least because those people who are currently wearing masks are inconveniencing themselves primarily for the benefit of others while some other people are choosing not to wear masks and making the overall effort to slow the transmission of COVID-19 less effective. Thus, these amending Regulations, if approved, will allow masks to be mandatory in specified locations with a penalty of up to a £1,000 fine for deliberate non-compliance. Of course, we recognise that there are some people who simply cannot wear masks because of some respiratory condition, because of some psychological issue or simply because it would cause them a harmful degree of fear and distress if they were required to do so. So in order to accommodate this, there will be an exemption from the requirement to wear a mask for those individuals who have certain respiratory ailments. However, where the issue is simply that a person would have difficulty in breathing while wearing a mask, the intention is to offer them the opportunity to wear a face shield or a visor instead by the wording of the Order. There will also be exemptions from requirements for those people with some psychological issue with wearing a mask or a visor which precludes them from doing so without suffering harm. Lastly, there will be an exemption for those people who suffer such a real degree of fear and distress that it is simply not possible for them

to wear a mask or face shield in the specified areas. This is a recognition of the fact that not all ailments are physical and indeed not all psychological issues which might be exacerbated by wearing a mask are diagnosed psychological conditions. For the purposes of any initial Order I might make, individuals will not be required to provide proof of their exemption.

[15:45]

This reflects that there is a balance to be struck here between the need to limit the transmission of COVID-19 in the community and the issues that arise from asking an individual to discuss their medical status in a public environment. So, in reality, somebody could walk into a supermarket and if staff ask them why they are not wearing a mask, if they say they are exempt from wearing a mask, that will be sufficient and they can proceed. Staff will not need to investigate why, ask for reasons why or interrogate that person. Now this might mean that some people will claim exemption when they do not need to. It might mean that people who will say that they disapprove of the mandatory requirement to wear masks will simply choose to claim exemption when they are required to wear a mask because they do not have any reason under the exemptions regime not so. That is the balance we have to strike here but of course if somebody walks into a supermarket and says: "I refuse to wear a mask because, in principle, I do not approve of the legislation", then they will be clearly committing an offence and the consequences then flow. If a significant avoidance problem does arise from this approach, then the Council of Ministers and I will need to consider whether or not there needs to be a more prescriptive regime imposed in this area. In the U.K. they are now in a similar position where, quite rightly I think, people seeking exemption are not required to prove it or be interrogated or have any sort of judgment passed on whether or not they can wear a mask. We understand that some people might be worried about what the reaction of other people in a shop or supermarket might be looking at them not wearing a mask so public health officers are in discussion with other colleagues with the intention of developing a system by which people can, but only if they choose to, demonstrate their exempt status. This would not be a requirement for people but would offer a way for individuals who may feel under pressure to wear a mask, perhaps because their disability is not visible, to establish that they are exempt from the requirements without attracting the disapproval of those around them. I will talk now about the locations which are understood to be a higher risk area for the transmission of the virus and which are the intended scope of the first Order to apply the requirement for the public to wear a mask. First of all, in retail premises which will include all shops and supermarkets including pharmacies, banks, post offices, petrol stations with retail aisles and also indoor covered markets. Secondly, in transportation settings, meaning when using public and private hire transport including buses and taxis, inside the bus station or when inside covered bus or taxi shelters and when inside the airport or harbour. Thirdly, inside healthcare settings such as when visiting residential care homes, hospitals, G.P. (general practitioner) surgeries, dental surgeries, other health clinics and allied health services such as chiropractors, unless the circumstances of a treatment or service provided are such that it could not practically be carried out with a mask in place. Fourthly and lastly, when using close contact services such as hairdressers, beauty salons, nail bars, sports and massage therapists, tattooists, piercists and, similarly again, unless the circumstances of the service provided are such that it could not practically be carried out with the mask in place. There is no intention to bring the guidance on masks in educational settings into legislation. Schools are capable of ensuring the Pegaulation of their premises and the potential criminalisation of children in schools is absolutely not an acceptable outcome here. In addition to the requirement for the public to wear masks in those places I have mentioned, there will also be a corresponding requirement that staff wear masks or face shields although in a more limited range of environments. That requirement on staff will apply, firstly, when interacting with the public in retail premises in the same places that the public are required to wear masks. Secondly, when providing close contact services for which the customer must wear a mask. Thirdly, when interacting with the public in a setting which serves food and drink, so that is in licensed premises, restaurants, cafés, coffee shops and all those food and drink business and, fourthly and lastly, when providing health and care in a nursing or care home. There

has been much discussion among the public health team and involving Members and stakeholders in the past few days about the introduction of a requirement that shops not serve or admit people who refuse to wear a mask and are not exempt. I recognise that placing the requirement on shops to require customers to wear masks would impose a burden on those businesses. After hearing the concerns of stakeholders, principally retailers, and after receiving advice from the public health team, a requirement that shop staff not serve or admit people without a mask will take some time to prepare for. Staff would need support or training and therefore that would not be introduced in the first Order. My intention is to bring an Order that introduces the mask requirements on the individuals and staff, as I have outlined above, but does not place the corresponding requirement on businesses to ensure that these rules are followed at this time. We have to recognise that this legislation has been brought forward with haste, though it is properly thought-through legislation, but I would like to give businesses some additional time to make the necessary arrangements. However, it is in the enabling Regulations and it does not mean the requirement is dropped and I hope businesses will use the opportunity to make whatever preparations they feel necessary prior to the introduction of this requirement. That concludes what I need to say on masks at the moment. If I may move on to contact tracing, as Members will know, guidance is currently in place that recommends that licensed premises, food and drink businesses and close contact services, should collect contact details from their customers and the Regulations will bring that precise guidance into law. This is a recognition that while these businesses remain open at this time, their operations do pose, through no fault of their own, a greater risk than arises in the operation of businesses in other sectors. These risks primarily arise from the presence of people in relative close proximity for periods of time, whether that is to eat food, sit and have a drink or to receive a service that requires a member of staff to touch customers such as a haircut. I would repeat that this is in no way the fault of these businesses who are simply operating in their normal way. However, there is no doubt that their operations, however blameless, creates that significant possibility of the transmission of COVID-19 between people than in many other businesses. So the Regulations provide controls over the collection of contact details which are stricter than those currently in place through guidance. There are limitations on the data that can be collected and the Order will provide a limit of 21 days on the period for which it can be stored. The use of data will be restricted entirely to contact tracing and for ascertaining whether or not a business is meeting the data collection conditions of the Order. Businesses are not specifically required to collect the data themselves but simply to provide a framework by which it can be collected. This means that the data can be held by a third party as it is often where Q.R. (Quick Response) codes are the method that is chosen to collect that data. Then the data will be available in a very limited fashion to enforcement officers but sufficiently to assess the compliance of the business. If I may then address the enhanced enforcement provisions, in order to allow the requirements in Orders to be better enforced, these Regulations provide an enhanced capacity for enforcement officers to check the compliance of businesses. Currently, inspectors have to rely on powers within the Health and Safety at Work (Jersey) Law 1989, which does provide strong and far-reaching enforcement powers but they are triggered only by an assessment of the investigating officer that there is an immediate risk to health and safety arising from the operation of the business. That does not lend itself precisely to assessing whether a business is operating in such a way as to create the risk of the spread of COVID or creating a risk that the contact team may fail to trace direct contacts of an active case should a person with COVID visit the premises. So those sort of outcomes are rather too remote for the Health and Safety Law and, thus, inspectors have had difficulty accessing the usual powers for the protection of public health in this regard. So the amendment to these Regulations provides a pared down version of those health and safety powers in the 1989 law. This will allow enforcement officers to apply a very similar regime to the question of whether or not the conditions applied on a business to limit the spread of COVID are being met. These powers consist of the capacity to serve an improvement notice if a business is not meeting the conditions detailed in an Order and that notice will require that corrective action must be taken within a specified period, which is usually 14 days. If the issues are not resolved, this may be followed by a Prohibition Notice



which will serve to close part or all of the business that is causing the harm. Alternatively, Prohibition Notices may be served on businesses which are operating in such an unsafe way that they present an immediate risk to health and safety in the spread of COVID. This should be a rare event but it is important to have the capacity available and it ensures that inspectors will not find themselves powerless in the face of a significant risk to public health. So there are Improvement Notices first of all which are most likely to be used but, if the situation is sufficiently serious, officers could go straight to a prohibition notice. Of course, it is hoped that this will allow inspectors to engage with businesses on the basis that they are looking to improve services rather than having a sole tool of prosecution. Of course, these powers will be used in preference to prosecution which can be a lengthy process and offers little in the way of immediately safeguarding the public. The offences that businesses can commit under the Regulation have been expanded by this amendment to reflect that inspectors now have additional powers and that lying to inspectors or concealing evidence of wrongdoing has become a criminal offence. The amendment will also allow Orders to be made for up to 31 days instead of the current 14 days. As I explained in response to a comment from Senator Farnham, Orders have been stable over 13 iterations but if the Senator and I will be obliged to consult, I am quite happy for initial Orders perhaps to be made on the same basis as at present, 14 days, until we are all satisfied that it might be appropriate to move to a period of 31 days before the next extension is made. The reason for this provision was that, although it appears procedural, it takes administrative and political involvement and case law drafting resources but we can create that shorter period at any time.

[16:00]

They can also be replaced or amended outside of that 14-day or 31-day cycle of extension so it is not harmful to any sort of democratic engagement in that respect. I think that is all I would like to say at this stage about the Regulations and I make the Proposition.

**The Bailiff:**

Are the principles seconded? [**Seconded**] Then I will open the debate.

**4.1.1 Deputy M. Tadier:**

If we can remember back to this morning when I inadvertently started talking about masks, I think now is the correct time to do that. In putting forward a counterargument to the Minister, I am by no means pooh-poohing all of the research that has been done to suggest that the correct wearing of masks is valuable in the restriction of the spreading of COVID. What I do want to look at though is the idea that we cannot necessarily presume that everybody who wears a mask will be doing it in such a way as to be preventing the spreading of COVID. We know that at the moment there are some people in our community who do not choose to wear a mask for whatever reason when they go to the shop. There are probably a bigger cohort, like me, who do try to wear a mask as much as possible but may every now and again get caught short. This happened once when I was in town and I just use it as an illustration. But I was about to go into a shop, if one must know it was just to get some new contact lenses, which I needed to nip up to the top floor to get. Then I realised there was a big sign saying: "Please wear a mask". The fact that shop had a policy and it was quite obvious that I probably would not have been served if I had gone into that shop. I would have certainly had a few looks. The fact it was probably the right thing to do made me go away and make sure I had a mask with me when I went into town. That is because it was not a planned visit. People do act spontaneously. If I had planned it, I could have got one of my many masks that I have elsewhere. The reason I say that is that I am slightly disappointed that it has come to this stage where we are having to enforce things in legislation. I do accept that the clarity the legislation will give to people is really welcome. But my concern is that I do not want us to vote for this today thinking that this is somehow the magic wand and that by doing this we are going to automatically make Jersey safer. Because I am not sure that is the case. I want to give a reason why that might not be the case. Let

us take a typical person going into a shop, a grocery shop. Up until now they might have already had the habit of putting sterilising alcohol on their hands on the way in because it is there. A lot of the point I am making can be built in already. They may not have been used to wearing a mask up until now. There might be all sorts of reasons for that. But let us imagine it is somebody who wears a pair of glasses so they put their mask on for the first time and they go into the supermarket. While they are going around the supermarket, they are having to adjust their mask constantly because it keeps slipping off their face, so they are touching their mask. They are having to take their glasses off, put their glasses back on when they steam up. By the time they get to the biscuit counter they have touched their face perhaps 10 times and that may be completely unconsciously. So they have touched a mask where there is a concentration of their own bacteria, which they will then pick up the packet of biscuits. Because they are a conscientious shopper and they care about the environment, they want to look if this particular brand of biscuit has palm oil in it. Alas, it does have palm oil, so they put that back on the shelf and they go on to the next one and they find: "Oh no, this has also got palm oil in it." So they go to the next one. This one does not have palm oil but it has partially hydrogenated vegetable oil and they realise that is really terrible for your health. So they put that back. Then they maybe go and finally find one that does not have either of those nefarious products in them. So by the time they have done that, because they are wearing a mask, and they would not normally be wearing a mask, but they are the type of person who is fastidious about washing their hands, normally they would have looked at these biscuits and they would have had clean hands. But now, because we have forced them to wear masks, they are spreading their potential COVID around the shop for other people to then pick up those same packets of biscuits and then either put them in their basket or put them back on the shelves because they have palm oil and hydrogenated fat in them. Of course this is happening all over the shop. So we pat ourselves on the back at the end of today and say: "We have done a great thing. We do not like taking people's civil liberties away but we did it under pressure because we know it is the right thing and it means that COVID will come to an end a lot quicker." Then what about the people who just keep a mask in the side of their car or in their back pocket, because they cannot afford to buy a mask every time. They do not want to be one of those people who is responsible for littering or even just for a lot of waste going into the incinerator. The *Bailiwick*, incidentally, let me be the first one to tip them for their article, who talked about people not disposing of masks in the street. That is really important. Of course sometimes people do it, they put them in the bin and then the bin overflows and it falls out. So we have to remind people to dispose of their masks safely. But is there anything in law to stop people from touching their faces when they are wearing a mask and then shaking people's hands? Are we banning people from shaking each other's hands? That might be covered under the 2-metre rule but I do not know if that is enforced. So I am concentrating here clearly on the whole mask issue. But what do you do with your mask? Are we supposed to take it home and wash it every time or is it okay if we just leave it hanging up and swap it for another mask when we get back and give the bacteria and the virus enough time to die, if indeed we have the virus? I am concerned that this is going to give people a false sense of security: "I am wearing a mask so that is all right." The other stuff goes out the window. I accept that there is no silver bullet in this. But there are so many other factors, including the fact that we have not properly shut down our borders at the time we should have and we had not required people to isolate for that first 24 hours, as I have said before. I do not like the expression, but it is kind of the equivalent of virtue signalling from a health perspective. We wear masks because we think it is going to make a difference. We are not sure, if masks are not used properly, they are necessarily going to make that difference. So I put those arguments out there so that we can have some kind of debate. Maybe they are strawman arguments that the Minister can easily rebut and give me assurances on. But at the moment this is a much more nuanced and controversial Proposition than the one we have just had about restricting numbers. That makes much more sense. When people were doing that early on in lockdown that made sense that it was slowing down and restricting the transmission and the number of cases. Instinctively, I do not feel that this makes as much sense for some of the reasons that I have outlined in that imaginary anecdote that I have talked about. That in

itself may not be sufficient reason for me or other Members to vote against, but it is a key consideration we need to grapple with when we are putting this in position on to people, which is again affecting their civil liberties. Can I just at this point, as somebody who does not instinctively like wearing a mask, but I know it is not about what we do or do not like, just pay tribute to the people who do have to work long hours, especially those in shops who are there perhaps from 8.00 a.m. until 8.00 p.m. and that they have to wear face coverings. I know it is really uncomfortable for them. They are doing that before a point at which it has been dictated in law because it is their company policy and they want to try to keep everyone safe. So we have to recognise that sacrifice they are making. Also our public sector workers and the schools. Perhaps, as a subpoint, is that if we are saying to schools: “Schools will be exempt because we can trust them to do the right thing and we do not want to criminalise children”, but we are happy to criminalise the rest of the public for not wearing masks and we are not trusting those businesses. I guess it is coming full circle to the point I started with. Most of these businesses can be trusted. It should be up to a supermarket, you could argue, the optician or the restaurant, to decide: “We are not going to accept anybody if they are not wearing a mask. That is our company policy. We do not want to endanger our staff. So if you want to come and buy your products here, if you want to come and sit in our restaurant, while you are not eating then we will expect you to wear a mask.” That is a policy that they could have in place already. The Minister also has not told us what the age is going to be for these children. If it is not right to criminalise children at school who can go up to the age of 16, and I understand of course there is a different policy in year 10 and 11. But if we are not going to criminalise them, what is the age that he is setting for children? He could have put this into the law. At the moment we know it is not going to be younger than 12 but he could tell us and I would say should tell us what age that would be. Because it is something that he should know by now and that we should know in passing this today or rejecting it. So I will leave those comments there and look forward to some clarification potentially at the end of the debate in the Minister’s summing up.

#### **4.1.2 Deputy L.B.E. Ash:**

I am pleased to follow Deputy Tadier because I agree with many of the points he makes. I would just like to pick him up on one thing about criminalising. I am not even sure it is about criminalising because at times, if people are wearing masks, let us say they have worn the same mask for 5 or 6 days. We tend to have this view everyone will wear a nice clean mask. Well that just will not happen and, as he said, people will keep a mask in the car and put it on when they go out. Now, they will not be criminals, they will be wearing that mask. But as far as spreading the disease is concerned, or the virus, it will be twice as bad as people just normally going around. So I do agree with him on that very much. I also agree with him on the fact that people now are tending to discard the masks. You see them now lying in the street and that is partly because they are not the strongest things, particularly the linen ones, they break pretty easily. People just drop them and probably take another one out of their handbags or coats or wherever. This is exactly the sort of thing we would be horrified if people were blowing their nose and throwing the tissue on the ground. One of the questions I would like to ask, and I am not going to speak for long, I would like to ask this of the Minister for Health and Social Services, would he consider, particularly in town, putting some biohazard bins in place so that people who have broken masks or just merely wish to discard a mask and put on a fresh one have somewhere to put them, rather than just put them on the ground? I know that they should be more responsible, but we can help them be more responsible by providing the correct facilities.

#### **4.1.3 Deputy S.M. Ahier of St. Helier:**

I am commenting on the previous speaker. I did ask the Minister for those bio bins and he said they were not necessary. Earlier this year, we were given the following advice: “There is limited direct data and evidence on the use of cloth masks and the effect they have on reducing the spread of coronavirus within the community. So it would not be appropriate to produce a definitive direction that these must be used. Wearing a cloth mask is absolutely not a substitute for appropriate social

distancing.” These were the words of Dr. Ivan Muscat, whose advice seemed clear. So why are we now trying to bring in Regulations to enforce their use? Masks may well reduce onward transmission when worn by a person who is infected. But we would hope that any infected person would not be out shopping in the community but rather self-isolating. Compliance rates with the recommendation to wear masks have been very high. I have seen very few people without masks in retail outlets, so why do we need to enforce the use of them now? Last week marked the publication of a long-delayed trial in Denmark, which was conducted this year with over 6,000 participants. It was a randomised control trial looking at the effectiveness of masks in preventing the spread of COVID-19. Half of those in the trial wore surgical face masks and the other half did not.

[16:15]

1.8 per cent of those wearing masks caught COVID compared to 2.1 per cent of the participants in the non-face mask wearing group, a difference of 0.3 per cent. This study shows that the compulsive wearing of masks will not drastically reduce the numbers infected. Indeed, I have noticed a sense of indestructability among some mask wearers. It seems that the one-metre rule no longer applies to those wearing masks. But we now intend to fine people up to £1,000 for failing to wear a mask. But there will be no penalty for people engaging in close personal contact with each other in public places. But just wearing a mask will not prevent you from falling foul of these Regulations. Under Regulation 3(1)(b)(e) it states: “May include a requirement as to the standard to be met by a mask.” In other words, covering your mouth and nose is not in itself sufficient to avoid a fine. The next paragraph states: “May include a requirement as to the manner in which a mask must be worn.” Again, having a mask may not stop a person being fined if they do not wear it as the Minister deems it must be worn. Will the majority of masks comply with these standards? The Royal College of Nursing on its website says: “Any personal protective equipment made by hand, for example cotton masks, will not provide the level of protection required against COVID-19.” So an awful lot of people may unknowingly have masks that contravene the Regulations and could face a fine even though they are trying to comply. The people of Jersey have made a tremendous effort to abide by the current recommendations and they are to be congratulated for their diligence and conformity. Now is not the time to start to criminalise those who are trying so hard to prevent the spread of this infectious disease. We should continue to actively encourage the use of appropriate face masks in enclosed public spaces. But we should not be enforcing compliance through these oppressive measures.

**The Bailiff:**

Deputy Pamplin seeks a point of clarification.

**Deputy K.G. Pamplin:**

I think this is a point of clarification, so do rule over me if you think it is not. But is the previous speaker aware that the Danish ...

**The Bailiff:**

I am afraid that is not a point of clarification because it is not a point of clarification of what the previous speaker has said, Deputy Pamplin. But you are obviously able to speak in the debate yourself if you wish to.

**4.1.4 Deputy J.A. Martin:**

I will be brief. I listened to Deputy Tadier and it was Deputy Tadier’s words that made me want to speak. Because, as he was finishing his speech, he said he would like to really thank all the workers that are there in the shops with their masks on trying to keep us safe. Well, in the last couple of weeks, when I have been shopping, and here I definitely disagree with Deputy Ahier as well, I do not think everyone is wearing masks. I would say about one in 5 are wearing masks. The evidence is what the evidence is. I would say it is about 50:50. But when people in the shops, who are working

in the shops, who have been working in these shops all the way through, start saying to me that they are feeling unsafe, I am very worried and I am concerned. Who is looking after them? Would it not be lovely if all the shops had a policy of: “You are not coming in because I am protecting my staff”? I am not hearing that. So today I cannot not support this legislation. I cannot emphasise enough that people, who very rarely get a voice, who are there and have been there for us, are feeling unsafe. So I am supporting this and I really hope Deputy Tadier will think about those people who he thinks he is protecting, who are doing the work.

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

I am concerned about this particular Proposition. Yes, we have seen an increase in the number of cases being discovered. But one must look at the figures. Between March and 1st July this year we had a total of 15,802 tests taken and of those 320 people proved positive. Since 1st July, we have had almost 10 times as many tests, 156,877, however only 535 persons have been positive. I understand, and I stand corrected on this, but the majority have been asymptomatic. I have tried very hard to try to find out how infectious asymptomatic persons are versus symptomatic persons and there appears to be very little research in that area. It may just be my lack of knowledge of trying to find out, but I have not been able to find reliable studies on that. I have then looked up face masks and there the internet is swamped with advice. Much of it is concerning the quality of the masks you wear. One sentence that has come out very strongly: “Masks can prevent the spread of disease if worn correctly.” When you start examining how you correctly wear a mask, the cloth masks must be washed every day and ironed with a hot iron. Disposable masks, this is interesting because each manufacturer has different qualities of masks, some of them manufacture 5 different qualities, some manufacture 3 different qualities. But basically one theme that comes across is that the mask must not be worn more than once. Effectively that means that once you take it off you throw it away. So, if you go into one shop, you then drive to the next shop because it is an out-of-town garden centre, you have to have another mask. So the use of disposable masks will be substantial. There are also within that using disposable masks, as I said earlier, there are different qualities and therefore have different rates of control. We as an Assembly have to make a decision today and we need to balance the evidence provided by Health, the evidence provided for the economy, and the evidence provided for the freedom of the individuals. We need to respect each one of those and come to our decision. I was very grateful to hear from Deputy Ahier and the statement that he produced earlier this year from Ivan Muscat. I confess that I too sought advice because people were asking me: “Should we be wearing masks?” At the time, the advice was clear, the evidence did not support wearing masks. So I now need to ask the question, where is the new evidence that has provided such a change in direction? When we look at freedom, this is clearly, I believe, a step too far. The compulsory wearing of a mask, I do not think the case has been made. The freedom of the individual is being too stringent and from that point of view I would not support the wearing of a mask. With regards the economy, it is very wrong indeed that businesses and shopkeepers should be expected to police a law. Putting the onus on to them to police the law is very wrong and is opening a can of worms. Having studied as best I can the evidence provided by Health, while it has been truly excellent in the past, on this particular one topic I am not able to support this Proposition. I leave it to Members to make up their own decisions but I shall not be supporting this Proposition.

#### **4.1.6 Deputy K.G. Pamplin:**

Bottom line, masks work. They are safe for almost everyone to wear. The more people that wear them, as long as they are also adhering to the physical distancing, enhanced washing of hands and services, they work in that way. This is backed up by the science that has been playing out in real time during the arrival of this new virus as the research has caught up since the pandemic began. Masks work to slow the spread of diseases that are spread by airborne infections. It also sends the message that we are all in this together. But, in this new world we live in, there is still some confusion and misinformation out there when it comes to wearing masks and the risks of getting infected with

COVID-19. This is unfortunate but it cannot be denied. I just wanted to draw attention; Deputy Ahier earlier in his speech mentioned a Danish study, which caught fire on social media, which, much like we saw the rumours for a Jersey lockdown, spread without any real basis and missing the fine print. Now, having spent an evening reading all of that study, this is what it says. This is also backed up by many of the media outlets and other fact-checking providers. That the researchers of that Danish study say: “These findings do not offer evidence about the degree of protection mask-wearers can anticipate in a setting where others are not wearing masks. These findings however should not be used to conclude that a recommendation for everyone to wear masks in the community would not be effective in reducing SARS-CoV-2 infections because the trial did not test the role of masks in source control of SARS-CoV-2 infections.” This is why we have to be so careful. There is a lot of evidence and with social media and 24-hour information at our fingertips, thanks to the internet and social media pages, things have to be double-sourced and double-checked. When people breathe out coronavirus it is ejected out in droplets of moisture. The number of droplets increases with coughing, sneezing or propelled diaphragmic use. The droplets, it is now known, are way bigger than the virus. Wearing a proper cloth mask or a surgical mask catches those droplets and protects other people from you possibly passing and spreading the disease unwittingly. Or even inhaling a high viral load via your mouth or nose if you are in an area where droplets are in close contact in an area where the virus is. However, we also know, science tells us this, that a person with the disease carries the most viral load and is in turn the most contagious in the first few days of getting the virus, those first few days when the person does not know that they are infected until they start feeling the effects of the virus. That is why isolation has been an important tool in combating this disease. The other concern has now been made clear that a person who is pre-symptomatic, as I just mentioned, will not know how highly contagious they are before they show symptoms or have a test in the time that they are walking around unwittingly shedding the virus. It is also a concern, and continuing research is going on right now about asymptomatic patients, as the Constable had just mentioned before me.

[16:30]

But there is a clear distinction that they also carry a viral load, but we do not know how heavy that is. But it is a risk. Masks have also been proven not to be too dangerous for wearing for long periods of time. This is also backed up with science. There has been talk of not getting enough oxygen. According to the various world lung associations, there is no evidence that dangerously low levels of oxygen occur from wearing a face mask. Again, they should be worn with common sense and it is right that those who need medical exemptions, both physically and mentally, are exempt of course. They should be disposed of, and I think we can do a better effort providing places where the masks can be taken off, especially as we now give them freely to people taking taxis and on the buses. We should be providing safe places for them to be thrown away. Also, wearing a mask is not going to make your infection worse. Coughing out a virus is not what cures you when you are sick. It is the virus’s way of ensuring it can be passed on because it wants to live on. Again, wearing a mask, as we have been told for generations by our mothers when we cough, how many times were you told? I am sure you have been thinking it yourself today. You put your hand over your mouth. Then you go and wash your hands before dinner. Wearing masks goes back to the 17th century when the first plague was recorded that we knew about. Also the famous images of the special bird, long beaklike masks of the plague. In 1905 a doctor named Alice Hamilton published one of the first studies recommending masks to slow virus transmission but not being listened to by male superiors. She went on to prove that surgeons were passing dangerous bacteria to their patients just by breathing or talking when close to their patients during surgery. For those who have been comparing this pandemic to the 1918 influenza pandemic, mask-wearing was adopted by many cities and countries around the world. You simply now can just Google that or use any other service provider to see those images. Masks work, we have always known that. What we did not know at the beginning of this year is what we were dealing with. This, as I repeat, has played out in real time. The science and the research has had to work very, very fast. It is very rare for our political world for an opinion to

be given, a decision to be made, for that to be changed. In the political world that is seen as flipflopping or being convinced for other ulterior motives. But in the world of science and medication, these things are constantly reviewed and they change. That is what has played out in real time. There was also genuine concern at the very beginning of this pandemic, as we may all remember, there was a very big shortage of P.P.E. (personal protective equipment) and they did not want surgical masks lost to where they should be at the front line in hospitals. Thankfully, we are not in that place now. In brief, to finish, we know that thankfully death rates are low. However, that is because measures were put in place, the blunt measures of lockdown, but the evidence is also so clear that this is a very contagious disease. If you get it, maybe you will be okay, but there is a risk that you could have long-term symptoms. You may never get your sense of smell or taste for a long while. We do not know yet scientifically how many antibodies you will be provided with. Also, we do not know now about long-term lung scarring and other issues physically and mentally. That research will come down the line. But there is research out there because it is similar to the diseases SARS and MERS. We all want to get back to normal and with the vaccines now in sight we just have to look out for the public health of all of us. That is what our generation have been asked to do for a short period of time. Just look at some of the larger countries of the world and the arrogance that they have shown. The statistics of America today are frightening. That is because the inconsistent messaging of wearing a mask became political and we did not support the evidence. It is our role to challenge, to question, and I am proud of my colleagues on Scrutiny and to everybody being available for that challenge. But this is where we have to just get through this next period. It is the cold season. These things are passed on by the droplets. We just need to support each other and our shops and our businesses in this very nervous period. We do not know what is going to happen with Christmas and like. But if we do this bit now we could get back to normal next year with the vaccinations. Is that not just it? So let us support each other. We could have done this a lot earlier. I believe we should have done. But we are here right now. This is the evidence I have compiled for my speech.

#### **4.1.7 Deputy R.J. Ward:**

Let us try to bring this back to some simplicity in a way. I do not think anybody really believes that wearing a mask is the be-all and end-all in the solution to the COVID-19 epidemic. If it was, we would simply all have worn a mask and it would have gone away. As with any virus, as with any public health situation, there are a number of ingredients to combating the virus in the long term. This has been a very different experience for us all because of the pandemic nature of the virus itself. Science is not as absolute a subject as people sometimes think. There is debate within science. There are research papers that are published all of the time that may question others. To some extent, you pay your money and take your choice in terms of what you want to believe. But there are some consistencies and it is always best to go for organisations that are perhaps more informed. If you look at the Centre for Disease Control, which is a very well-known organisation that has been looking at COVID. I think we need to look at some really simple things from there. COVID spreads mainly from person to person through respiratory droplets and they travel in the air when you cough, sneeze, talk, shout or sing. I do agree with Deputy Doublet that we need to look carefully at that. These droplets can land in the mouth or nose of people who are near you and you may breathe the droplets in. Masks provide a barrier of some form to those droplets. Surgical and medical masks used in hospitals are particularly good at that because they are fitted, they are made to do a job when you are in contact with high levels of the virus on a daily basis. They are a different kettle of fish, so to speak, than the masks that we may be using in general circulation. This legislation is not asking us all to wear a mask 24 hours a day. In fact it is not asking us to wear a mask in the way that our healthcare workers do or the people who are working in shops are asked to do or people who are front-facing so many areas of our society are asked to do. It is asking us to put a mask on when we go into a shop for the brief time that we are there in order to provide a level of protection for both ourselves and the people around us. That is it. It is that simple. It is not offering you a 100 per cent solution to the

problem of this virus. It is just offering one of the ingredients to combating this virus. I agree with those people who have said: "There can be problems. What if you do not change your mask? How do you dispose of them?" That is about taking some social responsibility that we all have to do in the current situation. The simplest thing is to have a number of cloth masks and wash them regularly. Yes, of course, if you are going to use paper masks, throw them into a bin. I am not so sure hazardous material bins are necessary but that would be a useful thing to have. But we all have to take that responsibility. So I feel uneasy with passing a law to say wear masks. But we are in a situation where we are close to a point where we may be at the end of this pandemic. But it is not over. If we can get things right in the next few months, and thank you for the wonders of science yet again, if we get a vaccine we may be able to return to some form of normality. But I will say one thing, and one of the things that, perhaps not changed my mind, but pushed me in the direction of supporting this, I went to my G.P. for my flu jab. I have a flu jab each year because I have asthma, so I have a flu jab and it helps. I asked my doctor: "What do you think about masks? Would you expect people to wear them and do you think it is a good idea?" I literally opened the floodgates for a tirade at me about: "Yes, of course you should be wearing masks. I do not think I will be practising again without wearing a mask. I for once have not had a cold this year and you should have made this happen a long time ago and everyone would have been in a better position." This was the doctor speaking. I take the advice of the medical experts. I trust that person with my health. I would trust that person with the wider health of the community as well. So I think we should listen. Yes, it is inconvenient. In fact, it is slightly embarrassing, is it not, to go into a shop and think: "Will I have to put on a face mask?" The first few times I did it, I felt a little bit silly, if I am honest. But if that is the only thing that I have to go through then I need to deal with that and move on. I understand that some people have a problem with that. That is absolutely fair enough. But we can make those exceptions for people in our society who may struggle. We should be doing that more in general. But that is not the biggest issue. I would say to those who do not have a problem but just do not like the idea of this that you are not helping the situation when you do that. Please, just find yourself a mask when you go into the shop and let us support everybody as best we can. But there are some issues with the legislation itself that I would like to talk about and I do not know whether I should mention this in the Regulations. Perhaps I will just talk about the principles of that. I am concerned about the onus being on staff in shops to police this by refusing service. That is a difficult situation to put people in shops in. Because, in many shops on our Island, there are a skeleton staff working and often very junior staff are being put into that position. The last thing I want to do is to criminalise anybody for not refusing to serve somebody simply because they do not feel they can. So we have to be very careful of that. I believe there is a staged approach to enforcement, an improvement notice and then a prohibition notice, so I will ask more about that when we come to the Regulations. I would say as well that, if we are going to go down this line and vote for this today, we need to make a very, very strong move to employers, including the States themselves, to provide the right P.P.E. for members of staff to use and for businesses to do the same. If you are wearing a face mask all the time, then it is exhausting and it is hard work, 10 hours in your shift or whatever. Face visors are great and there are some that are very manageable. I think they should be provided. I have heard stories of members of staff in the States employment buying their own P.P.E. because it is a better quality than what they are provided. So that needs to be looked at. I just remind people that there is a virus called norovirus and every so often it goes through our schools in particular and it goes through our public buildings and everyone says: "We have to wash our hands. We have to be really careful." Everyone seems to comply to that really well. What we need to do is we need to recognise that these are very small measures that we are taking. A small measure of wearing a mask, keeping your distance, washing your hands, being aware of your distance, and that is the simplest thing that we can do to help combat this virus. So I would say that it is a shame we have to pass a law to make this compulsory. But I will be supporting this for the right reasons, which are that it does improve public health. As soon as we do not have to do this, I would like to see this law repealed so that it does not continue beyond what is necessary. I will be supporting this.



#### **4.1.8 Deputy R.E. Huelin of St. Peter:**

I love all these debates because we have so much conflicting evidence. If you want to trawl through your favourite search engine for every single article you read it will tell you that masks should be mandatory. Then you will get others from quite well-known individuals who will say they are a complete and utter waste of time. So we have to take a judgment on that. My judgment is thus: as an Island we have done well. We are acknowledged to have done well. The reason we have done well is we have done some good listening to the health professionals that have led us through this for the past 9 months, or whatever it is, it feels like eternity. So I see we have a couple of options. Before I say that, I do feel for care workers, shop assistants, who have to wear a mask all day. I wore one for a whole hour and it was torturous. I do appreciate that. However, for the majority of us, wearing a mask to go into a shop or whatever for a quick visit is no great hardship. It is a very, very small sacrifice. It reminds us of what we have out there and what we are facing. Hopefully, as Deputy Guida said in the previous debate, we are getting near the end of it when we have this vaccine. Let us hope it is the great solution we are expecting. However, we have another option and we all know this when we are in our Parishes and we are talking to those people that contact us regularly that we could be having to explain lockdown for Christmas. We could be having to explain lockdown to those living in small flats without outdoor space.

[16:45]

We could be having to explain to residents of care homes, the elderly that I am particularly concerned about, that they will be receiving no visitors. That is an option I do not want. So my view is I will support this because it really is a small sacrifice in the bigger picture. Whichever side of the evidence you wish to choose from Mr. Google. However, I would like to be assured that, when we are getting down to any form of arrests and fining, we will be proportionate and it will only be a last resort. A refusal for wearing a mask, and I know we have discussed the word “wilful” earlier on today, those will only be taken to task for wilful and trenchant refusal to comply. So I will support, thank you.

#### **4.1.9 Deputy G.J. Truscott of St. Brelade:**

It probably comes as no surprise that I will be supporting the Minister with this initiative. For me, the next 5 to 6 months are pivotal in our combat against the coronavirus. It is really great to see that the Oxford vaccine looks so promising, particularly when you take half a dose and then a full dose, it seems the 90 per cent is very encouraging should you have it that way. So that gives us light at the end of the tunnel one hopes. But we still have the next 5 to 6 months to deal with and anything we can do now to suppress COVID from rising. For summer we have had it relatively good in Jersey with up to 30 consistently for a number of months. All of a sudden, in the blink of an eye, we went to 170 cases found in our society. So something like this and the measures that the Minister is bringing, in conjunction with the advice from our wonderful medical team under Dr. Muscat, should be adopted by everyone. We have 5 months hopefully to see us through this difficult period. We are in flu season as well so can you imagine COVID and flu, if it is going to be a particularly virulent flu virus this year, I dread to think of the consequences. Personally, I do not like wearing masks, but I will, because I do believe they act as that barrier that stops the virus spreading. From an early age, I was told by my parents that when you cough put your hand to your face. Coughs and sneezes spread diseases. All those things. It really brings it home that barrier to the face, that hand to the face, is so important. I do likewise feel for the shop staff, working day-in/day-out with a mask over your face must be very, very difficult. I have a degree of empathy and sympathy for them. Hopefully, a lot of the owners of these shops will provide their staff with the plastic visors because I think that makes life that little bit more tolerable when you are wearing them. If we can all just reel back when COVID first emerged back in late-2019, the nations with the best outcomes, and that is the fewest deaths and the last incidences, were places like Hong Kong, Singapore, Indonesia, and South Korea. Why, one asks oneself? It is because they wear culturally a face mask. I think it has been proven that the incidences of deaths and that type of thing, because of the face masks, were much less. So it has to

be for us a way forward. Government messaging is so important and none of us want to do this, believe me, it is the light touch. It is that respecting the law but just encouraging people to abide by the law. I am disappointed with the Minister. He has given people that little get-out-of-jail card with not having to prove that you have a condition. I can understand to a degree why he is doing that. But all of a sudden, I was watching the BBC News the other day, where a lady made a comment something along the lines that all of a sudden there seem to be an awful lot of people with asthma in the U.K. I can understand why he has done it but at least it gives some people the out if they feel they need to. I am fully supportive of this and I just hope other Members support the Minister as well. I have had a number of contacts from constituents, some with health issues, somebody who has had a heart operation recently. He plainly goes into the shops, wears a mask, pleased to see the staff are wearing them, but he is disappointed to see that many others are not. It is all about confidence when you go out and if you know that when you go into a shop the majority of people will be wearing masks then I think that gives every individual the confidence to get out there. So, as I say, all in all, I am fully supportive of what the Minister is doing.

**The Bailiff:**

Does any other Member wish to speak on the principles? If no other Member wishes to speak on the principles, I will close the debate and call upon the Minister to respond.

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

I am grateful to Members who have spoken. We began with Deputy Tadier's speech and his comprehensive arguments why this measure should not be brought forward. I would like Members to understand that I am not suggesting that mask-wearing is a panacea on its own, but it is part of a wider response to the pandemic, which, put together with everything else we are doing, will have an effect. There is argument, yes, as to whether mask-wearing does have that effect. But the balance of evidence is that it does reduce transmission of the virus. That evidence has been circulated to Members previously by the evidence review that was prepared by the public health team. The bang up-to-date evidence is in the report accompanying this proposition as an annex. So I cannot understand Members who say they have not seen the evidence. It is there with all the links if Members wanted to research it. It is true that Deputy Ahier quoted something from Dr. Muscat in the spring. But Deputy Pamplin had this absolutely right. Things change and this is a new virus. What we knew in the spring was nothing compared to what scientists have now understood about how the virus transmits and its nature. Therefore, quite rightly, they have reviewed the evidence for mask-wearing and we have seen the iterations throughout the summer. In the beginning it was that there is no evidence that mask-wearing has an effect, to mask-wearing might have an effect, mask-wearing is recommended, mask-wearing became strongly recommended. So why those changes? It is because more and more evidence came out that it did have a beneficial effect. That is of course not Jersey studies, it is studies from all around the world. The preponderance of evidence is that this will have a beneficial effect. To the comment that people who are carrying the virus should not be out in the community, should not be shopping in supermarkets. We have to consider how many people are asymptomatic and conduct their normal lives. We have learned that they can be infectious but they do not demonstrate symptoms. Or they might develop symptoms, but for those days before they develop those symptoms they will be infectious. It could be any one of us. So for that reason it is highly desirable for us to protect others by wearing masks. Yes, I recognise the comments that others have made about the improper use of masks, the disposal of masks. We have guidance around safe mask use and their disposal. We could look again at installing special bins, perhaps supermarkets could have normal bins outside their shops, and they probably do. But really people, if they are wearing a mask and take it off after they have visited a shop, they should find a litter bin. They should dispose of their mask safely. Littering is an offence and I hope that will be enforced in flagrant situations. As to the quality of the mask, yes, there is power in these Regulations to set what standards of masks may be lawful. The reason is to get over somebody using a lace doily, which is full of

holes, and calling that their mask. What will be put in the Order is going to ensure that the vast majority of the masks that are on sale locally that we use, and including home-made cloth masks, if properly made, will be lawful and will be in effective use. Deputy Ahier quoted the Royal College of Nursing, but of course in that context they are talking about surgical masks for clinical use, not the ones that we use, which are different. They are for non-healthcare settings and they are not regarded as P.P.E. I thank Deputy Pamplin for his very erudite speech and educational speech. Deputy Ward was concerned about the onus on staff policing this measure and that is why I have said we want to engage with shops and it will not be an immediate requirement on staff that they should refuse to serve people. We will engage and we will see how that develops, what training and support can be given to staff. Deputy Ward also asked about staff having those masks. I believe they are widely available; the shops should provide them for their staff. It would be intolerable if they required staff to buy them themselves I believe. I do not believe that is happening. We have not heard about it. I have not heard about it anyway. It is not P.P.E. that is provided to shop staff but it is a range of equipment that meets their needs in a retail setting. Deputy Huelin wanted to ensure that enforcement would be proportionate. Absolutely, because it will need to be a deliberate refusal to wear a mask that would create the offence and that is a refusal without having grounds for an exemption of course. If we are not requiring shops to stop serving people or bar them entry at first, then we are going about this in the right way at first by gradual steps. So this is proportionate I believe. To Deputy Truscott's concern that people might apply their get-out-of-jail card, as he mentioned, that will be monitored. We will have to see. But it remains the situation, what is proposed now is the situation that exists in the U.K. and other countries. What we want to do is to ensure that mask-wearing is adopted by a huge majority of the population.

[17:00]

We recognise there will be exemptions. I hope that, when we go shopping, that all of us, States Members, members of the public, will recognise that the people who they will meet in the shop not wearing a mask will have a good reason, will be exempt from doing so, and we should not think any less of them for doing so. We will allow that tolerance. But, if most of us who have no grounds for exemption, and we can safely wear a mask, and it is no great imposition, let us wear a mask because that is the right thing to do. It will be a measure that protects our families, our neighbours, our friends, those around us, when we are in those venues. I hope I can draw upon the support of the Assembly and I move the Proposition.

**The Bailiff:**

Could the Greffier please place a link into the chat. The link has been posted. I open the voting and ask Members to vote in the normal way. If Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. The principle has been adopted.

<b>POUR: 43</b>		<b>CONTRE: 2</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst		Connétable of St. John		
Senator L.J. Farnham		Deputy S.M. Ahier (H)		
Senator S.C. Ferguson				
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of Trinity				

Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy J.H. Perchard (S)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

**The Deputy Greffier of the States:**

Deputy Ahier and the Connétable of St. John voted contre.

**The Bailiff:**

Deputy Morel, does your panel wish to call this in?

**Deputy K.F. Morel (Chair, Economic and International Affairs Scrutiny Committee):**

No, thank you, Sir.

**The Bailiff:**

How do you wish to propose the Regulations in the Second Reading?

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

I would like to propose them *en bloc* and say a few words before opening the debate. I thank those Members who have contributed to the debate on the principles. Dealing with the Regulations, the first describes the purpose of the Regulations: to make amendments to the existing COVID-19 Regulations. Regulation 2 provides new definitions. Regulation 3 extends the duration of the Workplace Restrictions Order to 31 days instead of the current 14, though I will discuss that with Senator Farnham to try and meet his wishes. Regulation 4 revises the capacity, to make restriction Orders to allow an Order to impose a requirement for people in certain workplaces who are 12 years or older and not employees to wear a mask covering the mouth and nose. The requirement can

contain and can set the standards for masks and how they are worn. This Regulation also allows Orders to impose a requirement on businesses to take action to ensure that other people in the workplace follow the requirements in the Order, for instance by not serving customers not wearing a mask where they are required to. As I have said, we will not introduce that immediately and will engage with retailers and other stakeholders. The same Regulation also places the collection of relevant personal data for contact tracing purposes on a legislative basis. Regulation 5 brings some of the powers of enforcement officers under the Health and Safety Law into these Workplace Restriction Regulations, which will allow enforcement officers to gather the necessary information by taking measurements and examining documents, et cetera. It allows for an expansion, if necessary, of the definition of enforcement officer by Order. Regulation 6 will allow enforcement officers to serve the 2 types of notice I mentioned in my opening speech, again in line with arrangements which are already in place in the Health and Safety Law. The first is an Improvement Notice. If it appears a business is not following the requirements of a restriction Order and reasons must be given for imposing that notice. The business is then required to remedy the contravention with a specified period. If the necessary improvements are not made or if the activities create an immediate risk of the spread of COVID-19, a Prohibition Notice may be served, which will stop the harmful activity. That may be part of a business activity or the entire business activity. Anyone receiving those notices will have a right to request a review on the issue of the notice, to myself as Minister, within 14 days. Regulation 7 expands the existing offences to give effect to the new information gathering and enforcement powers by creating offences contravening a requirement of a notice and obstructing enforcement officers. The new offences for businesses carry the same maximum penalty of an unlimited fine, as I believe is in the Health and Safety. A new offence is created to underpin the requirement to wear a mask, unless a person is exempt or has a reasonable excuse. That carries a penalty of up to £1,000, which is on level 2 of the standard scale. As Members will know, the maximum fine that is set in legislation is always reserved for the most serious cases available. In reality, I imagine courts would impose a lower fine initially, depending on the seriousness of the case. Finally, Regulation 8 provides for citation and commencement and the important thing is that this Regulation will come to an end, as with other COVID-19 measures, on 30th April next year.

### **The Bailiff:**

Are the Regulations seconded for the Second Reading? [**Seconded**] I open the debate.

#### **4.2.1 Deputy K.F. Morel:**

I did not speak in the principles. I thought I would just speak once, on the Regulations. I am not a fan of the idea of having to wear a mask, but as I said in the P.157 debate, I am much more concerned about Government reaching into our living rooms and telling us how many people are allowed into our homes than I am about what they tell me to wear on my face. That said, as a Member of the States Assembly, I will be watching carefully to ensure that the Minister does not keep these Orders, once he has written them, in place for a day longer than he needs to. I hope, when I look at the statistics, that with some luck and some good behaviour by all of us, that the peak of COVID-19 transmission has been reached. I do appreciate we are going into December and we will have more people circulating in bars, et cetera, so I can understand the need for some precaution. I have circulated again the Scrutiny comments that we undertook. I have to say, I am again, as we have been throughout this period, disappointed about the length of time provided to Scrutiny. In this case, it is very justified, because we know that the Minister was talking about bringing in mask legislation approximately 2 months ago. It does surprise me, knowing that, that we have had so very little time to scrutinise these Regulations properly. I do have concerns, such as the burden that is placed on businesses, both to police their own customers and also the unlimited fine that comes if they are seen to not be acting appropriately themselves, as a business not enforcing these things. I am always concerned about the imposition we place on businesses, which are those elements of our economy,

which basically keep us all in the lifestyles we are accustomed to, keep the public finances flush with money and allow us to build very expensive hospitals. Every imposition we make on them makes it harder for those businesses to keep all our finances healthy. Looking further at the Regulations, I am also concerned from a data collection perspective. We did talk about these things with the officers, this is why I will be voting to support the Regulations but, from a Scrutiny perspective, we will need to keep our eyes open. We did contact the Information Commissioner who, from a legal perspective, is happy that the Regulations do fall within the remit of the Data Protection Law. He was surprised that he had not been contacted himself by the Minister or the department before drafting the Regulations, but that is the way it is; unfortunately it is left to Scrutiny to cover off that base. I am concerned that it will not be easy. We are giving information to businesses. Some of whom are perhaps not so use to collecting customer data in a certain way. I would want to ensure that they are held to the high levels of the Data Protection Law that none will be selling the information that has been provided to them by customers, *et cetera*. We do have to look out for that side of things. There is also a question, which I do not believe we had a full answer to, the question of those apps. One of which is a superb Jersey app, which means that the business itself does not hold the data. I am still unsure as to how the Regulations deal with that. The Regulations, in my view, clearly asks for businesses to hold that data, but there are apps designed specifically to keep that data away from businesses. Obviously, that means that the business cannot know that somebody has used the app appropriately. There is going to be some level of enforcement difficulty or, may I suggest, that enforcement will not happen at all in that area because it will be impossible to know one way or another whether the data has been collected properly. My biggest concern is perhaps more about the principle than a particular Regulation. I mentioned it in the P.157 debate, that is the issue of behavioural change by Islanders. We, as a Scrutiny Panel, liaise regularly with business groups and it was brought to our attention that already business owners are seeing customers acting in very antisocial ways on the matter of masks. This is from both sides of the equation. You have on the one hand people who react aggressively when challenged by a business to wear a mask and they push back against the people serving them. Obviously we know that some people will be earning the minimum wage or a little above that minimum wage and they are being asked to put up with very aggressive behaviour by some people who just refuse to wear masks. On the other hand, you also have a kind of vigilante action by customers who, when looking at somebody who is not wearing a mask, feel that it encumbers on them to aggressively tell them to put a mask on. Unfortunately, as the Regulations do not require someone to hold proof of exemption, it is going to be very difficult for that person to say that they are asthmatic or have this other condition which means that they should not wear a mask. I am concerned and think it is important that we monitor these things and that the department and the Government, as a whole, monitor people's behaviour because, while masks will stop the transmission, if they create other social problems then you have to begin to weigh up the pros and cons, the costs and the benefits. I am pleased. The panel have worked well with the department to rush this scrutiny through. We have done a good a job as we can. We believe the Regulations are safe, from that perspective. I am not sure they are entirely workable. That will be to the department and the police and businesses to ensure that they do work in the way that they are intended. I hope we do not see any fines being levied on businesses for not complying. I also hope we do not see any fines being levied on Islanders for not complying. Please do take a look at the comments paper; it would be helpful. From a personal perspective, I will be supporting the Regulations. I thank the Minister and his department for the briefings and the information they provided for us.

[17:15]

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

My observations are a little bit more general. I would like to refer really to Regulations 4 and 5. They are a triumph of law drafting. The law drafters clearly have had a challenge in this. For the ordinary person in the street, I do not think they are reasonably understandable. I would urge the

Minister to provide simple guidelines, for businesses particularly, to read and to be able to understand the premises within which they have to work. The intention is not that they have to receive legal advice so to do, so I would ask the Minister to provide simple guidelines, please.

**The Bailiff:**

Thank you very much, Connétable. Does any other Member wish to speak on the Regulations in Second Reading? No other Member wishes to speak. Then I close the debate and call upon the Minister to respond.

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

I thank Deputy Morel for his support, notwithstanding his concerns. I fully understand that he would want to ensure that these Regulations are not in place for any longer than necessary. I refer to Regulation 2(1), this is not in today’s amendment, where Members have had a mock-up to show the entire Workplace Regulations, if the amendment is supported. Regulation 2(1) is already in the Regulations and it says that: “The Minister may make a Restriction Order if the Minister, after consulting the Medical Officer of Health, is satisfied that in relation to workplaces the risk or potential risk to public health caused by COVID-19 is such that it is proportionate and necessary to do so. When it ceases to be proportionate and when it ceases to be necessary to have these Regulations in place they will be removed. I am required to take the advice of the Medical Officer of Health on that. That is a comfort to me very much, because I do not wish to have these in place any longer than they need to be, like Deputy Morel. Yes, I am sorry that it has taken so long to bring this legislation to the Assembly. I had said ages ago that I would wish mandatory mask-wearing to come into force, but there has been a lot of work involved in the drafting, a lot of changes to the drafting, because a lot of thought has gone into this. We have been able to debate it. Members supported the shorter lodging because, I believe, they understood that this is an important provision to bring in. Again, I thank all the Scrutiny Panels involved for stepping up to work within that tight timeframe I suggested and preparing the comments they have and responding to the briefings that we put in place. As to the technical aspects of data collection, my advice is that the draft was provided to the information commissioners at an earlier stage and that businesses will be within the law if they provide that facility for customers to scan a QR code. That is sufficient for them to comply. I am informed that that is sufficient for our teams to source the data they would need to ensure contact tracing and compliance. In response to Connétable Jackson, our enforcement teams work by trying to engage with businesses. They will be out there first of all to explain, rather than to use the heavy hand of enforcement first. That has always been the way they work. Indeed, that is how the Health and Safety Department works at all times. That will continue happening. If there are guidelines needed, beyond what is already in place, they will be put in place. Regulations 4 and 5 are not about any change in the regime, because the regime is what they should be doing now and what they have been asked to do by the teams, they are around enforcement and giving teeth to us, as Government, to close down, if necessary, any places that are a risk to the spread of COVID-19. First of all, of course, there will be that engagement, that encouragement, to create a safe place of work and a safe venue where Members of the public may attend. Then the different powers that are available to serve notices. I thank Members and call for the *appel*.

**The Bailiff:**

The appel is called for. I ask the Greffier to post a link into the chat. I open the vote and ask Members to vote in the normal way. Members have had the opportunity of casting their votes. Then I ask the Greffier to close the voting. The Regulations have been adopted in Second Reading.

<b>POUR: 41</b>		<b>CONTRE: 2</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst		Connétable of St. John		
Senator L.J. Farnham		Deputy S.M. Ahier (H)		
Senator J.A.N. Le Fondré				

Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy J.H. Perchard (S)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

**The Deputy Greffier of the States:**

Those voting *contre*: Deputy Ahier and the Constable of St. John.

**The Bailiff:**

Do you wish to propose the matter in Third Reading, Minister?

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

Yes, Sir.

**The Bailiff:**

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

**4.3.1 Senator L.J. Farnham:**



I am sure many Members will probably never have felt so uncomfortable in having to support legislation like this. Legislation that criminalises what would under normal circumstances just be part of the normal everyday actions of Islanders and businesses. I wanted to remind Members not to forget the impact on business and on jobs and on the health and well-being that goes with a strong economy. Things might appear to be going okay for some businesses, but we must not forget the huge pressure that Islanders are under. Equally, if we have to do this on the back of the advice of our advisers, and we have had very good advice from them, we have not always agreed, but we have stuck to it and it has seen us through the pandemic very well. The trade-off is if we can avoid more drastic measures then we have to follow this route. To finish up, I think everybody will agree that these laws must be policed sensibly, consistently and with clarity of detail. To echo the words of other Members, these Regulations must not remain in place for a day longer than necessary.

**The Bailiff:**

Thank you very much, Senator. Does any other Member wish to speak in Third Reading? No other Member wishes to speak in Third Reading. Then I close the debate and call upon the Minister to respond.

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

I can just reiterate what I said in Second Reading, that I am required only to maintain the Regulations while it is necessary and proportionate to do so. I hope that gives comfort to Senator Farnham.

**The Bailiff:**

I ask the Greffier to post a voting link into the chat. The vote is for the Regulations in Third Reading. I ask the Greffier to open the voting and Members to vote in the normal way. Members have had the opportunity of casting their votes. I ask the Greffier to close the voting. The Regulations have been adopted in Third Reading.

<b>POUR: 41</b>		<b>CONTRE: 2</b>		<b>ABSTAIN:</b>
Senator I.J. Gorst		Connétable of St. John		
Senator L.J. Farnham		Deputy S.M. Ahier (H)		
Senator S.C. Ferguson				
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of Trinity				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M.R. Higgins (H)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				

Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy J.H. Perchard (S)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

**The Deputy Greffier of the States:**

Those voting *contre*: Deputy Ahier and the Constable of St. John.

**The Bailiff:**

We are now at 5.25 p.m. We have one further item of Public Business to deal with, which is the Draft COVID-19 (Regulation of Care - Standards and Requirements). Can I ask for an indication from Members, perhaps the chair of P.P.C. (Privileges and Procedures Committee), whether it is proposed to continue until we finish or to adjourn until tomorrow morning?

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

We should probably adjourn. Possibly we could hear from the Minister as to how controversial it is and whether he feels he can dispatch it very quickly.

**The Bailiff:**

It depends, of course, in part upon the Minister and in part upon how many people wish to speak on it. Minister, what time do you think you will need to devote to dealing with this from your perspective?

**Deputy J.H. Young:**

This is an important proposal, because the case sector is important, to do it justice, at least to cover the material properly, probably a maximum of 15 minutes. I would hope that it is non-controversial, but of course I do recall that when we faced these decisions some months ago, and what we have today is not entirely on all fours with that, it is a lesser change, it was a matter of controversy and the debate was quite extended. In theory, it should be easy if there is not a great deal of contention to deal with this and complete it before 6.00 p.m., but otherwise I fear that it would go on if Members raise issues, Sir.

**Deputy G.P. Southern:**

Could we go for the adjournment, please?

**The Bailiff:**

That is the correct way to proceed, Deputy. If you propose the adjournment and it is seconded, a vote can be taken and then we can determine whether or not people are adjourning or continuing. That is probably the easiest way.

**Deputy G.P. Southern:**

Can I propose then? [Seconded]

**The Bailiff:**

Does any Member wish to speak on the adjournment, other than to simply say yes or no?

**Deputy R. Labey:**

Just to say thanks to Deputy Southern. Opinion is divided and this is the right way to do it.

**The Bailiff:**

Does any other Member wish to speak? Presumably you do not wish to respond to that, Deputy Southern, so I will ask the Greffier to post a vote in the link. The vote is on the adjournment. A vote *pour* means that we adjourn until tomorrow morning at 9.30 a.m. A vote *contre* is that we continue to deal with the next item of Public Business. I ask the Greffier to open the voting and Members to vote in the normal way. I will not be counting any votes above the voting link, so anyone who has registered some vote on the chat must press the button again, I am afraid. Members have had the opportunity of voting. I ask the Greffier to close the voting.

<b>POUR: 29</b>		<b>CONTRE: 14</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst		Senator J.A.N. Le Fondré		
Senator L.J. Farnham		Senator S.W. Pallett		
Senator S.C. Ferguson		Connétable of St. Helier		
Senator K.L. Moore		Connétable of St. John		
Senator S.Y. Mézec		Connétable of St. Mary		
Connétable of St. Clement		Connétable of St. Ouen		
Connétable of St. Brelade		Deputy J.A. Martin (H)		
Connétable of Grouville		Deputy of Grouville		
Connétable of Trinity		Deputy of St. Mary		
Connétable of St. Peter		Deputy G.J. Truscott (B)		
Connétable of St. Martin		Deputy L.B.E. Ash (C)		
Deputy G.P. Southern (H)		Deputy G.C.U. Guida (L)		
Deputy K.C. Lewis (S)		Deputy S.M. Ahier (H)		
Deputy M.R. Higgins (H)		Deputy K.G. Pamplin (S)		
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy J.H. Young (B)				
Deputy K.F. Morel (L)				
Deputy of St. Peter				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy J.H. Perchard (S)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy I. Gardiner (H)				

Accordingly, the Assembly stands adjourned until 9.30 a.m. tomorrow morning.

**ADJOURNMENT**

[17:30]