

2. Statement by the Minister for Home Affairs regarding the withdrawal of R&O 69/2008 Police Procedures and Criminal Evidence (Codes of Practice) (Amendment) (Jersey) Order 2008

2.1 Senator W. Kinnard (The Minister for Home Affairs):

I make this statement because of public and Members' concern following an article that appeared on the front page of the *Jersey Evening Post* on Saturday, 14th June, under the headline: "Now they can lock you up indefinitely." The report alleges that I had authorised the indefinite detention of suspects without charge under delegated powers and that I had not consulted with interested parties. The amendment concerned is specific change to paragraph 16.5 of Code C of the Police Procedures and Criminal Evidence (Codes of Practice) (Jersey) Order 2004. In case Members are not aware of the material point in question the original wording of the paragraph 16.5 was: "The detention of any person for a period in excess of 24 hours must be authorised by an officer of the rank of Chief Inspector or above and the custody record will be endorsed to that effect. The officer conducting that review will endorse the custody record and may authorise further detention up to a further 12 hours from the time of the review." The amendment made by R&O 69/2008 was as follows: "The detention of any person for a period in excess of 24 hours must be authorised by an officer of the rank of Chief Inspector or above and the custody record will be endorsed to that effect by that officer. An officer of the rank of Chief Inspector or above may authorise a further period of detention of up to 12 hours from the time of the review and may conduct further reviews and authorise further periods of such detentions." In reality the only material or practical change that took place is that any Chief Inspector could carry out a detention review as opposed to the officer conducting the original review. This was a measure requested for practical reasons and to give more flexibility to the review process. The amendments to Code C contained in the Order did not affect permitted periods of detention. There is no power to detain indefinitely under R&O 69/2008, nor under the previous Order which was brought into force by the former Home Affairs Committee on 1st December 2004. The word "indefinite" means "not clearly defined or stated." In my view therefore, it is quite wrong to associate this with the law in Jersey on limits for detention and subsequent review. It also ignores the crucial point that the police manage the detention of suspects within the requirements of the E.C.H.R. It is my belief that the present system of detention and review is operated perfectly compatibly with E.C.H.R. requirements. The police as the public authority under Article 7 of the Human Rights Law are obliged to act compatibly with convention rights and so must have particular regard to comply with Article 5.3 which means they must get detained people before court promptly. This is exactly what the police do in practice. The police are, of course, mindful of and work within the principle of the decision of the European Court of Human Rights in *Brogan v United Kingdom* where a period of detention of 4 days and 6 hours was held to be outside the maximum permitted period of detention without a person being referred to a judicial authority. In effect, since that decision of the European Court it has always been that where it could be justified on the circumstances of the case the final backstop for detention by police has been 96 hours or 4 days, although few people are detained more than 36 hours before a court appearance because of the requirement to place detained people before the court promptly. Since 17th April 2007, 3,306 people have been arrested and placed in police custody. Of these people 104, about 3 per cent, have been arrested and held in police custody for more than 24 hours prior to being either charged or released. Of those 104 people, 86 were held for between 24 and 36 hours, 17 or about 0.5 per cent were held for between 36 and 48 hours, and one person was held for just over 48 hours. I am advised by the police that the practice is that detention of any person for a period in excess of 24 hours must be authorised by an officer of the rank of Chief Inspector or above, and the officer conducting the review before the 24 hours has expired will endorse the custody record and may authorise further detention up to a further 12 hours time of the review. Although acting promptly will differ to some extent in each case and depending on the circumstances, as we have seen, where someone has been detained in

excess of 24 hours, 36 hours has tended to be the maximum period adhered to following appropriate review procedures. Prior to the introduction of the P.P.C.E. (Police Procedures and Criminal Evidence) Law the police had already voluntarily adopted procedures to extend in 12 hour blocks under Code C and these were codified by the 2004 Order of the Home Affairs Committee, and I have a copy of them here, Sir, if Members are interested. An extension would need to be, of course with good reason, and in accordance with the requirements of Article 5.3 of the European Convention of Human Rights, the convention rights must and do take precedence. Consequently detention beyond 36 hours happens rarely. Firstly in order to observe an individual's rights and, secondly, in case it had the detrimental effect on subsequent judicial proceedings. I must emphasise that R&O 69/2008 did not alter the existing position. Nevertheless I have decided to withdraw R&O 69/2008 because I am a strong believer in civil liberties and would not wish the impression to be left that the Order was an attempt to give the police additional powers to detain. This will be made clear in the terms of any revised Order which may be proposed after further consultation, namely that there are no additional powers to detain. As an additional safeguard, I shall be taking advice from the Law Officers as to whether the implications of the *Brogan* decision of the European Court of a 96 hour maximum limit can be enshrined in the Order. Given the public interest in this issue I will circulate the draft terms of any new Order to Members as part of that consultation. My view, and that of the States of Jersey Police, is that extended reviews of custody should be conducted by the courts, and that everything should be done to ensure that people are brought before the courts promptly. Ideally time limits for detention by the police ought to be further covered by part 5 of P.P.C.E. which deals with bail and detention. Unfortunately, for practical reasons, it has not yet been possible to bring that part into force, but I am hopeful that we will be bringing a proposition to the States in the autumn to enable this to happen. I shall now come on to the circumstances behind the issuing of the Order on 5th June 2008. In April this year it was discovered that the amendment in question had been in abeyance for some time. In fact it had been approved in principle by the former Home Affairs Committee on 19th May 2005 by virtue of Act A16. Contrary to what was said in the *J.E.P. (Jersey Evening Post)* article, this was subsequently promulgated in the *Gazette* in accordance with Article 62 of the P.P.C.E. Law at that time. No comments were received as a result of the consultation process. The department sent the draft Order to the police on 8th April this year to check whether they were still content for it to be brought into force. The Law Draftsman was subsequently instructed and the Order was then sent to the department for Ministerial approval. It appears, Sir, that inadvertently the Order was referred to me for signature without the usual procedures being followed. The Home Affairs Department has the policy of holding regular Ministerial meetings at which decisions are taken and from which the requisite documentation is raised for recording on the LiveLink system. However, on this occasion, tried and tested procedures seem to have broken down. I will be reviewing with my department the procedures involved and any lessons learned to make sure that this does not happen again. Having said that, the Authority of the Committee Act is transferred under Article 50(2)(b) of the States of Jersey Law notwithstanding the passage of time. Finally, I regret very much the way in which what was a minor change to current procedures, that is to allow any Chief Inspector to carry out a review rather than the original Chief Inspector, has been interpreted as something which it simply is not. The police do not and will not have powers to detain indefinitely. I apologise to Members and the public for the concern that has been caused by the misinterpretation of the effect of the Order and the way in which it entered the public domain.

2.1.1 Deputy R.G. Le Hérissier:

Would the Minister first of all identify in what way the procedures under 62 Code of Practices Supplementary were not followed? Secondly, Sir, would the Minister not accept that assuming we take the Oxford English Dictionary definition of indefinite as: "Lasting for an unknown and unstated length of time" the following people confirmed to the media that a high profile suspect

at the weekend could be detained indefinitely, and that people in the police service were: the Press Officer, the Custody Sergeant, the Duty Inspector and, I think, the head of C.I.D. (Criminal Investigation Department)? Would she confirm they all confirmed that a high profile suspect could be detained indefinitely in terms of the definition I have just given?

Senator W. Kinnard:

In terms of the procedures, Members will probably understand that this only broke in the news on Saturday and I have been dealing with queries from members of the public and the press ever since, so I have only been able to have a cursory look at the reasons behind what occurred on the day of the signing. Just a cursory look. I have indeed asked for a report and this is a matter that I will be taking up with my department in the days to come. But I have to say that I am not jumping to any conclusions at this stage. This is a matter that I have to investigate carefully, together with my department, and take on board any lessons learned. But, at this stage, I cannot say any more than that. I have not had the opportunity to have that in depth discussion with all my members of my department that will be necessary. In terms of what was asserted in terms of “indefinite”, I think the Attorney General has quite clearly made the point several times that the police are not able to hold anybody for an indefinite period of time. They are indeed curtailed on a number of fronts. One is the need to have to bring a person to court to be charged promptly. Promptly, promptly, promptly. Also they are curtailed by the *Brogan* decision from the European Court and they, of course, have to abide by the Human Rights Legislation. As to the assertion about who told what to the press; that is a matter, of course, that I again have to investigate. I have asked for any e-mail trail as to whether indeed what is asserted took place. I have not been provided with any of that, but that is an internal matter, I think, and I think, as the Attorney General has made it quite clear, any police officer that may not have known exactly what the terms were does indeed know. But I can absolutely assure everybody here that the Chief Officer of Police and those that are responsible for reviewing custody times are absolutely clear as to what all the provisions are in these very comprehensive codes which I have here today, and I am quite happy for Members to have a look at, Sir.

2.1.2 Deputy R.G. Le Hérisssier:

Would the Minister not accept 2 things; that the popular usage of “indefinite” is: “Lasting for an unknown and unstated length of time” and that to say “indefinite” is not indefinite is utterly confusing. Secondly, Sir, if it is proven that there have been potentially tragic lapses in procedure, will she - as an honourable person, were those lapses to be proven - be resigning?

Senator W. Kinnard:

First of all, the word “indefinite” does not fit with the actual situation, which is the long-stop of 96 days and, indeed, the situation where the police are required to bring people before the court promptly. I do not accept what is being asserted by the Deputy. In terms of a lapse of procedure, as I have already said, I have not had an opportunity to look at this in depth - I have not yet had time to do that - that I will be doing, so it is impossible for me to say really at the moment what action would be appropriate to be taken.

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

Given that the Minister was President of the Committee when the proposed amendment was first proposed it is perhaps understandable that she would not read it too carefully, but who identified this amendment and asked for it to be brought, and who read and reviewed the amendments as written before they were picked-up, thank goodness, by the press?

Senator W. Kinnard:

Again, these are matters of detail which I have not yet had an opportunity to work through with my department.

2.1.4 Deputy S.C. Ferguson:

Surely the Minister can remember who came and said: “Hang on, we have not done this, we need it because we are having trouble with our Chief Inspectors having to stay on duty and sign forms”?

The Bailiff:

Deputy, I do not think you can ask a specific question like that if the intention is to identify an individual public servant, is it?

Deputy S.C. Ferguson:

I do not know, I think possibly it is of interest as to whether it came from the police or within the Minister’s department and so on.

The Bailiff:

Well, you can certainly put that question; did it come from the department or did it come from the police?

Senator W. Kinnard:

The original recommendation for the Order came, of course, from the Committee when it was made in the original 2005 Order and that will have come through the Committee system on a paper to the Committee. This latest Order came to me as Minister but I am still researching, Sir, the circumstances of how it came before me.

2.1.5 Senator S. Syvret:

I repeat a question put by Deputy Le Hérisier that I do not think was really answered satisfactorily, and I do not criticise the police for this because they do not want this, they believe, quite clearly, that this should be a matter for the courts but their clear understanding of the meaning of this was that they could renew the period of detention indefinitely. This was the opinion of the Duty Inspector, the Chief Inspector and the Duty Sergeant. This was the clear interpretation the police officers made of the situation.

Senator W. Kinnard:

I do not accept that assertion. As I say, this is a matter that I am taking up because it has been asserted and it is certainly not the view of the Chief of Police, it is certainly not the view of those who are responsible for reviewing these matters. I do not know the circumstances under which people were questioned in this matter, how questions were put or why indeed they were put. But indeed, Sir, I think it is absolutely clear to everyone now that, if they were not clear before, that there are indeed curtailments and always have been curtailments on the length of time people can be held in police custody without charge.

2.1.6 Senator S. Syvret:

The Order makes it clear that the terms of detention can be renewed, the periods of detention can be renewed up to a further 12 hours and for further periods of such detention. Now if the Minister is informing the Assembly that, in fact, such rights as to *habeas corpus* are protected by higher legislation then is it not the case that this Order is incorrect? It has been appallingly drafted [**Approbation**], it is incompatible with statutory legislation. Frankly, all of this stuff about indefinite and not clearly defined or stated... I mean, the difference between the 2 parts of the law cited in the Minister’s statement is abundantly clear, one means “up to a period of 12 hours”, the other one says “further periods”. This statement is one of the worst pieces of sophistry I have ever seen come before the States.

Senator W. Kinnard:

I am not a legally qualified person and I doubt that there are very many of us in this Chamber who are, apart from our legal adviser to the States, the Attorney General, and the question was asked of me as to really a legal point as to does the second statement differ from the first statement in allowing unlimited powers of detention. I have said that that is not the case but I have been asked a legal question and I wonder if the Attorney General could assist and give a legal opinion on the 2 statements.

The Attorney General:

I think I have really said all I have to say on the subject. These codes were not designed to create time limits. The time limits are to be found in part 5 of the law. The codes are designed to create procedures, so the underlying implication in the question that somehow or other the codes authorise unlimited detention of suspects is wrong, because the codes cannot authorise that and if police officers thought they did they were wrong.

Senator S. Syvret:

That is my point. The fact that the codes cannot authorise that renders them incompatible with statutory law.

The Bailiff:

I think the Attorney has probably answered that several times, Senator.

2.1.7 The Deputy of Grouville:

Could the Minister confirm if one of the driving forces or one of the issues here is the lack of Saturday court or emergency weekend court so that the detention before charge is kept to a minimum and, if so, who is responsible for putting arrangements in to ensure that the Saturday or emergency courts sit so that charges can be brought about promptly?

Senator W. Kinnard:

This is quite a long saga I am afraid, and the Deputy, of course, was a previous member of the Home Affairs Committee so she has some knowledge of this, and this is in relation to part 5 of the Police Procedures and Criminal Evidence Law which we have yet to bring into force, despite, I have to say, Sir, efforts on the part of the previous Home Affairs Committee and myself, as Minister, over about a period of 5 years. There are certainly longstanding minutes and correspondence showing that we have been trying to fix this problem because of the difficulties in implementing the law in its original form and these, indeed, were discussed at the Home Affairs Committee on its meeting of 8th September 2005. At that meeting, Sir, a number of issues came out as causing difficulties for bringing in part 5 P.P.C.E.; one was the difficulty of Saturday courts. There was concern at the time that this would effectively mean that the Magistrate would be on call 24 hours a day, 7 days a week. There were also the costs involved which at the time were quite substantial in terms of bank holiday courts would vary from the cost of £62,000 to £78,000 per annum. Also additional costs of £120,000 to £180,000 per annum for standby cover that would be needed for weekends and extended obviously for some working days as well. There were difficulties, Sir, as well in terms of the legal aid provision because that was a significant factor in terms of the implications for the legal profession and the current legal aid system. The Law Society was consulted at the time by both the Attorney General and myself when I was the President of the Home Affairs Committee, and as the lawyers already carry out a significant burden providing legal aid there was reluctance at that time to see the legal aid burden extended any further. The solution, Sir, that we thought might work was that we held in-depth discussions with the Magistrate and the Assistant Magistrate so that we could amend part 5 of P.P.C.E. to alleviate the burden of the court but still obviously maintaining convention rights of the accused. The formula, Sir, that was put forward for part 5 was developed on the basis of some amendments which the Law Officers took forward into consultation with the U.K. Home Office lawyers and that did, in fact, take some time. The effect of the alternative arrangements

does, in fact, reduce the overall implementation costs and, indeed, will enable us to bring part 5 of P.P.C.E. into force. But there will be some additional costs, of course, incurred.

The Bailiff:

Senator, I am sorry to interrupt you but...

Senator W. Kinnard:

I was just about to say, Sir, that we are now in a position where there has been agreement with the U.K. Home Office lawyers and we will be bringing part 5 to the States, hoping to bring it into force in the autumn.

The Bailiff:

I was looking to you because in accordance with precedent you are the Member who seeks to extend the time for the asking of questions. We have well expired the period during which the Minister can be questioned under Standing Orders.

Deputy P.V.F. Le Claire:

I had thought that I made the point, Sir, in the first episode of this morning that it was to cover both question periods but if not, Sir, I again make the same proposal.

The Bailiff:

Very well, it is proposed that the time limit on questioning the Home Affairs Minister be suspended under Standing Orders, is that proposition seconded. **[Seconded]** I ask any Member who wishes to vote on this to return to his or her seat. I ask the Greffier to open the voting which is for or against the suspension of the time limit for questioning the Minister for Home Affairs.

POUR: 29		CONTRE: 8		ABSTAIN: 1
Senator S. Syvret		Senator F.H. Walker		Deputy of St. John
Senator W. Kinnard		Senator T.A. Le Sueur		
Senator M.E. Vibert		Senator T.J. Le Main		
Senator P.F.C. Ozouf		Connétable of St. Lawrence		
Senator J.L. Perchard		Connétable of St. Brelade		
Connétable of St. Ouen		Connétable of St. John		
Connétable of St. Mary		Deputy J.A. Martin (H)		
Connétable of St. Peter		Deputy G.W.J. de Faye (H)		
Connétable of St. Clement				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy J.J. Huet (H)				
Deputy of St. Martin				
Deputy G.C.L. Baudains (C)				
Deputy C.J. Scott Warren (S)				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy S.C. Ferguson (B)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy D.W. Mezbourian (L)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. Mary				

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

Would the Minister not confirm that in the absence of part 5 of the Police Procedures and Criminal Evidence (Jersey) Law the Order as is now written - and it probably appears in answers from the Attorney General as was previously written - does in actual fact allow for unlimited detention, because this Order is not about minimum periods, it is purely about the procedure for gaining a custody without a charge and therefore if one reads it in the plainest form of English it does allow for unlimited detention? I fail to see why the Minister cannot admit that and recognise that the important thing is to bring in part 5 as quickly as possible so that Members can rectify this situation we find ourselves in. [Approbation]

Senator W. Kinnard:

I do not accept what is asserted. The Attorney General has repeatedly said that these are guidelines as to practice, and that the law that is guiding us is, indeed, a number of issues to do with the Human Rights legislation and the *Brogan* principle. The point is, is that Jersey is not in a situation where we have P.P.C.E. part 5 in force at the moment. That is not ideal from my point of view, from a political point of view I have been trying to get this on the statute books for 5 years. I am now close to doing that, hoping to bring it in September. The issues have been resolved with the U.K. Home Office. I accept, from a political point of view - and I have been pushing this myself, from a political point of view - it is important to have P.P.C.E. part 5 in because we ideally should reinforce the legal framework and that law, together with the Humans Rights legislation, will together govern the time limits for police detention.

2.1.9 Deputy I.J. Gorst:

I appreciate fully that what the Attorney General said is that anybody in custody without charge, the Human Rights legislation comes into play and that is as it should be. But what we are talking about here, and I hope the Minister will accept this, is the wording of this particular Order, and it does allow for unlimited detention. I recognise that somebody in detention they would then come under the auspices of human rights ruling and therefore one would hope that the 96 hours would come into play and they would be properly reviewed. But the Order as written appears clear; would she not admit that?

Senator W. Kinnard:

I am only repeating the advice that I received from the Attorney General that we have already received this morning. That Order does not allow the police to hold individuals in custody for unlimited amounts of time.

2.1.10 Deputy G.C.L. Baudains:

I am grateful that Deputy Gorst has got to the crux of the matter, Sir, because it does seem to me, as explained eloquently by the Attorney General this morning, that it is other laws or codes of conduct or legal precedents which define the limit of a period of detention, but what I am concerned about, Sir, is the same matter Deputy Gorst raised. That all that does not alter the meaning of the Order because I would like the Minister to advise why her Order included the words: "and may conduct further reviews and authorise further periods as such detention" which is quite unambiguous and the crux of the matter because it clearly indicates a never-ending process. It is not a misinterpretation, Sir, as alleged by the Minister but I believe a failure on her part to create an Order that did what was allegedly intended. What I want to know, Sir, is how did that occur because I am getting quite concerned about Ministerial Orders generally?

Senator W. Kinnard:

There are 2 questions there. One is about the legal interpretation of whether or not the Order says what it says or whether indeed it says what the Deputy is asserting, and I think the Attorney

General has made it absolutely quite clear, and so have I. Indeed, as I must warn Members, we are not legally trained and if we look at the previous Order, a number of people have interpreted that in recent times as believing that the police are only allowed to have people in custody for 36 hours. Although that is... the usual case does not usually go beyond that, there have been one or 2 cases which have gone to 48 hours. So, Sir, I think it is wrong for us to try, as lay people, to interpret the legal meanings of Orders in legislation when we have been given the definitive answer by the Attorney General.

2.1.11 Deputy J.B. Fox:

The question of these Orders is where the crux of this lies: the lack of information that has been circulated not only to the States Members and the public in the way that it is intended, and that is where the problem lies. The Minister already admits that inadvertently the Order was referred for signature without the usual procedures and then goes on to say: "occasion tried and tested procedures seem to have broken down." That is why I voted against the extension last time, because this is going on to a series of debates and discussions. What I seek reassurance from the Minister, that this subject will not be introduced until such time as it has been fully reviewed and brought back to the House for the House to consider because I think it is very important. What disturbs me is her statement that senior police officers know about it but not necessarily the lower ones. We have a department - or we did before I retired 10 years ago - that was responsible for custody and for ensuring that people had their rights safeguarded and, indeed, to ensure. There is a question mark over that, and I would certainly like to be one of the people that had prior discussions before anything came back to the States in order to clarify some of these points. That is my question. Thank you, Sir.

Senator W. Kinnard:

Yes, I have already said that if and when another Order comes back it will be consulted upon with Members and Members will have an opportunity to obviously have their say prior to it being made. In terms of the assertions that have been made about certain police officers not perhaps knowing what the actual position was in relation to this, I cannot really comment further on that. There have been assertions that have been made. I have not yet had an opportunity to find out the veracity of those assertions but clearly I have stated that those that are at the frontline dealing with this are absolutely aware of what the situation is and indeed know these codes inside out. But because assertions have been made it would be my natural inclination to defend my officers, but assertions have been made and it is a matter into which I must look.

2.1.12 Senator S. Syvret:

Just returning to the words at issue, the original Order said: "Up to a further 12 hours from the time of the review", the new Order now repealed says: "Further reviews and authorise further periods of such detention." That seems to me to be abundantly clear as to its meaning. It means that in theory you could have the indefinite renewal periods of detention. It would appear from what the Attorney General has said and what the Minister has said that this wording of the now removed Order is simply not compatible with and is in conflict with statutory legislation. Would the Minister not then accept that this is simply an unholy mess and she might have got more credit from this Assembly had she simply come here and admitted this is a mistake and an error rather than engage in this sophistry?

Senator W. Kinnard:

I think on the first point it is a legal question on to the actual meaning of the Order and I do not know whether the Attorney General has got the stamina to answer that particular question again. I have come to this House, Sir, and said that I do not believe that there was any problem with the Order as made and that is the advice that I have received about it. But I have chosen to withdraw it because of Members' concern and because of public concern. I have also undertaken to try to add in additional safeguards so Members may be absolutely certain that what I say is the case

will be written on the face of the Order. That is what I am taking legal advice about it in order to try and achieve that to meet Members concerns. I have apologised to the public, I have apologised to Members; frankly, Sir, at this point until I have further information I am not sure there is much more I can do.

2.1.13 The Deputy of St. Ouen:

Obviously one of the main concerns that I have, Sir, is in comments made in the statement by the Minister which suggests that inadvertently the Order was referred to the Minister for signature without the usual procedures being followed. I would like to ask the Minister; is it normal procedure for the Minister to sign Orders and make Ministerial Decisions without fully considering the implications of that proposed decision? Was a report and supporting evidence provided to her to enable her to make that decision?

Senator W. Kinnard:

Again, I just have to say that given the shortness of time with this only happening on Saturday, I have yet to have an opportunity to investigate all the circumstances, and that is a matter I am taking up with my department after today.

2.1.14 Deputy P.V.F. Le Claire:

I appreciate the Minister has still to investigate what went wrong but quite clearly in her own admission and with her apologies something has gone wrong. Can I ask 3 questions that maybe the Minister could prepare herself? The first is that given that Human Rights Law overrides any other codification or procedure that is currently in place in Jersey, how many people have had to be released in the past? Or have there been occasions when people have had to be released much to the dismay of the police who would have liked to have held them for longer periods due to the fact that the court was not available to them? Specifically, because we are now being told that the Minister wishes to undertake this review, will the Minister give us 2 answers. The first is, when this code came into being did it come into being as a result of her signature? Will she, when she has understood and undertaken this review, present the findings to the Assembly for the Assembly to be appraised as to what did go wrong? The third question is, with the accompanying codes that the police officers determine the procedures from, are the relevant parts - although they will be well known by now - were the relevant parts in that code written to give the officers the understanding that they would require as pointed out by Her Majesty's Attorney General today? They are not lawyers either. They are police officers, they interpret codes and law as how they read them. They may not be as legally qualified in many cases as the Attorney General to know the overriding higher laws.

Senator W. Kinnard:

In terms of the Human Rights Law overriding, I think that has been said on a number of occasions. I am not aware, Sir, but again I would have to check for certain, but I am not aware of any circumstance where an individual has had to be released because they have not been able to be brought before a court. The Attorney General may have further information about that, but I am certainly not aware. Indeed, from the statistics that I have given, Members will see that the vast majority of people anyway are either charged or released within 24 hours. In terms of reviewing the circumstances, yes, it was under my signature that the Order was made but, as I say, there have to be further investigations on that particular issue. In terms of the findings of that investigation, at the moment, Sir, I cannot see any particular reason why I might not publicly tell Members what the circumstances were, but I would have to obviously take advice on that because we do have issues about identifying perhaps individual officers. So I would need to take advice. In terms of the code and the understanding of police officers, of course it is part of their training but Members will just, perhaps even looking at the codes, realise that even in this particular small area of police work it is very complicated. But I can assure Members that those

who are responsible for looking after prisoners in detention are fully aware of the guidance in all of these codes.

Deputy P.V.F. Le Claire:

It did not answer the question, Sir. The first 2 were answered very kindly, and I appreciate that. The third answer was not at all answering the question I put which was, in the codes that are written is there accompanying advice at the moment that refers the Law Officers to the fact that having reached the 4 days that they are required to release?

Senator W. Kinnard:

There is of course training on all of the codes on the laws.

2.1.15 Deputy D.W. Mezbourian of St. Lawrence:

I was intrigued to hear Senator Le Sueur on the news last night seemingly defending the Minister and saying that it was a simple error that anyone could have made and it is very difficult to proofread your own documents. My question to the Minister then, Sir, is did she proofread what was in front of her to sign, and if she did do that, did she query why the wording had been changed and what, if any, were the implications of that change?

Senator W. Kinnard:

This will obviously form part of the review but, of course, I am well known for proofreading everything that I am required to read before signing.

Deputy D.W. Mezbourian:

My question was not answered. I asked the Minister whether she queried why there was a change and whether there were going to be any implications from that change?

Senator W. Kinnard:

I did not query the change because my knowledge of what the change was, was that it was a very minor amendment relating to the number of senior officers who could, in fact, authorise an extension to time, not one officer. That was my understanding of what that amendment meant and that, I believe, is still the understanding that I am given by the Law Officers.

2.1.16 Senator P.F.C. Ozouf:

The Minister will be aware of Members and other members of the general public's concern about Ministerial Decisions and powers. The Minister has referred in her statement to procedural issues; would she confirm that the process is that a Ministerial decision upon advice must be signed and the Order must be signed, and the Ministerial seal affixed to that Order by the Minister? Would she confirm that in this case, for whatever reason, it is the problem of the Ministerial Decision that appears not to have been signed? Would she agree to take her report to the Council of Ministers so that the Council may review the procedures for Ministerial Decisions and Orders so that we can restore confidence in the process and to give Members assurances that there are proper checks and balances in the system?

Senator W. Kinnard:

Yes, Sir, I am more than happy to do that. In fact, I have already determined that that will happen. I have to say that I have worked with my department and those who have worked with my department on previous days of the Committee days, know that they are extremely professional and work very hard, and they have a very good reputation generally for doing the right thing and in terms of getting these things right they generally do. I have to say on this occasion we do seem to have slipped-up and I can apologise for that, but I do not have the absolute circumstances as to exactly what went wrong but there does appear to be a lack of a Ministerial Decision being filed at the same time. I am looking at those circumstances and I am

certainly going to be discussing the matter with my Ministerial colleagues to ensure that we learn the lessons we need to learn and so that this situation does not happen again.

Senator J.L. Perchard:

Point of clarification, Senator Ozouf seemed to - I may have misunderstood - imply that the Minister had not signed this Ministerial Order. Can the Minister confirm that she did?

Senator W. Kinnard:

No, the Order has been signed by myself.

2.1.17 The Deputy of St. Martin:

The Minister is claiming that she has withdrawn the Order because she is a strong believer in civil liberties; how could a Minister reconcile that statement when indeed the Order is made in her name, and if she was not a strong believer in civil liberties would she have left the Order in place?

Senator W. Kinnard:

I have to say that the intention that is being imputed into this Order was never the case, and I have to say my record on civil liberties in terms of bringing the Human Rights legislation to this House and getting it passed and in terms of doing my utmost to try and bring anti-discrimination laws to this House is well known. I think there is no question over my defence of individual civil liberties.

The Deputy of St. Martin:

The Minister has not answered my question.

The Bailiff:

Would you put the question again, what element was not answered?

The Deputy of St. Martin:

I will repeat it. The Minister is claiming that the Order is made because of her strong belief in civil liberties. If, in fact, she had not been a believer... why did she make that statement in the first place? **[Interruption]** Can I start again, Sir? The Minister is claiming that she has withdrawn the Order because she is a strong believer in civil liberties. How can a Minister make that statement when in actual fact the Order has been made in her name and, if in fact she was not such a strong believer, would she have left the Order in place?

Senator W. Kinnard:

I do not know how many times I have to say this; there was not a problem with the Order. It was not curtailing anybody's civil liberties and the reason that I made reference to civil liberties was that I would not wish the impression to be left that the Order was any attempt to give the police additional powers to detain. It was not and it will never do so. That is the reason why I made reference to my record on civil liberties, Sir.

2.1.18 Senator J.L. Perchard:

The Minister in her statement a moment ago said that she regrets the way the Ministerial Order has been interpreted. She quite absurdly maintains that the only material change to the Order that took place is, and I quote: "is that any Chief Inspector [- any Chief Inspector -] could carry out a detention review as opposed to the officer conducting the original review." Does she seriously maintain this view or will she withdraw that false claim which is, frankly, insulting to Members?

Senator W. Kinnard:

I have to say, it is quite clear in my statement. In reality the only material or practical change that took place is that any Chief Inspector could carry out a detention review. I do not know how many times I have to say it. Sir, I just think if we are going to have the same question I just will probably say: "I have answered it."

2.1.19 Senator M.E. Vibert:

Can I say I have no doubt about the Senator being a strong believer in civil liberties and I am sure that her record is second to none in showing that in this House, and I share those beliefs. In the light of those beliefs I did take some comfort from a statement within the Senator's statements saying that the final backstop for detention by the police has been 96 hours or 4 days. Now, I do not know where this is written down or encoded but I do know that Members appear to be very unhappy over the codes that exist that seem to rely on other laws to put a limit on legal detention. I would like the Minister to say whether she would give an assurance, possibly a reassurance, that she will introduced statutory limit on police detention, written down in a codified form as soon as possible?

Senator W. Kinnard:

Absolutely, Sir. I, as I say, am looking at a way in which I can put it into a new Order, if that comes before the House, but I am pushing on - as I have been pushing for the last 5 years - to bring into force part 5 of P.P.C.E. which will give and bolster the legal provisions we have to protect individuals rights. Sir, I have never wavered from the intention to try and bring that part of the law in as quickly as possible.

2.1.20 Deputy C.J. Scott Warren:

To me the major change is the additional few words at the end of the statement about the further reviews. I would like to ask the Minister, did the Minister question whether these additional further reviews and further periods of such detention, did the Minister ask the police whether this would be up to a day extra or was likely to be an additional 48 hours extra, because to me that is the major part of the change.

Senator W. Kinnard:

I interpreted it in the knowledge that I have about the *Brogan* decision and the European Court of Human Rights, so I do not share the interpretation that has just been given by the Deputy. I interpreted it as I have constantly said in this Chamber this morning, within the framework of human rights and the *Brogan* decision. So it causes me no concern.

2.1.21 Deputy R.G. Le Hérissier:

The Minister said she was going to look into more detail about the contrary stories about people asserting indefinite; will she assure me, Sir, that that inquiry, in order that it is utterly even-handed will be carried out independently, because in the same sentence she said: "You must remember I always defend my officers. How can the media in these cases feel that the matter is being approached independently? Secondly, Sir, would she not accept that when someone is told indefinite they will go for the common usage of the term and they will not engage in a conversation which says: "Oh, have you heard about *Brogan v. U.K.*? Have you heard about the Ukrainian case?" That is utterly ridiculous. People want their rights in a clear uncomplicated fashion. Thank you.

Senator W. Kinnard:

It is not I who made reference to indefinite, firstly. Secondly, I agree absolutely that people must have their rights defended and I am doing everything I can to ensure that they do, not just through the Human Rights Law but also by trying to bring in P.P.C.E. part 5. I did not say I always defend my officers. I said I tend to defend my officers because generally it is appropriate to do so, may I say. But that does not mean that I cannot take officers to task when it is

necessary to do so, if indeed it is necessary to do so. I am jumping to no conclusions in this matter at all and I would ask Members to do likewise. Indeed, Sir, independent overview.... the matter is going to the Council of Ministers so there will indeed be discussion about the details of what happened, when, among my colleagues there and I would hope that Members would consider that that was certainly a degree of independent overview.

Deputy R.G. Le Hérisier:

I just have a supplementary. Would the Minister tell us how she intends to ensure that the press' view - or the view of the people who have an entirely different interpretation it appears than her and some of her subordinates - that that view will be taken seriously?

Senator W. Kinnard:

I really cannot see how I can be accused of not taking this matter seriously. I have spent hours e-mailing my colleagues with detailed explanations. I have spent quite some time this morning making a statement and answering questions. I cannot see for one moment that either of my colleagues, surely - or indeed the public - think that I have not taken this matter seriously. I have taken this matter very seriously indeed.

The Bailiff:

I did not think that was the Deputy's question. I thought - and the Deputy will correct me if I am wrong - he was asking you how you were going to ensure that the knowledge of the Chief Inspectors and people of that rank as to what these provisions mean percolated downwards to the people who are detaining members of the public.

Senator W. Kinnard:

Sorry, I did get a little carried away. I indeed will be requiring a report from my police chief on the matter as an initial step, Sir.

2.1.22 Deputy P.V.F. Le Claire:

We will just get belt and braces on that if we can. Can we make sure that the situation as it stands today is also circulated to the lawyers in Jersey and the law firms that might be representing their clients so they have a full and clear understanding of the situation? Can I ask - and this is not a glib question because I do have great respect for the Minister's human rights record and her civil liberties stance - if there was not a problem, and we have been told in great depth today that there was not a problem, why did the Minister withdraw it?

Senator W. Kinnard:

To answer the second question first, I withdrew it because I wanted to listen to Members. Members were concerned. It was an area that was not simple to explain. The public had become concerned by the headline and I thought that it was far better to withdraw the R.&O. rather than have any kind of feeling hanging over it that it was any attempt to reduce the system of civil liberties. That is the reason I withdrew it. In terms of circulating to lawyers, I am aware, Sir, that some lawyers did contact members of the Law Officers' Department and I have asked a member of the Law Officers' Department certainly to circulate my response that I gave to Members on Sunday to those lawyers and, indeed, I will ask them if they would be kind enough to circulate as well my statement that I have made this morning.

2.1.23 The Deputy of Grouville:

Could the Minister confirm that there is a flipside to this, that this Chamber does not seem to be addressing either? In my time on Home Affairs there was a tragic case whereby the police were questioning a detainee. They were waiting for some information from overseas and had to let that particular person go because the information did not arrive on time and that man then went

out and murdered the nurse, a few years ago. So there is a flipside to this that people's human rights have got to be considered, both the detainees and the people out there.

Senator W. Kinnard:

I thank the Deputy for drawing to our attention that human rights do not work one way, we also need to think about the victims. Thank you.

2.1.24 Deputy P.V.F. Le Claire:

Surely that was the case that I asked earlier, were there any instances where the police were? So we obviously have on record that that was one.

Senator W. Kinnard:

I am not aware of the details of that. The Deputy obviously has related a case and I do not have the absolute details to hand to either confirm those details or not.

The Bailiff:

If no other Member has a question for the Minister of Home Affairs we will come back to the Order Paper and go to question time.