

STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 22nd APRIL 2020

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[9:31]

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

COMMUNICATIONS BY THE PRESIDING OFFICER

The Bailiff:

1.1 Speaking through the Chair

Under A there are no communications under the Presiding Officer but I would like to make one remark about something I noticed yesterday. It is quite clear that during the course of yesterday Members, and that is all types of Members, seemed to fall into the habit of not speaking through the Chair. It is still a formal sitting of the Assembly and to the extent that they are not perforce in some way moderated the Standing Orders of the Assembly still apply, as does the guidance that I have previously issued. Could Members please keep in mind the importance of speaking through the Chair when they are dealing in their speeches or answering questions during the course of speeches.

PUBLIC BUSINESS

2. Draft COVID-19 (Emergency Provisions – Courts) (Jersey) Regulations 202- (P.41/2020)

The Bailiff:

We now carry on with the debate on P.41 and I now leave the Chair for someone else to take over.

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

We return to Regulation 8, as amended by the Corporate Services Scrutiny Panel. Does any Member want to speak on the Regulation? If no Member wishes to speak then I call upon the Chief Minister to reply.

2.1 Senator J.A.N. Le Fondré:

I do not think I need to add to anything that was said yesterday other than in relation to a query from Senator Gorst, which was a work around suggestion to obviously the issue we are trying to deal with under Article 8. I would just note that I had looked into that I think a couple of days ago and unfortunately again attached to it there are some quite practical difficulties with it. So it is not for want of trying. The fundamental issue on all of this in terms of the principles of any form of web streaming or allowing members of the public in somewhere is the risk to the health of the court staff who then have to look after them in some shape or form. That seems to be the hurdle that we have to try and deal with during this time. But other than that comment, I maintain the proposal on Article 8 and ask for the *appel*.

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

Before we go to the vote, Deputy Tadier, you have indicated that you want to ask a point of order.

Deputy M. Tadier of St. Brelade:

That is right. I am just wondering if I, as a States Member, were to have a court case coming up in the next few weeks or months should I declare some kind of interest in that for any of these votes and speaking in any parts of this debate?

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

I do think it would be appropriate if any Member were to have a court case due that they would make a declaration under Standing Order 106(1)(c). That is an interest which is not financial but they should indeed declare that interest.

Connétable C.H. Taylor of St. John:

It is the Constable of St. John, I declare an interest as I have a court case pending.

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

Thank you, Connétable. That interest is noted. Very well, then we are returning to the vote. In a moment, the Greffier will place a vote in the chat for Members to join the link. The link is now visible in the chat channel if Members want to download and cast their votes. If Members have had an opportunity to cast their votes ... sorry, in the messages there are quite a few saying that the link is not working. We will put a new link into the channel and we will do a new vote, yes, Deputy Le Hegarat. I think the problem is that there is a time delay depending on Members' Wi-Fi connections as to how long it takes to download the actual voting link. So we will take our time.

Senator S.C. Ferguson:

Madame Greffier, please can you confirm what we are actually voting on?

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

The vote which has just been put into the channel now by the Greffier is a vote on Regulation 8 as amended by the Scrutiny Panel amendment of the Draft COVID-19 (Emergency Provisions - Court) (Jersey) Regulations. So it is Regulation 8 that you are voting on in its amended form. It is ready to go. If Members want to download and cast their votes.

POUR: 42		CONTRE: 2		ABSTAIN: 0
Senator I.J. Gorst		Deputy M. Tadier (B)		
Senator L.J. Farnham		Deputy M.R. Higgins (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. Saviour				
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 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 G.J. Truscott (B)				

Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (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)				

[9:45]

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

I think as with yesterday if there are any instances where Members feel that their vote has not loaded or it has not been counted if they indicate in the chat channel and we will clear up after the meeting and ensure that your vote is properly included within the minutes of the States Assembly. We turn to Regulation 9, Chief Minister.

2.2 Senator J.A.N. Le Fondré:

Regulation 9 is, as Members will be aware, the citation, commencement and expiry. Obviously this confirms that these Regulations will expire on 30th September 2020. I do not think I have any other comments to make. I propose the Regulation.

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

Is the Regulation seconded? [**Seconded**] Does any Member wish to speak on Regulation 9? In which case I ask the Chief Minister to reply.

Senator J.A.N. Le Fondré:

Thank you. Does that need to go to *appel*?

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

If Members are content to indicate in the chat channel of the standing vote, we have got a vote prepared if ...

Senator J.A.N. Le Fondré:

If it is quicker let us do it on the *appel*.

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

The vote is there in the channel but looking at what is coming up in the chat I think Members are quite happy with the ... I think in this instance we will just vote in the voting channel. We will cancel that vote. I think it is easier if Members use the voting link for the future votes. It just allows us the clarity to be able to use that in our Minutes going forward. The vote is closed. I think, judging by the amount of *pours*, the Regulation has been carried. That is the final Regulation. How do you wish to take the matter in Third Reading, Chief Minister?

2.3 Senator J.A.N. Le Fondré:

Everything *en bloc* and, sorry, if I can just propose the Regulations in Third Reading and I thank Members for all their comments. As ever, this is a difficult situation we are having to adapt to but, in particular, can I thank all the officers and other individuals who have been involved in getting this

particular Regulation together and obviously in putting the comments together that came through for the various Amendments that came through in the last few days? Can I also thank Scrutiny for their co-operative working on this particular subject? Once again, thank you to Members for their support. I propose the Regulations in their Third Reading.

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

Are the Regulations seconded in Third Reading? **[Seconded]** Does any Member wish to speak in Third Reading?

2.3.1 Connétable R.A. Buchanan of St. Ouen:

Just a couple of quick comments. Firstly, I think when we come to renew this legislation in September, if it is renewed, we need to think very carefully about it because it is quite likely that a number of people will have delayed their trial by jury to that stage and I think a further delay of 3 months, certainly in my mind, would not be acceptable. Secondly, while I voted for this legislation I still have serious concerns about members of the public not being able to see court proceedings. I cannot believe that there is not a solution that can be found to sort this out. The argument put forward by the Attorney General, very eloquently I have to say, was that the press would report this however if, for instance, one of my relatives was in court and was being charged with a serious offence I am not entirely convinced I would like to rely on reports in the *Jersey Evening Post* for the conduct of the trial. So I think there is still an issue and I think it does need to be addressed sooner rather than later.

2.3.2 Deputy R.J. Ward of St. Helier:

I would like to reiterate that point and I agree. I would like to see this as a position of last resort in the coming months and I would like the Chief Minister to try and reassure the Assembly that every effort would be made to ensure that these changes are not necessarily implemented if they do not have to be. If another way can be found then I think it should be taken even in these extraordinary circumstances. I think that would be a reassurance to all of us.

2.3.3 Deputy M.R. Higgins of St. Helier:

If I could just speak. I cannot indicate on chat, my chat is broken. It is Deputy Higgins. I just reiterate what Deputy Ward has said. I do believe that we should try and continue as best we can without having to resort to these extra measures. I hope that we will get an undertaking from the Chief Minister that they will put all their efforts in to try and resolve this particular issue. Again, justice must be seen and heard to be done.

2.3.4 Deputy M. Tadier:

The Proposition that we have now in the Third Reading is a completely different Proposition to the one that was lodged by the Chief Minister. That is just as well because the original Proposition, and I know that this was done in relative haste, was shoddy. It was shoddy workmanship. Were it not for the fact that the Scrutiny Panel pulled this in and highlighted some areas of real concern, the States Assembly, in all likelihood, would have passed something probably not completely unanimously but with a strong majority and put it into law, for a short period of time albeit, with some major flaws and holes in it. So I think we need to recognise the good work that Scrutiny has done. The 2 areas in particular is that they put back the ability for a defendant to have a jury trial if they want to, albeit that they would have to wait a bit longer. I do not know why that was not considered in the first instance by the courts or the Chief Minister when that was put forward. The second point is also that they made provisions to tighten up who controlled the filming because, as Article 8 was drafted, anybody could have filmed the proceedings with impunity and the Scrutiny Panel, as I would have done, because I noticed that as well, said: "Actually, let us make sure that the Judicial Greffe has the ability to control the filming and any broadcasting of it." What I am really concerned about is the tone of the debate that we had yesterday, is that this complete deference for

the court always being right persists. That the courts and the Parliament or the Assembly should exist in a healthy tension where we provide a check and balance on the courts and the court and the judge should provide a check and balance on us. That is particularly difficult in the Jersey context where the 2 are still intrinsically intertwined. We know we had some very compelling and I would say political speeches from the Attorney General making the case against, for example, livestreaming in courts and we have the head of the judiciary, who is a President of this Assembly, who has of course recused himself for this part of the debate. The jurisprudence in Jersey is far from ideal. I am concerned that I have come across the same old Jersey way defensiveness when anyone tries to suggest a slightly different way of doing things in the courts in Jersey. One example of this is that there seems to be a complete disregard and a disinterest for the fact that the public, and they might sometimes be in small numbers in the same way that we have a relatively small number, but nonetheless an important number, of people who come to watch States proceedings in the public gallery, similarly with our Scrutiny meetings. There is a public interest out there and I know that that public interest exists and that there are people who want to go and watch court proceedings. There is absolutely no provision at the moment for a member of the public to be able to watch what should be a public court hearing. That means that we do not have public court hearings. We effectively have closed court hearings where some people get an invite in the media and if they can be bothered to turn up, and if they can be willing to risk their health at a time when we have a pandemic, they can sit in the Royal Court. That is simply not satisfactory. That shows a blatant complacency and I think arrogance of the courts. If we were to do the same in the States Assembly we would quite rightly be shot down. So I would put a challenge to the courts: what are you doing during this 3, 4 month period - it could be extended, we have no idea when we are coming out of lockdown - to make sure that interested members of the public can somehow get access to the courts? That is either by sitting in a room where they can spread out, it could be sitting in an annex where Senator Gorst said that livestreaming could be fed through to that room. This is a problem for the courts of Jersey. I would also encourage any defendant to talk to their lawyer if they are going through because they are being denied a public hearing and that E.C.H.R. (European Convention on Human Rights) Article 6 rights are potentially being infringed. It is not just because the Attorney General of Jersey, who is a member of the courts says that we are complying with the E.C.H.R., it does not mean that you cannot appeal that. So I would encourage as many defendants at the moment who are going through their closed court hearings to say: "This is not compliant with European Court Human Rights Directives" or the Human Rights (Jersey) Law 2000 that we ... and appeal it and say that you want better and make sure your lawyers do that. If you have an issue come and talk to me as the Chairman of the Jersey Human Rights Group and I will certainly see what we can do if you are not getting any luck from the Jersey establishment. But lastly I will just I can probably just about stomach this in the Third Reading because of the good amendments that the Scrutiny Panel have put forward.

2.3.5 Deputy J.H. Young of St. Brelade:

I just wanted to say that I am really troubled about the talk of renewing these Regulations. I think all of us accept that we have no choice because of where we are but to bring these measures in for 5 months. I would ask those involved with the administration of justice to think very carefully because I think what the Constable of St. Ouen had to say was absolutely right. Bearing in mind also what Senator Gorst said yesterday is that we have not got a perfect solution for our fight. These measures are having to be introduced by necessity. They would not be the slightest chance that any of us would ever have even thought about these measures if we were not in this COVID crisis because these sort of measures of denying jury trials and so on and closed doors is really the sort of hallmarks of rogue states elsewhere. So please, I agree with the Constable of St. Ouen. During the time we have, I want work please to be done to find out what measures we can do to bring this more fair because one other thing about the talk of extension, I would imagine if somebody does opt to wait until the end of September certainly finding they have then got to wait another 6 months and so on, this would be very bad. I am going to support this but I think we really do need to know the importance of what

we are doing here and the importance of working on alternative solutions in the meantime. Because none of us know what is before us with the COVID timetable and the exit.

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

Does any other Member wish to speak? Very well, if no other Member wishes to speak I call on the Chief Minister to reply.

2.3.6 Senator J.A.N. Le Fondré:

I will make one or 2 comments. Just to reiterate, as we were saying yesterday, certainly my clear understanding is that essentially if someone is currently entitled to a jury trial they can still request a jury trial. That is the position. We are not denying anyone the rights to a jury trial. I think I better pick up on 2 comments. One in relation to the comments from one or 2 Members, including the Connétable of St. Ouen, is I rather suspect I will be asking one of my Assistant Ministers to be looking into the process in the time that we all have, which I am sure that particular Assistant Minister will no doubt be looking forward to. I think the second one is in relation to Deputy Tadier’s comments. Other than the remark about people having to risk their health, which is the whole fundamental reason behind this, if we were not in a crisis, with a virus that in certain circumstances can cause death or severe damage to people’s health we would not be doing this.

[10:00]

I think that is what Deputy Tadier seems to have forgotten in that whole episode. To say I fundamentally disagree with an awful lot of what he said would be an understatement. Particularly when he used the word “shoddy”. I think that was a fairly poor reflection on the work that had been done. I do welcome the work that has been done by Scrutiny. Obviously if Members want to remind themselves as to the changes that Scrutiny proposed, there were 3 fairly straightforward - but I accept they were important - changes that were proposed. I think that is the whole purpose of Scrutiny. It improves on something that is being proposed, particularly when we are all working at pace. I do not propose to take this any longer therefore I would like to maintain the Regulations in their Third Reading and call for the *appel*.

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

The *appel* has been called for. We will use the link in the chat and I ask the Greffier to produce the link that should appear shortly. The link is now visible, if Members wish to download and then cast their votes accordingly.

POUR: 45		CONTRE: 2		ABSTAIN: 0
Senator I.J. Gorst		Senator S.Y. Mézec		
Senator L.J. Farnham		Deputy M. Tadier (B)		
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. Lawrence				
Connétable of St. Saviour				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				

Connétable of St. Peter				
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 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 Trinity				
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)				

3. Draft COVID-19 (Health Insurance Fund) (Jersey) Regulations 202- (P.45/2020)

The Bailiff:

We now come on to the next item of business, which is the Draft COVID-19 (Health Insurance Fund) (Jersey) Regulations, P.45/2020, lodged by the Minister for Social Security, and I ask the Greffier to read the citation.

The Assistant Greffier of the States:

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

3.1 Deputy J.A. Martin of St. Helier (The Minister for Social Security):

This Proposition today asks to use funds that the Government already hold as part of the Health Insurance Fund. A single transfer of just over £5.3 million is proposed and this will meet the cost of 2 specific projects that the Health Department has already initiated. I would just like to give a bit of the history on the first project. Myself, the Minister for Health and Social Services and officers, with G.P.s (general practitioners), were meeting very late in February, early March because we saw something coming over the water and G.P.s were saying to us that we really need to contact our most vulnerable; we are looking worldwide and it is really affecting people with underlying health

conditions more than others and certain ages. So this was discussed and it was approved. For the timeline, if you remember, we had our first case in Jersey confirmed on 10th March 2020 after the last normal States sitting and then on 11th March the World Health Organization said we have a pandemic and it urged governments to take urgent and aggressive action. With our doctors, we were there and on that weekend of 14th and 15th March they contacted, with all their staff, around approximately 17,000 people. We have also been told they were really grateful they got this call because it put their minds at rest but it also confirmed to me that what we now know as shielding was for them. A lot of them were told: "Do not go out, 3 months do not go out" and they were given extra medication and every single one that was contacted also had what we now know as a rescue pack. It is medicines that if any of these people start to get any symptoms they then start to take this medicine. It is just an antibiotic. It is not a cure but it is there and may allay underlying symptoms. I cannot thank the speed that the officers at Health - I was in the room because they see a pot of money, which is not a problem - and the G.P.s for doing the work. Over that week, they put double or treble the amount of work out. By that time they were quite stretched, and pharmacies, because some of their staff were getting sick and some of their staff were self-isolating. They did a fantastic job. From that weekend, I think, to the following weekend everyone had got the rescue pack and the ones that were shielding were having them delivered home, quite rightly because they were told they cannot go out. That scheme is around £900,000. I cannot see him but I can feel, for Deputy Southern, it was free, all those phone calls, all that medicine, obviously free to the patient. Then there is the second scheme and I again was in the initial talks with Health and Social Services because they wanted to use the Health Insurance Fund. It was money there that could be used. The G.P.s and all their staff see these patients a lot more probably than the consultants at the hospital. They have a lot of local knowledge, as you would say. They are now working for Health, for us and for all the Islanders. So really that is going to cost just over £4 million and it is initially for 4 months and there is a small charge but not for anything to do with COVID. That is free, but they are still carrying on. If you need to go and see a doctor, you go and see your doctor. You do not worry it is not COVID. If you have got something else wrong with you and it is not normally there, you ring your doctor. It is done differently. They can consult you over the telephone or onscreen at any time. Any time the doctor feels he needs to see you, he can stop the consultation and he will pull you in and that will be as one consultation. As I say, there is a small charge. Under 4s are free, for children under 18 it is £10, adults are £20 and all home visits are £40, but that is for anything not COVID related. I think the Minister for Health and Social Services may want to add some more and States Members may have more questions. As this time though, as well, I would like to thank my Scrutiny Panel. I dropped the ball on the first transfer and I think over the last 4 or 5 weeks it has taken a few weeks to all be working together. Scrutiny is going the extra mile. They are meeting in lunchtimes. Last night we had Deputy Pamplin sending out more information. I could not see what time but I do not think it had come before I went to bed and it was gone 10.30 p.m. They worked yesterday and the officers are working. Then we have got the Assembly, which again I hope are going to be very good today. They have let me shorten the lodging period, and it is a lot of money but it is needed. We need this money to be transferred from me, from the H.I.F. (Health Insurance Fund) into the Consolidated Fund because basically I think it has been already paid out from the Consolidated Fund and that fund needs to fund other things. I cannot thank every States Member enough. I know we are all working hard and at funny times and in funny ways. I am sorry I have got my camera on because it is horrible but there you are. I was asked to do it. I maintain the principles.

The Bailiff:

Is the Proposition seconded? [**Seconded**] Does any Member wish to speak on the principles?

3.1.1 Deputy M.R. Le Hegarat of St. Helier:

I thank the Minister for her words in relation to the Health and Social Security Scrutiny Panel. From our perspective, I would also like to thank the exceptionally hard work that Scrutiny has had to do

over the last couple of weeks. As you can appreciate, Health has been exceptionally busy as has Social Security. Also, we had a presentation from Social Security in relation to this matter and, as always, their policy officers provide us not only with the detail but also answer all the questions that we feel that we need to have more information on. I would also like, obviously, to point out that we have done a comments paper and I do not intend to go through any of those comments as Members will have had an opportunity to read them. Therefore, I would just like to say that the Scrutiny Panel feels that it is the right and appropriate thing to support the Minister in relation to these funds due to the situation that we are currently in.

3.1.2 Deputy K.G. Pamplin of St. Saviour:

Before I start, because I do not think it has been said publicly yet, it is great to have our colleague the Deputy of St. Mary back with us after his brief spell recovering and we are just pleased to have him back with us. I just wanted to publicly air that. Just to echo my Chair and as Vice Chair of the Health and Social Services Scrutiny Panel, I would like to thank the Minister for her comments. As she noted by one of many late emails, the Scrutiny side of things has worked at pace as well, sometimes into the early small hours, to ensure that Members have as much information as possible when deliberating and then ultimately voting on the Regulations put forward. I just want to draw attention to, because I believe Deputy Southern will be speaking, building up pre-COVID, which I am sure we could all think seems like a very long time ago now, we were scrutinising the Future Jersey Care Model. It came up during the Future Jersey Care Model about the double running of the service if changes were approved at some former point of time to change the care model system in Jersey. Some of that funding was going to be quite substantial and there were plans - and I have the transcript of our Scrutiny hearing with the Minister's Department - that a large sum of money of the H.I.F. was being looked at to support that. I am just wondering if the Minister has got any indication at this time or she has been briefed about the future of the future care model. There was a large substantial pot of money that was being looked at to support that going forward. I just raise that point.

[10:15]

Equally, we did show concerns regarding the long-term future of the fund. Like all our funds, we are so grateful that we have them. There were similar views from G.P.s expressing their concern on the implication of the transfer for the future of the H.I.F., given the significant role of the H.I.F. and providing support to Islanders. We are of the opinion as a Panel that a commitment should be made by the Minister for Treasury and Resources to ensure that the funds taken from the H.I.F. could be repaid in some form in coming years. While at the moment having that substantial money available is important and what the G.P.s brought forward to work with the Government we are grateful for and we are seeing that coming into play and it is good that is being funded, we just know how important the H.I.F. is and I know the Minister believes that is so. I just wanted to raise those points this morning and thank everybody for their comments.

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

I have got a couple of questions to ask. I do not mind if it is answered by the Minister for Health and Social Services, if that is appropriate, or the Minister for Social Security. The first one is that we are talking about £5.3 million, £4 million something to initiate these consultation fees. I just wondered what would be the total annual bill if that were scaled up to a more permanent situation. What would the total annual bill be for paying these rates of consultation fees and what would the subsidy be or the consultation fees if that was put in place? Secondly, I would ask how you arrived at these particular consultation fees, differentiating between a child aged under 4 and a 5 year old. Also I noticed that there is an adult fee but there is not anything for those who are particularly vulnerable, those people who make the biggest demands on G.P. services, the over 65s and going upwards now increasingly towards the 90 year olds, no special exemption for them. Also why is no fee attached

to those with chronic illness, who it seems to me, again, in terms of vulnerability are likely to have financial vulnerability and find it very difficult to pay £20 under this scheme if they have got to continually go back to get their routine meds, as it were, for chronic illness? Then, thirdly, the question is: when we get out of the COVID situation and the crisis we are in and a fresh piece of legislation put into place, is it envisaged that these fees will be the ones charged in the longer term or are there meetings going on to rejig this to do something, I would say, a little better and a little more accurately focused, particularly on those with financial vulnerability in there? Finally, and I have got a part answer from the Department but I want to pose it in public, we seem to be operating on 2 levels. One the Minister for Social Security described where G.P.s phoned their long-term clients and checked up and made sure that they were covered. If you had phoned the G.P. over a matter that was not COVID related, you were getting charged £45 for doing what you were asked to do, which was not to go into the surgery, where you were likely to pick something up rather than leave something behind, but to take a phone consultation. That was being charged at £45 a throw and it looks now that it will be charged at £20 a throw. If I phone up to say I think I may have corona infection and it turns that I have not, am I going to be charged for making that phone call again or does that count as long as it is somehow related? I want to know what is happening to fees now and in the long term. That is 4 questions I think but if somebody can answer them I would be very grateful.

3.1.4 The Connétable of St. Ouen:

While we are debating this, I think a word of thanks is definitely due to Social Security and the team there because, as somebody of high risk, I can attest to the speed with which this was rolled out. Very quickly I had my pack and the doctor had contacted me and told me what I should and should not do and it was amazingly rapid and was done literally within days of us announcing it. As far as the doctor service is concerned, certainly in my experience - and it is a sort of response to Deputy Southern - my wife had to consult the doctor through a video consultation and was charged £20 for that. I think the scale is being rolled out as we speak. Finally, as somebody who has had, unfortunately, to experience the A. and E. (Accident and Emergency) service and then the doctor service, the change to distancing has been remarkably good and I certainly felt reassured that it had been put in place very quickly and was very robust and worked very well. My view is we should support this. The money that we have spent has been well spent and the service has been well rolled out. I think words of praise are definitely due to the team at the Social Security for getting this done as quickly and as efficiently as they have.

3.1.5 Deputy J.H. Young:

I think in contrast to the last item when we were saying, and I certainly said, that these are situations we would not normally contemplate, this item is very different. This is, in my view, a hugely positive step towards the greater co-ordination between primary and secondary healthcare and I think the Minister and her team should absolutely be congratulated and indeed the G.P.s who have come on board. Yes, there are issues of detail within these schemes but I think that is not the thing I am looking at now. For decades the Island has sought to have a means of better co-ordination between our G.P. services and our secondary healthcare and the benefits are obvious. The more we invest in health prevention and identifying problems early the less the cost for our secondary healthcare service, and this is a massive step forward. I absolutely understand the Scrutiny Panel have done an excellent job but I worry a little bit about saying let us repay the money. I think if that means that we are going to have to go back to imposing a higher level of charges, which many people cannot afford and are the health disadvantaged, that would be a mistake. I really think we should, in the time we have this, see the benefits, look at the detail, and I hope out of this comes some real long-term future direction to try and help us do that rather better. That is no criticism of all those G.P.s. They provide an excellent service and we are so lucky in this Island, but it is about the issue of cost, issues of who pays and how we fund our health service. Those are important issues that I think we

should be spending time on, but I am very complimentary. I think well done, Minister. This is a really good move, so I am totally supportive.

3.1.6 Deputy M. Tadier:

I do not necessarily share Deputy Young's sunshine view that all G.P.s in Jersey are great. I think we have got a mixed bag and I think, quite frankly, even in normal times we have got some of those out there who are just making money for old rope, charging £40 or £50 a pop to look down your throat and give you some antibiotics. That said, that is the same in any profession so let us be realistic about this. The concern I have got is looking at the comments from Scrutiny who, again, we have to acknowledge the piece of work they have done in a relatively short time. In paragraph 9 of their Comments they said that they did query the cost. So the first question I have got is does it constitute age discrimination? Why are we charging under 4s nothing, children between 5 and 17 £10, adults £20 and a home visit is £40? What about pensioners? Pensioners, for example, do not necessarily have a lot of disposable income. They are not a homogenous group by any means but this is not a means-tested system. It is done based on age discrimination and a 6 year old child probably does not have any of its own income and I do not see what difference it makes if a child is 4 or a child is 6. A family that is struggling to pay bills is going to struggle to pay whether the child is 4 or 5, so I think the Minister needs to give a bit of explanation about how these somewhat arbitrary thresholds have come into place. Similarly, there are probably adults out there who are going to see a reduction in their visits who could well afford to pay it, but these are underlying problems about the mess that our current health system is in for primary care. We need to be working on the basis that you should be able to go and see a G.P. wherever. It could be at the hospital or it could be in their surgery and that cost should not be a barring factor. The ultimate way we do that is by having a free service that is paid for through taxation. They also go on to say in paragraph 10 that a fee would not be charged for confirmed cases. If you end up having a confirmed case of COVID, which you, of course, may not know at the time of your initial consultation, which could be presumably over the phone or it could be a home visit, you will not be charged for it. But why would we charge people who end up having a worse affliction? If you go and see the doctor during this time and it turns out that you are diagnosed with cancer, you have to pay for that even if you are relatively poor but if you turn out to have even a mild case of COVID you will not be charged for that even if you can afford to pay for it. Again, I am not sure I follow the logic. Then the comments go on to say that the Minister or the Department could not guarantee that everyone would be exempt from being charged for COVID-19 related enquiries. That is a strange comment because it is very non-committal and ambiguous. I would ask the Minister: is it the intention, at least, the fact that if you make a COVID related enquiry it is legitimate for the G.P. then to recharge the client? I think the question of double accounting has already come up. If G.P.s are being subsidised increasingly from the current situation, there is a risk that they could be claiming twice, so getting a co-payment for COVID related enquiries from the Government but charging it out. What checks and balances will be carried out in this situation? I think this is probably one of the areas where I would be quite comfortable seeing these changes staying in place and developed after COVID has settled down and some level of normality is restored. COVID or not, people in all of our constituencies are really struggling in normal times to go and see doctors and if we are genuinely to tackle income inequality then we also need to tackle health inequality and access to health as an urgent matter.

3.1.7 Deputy G.J. Truscott of St. Brelade:

Personally I have no issue with this. I think it is money well spent at this particularly difficult time. It is just with regard to the H.I.F. It is a strange fund that Social Security administer and it is quite a small fund in the grand scheme of things. When I say that, it is currently sitting at £80 million odd but compared to the other funds, £1.5 billion, it is quite a small fund. During the last Government it was starved to a degree with funds from the States due to trying to balance the books, *et cetera*. All

I would urge is for Scrutiny and the Minister to have a look at this fund because it will need to be bolstered going forward and I think it is important that that issue needs to be looked at.

[10:30]

3.1.8 Deputy R.J. Renouf of St. Ouen:

I fully support this proposal, as would be expected. This is a way to maximise access to primary care for all Islanders during this period of emergency and I am very grateful to the G.P.s who have all come on board to deliver primary care in new ways. I am speaking really just to try and answer, as far as I can, questions that have been raised, particularly by Deputy Southern. He began by asking what is the total annual bill for this. I have not got a precise figure because the contract is for 4 months. The cost of that has been calculated, so therefore you could times it by 3 but it is hypothetical at the moment to ask what an annual bill would be. But under the agreement with the doctors we have established open book accounting. The agreement is that we cover their costs of running surgeries and staff costs and overheads, so for that purpose they are disclosing to us what their costs are. That is all going to be verifiable and that work is being done throughout the course of the contract. Should there be further negotiations at the end of this 4 month period, that would be on an open and transparent basis. We would know what costs are involved in delivering primary care. The Deputy also asked how did we arrive at the charges. Well, this is all being done for 4 months. It is not a permanent arrangement but the intention was that we should not have financial barriers to anybody needing primary care. It was not possible to go to make it a free service at this stage. That would have involved a great deal of cost at a time of great uncertainty, but the reduction in fees, we felt as Ministers, was sufficient to ensure that people would have that comfort that they could access their G.P.s without significant financial detriment to them. It is the case that anyone consulting their G.P. on a COVID related matter will not be charged. My understanding is that if they are concerned that they have coronavirus symptoms and they consult their G.P. there would be no charge for that consultation. Even if it turns out that they were not positive, it is a COVID-19 related consultation so there should not be a charge for that circumstance. It is asked why did we not make consultations free for others who are vulnerable but not necessarily COVID related. Simply a decision had to be made about a temporary scheme. I think what we did was generous. It is obviously a cost that we are now seeking. These sort of questions are the longer term questions we have been asking for a long time and are still under consideration for longer term planning. But remember those who are vulnerable have had that call from their G.P. free of charge. That has optimised their health for this period and, of course, if they have concerns about developing coronavirus symptoms they can phone and they should not be charged for that consultation. Deputy Southern also asked about would there be any fresh legislation after this period. That is a matter for discussion but after the 4 month period the G.P.s are free to return to private practice and they would charge what they feel is an appropriate charge and the H.I.F. would revert to the £20 and some pence that is paid to the G.P.s. Now, when we get to that stage we will see if the world has changed. It may be that Health and Community Services would wish to still employ some of those G.P.s. I do not know. Maybe those G.P.s would all want to return to the private practice. It is early days, but this is in some respects the new care model that is already in operation, so we will see how it works. We will see what the professionals think. We will discuss it together ourselves, I am sure, and see how we might choose to work differently after this 4 month period. Deputy Tadier was asking a similar question: why were not others charged or subject to reduced charges or even no charges at all? I think you should remember, these changes were introduced to maximise primary care over the next 4 months. They were not intended to be an answer to all the long-term issues that we have talked about, certainly since I have been in the States but I know before as well. So I do not regard this as something that is strict, something that is not changeable. It is simply an arrangement that was agreed over the next short period. Those checks and balances that Deputy Tadier was concerned about are in place. There is verification of the charges being made. I think the Minister for Social Security will be able to say

more on how that is being done in her Department. I hope that answers the questions that have been posed and I fully support Deputy Martin.

Deputy M. Tadier:

Sir, could I ask a point of clarification?

The Bailiff:

Deputy Tadier has asked for a point of clarification.

Deputy M. Tadier:

The Minister for Health and Social Services said that even if a case turns out not to be COVID they would not get charged. A lot of symptoms will be shared by other illnesses - hay fever, flu, the common cold, *et cetera* - but somebody could go to their G.P. and it turns out that they have got aches and pains but they have got a bad back rather than COVID. It seems unfair that the G.P. could not charge them for diagnosing something other than COVID where they otherwise would be charged for that. Can the Minister clarify?

The Deputy of St. Ouen:

I find it difficult to discuss individual circumstances on how a G.P. would treat and how a G.P. would regard symptoms that are presenting to him. This is very much operational. I think it must be if a G.P. considers that a person making an enquiry might have COVID related symptoms then that would be a COVID related consultation. If the issue of COVID is addressed then it is a COVID related consultation. I am not sure I can add much more except that I think we can trust the professionals to work out what is or is not COVID related.

Deputy M. Tadier:

Can I just seek further clarification? So, effectively, a member of the public, as long as they say that the consultation is COVID related and they have got concerns - of course the G.P. cannot know until they have diagnosed the patient - they will not be charged?

The Deputy of St. Ouen:

I do not think it is as easy as that. It is not self-declaration on the part of the patient. It is a consideration that is made by the G.P. There may well be further guidance. The G.P.s may be listening, so there may well be detailed guidance on this within the profession, which we as Ministers would not be party to. I think we must leave this to the workings out of a new scheme and there is verification of it. Remember that the Minister for Social Security will be responding.

The Bailiff:

Could I ask who is speaking?

Deputy G.P. Southern:

It is Deputy Southern.

The Bailiff:

Do you not have access to chat? People are normally notifying questions on chat.

Deputy G.P. Southern:

Sorry, I am just not used to the routine. I have got all the bits but not necessarily in the right order, as Eric Morecambe used to say. The question is very simple. We keep talking about this 4 month period. This 4 month period starts and ends when? When does it end?

The Deputy of St. Ouen:

The formal agreement with the G.P.s was signed a fortnight ago, I believe, so it is 4 months from the Easter weekend.

3.1.9 Deputy L.M.C. Doublet of St. Saviour:

I wanted to speak about the costs of G.P. consultations - I will not repeat what has been said - for children. I will just add my voice to the debate in terms of being displeased at the £10 charge for the 5 to 17 age range. I wanted to remind Members, and to remind Ministers in particular, that the Children's Commissioner put out a statement nearly a week ago reminding us of our obligations under the United Nations Convention on the Rights of the Child that no child should be deprived of their right to access healthcare and that we have a proactive duty to fulfil this obligation. I just wondered whether the Minister, when she replies, could respond to that because I have not seen a Government response to that statement that was made by the Children's Commissioner. She ends the statement by saying: "It is the duty of this Government to provide it. It is not a 'nice to have'. They must do it." I am really disappointed that even though it is something that must be done, that there was not the outcome from the negotiations with the G.P.s to have free consultations for children. Also the Children's Commissioner mentioned pregnant women, because as part of this agreement with G.P.s there is a pregnancy bundle for £120. I am unsure about this but I believe that pregnant women have been added as an at risk group in terms of COVID-19, so if we are indeed offering free consultations to at risk groups, then surely this pregnancy bundle should be made free. Could the Minister comment on that, please?

3.1.10 Deputy R.J. Ward:

That has encouraged me to say a couple of things that I was thinking of saying. First of all, I think it is a very much needed scheme and to me it is a shame it is only for 4 months because it could end at a key point in our dealing with the virus. I would hope that the Minister and the Minister for Health and Social Services would consider early negotiations about extending the scheme rather than doing anything last minute. That way, we will all have certainty. It is that certainty that I think I need to talk about. One of the really key things at the moment for our population and where I think people are feeling under pressure is there is a lack of real confidence in the structures and the services that are available at this time. It is not about the quality of the work that those on the front line are performing, and we all know that extraordinary efforts are being made and extraordinary services are being provided, but it is about people knowing what they can get access to, the best way to get access to these services in order to help themselves and the wider community, and that is my concern here. I would like to support Deputy Doublet in her comments as regards young people being charged. I would suggest that it has finally been recognised that the contradiction of social security only being available for those over 25 has been slightly addressed during this crisis but I think we need to do the same in terms of our access to G.P.s.

[10:45]

Young people knowing whether or not they have COVID I think would be very important to have in the future as we come out of this emergency. We also need to remember that we are not testing widely. People with symptoms have contacted me, who have been to the doctor and have been told: "Yes, you probably have COVID but we are not testing you." Therefore, knowing whether this is a COVID related illness will for many be a guess and that is not what we want in the current situation. I would suggest that we need a flexibility in this system as well. If anybody who does not quite fit those criteria would be put off going to the doctor at this time, I really believe that we need to look at flexibility in terms of charges. I know doctors do this off their own bat but it needs the support of the Government in doing exactly this. So I will be supporting this. I would like to say thank you to the doctors who contacted me early on and gave me one of the emergency packs. It has reassured me and I know it has reassured many others, but we need to ensure this system works and we need

to think very carefully about extending this system beyond the time that we have said because of the long-term impact of this virus on people.

The Bailiff:

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

3.1.11 Deputy J.A. Martin:

I do understand that Deputy Le Hegarat has not got too much for her Panel from Social Security but, yes, absolutely inundated with Health things and I fully understand that. I know they are working hard and the comments have been helpful. Again, there were some helpful comments by Deputy Pamplin and then the questions by Deputy Southern. Before this COVID hit the world, corona hit the world, we had agreed to the Proposition by Deputy Southern, which we were looking at for people of certain incomes and then illnesses and the work was moving, and then this hit us. Even in that Proposition, the Deputy's Proposition was to have a possible co-payment and that could be £10. Also let me say under this scheme there is no co-payment. The monies will go to the Health Department because that is who they are working with. It will be a G.P., because I am not telling a G.P., and I am sure the Minister for Health and Social Services is not going to tell the G.P., what are you diagnosing this patient with. Some will be very simple to see that it is not COVID. If they are not sure and they cannot get a test, obviously it will be treated as a COVID patient and it will be free. The scale of the fees was similar. There was a lot of surgeries doing under 5s for free on the Island, so that is where that came from, and again all in discussion with G.P.s. It was thought the £10 for the under 17s was a lot less than their parents were paying before, which could be anything between £35 and £45 unless they are an income support household and then they get a component for doctors. We were looking at it and then this happened and we had to have the G.P.s working with us the way they are working with us. It was talked about doing it in slightly different ways but all the health advice was if they can come in, work with us and they are happy to do that, we would have a better chance to fight this disease. That is where we are. As I say, the fees will go to Health. There will be no co-payments coming out of the H.I.F. There is a figure I forgot to mention, the £800,000 already for all the extra medicines that went out with those patients in the rescue packs and their top-ups for the illnesses they already had. That is coming out of the H.I.F. and that is probably all the medicines will be now coming out of the H.I.F. Deputy Tadier again wants free. I do not think we ever agreed to free because we have seen how that has had a terrible effect on a fantastic N.H.S. (National Health Service) but that is a discussion for another day. We will have another political discussion when we bring back what the new healthcare model is, what it actually looks like and how it is costed, and it will have to be costed. As somebody said, there will be monies coming out of the H.I.F. to do a co-run with it, a start and then ... but that again, any monies that come out of the Health Insurance Fund have to come to the Assembly and I can assure Members no money is going anywhere to support the new healthcare model until the Assembly has seen it and it has been well scrutinised. So, we are not free and I understand, if you heard my first comments, initially it will be for 4 months. That is what is costed and if we are in a very bad place in 4 months of course we are not going to start saying we will try and do it a different way. This way will work. It is already working. They are still seeing patients because they have got hot and cold surgeries where you might go if the doctor does need to see you and he cannot finish the consultation on the phone. Deputy Doublet, I am not sure of the package for the ladies who are pregnant. Again, I know they are very vulnerable at this time and obviously again we are hearing in the U.K. many, as they are going to give birth, actually have got COVID and they cannot even have their partners in. For this scheme, it has not changed for the pregnant ladies. The comments of the Children's Commissioner, and she is the Children's Commissioner and I heard the comments that we have a duty to every young person under 18 to give them a free doctor. Again, that is a statement she has made and this will have to all be discussed after this. This is not a time to bring in massive changes. This is a massive change, to deal with the

terrible virus that has come round the world and it is now here. It has been put together quickly. As I said, the first package we were talking about at the end of February. The doctors were out there on 14th and 15th March and it was only a pandemic on the 11th and we had our first case on the 1st. I know people are saying it is not ideal. I think it is a fantastic way forward and I cannot thank the officers at Health and a few people intervening, policy officers from my Department, with G.P.s as well, and they got round the table and they knew this was the best way they could help us and they keep all their staff. Their staff, as I said in the beginning, know their patients. They may be seen in a different G.P. surgery if they need to go into the G.P. It might just need a consultation, £40, and a home visit was anything between, I have been told, £120 and £180, and that was a steep amount of money. If people do not think it is ideal, I think I can hear that. All I can say is we are in the place we need to be, we have all the G.P.s on board. They are working alongside the consultants at the hospital and they are working with the ambulance crews and probably - and I do not know this because I am not in the scheme team - from memory they would all be working at the field hospital. These are experienced doctors and they know exactly what they are doing and again, as I say, they know their patients. I maintain the principles and ask for the *appel*.

The Bailiff:

The *appel* is called for.

Deputy G.P. Southern:

If I may, Sir, I have put a notice in the right box, a point of clarification.

The Bailiff:

You did, indeed. I am afraid I missed it. Yes, Deputy, do you have a point of clarification?

Deputy G.P. Southern:

Yes, just briefly. Can the Minister confirm that the £20.26 co-payment is now going to go not to G.P.s but to the Health Department, in total something like £8 million, and that will be passed on, will it, to G.P.s in terms of opening their books?

Deputy J.A. Martin:

From memory, I will have to check this, I know I asked my officers and, no, there is no co-payment. The charge that they are charging goes straight into Health. The payment for the doctors is the £4.4 million.

The Bailiff:

The *appel* is called for. Very shortly the Greffier will put on the chat screen, in the normal way, the link for Members to vote. It should be there now and Members will know to click on it and to register their votes accordingly once it has loaded and I ask the Greffier to open the voting.

POUR: 48		CONTRE: 0		ABSTAIN: 0
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator S.C. Ferguson				
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. Saviour				

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 Trinity				
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 Bailiff:

Does the Health and Social Security Scrutiny Panel wish to scrutinise the matter?

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

No. We have already scrutinised this and we are happy to move forward. Thank you, Sir.

The Bailiff:

Minister, how do you wish to propose the matter in Second Reading?

3.2 Deputy J.A. Martin:

There are 3 small Regulations and I will take them *en bloc* and if anybody has any questions on them I am quite happy to try and answer them.

The Bailiff:

Are the Regulations seconded in Second Reading? [**Seconded**] Does any Member wish to speak in Second Reading? If no Member wishes to speak, then I will ask the Greffier to put up the link for the adoption of the Regulations or otherwise in Second Reading. It is now on the chat page and I ask the Greffier to open the voting.

[11:00]

POUR: 46		CONTRE: 0		ABSTAIN: 0
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator S.C. Ferguson				
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. Saviour				
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 J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
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 Trinity				
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 Bailiff:

How do you wish to deal with the matter in Third Reading, Minister?

3.3 Deputy J.A. Martin:

I would just like to propose the matter in the Third Reading but I would just like to reiterate again the work that has been done from officers at Health, the G.P.s, my staff, policy staff across the Departments to get to where we are. I think it took some good talks and we are in a very good place now to fight this virus. Obviously Scrutiny again and then an extension of thanks to the States Members who are allowing again all this legislation only being lodged a few days. I took the Deputy of St. Martin’s comments yesterday but I do not know how we can do this any better because it has to be done fast. That is why I am so pleased. We have got into a routine. I think some Ministers got it wrong at the beginning. I was one of them. I dropped the ball on the other [H.I.F? I can’t make out what she is saying] **and now working, everything I am sending, Ministerial Decisions will be going to my Panel, and any time they want me or my officers, we will make ourselves available. So, I just say thank you and I maintain the Proposition in the Third Reading.

The Bailiff:

Is it seconded in Third Reading? [**Seconded**] Does any Member wish to speak on the Regulations in Third Reading? If no Member wishes to speak, I will ask the Greffier to put the voting link on to the chat. It is now on the chat. I ask Members to follow it and vote in the normal way and I open the voting.

POUR: 47		CONTRE: 0		ABSTAIN: 0
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. Saviour				
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 J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
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 Trinity				
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)				

4. Draft COVID-19 (Mental Health) (Jersey) Regulations 202- (P.46/2020)

The Bailiff:

The next item is the Draft COVID-19 (Mental Health) (Jersey) Regulations, P.46/2020, lodged by the Minister for Health and Social Services, and I ask the Greffier to read the citation.

The Assistant Greffier of the States:

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

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

I have asked my Assistant Minister, Senator Pallett, to present this item and also the next item on the Order Paper.

4.1 Senator S.W. Pallett (Assistant Minister for Health and Social Services - rapporteur):

Good morning. Many of us have sat and listened during debates on emergency powers and have been concerned about the effects such changes may have on both civil liberties and human rights, and I have no doubt such concerns could be raised today. Both myself, the Minister and officers are aware of concern raised by several stakeholders regarding both this Proposition and the following P.47/2020, which deals with Regulations associated with self-determination and capacity. Before I go into more detail around the need for temporary changes to the Mental Health Law, I want to thank

both the Health and Social Security Panel and senior officers for their help over the last 48 hours and, indeed, before in working collaboratively to address many of the concerns raised and communicate with interested groups, individuals and stakeholders. I do hope the Assembly will understand that I am bringing both this and the following Proposition as I feel they are necessary and proportionate in light of the current COVID-19 crisis. The draft Regulations before you today bring temporary changes to our Mental Health Law in light of the anticipated impact of COVID-19 on our Island's healthcare system. These changes will ensure the continued protection of some of our most vulnerable Islanders while ensuring the capacity and capabilities of our valuable medical professionals, our doctors, our nurses and healthcare staff, so that they can focus on where they are most needed. As we see across the globe, COVID-19 is challenging established healthcare systems like never before. During these unprecedented times, health workers are under pressure. The best thing we can do for our medical staff and those they care for is to prepare as much as we can for what is about to come. In the coming weeks and months we anticipate that our mental health service could be challenged by the effects of COVID-19 in a number of ways. Firstly, the number of specialists and consultants available to make decisions in line with current mental health legislation may be reduced through illness. Secondly, all staff, including doctors, nurses and related professionals, may have to be redeployed to other areas of the healthcare system to meet additional demands. Thirdly, other specialists involved in our mental health service are currently based in the U.K. and may be unable to visit the Island at this time. Therefore, the draft Regulations are intended to allow our staff to continue to meet the demand within a legislative framework while continuing to protect the needs of those receiving care and treatment for mental disorders. In short, 2 types of temporary change are being proposed. Firstly, the notion of a single recommendation. This will provide the powers to detain and treat patients who need urgent treatment to be implemented using just one doctor's opinion; 2 are currently required. Secondly, the draft Regulations temporarily extend the maximum time periods for detention to ensure there is sufficient time for assessment and care where staffing levels are reduced. As I mentioned at the beginning of this speech, these Regulations, like many others put before the Assembly in recent weeks, are of limited duration. They will expire on 30th September 2020 unless this Assembly, which is the check and balance, decides that new Regulations are needed to deal with any ongoing situation. While these Regulations come into force tomorrow, if you choose to adopt them, there is an inbuilt additional safeguard to ensure that any divergence from existing policy and practice is only permitted for the shortest possible timeframe. Regulation 1 sets out that the Minister must, by Order, declare the start of an extraordinary period in order for the proposed amendments to the 2016 Mental Health Law to take effect. The Minister may only declare this extraordinary period if he is satisfied that it is necessary to do so because COVID-19 is disrupting the provision of care and treatment to people suffering mental disorder. The Minister cannot declare an extraordinary period on the grounds of the COVID-19 outbreak alone. It must be on the grounds that the outbreak is disrupting mental health services. The decision to declare an extraordinary period will be done in consultation with key medical staff, specifically the Associate Medical Director for Mental Health, who many of us do know. This extraordinary period can be declared for a maximum of 28 days and then reduced or extended for a further period of up to 28 days, again by Order. Any extension or reduction of this period will also be undertaken in consultation with the appropriate medical professionals. The U.K.'s Coronavirus Act 2020 provisions provided a start point for consideration of changes to our Mental Health Law, but it is important for the Assembly to note that what is proposed has been done in consultation with key front line mental health workers and with the support of the Associate Medical Director for Mental Health. Before I outline the temporary changes brought about by Regulation 2, I want to reiterate that these Amendments will only be used where absolutely necessary. The 30th September expiry date and the declaration of an extraordinary period provide a double lock safeguard. Regulation 2 provides a third lock as it explicitly states that deviation from current standard practice should only occur where it is impractical or would involve undesirable delay, i.e. a delay that could pose a direct risk to the safety of patients or others. The provisions propose 2 changes to emergency admissions

for patients who represent a potential danger to themselves or others. The provisions set out that an admission may be made by a registered medical practitioner, i.e. any doctor, as distinct from an approved practitioner where none is available, an approved practitioner being a registered medical practitioner who the Minister has approved for the purposes of the Mental Health (Jersey) Law 2016. Furthermore, the powers extend the period of emergency admission from 72 hours to 120 hours to allow sufficient time for assessment and care during periods of reduced staffing. Regulation 2 also sets out an increase to the existing 6 hour period in which a patient can be detained by a nurse if there are concerns about their safety. This is extended up to 12 hours, allowing more time for the patient to be assessed by a clinician. To provide Members with a point of reference as to the number of patients who may be affected by these changes, during the period between October 2018 and October 2019, emergency admissions holding powers were used 15 times over the course of the year, and the detention by nurse holding powers were used 13 times. With regard to applications for compulsory admission to hospital for assessment or treatment, provision is made for a single recommendation. That is to say, compulsory admission to hospital can be approved by one instead of 2 registered medical practitioners, but again only where the requirement for 2 would be impractical or would involve undesirable delay. Furthermore, the Regulations set out that a registered medical practitioner must be an approved practitioner unless it would create undesirable delay. Regulation 2 also allows a second opinion approved doctor - also known as a S.O.A.D. - to consult only one person instead of 2 when providing a certificate allowing treatment to be given, but only where necessary. However, if only one person is consulted by the S.O.A.D., that person must be professionally involved in the patient's treatment but not - and I stress not - their responsible medical officer. This is to uphold the safeguard that the second opinion approved doctor can provide an independent alternative view to that of the medical officer who is suggesting a particular course of treatment. The last provisions set out powers of the court in relation to accused persons suffering mental disorder. The court may proceed with a single recommendation where previously evidence was required from 2 registered medical practitioners. For example, under the draft Regulations, the court will have the power to remand a defendant to an approved establishment for assessment or treatment on the evidence of one medical practitioner, though again this would only happen where the court determines that obtaining evidence from 2 practitioners would create undesirable delay which may put the patient at risk. Finally, where a prisoner needs to be transferred to a hospital for care and treatment, that transfer must take place within 28 days as opposed to 7 days, the 28 day period if COVID-19 related staffing pressures means there is no capacity in the short term in an appropriate facility. Our mental health team is working hard to ensure that should the Assembly choose to adopt these Regulations that all front line and related staff are aware of the new powers and, importantly, receive guidance on how they should be used, which will always be a last resort. I am convinced that introducing these temporary changes are absolutely necessary if we are to support both those who may suffer mental health disorders during this pandemic and, equally importantly, support our front line medical professionals, who may find themselves under increased pressures, as I have explained. I recommend these Regulations to the Assembly and I am happy to receive comments or questions.

[11:15]

The Bailiff:

Are the principles seconded? **[Seconded]** Does any Member wish to speak on the principles?

4.1.1 Deputy M.R. Le Hegarat:

Yes, as the Minister has said, this piece of legislation has without doubt caused all some great concern. It is very difficult to find ourselves in this situation, but we do recognise that some things have to change. It is always difficult to impinge on people's human rights. I think, having discussed this matter with the Scrutiny Panel and us having put our comments forward, we were then approached very late on Monday, and Deputy Pamplin will go more into that area later, but it has been difficult and we have to say a big thank you to the Policy Officer as they did provide us with

extra reassurance when those comments came in. We recognise that this legislation will be complete at the end of September and hopefully there will be no need for them to come back with any extension. So, therefore, at this time we are supportive of this legislation because we do realise that we also have to be supportive of our mental health service and we do not want to prevent them from being able to do their job to the best of their ability. So, thank you, and we will be supporting it.

4.1.2 Deputy R.J. Ward:

I am thinking very carefully about speaking on the principles here, because there are issues on specific Articles. So, I am going to keep this very short and raise some very generic principle questions I think should be addressed. It is very well known by many of us that there is a real strain on mental health services on the Island in the best of times, and I would like to know that given the stress on staffing and provision in normal times how a differentiation will be made between that situation and the specific example that may come through COVID-19. Because these low staffing levels may be there as a matter of norm, unfortunately, in the current situation that we had. That leads me to a concern over this becoming the norm in response to a crisis in mental health provision in general rather than just this, and I want to raise that point to say that we want to be very careful that we are not going to have this as the norm after this situation has been got through. Just a general question is: what are we losing in protection for people with this change? I think those general questions could be asked of so many of these laws that we are passing but particularly around the area of mental health, which we are now. I have some specific things which I think are more to do with Articles, so I will leave them now.

4.1.3 Deputy K.G. Pamplin:

Firstly, before I respond fully to the Senator, I would just like to thank the Chair again for her words and also pay tribute to the mental health services staff, nurses, healthcare assistants, doctors, consultants, and all who support our healthcare services on this Island. Again, following Deputy Le Hegarat's comments, I want to pay tribute to our Scrutiny Officer and her support and all supporting us at this time trying to in a very short period of time scrutinise what is very important Regulations. It cannot be stressed enough how important this is and I thank Senator Pallett for his words and, equally, his support to us as a Scrutiny Panel. I think we have to go back and remind everybody of the work that our Scrutiny Panel did from day one, not too long after the election, to kick off with our now infamous Assessment of Mental Health Services Report, which highlighted in it through the 8 months of work that we all did many areas of concern that were accepted by the new Government and acted upon. We started to see impetus and refocus on the world of mental health on this Island. I have it in front of me and I am sure Members are very aware of it, but we had in the report 21 recommendations and 24 key findings. The main thrust of our report was the state of the service as we found it as newly elected politicians, newly elected scrutineers. What we discovered was laid out. We had a debate in the Assembly which Members took part in as well. We all agreed that now is the time to finally really get to grips with our mental health services, seek the investment to support the staff and the care needed now across the board. There are many parts and many levels of mental health and mental illness. It is a very complicated illness and various degrees of it need various degrees of support. Dementia, for example, and Alzheimer's is going to be our biggest challenge for years to come. That requires specialist care, specialist mental health support, and services to provide it. As previous speakers have spoken about, the concern we raised was, and as we all know, about the challenges of securing mental health staff and general health staff to this Island, which we do not really want to get into here but it is an issue. We are very lucky because of the work that we have done to have a really constructive relationship with the Government and, equally, the mental health services, which have been going through a fast paced period of change responding to our report and the urgent needs being put in place. I would really like to thank all of them for being at our beck and call during us looking at these Articles and looking through this, especially Dr. Garcia, who has been extraordinary to find the time to listen to our concerns and put us at ease with them. As Senator

Pallett said, there are safeguards in this Proposition, P.46/2020, which thank goodness they are there because it is very different to the United Kingdom. We often get confused, do we not, sometimes about what the U.K. do and what Jersey does. It is understandable. The U.K. Emergency Coronavirus Bill which they put forward does differ to the Jersey way of doing things at the moment. We are doing things in stages, as many have said. A lot of our emergency legislation falls away on 30th September unless it needs to come forward again. The United Kingdom Government did things slightly different. They put their Bill in for 2 years with a review process every 6 months. The charity Mind, U.K. Mind, the mental health charity, issued a statement that reflected the U.K.'s emergency coronavirus laws that could severely impact the rights of people. They stated that they will closely follow the introduction and the effects of the measures to make sure that the voices, rights and choices of people with mental health problems are not forgotten. Many on this Island who have mental health and the rights of those where some of these Regulations touch on have equally come together at this time and through us as a Scrutiny Panel wanted to get their concerns raised quickly, which, as the Senator alludes to and Deputy Le Hegarat alluded to, came at me very late in the day, but we are so grateful that they did because it allowed us to do extra scrutiny over the last 24 hours to help link in with those valuable services, advocacy services that support the most vulnerable on this Island. I guess the reality of, yes, we are going through this crisis and, yes, things are turning over at extraordinary paces, this is not the norm how democracy is normally done, to have a briefing on something then have it lodged in a matter of days and then be here collectively a few days later to debate it, which is why we have been scrutinising it every day as much as we possibly can to reassure everybody who this affects but to also state the point that we will continue to scrutinise this going forward. We have to because it is, therefore, so important. So, I urge Members to read all the information that was circulated late last night and this morning and continue to ask questions. We must do. I will speak further on the next Regulations but again would like to thank everybody who has aired their concerns. We will be keeping a very close eye on this.

4.1.4 Deputy G.P. Southern:

I, too, was concerned by the letter that came round yesterday about concerns expressed by the independent advocacy service on these moves. In particular, they focused very carefully on the restrictions on human rights and said that all too often legislation is rushed through where it has an unforeseen impact upon people's rights and obviously we must be very careful. So, on P.46/2020 and on P.47/2020 this group have expressed extreme reservations about what is being proposed. I believe that most of those have been addressed in the re-examination of where the restrictions are and where they are not, but I just want to make sure that they are addressed properly, and so where this body has expressed concerns about P.46/2020 and ultimately P.47/2020 that those have been addressed properly. So, on P.46/2020, the concerns that they express, which I want to make sure that the Minister addresses in his summing up, they say about P.46/2020, what will be the date, time and method for review of these powers; one question. Two: how are Orchard House evidencing lack of capacity to offer business as usual when prisoners are waiting for 28 days rather than 7 days for treatment in an appropriate facility? So, how are they to do that? Then, the third and final practical mechanism: during this 28 day period, what provision is in place within the prison particularly to meet the mental health needs of these people? So, what I ask is will those concerns, which had caused extreme concern, be addressed today to make sure that we have addressed those concerns? I will have a little go on P.47/2020 when we get around to that over the actions and concerns that they expressed as well.

The Bailiff:

Thank you very much, Deputy. Does any other Member wish to speak on the principles? If no other Member wishes to speak on the principles, I close the debate and call upon Senator Pallett to respond.

4.1.5 Senator S.W. Pallett:

Thank you, if you could just give me 2 seconds, I am moving to another room. I have family in the house. I will firstly start with Deputy Le Hegarat. Can I thank her for her positive comments? I think what I can say is that the Policy Officer - she mentioned this - has provided reassurance to many key stakeholders. I want to thank her, the specific Officer, for her support over the last 48 hours to make sure that we have engaged with everybody that I think it is important to engage with. There have been concerns, I think quite rightly there have been concerns, and we have taken those extremely seriously. In terms of an extension, I would hope that we would not have to extend this after 30th September, but we just do not know at the current time in terms of where we are with COVID-19, about what capacity there may be within the mental health service at that time. I would hope that we would not have to extend it beyond that period of time, but again I thank her and her Panel for their work. Deputy Ward made a comment around the strain on mental health services, and at the current time I think as much as there is a strain on mental health services, the Associate Medical Director of Mental Health Services - he has been mentioned by name already - has made sure that the service is in a position where it is working differently.

[11:30]

It has been formed into 4 teams that are very much working on a rota system so that they are available virtually 24 hours a day. There is a differentiation between current services and COVID-19. What we are trying to do or what we are looking to do within these particular Regulations is that these would only be introduced and enacted obviously during an extraordinary period and specifically for the impact on COVID-19 to the service, not for any other reason than that. What I can say, and speaking to the Associate Director over the last few days, is that the need for the service has not increased over recent times, although it is thought that that is likely to happen over time when people I think are affected more greatly from a mental health capacity as this pandemic progresses and certainly progresses within Jersey. So, I think the service is aware of that and is prepared to react to that, and I think the Regulations are very much being put in place to support them if, and only if, COVID-19 is beginning to affect mental health services in a way where we need to work in a different way. In terms of Deputy Pamplin, again I have to thank him for his personal support over the last 48 hours. Again, he has been extremely interested over many months and years in regards to mental health services, and he again gave his thanks to healthcare professionals today. It would be wrong if I did not give my thanks to our mental health professionals who work on the front line, and also in-house in the inpatient unit up at Orchard House, and also at Beech and Oak Wards, up at Clinique Pinel as well. He mentioned his Scrutiny report. We were making really good progress with many areas within the Scrutiny report prior to COVID-19, including, I think, some excellent work being done at Orchard House, which I think the Panel and Deputy Pamplin are very aware of and I really want to make the Assembly more aware of when the time is right. We have worked hard to work through all aspects of the Scrutiny report, and like I say, I think we have made good progress in that. He mentioned the service being in a transitional period and I think it has been in a transitional period now for some time. There have been difficult periods, even within the period of time that I have been involved with it, but we have worked through that. I have to say the work of our mental health team and care group has been exceptional in trying to improve the services that are offered to Islanders locally. COVID-19, as I have already said, has meant we have had to work differently and I can only thank the Associate Medical Director of Mental Health Services for really being quick off the mark and realising that we had to and need to work in a different way, and that is exactly what we have done. I think the Regulations will ensure that we do not forget about anybody in regards to mental health issues, but again I need to stress that we will only introduce these measures through an extraordinary period which will need to be evidenced to the Minister from the Associate Medical Director. So, he will have to evidence that there is a need to move into what is quite an extreme working situation. Again, I just want to thank the Panel for their support with the key stakeholders. Again, I cannot stress enough I understand the concerns of all the groups that have contacted us and I certainly understand the volume of the work that the Panel has done over the last few weeks and

months. They have had to work extremely hard with the amount of work that has been thrown at them, with the number of Propositions that have come their way. Deputy Southern mentioned the letter from My Voice, and we have taken that extremely seriously. The advocacy service is crucial to ensuring that those that are involved in the service have their voice heard. I can only thank them for the support they have given, not only through the transitional period but certainly through this COVID-19 period and the support they have given. I did mention at the start of my speech around human rights implications. The advice we have been given is that there are no human rights implications within the new Regulations, and I want to assure Deputy Southern that that is the advice that we have been given. The safeguards currently exist within the main Mental Health Law and the same will apply. He has already mentioned P.47/2020 with the capacity law, but the safeguards will carry on existing within those to ensure that people do get the service and the care that they deserve and that they are protected in the right ways. Clearly, we were only going to introduce this if the necessity shows itself. Currently, Orchard House is coping reasonably well with the current situation. The last time I spoke to the Associate Director of Mental Health Services, they were not at capacity but they expect to be, and things can change quite quickly over even one weekend. So I do get regular updates and I can assure the Deputy that at the moment we are coping but, again, I do not think we are at the worst of this particular pandemic, so things may change. He raises an interesting point around the prison in terms of moving from 7 to 28 days. I have to say that will only ever be in exceptional circumstances and I hope that we do not get to the point where we have to delay a transfer by that period of time. In saying that, we would have to provide and I think the mental health service would have to provide support for those prisoners that would be held within the prison. I am sure we have already contacted the Prison Service and we work closely with the Prison Service anyhow in terms of those that suffer while they are being held at the prison. It can be a very daunting prospect for those that maybe have their liberty taken away for some period of time, so there is already a close working relationship and that will continue. I think that has covered most of the points I believe that were picked up within the 4 speeches. I thank the 4 Members that spoke. I think they brought up some very important points, but as I stressed in my speech, I would not be bringing these Regulations forward if I did not think they were necessary. But they really are going to be used only in exceptional circumstances and only if the Minister decides that an extraordinary period is necessary. So, if I could maintain the Proposition and look for the *appel*.

Deputy K.G. Pamplin:

Sir, just a point of clarification from the Senator.

The Bailiff:

Yes. Could you not indicate points of clarification ... could all Members indicate those on chat, please?

Deputy K.G. Pamplin:

Yes, sorry, my screen frozen so I was unable to.

The Bailiff:

Very well, that is fine, Deputy. Yes, point of clarification, Deputy Pamplin.

Deputy K.G. Pamplin:

Yes, if he could clarify the Order that the Minister will sign, will that Order be shared with the Scrutiny Panel and Members when that decision is taken?

Senator S.W. Pallett:

Yes, absolutely. I think it is important that we are all aware of an extraordinary period when it is decided upon, and I think it is only right that the Scrutiny Panel and Members are aware when that takes place.

Deputy G.P. Southern:

Can I have a point of clarification? I put it on the ...

The Bailiff:

Yes, indeed, Deputy Southern.

Deputy G.P. Southern:

The Minister said he would hope not to have to extend this measure on P.46/2020. The question I asked was: what is the method of review of these powers? So, where is the check and balance in there, apart from the Minister?

Senator S.W. Pallett:

Well, the Minister does have the final say over the extraordinary period. He has to have the evidence that an extraordinary period is needed. That has to be provided by the Associate Medical Director. The checks and balances have to be through the medical professionals, as you would expect. It has to be on the advice of medical professionals.

Deputy G.P. Southern:

Minister, if I may ...

The Bailiff:

Yes, Deputy, it is a point of clarification, is it?

Deputy G.P. Southern:

A further point of clarification, yes. So, is the Minister saying there is no potential for some legislative oversight, so no access to the courts in some way whatsoever in this particular piece of work?

Senator S.W. Pallett:

Could the Deputy clarify what he means, what he would like to see before a court, for example? The Order itself?

Deputy G.P. Southern:

No, the fact is there must be some, as in any human rights legislation, way of appealing to some sort of court authority following the decision of a Minister, and that I thought was pretty sacrosanct in any legislation. I am waiting to hear the Minister say that this is in place.

Senator S.W. Pallett:

I cannot comment on something that I do not know for definite, but if it currently exists with other laws I see no reason why it would not exist with these current Regulations.

The Bailiff:

I wonder do you wish to ask that question of the Attorney General.

Deputy G.P. Southern:

Yes, that would be very useful.

The Bailiff:

Mr. Attorney, are you able to advise within general rights of review where no appeal provision is provided for within the documentation?

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

Sorry, Sir, I would be grateful if the Deputy could repeat that question because I was focusing on something else when he asked it.

Deputy G.P. Southern:

As far as reviewing the powers that P.46/2020 introduces, albeit they are temporary, my question is: is there no mechanism for a judicial review in the courts at some level in order to provide a check and balance on the powers of the Minister or of the officer concerned? I thought in terms of a right to appeal, a right to a court appearance, was something fundamental to human rights and if it is not there either in this Amendment or in the previous legislation, then it should be.

The Attorney General:

Yes, Deputy, in terms of a Ministerial Order, that would be subject to a right to challenge by way of judicial review and that would be determined by the courts in the normal way for judicial review applications. Obviously, there is also a political check and balance in that a Ministerial Order is subordinate legislation and that could be called in by the Assembly for debate and potentially to be overturned in a political way.

Deputy G.P. Southern:

It is not for debate, it is for rescindment technically, but nonetheless I am reassured by the noises you are making there that there is cover now. Thank you.

The Bailiff:

Very well, the *appel* is called for and I now ask the Greffier to put the link into the chat area. The link is now in there and Members will please use it in the usual way. I open the voting.

POUR: 45	CONTRE: 1	ABSTAIN: 0
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		
Senator S.Y. Mézec		
Connétable of St. Helier		
Connétable of St. Clement		
Connétable of St. Lawrence		
Connétable of St. Saviour		
Connétable of St. Brelade		
Connétable of Grouville		
Connétable of St. John		
Connétable of Trinity		
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 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 Trinity				
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 Bailiff:

Very well, does the Health and Social Security Scrutiny Panel wish to scrutinise the matter, Deputy Le Hegarat?

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

No, thank you, fully scrutinised by us.

The Bailiff:

Thank you very much. Senator Pallett, how do you wish to propose the Regulations in Second Reading?

4.2 Senator S.W. Pallett:

I am quite happy to take them *en bloc*. I do not know if Members want me to go through them individually. I can do it very quickly. Regulation 1 just is the Regulation that deals with the extraordinary period.

[11:45]

Regulation 2 deals with the specific areas of the Mental Health Law that are being temporarily changed - I went into detail in the speech itself - and 3 is the citation. I recommend them *en bloc*.

The Bailiff:

Are they seconded *en bloc*?

Deputy R.J. Ward:

Could I ask that perhaps they are taken as the 3 separate Regulations because there are some particular questions about some areas? I do not know what people think about that.

The Bailiff:

The position, Deputy, is that they are proposed *en bloc* but any Member can speak on any Regulation during the coming debate and a request can be made to take the vote on any Regulation separately. So, hopefully that will meet your concern.

Deputy R.J. Ward:

So that could be asked at any time, then? Sorry, I ask for clarification on that.

The Bailiff:

Yes, generally the request can be made at any time for them to be voted on separately, but now we are in Second Reading it will be open to any Member to ask or to deal with any aspect of any Regulation that they wish to bring before the Assembly. It will be open to any Member to ask that any separate provision be voted on separately, and they are entitled to do so.

Deputy R.J. Ward:

Thank you.

The Bailiff:

Very well, are the Regulations in Second Reading seconded? I do not recall if we received a seconder. **[Seconded]** They are seconded. Does any Member wish to speak in Second Reading? Deputy Tadier, you have a question for the Attorney General, Deputy?

Deputy M. Tadier:

I do, thank you. So, insofar as it relates to the Articles, it touches on the point that Deputy Southern raised. Rather than challenging the Ministerial Order in court *per se* by the usual mechanism of a judicial review or equivalent, is there anything specifically in this law and in these Regulations and these Articles which would allow an individual who has been on the receiving end of the effect of this law, being admitted into mental health services perhaps against their will, to challenge that actual decision for their incarceration?

The Attorney General:

I believe that there would also be a right for an individual in those circumstances to challenge a decision made pursuant to these Regulations in the Mental Health Review Tribunal, and there would be the normal protections for them in terms of an appointment of a specialist advocate to assist them in that tribunal.

Deputy M. Tadier:

I know these are difficult circumstances, but could the Attorney General clarify how that system would work in practice given the lack of availability perhaps, certainly in person, of access, especially these individuals who may be suffering from potentially COVID and from mental health related issues to access these services?

The Attorney General:

I am afraid I can only give very limited assistance on that. I know that the effect of the legislation that the Assembly was debating yesterday and has passed this morning will extend to all tribunals, not just the courts. So, for example, I am thinking in particular of the ability to conduct proceedings by way of video conference. I think necessarily in those circumstances the ability to conduct hearings by way of video conference pursuant to the Regulations that have just been passed will be engaged, so there will be the ability for hearings to take place in that way. As I said yesterday, certainly the experience of the Magistrate's Court is that those hearings have proceeded smoothly. In terms of whether or not the Mental Health Tribunal has already experienced conducting hearings by way of video conference, I have to say I am not sure, but I had heard through the Judicial Greffier that arrangements have been put in place and I think have been tested and found to be satisfactory for all

tribunals, which would include the Mental Health Review Tribunal. In terms of whether or not someone is also suffering from COVID and how that will affect them in those circumstances, I am not really sure how far I can assist. It is perhaps more a medical question than a legal one. I am not sure that I can assist on that part of the question.

4.2.1 Deputy R.J. Ward:

I just want to ask a few questions about specific things, and forgive me because I have the Regulations in front of me and there are some very specific things I want to ask. In Regulation 2, I think the issue that I have here is given the context of our mental health system, the change in I believe it is Regulation 2, part (2)(b), from 72 hours to 120 hours, I would like to know how many times that perhaps would have been required in the situation we had before COVID-19 hit us all, and the same for part (3) of that Article for the 6 to 12 hours, when that would perhaps have been necessary as well, so that we have a context for these changes. Because I am concerned where these numbers have come from and whether it may be through experience as to where we are now. The other thing as well is that there is a part somewhere in the Regulation, and I have lost it now but I wrote down the quote: "... must be an approved practitioner unless it creates an undesirable delay." In that case, who would make the decision? I think it refers to a registered medical practitioner, but in the case of mental health I would not want perhaps my mental health being decided upon by somebody who is perhaps a specialist in other areas of medicine. That would be something I would want to question. Also, in terms of being professionally concerned with the patient's treatment in part (5) of those Articles I think there needs to be a more ... I just would like some understanding of what that actually means for people who are obviously going through a very difficult time and may be losing their liberty. Then, under these Regulations, certainly they could be losing their liberty quite rapidly. Also, the extension from 7 to 28 days and the point that has been raised before by other Deputies and the way in which rescindment of Orders can be made, Ministerial Orders, I think we need some clarity on that. So, there are some concerns in those Regulations and underlying them are the concerns we have about our current mental health system. I want to reiterate that because I think it is very important. We do not want anything that is impinging on the quality of our current provision for mental health, not the quality in terms of the staff who are working because we know how hard they are working, but we do not want to make changes that would cover that up for a period of time and it not be addressed, given what we know about the need for mental health provision on the Island. So, those are the questions I have so far. I hope they make sense. It is not always easy to go through these Articles live, so to speak.

4.2.2 Deputy K.G. Pamplin:

I am pleased to follow the previous speakers. As somebody who has gone through all of this with a fine-tooth comb for the last couple of days, I just thought it would be helpful to reiterate some of our findings to help Members. The provisions set out in the Regulations, it is best ... and I do not know how many other Members know the Mental Health Law. It is so complex but, again, it is an area I have really looked into. It is best not to look at things in isolation but it is absolutely right to query them. So, for example, if this Proposition, these Regulations, are adopted and then, as the Minister said, the Minister brings forward an extraordinary period where they are then adopted, there are temporary new provisions which will be inserted under part (5) of the Capacity and Self-Determination (Jersey) Law 2016, specifically Article 68(f), and all the general principles associated with the Law which are set out and the protections afforded to the person under the Law still apply. So, for example, that means a person would still be entitled to be represented by the nearest relative advocacy service under part (6) and Article 51, referral to the Mental Health Review Tribunal, which is under part (5), Article 55, to challenge the authorisation, and also under the Mental Health Law a person would still be entitled to an independent review mechanism such as reference to the Mental Health Review Tribunal under part (7) of the Mental Health Law 2016 and an appointment of an independent mental health advocate. As already stipulated, we do have that in the service called My

Voice Jersey, which does have a 2 year contract with the Government and is available and have put things in place to do things remotely, much like how we are doing today, by telephone, with social distancing, *et cetera*, much like how our mental health service practitioners are also putting those social distancing and challenging rules we all follow in place. So, I just wanted to raise that. There was another area. For example, where an independent advocate was previously appointed to a person who was subject to a significant restriction of liberty, this will remain exactly the same. The introduction of this interim authorisation process, if adopted and then if activated, does not change this. I think this is really important and we need to get that out to anybody out there that even though we are all operating under these current COVID-19 rules, even though our health service is being challenged to ensure the health and safety, caring and saving lives, that the healthcare service is still working and is still providing care and support for all areas of health. That includes mental health. Yes, adjustments have been changed but they are following the Law and this will help and support them. So, I hope that is helpful. There is a lot of information - and I appreciate Members are dealing with a lot at the moment - that is there, but again I emphasise what others are saying. This is what we are here to do, to provide those checks and balances and to make sure these things are put in place. Again, it is with great thanks to the advocacy services, such like Jersey Care, such like My Voice Jersey, such like the Children's Commissioner, who have raised these concerns and through us we will continue to do this. We will not just simply be putting this back on the shelf. I hope that is helpful to Members.

The Bailiff:

Thank you, Deputy. Does any other Member wish to speak on the Regulations? If no other Member wishes to speak, then I close the debate and call upon Senator Pallett to respond.

4.2.3 Senator S.W. Pallett:

Can I firstly thank the Attorney General for some of his guidance that he has given this morning? If I start with Deputy Pamplin, he mentioned the Mental Health Law being very complex. It is very complex, but I think in regards to how the Mental Health Law will work within the new Regulations, he is absolutely right in that all the current safeguards exist. He has detailed them I think quite eloquently this morning, better than I could, in terms of there will be no change to how both this Law, the Mental Health (Jersey) Law 2016, and the Capacity and Self-Determination (Jersey) Law 2016 within P.47/2020 will work. He mentioned the advocacy services and again I want to thank them as well for the support that they have given. In terms of Deputy Tadier, again Deputy Pamplin I think was responding to some of the comments made by Deputy Tadier. The safeguards do exist. I think I have already stated within the speech that the numbers I think within all these particular areas are relatively low in terms of the numbers we get each year. In terms of how a mental health tribunal would work, video conferencing already exists within that service because of the use of U.K. professionals on a regular basis.

[12:00]

So, in terms of that service carrying on and being able to deal with those that object to their detention or a family member or a guardian, the safeguards exist and I think there is provision within the service to allow tribunals to carry on and still function. He mentioned around a patient suffering from COVID as well. Again, it is a medical question but I think procedures would clearly need to be put in place to deal with somebody that also was unfortunate enough to have COVID at the same time. I think this is an issue that will come up within P.47/2020 around detention and isolation and those that have COVID. In terms of Deputy Ward, I mentioned previously about the numbers of times these provisions will be used. In terms of the 72 to 120 hours and the opportunity to use that during an extraordinary period, it was only used 15 times in a one year period. I say only, it is still 15 people's lives that are being affected and we take that very seriously. Nevertheless, it is only on average just over once a month. In terms of nurses assessment, in terms of the 6 to 12 hours, that

only happened 13 times in a year. In terms of the 7 to 28 days for a transfer from prison, that only happened 5 times in a one year period. I would hope during the current crisis that is a very rare occurrence and that we could provide the necessary support that we need. In fact, we would not need to go to a 28 day period when there are so few transfers happening each year. I do take his point about the state of the current mental health service and some of the transitional work and work that we were doing to improve the service and ensuring that that is not impacted. The intention is not to reduce quality. It is important that we provide the same quality to those that are in mental health distress. These new Regulations with temporary changes are there to ensure that people do get the care within a reasonable timeframe when we have reduced staff numbers. I would ask the Deputy to support these Regulations. I know he has his concerns and I know other Members as well have their concerns. It is important that during this period we can support staff and those in mental health distress as much as we can. I maintain the Regulations.

The Bailiff:

Very well. I would ask the Greffier to put up a voting link in the usual way. It has now appeared in the chat and Members will cast their vote in the normal way. I open the voting.

POUR: 46	CONTRE: 0	ABSTAIN: 0
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. Saviour		
Connétable of St. Brelade		
Connétable of Grouville		
Connétable of St. John		
Connétable of Trinity		
Connétable of St. Peter		
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 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 Trinity				
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 Bailiff:

How do you wish to deal with the matter in Third Reading, Senator Pallett?

Senator S.W. Pallett:

I maintain the Regulations as set out. I am happy to take any questions in the Third Reading if anybody has anything to add.

The Bailiff:

Are the Regulations seconded in Third Reading? [**Seconded**] Thank you. Does any Member wish to speak in Third Reading? No Member wishes to speak in Third Reading. We ask the Greffier to put up the vote for Third Reading. The link is now on the chat. I ask Members to record their vote in the normal way. The voting is now open.

POUR: 44		CONTRE: 0		ABSTAIN: 0
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				
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Connétable of Trinity				
Connétable of St. Peter				
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 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 K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

Senator S.W. Pallett:

Could I just thank Members for their support? I would also like to thank the Scrutiny Panel. I know I have already done it, but I want to thank them again for the support that they have given, especially over the last 48 hours. I also want to thank officers for the incredible amount of work that they have done as well over the last 48 hours to comfort and deal with concerns by stakeholders. It has been really important. I can only reassure Members that we will only use these powers when they are absolutely necessary. Thank you.

The Bailiff:

Thank you very much. I have a note from Deputy Martin that she wishes to correct something that she may have misspoken in the Assembly.

Deputy J.A. Martin:

Yes, I am ever so sorry, Sir. It was the last point Deputy Southern made. I thought I was correct. The fees are the fees that have been negotiated with the Health and Social Services Department and the G.P.s. Whatever the appointment the G.P., as normal, will collect a co-payment. He will also collect the fee. At the end of the month, the G.P.s will be passing that money to the Health and Social Security Department to balance the costs. I am ever so sorry, I knew the co-payments were going to be different, I thought they had been done away with. I apologise for that. That is how it is. If Deputy Southern wants any more information, come to me and I can get that for him. Thank you.

5. Draft COVID-19 (Capacity and Self-Determination) (Jersey) Regulations 202-(P.47/2020)

The Bailiff:

Thank you very much, Deputy. We now come on to the Draft COVID-19 (Capacity and Self-Determination) (Jersey) Regulations 202- (P.47/2020) lodged by the Minister for Health and Social Services. I ask the Greffier to read the citation.

The Assistant Greffier of the States:

The Draft COVID-19 (Capacity and Self-Determination) (Jersey) Regulations 202- (P.47/2020). The States make these Regulations under Article 2 of the COVID-19 (Enabling Provisions) (Jersey) Law 2020.

5.1 Senator S.W. Pallett (Assistant Minister for Health and Social Services - *rapporteur*):

I will not repeat my comments that I made on the previous Proposition around Members concerns around civil liberties and human rights. Some of that will probably come out again within the questioning. This is looking at another area of Jersey law and something that clearly has an impact on work within care homes and care settings at the current time. These draft Regulations before you today bring temporary changes to the Capacity and Self-Determination Law, in light of the anticipated impact of COVID-19 on our Island's healthcare system. In line with the Mental Health Regulations, now approved by the Assembly, these changes will ensure the continued protection of some of our most vulnerable Islanders during a time where our healthcare system is experiencing significant pressures. As I emphasised in my previous speech, COVID-19 will challenge the Island's healthcare system, hospitals and care homes. This may result in existing mental health staff, doctors, nurses and other professionals being redeployed to other priority healthcare services. Indeed, the impact of COVID-19 has already resulted in restrictions on physical access to the Island's hospital facilities and our care homes, which is having particular ramifications for our Capacity Law. The draft Regulations allow for temporary changes to the authorisation process associated with imposing what are significant restrictions of liberty on a person who lacks capacity. In doing so, they provide the safeguards necessary to protect the rights of those individuals. I stress that it is really important to make it clear that those safeguards are protected. A significant restriction on liberty could include, for example, a person not being permitted to leave their care home unaccompanied or their freedom of movement within that particular care home. It could be limited to certain rooms; it could be use of physical force or restraint if necessarily required; or restrictions on their social contact. It is important to emphasise the temporary nature of these Regulations. As with the Mental Health Regulations, these have a 30th September expiry date and will only apply if the Minister for Health and Social Services has declared an extraordinary period under Regulation 1 of the Mental Health Regulations, which again we have just debated. Once again, it is intended that any divergence from existing policy and practice is only permitted for the shortest possible timeframe. I would like to make clear that these draft Regulations have the backing of our front line staff and, again, that of our Associate Medical Director for Mental Health Services. In order to explain the proposed changes it is important to give the Assembly a little background on the current 2016 Law. The Capacity and Self-Determination (Jersey) Law 2016 sets out provisions for urgent and standard authorisations of significant restrictions on liberty by the Minister. This can last up to 28 days and 12 months respectively. The latter standard authorisations require a capacity and liberty assessor to undertake an assessment on behalf of the Minister along with a medical registered medical practitioner. The purpose of standard authorisations is to provide the Minister assurance that the individual concerned lacks capacity and it is necessary to impose restrictive measures in the interests of the individual's health or safety and the measures proposed are in the individual's best interests. These draft Regulations do not preclude the current authorisation processes from taking place. Indeed, the Regulations are written in such a way as to ensure that the current authorisation process is the preferred option. However, as it stands today, we know there are very real restrictions placed on that process. Assessors cannot visit care homes and hospitals, due to COVID-19, plus certain medical staff have been redeployed. Therefore, the draft Regulations propose an interim authorisation to overcome this challenge. The application for an interim authorisation can be made by the manager

of a care facility. As there is no requirement for an assessment to be carried out by a capacity and liberty assessor statutory obligations are placed on the manager to demonstrate the appropriateness of the application. Extra duties are placed on the Minister to check and consult on the appropriateness of the application. Care homes have been consulted on these draft Regulations, via the Jersey Care Commission. The draft Regulations are intended to provide managers with the peace of mind that they can continue to work in the best interests of their residents, while also complying with the Law. The social care team will support care home managers to complete applications. Plus written guidance is being developed and will be given as soon as is practically possible. The interim authorisation process seeks to maintain the assurances of lack of capacity, necessary measures and best interests in the following way. A manager can only apply for an interim authorisation in relation to an individual if that individual has already been assessed as lacking capacity. The application must include evidence of a diagnosis of a mental disorder or impairment. This is absolutely an essential safeguard as the Minister cannot proceed with an interim authorisation without this evidence. Furthermore, the application must include a statement explaining why the significant restriction on liberty is needed. The draft Regulations require the manager to provide details to show that without the restriction the individual would suffer serious harm or would be a significant risk to themselves or others.

[12:15]

Finally, the manager is required to demonstrate that the significant restriction on liberty is in the best interests of the individual. Evidence of this could include meetings with family or clinical reviews to demonstrate that the individual's needs have been properly reviewed. The draft Regulations also place a statutory duty on the Minister to consult with anyone considered appropriate, such as the individual's health and welfare guardian. It should be noted that the Judicial Greffe have been consulted and are happy to support the administrative process for this. The Assembly should note that a number of officers have been authorised by the Minister as decision makers under the Capacity Law and will be reviewing the applications by managers, if these Regulations are approved today. The U.K.'s emergency provisions do not include similar amendments, simply because their Mental Capacity Act 2005 is not as robust as our 2016 Law. Indeed, these draft emergency provisions set out in these Regulations echo current practice in the U.K. That is to say, applications can rely on previous medical evidence, rather than requiring a visit by a registered medical practitioner, as per our standard authorisation assessment. The powers set out in these draft Regulations strive to strike the balance between upholding the human rights of some of our most vulnerable Islanders, meeting the significant challenges posed by the COVID-19 crisis and enabling our healthcare system to continue to operate within a statutory framework. I recommend these Regulations to you and the Assembly. Thank you.

The Bailiff:

Thank you very much, Senator. Are the Regulations seconded? [**Seconded**] Connétable of St. Helier, do you wish to make a declaration of interest.

Connétable A.S. Crowcroft of St. Helier:

Yes, I have a parent who is in a care home and could be affected by this. I also want to place on the record the fact that I am responsible for St. Ewolds Residential Home in St. Helier, as Constable. That is not a personal interest, but it is an area of concern for the Parish. Thank you, Sir.

The Bailiff:

Thank you very much.

5.1.1 Senator I.J. Gorst:

Unfortunately, I was not quick enough on the draw with the technology for the last Proposition. I do want to start by paying tribute to the Assistant Minister and for all the excellent work that he is doing

in co-ordinating the Island's response to the mental health issues that we face. For my part, the issues that we face cannot be overestimated. Some have been talking about the challenges that Islanders face when it comes to mental health issues for a number of years. The new laws regarding capacity and mental health were great strides forwards, but as the Scrutiny Panel, and as the Chair has reminded us, the legislation being modernised and put in place was but the first step to a strengthening of the service and a reduction in waiting times. That is ongoing work. I want to, in my comments, acknowledge those great strides that have been taken. Deputy Tadier yesterday said that while recognising the need for emergency legislation to deal with the COVID-19 crisis, each of us, as individuals across the Island and of course as the Island's legislative assembly would find that some of the bitter pills that we were choosing to swallow might be from time to time not possible for us to swallow them. I am finding myself today with these 2 pieces of legislation in a very difficult position. As politicians, in Government, in the legislature, we must always think not only about processes and structure and the service, and it is right that we do that, but at the heart of everything we do there should be individuals and how our decisions are affecting those individuals. From the start of this COVID-19 crisis I personally, while supporting the approach that the Government has taken in following the best medical advice to lockdown the Island in the way that we have to social distance before that and to shield the most vulnerable. They were some of the most important decisions we took at the start of this crisis: to engage with G.P.s; to get a better handle on where vulnerable Islanders were and the conditions that they had; and then to shield them appropriately. Let us be honest, that shielding of the most vulnerable will continue longer than the current lockdown that we are going through. I have been concerned that in dealing with the COVID-19 crisis and slowing the spread through our community and therefore slowing the curve, therefore meaning that we would see fewer deaths in our community, the other health issue or other health issues have been created in making those decisions. Some of the greatest health issues are around mental health and those in our community that might previously have been suffering quietly, the pressures that they are now facing, through being isolated at home, perhaps through home schooling, through being away from the wider family and community, through being away from the workplace, they are creating right now mental health issues. Not to mention the domestic abuse issues. We have already seen, have we not, a 30 per cent increase in reporting of those. The child abuse issues and other health issues that we know Islanders are not going to hospital or contacting their G.P.s that they were in the same way that they were before. We see that also mirrored in other countries as well. I come to this debate struggling to see that the emergency legislation that is being proposed. The Minister is absolutely right: COVID-19 will put stress on the mental health service. We need to find a way of dealing with that. Perhaps it is me being unrealistic, but I would have preferred us to think about how we can strengthen that service. We have to acknowledge that the requirement to use that service is only going to rise in the coming days and weeks. Yet that service is a critical service in providing support for Islanders with mental health stress in their lives. The decision about taking an individual's freedom away from them, because they do not have capacity, is not one that should be taken lightly. I know we do not often talk about personal experience, although I am reminded of the very moving speech that the Constable of St. Peter gave about his own experience in this regard, but when we are getting to the point of depriving individuals of their liberty, sometimes they recognise that they make the positive decision to have that deprivation themselves, other times it requires difficult decisions to be made and the service to make difficult decisions to deprive them of their liberty. It should never be taken lightly. Having seen it in my own family, first-hand, these are extremely traumatic decisions and the effect that they have on all of the family where an individual is needing to move out in this way. I am pleased that the Minister has made sure that the safeguards of the other law remain in place. We are here and in P.46 saying that timescales can be extended, that decisions can be made by fewer people than previously and that they do not need to be reviewed, whether it is 6 hours that a nurse can hold somebody or 12 hours. We need to make sure that with these changes it is absolutely clear the changes that are being proposed for this temporary period. I note that in some of the clarificatory work in answer to those services which raised queries over the last 24 to 48 hours. One of the phrases

in that clarification that really added to my concern was with regard to depriving under 25s and under 18s of their liberty. There was a throwaway phrase in there that said that in effect there were very few cases of under 25s and under 18s that were deprived of their liberty. One of the reasons for that was because young people on the whole are with their family. What that, of course, alludes to is that young people in a family setting, however that family looks, are more likely to be supported and not need to be deprived of their liberty with regard to young people who are not in that family setting. Therefore, what we are talking about here is young people who are either in care or have recently left care. That gives me great concern. I know that the Minister and the Assistant Minister will be concerned about that. I ask him to think about those issues in the implementation of these Regulations and how they are going to deal with it. If we are not very careful it is only the most vulnerable that will be detrimentally affected by these pieces of legislation. We all know where we are when it comes to the modelling of COVID-19 in our community and we look forward to the next update of that modelling. I am really today, with these 2 pieces of legislation in particular ...I have found all of the others difficult as well, but I voted for them, but with these 2 I am really struggling today. I am grateful to the Minister. He has given an open and transparent presentation. I am grateful to the Scrutiny Panel for the work and the challenge that they have given to these pieces of legislation. I suppose, like we all do from time to time, having been given the privilege to sit in this Assembly, the internal mental challenge that we have ourselves about whether a decision is right, given all the information and the circumstances that we are provided with. I will continue to listen to the debate and to the Minister's summing up as I decide which way to vote on this particular Proposition. Thank you.

5.1.2 Deputy G.P. Southern:

Just briefly, my concerns have been largely met over P.46 and it looks like P.47 as well. I just refer to the seriousness of the subject which we are dealing with, where the advocacy organisation has pointed out the following conditions if you are to meet human rights obligations. It says: "Changes to the law must be necessary, proportionate, subject to democratic scrutiny, reviewable by courts, transparent and time limited."

[12:30]

It seems to me that yesterday, before consultation took place with My Voice and others that they were not satisfied that these conditions, extensive though they are, were not being met. I now note that following consultation and advice they are now acceptable, especially in terms of the statement by the Attorney General that any decision, particularly on mitigation of possibility of abuse of powers, is covered via reference to judicial review. I am content following that. Thank you, Sir.

The Bailiff:

Thank you very much Deputy. I have 3 further Members who are currently indicating their desire to speak. Although we are slightly in advance of when I would normally raise questions of continuation, we are also approaching the point where the 4 hour period that this session can remain active is coming to a close. I wondered if now might be a convenient moment to ask if there is any suggestion from the Chair of P.P.C. (Privileges and Procedures Committee) with regard to continuation and then for the adjournment, things of that nature.

Deputy R. Labey of St. Helier:

It seems likely that we are going to go into a session this afternoon. I would suggest an hour's lunchbreak, if that is convenient for yourself and for the Greffe, staff and all the other staff present and that are needed for this virtual meeting of the Assembly. We do not want to crash out of the session because of timing, so we are in your hands, Sir.

The Bailiff:

We have less than 15 minutes left within which the session can remain live before it crashes out. We could probably deal with one further speech if we were to take the matter up a little bit before 1.00 p.m. It could be we should listen to one further speaker and then adjourn after that for an hour until the afternoon.

Deputy R. Labey:

Yes, Sir. I think that is a very good suggestion and I would support that. Let us take another speaker, see how we go and call the adjournment for an hour when it is most convenient.

The Bailiff:

Thank you very much. I will not ask for further comments from Members at this point. That is the idea Members can think about over the next few minutes or so. Thank you very much, Chairman.

5.1.3 Deputy K.G. Pamplin:

I am mindful of all what has just been said. I will try and be as brief as possible under the time constraints. Echoing the words of the former Chief Minister, Senator Gorst, he is quite right to air the concerns of P.46 and P.47. As I stated previously, as somebody who has worked and has this issue close to my heart since becoming a States Member, these 2 Propositions in particular have caused me great concern, which is why alongside my colleagues I kick-started into overdrive the amount of scrutiny that we would normally do for such changes to such important laws over a period of time, non-stop. Focusing on this particular one, out of the 2 Propositions, this is the one that concerns me the most, as we were going through the briefing, it raised the concerns that we have been speaking of already. Particularly, as others have mentioned, the issues that have come about since the new laws were implemented, the Mental Health (Jersey) Law in 2016 and the Capacity and Self-Determination (Jersey) Law in 2018. There were concerns growing since particularly the 2018 Capacity and Self-Determination (Jersey) Law came into play of issues that were coming out, which were highlighted, if Members have read our comments paper. Particularly point 8 that we were advised that while urgent authorisations which last 28 days were still being carried out, standard authorisations were unable to take place due to the current pandemic crisis. It was advised that assessors are currently unable to enter care facilities to undertake assessments. Some assessors have been redeployed elsewhere within health and community services. We also raised questions regarding the historical backlog of assessments and how these were being dealt with. We were advised that there were currently 107 people awaiting assessments. The oldest application dated back to 12th February 2019. What this highlighted for us, separate to the current pandemic crisis and the need to make sure that our health and mental health services teams and experts can deal and do the work under the rules currently facing. It has highlighted the issues which we again highlighted in our 2018 mental health report into services. If we are fully going to, as Senator Gorst mentioned, keep going on the journey then we have to retain and train particularly and get the experts required to deal with this issue. Because of that, we raised that, and I am grateful again to the Assistant Minister for Health and Social Services, who has responsibility for mental health. He has responded that this will be reviewed. We need to come back at this. The mental health problems, as Senator Gorst explained, are only going to be exacerbated due to the current climate and the reaction going on. Equally, mental illness will remain. Dementia, again separate, is an issue and will continue. We need to address this. We need to look at the facilities, the expert deliverable care needed for all these different types of mental health illnesses, and also train as many people specifically in these finite areas. So we can better be on top of things in going forward. I just wanted to stress that. Also, I know Senator Pallett mentioned it at the beginning, one of the big concerns for us was the issue about how a care facility manager will be applying for the interim authorisation. Again, it was stressed to us and it is in our comments that this already can only be done if the individual has been assessed as lacking capacity already and the manager must provide evidence of a diagnosis of a mental disorder or impairment. It was further stressed that an application by a manager must also include a statement

explaining why a significant restriction of liberty is believed to be necessary, plus confirmation that a standard authorisation would not be practical in the circumstances and would put the welfare of the patient at risk. This is the fine line that we are all walking on in terms of doing the right thing under COVID-19 to try and save and shield our most vulnerable people; that is our elderly and people in care homes around this Island who are most susceptible to this contagious virus. Equally making sure that human rights can be upheld and all these things can be taking place in the safety of mental health. We will be following this very closely. I look forward to hearing the Senator really stressing these points. It is good that the Care Commission has noted this, but it really needs to be stressed, again as I have done in the previous debate, how serious this is and how important it is when these decisions are made they are reviewed. The final point I need to make is, again, this has been extraordinary. We had a briefing last Tuesday. Scrutiny work continued at a pace. Things were lodged Friday, as has been alluded to. Late on Monday night various individuals and third party advocacy groups contacted us. We, as a Panel, reacted as quickly as we possibly could. We put all those concerns to the Minister's Department. We have taken them and passed them on. We continue to air these concerns. I am pleased that the Minister and Department have taken our advice, that we must have an urgent meeting of all stakeholders, so we can discuss all these issues. Going forward, even under these incredible times and how quickly we are turning things over, we must include these specialist advocacy groups in part of the Scrutiny process. They are just as important. They have absolute line of sight of our most vulnerable members in our community. I know it is difficult, but these times in between, as the Deputy of St. Martin has alluded to and others, of lodging and debating, giving all 49 States Members the ability and the time to address and take in and absorb all these comments. We are working at a pace that is just totally unknown to anything else, but we have to do this right. Otherwise, we leave ourselves open. We have to ensure going forward that that just improves. Even if the feedback from these groups is not what we want to hear, it will be constructive advice that helps us improve things. We may have to bring amendments going forward to tighten things up. I look forward to Senator Pallett addressing those things. I wanted to raise those issues, because this is fundamentally one of the most important things to me as a States Member. Thank you.

LUNCHEON ADJOURNMENT PROPOSED

The Bailiff:

Thank you very much, Deputy. We have some 5 minutes or so before we naturally crash out, as the expression is, from this particular session. Does someone propose the adjournment? Thank you very much. I am proposing to adjourn for one hour, unless anyone wishes to indicate that that is not viable. Can I just mention one thing: during the adjournment, on the chat will appear a questionnaire, which Digital Jersey would be grateful if you could complete? It is important, because it will enable them to improve the service and the performance for the next session. So if Members could complete that they would be very grateful. In the usual way, when we end this session, the next session will be a brand new meeting. A new meeting convening notice and request will be sent out and Members will have to log in to that new meeting. That is all I need to say at this point. We stand therefore adjourned until 1.40 p.m.

[12:42]

LUNCHEON ADJOURNMENT

[13:42]

The Bailiff:

Very well, we now continue the debate on the principles of P.47. I have next listed to speak Deputy Ward. Deputy Ward? Very well, I have next listed to speak Deputy Le Hegarat.

Deputy M.R. Le Hegarat:

Thank you

Deputy R.J. Ward:

Sorry to interrupt I was there. I was pressing the buttons; I wonder if I could speak afterwards?

The Bailiff:

Yes, I will call on Deputy Le Hegarat now and Deputy Ward can speak immediately after.

5.1.4 Deputy M.R. Le Hegarat:

All the concerns that were highlighted in relation to the previous piece of legislation obviously rests with this one also in relation to the human rights and our concerns in relation this type of legislation. The one thing I would like to point out, and it was mentioned by Deputy Pamplin when he spoke earlier, that there are 107 outstanding applications. This was brought to our attention by one of our Panel members and for that I am grateful. What I would like to just confirm with Members, and it is within the comments that we made, that these outstanding matters will not be dealt with in relation ... it is not the intention to deal with those outstanding matters under this legislation. It would only be if the circumstances changed in relation to COVID-19 measures. So I think that is quite an important factor. As I said, teams have worked exceptionally hard in order to get this legislation to where we are today and I have to say I fully concur with the concerns raised by Senator Gorst, because I think all of us within the States Assembly are all in the same place when it comes to this legislation, but we are being supportive of it because we do feel that we are in a different world at the moment and we need to help as much as we can. Having said that, as the Scrutiny Chair I would just like to reiterate to Members - because there will be over the next few weeks more legislation probably coming through but also there will be more concerns raised by others within our community about this legislation - we are a Scrutiny Panel and we will work our hardest to ensure that these matters are resolved as efficiently and as effectively as we possibly can. So if there is concerns or if something happens where we are also concerned then we will look at it. We will continue to speak to the Minister for Health and Social Services and the Assistant Minister for Health and Social Services, in particular in relation to mental health because I think everybody at this time is in a different place.

[13:45]

5.1.5 Deputy R.J. Ward:

I am here now, yes, thank you for that. There are a few things I wanted to raise regards this. One of them is a question regards the actual meaning of what we are agreeing because I do have genuine concerns about the level of loss of rights and loss of determination of verification and checks of those decisions. I will refer to a comments paper, a response to the comments paper, that was sent to us all which does make reference to the point about the determination of capacity and liberty not being taken on by the assessor but by the manager. It has been said previously that that will be for ... it seems to have said it - and if I am wrong I can be corrected by the Minister here it seems to have been suggested that a lack of capacity would have to have been proved before in order to make this happen. But if I refer to paragraph 17 of the paper that came around, and I will read from it: "In making an interim application it will be the manager as opposed to the capacity and liberty assessor who cannot access the person in the care home [we know that] who will forming a view on the person's capacity." Then it references the Article. "The manager will not [underlined] be relying on a previous determination of lack of capacity, albeit the manager may provide evidence relating to previous determination of a lack of capacity if there had been one." So this does seem to suggest that it is not a previous lack of capacity, although it can be referred to. It then suggests and I will go back a paragraph to paragraph 16, I could have done this in either way. I am concerned about protection for our managers of care homes because they too face the COVID emergency and they may be ill

themselves. So it may be a chain of command, so to speak, in a care home where people are left with decisions to be made. Now, paragraph 16 does say support will be provided to those managers via designated link workers from the adult social care team plus via capacity and liberty officers, which is good. It then goes on to say: "Care home managers care for people who lack capacity on a day to day basis." Now, that support is there but it would have to be, I suggest, spread wide and adjusted by that manager of the care home, many of whom may be business people as well and may not be specialists in mental health care, may not be specialists in other forms of medical provision. Further then after that in paragraph 18 of that document, and I think this is a very important point, it does suggest that the evidential requirements for establishing whether the liberty order or capacity order can be authorised will rest with the Minister. If the Minister is not satisfied there will be no authorisation as per the current law. I would like to know what criteria the Minister will be using and how he will make that decision. It says he will: "... make enquiries regarding lasting power of attorney, mental health articles and **additional** [in bold] consultation with family." Given the fact that we will not have the ability for people to visit care homes because of the COVID-19 situation, I am not entirely sure what additional consultation could be made beyond that which has already been made and therefore how the Minister would direct their evidence for the requirements made. So I would like to clear up these points because this is a very serious issue and has been mentioned by previous speakers. We have agreed many pieces of legislation which we sit very uneasily with. This may be for me one that takes one step too far because of the demand being made on those who do not have the medical and specialist knowledge which we would need them to make. It is a huge demand being made. Beyond that demand that is being made day to day in the current situation of simply ... not simply, but very difficult situation of running care homes is such a difficult circumstance. I would be very concerned about that and I would like those points, particularly the ones from paragraph 17, addressed as to how the decision will actually be made and whether the previous determinant lack of capacity ... the primacy of that, I think, in this decision making process. I think that is just about everything I want to say on that at the moment.

Senator K.L. Moore:

I am grateful to follow the previous speaker who raised some eloquent points. It has come to my attention over the lunchtime period that despite the really great efforts of officers and my fellow Scrutiny colleagues, there remains some stakeholders who hold concerns and, of course, there are Members who hold concerns as we have heard from their speeches. So I acknowledge the really tremendous effort of my Scrutiny colleagues on the Health and Social Security Panel who, I think, have been placed in a really difficult position this week with so many propositions to turn around in a very short order and I think they have done a really sterling job. But given the recent communications that I continue to have and the concerns around what is a really sensitive matter, I would like to propose that we move to the next item in order to enable all stakeholders to be on board and supportive of this proposed action.

The Bailiff:

You wish to make a Proposition that you wish to move to the next item, Senator, is that correct?

Senator K.L. Moore:

Yes, Sir.

The Bailiff:

That is provided for by Standing Order 84, which says: "A Member of the States may propose without notice during the debate on a proposition that the States move to consideration of the next item of the Order Paper" and then in section 2: "The Presiding Officer shall not allow the proposal if it appears to him or her that it is an abuse of the procedure of the States or an infringement of the rights of the minority." It seems to me it is difficult for me to allow the Proposition to do so at this point, Senator,

although it may be something that you can make later on, as including yourself only 5 people have spoken thus far. It seems to me to be able to move to the next item it would arguably prevent a sufficient airing of this matter. I might have taken a different view on a proposal for a reference back or something of that nature but I think to move to the next item is probably something I am not prepared to allow at this point, although you can, of course, bring it later.

Senator K.L. Moore:

Well, I accept if that is your position but I simply did not want to take up too much time of the Assembly and the hope was that we would be able to debate this again at the next sitting.

The Bailiff:

Thank you, Senator. The ruling that I have made is that that cannot be brought at this time but there is no reason why it cannot be brought at any point in the future during the course of this debate. I simply wish to allow more people the opportunity of speaking before it is clear that such a Proposition might be supported. Does any other Member wish to speak? Deputy Southern, you have a procedural question?

Deputy G.P. Southern:

I wonder if it is possible to request of the mover to move on to the next subject to state where she has got her concern from. She says she has got a new stakeholder who is still concerned about the legislation that has only made themselves known to her in this lunchtime, it seems to me that if we knew who was holding up the red flag then we might be more ready to move on and address those concerns.

The Bailiff:

Thank you, Deputy, that is a valid question but I am afraid it is not something that can be put in the context, I think, of this particular issue. The Senator has asked for a move to the next item, who caused her those concerns might well be a relevant question as to whether the States would agree to move to the next item but I have ruled it to be out of order at this point because an insufficient number in my judgment have spoken thus far. It could be a question that could be raised later on in the event after 2 or 3 more people perhaps have spoken that the Senator still wishes to make that Proposition. Does any other Member wish to speak? If no other Member wishes to speak then I would call on Senator Pallett to respond.

5.1.6 Senator S.W. Pallett:

I am not going to comment on Senator Moore's Proposition, I think it is not necessary. I will just move on to those that have spoken and thank them for speaking. Can I start by saying I know this is a difficult Proposition for many people to get their heads around? I think we all know some of the stresses and strains that are currently going on within the hospital service and certainly within in our care homes. I think it is important to understand the position that care managers are finding themselves in. I think without these particular Regulations, without an interim authorisation process to augment the standard authorisation process, which we know cannot operate due to the associated COVID risk, individuals who lack capacity in Jersey may be experiencing arbitrary detention with absolutely no scrutiny at the current time, no legal process, no means to review or recourse around detention. A lot of that could be around the fact that there could be COVID-19 within care homes and decisions are being made to isolate people or detain people who potentially lack capacity and do not understand why they are being isolated or moved away from friends and why they cannot see family. I think it is really important that we get a process in place that I think supports care managers in what they do in terms of making it lawful to allow some of these patients and residents to be moved and isolated. Just moving on to the individual people that have spoken. I thank Senator Gorst for his comments because they are heartfelt and I know how much he feels in regards to this particular subject, as I am sure all of us do. There are many of us that will have loved ones who are currently

in care home settings and we feel desperately for them because they are isolated, they clearly do not have the opportunity to socialise in the way that they used to and for those that are vulnerable, for those that do not have capacity, it is going to be a lot harder but I think not providing care managers with the legal responsibility to be able to deal with the issues that are currently happening within care homes I think would be irresponsible. The Senator is quite right about the strengthening of our laws. I think our capacity laws are stronger than those in the U.K. and I think we should be very proud of that. We have made great strides in both our mental health laws and our capacity laws. It is a difficult position, it affects all of us in some way, shape or form and it is absolutely right that we think about how we shield the vulnerable. The fact that we look after our vulnerable in this Island, which I think we are rightly proud of in how we look after those that are in a vulnerable situation, has to continue. I think the spread of this particular virus has increased the potential issues in all sorts of areas but mental health is the one that really does bring home to all age groups, whether it be children, adults, working age adults, senior citizens, vulnerable people, I think we are all in some way, shape or form, whether we like it or not, having pressure put on our own mental health at the current time. That includes us as States Members because we are having to make some very difficult decisions. That sometimes does not sit very well with us. This morning's decision and whatever decision we come to this afternoon will not sit well with some of us. I understand that and I totally agree with those feelings. COVID is putting a strain on the mental health service and I absolutely agree with Senator Gorst that we do need to strengthen that service.

[14:00]

At some stage I think the Assembly may well have to seriously consider increasing investment in services over the coming months to deal with mental health issues arising from COVID-19. That also has to be on top of and ensuring our commitment to mental health that was included in the Government Plan. Clearly there has not been parity between physical and mental health and if ever the time there needs to be a parity between both physical and mental health, now is the time and we need to step up to the plate, all of us, in regards to ensuring that mental health services in Jersey are provided with the necessary resources to deal with some of these issues. It does not matter whether it is our own adult mental health services or those that we get to help us. I am thinking something like the Listening Lounge, which has been under enormous stress itself and I think there may be a need to ensure that we provide an adequate resource to that particular service in future to ensure that they can pick up some of the slack in regards to those that are suffering mental health strain. I know the Senator mentioned what he considered to be a throwaway comment within comments around under 18s to 25s. I can assure the Senator that it was never meant to be a throwaway comment. I think what we were trying to stress was that there are very few people in that particular age group, in fact under 18 full stop that fortunately enter the health services, in fact there were only 4 particular applications between 18 and 25 in a year. I think that just shows the strength of their community, it shows the strength of our families and shows the strength of support we provide to families. I am sorry if he felt that way but it was not meant to be that, but I understand why he may feel that. Sometimes it is those that are most vulnerable that seem to be affected the most but we, as a States, as a ... nobody has mentioned corporate parent today but I will mention it now. We are corporate parents and we are there to protect the most vulnerable in our community. I believe that this particular Regulation, as the ones this morning, are there to protect them. There is no way on earth we would be agreeing some of these things if it was not for COVID-19 and I accept that. But I think for the short period of time providing both them and care home managers with the opportunity to make sure that people are safe, people are lawfully detained, if necessary ... and I say that it is only if necessary and it is in extreme circumstances during an extraordinary period, that we will need to introduce this. I think it will be needed and I think there is a need for those care home managers to be supported. I thank Deputy Southern for supporting the Regulations, which I think he, after some convincing and some advice from the Attorney General this morning, understands that there is a need for this. I hope he can support the Proposition. It is an extremely serious subject and nothing that any of us should

take lightly. Anybody's liberty has to be at the top of our list in ensuring that we protect that. These are short-term measures and they will only be introduced if absolutely necessary. The passion that Deputy Pamplin shows is ... you can almost see it coming out of his veins or out of his pores, it is jaw-dropping at times and I thank him for his continued efforts in regards to mental health in Jersey, but clearly at the moment assessors cannot access care homes and we do need to have something that bridges that issue while we are getting through COVID-19. Both he and Deputy Le Hegarat brought up the issues of the backlog and it is not great. I think we are absolutely admitting that we are not particularly proud of the fact that we have 107 people currently waiting for standard authorisations in Jersey. Just prior to this outbreak we were in a position where we had ... I am just trying to find the necessary advice that I was given. Just prior to the outbreak we had taken on extra staff and, in fact, during February, I think it was, we reduced the number by 25 by having new staff in place but clearly the COVID outbreak has stopped that work going on and some of those staff have been seconded elsewhere. But we gave a commitment to Scrutiny that once we are through the worst of the COVID outbreak and assessors can get back in to start reassessing residents and people that live in care homes that we will bring this backlog. It is a commitment I gave and it is a commitment that I know the Minister is quite happy to give that we will work tirelessly to make sure that we reduce the numbers that currently are awaiting to be assessed. Deputy Le Hegarat also brought up human rights concerns again. Again, I need to stress that the advice we have been given is that there are no issues around human rights in regards to the Regulations we are bringing, although clearly changes to civil liberties ... I can understand why it is a concern but I hope that during both of these debates we have tried to explain why they are needed at this quite unprecedented time. Deputy Ward brought up some interesting points around how this interim process will be administered. He mentioned various items with some comments that we released last night. I think he picks up an interesting point about the manager will not be relying on a previously determined lack of capacity. I think that should be probably be: "Will not be relying solely on a previously determined lack of capacity." There are other things that need to be proven for an interim authorisation to be given and I think they are clearly set out within the law itself. What I would say about care managers, because I think there have been some comments around the ability of care managers to be able to assess or to make those applications, is that I know from my own experience when I was Constable in St. Brelade around my time as Chair of the Management Committee at Maison St. Brelade, our own care home manager, who is still there, had vast experience and most, if not all, of our care home managers have got vast experience. The good thing about having care home managers, giving them the ability to make interim authorisations, is that they know their residents. They know their patients. They know who they are dealing with on a day to day basis, they know their issues, they know whether they have got mental health issues and I think they are more than best placed to be in a position to be able to decide whether an interim authorisation is right for a particular resident or not. I think people have rightly brought up the issue but my experience of care home managers is they are probably best placed in the current situation to decide whether a patient requires an interim authorisation so that they can lawfully detain or isolate a patient who may be not only a risk to themselves but a risk to others through COVID or another reason. Again, just getting back to Senator Moore. I know there are stakeholders that have concerns. We have tried to deal with each and every one that has come up over the last 48 hours. I apologise to those that we should have, in hindsight, consulted with, even if it was briefly, to try to get their support and at least get them to understand what we were attempting to do with these Regulations. I think there will undoubtedly be one or 2 that we have missed and I think what we have committed to, and I think it has been already mentioned by Deputy Pamplin, is that we will arrange a meeting in fairly short order, either late this week or early next week with the stakeholders, not only to hear their concerns but to clearly set out how both the mental health regulations, the new mental health regulations, and the new capacity laws will work. People have not really had time to digest this and I think this has been an issue that has been raised by many people today that these Regulations have been lodged in fairly short order and the scrutiny has not been always ... we have not given Scrutiny the opportunity and sometimes the time to be able to do

the sort of in depth review that they normally would. The only excuse can be that these are unprecedented times and that there are issues going on at the current time that we need to resolve. I think that the issues around care homes and how we deal with short-term authorisations is one of those. I do not mean to dodge anything that people have brought up, it is certainly not something that I am looking to do. I think this is an extremely contentious issue. It is one that, as I said before, I do not think if COVID had not raised its head we would even be considering at the current time but I do ask Members to seriously consider supporting this Proposition because I think it is important that we can support care home managers in some difficult decisions that they need to make. What I mean to say is that all the current safeguards within the Capacity and Self-Determination (Jersey) Law 2016 exist as they do within the Mental Health Law so nobody is going to get poor treatment. They are going to get the same safeguards that currently exist within the law. The only change in this particular piece of legislation is the interim authorisation and how it will function. But, as I said, I have total faith in our health professionals and that includes in our private facilities such as care homes and the excellent service that they offer and the excellent way they are managed by our care home managers. I have no doubt that they are extremely capable of dealing with hopefully the very few instances when we are going to need to use an interim authorisation to detain people for their own well-being during the COVID. I stress this during the COVID-19 outbreak. I hope I have answered the questions. It is a complex piece of legislation, both the laws are, and they are difficult to get your head around. I hope that the Regulations are the right ones for the current time and, again, if I could ask for the *appel*.

The Bailiff:

Thank you, Senator. There are 2 Members who are seeking points of clarification. The first is Deputy Ward.

Deputy R.J. Ward:

It is a point of clarification on the reference to 107 people awaiting an assessment of some form. Where does that fit into the emergency legislation? Would it be possible that they may receive an emergency assessment, a short-term, interim emergency assessment which would then no longer be valid at the end of this period or would it continue?

[14:15]

That is a concern and I do not understand where that fits into this piece of legislation.

Senator S.W. Pallett:

I thank the Deputy for the question because it was a question that was brought up by the Scrutiny Panel. In essence it does not fit in with this legislation. The interim authorisations require some evidence of previous mental health issues or a mental health disorder because there is no assessment. It does not fit in and it is not meant to take the place of standard authorisations. It is an issue in itself, there are a series of standard authorisations of which currently there is 107 that we need to deal with as a matter of urgency. But until we can get our capacity and liberty assessors into care homes to deal with those assessments we cannot do that. In saying that, there may be one or 2 that may need to be dealt with through interim authorisations but it is not the intention of these particular Regulations to be used to circumvent standards authorisations. I hope that helps the Deputy.

The Bailiff:

The second point of clarification is from Deputy Labey.

Deputy R. Labey:

Is there a requirement that those who these Regulations recognise as care home managers have any professional qualifications?

Senator S.W. Pallett:

To be a care home manager there are various degrees of expertise or record or qualifications you would need to be a care home manager and they are registered under the Jersey Care Commission. Without saying that I am 100 per cent sure, because I would have to ask the Jersey Care Commission, I am sure that all care managers within homes would have to have the necessary qualifications to be able to manage a care home, otherwise they would not be permitted to do so by the Care Commission.

The Bailiff:

I note the Connétable of St. Brelade wishes to make a declaration.

Connétable M.K. Jackson of St. Brelade:

Yes, I would just like to declare that I Chair the Management Committee of Maison St. Brelade in the Parish and I would like to speak on the Third Reading, if I may.

The Bailiff:

Very well, the *appel* has been called for so I ask the Greffier to put up the link. The link is there so if Members will follow the link, please, in the usual way. The voting is now open.

.POUR: 39		CONTRE: 6		ABSTAIN: 0
Senator L.J. Farnham		Senator I.J. Gorst		
Senator S.C. Ferguson		Senator K.L. Moore		
Senator J.A.N. Le Fondré		Connétable of St. Brelade		
Senator T.A. Vallois		Deputy M.R. Higgins (H)		
Senator S.W. Pallett		Deputy S.M. Ahier (H)		
Senator S.Y. Mézec		Deputy R.J. Ward (H)		
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Connétable of St. Peter				
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 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 Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy J.H. Perchard (S)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

The Bailiff:

Does the Health and Social Security Scrutiny Panel wish to scrutinise this matter, Deputy Le Hegarat?

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

No, thank you, we have done extensive work over the last few days and we do not believe we can progress this any further, thank you.

The Bailiff:

Thank you very much, Deputy. Senator, how do you wish to deal with the Regulations in Second Reading then?

5.2 Senator S.W. Pallett:

There are only 2 Regulations, I would like to take them *en bloc*. Happy just to give a brief outline of really Regulation 1. I think there are various Articles within it that sets out the application process. Article 60A provides that the new provisions apply only when the Minister for Health and Social Services has declared an extraordinary period. Article 60B, restrictions to be imposed under Article 38 of the Law. Article 60C sets out the circumstances where a manager may apply for an interim authorisation. Article 60D provides that when an application is received the Minister must consult with the person's health and welfare attorney or guardian. Article 60E provides for authorising of the restriction and information that the authorisation must contain. Article 60F provides that the inserted Articles will expire, as I have previously stated, on 30th September 2020. Regulation 2 is merely the citation. Again, I maintain the Regulations and I am happy to take questions.

The Bailiff:

Are the Regulations in Second Reading seconded? [**Seconded**] The Attorney General wishes to speak.

5.2.1 The Attorney General:

I did not have a specific point to make in relation to the Regulations as drafted but I did wish to make an additional point on, in my view, the need for 2 additional provisions that can be brought, I would say, by the Minister in due course. The first relates to Article 55 of the Capacity and Self-Determination (Jersey) Law 2016, which provides the jurisdiction for a review by the Mental Health Tribunal of authorisations of significant deprivations of liberty. Currently, as drafted, these Regulations do not amend that Article, Article 55. That Article 55, when read with these Regulations could contain an element of ambiguity as to whether the review in Article 55 by the Mental Health Tribunal also applies to interim authorisations as set out in these Regulations. In particular Article 55 refers to reviews of standard authorisations, whereas this, of course, is not called a standard authorisation, it is called something different, an interim authorisation. While I am sure the Minister would not take any technical point on a request for a review of an interim authorisation on the basis that that was not specifically mentioned in Article 55, I think for clarity for the future it would be

preferable for Article 55 to be amended by an additional Regulation to make clear that the review of interim authorisations also applies under Article 55 so that there is a clear jurisdiction for these interim authorisations to be referred to the Mental Health Tribunal. If the Minister does that, I think it would also be preferable for an additional Amendment to be made to Article 51(1)(b) of the current Capacity and Self-Determination (Jersey) Law 2016 which again refers to standard authorisations. It is an Article that refers to mental health advocates who are lay advocates, but again I think it would be preferable, although it is dealt with in the comments or the response to the comments that have been circulated - I think it was earlier this morning, I have slightly lost track of when it was circulated - but I think it would be preferable again to amend Article 51(1)(b) to make clear that the right to have a mental health advocate also applies to these interim authorisations. As I say, I am not sure it is necessary to amend the Regulations as they stand but my advice to the Minister is that it would be preferable for him to bring a subsequent additional regulation just to make clear those 2 drafting points that I have mentioned.

5.2.2 Senator K.L. Moore:

It fills me with regret that we were not given, as an Assembly, the opportunity to move to the next item, particularly after hearing the Attorney General's advice to the Minister. It appears that this emergency legislation of course by its own nature has been brought in some haste. Officers on both sides, on the Scrutiny side as well as on the Government side, clearly appear to be under significant stress and they are doing their very best to deal with the circumstances. However, these are very sensitive and serious matters being brought before the Assembly and we really need to reassure ourselves that all stakeholders are comfortable and that the legislation is proportionate and correct. We must be mindful, as Members of the Assembly that we have the public's confidence in taking these very strident measures and changing the very structure and nature of our community. If I may just read to Members the email that I received over the lunchtime period I think it might assist them. So the person said: "I have just heard in the Assembly that our concerns expressed with several other rights and family organisations have been answered and that we are satisfied. This is not the case. We received the Government response at 8.30 a.m. today. We are currently agreeing a time to discuss it together. The initial feedback from the group is that it creates more concerns than it answers. One example is that it confirms that a care home manager will be able to make an assessment about someone's capacity. The concerns this raises are they do not have the specialist skills to do so. That same person could then decide to detain the person for up to 90 days and the justification for this is that capacity and liberty assessors cannot carry out assessments because of COVID-19. This does not appear to be correct. These assessors carry out the law and uphold human rights. Doctors, nurses, care home workers, *et cetera*, are still going to work. I cannot see how the same cannot be true of these assessors. The advice that we have taken suggests that this Proposition is not compliant with international human rights, the Children's Commissioner and our organisations request this is withdrawn for further scrutiny." These are very important points and I was fortunate this morning to have an opportunity to discuss with the Policy Officer, who I know well and trust implicitly, and that officer was able to provide me personally and I know another stakeholder with some reassurance this morning. The Minister accepted himself, and he acknowledged, that in hindsight they should have done more consultation. It is still within his gift to do that consultation before placing the Assembly in the position of proceeding with this emergency legislation under the circumstances. It will not surprise Members as I voted *contre* on the principles I will also be voting *contre* on the Articles. I would ask Members to give serious consideration to the way they vote also.

[14:30]

5.2.3 Deputy M.R. Higgins:

I am pleased to follow the previous speaker because I also voted *contre* on the principles of this legislation. As I will be stating later when we come, I think it is, to P.50 I have serious concerns about the haste in which we are passing legislation before it has been properly scrutinised. I would

also urge Members to vote against this piece of legislation. Let us scrutinise it, even if it is only a week. Yes, I am sure that people will argue a week is too long, however, we have a duty to the people that we are supposed to be protecting and do our job properly. Please, vote against this Proposition, let us bring it back, scrutinise it properly and then, if necessary, pass legislation at the next sitting.

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

I thought I would seek to speak after hearing from the Attorney General. I have made a careful note of all that he has said. I am sure my words will be echoed by my Assistant Minister who has very capably presented this piece of the legislation, that we would undertake as a matter of great urgency to investigate the suggested additional provisions that the Attorney General has said that need to be considered. I can understand the reason for that. This is new information to us. We have brought these Regulations forward on the advice of law draftsmen in the Attorney General's Department so nothing has been left out that we were previously advised should be included but, of course, if on further reflection we need to bring yet a further Amendment that will be done as a matter of urgency. It remains the case that the advice that we have received is that this provision and these proposed Regulations are compliant with human rights in this case of a public health emergency. It is important, I believe, that we should proceed and pass this legislation to allow these interim authorisations to proceed. A delay does mean that nothing could be done because of the restrictions on access to care homes. Members may be assured of our undertaking to take on board all that has been said about people's safeguards that are necessary and we will investigate the new information very carefully and bring forward any necessary further legislation.

Deputy G.P. Southern:

You [the Bailiff] said earlier that the Senator who brought the motion to move to the next item re - lodge that later in the debate I'm not sure whether it would also be appropriate to consider a reference back because we have certainly heard some reservations expressed and we would want the Minister to seek reassurance on those particular issues. I seek your advice as to whether I can try and say move on to the next item now or whether to go for a reference back but I'm not sure that we have got specific things that we need to know apart from the reservations already expressed today. So I seek your advice Sir.

The Bailiff:

In a sense it is a matter for you Deputy which you wish to ask for but as I mentioned before you are entitled to propose without notice a reference back, no not a reference back, I beg your pardon, a move to the next item. I must then consider whether it is appropriate to do so and, I have to say that, now more Members have spoken and there has been a vote on the principles I do not think it would be improper to propose a move to the next item if that is your wish, Of course it is a matter entirely for Members. There is no debate on the Proposition it is put immediately to the vote. So do you wish to make it?

Deputy G.P. Southern:

I do indeed Sir. I think we have had reservations expressed by one or more of the stakeholders in this particular aspect of life and I think those concerns have to be addressed.

The Bailiff:

Very well. Well the Standing Order provides that there shall be no debate and it must be out immediately to the vote. Therefore, I ask the Greffier to put a link in as to the vote. I remind Members that this is something that has a qualified voting, 20 Members must vote for it for matters to move to the next item. It is not a simple majority question. The voting is now open. If Members would now vote in the normal way please.

Connétable S.A. Le Sueur-Rennard of St. Saviour: Please Sir could you just re-iterate what am I actually voting for – to cancel this out?

The Bailiff:

No. You are voting, Connétable, whether we should stop debating this item now and move on to the next item on the Order Paper for debate. That does not negate any of the votes the States has taken on this matter thus far. They stand but it can then be brought back and the matter opened again in Second Reading on a future occasion.

Deputy Young did you have a question on procedure?

Deputy J.H. Young:

I think you have kind of half answered me. I wanted to know the effect of that move to the next item. Does that mean that we can effectively consider it at the next urgent sitting and deal with any additional Amendments as part of that process if the Minister is able to lodge that. Does that in effect have that outcome?

The Bailiff:

It would be open to the Minister to re-lodge in any normal way and again it can be taken by the Assembly at the next sitting it seems to me. The next routine sitting is 12th May.

Senator S.W. Pallett

I'm sorry to interject but the form that has come up that I have seen says *appel* 10 P.47 Regulations 1 and 2 does not mention anything about...

The Bailiff:

OK. Well I think ... just bear with me one moment. We will cancel this vote and we will put another link onto the chat if Members will bear with us for a moment.

Deputy R.J. Ward: Sir, may I ask a quick question about this?

The Bailiff:

If it is a procedural question then I can allow it.

Deputy R.J. Ward: If this Assembly was to sit again before the next sitting scheduled on the 12th May, and given the circumstances we are in with COVID this is likely, could it be brought back early with any Amendments?

The Bailiff:

Yes in my view it could be. The Assembly could be asked to deal with it at any next sitting of the Assembly other than of course the sitting on Liberation Day.

Deputy R.J. Ward: Thank you, Sir.

The Bailiff:

The new vote is now up and would Members please register their vote in the normal way.

POUR: 26		CONTRE: 17		ABSTAIN: 0
Senator S.C. Ferguson		Senator L.J. Farnham		
Senator K.L. Moore		Senator J.A.N. Le Fondré		
Connétable of St. Helier		Senator S.W. Pallett		
Connétable of St. Lawrence		Senator S.Y. Mézec		
Connétable of St. Saviour		Connétable of St. Clement		

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

The Bailiff:

Accordingly the Assembly is moving to the next item.

6. Draft COVID-19 Restricted Trading (Jersey) Regulations (P.48/2020)

The Bailiff:

The next item is the Draft COVID-19 Restricted Trading (Jersey) Regulations, P.48, lodged by the Minister for Health and Social Services and I ask the Greffier to read the citation.

The Deputy Greffier of the States:

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

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

These Regulations are made under the COVID-19 (Enabling Provisions) (Jersey) Law 2020 and are intended to underpin the current arrangements for the closure of non-essential business premises during the pandemic period. They have been brought forward because it remains the view of the Medical Officer of Health that the risk to public health is still so severe that the controls proposed in these Regulations are necessary and proportionate. What guides all the limitations on civil society in this period is that people should not gather together in a manner which might cause the spread of coronavirus and to that end some premises have been asked to stop trading. Compliance with that request, I am pleased to say, has been high and there seems to be a general awareness of the measures that are being taken are proportionate and necessary. However, we and no other jurisdiction has a clear view as to how the pandemic will develop over the next few months and it may be that restrictions and behaviour change will develop as time goes on. Also the currently high levels of compliance from business owners may not be maintained if some degree of restricted trading is not introduced to protect public health throughout the coming weeks or months. To address this and to

provide some legal certainty for business owners, these Regulations would provide a framework to control the operation of businesses that provide goods or services to the public. The specific limitation on business operations will be found in Orders made under the Regulations. The use of Orders will allow the restrictions to be modified in a timely way as we move through the pandemic period and back towards normality. I am required to consult with the Minister for Economic Development, Tourism, Sport and Culture before making Orders and their duration is limited to 14 days. It may be that after 14 days the same Order is remade, but as in the case of the Covid-19 (Screening, Assessment and Isolation)(Jersey)Regulations 2020 Ministers felt that it was important to ensure that restrictions on civil liberties could not continue without deliberate and positive action, and that the default should be that the restrictions fall away if no such action is taken. There are 2 offences that can be committed. Firstly, either opening a business to the public where it is required to be closed, or providing some goods or services that are restricted. The restriction on some businesses carrying out certain activities but not others is intended to allow safe activities such as collecting pre-prepared orders of goods or selling takeaway food to continue, even when the businesses providing those facilities are restricted in other ways. Secondly, it will be an offence to operate a business without providing for effective social distancing for customers and details of what social distancing means is left to an Order. This allows restrictions to reflect developing medical advice. The penalty for the offences under the Regulations is an unlimited fine. This does not mean that massive fines will be applied for infractions, as the quantum of the fine is up to the court to decide, but it does allow serious infractions to be dealt with effectively. The risk is that a large business could open in contravention of the restrictions and make sufficient profits that a £10,000 level 3 fine might not make the activity unprofitable. The fine is therefore in the hands of the court, who will hear arguments from the Attorney General and the defence on the matter as normal. This is the same approach taken in other legislation, for example Sunday trading legislation, which has operated from 2010 for the same reasons. The Regulations do not make a specific provision for the protection of staff, as such protections already exist in the Health and Safety at Work (Jersey) Law 1989. Importantly, that Law requires employers to take all reasonably practicable steps to maintain the health and safety of their workers and customers, and this requirement applies equally to the risk of transmission of COVID-19. Different arrangements may need to be made in different places based on the layout of a premises, its levels of staffing, *et cetera*.

[14:45]

But COVID-19 being a serious medical risk to health, the expectations on businesses to provide protection for their employees are high. I propose the principles and I am happy to answer any questions.

The Bailiff:

Thank you, Minister. Are the principles seconded? [**Seconded**] Does any Member wish to speak on the principles? If no Member wishes to speak on the principles then I would ask the Greffier to put the link to the vote. Very well, the vote is now up on the chat and Members will vote in the normal way. The voting is now open.

POUR: 43		CONTRE: 0		ABSTAIN: 0
Senator I.J. Gorst				
Senator L.J. Farnham				
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. Saviour				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Connétable of St. Peter				
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 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 Trinity				
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 Bailiff: Does the Health and Social Security Scrutiny Panel wish to scrutinise the matter, Deputy Le Hegarat?

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

We had a briefing from the policy staff in relation to this legislation, alongside the Economic and International Affairs Scrutiny Panel as well and the Health and Social Security Panel is content, thank you.

The Bailiff:

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

6.2 The Deputy of St. Ouen:

I believe they are relatively simple, as I have described in my first speech. I would like to propose them *en bloc*. I can answer any questions on specific provisions.

The Bailiff:

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

6.2.1 Deputy K.F. Morel of St. Lawrence (Chair, Economic and International Affairs Scrutiny Panel):

I want to partly correct the Chair of the Health and Social Security Panel because quite strangely the Economic and International Affairs Scrutiny Panel was not involved in the scrutiny of these Regulations with regard to business premises. This I believe is partly because of the very late lodging, but I will maintain my complaint with regard to that to the next item, which we were involved in. I will go with the Health and Social Security Scrutiny Panel with voting *pour* on this but there is a long tale of lodging things far too late for effective scrutiny involved with this.

6.2.2 Deputy R.J. Ward:

I wanted to make a question regarding Regulation 4 to have some clarity. I thought I may have had to speak in the principles, but I think it is in Regulation 4. There is a reference to the Health and Safety at Work (Jersey) Law 1989 where it is the employers' responsibility to take reasonable practical steps to maintain health and safety of their workers, and this requirement applies equally to the risk of transmission of COVID-19, and I wanted to emphasise that with regards to Regulation 4, because if read without that in mind it can sound like Regulation 4 makes it an offence to not have distancing on the business premises for those using the business premise as customers but it does not seem to refer to workers being kept safe. There is an issue regarding workers loading and unloading things, for example, where that may be very difficult, but I think it should be emphasised by the Minister that it is very important to take every possible measure to keep that distancing and to keep workers safe in their workplace after these Regulations, if they are passed. I wanted to emphasise that point and I would like the Minister, if he possibly could, to speak on that point, to give his opinion.

6.2.3 Senator T.A. Vallois:

I would like to raise a point with Article 2, paragraph (4) and Article 3, paragraph (3). I have raised this previously. I would like to understand the governance around this, if the Minister would be willing to explain how the consultation with the Minister for Economic Development, Tourism, Sport and Culture would work, whether comments made by the Minister would be openly and transparently shared with the public or with fellow States Members?

The Bailiff:

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

6.2.4 The Deputy of St. Ouen:

I am sorry, Sir. I am back with you. I seem to have double-clicked and turned myself off again. Firstly, in response to Deputy Morel's comments, which surprised me a little because it was my understanding that the Economic and International Affairs Scrutiny Panel was consulted and indeed that is referred to in the comments paper by the Health and Social Security Panel at some length with a specific question they had raised, but if that is not the case I am sorry about that. Deputy Ward is correct in that Regulation 4 does not cover employees engaged in business, and that is because there is other protection in other legislation governing the health and safety at work of employees and it was thought that it would confuse too much to have identical protections set out in 2 sets of legislation. The health and safety legislation remains enforceable and employers must take sufficient steps to protect their employees from the risk of infection and all health risks, but of course by Order

I as Minister after consultation with the Minister for Economic Development, Tourism, Sport and Culture can provide by Order that social distancing measures must be undertaken and perhaps a methodology on how that is achieved should be submitted and consulted upon with employees before any Order might be made permitting businesses to open. Clearly, the whole ethos is to prevent the spread of infection, so we will be looking to how it is safe to open businesses and that is safe not just for customers but for their employees. Senator Vallois was asking about the governance over the consultation. I anticipate that that consultation would be by means of a written record. Indeed, I have already written to the Medical Officer of Health, who has written back to me to say that he considers that these Regulations are necessary and proportionate. Before making Orders, yes, I expect that I and officers will have discussions with the Minister and members of his Department, but we will reflect that formally in written correspondence. We will also share that with the Scrutiny Panel, one or both of them, probably both of them, as there are 2 Ministers involved, and such correspondence would be subject to the normal provisions around disclosure, so there will be governance of exactly how this is done. If I may, may I propose the Articles in Second Reading?

The Bailiff:

Yes, indeed, Minister. There are 2 Members who have asked for points of clarification. The first is Deputy Morel.

Deputy K.F. Morel:

The clarification was to say if the Minister had read the comments paper carefully it talks about the Education and Home Affairs Scrutiny Panel, not the Economic and International Affairs Panel.

Deputy K.G. Pamplin:

Sorry, Sir, yes, I just caught the tail wind of the previous speaker. I think he was saying the same thing as me. I have our Health and Social Security Scrutiny Panel comment paper in front of me. We refer to our colleagues, the E.H.A. (Education and Home Affairs) Panel, that obviously being the Education and Home Affairs Scrutiny Panel who did co-opt on the scrutinising of this, so sorry if that is what the previous speaker said. I did not quite hear it, but that is all I need to say.

The Bailiff:

Minister, do you wish to make any response to that?

The Deputy of St. Ouen:

Simply to apologise to Deputy Morel, Sir. Yes, I did not pick up exactly what the E.H.A. Scrutiny Panel meant and it has changed since I was sitting in Scrutiny, so I do apologise to all concerned. We are moving rapidly and I did not pick up on the distinction.

The Bailiff:

Thank you very much, Minister. Very well. You have asked for a vote on the Second Reading and accordingly I ask the Greffier to put up the voting link. The link is there and I ask Members to vote in the normal way. The vote is now open.

POUR: 45		CONTRE: 0		ABSTAIN: 0
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator S.C. Ferguson				
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. Saviour				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Connétable of St. Peter				
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 of St. Peter				
Deputy of Trinity				
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 Bailiff: Do you propose them in Third Reading, Minister?

6.3 The Deputy of St. Ouen:

Yes, I do, and may I thank the 2 Scrutiny Panels involved for their work on this and for the officers who have prepared these very necessary Regulations which I would remind the Assembly are due to expire on 30th September unless renewed shortly before? Thank you.

The Bailiff:

Thank you very much indeed. Are they seconded in Third Reading? **[Seconded]** Thank you. Does any Member wish to speak in Third Reading? If no Member wishes to speak in Third Reading then

that debate is closed and I ask the Greffier to put up the link for voting. The link is now in the chat line so if Members could vote accordingly.

[15:00]

POUR: 45		CONTRE: 0		ABSTAIN: 0
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator S.C. Ferguson				
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. Saviour				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Connétable of St. Peter				
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 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 Trinity				
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 Bailiff:

Of course Members who have not been able to vote through the link can indicate their vote for the purposes of Hansarding.

7. Draft COVID-19 (Construction Work) (Jersey) Regulations 202- (P.49/2020)

The Bailiff:

Very well, the next item is the Draft COVID-19 (Construction Work) (Jersey) Regulations 202- lodged by the Minister for Health and Social Services and I ask the Greffier to read the citation.

The Deputy Greffier of the States:

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

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

These draft Construction at Work Regulations will work to support Jersey’s response to COVID-19 and our economic recovery after the pandemic. The Regulations set out provisions and safeguards that by now will be familiar to the Assembly and they include a 30th September expiry date and an Order making power which I may only enact if advised by the Medical Officer of Health that the risk to public health is such that it is necessary and proportionate to do so. In this case, as the Order provides for construction work to be prohibited or restricted I must before making the Order again consult the Minister for Economic Development, Tourism, Sport and Culture as he has oversight of the construction industry. The Order may end on the same day as the Restricted Movement Order which has been made under the Screening Assessments and Isolation Regulations or on a day which is no more than 14 days later after the making of the Order. The Regulations also provide that an Order cannot apply to those undertaking do-it-yourself work at home or to single contractors working in an unoccupied site, because those activities do not present a COVID-19 risk, but the Regulations can apply to all other types of construction or just some types of construction where certain conditions are met. Conditions could, for example, include construction work that complies with relevant guidance, such as that issued by the Medical Officer of Health or in line with the U.K.’s Construction Leadership Council. It could include work on sites of a certain size or with certain characteristics, such as a requirement that 2 contractors only should be on an unoccupied site, or it could include work that could only be undertaken after a permit is granted. Some will be familiar with the construction industry permit scheme that has been introduced, albeit at this point in time there are no statutory powers to enforce that scheme. To date the scheme has relied on the goodwill of the construction industry who when told to cease work in accordance with public health advice did so. Already under the non-statutory scheme a number of construction sites have been told that they may continue to operate because they are delivering critical infrastructure or other essential projects such as work on the hospital or sea defences or accommodation for health workers. If we are to strike a balance between allowing more construction work to continue while also working to reduce the spread of COVID-19 it is important we have a proper statutory framework as provided in these Regulations. We need to regularise the very unusual position of having a non-statutory scheme which permits people to undertake an activity they can already lawfully do. We need to ensure that the permit scheme can be dialled up or down as required and most importantly we need to be able to impose permit conditions requiring social distancing to be practised on all operational sites. The Economic and International Affairs Scrutiny Panel alongside members of the Health and Social Security Panel I am advised have reviewed the draft legislation. I want to thank them for doing so

in what I acknowledge has been a very tight deadline and I do accept that where circumstances force us to work at speed it is difficult, but we have had excellent responses from the 2 Scrutiny Panels. Members of Panels collectively raised concerns about protection for workers on those sites. In particular, they queried whether the Regulations could directly impose a condition on a permit stipulating that employers cannot require their employees to work on sites during the period of COVID-19. The advice to me is that we could not include that within these present Regulations as it would conflict or interfere with our present employment legislation. However we can require that social distancing must be adhered to and we can enforce that requirement. We can ensure that before any permit is issued the contractor submits method statements and risk assessments which would clearly set out how the COVID risk would be mitigated, and we can withdraw permits where those measures are not delivered in full and we can ensure that everyone working on a site knows how to and has a means of reporting social distancing breaches. The permit scheme allows construction to continue subject to conditions during the COVID period, but I must emphasise it does not permit employers or contractors to disregard legal obligations to protect the health and safety of their employees. Any contractor should expect their permit to be removed in the event of breaches and any employer would need to proceed with caution if they were to consider requiring an employee to work if that employee is from a vulnerable group or lives with someone from a vulnerable group, or is required to self-isolate, or has high levels of anxiety about COVID transmission, or has any legitimate reason to believe full practice puts them at risk. The Regulations provide that it will be an offence to undertake restrictive construction work, that is work that falls outside that permitted under the Order or is in breach of any condition that is imposed, and that includes social distancing conditions. It will also be an offence to allow another person to undertake restricted work or to fail to prevent another person from doing so. Enforcement will be undertaken by police officers who will see as they travel around the Island contractors who might be operating in contravention of the Order. It will also be undertaken by Building Control Officers who in the course of their daily work will be visiting sites and also undertaken where required as in the normal course of their work by Health and Safety Inspectors. The fine associated with committing an offence is unlimited on the basis that the £10,000 level 3 fine as a maximum is unlikely to deter those delivering high value construction projects, but that fine does not apply to householders as expressly stated in the Regulations. In the event that restricted construction takes place in a person's home it will be the contractor who has committed the offence. It is also an offence liable to a fine and/or up to 2 years in prison for a person who knowingly gives false or misleading information in connection with an application for a permit. This is an extreme measure that is only provided in the unlikely event that a contractor chooses to disregard the moral imperative placed on all of us to protect ourselves and each other. It should also be noted that the Regulations do not allow fees to be charged for a permit. We are not giving people permission to build. This is provided in the normal course by planning and building control processes and the fees payable under those Regulations. Under these Regulations we instead are permitting people to continue to build during the COVID period in a safe way. As with all our emergency legislation, we are working to bring forward measures that are proportionate, are time limited and which strike the balance between protecting Islanders in the short term by containing the spread of COVID and in the medium to longer term by supporting our economy. Therefore, I propose the principles.

The Bailiff:

Very well. Are the principles seconded? **[Seconded]** I have 2 Members wishing to make a declaration of interest. The first is Senator Vallois.

Senator T.A. Vallois:

I would like to declare an interest, as a family member works for construction.

The Bailiff:

Very well, and Deputy Alves?

Deputy C.S. Alves of St. Helier:

Yes, I have the same situation as Senator Vallois, thank you.

The Bailiff:

In my view that falls within the Standing Order that provides that that is an interest shared with any number of people within the Island and therefore thank you for that declaration.

7.1.1 The Connétable of St. Brelade:

I have 2 questions, if I may, of the Minister. One, is he satisfied there is sufficient manpower within the building inspectorate and the police to adequately police the whole situation and, secondly, will he be putting out this message in other languages than English? Because many building site workers of course are not fluent in English.

7.1.2 Deputy K.F. Morel:

As Chair of the Panel which undertook the scrutiny of this, I will speak now rather than in the Regulations but there is a lot to say. It is principally things perhaps people have heard already and, to be honest, the Minister also referred to them as well. But, first of all, it is important to realise these Regulations regularise an irregular situation and that was a situation whereby the construction sites around the Island had been instructed by the Government to close down, yet there was no legal basis for that instruction and there was no legal basis for the permit scheme that the Government created to enable them to reopen. As we stand now with these Regulations not passed, there are several construction sites around the Island operating with a permit that has no legal basis. Many Members will recall a week or 2 ago I was asking the Minister for Infrastructure the legal basis of this permit scheme and failed to receive an answer. I had asked the Minister for Economic Development, Tourism, Sport and Culture for the legal basis of this permit scheme through my Scrutiny Panel and had failed to receive an answer. In fact the only answer that we received was when these draft Regulations were presented to us as a Scrutiny Panel; that was the first time we received an answer to the question of: what is the legal basis for the construction site permit scheme? I would like to put on record my extreme disappointment with the Government and all the Ministers concerned that such a simple question could not be answered or was wilfully not answered by the Government because they were, essentially, trying to hide the fact that they had created a scheme without a legal basis. That is the first point and I really want the States Assembly to take that on board but I have not, sadly, finished. That then brings me on to the late lodging. These Regulations were lodged on Friday and we, as a Panel, had our briefing, our one briefing, where neither Minister, neither the Minister for Economic Development, Tourism, Sport and Culture nor the Minister for Health and Social Services were present, we had our brief one hour briefing on Friday. Obviously the weekend stood between that and then there is Monday and then we are into debate on Tuesday. That is not, under any circumstances, sufficient for proper and full scrutiny of any Regulations. We have seen that in the previous debates on P.46 and P.47.

[15:15]

I appreciate hugely the work that the Health and Social Services Panel did but I think we see with the way P.47 developed the debate in that that sufficient time for scrutiny was not provided. I call on, again, the Chair of P.P.C. (the Privileges and Procedures Committee) to please look to change the Standing Orders that require a minimum amount of time which must be at least 3 working days for any emergency legislation to be presented before the States. It is not just a matter for States Members, the speed in which this is happening denies the public the opportunity to see themselves what Regulations are being debated before the States and to assess the Propositions themselves. Denying the public that is denying them an important element of their democratic rights and I believe it is an element which no level of emergency should tread on. I would like that to also be noted by

the States Assembly. With regard to the Proposition before us specifically, as I mentioned, we have had no opportunity to speak with either Minister with regard to these, no formal opportunity. I agree that I do personally pick up the phone to Ministers and speak to them but we have no formal opportunity through the Scrutiny Panel. As a Panel, in the briefing, as we went through the briefing, we do have serious concerns but those concerns do not reside specifically with the Regulations, they reside with the implementation and the operation of the Regulations. As were reflected by the Constable of St. Brelade, our concerns relate to the Minister for Health and Social Services' ability to manage the enforcement of these Regulations. He has said that the police will be the primary - and this was told to us - method of enforcement. That strikes us as a difficult situation to put the police in because the police, we know, already have many things to be looking at, many elements of all this to be looking towards, as well as dealing with issues in people's homes, *et cetera*; the police have many things to do. They, in our opinion, do not need to be the primary means of enforcement for these Regulations. Behind that is Building Controls who have, of course, their ordinary work. The Building Control themselves, as far as I understand it, are not people necessarily trained in health and safety or trained in matters specific to health on building sites. As I understand Building Controls, it is more about the actual technical, their skills tend to lie in the technical specifications of the sites, rather than the health of the workers on those sites. This briefing was last Friday, in the briefing we received evidence that one developer was already telling their staff that they would be able to work on Wednesday. I found and I believe the Panel found this quite astounding, given that the Regulations had not even passed by the Assembly and would not be debated until Tuesday at the earliest. That gave rise to the question of, how exactly did this developer come to the conclusion that come Wednesday they would be able to resume work on site? We are here today on Wednesday and these Regulations have not yet been passed, so I hope that that developer is not currently working on their site. It did give us the question as to, what is the motivation behind these Regulations and why were developers being led to believe that come Wednesday they would all of sudden be able to open their building sites? As well as the actual policing of the sites themselves, the Panel has real concerns about the effective policing of workers' welfare. We really do not understand how the Minister for Health and Social Services, among the many, many other things that this health crisis is causing him to have to take on board, how he will effectively police workers' health. We have not had the opportunity to ask him but there you go, this is the situation we find ourselves in. We would like to know more about how workers will be able to bring to the Minister for Health and Social Services' attention that they believe they are being asked to work in an unsafe manner and if they were to do that the site would be closed down, so obviously they then lose their livelihood. If the Minister could help us understand how workers will be incentivised to put their own health first and the health of their colleagues first over the pay packet; that would be very useful because we do not see that situation in play at the moment. Having said all that and obviously after this, normally the Chair of the Panel is asked whether they want to call it in and we were seriously considering calling in these Regulations because, as I have just outlined, scrutiny of them has not been sufficient, in our view, but that is, as I said, on the operational side, rather than a legal side. We have been tempted to call them in but after discussion and after consideration we have decided that workers' need for a livelihood at this time, because obviously all these workers are currently not earning a living, that on balance their need for a livelihood is so important that delaying this for one or 2 weeks would deprive them of that livelihood and we therefore feel that we will not be calling this in because we do not want to delay people of earning a living. However, we believe still that there is potential for Amendments to these Regulations and we will be inviting the Minister for Health and Social Services to discuss our concerns and possible Amendments with him. You will note in the comments paper that the Scrutiny Panel has provided we have not said that we urge the Assembly to support these Regulations. Because we have concerns we believe it is up to individual Members to decide that for themselves. I personally will be supporting these Regulations and will vote for them but I ask Members to take that upon themselves to decide whether they believe an appropriate balance has

been struck or is capable of being struck in the operation of these Regulations. As I said, the law itself probably does work; it is the implementation of the law that is the problem with this.

7.1.3 Deputy J.H. Young:

I think I am pleased to follow the previous speaker because I think I am able to fill some of the gaps and explain to him that this issue has presented a very significant challenge for Government and to get to grips with because, as it is, it cuts across several different Ministries and several different Departments. But straight at the outset I should say that since the lockdown occurred the numbers of phone calls and issues that have arisen through to the Planning team and the Building Control team have been very high about construction site issues. I think we do have to recognise that even though it turns out we did not have a statutory power, and certainly I was not aware of that but, nonetheless, we have had co-operation for the industry and I think that has to be recognised. Having said that, there is not any question here that there are also very substantial commercial interests at stake, not just people's livelihoods but developments start at the top, they go down to the contractor, then go down to the subcontractor and the employees and, ultimately, the clients. There is that chain of value and I think, therefore, it is important that we have a statutory framework, one which is robust enough to take us through this awful crisis, this public health crisis. I am very pleased that the Minister has been able to bring forward these rules. One of the expertise, I think Deputy Morel there referred to the fact what Building Control officers do not have, it is not their prime skill but of course it is part of their job to visit building sites every day and they have been able to do that so far but that has been clearly on the basis of where it is safe for them to do so. Where that was not the case, those visits have not taken place and I think that has been a major contribution to keep things going were they essential and to a degree. But, nonetheless, they are the eyes and ears, if you like, of what is going on on site; they have got that information. I am pleased to say that speaking to the Acting Director General of G.H.E. (Growth, Housing and Environment), where that Department fits under and also the Environmental Health Officers, they are definitely expert on the issue of health advice. My understanding is that there is going to be some redeployment there to enable strengthening that team to the point of support to those decisions and I understand as well from Deputy Martin the Health and Safety Officers as well. I think we have got a number of active bodies in the States that where it is agreed that work can go ahead because it is essential or it is licenced or safe and what we have now got is rules to help us do that, that there is that enforcement. I think I absolutely agree with Deputy Morel, that is really important. I think I would also raise another question, which I think I am certainly going to raise when it comes to the Article. The prime purpose of these Regulations has to be protect, prevention and ensuring the health of our community during this crisis. There I am slightly troubled about bringing in, in those issues, the involvement of the economic affairs into the system here. I hope the Minister in the way this is administered, because he is going to be able to make those decisions, they have to reside somewhere and I am content for that to happen but I would be very troubled if the economic voice, as it were, is ever allowed to override safety decisions. There are a number of issues that fall between these, some issues are clear cut but I put this out there and maybe it might be appropriate for the Attorney General to give me an answer. Of the issues that have come to me about individual sites and come to the Planning Officers or Building officers about safety of health, they also raise the issue of excess construction noise and dust and disruption. In normal times these issues are generally pretty manageable but in times where everybody is locked in their homes for 22 hours out of 24, I think for some people then the existence of noisy building activities immediately adjacent to their premises can cause severe stress and that is something that I think we need to manage. I see in the Regulations that the Minister is able to set conditions. Normally on these type of matters the Environmental Health team help us by setting down conditions on things like noise, hours of work, dust and so on; they put limits on the volume of noise. Some activities like concrete breaking, which is horrendous, they are subject to some restriction. I very much hope in the way the Regulation is implemented, that does not get lost sight of because if it is an open site away from immediate premises that is not so much of a problem. But there are situations where sometimes

these pressures where their buildings are very close and large numbers of people living very close; that is an issue. I am sorry to complicate that but, nonetheless, I think with pragmatic and practicalities and the Minister and the way he operates that, focusing on the health needs of our community, I think that is really important and I am delighted to see that we have now got some rules. I am sure there may need to be changes downstream but, as we have found in other pieces of emergency legislation, we have got the opportunity to amend as we see snags that are not quite working right. I very much support and I would ask Members please to go with this and allow us to put in place this framework between our various Ministries.

7.1.4 Deputy M. Tadier:

I am, hopefully, going to follow in many of the same circumspect remarks. I think the Minister made some very circumspect and wise remarks because these are complicated issues. I am glad he touched on one issue, which has affected me insofar as I have had members of the public contact me about living next door and having to work next door now to a building site. Certainly, for the first week or 2 when we were in lockdown, if you like, but the building sites were not, it is the case of course that a lot of people, not all, but many people do work 9.00 a.m. to 5.00 p.m. or 8.00 a.m. until 4.00 p.m. or 8.00 a.m. until 6.00 p.m. and so they do not know that they are living next to a building site, apart from perhaps a bit of scaffolding and a bit of encroachment here and there. But when they are trying to do their work from home, like we are, over Skype, over Zoom or Teams, it becomes a real stress to their situation.

[15:30]

It is really damaging to their mental health as well to have to put up with that noise and, potentially, dust and all those kind of things when they are trying to get on with their jobs and their lives from home; that is one consideration that needs to be given. I do not know if there is an easy solution to that but I think these situations are not always symmetrical because it seems that businesses are normally more powerful than individual voices, so that does need monitoring as we go along. I did also want to quote from a builder, someone who is a director of a building site in Jersey, a large building site but I will keep them anonymous for now. This was very much early on in the days, so this is back already in March, this is pre-lockdown, if you like. They said that they made the decision on 16th March to close their building site completely and it took them a week to do that, so they had full closure on 23rd March. This director said, I will quote it verbatim, he said: “Respecting social distancing is almost impossible on a construction site. Changing rooms and canteens are made for 12 people and measure 15 metres squared without furniture. It worries me that construction people are being asked to keep on working, especially as it will put an additional pressure on health workers and health services, which are already on their knees.” This is the director of a company saying that, it is not the workers. What I am concerned about and I know this is, of course, all about balance and trying to keep the economy going, so this is quite right that we need to pass something today that deals with some of these thorny issues but the workers themselves are not going to be well placed to raise complaints because that is not the way it works. Again, we know there is an asymmetric relationship between workers and bosses but also nobody wants to be a snitch, nobody wants to grass up their employer, so to speak and that might be what they feel they would be doing if they were to raise concerns. Whistle-blowing I think has been raised certainly in the chat here, is not necessarily going to happen. I am concerned about the type of policing that we have, which in the Jersey context usually tends to be reactive, rather than proactive. I do not think proactive policing is going to necessarily be possible. We know that the Environment Department is already understaffed in normal times and to add something potentially to their workload would not be feasible, I do not think. We are being told that it is going to be policed by the States of Jersey Police. I do not see that happening, if I am honest, and I do not necessarily think the police have the time, with everything else that they are supposed to be doing, policing the beaches, the parks, the supermarkets and now construction sites. I really think, like the director of that company I quoted, it is probably really

difficult for sites to social distance, for them to keep 2 metres. There must be certain types of work that require 2 workmen or 2 workwomen to be in close proximity when it is particularly delicate work or whatever; you can imagine what that might be. I think we just have to accept maybe that you cannot always be legalistic about this. This is the other problem, is that it is not just people on sites who are raising concerns. We see people who are understandably under a lot of mental pressure and emotional pressure and it has been compared to the Occupation, has it not, that we are all living in kind of Occupation times? We have not quite got curfews, it is not exactly the same. An element of that is that we are seeing lots of people snitching and I am sure they are doing it for the right reasons but people are denouncing their neighbours and workers to the authorities and it is kind of a really unfortunate situation I think we find ourselves in. I think within this legislation we have to accept it is always going to be imperfect, that we expect people to do their best and to be sensible and that you might not always be able to keep your 2 metres distance but so long as you are taking sensible precautions for your own health that is good. But I am not convinced that workers' rights have been considered fully in all this. Perhaps one question I would ask in finishing is to ask the Minister what consultations there have been with trade unions in all this? Are they satisfied that health and safety provisions are being respected and will be implemented correctly on these sites?

7.1.5 Deputy C.S. Alves:

I would just like to take this opportunity to thank the Economic and International Affairs Panel for allowing me to join them during the briefing and to have some input into the comments that they have produced. I share many of the concerns that have been outlined. One of my real concerns is with the site's operating procedures. During the briefing that we had we were explicitly told that the issuing of permits would not override any health advice that has been given, for example, that social distancing would have to be adhered to. However, in the site's operating procedures there is a sentence here which states: "Where face to face working is essential to carry out a task when working within 2 metres, it is important to ensure to keep this to 15 minutes or less where possible." One of my queries is, will there be any P.P.E. (personal protective equipment) offered to those who are working on the construction sites and might find themselves in a situation where they will be working face to face and not be able to observe that 2 metre rule? Because it seems that the site procedures, which has been put forward by the Construction Leadership Council, is a little bit contradictory on this point. I would also like to request, and I am not sure whether this is under the remit of the Minister for Health and Social Services, but that any permits that are issued, can they be made publicly available somewhere and any additional documents also relating to the permits? This is in order to ensure that the public are fully informed of the operating procedures for those sites that have been granted the permits. I will be voting in favour of this but I do share the concerns that have been brought up already. Also, I also share the concerns for those workers that have family members who are at high risk. It has been mentioned whistle-blowing, *et cetera*, I am concerned that some of these workers will not feel comfortable saying to their employers that they have somebody who is high risk at home and, therefore, they should not be working. This is also an issue that I have raised with the Minister for Social Security privately, as I do not think this is completely communicated well at the moment as to whether these individuals who are high risk or have family members who are high risk can be signed off, for example, and receive sick benefit because they would be working otherwise but obviously should not be under the current circumstances. This also raises the issue of those without the 5 years and who would, therefore, not qualify for any income support. Obviously at the moment the construction industry do not qualify for the co-payment that is currently in place and so, again, I can see there being some reluctance from workers. Obviously I would recommend them being part of a union but I do think that we need to be very careful with this and ensure that workers are being looked after and that all the health advice is being adhered to.

7.1.6 The Attorney General:

It was to respond to a point that was made by the Minister for the Environment in his speech concerning noise in times when people are mainly working from home. Under the Statutory Nuisances (Jersey) Law 1999 the Minister for the Environment has a statutory duty to investigate complaints of nuisance and that would include complaints of noise. There is specific jurisdiction under Article 2 of that Law in relation to noise that is prejudicial to health or a nuisance. Nuisance is not defined in the law, prejudicial to health obviously would require some sort of medical evidence to satisfy that there was a health risk. But obviously in relation to what is a nuisance, that is then a question of fact and the Minister would need to satisfy himself that there was sufficient grounds for the noise constituting a nuisance in fact. If he is satisfied that there is a sufficient complaint of nuisance, he then has powers to issue an abatement notice requiring the relevant person to desist from making that noise in this case and then there is a process under the law for challenging that abatement notice. I hope that helps the Minister with his question.

Deputy J.A. Martin:

I was prompted to ...

The Bailiff:

I am sorry, can I just pause a moment? I am trying to be a little bit flexible. Deputy Young has indicated a point of clarification. I am assuming that is from the Attorney General, is it, Deputy?

Deputy J.H. Young:

Yes, please. It may be a matter that we prefer to deal with when we get to the Regulations but the key point is whether or not the fact that we have now Regulations for COVID, where the normal situation is not applying, whether that would be a matter that in determining what is or not a nuisance or not from noise, can take that into account that we are in an unusual situation of lockdown due to a COVID risk. Is that a factor that could be brought into that in that judgment?

The Attorney General:

That is, ultimately, a question for the court. The Assembly has not amended the Statutory Nuisance (Jersey) Regulations 2017 to change what is prejudicial to health in the context of COVID-19. As I say, there is no definition of what constitutes a nuisance in the Statutory Nuisances (Jersey) Law 1999 at all. Ultimately, if the point had to be determined by a court, it would be a factor that the court would have to decide itself as to whether what was meant by nuisance should be looked at in the context of the relevant circumstances and those circumstances are obviously where people are having to spend most of their time at home due to the lockdown.

Deputy J.H. Young:

Thank you, Sir, thank you.

Deputy J.A. Martin:

Is it me now, Sir? Sir?

The Bailiff:

Sorry, I was on mute for a moment.

Deputy J.A. Martin:

Sorry, I thought I had gone deaf, Sir.

The Bailiff:

No.

Deputy J.A. Martin:

Yes, you had called me and then we had a nice interruption by Deputy Young. Yes, sorry, I ...

The Bailiff:

No, there is also a further question from Deputy Tadier for the Attorney General, so Deputy Tadier.

Deputy M. Tadier:

Yes, sorry, Deputy Martin, we will get to you; I am sorry to interrupt. It is just to ask the Attorney General whether there is any mechanism and legal basis for the Minister, so presumably the Minister for the Environment, to make restrictions on the times that construction sites can open and can work, and this is particularly being mindful of the COVID situation where people are spending more time at home. Could the Minister, for example, say your site can be open from 8.00 a.m. until 12.00 p.m. or from 12.00 p.m. until 4.00 p.m. so that residents could be informed of that?

The Attorney General:

I think, looking at the Regulations that we are considering, the COVID Construction Regulations, in terms of the conditions that can be imposed on contractors, they looked as though they were a fairly comprehensive set of conditions. I have not obviously had notice of the question but, in principle, in terms of what may be included in a Restriction Order, in paragraphs 3(8), 3(9) and 3(10) of these Regulations, they do look a pretty comprehensive set of conditions.

[15:45]

In principle, it looks as though that it would be open to the Minister to impose some conditions around the time that the construction work is to be carried out.

The Bailiff:

Very well, thank you, Mr. Attorney. Deputy Martin, the floor, metaphorically speaking, is now yours.

7.1.7 Deputy J.A. Martin:

I was prompted to speak, firstly, by a few comments that were made by Deputy Morel because I was a bit confused, I thought I had read his comments properly and then he spoke. Obviously I do not expect him to tell me who the construction company was. I thought the evidence had come from some concerned employees who maybe thought they were being forced to work as of today but it might now be tomorrow because we are a day late. But I think he has cleared that up, it was definitely a construction company that approached him with evidence, so that was the evidence. It was more Deputy Alves' point and we have been speaking ... Social Security have been trying to get some real good guidelines for who is in this scheme and who, if I had a partner at home and who had been told to shield and was very vulnerable, would I be sanctioned down at Social Security? Absolutely not. You have to make that decision. You would not be sick yourself, your partner would have been told that they could not work because they could not go out because they were shielding and then that is the decision. But we have decided, the Social Security, they definitely would not be sanctioned; they would be treated in the normal way and, hopefully, the employer, if they were on the co-payroll scheme. I just want to correct the Deputy there. I know lots of small construction ... I mean I think things are coming out later but construction was not in the first phase but we do know there is a lot of construction that is not working now and I do know the firm I am sure they are in but there is more for that later. The Deputy also mentioned she is very concerned that people who thought were under 5 years and there might be a lot of people on these building sites but the Deputy... I would like to remind and remind the Assembly, as of 1st April we brought in a C.R.E.S.S. (COVID Related Emergency Support Scheme) scheme. That has had 237 people apply so far and 185 as of yesterday or Monday already had the money in the bank and we want more. If it is not getting out there, I keep trying to go on to media. The media seem to want to talk to only the Chief Minister. I have got plenty of schemes that I could promote and these are things we need to get out there. There is money,

there is this payroll scheme, income support is there for the over 5 years. But it is definitely about this balance. I have had many people contacting me and say too many people are ... let me just go back to the construction site; I, right from the beginning, have only been interested in the employees, the safety of the employees. Health and safety, who report to me all the time on different things, have been in this and they will still be in it and they must be, what building sites used to think there is a possible health and safety hazard or even, as you say, enough loos, some hot water. All these are being considered and it cannot be one person working on their own because one person on their own is very dangerous as well. I and Deputy Young are on this but it is, as Deputy Tadier said, going to be a balance today. You either do not pass it and then nobody can open or it is a judgment. I will go back to Deputy Tadier who said it is going to be policed by police, supermarkets are not policed by police. There are different security firms that have been employed and most people do not need it. Most people are really good over here and they are just standing in the queue, they are doing everything. I think the population has been fantastic. When people ring me or stop me and say: "I saw 2 people in a van and I saw this." I said: "Right, sit in your living room and what have you got? Can you flush your loo or someone is at the sewerage plant making sure you can do that? Can you put your lights on? Someone from Energy from Waste Plant, can you do that? Are your bins being emptied?" When they start thinking down the line and the longer people are at home, and this has been pointed out to me just from some smaller builders, plumbers and electricians, people have started doing D.I.Y. and then they will either go through the main pipe and the water will stop or they will cut off their own electricity. Then you make a judgment call, do you stay like that until lockdown is over or do you allow a workman in your home? These are all in there. As I say, it is a judgment. I do not want to force anybody to work. Right at the beginning when this was discussed, and I do not think it has gone away, I said a whistle-blowing line that, no, you do not even have to give your name. It is not about grassing up your employer, we are not going to go into them but just we need to know if good practice is not being kept. Deputy Morel and Deputy Tadier may be right that I would not have enough safety operators under health and safety and nor would the Minister for the Environment but we are going to try. But I am not, in my eyes, probably one strike and you are out. I hope that gives some reassurance because I am not mucking about with this. I really want to let people who can work ... as I have just said, think about what you have got; we absolutely have people that must work just to give us the basics and the comfort to sit in our home, even to do this, telecoms, everything like that. If that goes down people will then not find this such ... it is a bit of a nuisance, I cannot go out but we have got all those things that are still happening because people are going out and providing them. I hope that I have covered Deputy Alves' points but I do need to have a separate conversation with her to point that out but I really did want to put that on record. Anyone who knows that they have a partner that is shielding is not going to be sanctioned under any of my schemes, so I hope they feel comfortable to stay at home with their partner if they do not want to go to work. I think I have covered everything. Again, it is balance with me, I am going to support but I am making sure that everyone in my teams will be making sure that everyone out there is doing the right thing.

7.1.8 Deputy G.P. Southern:

The point I wish to make is about health and safety, the vital issue for workers on building sites. It seems to me that there are many building sites with a sort of a macho gung-ho attitude to the conditions under which they work, which does not auger well for health and safety issues. In particular, it is a point that I often make, if you want something doing and it is important enough, then you have to meet, put it into legislation and you have to make it sanctionable and you have to make it statutory. It is about time that this particular corner of our society is ensured that the right standards are in place and that everybody is obeying them.

7.1.9 Senator J.A.N. Le Fondré:

I just want to make 2 points, just to remind Members what this is also all about. This is about bringing in a lot of the controls or the ability to introduce the controls that a number of Members have referred to. If, for example, this legislation was not approved by the Assembly, we would be in a position where we would be resorting back to other slightly less clear ministerial powers and protections and things like that. This is very much to give the Minister for Health and Social Services particularly the legal ability to enforce the protections that all of us are so very keen to have. I think it is just worth mentioning and in reminding Members that when the industry shutdown occurred basically over the Easter period, that was done in conjunction with and in consultation with the Construction Council and also some of the leading construction industry members. In fact I believe this, as a joint piece of work, was, effectively, one of their suggestions, i.e. the approach that we have taken to date. We want to enforce the social distancing but remember the issues that were being raised by Members, some of them being repeated today again, which were being raised in certainly March around social distancing, around general hygiene and that is why we put the request, if you like, out to the industry before Easter, which led to the controlled shutdown over Easter. Obviously that was all done on the basis of the Medical Officer for Health but what this particular set of legislation does is give the Minister for Health and Social Services the right level of authority to bring in the enforcement that Members are seeking. Because if it is not there then it does get more difficult to maintain that enforcement and maintain where everybody is in the industry at present. Hopefully that point was worth making and I certainly commend this piece of legislation to the Assembly.

7.1.10 Senator T.A. Vallois:

There are just a couple of questions I would like to ask, there has been mention of co-payroll, if the employer of construction decides that they ...

The Bailiff:

I am sorry, Senator, I am not sure if other Members have the same difficulty but you are breaking up very badly and we cannot hear you.

Senator T.A. Vallois:

Sorry, Sir, is that better?

The Bailiff:

Yes, that appears to be better.

Senator T.A. Vallois:

OK, thank you, I do apologise. I will start again. Sorry, it was with regards to co-payroll, if employers decide not to sign up to co-payroll, yet the Employment (Jersey) Law 2003 still stands during this unprecedented time, I wonder what recourse there is for construction employees. Should their employer decide to change their contractual position temporarily, I do not know whether that would be something that the Minister for Health and Social Services could ask or whether it would be something for the Attorney General. But I will finish my speech on this. The next point I would want to ask particularly to the Minister for Health and Social Services, he mentioned in his opening speech about high risk members of a household. I wonder if he could explain how Enforcement Officers would ensure employees have identified those employees with high risk household members and whether this would be party particularly to the Regulations because there are some fines and imprisonment requirements in these Regulations as well. With regard to the Scrutiny comments, I believe their conclusion is pretty much spot on. I think there is a fear in terms of the ability to enforce, I agree with this Regulation, it needs to be in place, but there may be some issues around the enforcement. But also I am concerned about employees not being able to whistleblow. But finally I would just like to understand also from the Minister for Health and Social Services how the details of these Regulations would be shared with employers if they should be approved, especially

considering the points I have made just recently about the fines and the potential for imprisonment for not following the guidelines.

The Bailiff:

Does any other Member wish to speak on the principles?

7.1.11 Deputy R.E. Huelin of St. Peter:

I fully understand the legislation, the need for it, and Deputy Tadier brought out the point very clearly that it is about working next to a building site when you are not necessarily used to being there all day, which can cause an enormous amount of stress. My issue is about enforcement when everybody knows the situation that I have been having within a certain area of St. Peter where enforcement has been seriously lacking and a number of families have been under huge amounts of stress for the last 3 or 4 years. So I would just like to really get some clarification about how it is going to be enforced because otherwise it makes a mockery of bringing this legislation through.

The Bailiff:

Does any other Member wish to speak on the principles? No other Member wishes to speak; then I close the debate and call upon the Deputy of St. Ouen to respond.

7.1.12 The Deputy of St. Ouen:

It has been a good debate. I acknowledge the very real issues that have been raised; important issues because there is this tension between protecting the whole Island from a health risk and keeping a lawful industry running as safely as it can be and keeping people in employment.

[16:00]

So the question of how we would enforce these Regulations has been raised. We have a strong body of people from various sources so, yes, I have mentioned the police, but there are the others also and I thank Deputy Young who has also explained that there is a possibility of drawing in additional resource also. There was a fear that the police would be unable to enforce this but the police have shown that they can act in very different ways, they are doing very different things at the moment, and I have no reason to believe that the police would not be able to enforce law as they are trained to do. But we must also remember, we would all expect, the Island would expect employers, contractors on sites, to be extremely vigilant about adhering to the terms of their permit. That permit can be withdrawn at any time if we receive reports that they are not complying with it. So they are under direct control and they will want to complete their sites of course but they will need to do it in a way that shows compliance with their permits. Deputy Morel was concerned about some contractors who seem to have said that they would be opening today. There has been good communication with contractors and the Jersey Construction Council, it has been made clear to them that they would need to apply for a permit and a permit would need to be granted before they could open and that the whole permit scheme is in fact subject to these Regulations passing when they are passed by the States; if they are passed by the States. It is conditional on that. There should be nobody working today just on the basis that they thought it was going to happen. Members asked about how workers would report breaches. There will be a confidential hotline to be used by employees or members of the public. That will be displayed on a site notice, which will have to be displayed at the entrance to each site, and concerns can be raised that way. But I would also expect everyone working on a site to be very mindful of their health because we all are at the moment. We are all very cautious about how we are doing things and that carries into our places of work. That is why we had such good co-operation from the industry when we did ask sites to close down. They knew that they were at risk and they knew that they needed to think about new ways of working, so they did accept the need to shut down while all these things are thought through. They accept the need to protect each other's health. So they will be looking out for each other and to ensure their own health, so I expect vigilance on those sites; I expect the site managers to act wholly responsibly; and I expect employees on that

site to hold their site manager to account and to use the confidential hotline or to go further and to talk to us if they believe that their site managers are not observing the requirements. It was Deputy Southern I believe who referred to some contractors as macho or gung-ho. If they display that sort of attitude when they submit their methodology statements and risk assessments in their applications then they will not get a permit. If they display it when they are running their sites after receiving a permit their permit will be withdrawn, so there is no question of casually adopting slackness; no question of being gung-ho. Deputy Young was concerned about the economic considerations overriding the public health considerations. This is a measure that, if passed by this Assembly, has become necessary because of advice received from the Medical Officer of Health that it is a proportionate and necessary measure in the interests of the Island's public health. Its whole impetus is not economic but health driven and I have a duty to take advice from the Medical Officer of Health and my duty towards the Minister for Economic Development, Tourism, Sport and Culture is to consult with him. I will consult but he does not have the final say over how the construction industry will operate. But I have to say I do not expect any conflict with the Minister for Economic Development, Tourism, Sport and Culture. These things are discussed, not just by the 2 of us individually, but they are discussed by all Ministers involved in the Competent Authorities meetings and also in the Emergencies Council. Exactly how we work our way through this emergency is the subject of lengthy and well considered discussions. Deputy Young also raised the question of people living close by. The Attorney General has explained some of the powers already available. With the permit scheme we can consider, we can put in protections, which would make life bearable for people living nearby. Deputy Alves raised the question of face to face working because it is acknowledged that there are some tasks in the construction industry that cannot be carried out keeping 2 metres social distancing, so all this would need to be covered by the information submitted by the contractor when seeking a permit. We would also draw on guidance and I have a copy of U.K. guidance prepared by the Construction Leadership Council, which has a very detailed analysis of a hierarchy of controls to avoid close working but does end up saying that in certain circumstances where all other measures are not possible P.P.E. (personal protective equipment) should be used. That was one of Deputy Alves' questions. So again it is a measure of degree what is safe working in line with industry guidelines but P.P.E. will be a possibility. The Deputy also asked whether permits would be publicly available. I understand that there will be site notices, which will display the fact that a permit has been issued and give contact details for anybody wishing to make inquiries about that site. I thank Deputy Martin for addressing the question of shielding. I was also asked about the contractual position should employers decide to change terms of employment. I think that was Deputy Vallois. Employers cannot unilaterally decide to change terms of employment and particularly under a permit scheme. It is not a case of requiring your employee to work differently and writing that into an employment contract; under a permit scheme they will be required to demonstrate to government how they will work, how contractors will protect their employees and only if, on advice from officers including the Medical Officer of Health, I am satisfied that it is appropriate; those are appropriate safeguards, will that construction site be allowed to continue to operate. How contractors might identify employees who are shielding high risk members of the family, the only way to identify that is for employees to tell that to their employers. Unless there is knowledge already within employers they would not know, so that is important, employees must identify any particular vulnerabilities that they have and I would expect employers to address that thoroughly. I can also say to Members that there are Codes of Practice presently on the Government websites under Safe Operating Procedures for Building Sites. They have also been distributed to contractors who have so far expressed an interest in applying for a permit, so contractors know the sort of standards they are being required to meet. I hope that might answer many of the questions that have been raised. I hope this will receive support from Members because, if we cannot put this on a statutory footing, then it would mean that construction sites are free to open again without the rigor around a permit scheme and safeguards that we would want to introduce. We would have to find perhaps other ways to do it and seek support from the Assembly. So I hope this scheme does meet with the Assembly's approval; I think it is a

good scheme, which has been considered in conjunction with industry and the Jersey Construction Council, who are supportive of it, and I ask for Members' support.

The Bailiff:

A point of clarification is sought by Senator Ferguson.

Senator S.C. Ferguson:

In the list of category A permits issued, there is just a blanket note that Health and Community Services, all Health properties, will the Minister undertake to itemise which properties are subject to the permits?

The Deputy of St. Ouen:

Yes, they will be specific properties so we will itemise those to which it applies.

Senator S.C. Ferguson:

Thank you.

The Bailiff:

Very well, I will then ask the Greffier to put up the voting on the principles of the Regulations. The voting link is now there. I ask Members to vote in the normal way.

POUR: 46		CONTRE: 0		ABSTAIN: 0
Senator I.J. Gorst				
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. Saviour				
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 Trinity				
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 Bailiff:

Does the Economic and International Affairs Panel, Deputy Morel, do you wish to scrutinise this matter?

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

No, thank you, Sir.

The Bailiff:

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

7.2 The Deputy of St. Ouen:

I think we have had a thorough discussion about how the scheme would operate so I do not wish to detain Members any longer. Unless they have specific questions I would propose them *en bloc*.

The Bailiff:

Very well, are they seconded *en bloc*? **[Seconded]** Does any Member wish to speak on the Regulations in Second Reading?

[16:15]

No Member wishes to speak in Second Reading. Then I ask the Greffier to put up a voting link for the Regulations in Second Reading. The link is now on the chat and I would ask Members to vote in the normal way

POUR: 44		CONTRE: 0		ABSTAIN: 0
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. Saviour				
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 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)				

The Bailiff:

Do you propose them in Third Reading, Minister?

The Deputy of St. Ouen:

Yes, I do, Sir.

The Bailiff:

Are they seconded in Third Reading? [**Seconded**] Does any Member wish to speak in Third Reading? If no Member wishes to speak then I ask the Greffier to put up the voting link for Third Reading. I ask Members to vote in the normal way

POUR: 45		CONTRE: 0		ABSTAIN: 0
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. Saviour				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
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 Trinity				
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 Deputy of St. Ouen:

I thank Members for their support.

8. Draft COVID-19 (Signing of Instruments) (Jersey) Regulations 202- (P.50/2020)

The Bailiff:

Very well, the next item of Public Business is the COVID-19 (Signing of Instruments) (Jersey) Regulations P.50 lodged by the Chief Minister and I ask the Greffier to read the citation.

The Deputy Greffier of the States:

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

8.1 Senator J.A.N. Le Fondré (The Chief Minister):

I will try and go for a shorter introduction and then we will see if there is much detail that comes through I will pick that up at the end on the principles. Very clearly, if adopted, these Regulations would introduce time limited amendments to permit Wills to be witnessed over an audio visual link and it would also allow probate applications and the attestation of probate related documents to be executed remotely. I do absolutely emphasise that these Regulations will expire on 30th September and I shall pick up on the Scrutiny comments in a second as I am wrapping up. But the legislation is necessary so that people can continue to make Wills and obtain Grants of Probate or Letters of Administration without coming into physical contact with one another and obviously at the moment we know how important it is to limit face to face contact for the public health of our community. Therefore, while COVID-19 continues to affect Jersey, it is intended that witnessing of documents over an audio visual link will become normal practice. Obviously these draft Regulations have been developed in close consultation with both the legal profession and the courts. Can I very much welcome the comments from Scrutiny, which is their last line is: "In draft the Panel is overall supportive of these draft Regulations." They do make 2 particular observations, one is that they recommend that the efficacy of the measures is reviewed on 30th September rather than just extended, especially in relation to access to technology. I have absolutely no problem with that. In other words, taking the feedback over this period of time and seeing if there are any improvements that need to be made. They have also raised the issue about essentially access to technology, especially with the elderly and disabled, because obviously these are the groups that we are particularly aiming at. What I would particularly say on that front is we obviously have been aware of this; there have been discussions with, for example, within the hospital and the care homes to ensure the need for some form of device to be made available. Feedback on that has been positive and this will be able to be facilitated. There is very much a general appreciation of the important need to still provide people with their legal right to make a will or execute important legal documents at this time. Under the present system, while, as far as I am aware, matters have been able to have been undertaken, it has been difficult in very particular circumstances, so hopefully the aim of these Regulations is to facilitate this at a time occasionally where it may be very urgent and obviously very sensitive. I am not going to make any more at this stage. As I have said, I have tried to give a very brief overview and hopefully Members will understand it does what it says on the tin and on that basis I make the Proposition or propose the Regulations in principle.

The Bailiff:

Are the principles seconded? [**Seconded**] Does any Member wish to speak on the principles?

8.1.1 Deputy M.R. Higgins:

It is an unfortunate fact that in times of crisis and the passing of emergency or urgent legislation to deal with these events that unscrupulous and criminal acts are committed against the weak and vulnerable and it is our duty as States Members to guard against this. While the vast majority of people looking after vulnerable people act correctly and with great care and humanity, there are always those who will take advantage. Now I am worried that we are making decisions in haste and I believe that inadequate scrutiny, even if it means delaying proposed Regulations by even a week, is justified. In a previous sitting we passed legislation, which stated, where a person has passed away, the death certificate or registration of death would be made by a doctor other than the patient's own. This was to prevent doctors entering care homes and other places where COVID-19 was present and to protect the residents of care homes from possible COVID-19 carriers from entering from outside. However, this could lead to a diagnosis or determination of death being attributed to COVID-19 when it was not the case and I wonder how many, if any, of those deceased will be subject to a post-mortem or autopsy, especially if the worst case scenarios come to pass or if large numbers of people die in quick succession. How many people will be buried or cremated without the true cause of death being known? I mention this in the context of the infamous U.K. doctor, Harold Shipman, who, although convicted of murdering 15 patients in his care, was believed to have had 250 victims. I also mention it in the context of the Jersey Care Commission, whose job it is to monitor care homes, has revealed that during the pandemic it is not making any physical visits to the homes it is responsible for. Although it is easy for me, self-isolated in my own home, to say it, I believe that they should be provided with personal protection equipment and do their duty and ensure for the care of the residents in the care homes. Now with regard to this Proposition, I have been concerned for a number of years about allegations that have been made to me regarding abuse of the elderly and ill and terminally ill patients by advocates and their employees who have *prima facie* taken advantage of their clients. Before I am attacked by those who by default automatically support the legal establishment, or the usual suspects who accuse me of being a conspiracy theorist, let me say that I am sure that the vast majority of advocates and legal practices act honourably, but there are others that do not, and if anyone does not believe me then I advise them to go to the Jersey Law website and look up some of the judgments of the Royal Court in this regard. Unfortunately for members of the public who would like access to them, they may not well have because they may be in the unreported judgments section, which has limited access. Something, I might add, that I think needs to be changed. Now these judgments included inflated fees or fees that cannot be justified as no service was provided and cases where advocates like Advocate Andrew Begg, who in 2012 in J.R.C. (Royal Court of Jersey) 209 was fined £25,000 for deceiving the U.K. Department of Work and Pensions and acting to assist in a contravention of a Curatorship Order. There have been other cases of lawyers who have not acted in the most honourable fashion. I mention this because I am worried about the procedure that is being used here. People are not going to be present alongside the people who are making the Wills or trying to deal with probate matters; they are going to be seen perhaps from afar and I wonder, we are all concerned about duress, undue influence and also the documents that people are signing and so on. I know there are a few comments in the document saying how that should be done. One thing I am in particular concerned about, I am going to ask the Attorney General if he will comment on it, and it is regarding the ability to deal with the topic of lack of capacity, and I would like him to explain to Members the rules regarding patients who may be at various times lucid and other times who are not, and also their demeanour from a distance in terms of whether you can judge whether they have the capacity to enter into a change of a Will or Codicil or whatever, and also how we can take confidence that I am afraid the ill and the vulnerable may not be tricked or deceived. With that I would like the Attorney General to comment on the rules regarding lack of capacity and I will make my decision after hearing his advice, but at the moment I am minded not to support this on the grounds that I believe it needs to be scrutinised even further.

The Bailiff:

It is difficult to ask the Attorney General to comment on certain statutory provisions. You are certainly entitled to ask him for advice on what they are or what they mean but general comment is quite difficult for the Attorney; it is not a request for specific advice, which is the Attorney's function in the Assembly in connection with matters such as this. Do you have a specific question for the Attorney?

Deputy M.R. Higgins:

The Royal Court has judged in a number of cases about, for the purposes of the law, a person lacks capacity in relation to a matter if at material times a person is unable to make his own decision in relation to the matter if he or she suffers from a permanent or a disturbance in the functioning of his mind or brain. Then also there is reference to where the impairment or disturbance is permanent or temporary. But the most important one is lack of capacity cannot be established by merely reference to a person's age or appearance or a person's condition or an aspect of a person's behaviour, which might lead others to make an unjustified assumption about the person's capacity. So I would like him to answer those things about how we can judge from a video the person's age or appearance, their condition, *et cetera*, that we can be satisfied that the person has capacity to enter into the agreement that they are doing.

The Bailiff:

Thank you for that clarification, Deputy. So the question for the Attorney is, are there concerns about judgment of capacity by the reason of the fact that meetings are going to take place over video? Does that summarise it adequately for you?

Deputy M.R. Higgins:

I think that is. That is my main concern.

The Bailiff:

Thank you very much.

The Attorney General:

Yes, the Deputy has correctly read out the relevant provisions of Article 4 of the Capacity and Self-Determination (Jersey) Law 2016 and I accept that when it comes to determining lack of capacity by a videoconference rather than by a meeting in person that will make the task of determining a capacity, yes, a degree more difficult. But in normal circumstances the persons who are making this judgment of someone's lack of capacity are experts.

[16:30]

They are usually doctors or they are specialist workers who deal with mental health and they are used to making these sorts of assessments and there is a body of literature and science as to how one determines lack of capacity. So in terms of assessing capacity it is not only a visual exercise; frequently questions are asked about, for example, when making a Will the person has to recall the extent and nature of their estate. That is not just a visual question; that is obviously a mental and oral question as to whether in fact the person does have the ability to recall their estate and communicate it. So it is not just a visual question, but I certainly accept the Deputy's point that when the exercise is being carried out over a videoconference then it would make the task a degree more difficult. But I stress that everyone is having to adapt and is having to make use of technology in a way that we did not envisage before this crisis arose, so if the Deputy is trying to get me to say I think it would be impossible for an accurate assessment of capacity to be made in these circumstances he is not going to succeed. The people who carry out these sorts of exercises have a huge degree of experience and expertise in making these sorts of judgments and I think that is as far as I can take the point.

Deputy M.R. Higgins:

Could I just follow up; could I just ask the Attorney, you mentioned these experts, well these experts, if the COVID Regulations were trying to stop people going into the premises where they may well have the virus, how are those experts going to be present other than at a distance or remotely? Therefore I do not see how we could possibly be able to verify, as you said, that the person has capacity.

The Bailiff:

Deputy, I am not sure that is a question. That appears to be a point that you are making in your speech. Is it a further question for the Attorney General or not?

Deputy M.R. Higgins:

I think not. I think that by expressing what I have said and hearing the Attorney, I think it just makes my point; this is an exceptionally difficult area. It is our duty to protect the vulnerable and I am not convinced for this piece of legislation that we are doing so and I would urge Members to vote against it.

8.1.2 Senator K.L. Moore:

The Corporate Services Scrutiny Panel have undertaken a moderate amount of consultation during its consideration of this emergency legislation, the Regulations, and we are of the mind that there is considerable need for the Regulations to be brought in, in order for the amount of work that is currently being required of lawyers to be conducted. There were however some Regulations that were initially to be proposed but have since been withdrawn following comments of the Children's Commissioner and the concerns that she raised. I am grateful to the Chief Minister for having done that and we are now content, as Members will have seen in the comments, for this to be brought forward and, mindful of the previous speaker's comments, it is our understanding that there is some immediate need for these Regulations to be adopted today.

The Bailiff:

Thank you very much, Senator. Deputy Pamplin, you had a question for the Attorney General?

Deputy K.G. Pamplin:

Yes. I just wanted to push further on Deputy Higgins' question to the Attorney General. Again having a lot of time spent on studying the Capacity and Self-Determination (Jersey) Law 2016 that the Attorney General referenced, could he just, for all of our benefit, explain the tensions that are there in place with the Capacity and Self-Determination (Jersey) Law 2016, which came into force on 1st October 2018, and that these emergency Regulations do bring. He did allude to some of them and I just think it would be for all our benefit if he could elaborate further.

The Bailiff:

Are you able to assist, Mr. Attorney?

The Attorney General:

I will do my best. The Capacity and Self-Determination (Jersey) Law 2016 introduced a considerably more nuanced and complex way of dealing with capacity than had been the case under the previous law. For example, it included a statutory requirement to always consider the best interests of the patient, who is under consideration, and also to some of the provisions that Deputy Higgins referred to about not making assumptions from a person's appearance. Those were safeguards so that people who might be suffering from a particular impairment, assumptions are not made about their mental capacity simply by reason of their physical appearance. So there are a considerable number of safeguards that are in the Capacity and Self-Determination (Jersey) Law 2016 and as far as I can see those continue and, for example, capacity is not taken as a sort of fixed point at any one particular time, it is recognised that capacity can fluctuate and so, for example, that a person may have capacity

to make a certain type of decision on one day but then on another day they will not have that sort of capacity. So it is usual and standard practice, when making a Will, certainly for a lawyer who is assisting a client with making a Will, if there is any doubt about a person's capacity then it is standard practice for a lawyer to obtain assistance from a medical practitioner, it frequently will be that person's G.P., or they may in certain cases bring in someone who is a specialist. So it is certainly not unusual by any means for questions of capacity to arise in relation to the making of Wills, but to my mind that is nothing unusual and those safeguards that are built in, in relation to the Capacity and Self-Determination (Jersey) Law 2016, as far as I can see are not being affected by these particular Regulations concerning Wills.

The Bailiff:

Thank you very much, Mr. Attorney. Do you wish to continue with your speech, Deputy Pamplin? You indicated you might.

Deputy K.G. Pamplin:

I thank the Attorney General for that. It is important again as we discovered previously that when it comes to changing emergency Regulations, which does have impact on anybody with capacity, which Deputy Higgins did allude to, that again, as other Members have previously, I have had people with concerns about the impact of those in care homes or in their homes where they are receiving care because of different forms of mental illness, dementia, Alzheimer's, that one of the safeguards, as the Attorney General pointed out, was that there is mental capacity to understand what they are signing, but one of the critical components is if the person lacks the mental capacity that support is provided to them, or equally if their partner or the person caring for them equally has a similar situation, that it is definitely ensured that those tight safety Regulations are around the individual. So I do have a couple of concerns on this and I look forward to hearing more in the debate. I obviously understand why they are being brought forward but I just raise those points because I am reading the Articles in front of me. Again the issue has come up that, given both the hospital and many care homes currently prohibit visitors on public health grounds, this is the same tensions that we explored earlier. So I think it is right that we raise them because obviously right now it is of concern and the people that we have the concern the most, the most vulnerable, I just want to raise those concerns for those people that concern me the most. As we alluded to earlier, we do have an independent advocacy service, My Voice Jersey, with a contract to the Government who could help those people who do not have access to lawyers, do not have the financial means for lawyers, and I just want to point that out that those people can seek the help they can when dealing with these sort of matters when we are in these times. They are the points I wanted to raise.

The Bailiff:

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

8.1.3 Senator J.A.N. Le Fondré:

I will try to keep it generic but I thank the Members for their contributions. In the circumstances that we are presently facing there are always going to be increased risks, we know that. But also do not forget that what we are trying to do is that there are some real practical challenges around the continuation of face to face witnessing and court activities and I would say certainly this legislation has been drafted and representatives from the courts have been consulted and they are supportive of what is being proposed. But an example I would give, which was in recent days an Advocate was asked to witness a Will for a terminally ill patient in the hospital. Under the present law that Advocate had to attend the client in person, and bear in mind that got more complicated because of the lack of access for all visitors, and in the end there was an exception made that Advocate had to visit the client in full P.P.E. (personal protective equipment) but obviously what is happening there is one does not

know if the Advocate has underlying health conditions, for example, so potentially that Advocate is putting their own health at risk. So one is trying to find a balance here between trying to get the practical things in place to do it as quickly as one can but with the relevant processes, as many as possible, still staying there. I do not particularly think I can add anything more around the whole capacity issues. There is the golden rule for lawyers, so that is all about assessing capacity; if they are uncertain they will require a Certificate of Capacity from a doctor. It is not just about looking at them; it is about talking to them as well, which can be done obviously on an audio or a visual position. The other key point here is most of what we are dealing with is around witnessing; that is the main changes that are coming through, we are not taking any of the other protections away that are in place. It is probably also worth noting that there are a number of other jurisdictions, which does include New Zealand and Scotland, have gone down this particular approach, so we are not just carving our own path here, we are following processes and procedures that have been done in other jurisdictions specifically to try to deal with this particular crisis that we are facing. I do not think I can add very much more to that; I very much welcome the comments from Senator Moore, who was supportive, and obviously that is also referred to in the Scrutiny papers. On that note I maintain the principles and I call for the *appel*.

The Bailiff:

The *appel* is called for. Deputy Higgins would like a point of clarification.

Deputy M.R. Higgins:

The Chief Minister mentioned New Zealand and Scotland. Can he tell us what additional safeguards, if any, they put in or have the adopted exactly the same provisions that we are putting forward?

[16:45]

Senator J.A.N. Le Fondré:

I will see if I can find out further details in the short time we have. I have not specifically looked at the legislation there; I am just advised that they have had to make similar changes in dealing with this crisis. I am making an assumption, it is an assumption, that they will have had similar debates to what we have had and that they will have some form of safeguards in place.

The Bailiff:

Thank you, Chief Minister. Then Members will see the voting link is up on the chat and I open the voting

POUR: 46		CONTRE: 0		ABSTAIN: 0
Senator I.J. Gorst				
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. Saviour				
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 Trinity				
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 Bailiff:

Before moving on I should first ask the Corporate Services Scrutiny Panel if they wish to scrutinise the matter. Senator?

Senator K.L. Moore (Chair, Corporate Services Scrutiny Panel):

No, thank you, we have done so.

The Bailiff:

Thank you very much indeed. I should perhaps alert Members at this point that there is a fraction over 45 minutes still available on this session before it naturally terminates. How do you wish to deal with the Regulations in Second Reading, Chief Minister?

8.2 Senator J.A.N. Le Fondré:

Perhaps if I could just propose them *en bloc* and then if Members wish to raise individual issues we will try to deal with them separately. I am going to assume from some of the comments that Members may wish to have separate votes on different Articles, but if I could propose *en bloc*.

The Bailiff:

Very well. Are they seconded? **[Seconded]** Does any Member wish to speak on all of the Regulations or any of them?

8.2.1 Deputy M.R. Higgins:

It is Deputy Higgins, can I jump in at this point?

The Bailiff:

Deputy, do you not have access to the chat?

Deputy M.R. Higgins:

I did; I just mistyped it. If I could, could I just say that I would like the provisions relating to Wills, it is in part 1, procedure for application for probate or Letters of Administration where an applicant is not physically present and procedure for attestation of documents required to be executed and matters of a grant where the witness is not physically present, I would like to have those put up for a vote separately.

The Bailiff:

You would like to have a vote on Regulation 2 and Regulation 3 separately?

Deputy M.R. Higgins:

Yes, because, although I said earlier that I wanted people to vote against this Proposition, there are other elements that are satisfactory. No, they are not, on this particular one. I was looking at the wrong thing. So, yes, but I would still like to have a discussion on those particular points and in fact I would like to speak on it as well.

The Bailiff:

Deputy, we have not closed the debate. We have not even opened the debate yet. You are just indicating that you would like those votes to be taken separately. That is a helpful indication.

Deputy M.R. Higgins:

I would also like to speak after others, if the others go ahead of me please.

The Bailiff:

No, off you go, Deputy.

Deputy M.R. Higgins:

Yes, I did not mention it earlier when I made the comments on the principles, one area of operation of the law that has concerned me for some time, and I have had some first-hand experience of this helping people within the Island, and it is to do with Enduring Powers of Attorney where elderly people in particular have given powers to lawyers to act on their behalf. Subsequently the person has died and it has been found, I say found, it has not been proved in a court of law, but I have heard the allegations and I have looked at some of them, that property that was part of the estate has been sold below a market price, which deprived the estate of funds that would otherwise have been there. Not only was the property sold below market price, it was sold to someone related to the legal firm. Now I say this because I was told by the person who put in a higher bid for it and did not get it, in fact they offered over £100,000 more than was received by the estate. So that is what I have been told, it has not been unfortunately investigated by the police and gone to court, but I am aware of indications where, and this is where I do have first-hand knowledge, of a lawyer trying to convince his client to go for an everlasting Power of Attorney when all they wanted to do was to apply for a grant of probate. One, they did not need an everlasting Grant of Probate, they could have had a specific one, and besides that, as it did, I helped them get a Grant of Probate, which cost them nothing. But I am

suspicious of some advocates and their practices and all I am doing is setting this out as a warning and I would ask people to vote against this.

The Bailiff:

Deputy, I have allowed you a fair amount of leeway; you have finished as it is, but of course this is a debate on the Regulations in Second Reading and so it would have to be a debate on specific Regulations.

Deputy M.R. Higgins:

I am talking about Regulations 2 and 3, thank you.

The Bailiff:

Does any other Member wish to speak on the Regulations in Second Reading? If no other Member wishes to speak in Second Reading then I close the debate and I ask the Chief Minister to respond.

8.2.2 Senator J.A.N. Le Fondré:

Although I understand Deputy Higgins’s concerns in the specific area he has raised, I am not entirely sure how I can answer his question with regard to these Regulations, so I think all I can say is that I do sympathise in that area; I do not think it is germane to the present debate. If it does help, what I have asked, after I think it was his question yesterday, which was around the complexities generally around Wills, is that officers are looking to simplify the guidance out there so that hopefully there can be some clarity as to what the procedures are in general terms. What I will also say is that the Royal Court, as I understand matters, will be issuing guidance to lawyers around their obligations, particularly around the whole duress and capacity issues, and also the Law Society of Jersey will be highlighting that point to the legal profession. I do not think I can add much more to the debate on what has been said, particularly by the Attorney General as well, and on that basis I would like to maintain the Regulations and at that point I just propose Regulation 1 for a vote and then obviously Deputy Higgins has suggested he would like to vote separately I think on 2 and 3.

Deputy M.R. Higgins:

If I can interrupt, I have no objection to them all being taken together now; I am going to vote against it anyway.

Senator J.A.N. Le Fondré:

If Members are happy, I would like to maintain the Regulations and call for the *appel* on all the Regulations.

The Bailiff:

If Members have had the opportunity of casting their votes I ask the Greffier to close the voting.

POUR: 45		CONTRE: 1		ABSTAIN: 0
Senator S.C. Ferguson		Deputy M.R. Higgins (H)		
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. Saviour				

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 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 Trinity				
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)				

Deputy M.R. Higgins:

I was having trouble.

The Bailiff:

I understand, Deputy, you have indicated a vote *contre*, but you could not do it on the link, but you have indicated it anyway. Can we deal with the matter in Third Reading, Chief Minister?

8.3 Senator J.A.N. Le Fondré:

Yes, thank you. If I could just thank everybody for their contributions and I would like to direct my thanks particularly to the Corporate Services Scrutiny Panel on this and then obviously express my thanks to all the officers who have been involved in bringing this legislation to the Assembly today and on that basis I maintain the Regulations in Third Reading and call for the *appel*.

The Bailiff:

Is the matter seconded in Third Reading? [**Seconded**] Does any Member wish to speak in Third Reading? If no Member wishes to speak in Third Reading then I ask the Greffier to place the voting link. The vote is now open

POUR: 45		CONTRE: 1		ABSTAIN: 0
Senator S.C. Ferguson		Deputy M.R. Higgins (H)		
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. Saviour				
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 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 Trinity				
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 Bailiff:

A number of Members have indicated their votes, which did not come through the link, but they will of course be Hansarded in the normal way.

Deputy M.R. Higgins:

Sorry, might I point out I did vote *contre*, as I said I would, thank you.

The Bailiff:

Yes indeed, Deputy, your vote is recorded as *contre*.

9. COVID-19: questions without notice to all Ministers on the response of the Government of Jersey (P.51/2020)

The Bailiff:

Very well, the final item is COVID-19: questions without notice to all Ministers on the response of the Government of Jersey, P.51, lodged by Deputy Labey. I ask the Greffier to read the Proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion (a) to suspend, in accordance with Standing Order 80, Standing Orders 64 and 66 until 1st October 2020 in order that alternative arrangements for questions without notice may be introduced temporarily; and (b) to agree that, until 1st October 2020, every scheduled meeting of the States will include a period of questions without notice during which questions may be put to any Minister about the response of the Government of Jersey to the coronavirus crisis.

9.1 Deputy R. Labey:

I will just explain, if successful, how this Proposition would affect our procedures. For scheduled States debates; that is those States debates that are in the diary for the year, there would still be written questions, the same rules would apply, there would still be oral questions with notice, again the same rules would apply. But instead of the 15 minute ministerial rota there would instead be a period of questions without notice to any Minister or any Chair. This would replace the 15 minute rota for Ministers and I am suggesting one hour for that; that would be my recommendation. The time can change but we should see how we go with that. For additional meetings of the Assembly during this crisis, there would be one hour of questions to any Minister, questions without notice to any Minister or Chair, and again I would suggest one hour. So Members will be used to this now because we have had this type of questioning, questions without notice, during the crisis on my recommendation. The feedback I have had from Members has been I think universally or unanimously positive for it. But each time we have had a States sitting, an additional one, or a scheduled one, I have had to chase the Executive and the non-Executive or the Greffe has been chasing me, we have had to work out how we are going to do it, and this will just standardise it and give us certainty that for each meeting, the scheduled ones or the unscheduled ones, the additional ones, this is how we will proceed until the end of this crisis, until 30th September. This Proposition, the effects of it, will disappear like morning mist on 1st October. I say that and I stress that because I am on the record as saying that I think these type of questions without notice would be a good thing for us to adopt permanently but this Proposition does not do it. The advantage is that with these questions without notice they are more successful when they spring from contemporaneous events or current circumstances or issues, instead of just whichever particular Minister is before us and in the hot seat. With that I move the Proposition.

The Bailiff:

Is the Proposition seconded? **[Seconded]** Does any Member wish to speak on the Proposition?

9.1.1 Deputy J.H. Young:

There are a couple of things that I would like to say. I certainly agree that the meetings where Members have been able to put an hour of questions to Ministers in respect to the COVID crisis have been excellent.

[17:00]

But my concern about just relying on that entirely is that we are going to have to start to discuss long-term policy on exit and recovery, which I think involves a bigger range of Ministers other than just the day to day operational issues; they are very different. So I am a little bit puzzled by what the proposal or the intention of the proposal is. Absolutely we need to have the opportunity during the crisis to ask these COVID questions from any Minister on those issues. That needs to continue. But I also think we should not lose sight, absolutely not, of the need as well to start to keep our policy agenda by exposing Ministers to what issues are in Members' heads, which are beyond the next stage of dealing with the crisis. I was surprised myself, for example, in this sitting this week I was not expecting that the questions without notice to other Ministers as scheduled would go ahead because I did not think Members minds' were on that; I think probably it is a bit too early. But nonetheless the questions that I got indicated that people are asking longer term questions and we need to have that opportunity to us. I can understand probably yourself and the Chairman of P.P.C. (Privileges and Procedures Committee) is anxious to avoid protracting States sitting unnecessarily but I think we have to accept, and this has been my experience and I think it is pretty well shared, is that when we are having virtual meetings rather than physical meetings they take longer. They take longer because we are operating without any visual clues and therefore that means that we have to be prepared to be flexible while we are in this crisis and we are having virtual meetings to have arrangements that deal with the urgent questions on the operational issues of predominantly those Ministers who are leading on that, but also have the opportunity for other Ministers about the follow-up, the long-term policies of which there are many. I am a little bit confused about what the intention of the proposal is and I think reading the report published by P.P.C. that in view of what I just said I should vote against (a) and vote for (b). But I am not really sure about that because it is not really clear what is meant by (a). I am sorry to put that complication but I would like to have been a little bit clearer about the way the Proposition is instructed but that is the principles that I would like to see, the urgent questions on COVID, any Minister, whether it is an hour or more, sometimes we are running out and an hour is not enough and Members are frustrated because they have more questions. The other thing, also an opportunity for policy based questions, and I am not fussed if they are with notice or without. If we are going to lose that entirely I do have another suggestion that Ministers could send a regular written report to all Members to keep them posted; I am quite open to do that if Members feel that is advantageous. But, nonetheless, we need to keep both streams going.

The Bailiff:

Might I mention to Members that there are now 30 minutes left at the outside before we are automatically removed from this conference and that obviously has to deal with the future business of the Assembly as well unless we go on to a third session today or reconvene tomorrow.

9.1.2 Deputy L.M.C. Doublet:

I thank the Chairman of the P.P.C. for bringing this; it is really important that we have these questioning opportunities. I also agree with the previous speaker and I will just be voting for part (b) because I believe that we should retain the questions without notice to the specified 2 Ministers. But what I wanted to know was, if we do have some time remaining at the end of this session, will this

come into effect, if it is passed by the Assembly, will it come into effect immediately and enable us to have a period of questions at the sitting today?

The Bailiff:

Although I cannot answer the first part of your question, Deputy, we literally have 29 minutes left of the session today before it is automatically timed out, so Members would need to vote to have a third session in order to carry on beyond that time.

Deputy L.M.C. Doublet:

My understanding is that the time is not specified for the questioning, so if we only had 10 to 15 minutes then that would be possible. Would that be acceptable to Members?

The Bailiff:

That is a matter for the Chairman of P.P.C.

9.1.3 Deputy K.F. Morel:

Just very much in line with the previous 2 speakers, my biggest concern here is about lack of opportunity to ask questions about other topics. I lodged an oral question this week about a topic and the Chief Minister's response seemed to be one of surprise that I could possibly ask a question, which was not related to coronavirus. It strikes me that, while projects and policies continue that have nothing to do with coronavirus, it is very much the States Members' duty to ask questions of Ministers about those subjects and Ministers should not be surprised by the asking of questions unrelated to coronavirus. So at the moment, with this Proposition the way it is worded, I feel the only way I could possibly support it would be in the same vein, which is to support part (b) but not part (a) because I feel strongly that we should be able to ask questions without notice on subjects other than coronavirus and I think Ministers need to begin to get used to this because they are not working solely on coronavirus, they are also working on other projects and we cannot let those projects go under the radar; they must be questioned and Ministers must be held accountable for them.

The Bailiff:

There is a point of clarification from Deputy Ward. Is that about the speech that has just been made, Deputy?

Deputy R.J. Ward:

It is sort of linked to that speech but it is a point that was made in that speech but it is something I think should be clarified.

The Bailiff:

A point of clarification is a point of clarification of the speaker's speech or a point of clarification of your own speech, but you have not spoken yet, so it can only be a point of clarification of the last speaker. Do you have a point of clarification?

9.1.4 Deputy R.J. Ward:

The point of clarification I want to make is just to confirm that what the last speaker said is the case for everybody that by rejecting part (a) and accepting part (b) we retain the 2 15 minutes of questions without notice for named Ministers but add on questions without notice for all Ministers in addition, whereas if we adopt part (a) we lose the 2 15 minutes and only have the add on of one hour of questioning. I believe that is the case. I just want to ensure that everybody is clear on that.

The Bailiff:

Deputy, I am going to have to take that as your speech because you have not asked for a point of clarification. Do you wish to continue with your speech if you want to make on or are you content?

Deputy R.J. Ward:

I was not expecting to jump the queue in that way, but if that is the case I would go for part (b) and not part (a) because I agree with the last speaker and other speakers and say that we should retain the questions to Ministers individually on that rota so that we can raise points that are perhaps not linked to COVID-19 because life does go on beyond that. But also have in addition the extra time to ask specific questions across the field of Ministers, which I think is really important at the moment, and I personally believe it would be a good thing going forward anyway.

Deputy M. Tadier:

Can I just check, is this the last item today?

The Bailiff:

Yes, Deputy, it is.

9.1.5 Deputy M. Tadier:

Good. So, in that case, because I was minded to suggest that P.P.C. could have done better than this and if it were normal circumstances I would probably make that charge against them as they would against me if I lodged something similar. That said, there is an issue here because we do not know the detail of how long questions without notice on COVID only would last for and the problem is, if it were for an hour, there are some Members who purely for time purposes would vote for part (a) because they would not want an hour of question time plus another half an hour of question time on top of that. But that would be democratically problematic like has been said by Deputy Morel. It is imperative that at every sitting, especially at every scheduled sitting, we do not change Standing Orders because there will be other issues that affect all of our constituents and general public interest questions that we need to raise, which are not necessarily related to COVID. So I do not think it is going to be an either/or, it has to be that we vote against part (a) today because it would be undemocratic to do so and to vote for part (b). I would say that we do not necessarily need a full hour for questions on COVID because we can pick and choose which Ministers we want to ask for. I do not mind if there were an hour but I think half an hour would probably be sufficient and then keep the half an hour of questions without notice to the rota'd Ministers. In an ideal world, and I have raised this with P.P.C. before, we should be able to submit written questions when we are not in scheduled sittings, so written questions do not need to have a sitting attached to them. It would be better, for example, if we could put 5 questions in on a rolling basis, let us say every 2 weeks, so that questions could be asked as and when we need to. I know we are not debating written questions today.

The Bailiff:

Deputy, I would not normally interrupt you at this point but we are coming close to being only 20 minutes left before, beyond our control, in 18 minutes the whole thing just stops. So if you could confine yourself to the Proposition being considered that would be better and if all Members wishing to speak could do so, thank you.

Deputy M. Tadier:

I will finish by saying it would be better if P.P.C. had brought something that was future proofed because we are going to have emergency situations coming up all the time. At the moment it is COVID, in the future, in the near future, it is going to be the recession. We could have specific questions that are limited to certain topics, so I am slightly wary of limiting what the nature of the topic is, especially when there are tangential matters that might be loosely related to COVID and then the Chair has to rule on that. So fine for the moment, I can stomach part (b), but P.P.C. need to come back with this in the future to think about a new way. I was just going to add that there should be 15

minutes of questions to the Chief Minister every sitting anyway because he is the Head of Government, whoever that might be in the future included.

9.1.6 The Connétable of St. Ouen:

My concerns are similar to Deputy Tadier's because if we suspend part (a) of the Standing Orders then that does not allow Members to ask questions of the Ministers on rota about normal issues. I guess our views on that would be helped if the Chairman of P.P.C. could qualify what he means by questions about the coronavirus, how widely, or indeed you as the Chair, would interpret that particular direction, how far away from the central theme of coronavirus would you allow questions to stray before you ruled them out of order. Those answers will certainly influence my views on whether I vote against part (a) or for part (a) but in closing I would thank the Chairman of P.P.C. for bringing this to the Assembly because it is an important subject in this time of crisis; the Assembly need to be able to ask questions of Ministers so that they can get clarification for important issues that their constituents have. In the interest of time I will close there.

9.1.7 Deputy M.R. Le Hegarat:

I would just like to make one point to other Members within the Assembly. This Proposition is lodged by Deputy R. Labey of St. Helier. This is not lodged by P.P.C.

The Bailiff:

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

9.1.8 Deputy R. Labey:

I absolutely understand the concerns raised; the major concerns raised being this preventing questions without notice on 2 Ministers on a subject that is not COVID-19 related. I understand that. I would just say this: there is still the opportunity for questions with notice to be asked of any Minister outside COVID-19 and the good thing about those is you get 10 minutes of questions afterwards in which to press the point.

[17:15]

My other point is this: for the next 3 or 4 months every single question we ask is about C-19 because that is what we are experiencing at the moment and it has a profound universal effect on every single thing we are doing now and we will be doing once it is over. So the scope of questions relating to COVID-19 is huge because you can frame it, every single question, with COVID-19 in it because you are either asking a question about current COVID-19 things while we are under the Regulations and under lockdown, *et cetera*, or you are asking a question, a pertinent question, is the Minister, while the COVID-19 epidemic is upon us, is he still researching or considering or developing X, Y or Z? So in fact the scope is wide and I do think the Chair will exercise leeway in this. I am absolutely sure that Members will be able to ask any question they want because COVID-19 is all encompassing. I would ask Members to vote for (a) and (b) now so that we can get a standard in place. If it is not working we will adapt it or if we think we can make it better we will adapt it. The only reason it is not a P.P.C. Proposition is because P.P.C. met at 2.30 p.m. on Monday and I had to get this in sooner than I had the opportunity of meeting with them and getting this vote on. I cannot think, Members, of a question that would be ruled out of order during this crisis because every question is about COVID-19. Questions are one of the most important functions of this Assembly, so we have to tread carefully, but I do think that this will not stop Members from asking questions. It in fact increases the time for Members to ask questions. But we should think carefully about having half an hour of questions maybe to the Minister for International Development and maybe the Minister for, I do not know, External Relations in the diary coming around again and again, when that half hour could be better spent. But if Members felt we should have it we will amend it and we will come back and we can say let us put that rota in. But I would urge Members to give this a try for the next month or 2.

It will become apparent if Members are not feeling it is working and we can adjust it and amend it. But this would at least give us the certainty that we will have this hour of questions and on both kinds of sittings and it would assist us; I think it would assist me and everybody, to have that certainty and to make some rules here in these extraordinary circumstances. I hope that is good enough for Members; this will be positive. I honestly believe no Member will be short-changed and if they do feel they are being short-changed we will adapt it, we will change it to make sure that does not happen. I maintain the Proposition and I ask for the *appel*.

The Bailiff:

Thank you very much, Deputy. There are 2 points of clarification raised. I warn Members there is approximately 10 minutes to go and we still have to deal with future business. The first one is Deputy Tadier.

Deputy M. Tadier:

I will keep this brief. We can certainly tell it is the afternoon session by some of the comments that are being made. Deputy Labey said that the Chair would exercise leeway but, if part (a) is removed and we can only ask questions on COVID, can he clarify how that would be the case? He also said that all questions that we would ask of Ministers would necessarily be COVID related. Let me give an example. So if someone were to ask a question of the Minister for Education about ...

The Bailiff:

I am sorry; this just is not a point of clarification.

Deputy M. Tadier:

It is clarification, Sir.

The Bailiff:

I am sorry, Deputy, these are observations you are making on the Chair's speech, the Chair of P.P.C., Deputy Labey's speech. They are arguments; they are not points of clarification. They are simply putting a different point again to him and I do not allow them.

Deputy K.G. Pamplin:

My point of clarification is very quick, does the Chair of P.P.C. have any information of any unscheduled meetings that we will be needing before the next scheduled meeting and also does that also include 9th May?

The Bailiff:

I can answer the last one; it cannot include 9th May, which is a special sitting for a particular purpose. It will require a special vote on that. But do you have any other points you wish to make, Deputy Labey?

Deputy R. Labey:

I was going to cover all that in arrangement of public business. My feeling is the messages I am getting from the Executive at the moment is that the next sitting of the Assembly will be the next sitting of the Assembly to discuss, taking Liberation Day out of it, will be 12th May. There was a suggestion they might need an additional meeting but I understand not before 12th May. Things can change; it is very fluid.

The Bailiff:

So you maintain the Proposition. Are you taking the various parts separately, Deputy?

Deputy R. Labey:

I will take it together.

The Bailiff:

You would like to take it together, very well. That is a matter for you and I ask the ...

Deputy R.J. Ward:

I really do not think it is a good idea to take it together. To be rushing this through at the last minute and I am very unhappy with this.

The Bailiff:

Thank you, Deputy Ward, and I understand, but on a matter of a Proposition it is entirely a matter for the person bringing the Proposition whether they take it separately, if it is capable of being taken separately, or together. Deputy Labey has indicated he wishes them taken together and so that is the way that it has to be dealt with. Very well, I ask the Greffier to put up the link and ask Members to vote in the normal way.

POUR: 23		CONTRE: 20		ABSTAIN: 1
Senator L.J. Farnham		Senator S.C. Ferguson		Deputy G.C.U. Guida (L)
Senator J.A.N. Le Fondré		Senator S.Y. Mézec		
Senator T.A. Vallois		Connétable of St. Lawrence		
Senator K.L. Moore		Connétable of Grouville		
Connétable of St. Helier		Connétable of St. John		
Connétable of St. Saviour		Connétable of St. Martin		
Connétable of St. Brelade		Deputy G.P. Southern (H)		
Connétable of Trinity		Deputy M. Tadier (B)		
Connétable of St. Peter		Deputy M.R. Higgins (H)		
Connétable of St. Mary		Deputy of St. Martin		
Connétable of St. Ouen		Deputy L.M.C. Doublet (S)		
Deputy J.A. Martin (H)		Deputy G.J. Truscott (B)		
Deputy of Grouville		Deputy J.H. Young (B)		
Deputy K.C. Lewis (S)		Deputy K.F. Morel (L)		
Deputy J.M. Maçon (S)		Deputy M.R. Le Hegarat (H)		
Deputy S.J. Pinel (C)		Deputy S.M. Ahier (H)		
Deputy of St. Ouen		Deputy J.H. Perchard (S)		
Deputy R. Labey (H)		Deputy R.J. Ward (H)		
Deputy S.M. Wickenden (H)		Deputy C.S. Alves (H)		
Deputy L.B.E. Ash (C)		Deputy K.G. Pamplin (S)		
Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				

The Bailiff:

Are we in a position to read out the *pour*? As we do not have the table up yet, let us move on to deal with the public business and we can come back if necessary when the table is available.

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

10. Deputy R. Labey (Chair, Privileges and Procedures Committee):

Can I just say a word of thanks to, from Digital Jersey, Mr. Rory Steel who has been helping us so much and helping Members and the Greffe with these virtual proceedings and on the same vein can I thank my Vice-Chair, Deputy Alves, who is also tirelessly helping Members with their individual issues, I.T. (information technology) issues, and I thank them both. The only changes so far to the Consolidated Order Paper are the addition of P.43, Deputy Tadier's Proposition about web-streaming of court proceedings, and P.52, Deputy Southern's Jersey Gas Proposition; that is for the meeting of 12th May 2020. There are some Bank Holidays around, so there will be changes to the deadlines for questions. I think 9.30 a.m. on Thursday, 30th April, for written questions and Wednesday, 6th May, for oral questions, but I am sure the Assistant Greffier will put a notice out to Members about that via email. I was just going to seek clarification from you, Sir, that we are meeting on 9th May, which I think is very important and we should always do, but there was a suggestion at one time that it might be moved but that is going ahead, is it not, full steam?

The Bailiff:

Yes. The States will meet virtually at 10.30 a.m. on 9th May to enable a Member to speak on the matter of the liberation of the Island.

Deputy R. Labey:

In which case, thank you, Sir, I propose the arrangement of public business.

The Bailiff:

Does anybody wish to comment on the arrangements for public business? Very well, the arrangements of public business are as proposed by the Chair of P.P.C. and the States stand adjourned until 10.30 a.m. on 9th May.

ADJOURNMENT

[17:26]