

STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 27th MAY 2020

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[9:33]

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

COMMUNICATIONS BY THE PRESIDING OFFICER

The Bailiff:

1.1 Welcome to His Excellency the Lieutenant Governor

On behalf of Members I would like to welcome His Excellency the Lieutenant Governor to the virtual sitting of the Chamber this morning.

QUESTIONS

2. Question to Ministers without notice

The Bailiff:

There is now a period of questions for Ministers without notice. As has become customary, I will allow an hour for questions. I would ask when Members wish to ask a question they indicate that within the chat, including identifying the Minister who they would like to ask a question of. If the Member is uncertain then the Chief Minister can allocate a Minister to whom it is addressed. I will allow one supplementary question from the original questioner before moving on to the next question notified on the chat in the usual way.

2.1 Connétable A.S. Crowcroft of St. Helier:

The Chief Minister will recall that before the pandemic struck the Island the Regeneration Steering Group had agreed a number of projects that would be taken forward using the dividends from the Jersey Development Company for funding. Can the Chief Minister confirm that that list of projects is still going to be put in place, particularly as a lot of them relate to open space, which is something that is going to be even more important than before post-COVID-19?

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

My understanding is we are going to get an update from the R.S.G. (Regeneration Steering Group) sometime in the next very few weeks. At this present stage everything still remains on the table and my view is that some of that would potentially assist in essentially this economic stimulus. Therefore, I would hope that we were progressing at least some of the projects that have been identified. What I cannot give certainty on is in what order and exactly whether they will all be done within the timeframe that we originally envisaged. But my support is certainly there for it, but we have also got to just keep an eye on where we are, given the financial updates that all Members were provided with last week. My overall position though is that to me they would fit into projects that are likely to be at a more advanced stage than others and therefore be likely to generate some form of economic stimulus as well as social benefit and therefore should be supported.

2.1.1 The Connétable of St. Helier:

Would the Chief Minister agree with me that quite regardless of the fiscal stimulus argument, which I agree is useful, there has been a pledge made and repeated in the States that the dividends from the Jersey development work would be used for urban regeneration and that pledge needs to be fulfilled in its entirety?

Senator J.A.N. Le Fondré:

I am absolutely aligned with the Connétable on this matter and I do want to see investment coming into St. Helier, particularly funded by the mechanisms he has talked about. My usual caveat, as an accountant, which is not trying to slide away from it in any shape or form, is bear in mind the

extraordinary circumstances we are in relative to 2 or 3 months ago. I am just adding an element of caution as to whether they will all be done in the timeframe that we had originally hoped. But we will know, as will the Connétable, when the R.S.G. next meets and my understanding is that will be within the next 3 to 4 weeks. At a personal level, and at this stage, I see no reason to disagree with the Connétable in any shape or form.

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

Could the Minister for Health and Social Services update the Assembly as to what progress has been made with regard to 2 projects? One being the stress testing of the Future Hospital and, secondly, the new Jersey Care Model, effectively the old P.82.

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

The stress testing of the Future Hospital, I think perhaps the words “stress testing” has been used more so in the context of the care model. First to the Future Hospital; that Political Oversight Group is led by Senator Farnham, who has recently given a statement to the Assembly on the progress of that, and the delays that have unfortunately been incurred as a result of COVID, but the work that is planned going forward, including the announcement of a third partner and the short-listing of sites and the planning application. As to the Care Model; that work the PwC review has now been concluded and the Care Model has been shared with the Scrutiny Panel - that is the PwC review - and the matter will be moving forward. I have previously promised a debate on it in the States and still intend to find time for that.

2.2.1 Deputy G.J. Truscott:

With the political oversight group pressing ahead with the full planning application, I am sure the Minister would agree that the timelines have narrowed somewhat. Is the Minister confident that both pieces of work will be ready in time to influence the design of the new hospital?

The Deputy of St. Ouen:

Yes, I am confident. There has been very careful planning around this and the 2 streams are moving forward in tandem.

Deputy R. Labey of St. Helier:

Sorry to interrupt. It is Deputy Labey here of St. Helier. I am taking part in the meeting but the chat box I have got does not seem to be the right one.

The Bailiff:

You said in the chat: “I am in the wrong chat”, Deputy, I could read it. It was on the chat I am on.

Deputy R. Labey:

So, did you get my request for a question?

The Bailiff:

Yes, I have you as a question for Economic Development, yes?

Deputy R. Labey:

Thank you very much.

2.3 Deputy M. Tadier of St. Brelade:

Would the Minister for Home Affairs confirm whether it is currently the case that the 2-metre rule for people in public is in law and, if not, what is it that the police have been enforcing up until this point?

Connétable L. Norman of St. Clement (The Minister for Home Affairs):

Yes, my understanding is that the Order prescribed by the Minister for Health and Social Services, which expires later this week, makes it an offence not to social distance or physically distance the 2 metres. Also, it is an offence to visit somebody else's home and it is also an offence to be out of your home more than 6 hours a day. That would be subject to a fine of up to £1,000 in the Magistrate's Court. That is my understanding but probably confirmation from the Law Officers would be more appropriate than from me.

Deputy M. Tadier:

I would quite happily ask the Attorney General a question. I am not sure if he is there.

The Bailiff:

I am afraid you cannot ask the Attorney General a question that arises out of an answer at this point.

2.3.1 Deputy M. Tadier:

I might have directed my question if I thought the Attorney General was there, for example. Could the Minister explain what the difference is between the legislation and P.66 on the table today and what is currently in place?

The Connétable of St. Clement:

Both pieces of legislation are the Minister for Health and Social Services, not the Minister for Home Affairs, but the difference is, as far as I can gather and I am sure the Minister for Health and Social Services will confirm this later on in the day, that visiting someone else's home and being out of your home for more than 6 hours a day is no longer an offence or will no longer be an offence.

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

Could the Minister for Health and Social Services please inform Members of the medical guidance that led to the decision that children and their parents are included within P.66 as liable please?

The Deputy of St. Ouen:

I thank the Deputy for that question. We have learnt from the briefing notes that the Medical Officer of Health kindly forwarded yesterday that children and adults can equally transmit the COVID virus. It is not for the Medical Officer of Health to formulate a decision as to whether children or adults should be responsible for the commission of an offence. That is a policy issue and that decision was taken ultimately by me as Minister.

2.4.1 Deputy L.M.C. Doublet:

Can the Minister please outline what basis he decided to include children and their parents within this legislation?

The Deputy of St. Ouen:

I began by noting that from the outset when we met at Fort Regent to pass emergency legislation, the Assembly approved exactly the same sort of provision that we will be debating later, that children of an age of criminal responsibility should not be exempt from regulations but should equally be responsible for their conduct. That is already in existing regulations. I believe that is appropriate. We do ask people under 18 years of age to obey societal rules, which we formulate in laws or regulations. I think it is important that people under 18 in this case understand the risks of transmitting the virus. What we will be discussing later will be an offence that is only created by a wilful refusal to physical distance and I believe that young adults and children over the age of criminal responsibility can understand what wilful refusal is.

2.5 Deputy S.M. Ahier of St. Helier:

What will the cost of firefighters be that are required to be onsite at the Nightingale wing when it is in operation and was this cost included in the original estimate of £14.4 million?

The Connétable of St. Clement:

I do not know about the £14.4 million but the officers or the fire equipment which will be based at the Nightingale hospital, when and if it is occupied, will be part of the normal day-to-day routine of the fire service. It will not be an extra facility. It will effectively mean that we will be operating 3 fire stations; one at Rouge Bouillon, one at Western Fire Station and one at Millbrook instead of the current 2.

2.5.1 Deputy S.M. Ahier:

Will anymore staff be required to cover the facility, or will they come from the standard resource?

The Connétable of St. Clement:

They will come from the standard resource as part of our normal deployment.

2.6 Deputy I. Gardiner of St. Helier:

There are many Islanders for weeks waiting for the opening of dental practices. Would the Minister indicate when dental practices might be reopened?

The Deputy of St. Ouen:

It is our intention that private dental practices should be able to reopen from next Monday, 1st June.

2.6.1 Deputy I. Gardiner:

Thank you to the Minister for the answer; it is really reassuring. When does the Minister think the protocols will be shared with the industry, which will give them time to prepare premises and the practices to the new procedures?

The Deputy of St. Ouen:

The Public Health Team is currently working with the Jersey Dental Association to develop guidance, which will support the safe practice of the surgeries, and that guidance will be ready by the end of this week enabling the practices, if they wished, to be open on Monday.

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

What provision has been put into place to continue the testing regime moving forward since those staff currently performing this role return to their normal duties?

The Deputy of St. Ouen:

Interestingly that was a question I asked yesterday of officers, envisaging that normal work life would be returning for some of those on our teams. But I am assured that there are people who are still being signed up to join, for example, our tracing team. Graduates who are in the Island or students who are studying and not yet at university, as an example, have been drawn in to be part of the teams. There is not believed to be a difficulty at present in approaching the people that we need.

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

Will the Minister detail the current legislation that specifies the 2-metre physical or social distancing requirement and the £1,000 fine that the Minister for Home Affairs has just alluded to?

The Deputy of St. Ouen:

The requirement to keep the 2-metre physical distance is contained within the Covid-19 (Restricted Movement) (Jersey) Order 2020, which is an Order made under the Covid-19 (Screening, Assessment and Isolation) (Jersey) Regulations 2020, which we passed on a whole States Assembly in Fort

Regent in March. It is a condition of being able to spend time outside of the home that all persons keep that distance. Should they not do so they would be guilty of an offence. That is how it works. I believe that is liable to a fine at Level 2, which is £1,000. I hope that has helped.

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

In Written Question 161/2020 with regards the Island's recovery, the Chief Minister stated the creation of a Political Oversight Group above senior officials' group and a newly formed Economic Recovery Council. Will the makeup on the criteria for inclusion for these groups be published before they start work?

Senator J.A.N. Le Fondré:

The Political Oversight Group, which has got some external members on, was signed off by me, I think last week. From recollection the membership of that group is included in the Ministerial Decision and accompanying report. In terms of the membership of the officer group, I see no reason why that should not be disclosed, and the formation of the Economic Council are finalised, so therefore the makeup will be notified to States Members and publicly as a result of, I assume, a Ministerial Decision.

2.9.1 Deputy R.J. Ward:

First of all, with regards the Ministerial Decision, can that be sent to Members? I do not think it has. But the supplementary is: will the outcomes of the work of these groups be published to the Assembly so that their influence over future policy can be evaluated by Assembly Members?

Senator J.A.N. Le Fondré:

The work of the overall Political Oversight Group, which we have been informed by the work of the Economic Council, will obviously be available, notified and informed to States Members because part of that will be feeding through to the Government Plan and all those types of aspects. So, yes, Members will also be kept informed and involved and that is what we are just trying to fine tune is how we get the involvement of States Members in at the right time and the right level and ideally as early as possible. Obviously, part of that involvement commences with the in committee debate next week.

2.10 Deputy D. Johnson of St. Mary:

In the Minister's reply to the question raised by Deputy Gardiner, he said that it was his intention to allow dental practices to operate as from 1st June.

[10:00]

Could he please give an unqualified commitment that in fact will be the case or, if there are further procedures outstanding, could he please advise what they are?

The Deputy of St. Ouen:

As I told Deputy Gardiner, guidance is being worked on at the moment with the Jersey Dental Association. We intend to have that guidance ready by the end of the week. I think that enables then private dental practices to reopen from Monday. Whether they choose to do so exactly on Monday will be for each practice to make that decision. But the guidance, our intention is fully to have that ready by the end of this week. We believe that will be achieved.

2.10.1 The Deputy of St. Mary:

The Minister will appreciate that there is a not inconsiderable number of patients presently suffering as a result of the breakdown. Dentists wish to treat these as soon as possible. If he is not able to give an unqualified commitment to opening now would he undertake to issue a press release as soon as possible as to the ability for practices to open and communicate that direct to the Jersey Dental

Association. I noticed comment about Friday. If the practices are to open as from Monday, I am sure more time would be appreciated and is he able to bring that press announcement forward please?

The Deputy of St. Ouen:

I will do all I can to make Islanders aware of this facility that is being made available to them. We have been able to put this approach in place following a clarification of the General Dental Council's position on 11th May, which established that guidance could be followed by our Jersey dentists allowing them to reopen at a different time than the U.K. (United Kingdom) because it explains the case that private dental practices in the U.K. are not open and that few U.K. urgent treatment centres are offering a whole range of dental services. So, we in Jersey are leading the way here, it seems to me, and all credit to those involved, including dentists who are working with the Public Health Team. But it is complex. We must appreciate the risks that are involved and that is why it is necessary to put in place good precautionary and hygiene measures, which the dentists fully understand. As to press releases, yes, I will ensure that those go out as soon as they can. As I said, we anticipate the end of this week and reopening on 1st June.

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

Would the Minister confirm whether she has had any representations from industry regarding her proposed family friendly legislation and indeed the outcome of the meeting she had on Friday with the Chamber of Commerce?

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

Yes, I did meet with Chamber on Thursday for an hour. There was a feeling in Chamber that an 8-week delay would be helpful to small business. When I explained my scheme, which at the moment does not help the second partner, I had to go away and decide which was the best way forward. With Jersey Business around for advice and everything weighed up, it is really important to those few babies that are born in those 8 weeks, I made a decision. It has been published, I have written to Chamber that I am aiming to still go for the 28th June introduction.

2.11.1 The Connétable of St. Brelade:

Would the Minister confirm that in the light of the States' finances being uncertain as a result of the COVID interventions that the ability for the Government to afford to support businesses who cannot afford to support families is inappropriate at this time and it would be better to wait for some clarity with regard to what can be afforded?

Deputy J.A. Martin:

We had a big discussion of this as well at Chamber and I worked on the Co-Funding Payroll Scheme, which is worth millions. There is more support for the second parent ... well, it is not the second parent, it is the employer of the second parent, is just enabling. That is what they were asking for last year. The Constable will remember, and I had many representations from small business and it is affordable, I have got the money, the Treasury are going to back me up. Again, we have costed it for every second partner, probably will not be that, and, as I say, it is the difference between 8 weeks. Chamber was supportive. To me the babies born in that time, parents as soon as they heard I may be delaying I have had emails over the weekend. The babies are important, and we do have the money to go forward.

2.12 Deputy R. Labey:

I think I have got the right Minister. Will the Minister undertake to ascertain whether Ports of Jersey has halted work on the £42 million redevelopment of Jersey Airport, pending the review of the project's appropriateness in the light of COVID-19, the greatly changed aviation landscape, and the uncertainty surrounding the future of air links to the Island?

Senator L.J. Farnham (The Minister for Economic Development, Tourism, Sport and Culture):

Yes, I will quite clearly and obviously the Ports of Jersey have taken a very large financial hit given the circumstances of COVID-19. So currently all projects are under review and I will undertake to update the Assembly in short order.

2.12.1 Deputy R. Labey:

Given that understandable position, is it not right that any work on demolishing the old 1937 terminal should not proceed?

Senator L.J. Farnham:

Not necessarily because, notwithstanding the Ports of Jersey's position, the changes to their financial position, any changes they might make to wish to the development of their business, we also have to reconsider economic stimulus and how we start to rebuild the economy. It might well be that supporting projects like that may be in the very best interests of the economy at this time. Those are questions we are dealing with right now, but I want to make it absolutely clear that we have to get the Island back to work as soon as possible. We have to get as many businesses, as we can as safely as we can, open and all people back to work as soon as we possibly can.

2.13 Senator K.L. Moore:

At a Scrutiny hearing last week the Minister told the Panel that she was considering removing the prior year payment of taxes. It has come to my attention that early requests for payment are now being sent out to prior year taxpayers and that somewhat flies in the face of the Minister's previous statement. Could the Minister explain to the Assembly what exactly is the purpose of these requests for early payment please?

Deputy S.J. Pinel of St. Clement (The Minister for Treasury and Resources):

I thank the Senator for her question. The change which we are hoping to make and would have done, without necessarily this situation at the moment, from prior year basis tax to current years basis tax, which I think is generally popular with the public, may or may not go ahead this year because we would have to do some sort of consultation on it. Because of the current situation that is proving difficult. With the introduction of online tax filing that has also been quite complicated, as the Senator will know and as will the public, but a lot of people have taken up that offer and the change being that if a member of the public is filing their own tax return it has to be by the end of May with an extension to the end of July if an agent is doing it for them or if they are filing online.

2.13.1 Senator K.L. Moore:

I think the Minister has slightly missed the point in the question, which is why are early payment requests going out to prior year taxpayers, particularly at this time when some might be financially stressed?

Deputy S.J. Pinel:

It is to ask people if they wish to pay earlier on the basis that we do not want to inflict on people a debt if we move to current year. So, until this comes before the States as a decision to be made then it is just a request for people to pay earlier if they wish to.

2.14 Connétable S.A. Le Sueur-Rennard of St. Saviour

I have had a member of my family in and out of hospital for the last 10 days and the hospital staff have been absolutely fantastic but there have been some questions asked. For a start, the surgeon and the staff would like to know why none of them have really been consulted about the Nightingale hospital that went up? Also, they want to know who organised it, whose suggestion it was that we should have a Nightingale hospital.

Senator J.A.N. Le Fondré:

I have to go back now to I think it was late March/early April. The process was that we were looking at bed capacity in the event of a surge coming through, which at the point the decision was being taken was still considered to be a very ... it is part of the preparation in the event that the other mechanisms that we put in place did not work. Obviously, that is no longer the case. In looking at bed capacity, there were a variety of options that were available and in the end the conclusion and recommendation that then came to politicians was to go for the Nightingale wing, as it is referred to. The sign-off process, from memory, I would want to go back and check, but essentially it came to Competent Authorities, then to Emergencies Council and then was finally endorsed by the Council of Ministers. From memory that was on a Wednesday and then the Minister for Treasury and Resources signed off on a Thursday and preparation was then ready to go and almost commenced immediately. In terms of consultation below, I cannot answer that question. I can go back and find out. I would make the point it was around bed capacity in the circumstances that we were facing at that point in time. Does that answer most of the questions?

2.14.1 The Connétable of St. Saviour:

You said “we” and a recommendation. You still have not said who mooted this. People there, in the hospital who are working, would like to know who put this forward because they would have preferred the £14 million to go on staff or staff pay rises, so they are just interested to know who suggested. I will give the Minister time if he has not got the answer, maybe he could look back on the minutes of the meeting that they had in March and it will say whose suggestion that it was and whose recommendation. The people out there would like to know.

Senator J.A.N. Le Fondré:

I can say it would have been from the senior management of Health and Community Services absolutely. The Chief Nurse would have been involved in that decision-making and it was around the point about bed capacity. It was not a case of that £14 million was available to be spent elsewhere. It was a case that we needed to make sure we had appropriate bed capacity if a surge came through. The choices in front of us were what was the most efficient way, for want of a better expression, in other words that placed the least stress on staff and other resources, such as ambulance time to get patients from the General Hospital to the Nightingale. That would have been part of the factors that went through. That was the - as we have alluded to in the past - reason that the Nightingale option was chosen and that was the reason it was placed at Millbrook.

Deputy G.P. Southern of St. Helier:

I have been trying to ask a question for the last half hour. Am I not on the list?

The Bailiff:

I have next to ask Deputy Alves, then you, then Deputy Morel, then the Connétable of St. Mary and that ends my list of people asking the first questions.

Deputy G.P. Southern:

I do apologise.

The Bailiff:

Then we move over to second questions. What I have done is I have noted everyone in strict order and making separate columns for second and third questions, which obviously will get called after the first questions are exhausted.

2.15 Deputy C.S. Alves of St. Helier:

Given that the antibody testing is now fully booked for 6 weeks can the Minister advise whether further testing opportunities will be provided?

The Deputy of St. Ouen:

We will always look into what further may be required. We need to consider the resources and the availability of staff. But we have a good testing regime in situ at the moment to test a large number of our population.

2.15.1 Deputy C.S. Alves:

Can the Minister advise whether the testing results are being fed back to individual's G.P.s (general practitioners) or being stored somewhere centrally?

The Deputy of St. Ouen:

No, in the case of the antibody tests the results are given to the individual themselves. It is not a diagnostic test.

2.16 Deputy G.P. Southern:

The Health and Social Security Scrutiny Panel has received a final draft dated 14th May 2020 of the report by PwC on the Jersey Care Model. It has also expressed a wish to see the early drafts. What did PwC say on 23rd March, for example, in version 0.6 and what did they add to the report in the detailed consolidated comments received from the Executive Team and the Clinical Chair? Can the Minister assure the members of the Panel that we will be able to see those early versions of what PwC first reported rather than the version that we have now 8 weeks later?

The Deputy of St. Ouen:

That seems an unusual request, but we will certainly look at it. Perhaps if the Scrutiny Officers would speak to my Officer to explain the reasoning. There is only one PwC report and it is understandable that that would have gone through a number of drafts. We all work on drafts before something is finalised. So, I do not quite understand the reasoning for the request for further drafts, but I certainly undertake to look into it if the Panel wishes to communicate in the usual way.

2.16.1 Deputy G.P. Southern:

Can the Minister not do better than "we will look at it". "It was an interesting request." The point is we want to see what PwC first said. Not what has been tarted up, what has been opinion from the members of the Health Panel there, but how it arrived at its original questions. Will the Minister offer some assurance that we will be able to see the thinking that has gone into this?

The Deputy of St. Ouen:

I am afraid I still do not understand fully the Deputy's request unless he is suggesting that PwC have been told to write something in their report by Health. That is inconceivable. PwC are a professional firm who were brought in to report.

Deputy G.P. Southern:

The Minister knows well the devil is in the details.

The Deputy of St. Ouen:

I just say to the Deputy that PwC have issued one single report that is available to be scrutinised and examined by all. How they drafted their report, how many drafts they put into it, is not something that I have any control over. It is their work. It is work that is done outside of my Department. May I ask the Deputy to write in and explain what his concerns are because I am afraid I do not understand at the moment?

2.17 Deputy K.F. Morel of St. Lawrence:

We have heard this morning how dentists will have less than one working day in which to adopt guidelines presented to them by the Health policy people. We also know that there are other business sectors, such as hair and beauty, and others, who are still yet to receive guidelines from the Government as to how they may reopen their businesses. Would the Chief Minister please assure the Assembly that resources in terms of number of Policy Officers available is not the reason for leaving some business sectors unable to open at this time?

Senator J.A.N. Le Fondré:

I have had a similar conversation with the Chief Executive in the last couple of days on this matter. What I will say, resource is not the issue from the point of view that if individuals need to be diverted or moved from other departments into S.P.3 (Strategic Policy, Performance and Population) to add to the development of the guidelines, that will be done. Obviously, there is a certain skillset in there as well. I will say that Officers have been working not quite day and night but very many hours since March getting all the legislation and all the guidance in place. So, from a capacity point of view, it is more the fact that I think they have worked every hour under the sun and therefore there are limits if it gets more demands coming in as to how quickly things get turned around. What I will say though, the Deputy cited hair and beauty as an area and although I have not got the guidance in front of me, from memory that is a Level 2 area, not a Level 3. Although we have got some flexibility in there and we are watching what is happening elsewhere and what is happening on the Island? The focus, as the Deputy is aware, is dental practices ...

The Bailiff:

Supplemental, Deputy?

Deputy K.F. Morel:

I would like to thank ...

Senator J.A.N. Le Fondré:

... and when that has been properly evaluated then we move on.

The Bailiff:

Sorry, Chief Minister, you cut out. I had assumed as it was well past one minute 30 seconds you had come to an end of your answer and therefore the Deputy has asked a supplemental. Would you like to ask your supplemental again, Deputy?

2.17.1 Deputy K.F. Morel:

I would like to thank the Chief Minister for his answer. Could he assure the Assembly that where offers of Policy Officers from other departments are made to help with the drafting of guidelines and to ensure businesses are able to get back to work as quickly as possible they will be considered and, in the main, accept it?

Senator J.A.N. Le Fondré:

I believe that is always and already the case.

2.18 Connétable J. Le Bailly of St. Mary:

Could the Minister confirm the clarification of social distancing? Is the 2 metres to be face to face or should it be between outstretched hands which would then be about 3½ metres face to face? I ask this really in case our Honorary Police need to contain somebody.

The Deputy of St. Ouen:

I hesitate to give guidance as to how the police might specifically enforce the regulations, if approved. I think anybody within 2 metres. I know that the police would enforce that in a sensible way having

regard to the circumstances that they are faced with. I do not think it is appropriate to get into a discussion as to what happens if someone has outstretched arms towards another. It is 2-metre rule.

2.18.1 The Connétable of St. Mary:

Could I take that 2 metres to be face to face?

The Deputy of St. Ouen:

It is 2 metres of a person closer to another person who is not of their household. There is no specific reference to a face or any part of the face.

The Bailiff:

That is the end of the first questions that we have listed. Deputy Gardiner, you have a second question?

2.19 Deputy I. Gardiner:

During the last Bank Holiday weekend there were lots of reports about the extreme level of rubbish discarded by groups of people, which include broken bottles, discarded barbeques, food scraps, drinks and plastic bags. Can the Minister advise how many spot fines have been issued or any other actions were taken over the weekend to address this issue?

The Connétable of St. Clement:

Unfortunately, the police, both the States Police and the Honorary Police, do not have the authority to issue on the spot fines or, as yet, fixed penalty notices for such offences. The only power they have is to arrest and charge. Unfortunately, when people see the police approaching they tend to disperse, and it is very difficult to catch them. As far as I am aware - I could be wrong - I have not had any reports of any arrests being made for some of the disgusting littering that has occurred around our Island over the past few weeks.

2.19.1 Deputy I. Gardiner:

What does the Minister think can be done to prevent this from happening in the first place and if he is considering to push forward legislation for the spot fines?

The Connétable of St. Clement:

I hope to convince my colleagues on the Council of Ministers that we should be looking for fixed penalty notices rather than on-the-spot fines. But of course, we do already have anti-littering laws. The difficulty with anti-littering is catching people in the act of committing the offence and then taking the appropriate action. As I say, often people will disappear very quickly when they see Police Officers approaching, which does make life very difficult for the police. One of the things that I hope will improve the situation, particularly as far as young people are concerned who have been out of school now for a long time and looking for other distractions, going back to school might help improve the situation.

2.20 Deputy G.J Truscott:

I note that the U.K. Government are pressing ahead with a points-based immigration policy. Can the Chief Minister confirm that he still intends to bring the immigration debate to the Assembly later this year and if not, why not?

Senator J.A.N. Le Fondré:

Yes, I can confirm.

2.20.1 Deputy G.J. Truscott:

I am pleased that he confirms that. There are 18 months until the next general election and this is asked directly of the Chief Minister: can he confirm that he aspires to have a new immigration policy in place by then?

Senator J.A.N. Le Fondré:

Yes, ordinarily I would have said we had been thinking about having it lodged in the next few weeks but obviously with the crisis that emerged pretty well as the drafts of the report were being presented to the Council of Ministers, and I think were presented to Members as well. It feels a very long time ago. Obviously, that has delayed matters, but the intention is to get an immigration policy in place and before the election. On that basis I do want to come into the Assembly ideally this year.

2.21 Deputy R.J. Ward:

This is about the Nightingale hospital. Does the Minister regret not including the fire service in the initial stages of planning thus leading to the requirement of a permanent onsite presence due to a lack of the local fire safety precaution consultation?

The Deputy of St. Ouen:

As the chief fire officer has said on the media this morning, the Nightingale hospital has been issued with a fire certificate.

[10:30]

It has been issued with a fire certificate. It has been issued with the condition that a crew is stationed there on the premises and that would have happened anyway, not through any lack of consultation. That is a similar setup with U.K. facilities. The temporary structure cannot conform to normal business standards so other mitigations are put in place. That has been agreed with a high degree of co-operation with the fire services. I think the document submitted to the Scrutiny Panel talks about a lack of consultation in the planning stage. I do not precisely know what was meant by the planning stage but that was presumably pre the decision to order and bring a Nightingale hospital into the Island. Once that decision was made there was excellent engagement with the fire service and the arrangements are the same that exist with Nightingale hospitals throughout the country.

2.21.1 Deputy R.J. Ward:

If the use of Nightingale is extended will the fire safety measures be revisited and, if so, how?

The Deputy of St. Ouen:

Lots of ifs there, but yes, I imagine all this is kept under review and if there is to be that extension I would expect discussions, and I know discussions would take place with the fire service and their recommendations taken on board. Exactly what those recommendations might be I am not in a position to know at this stage.

2.22 Deputy L.M.C. Doublet:

I would like to ask the Minister about his schemes for financial assistance and we are all aware of the fantastic work he has been doing for businesses. Would he agree to look at how families can be financially supported because I am aware of many families who are having to take unpaid leave to care for children. Of course, the issues might be with us for quite a while where grandparent care is not going to be there, and families will be faced with increasingly high costs even when childcare is available. What will the Minister do to help families with this please?

Senator L.J. Farnham:

There are circumstances I believe in which families or employees can be assisted under the current payroll 2 schemes, but I will check with officers as to the exact position and come back to the Deputy.

I agree. I think it is essential that we help as many people as possible to remain employed or remain paid during this difficult period.

2.22.1 Deputy L.M.C. Doublet:

I thank the Minister for his answer and I look forward to seeing what his plans will be. Can I just ask how the Minister has factored in the economic value of care and specifically the care provided by grandparents?

Senator L.J. Farnham:

I am sorry, factored into what? Factored into the overall Economic Payroll Scheme?

Deputy L.M.C. Doublet:

Is the Minister aware of the economic value of grandparents caring for their grandchildren?

The Bailiff:

Did you hear that, Minister?

Senator L.J. Farnham:

Yes, I did. When we look at the way the economy is monitored in the industry code, the S.I.C. (Standard Industrial Classification) codes as we call them, we do not estimate a value of that. It is something we have talked about before and it is something that I think we have to take notice of. It is not just that. It is the value of the contribution to the economy of all work carried out by people in all walks of life that might not be classified as helpers, from family carers to work in the home to childcare. That quite clearly brings a huge value to our economy, but we do not monitor it financially. It is very difficult. It is almost impossible to do that. But it is something we need to take more notice of in the future, I believe.

2.23 The Connétable of St. Saviour:

Like the building of the Nightingale hospital, the people who are possibly going to use it were not kept in the loop or asked many questions. The fire service, and we have had a lot of questions about this, have already reiterated that should this go on for the few months that they are anticipating they will not be able to give cover. This is common knowledge. Could the Minister - I do not mind which one answers it. It was the Minister for Home Affairs previously - tell us how he has arrived at the fact that the fire service will be able to cover it when the fire service themselves is saying they will have great difficulty in covering the hospital?

The Connétable of St. Clement:

Which Minister is that question to?

The Bailiff:

It started to the Minister for Health and Social Services, Connétable, but you seemed to change it to the Minister for Home Affairs. Shall we assume it is to the Minister for Home Affairs?

The Connétable of St. Saviour:

It is to whoever can give me an honest answer.

The Bailiff:

I think you must assume that all the Ministers will try and give you an honest answer, Connétable. If no Minister is specified, the Chief Minister allocates it. Chief Minister, which Minister do you wish to allocate that question to?

Senator J.A.N. Le Fondré:

I believe that the Connétable of St. Clement probably has a more honest face than the Minister for Health and Social Services, so on that basis, with tongue very much in cheek, I am sure the Connétable of St. Clement is going to answer the Connétable of St. Saviour's question.

The Connétable of St. Clement:

All I can tell the Connétable and the Assembly is that I have assurance from the Fire Chief that full fire cover will be provided for in the Nightingale hospital for any time that it is in use and occupied. Clearly, the indication at the moment it is not going to be needed, but things can change, and it may be needed. But I can assure the Constable that if it is occupied it will receive full fire cover from our very professional, efficient and effective fire service.

The Connétable of St. Saviour:

I have never underestimated our fire service, and this has been a bit of a twist in the question. I just wanted to know that ... all they had said, it would be difficult to give cover. I am sorry, I am disappointed with the last thing because the fire service are not ...

The Bailiff:

Connétable, it does have to be a question.

The Connétable of St. Clement:

I do not have one; trust me, it would be best if I did not.

2.24 Deputy M.R. Higgins:

As we all know, the death of a loved one can be a very traumatic experience. Will the Minister take into account the size and capacity for physical distancing of the building or venue the funeral takes place rather than the current arbitrary numerical figure limiting those who can attend, and will he revise his policy?

The Deputy of St. Ouen:

I do share the distress that is felt by many over the difficulties in holding funerals at the moment and the limitations on numbers. These processes are under review. I cannot say exactly when decisions might be made because they involve a great deal of engagement with the stakeholders, including faith groups who hold the buildings in which funeral services might take place. I can assure the Deputy that this is being considered. It is a question though of public health and trying to ensure that while families are allowed to grieve we do not put them in a situation where the virus would spread unnecessarily.

2.24.1 Deputy M.R. Higgins:

Would the Minister undertake to come back to Members and to the public as quickly as possible on this? We are opening up the economy. We are allowing more shops to open and so on and there are more people about generally. Surely if you have a venue that can accommodate 50 people and only 20 go that would be sufficient. Will the Minister give that undertaking to come back as quickly as possible please?

The Deputy of St. Ouen:

I will be able to come back when all the stakeholders have considered what might possible. For many of these venues it is not just a question of having the space to put people in. It is then a question of after any funeral service you might then have to deep clean the space. While a commercial organisation might be able to do that it is not always possible for some of these venues easily and if you take an ancient Parish church that might be difficult to clean. So, all these matters have to be taken into consideration. I do take the point the Deputy says that the Island is opening up again but let us consider how we are opening up. All sorts of constraints are rightly still upon us when we are

out in public, in our work places, because we must recognise the risks of the spread of infection. So that risk has to be taken fully into account.

PUBLIC BUSINESS

3. Reduction of minimum lodging period

The Bailiff:

That brings the time allocated for questions to an end. There are no items under J or K. We move on to Public Business but before we start 2 items listed are matters lodged over the last few days of which notice has been given. A Proposition will be made to reduce the minimum lodging period for each one in order that they can be taken at this meeting. Minister, do you wish to make the Proposition for both of the items? I am sorry, I did not hear the Proposition made. I think this is a matter for the Minister for Health and Social Services. Minister, do you wish to make a Proposition.

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

My apologies, I was on mute. Yes, I would like to make that Proposition.

The Bailiff:

Thank you very much. **[Seconded]** It has been seconded. Does any Member wish to speak on that Proposition?

3.1.1 Deputy M. Tadier:

Yes, please. I do not think the case has necessarily been made for a reduction in lodging period. I know that a case can be made for having the debate and then of course deciding on its merits. But I think even in question time this morning there seems to be a lack of clarity from Ministers about what current legislation is in place and to what extent that is enforceable and to what extent it is sufficient to guarantee a balance between public safety and public freedoms and the new legislation, which personally I think is much more draconian coming forward from the Minister for Health and Social Services. I am sceptical as to whether we should even be debating this. Especially when there is a sitting next week, which is a scheduled sitting, and he needs to make the case as to why in the next 6 days it is so important that we are able to issue £1,000 fines to certain members of the public when it could be made next week at a scheduled sitting, albeit I know the lodging period will still need to be reduced. So, I am very uncomfortable about what has been summarily the reduction of lodging times, understandably in most cases. But I think this is perhaps one step too far where some resistance does need to be shown by the Assembly. I will not be supporting the lodging period reduction.

3.1.2 The Connétable of St. Helier:

I would like to endorse what Deputy Tadier has said. This has very clearly been rushed through the States Assembly. We only had advice from the Medical Officer of Health yesterday. I have had concerns expressed to me by the public who really do not understand the need for this measure to be brought forward. At the very least I would expect there to be a briefing of States Members so that we can fully question the various Ministers concerned about the existing legislation and why that is not adequate and what kind of message this sends out to the community at a time we are trying to responsibly find a safe exit strategy from the pandemic. So, I would oppose this being debated today.

3.1.3 Senator J.A.N. Le Fondré:

I thought we had touched on this in the past.

[10:45]

The basic principles are that up to now what we used to call social distancing is now being called physical distancing was enforceable under the Order that the Minister for Health and Social Services had made, which tied into the stay-at-home order; that was Islanders in general could only exit from

their homes for up to 2 hours. Originally that was for 3 specific purposes. What has then happened over the last few weeks is we have managed to ease or increase the number of hours. My perception is that has been very welcome and also, we have gone to 4 and up to 6 hours. There is a point that the advice we received indicates that, and for all the right reasons, including the whole concern around civil liberties, one could not just extend those 6 hours to 8, 10, 12 hours because on balance at which point it is no longer a stay-at-home order. Then we get into civil liberties, human rights, *et cetera*. However, it was indicated in the note from the Medical Officer of Health the 2-metre physical distancing remains very important going forward. Trunched with that is while we have very good results, and when I say increasingly better, there is still the risk on 2 accounts of the virus spreading. One, is obviously internally as we ease back into a more normal form of life, for want of a better expression, secondly, and as alluded to a number of times in the national media but also I have referred to it probably over the last 4 or 5 weeks at the very least, which is what happens in, for example, October/November, i.e. winter and when we normally get an increase in impact on the hospital services as a whole. Therefore, the 2-metre physical distancing remains a very, very important tool in the armoury of dealing with this pandemic. Bluntly, the Minister would, if the legislation did not go through, be in the very difficult decision of either having to justify renewing the Order again or stay at home for 6 hours and all the issues that comes to versus not having the Order there at all in which case a lot of things start to unravel, in our view. That then takes us back to the risk of losing control on something which we have controlled very well up to now. I think it is probably helpful, I was going to cite this in the debate, but the Medical Officer of Health has been very clear and has said without a 2-metre distancing as part of the advice I believe S.T.A.C. (Scientific and Technical Advisory Cell) would have recommended a slower, one very cautious measure at a time approach to easing lockdown. The point is that what we are also having to balance up with the issues of the specific issues of COVID-19 versus the overall welfare and well-being of the Island and the impact on Islanders of lockdown continuing and, as we debated last week, of it being more stringent. In a nutshell, my perception on this is that the social distancing and now physical distancing has always been enforceable, has always been enforced, and all this does is take that element of the legislation, it makes it enforceable by refusing to effectively obey the instructions of a Police Officer, but the underlying substance of that legislation has been in place since March time. I hope that helps to clarify matters, but it is, in my view, very important that at the very least we have that debate today if possible, if not we will then have the very difficult discussions to deal with what we do for the next week while we then wait for the States at the scheduled sitting. Obviously, the motion to bring this sitting today was for the specific discussions on the legislation in front of Members.

3.1.4 Deputy L.M.C. Doublet:

I do take the points of the previous speaker, but the fact remains that there are some quite significant issues with this legislation and I personally spent a lot of time yesterday trying to analyse the legislation and the Scrutiny Panel comments were really good and I thank the Panel for those. But they came in yesterday afternoon because it is such a short period of time that we have had to look at this legislation. There are amendments that need to be made to it; I am not happy that there is still no Child Rights Impact Assessment, and if Ministers want me to support this legislation then I need to be given a chance as a Back-Bencher to properly scrutinise this and to work on amendments that I feel might be necessary. I have not had that chance and it is not right that we are being asked to debate something without being given a proper time to work on it. So, it is not good enough, I have not decided exactly what I am going to do about this, I am going to listen to other Members during the debate, if we do debate this today, but I am not sure that we should be debating this today. Deputy Tadier said: "Why do we not debate it in 6 days' time in the scheduled sitting?" and perhaps we should consider that option. Ministers will have to put something in place in the meantime, so I am not happy with this; there are some big issues. It is around the issues of children being included in the legislation. I have asked for the medical advice that decision was based on; I still have not had it, so I do not understand how we are supposed to make a fully-informed democratic decision on

something as significant as this when we have not had the full information. At the moment I am not minded to debate this today, so I am going to be voting against this.

3.1.5 Deputy T. Pointon of St. John:

I am opposed to the idea that we debate this today. We, as a Scrutiny Panel, and this is a personal opinion, but as a Scrutiny Panel I feel there are strong real contradictions in this Law that create unfair situations and to debate it now without proper opportunity to place amendments, as Deputy Doublet says, to create amendments to this Law, would be wrong. So, I will be voting against debating this Proposition today.

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

Obviously, I am a Minister and a member of the Council of Ministers but not a member of the Competent Authorities or the Emergencies Council. I first saw this last Thursday and I was concerned about it, particularly about the issue that for 3 months we have been telling people that the risk of infection is much greater within buildings and we have passed huge amounts of legislation to control that and that the risks were less outside. Now the Safe Distancing Regulation we are asked to deal with today on very, very short notice switches that direction and I really am troubled how we are going to manage that situation. Of course, I had my doubts and so, okay, I thought the bigger picture, the health advice is good, there is no problem with the health advice, but I do not think it addresses this issue of the balance of indoor and outdoor risks, which I was very surprised this morning to see the Scrutiny report has identified; I am very pleased to see that Scrutiny report. Like Deputy Doublet, it did raise the question in me, I was looking at the Standing Orders this morning, how can this debate be moved to next week so that we can have a chance for the Ministers and others to consider where any amendments are possible? I know other Members have concerns on other matters, the civil liberties issues and children and so on, I understand those, but for me it is this question of the shift in health messages and the issue now that we will inevitably shift attention to gatherings in people's individual homes at a time when we are told the risks have not gone away, we must not be complacent, and there is still every single jurisdiction you read about the health adviser warns of a resurgence and a second wave. It is why we need to have this consistent message. So, I have those doubts and I will not be supporting to shorten the lodging period on the safe distancing one. I do not have the problems about the Cremation (Suspension and Modification of Regulations – Covid-19) (No. 2) (Jersey) Regulations, but I do about the safe distancing and I would very much hope my colleagues do not see that as me clashing with them on some issue of confidence; that sort of thing that was said on previous issues. I hope further thought is given to this as to how we can deal with this next week in time, but hopefully there may be an amendment coming or at least some clarification of the issues I have raised and the others. The timescale is drawn by the fact that the Minister for Health and Social Services said just now that the reason why this has to be dealt with today, and the Chief Minister said, so I think the same thing, is the current Regulations, which we have been working on for several months, and they have been very, very successful, expires on Friday. I do not see the problem about the Minister extending them for a period; he has that under his control entirely, while we see how we can come up with a solution that we are all confident with here. Because we do need to move on, but we need to move on at a sensible managed rate, managing risks and not being driven by a timetable, which does not give us time to make decisions, so I shall not be supporting the removal of the lodging period.

3.1.7 Senator I.J. Gorst:

I am grateful to follow the previous speakers because, let us just be clear, it is not a matter of the Minister for Health and Social Services simply getting up on Friday morning and deciding he is going to extend the Stay-At-Home Order, which, if we do not take this Proposition today and foreshorten the lodging period, the Minister for Health and Social Services is going to be placed in a very, very difficult position, because he cannot just listen to States Members and say: "Okay, well I am going

to extend the Stay-At-Home Order until next Tuesday or next Wednesday or later next week”, because that is what he feels like doing and that is the indication that States Members are giving him by not wishing to take this Proposition today. He has to, on the advice of the Medical Officer of Health, consider that it is appropriate and proportionate to keep the virus under control to make that Order. We all know from looking at the statistics that it is getting more and more difficult to make the case that the Stay-At-Home Order is appropriate and proportionate. It would be an impossible position that we would place the Minister for Health and Social Services in. As the Chief Minister rightly reminded Members, currently social distancing is dealt with by the Stay-At-Home Order and, I forget the technical term, but the working Regulation. So, it is not a straightforward differential between 2 metres outside and 2 metres inside because the 2 metres inside, as I understand it, and the Solicitor General will correct me if I am wrong, or the Minister for Health and Social Services, is dealt with by the working Regulation. So, 2 metres in the workplace is dealt with by that Regulation; that remains whether we approve this proposal today or not. What this Proposition does, if we get on to debate it, is take the offence in effect or the requirement to physical distance for 2 metres outside of the Stay-At-Home Order and creates this new Regulation. What the Minister has decided, and I absolutely support his position when it comes to this, is that it is no longer proportionate to infringe Islanders’ civil liberties in their own home. Of course, the health advice will remain that people should be, when it is a member of somebody outside of their family, stay 2 metres away from them. That is the appropriate advice. But it is no longer proportionate for the Minister to be making or creating a criminal offence for what people do in their own homes in this regard. I would have thought that would be welcomed by Members because - let us not forget the pressures that the Minister for Health and Social Services is under in making these orders and removing Islanders’ civil liberties -

[11:00]it shows right at the heart of Government he is prepared, as soon as possible, to divest himself of those powers and return to Islanders their civil liberties. If we do not take this Proposition today, the Minister for Health and Social Services has to go back to the Medical Officer of Health, she is going to have to contort herself in the advice that she provides to the Minister for Health and Social Services so that he feels it is appropriate for him to extend that Order. He might be liable to judicial review. It is absolutely apparent to me that a Stay-At-Home Order is no longer fit for purpose and therefore Members need to give him a view today on whether this replacement is the appropriate thing to do. I think, when we get to that debate, Members will think it is. I ask Members to think very carefully before they agree to not foreshorten this lodging period because it will place the Minister for Health and Social Services in a very difficult position and I for one am not prepared to place him in that position because he has had to make some very difficult decisions through this crisis and I know he has my support, and I think he has the majority of the support of Members and I ask them to consider the issues under the proposal today so that he is not placed in that position.

3.1.8 Deputy R.J. Ward:

It is very interesting to follow the previous speakers in all their guises. I will say that we all understand it is not straightforward if we do not debate this today, but it is possible. Too often in the Assembly we have had the argument that the process will have to be foregone in terms of Scrutiny and looking carefully at the implications, and the wider implications of the legislation we pass, because there will be very difficult decisions for Ministers to make. I am afraid that today what we are talking about is something where we are talking about control of behaviour outside the home. We have talked about the Stay-At-Home Order. That Stay-At-Home Order has worked because of co-operation of people because people have decided and acted appropriately, given the advice that has had some clarity to it. It was clearly to stay at home, a distance of 2 metres, and that is still in place and could be renewed. But this legislation is about criminalising behaviour outside the home and there is not even clarity as to what 2 metres means, as was clear from today’s discussions and questions. But this debate is about reducing the period of the debate. We have a sitting next week; why now? The short period of scrutiny has meant that they yet again, and I really understand the

work the Scrutiny Panel has done because my Scrutiny Panel has had to do the same thing too often, and so have so many others, and produce a very quick turnaround of a comments paper and the comments paper does reflect the uncertainty on this Proposition and its wider implications for society as a whole. I agree with the comments made by Deputy Doublet with regards to the possibility of amendments because bad legislation will not perform the function that we want it to in order to act on the behaviours that we want it to. That is such an important thing for us to consider. What Deputy Young said as well; it is right, and I am pleased to see that members of the Council of Ministers are willing to speak and show their concerns because this is such an important wider debate that we have. I would say that reducing the period of debate for this weakens the Proposition because of the lack of clarity on its wider impact on our society. That is why it needs more time and we are being asked to decide today on a significant change to the way that we police our Island and very, very quickly, on limited information or information that has only just come through to us, and I for one feel very uneasy in doing that given that we have a sitting next week and we still rely upon the public of Jersey to follow instruction. I really do not believe I can vote for this reduced lodging period.

The Bailiff:

Does any other Member wish to speak on this Proposition? If no other Member wishes to speak then I close the debate and call on the Minister for Health and Social Services to respond.

3.1.9 The Deputy of St. Ouen:

There has been a misunderstanding over what I am seeking to do here. These are not new measures that we are introducing. They are a step down from the present situation that we have, a very considerable step down. They are introducing a lighter touch of regulation to ensure that public health of this Island is protected. If we could debate the Regulations today it would mean that I could allow the Restricted Movement Order to lapse. That Restricted Movement Order presently contains very significant restrictions on civil liberties. At the moment it says that people cannot go into the homes of their families and friends; that they must stay outside except for certain purposes, and moreover they can only stay outside for 6 hours a day unless they fall within certain exemptions. All of that, we agreed at the very beginning, was something that were highly significant infringements of civil liberties and the Assembly in the legislation charged me to keep that imposition under review and to remove it as soon as possible if I did not consider it necessary and proportionate any longer for the purposes of public health. We introduced that in a very different scenario when we were facing an immediate threat of a huge curve of infection. We are not at the moment. If I was to merely extend all those restrictions because the States did not wish to debate today this lighter touch, I feel, as Senator Gorst has said, it does put me in an impossible position because it is now so hard to say that those restrictions are still necessary and proportionate and should continue. I am required to take the advice of the Medical Officer of Health, which is that we should still retain the social distancing as the single most important measure to prevent the spread of infection in the Island, but the way these Regulations do it is in a different way, it is not an automatic offence, it only becomes an offence after a warning has been given. So, to those who say that this is stringent; that it is different from what we have, it is different in that it is better for criminal justice, it is better for Islanders, social distancing is not automatically an offence merely because you happen to pass within 2 metres of somebody. I hope Members will give me a chance to explain. I had wanted to bring this today because I believe it is important as soon as practicable to remove those restrictions on civil liberties where they are no longer necessary and proportionate. I believe we can explain, I can explain, and other members of the Council of Ministers can explain, how this introduces a lighter touch, how it is appropriate to involve children, and how it can be policed. I am willing to do all that otherwise it is unclear. Some Members have suggested just bring it forward to next week; there are other Members suggesting that we lodge it in the usual way over a 6-week lodging period, and those impositions on civil liberties continue until then. Let us not forget we are not out of the woods with this public health crisis; we are all looking forward to returning to normal, we are all glad that we are beginning to do

so. But there are still risks out there and Ministers are faced with the problem of trying to address them proportionately and in a balanced way. This is a balanced piece of legislation that is fit for coming before the Assembly and I hope Members will give me a chance to present it.

The Bailiff:

Minister, before you stop, would it be helpful for you to seek the advice of the Solicitor General who has offered on the chat that he would give advice on the legislation?

The Deputy of St. Ouen:

Yes, I would be very pleased to hear from the Solicitor General.

The Bailiff:

Very well, Mr. Solicitor.

Deputy M. Tadier:

Can I object? Did you just ask for the Attorney General to come to the rescue of the Minister for Health and Social Services because he was flailing in winning this debate and is that appropriate?

The Bailiff:

The reason that I have done so, Deputy, is that we can either deal with the matter at the end, the points of clarification have been requested, I am anticipating that those points of clarification are going to be directed to the Solicitor General, and I wanted Members to have the opportunity to hear what that was in order that further questions could then be raised of the Minister for Health and Social Services. It is not a question of coming to the rescue; it has been an offer from the Law Officers to provide advice and I thought that was the suitable point to interpose it to keep the integrity of the debate.

Deputy M. Tadier:

It is a point of order though; I mean the debate has finished at the point at which you call the Minister for Health and Social Services to reply, so I would ask that I do not think this is in order.

The Bailiff:

A legal opinion after the debate has closed; it is reasonable.

Deputy M.R. Higgins:

Can I just add that if you do rule this way you are setting a precedent for all future debates?

The Bailiff:

Allow me a moment please. On reflection the points made on the point of order to me are correct. The debate closed at the moment that I called upon the Minister for Health and Social Services to respond and I do not think it is therefore possible or appropriate for the Solicitor General to interpose at this point. The time to ask for legal advice was during the course of the debate or immediately before the summing-up. Accordingly, I would just ask the Minister for Health and Social Services; I did interrupt you, had you finished your speech?

The Deputy of St. Ouen:

Yes, I had.

The Bailiff:

In which case I ask the Greffier to put a vote in the chat. The request has been made for separate votes on both of the pieces of legislation. They are separate pieces of legislation; that appears to me therefore to be completely appropriate. The first will be on the Draft Cremation (Suspension and Modification of Regulations) P.65 and the vote will be on whether that may be taken at today's

sitting. Members will see the link has been posted and I ask Members to vote using the link if possible in the way that has become customary. I open the voting.

POUR: 42	CONTRE: 4	ABSTAIN: 0
Senator I.J. Gorst	Deputy G.P. Southern (H)	
Senator L.J. Farnham	Deputy L.M.C. Doublet (S)	
Senator S.C. Ferguson	Deputy R.J. Ward (H)	
Senator J.A.N. Le Fondré	Deputy I. Gardiner (H)	
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 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 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 C.S. Alves (H)		

Deputy K.G. Pamplin (S)

Deputy M. Tadier:

Can I thank you for your ruling and apologise if my interjection had the wrong tone? It was not my intention to suggest you were acting ... there were questions of the Attorney General that Members had but the time had passed; that was my point. Sorry if there was any wrongness in my tone.

[11:15]

The Bailiff:

Thank you very much. I took your interjection in that spirit. We now come on to the vote on the second piece of legislation before the Assembly, which is P.66, Draft COVID (Safe Distancing) Regulations and the vote is on whether that can be taken at the current sitting and I ask the Greffier to put a link in the chat box. I ask the Greffier to open the voting.

POUR: 31		CONTRE: 15		ABSTAIN: 1
Senator I.J. Gorst		Senator S.C. Ferguson		Deputy J.H. Young (B)
Senator L.J. Farnham		Senator S.Y. Mézec		
Senator J.A.N. Le Fondré		Connétable of St. Helier		
Senator S.W. Pallett		Connétable of Grouville		
Connétable of St. Clement		Deputy G.P. Southern (H)		
Connétable of St. Lawrence		Deputy M. Tadier (B)		
Connétable of St. Saviour		Deputy M.R. Higgins (H)		
Connétable of St. Brelade		Deputy L.M.C. Doublet (S)		
Connétable of St. John		Deputy R. Labey (H)		
Connétable of Trinity		Deputy of St. John		
Connétable of St. Peter		Deputy S.M. Ahier (H)		
Connétable of St. Mary		Deputy J.H. Perchard (S)		
Connétable of St. Ouen		Deputy R.J. Ward (H)		
Connétable of St. Martin		Deputy C.S. Alves (H)		
Deputy J.A. Martin (H)		Deputy I. Gardiner (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 S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (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 M.R. Le Hegarat (H)				
Deputy K.G. Pamplin (S)				

4. Draft Cremation (Suspension and Modification of Regulations – COVID-19) (No. 2) (Jersey) Regulations 202- (P.65/2020)

The Bailiff:

The first item of legislation before the Assembly is the Draft Cremation (Suspension and Modification of Regulations - COVID-19) (No. 2), P.65, lodged by the Minister for Health and Social Services and I ask the Greffier to read the citation.

The Greffier of the States:

Draft Cremation (Suspension and Modification of Regulations - COVID-19) (No. 2) (Jersey) Regulations 202-. The States make these Regulations under Article 3 of the Cremation (Jersey) Law 1953.

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

I am grateful to Members for agreeing that this may be brought before them today. These draft Regulations amend the current Cremation (Jersey) Regulations 1961, which I will call the 1961 Regulations, and they are temporary amendments, which, like all other COVID-related Regulations, will expire on 30th September this year. If approved by Members they will make 2 changes, firstly they will temporarily amend Regulation 6(a) of the 1961 Regulations to enable a medical practitioner to complete and sign a Certificate of Medical Attendance even though they have not attended the deceased during the deceased's last illness. That certificate is the one that certifies the cause of death. Secondly, the Regulations will temporarily amend Schedule 2 of the 1961 Regulations, which is the Certificate of Medical Attendance, which is attached to the 1961 Regulations as a proforma and that will remove the requirement for the medical practitioner to declare that they have attended the deceased before death. These Regulations will align the 1961 Regulations for the Amendments made in the Marriage and Civil Status (Jersey) Law 2001. Those Amendments were made very recently by P.36 and approved by the States Assembly. Members will see this is a rather technical piece of legislation around the death process. During the COVID-19 response there have been a number of propositions brought to the Assembly to amend those processes for certifying and registering deaths and authorising cremations. P.21 was adopted on 24th March; that amended the Cremation Regulations 1961 and removed the requirement for an independent examination of a body by an independent doctor as part of the cremation authorisation process. P.36 was adopted by the Assembly on 2nd April, which amended the Marriage and Civil Status (Jersey) Law 2001 and allows any doctor who has examined the body after death to be able to certify the cause of death. It achieved this by removing the requirement for a doctor to have attended the patient during their last illness. The whole impetus behind these changes was to ensure that the risk of infection and the circulation of infection was minimised by limiting to a team of G.P.s those who could certify the cause of death and thereby minimising the risk among G.P.s and their practices and patients and also among funeral directors. For this purpose, a Community Death Certification Team was formed. P.36, the earlier proposition, supported this team to operate as it allowed the community death certification team doctors to certify all deaths that have occurred in the community. Those doctors received specialist training to fulfil a role that was previously carried out by any G.P. The team have mobile access to patient records and are also able to consult with the G.P.s and the Deputy Viscount. The Community Death Certification Team was not made immediately operational after the approval of the previous Regulations; they were instead made operational as part of the agreement between the G.P.s and my department. The team is just one example of the changes that were made to how Islanders interact with medical practitioners as a result of measures put in place to reduce the risk of spreading infection. These Regulations have been discussed with the Health and Social Services Scrutiny Panel and I thank them for their review and their comments. They have made a number of comments. They first of all questioned whether it was correct for the same doctor to sign off the certificates of cause of death and the certificate of a medical attendance in the cremation process. But it is the case that, prior to any amendments being made, the same doctor could sign off both certificates, so this has not been a change. The Regulations we passed earlier as P.21 did remove the requirement for an independent examination by a second doctor and it remains the case that no cremation is permitted without authorisation by the Medical Officer of Health or the appointed medical referee, who undertake due diligence checks. In January 2020, before COVID, a review of all processes and legislation relating to death was commissioned but, like so much else, this work has stalled during the COVID-19 emergency, but I wish to assure Members of the Assembly that this work will resume as soon as possible. In conclusion, these draft Regulations ensure that the 1961 Regulations align with the decisions taken by the Assembly when they adopted the previous Regulations as P.36. They simply amend the Certificates of Medical Attendance and do not make any further changes to the process of certifying or registering a death in Jersey and they therefore continue to allow the Community Death Certification Team to operate as intended. If we had been able to, we would have picked this up at

an earlier opportunity, but if the Assembly would kindly accept my apologies for not poring over the legislation at the time and Officers' apologies also, but this has been brought now to align what we have already done with the detail of the Regulations. I am happy also to answer any questions, but I would propose the principles.

The Bailiff:

Thank you very much, Minister. Are the principles seconded? **[Seconded]** Does any Member wish to speak on the principles?

4.1.1 Deputy J.M. Maçon of St. Saviour:

Just very briefly - and I thank the Minister for that explanation; it is very helpful - just to say that I have had some reason to get in contact with the Superintendent Registrar and I just want to reassure Members after conversations with her just how robust she has been in the death certificate process. Although we do have this good team going around doing all of the registering of deaths, herself she has been very good at challenging what goes down on the death certificates, working with the families, that type of thing, and I just want to put on record my thanks to her and her team through what has been a difficult period and the team of doctors registering the deaths. There are definitely challenges within the process and it is just good to put it on the record.

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

I have just noted the Chair of the Panel has indicated to speak so I will be brief. We did have a briefing on 21st May and we thank the Minister for that. What was very interesting during that process was the information that we received about the list of people consulted and surround the board, and I was wondering if the Minister would make a collection of those individuals, or would he approach them, so we could have a meeting with them to discuss the wide implications of COVID-19 on them and the ongoing future as we go through the lockdown stages? With that I will give way to the Chair.

4.1.3 Deputy M.R. Le Hegarat:

I will be brief. As already stated, we were fully briefed on 21st May in relation to this legislation. It is interesting in that this legislation crosses a number of areas and of course at first there was some confusion because the original legislation came under the remit of Home Affairs and so therefore there was some confusion for us. In relation to this legislation, the concerns were raised in relation to the potential for one person to sign both areas off but, now that the Minister has clarified alongside what Deputy Maçon has said, we are content to support this legislation moving forward.

4.1.4 Deputy R.J. Ward:

I wanted to reiterate something that Deputy Le Hegarat had said and this is linked to another piece of legislation, P.36, which was a different Panel. I want to point out a couple of concerns that I have with regards the way in which Scrutiny has had to really link pieces of legislation that have knock-on effects later on and had to work so quickly and so flexibly in order to link these together to raise the concerns that have been raised in the comments paper by the Health Panel. I still have the concern with regards the same doctor signing the death certificate, particularly as previously there would have been a link with that doctor with the family and the patient themselves, and that would have been lost in terms of the signing of the death certificate from P.36 when the community death certification group are now responsible for that first stage of those situations. I understand the need to reduce delays in registering a death but I do have concerns that this next piece of legislation, which is cumulative in the way it perhaps loses some of the safeguards, and I really would want some reassurance that real safeguards were in place, because once cremation happens obviously there is no going back in terms of autopsy, you cannot exhume or anything like that, it is a very final position. That is where my concerns arise, and I would like the Minister to address those as much as possible please.

[11:30]

4.1.5 Deputy M.R. Higgins:

My reason for speaking at this stage is I raised similar issues to the one that Deputy Ward has just mentioned in a previous debate. I am very concerned about the loosening of the checks and balances to make sure that, if a person has died, they died of a particular disease, and I believe that we have lowered the standards through this. By not involving the G.P. himself who knows the patient I think we are leaving the system open to an abuse and I would hope that it is not abused but I cannot support this measure any more than I could the last one.

4.1.6 Senator K.L. Moore:

I would just like to ask the Minister to address one point, given that fortunately the mortality rate has been quite low this year in comparison to previous years, it does beg the question why the Minister has not sought to reduce the requirement on the previously and allied piece of legislation in relation to the registration, the easing of the changes to the registration of deaths at this time, and therefore that calls into question the relevance of this Law. I would be grateful if the Minister could address that point please.

4.1.7 Deputy K.F. Morel:

I was not planning to speak on this Proposition but, having heard Deputy Higgins, I felt I may have something to add and I do beg the forgiveness of the Superintendent Registrar for divulging the conversation that I recently had with her. I just want to say that, with regard to the registration of death and causes of death, I have spoken to the Superintendent Registrar and there is no doubt in my mind that at the moment the teams that are registering deaths are certainly not overlooking other possible causes of death. In fact the registration forms, which are supplied following some of these deaths, are broken down in such a way that COVID-19 can be placed as the cause of death or it can be placed as something such as a heart attack was the cause of death but the patient was suffering from COVID-19 at the time, or equally that COVID-19 was not a cause of death but was one of the underlying health complaints that the patient was suffering from at the time. So, having spoken with the Superintendent Registrar, I certainly personally was satisfied that other possible causes of death are not being overlooked and that teams who are certifying the cause of death are only placing COVID-19 as the cause of death where they truly believe it is. There is a problem in the way that the statistics are then forwarded on in the sense that the statistics that we see saying that there are 29 COVID-19 related deaths amalgamate all that into one statistic rather than giving the breakdown. So, what we as the public are seeing is not the kind of granular information that is being provided to the health authorities once a death has taken place, but the health authorities certainly are recipients of that more-granular information. I hope that may help somebody such as Deputy Higgins to have faith in the system that is currently being used.

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 call upon the Minister for Health and Social Services to respond.

4.1.8 The Deputy of St. Ouen:

I thank Members for their contributions. I thank the Health and Social Security Scrutiny Panel for their understanding and support for the Regulations and Deputy Pamplin has asked if they might meet with the Excess Deaths Board and, yes, I will make that request and try to arrange such a meeting. Some Members have expressed concern about the oversight that is around this process. The necessary oversight is expressly stipulated in the 1961 Regulations. The Medical Officer of Health or her authorised referees have to undertake due diligence checks. Their duties are expressly set out in the Regulations. The practice is that a certifying doctor would consult with the G.P. who has attended the deceased during their last illness, usually by phone I suppose or email, and any

information from that is communicated to the Medical Officer of Health or the appointed referees. There is also the ability to escalate any concerns to the Deputy Viscount. So, this is not a process that is just in the hands of a single practitioner; there is due oversight. But, as I mentioned in my speech, the whole process is under review so safeguards and anything extra will be considered as soon as we can. Senator Moore has asked if I considered that the requirements around the process could be reduced and we revert back to pre-COVID, I imagine she was suggesting, but I believe that the group working on these processes believe that risk remains and therefore it is appropriate that risk is mitigated at this time when we are concerned about spreading infection and ensuring that steps are taken to reduce that risk. I would ask Members to support the Principles.

The Bailiff:

Thank you very much, Minister. Then the Greffier will add a vote to the chat channel and I open the voting and ask Members to vote using the link in the normal way.

POUR: 44	CONTRE: 2	ABSTAIN: 0
Senator I.J. Gorst	Deputy M.R. Higgins (H)	
Senator L.J. Farnham	Deputy R.J. Ward (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 St. John		
Connétable of Trinity		
Connétable of St. Peter		
Connétable of St. Mary		
Connétable of St. Ouen		
Connétable of St. Martin		
Deputy J.A. Martin (H)		
Deputy of Grouville		
Deputy K.C. Lewis (S)		
Deputy M. Tadier (B)		
Deputy J.M. Maçon (S)		
Deputy S.J. Pinel (C)		
Deputy of St. Martin		
Deputy of St. Ouen		
Deputy L.M.C. Doublet (S)		
Deputy S.M. Wickenden (H)		
Deputy 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 C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

The Bailiff:

I take it, Deputy Le Hegarat, the Health and Social Security Scrutiny Panel does not wish to call this in for scrutiny?

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

That is correct.

The Bailiff:

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

4.2 The Deputy of St. Ouen:

I propose them *en bloc*.

The Bailiff:

Are they seconded? [**Seconded**] Does any Member wish to speak in Second Reading? If no Member wishes to speak in Second Reading, then I ask the Greffier to post a link in the chat box. The link is there, and I therefore open the voting and I ask Members to vote in the usual way.

POUR: 45		CONTRE: 2		ABSTAIN: 0
Senator I.J. Gorst		Deputy M.R. Higgins (H)		
Senator L.J. Farnham		Deputy R.J. Ward (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				
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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 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 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?

4.3 The Deputy of St. Ouen:

May I propose the adoption in Third Reading and thank the Officers who have worked on these Regulations?

The Bailiff:

Thank you, Minister. Is it seconded? **[Seconded]** Does any Member wish to speak in Third Reading?

4.3.1 Deputy K.G. Pamplin:

I will just be quick. I thank the Minister for going ahead and trying to arrange a meeting with the Board for us; that will be really helpful for the Panel and our continuing work. I just wanted to reiterate a couple of sections in our comments paper. It has been touched upon during the debate earlier that the appropriate level of checks and balances should be implemented, particularly as the new provisions remove some parts of the formal certification process that we did urge in the comments, and reiterate those points now, the Minister to explore this matter with a view to amending the legislation if deemed necessary, which is why we also want to speak to the Board as well. We think that is really important. In a point that Deputy Ward has raised earlier, we expressed it as a Panel and in fact we mentioned it in the comments paper, that in this point of ministerial crossover with certain legislation the Panel was advised that the Strategic Policy Planning and Performance Department commissioned a review of all legislation relating to death in January 2020. We hope, when more capacity and resources are available, the legislation will become aligned under one ministerial unit and we think that would be a much smarter way of working for all concerned. I just raise those points and once again we would like to thank the Minister and his team for briefing us but our Scrutiny Officer as well for going above and beyond over the Bank Holiday weekend. I pay tribute to her sterling efforts as ever.

4.3.2 Deputy R.J. Ward:

I would just like to reiterate my genuine concerns over the cumulative effects on the safeguards put in place here. I understand Deputy Morel's comments and I do not think any of us are questioning the actions of the people involved in that way. But it is procedural and, as I mentioned, I think the

word is “cumulative effect”, if we are not careful, with pieces of legislation that take away safeguards from previous pieces can lead to an effect that we do not want. So, I would like the Minister just to reassure that those safeguards and those checks and balances and the reviews of this and the success of it are undertaken even within this time where there is limited capacity, because this is such an important area where we cannot afford to make any sort of mistake.

The Bailiff:

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

4.3.3 The Deputy of St. Ouen:

I thank both speakers. In response to Deputy Pamplin, yes, I will work in that medium-term task of revising our processes, including with the Minister for Home Affairs, and we will consider how this can best be organised administratively and I look forward to getting involved in that work. To Deputy Ward, I do understand his fears. I am satisfied that we have safeguards in place, proper checks and balances, but I will ask officers again to be vigilant and to ensure that for all deaths proper processes are strictly followed. I thank Members for their contributions.

[11:45]

The Bailiff:

I will ask the Greffier to put a voting link into the chat and I open the voting and ask Members to cast their vote in the customary way.

POUR: 44	CONTRE: 2	ABSTAIN: 0
Senator I.J. Gorst	Deputy M.R. Higgins (H)	
Senator L.J. Farnham	Deputy R.J. Ward (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 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 J.M. Maçon (S)		
Deputy of St. Martin		
Deputy of St. Ouen		
Deputy L.M.C. Doublet (S)		
Deputy S.M. Wickenden (H)		

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

5. Draft COVID-19 (Safe Distancing) (Jersey) Regulations 202- (P.66/2020) - as amended

The Bailiff:

We now come to the Draft COVID-19 (Safe Distancing) (Jersey) Regulations P.66 lodged by the Minister for Health and Social Services and I ask the Greffier to read the citation.

The Greffier of the States:

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

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

Might I begin by saying that these are of course new Regulations, but they do not introduce any new restrictions. These Regulations are intended to replace the current Restricted Movement Order, which was made under Article 5 of the Screening Assessment and Isolation Regulations that the Assembly agreed to in our first meeting at Fort Regent at the end of March. That Restricted Movement Order can lapse tonight if the States Assembly wishes to approve these Regulations. We discussed the obligations and the impossible position that Government might be in if the States Assembly was not happy with these Regulations today, but I will allude to that later on perhaps. But these new Regulations introduce a lighter touch. They are a proportionate approach to the position we now find ourselves in. Gone will be the requirement for Islanders to stay at home and gone will be the limitation on how many hours Islanders can spend outdoors and for what purposes and gone will be any legal restriction on entering the homes of family, friends or neighbours. Back in March we asked Islanders to accept significant restrictions on their civil liberty when we introduced these emergency measures and it was a difficult step for all of us to agree but the public health imperatives at that time meant it was the right thing to do. These Regulations before the Assembly today bring forward only one measure from the Restricted Movement Order, which is the necessity to keep a safe physical distance from persons not in your household, and that is the single most effective method to control the spread of COVID-19. This measure, these Regulations are recommended by the Medical Officer of Health and supported by the Public Health Team as necessary and proportionate on public health grounds. The advice we have received is that the risk of transmission is highest when people spend time within 2 metres of other people outside of their own household, so retaining that 2-metre rule to limit the spread of infection will allow other restrictions to be loosened or removed more quickly and for the Island to move through the phases set out in the Safe Exit Framework towards normality in an orderly manner. The 2-metre rule is the main focus of these Regulations for that reason. Importantly, the Regulations do not make gathering within the same distance of 2 metres from other people in other households an offence. The mere fact of gathering is not an offence. The

only offence that a person can commit is to wilfully fail to follow a direction from a Police Officer to stop breaching safe distancing or to wilfully fail to follow a direction from a Police Officer to stop a child from doing so within a reasonable time. That term “wilfully” is a carefully chosen term. It requires that a person has the capability to act and that it is reasonable and safe for them to do so but that they do not comply through some decision of their own. This is a safeguard to ensure that no one is penalised unless they have refused a clear direction that they can reasonably follow. That sort of safeguard does not exist in what we currently have under the restricted movements. In practice, the police have been issuing warnings before taking action under any of the COVID-19 regulations, but the safeguard in the offence itself gives the assurance that the practice of warning will be maintained. While the Regulations do apply to restrictions on gathering outside, they do not attempt to reach into the home and control the behaviour of people in their own houses or gardens. I know this has caused a lot of debate, even concern, so I wish to address that. It is the case, it seems, current advice is that there is a greater risk of infection in indoor places, so some may ask why are we making exceptions for our homes. For me, the answer is clear. Now that the transmission of COVID-19 is under control, it is no longer a proportionate response to the emergency to impose legal restrictions on Islanders within their own homes. We are now coming out of the period where grandparents and grandchildren have not been able to meet up in their homes, where someone living alone has not been able to go and have a cup of tea and a chat in their neighbour’s home, where life partners living separately have not been able to meet. There are so many other instances where Islanders have been amazingly diligent in keeping to the rules and with them together we have flattened the curve of infection. So, perhaps we could legislate, and legislation might permit people to enter homes but require them still to observe physical distancing in a home and criminalise them if they did not, criminalise them for actions in their own home or in the homes of their neighbours, friends and relations. But for me, and I hope for other Members, in the present situation such legislation with its criminal penalties would be something that is an unacceptable infringement of our civil liberties. That is not to say that we do not strongly advise maintaining physical distancing if mixed with another household. It will remain the public health advice that we will promote strongly in all our guidance and in all our communications. Indeed, all Islanders, notwithstanding whatever legislation is in place, should consider carefully whether they invite people to their homes and whether they should enter someone else’s home, because we are not out of the woods. This virus still has potential to spread with the unnecessary movement of people and that public health advice would be especially important for vulnerable and seriously vulnerable Islanders. The policy is to shield them, and they should not put themselves at risk by having people unnecessarily enter their homes and they should be extra cautious in the contacts they make outside their homes. I believe these Regulations, taken together with the other regulations already in place, will provide the right balance of protection against the risks we face. Just think about it, inside a home we can largely control our risks. We can decide who can enter and we can decide not to go into another home. We have less control in shops. We need to shop but there are people milling about, so we introduced the Restricted Trading Regulations to enforce public safety, including physical distancing wherever possible. But we also have less personal control in a workplace. The workplace may be crowded, there may be concerns about entry and exit points or air conditioning, so what have we done about that? We have introduced the Workplace Restriction Regulations and Construction Work Regulations. All of those enforce now physical distancing in indoor areas. We do not control the environment in outdoor public places, so it is good to be out if safe to do so. It is good to be in public parks and on beaches, but we may be anxious about groups gathering close together outdoors. So, these Regulations will be the measure that provides a proportionate degree of control for public safety. I hope Members will understand with that raft of appropriate legislation we can protect people outside of their homes where they cannot always control the risks they are exposed to, but inside their homes they have a greater degree of control. I trust the majority of Islanders to consider public health guidance and act upon it without the need for compulsion under law. In the comments of the Scrutiny Panel they made the point that social gatherings in houses and gardens could become more prevalent.

I accept that it is possible although it is not the gathering for social purposes that is objectionable, but it is a constant failure to observe physical distancing. If a large number of people gather in a small house, and particularly if alcohol is involved, it seems a very unlikely scenario that guidance would be observed, but in the main these would be the actions of an irresponsible minority who put at risk all who might attend such a gathering. We know people act irresponsibly in many other ways. They fail to observe good public health and other guidance and we do not always legislate, particularly when it risks criminalising the sensible majority in order to impose sanctions on a minority. There is always a balance and I fear that continuing down that authoritarian path would begin to undermine public trust. However, the police are not completely powerless if there is concern about rowdy parties not being physically distanced. If noise can be heard from outside a property, I understand the breach of the peace law could be invoked. It is possible also to invoke the Statutory Nuisances Law and Regulations. Members may recall that that legislation was one of the earliest measures taken by the Assembly in response to COVID-19 where Regulations were passed making it a statutory nuisance for there to be an event at which persons gather if that event is of such a size or duration and is held in such circumstances as to constitute an event that is potentially prejudicial to health on account of COVID-19. That legislation can apply to events in public or private places and it enables an Environmental Health Officer, who is informed of such an event being planned or taking place, to issue an abatement notice. That notice starts a process aimed at preventing or stopping the event and consideration is being given to the size and the nature of a private event that may constitute a nuisance and this will take account of the risk of infection. In practice, each event will need to be considered on its own merits. Now, if I may address concerns that have arisen over children. The Regulations, if approved, will apply to children reflecting the advice from the Medical Officer of Health, which Members have seen, and which draws no distinction between adults and children in terms of infection risk.

[12:00]

The Children's Commissioner has made comments on the inclusion of children in the Regulation and Members will have seen that correspondence as well as my response and the members of the Health and Social Security Scrutiny Panel also raised the issue during my discussions with them. The concerns of the Commissioner and the Panel have been well-articulated in their communications to Members and I will not repeat all of their points in detail now. It seems to me their clear concern is that it is not appropriate to apply the offences to children whose futures may be affected by a criminal conviction more so than adults. My position has not been reached by an oversight. We have legislated in this way in previous COVID-19 regulations. The Screening, Assessment and Isolation Regulations contain much the same provisions relating to children in effect if not in their precise wording. The provisions in these Regulations give a Police Officer the opportunity to address the direction to stop breaching safe distancing to an adult who has responsibility for a child at the time in question. This is not a provision found in most legislation and it is included in the suite of COVID-19 legislation because we recognise that the restrictions are unprecedented, and they do affect children at least as much as adults. The offences in the legislation can still be applied to children above the age of criminal responsibility and they could technically be arrested for breaching the regulations. But I would say again the offence is not breaching safe physical distancing but wilfully refusing to stop doing so, so no child could commit an offence without being made aware in advance that they were in the process of doing so. As Minister for Health and Social Services, I am not in a position to speak for the States of Jersey Police or the Honorary Police, but I know from ministerial meetings that I attend with the Chief of Police and reports of meetings of the Comité des Chefs that Police Officers are fully committed to their stated strategy of engage, explain and encourage before they take any enforcement action. It is the existence of the law in the background rather than its immediate enforcement that allows Officers to engage with the public. The public includes children and they engage in a respectful but authoritative manner should they see potentially risky gatherings. I will defer to the Solicitor General in terms of the practical aspects of the application of criminal

sanctions to children in Jersey but for my part I believe that even in normal times the imposition of criminal sanctions on a child or young person is never a step that is taken lightly and always as a very last resort. In response to comments from the Scrutiny Panel and the Commissioner, I have asked Officers to ensure that the relevant guidance addressing this legislation makes reference to the requirements of an adult responsible for a child to take reasonably practical steps and to give an indication of what that might mean in practice. I have also asked that specific guidance on observing safe physical distancing be made available for children, but I believe that exempting children from the Law would undermine its function and its purpose. We ask children and young people to assume increasing responsibility for their actions as they mature. When they cycle to school as young teenagers or pass their driving test at age 17, we ask them, we require them, to obey the same rules of the road as the rest of us have to when we reach adulthood. We do not exempt for fear of saddling them with a criminal conviction. The great majority of them accept their duty and responsibility to comply with the law and they want to participate in society as responsible citizens. Indeed, I think our young people are often more responsible than many adults in their adherence to our society's rules of good behaviour. I know Members will want to speak about this, but I just ask that our debate not turn into a diatribe of accusations against young people and their alleged bad behaviour. Let us acknowledge that a minority of people both young and old can behave badly but thankfully a greater majority are law abiding and respectful. I hope Members will understand how policing the various COVID-19 Regulations has been carried out. I am not aware of any child or young person having been arrested or charged. The States of Jersey Police and Honorary Police will continue with their approach of engaging with the public, explaining what is necessary, encouraging compliance and only enforcing the criminal offences in the regulations against anybody, be they an adult or child, as a last resort. I am grateful to my Scrutiny Panel for the discussion we had about dealing with offences at Parish Hall Inquiries and as a result I have tabled an Amendment to introduce an additional Regulation, which we can deal with in Second Reading, but I would just like to say something about the Parish Hall Inquiry system. Inquiries, I understand, have been suspended in recent weeks but in view of the positive position that Jersey finds itself in regarding infection rates, I understand that the Comité des Chefs de Police is working hard across the Parishes to try to recommence holding Parish Hall Inquiries, possibly in early July. The model for holding Parish Hall Inquiries in the context of COVID is anticipated to include face-to-face meetings but in circumstances that ensure physical distancing and upholding appropriate hygiene standards to protect both the Honorary Police and members of the public attending. Possible alternatives to face-to-face meetings are also being considered in case they need to be used in specific cases. I understand the precise timetable for recommencing hearings or Parish Inquiries is being settled at the moment. It may be that in the first half of June existing defendants will be contacted by the Honorary Police and asked to attend a Parish Hall Inquiry on a particular date but any new defendants, including any charged with offences under these Regulations if approved, would then be allocated to Parish Hall dates in the usual way. I have also been informed that the Comité des Connétables recognises the challenges around enforcing physical distancing and is supportive of the need to have enforcement powers for this purpose, including the proposal to introduce a power to issue fines at the Parish Hall. I believe this reflects the essential role of Parish Hall inquiries in diverting people from the criminal justice system where it is proportionate and appropriate to do so. I recognise that the period of restricted movement has been a significant challenge for many Islanders and it is a reflection of the strength of our community that we have seen such willingness to comply with these unprecedented restrictions on normal behaviour. These Regulations before the Assembly today are a significant step down and they point to a hopeful return to normality. They are grounded in public health advice and I believe they strike the right balance between those restrictions that are necessary and proportionate to limit the transmission of COVID and the social and physical needs of Islanders. I commend the Principles and I am happy to answer questions.

The Bailiff:

There is a question for the Solicitor General that Deputy Tadier wishes to raise.

Deputy M. Tadier:

I have got more than one question, but should I ask them one at a time or all together?

The Bailiff:

I beg your pardon, Deputy. I did not ask are the principles seconded? **[Seconded]** If you ask them all in sequence now, Deputy Tadier, then the Solicitor General can indicate if he is able to answer them straight away or wishes a time to reflect and come back later during the course of the debate.

Deputy M. Tadier:

The first question is what was asked earlier by the Constable of St. Mary. Is it envisaged when we pass this Law that the 2-metre separation will be strictly face to face or would it be from the nearest bodily point to the nearest bodily point, whether that be a foot or a hand, for example? The second question is: does the intent of the Minister or the States Assembly when passing the legislation, for example in terms of the 2 metres, matter when it is interpreted by the judiciary later on? It seems to me we have had a statement from the Minister for Health and Social Services where he is not sure even what the 2 metres mean. I appreciate he can clarify that, but what influence would that then have on the judiciary in setting a precedent in terms of that ruling? The third point is that under the current system without this Law being passed today, what is it that the police are enforcing? This is something I have not quite got my head around. We are told that the police are enforcing the 2-metre rule, but they cannot enforce it because if you do not comply with the Officer's request to stay further than 2 metres apart they cannot do anything about it, which means that that is not really a law as such if you cannot do anything about it. So, are the police in fact enforcing a Government guideline and, if they are, why are they enforcing Government guidelines, or are they enforcing a law that the States Assembly has made but not being able to enforce that law in a meaningful way? Sorry if they are roundabout and somewhat rambling, but that is about as clear as I could put it.

The Bailiff:

Mr. Solicitor General, did you want to answer those questions now or would you like some time to consider?

Mr. M. Jowitt, H.M. Solicitor General:

I am happy to answer them now, if that is convenient. The first question: is it envisaged when the Regulations are passed, if they are, that it be strictly face to face in terms of the 2-metre distance? I think the answer is this, that nowhere in the draft Regulations is there any further definition of 2 metres distance, nor are there any exceptions or caveats or saving provisions. To answer the first question, is it strictly face to face? It seems to me the better view is that it means what it says: 2 metres distance must be maintained physically between one human body and another, whether that is face to face, back to back, side to side or finger to finger, because the example was given of an outstretched arm. I think the better and more obvious construction is that all of those situations would be covered. You must not come within 2 metres physically of another human being. How to answer the second question: what influence if any would your debate have upon a judge seeking to construe the meaning of that provision? Well, where the construction of a statute is vague or uncertain, the general rule is one looks to the clear and obvious meaning of what the law says. It is permissible for a court to go behind that and seek some assistance from, for example, the *projet* to the Law or in this case the explanatory note. It may be permissible to have some regard to Hansard when the matter was debated. My own view is that the meaning of 2 metres is sufficiently clear that a court would be able to construe it on its face to mean what I advised it means, which is you must not go within 2 metres physically of another human person. I should stress that the Minister for Health and Social Services is right, the emphasis of the effect is not in fact on safe distancing or breaching safe distancing. It is upon a wilful refusal to cease doing so when asked to do so by a Police Officer. So,

in a sense the safe distancing, though very important, the 2-metre point though important, is to some extent secondary in terms of the *actus reus* or the physical element of the offence. The Deputy asked me a third question, which is a good one. Under the current system, what are the police enforcing?

[12:15]

Can they enforce a 2-metre rule and if that rule is breached, can they do anything about it? I am happy to advise Members on what our Law is at this very moment. The starting point is the COVID-19 (Screening, Assessment and Isolation) Regulations and specifically Regulation 5, paragraph (5) and paragraph (6). The effect of those is that it is an offence for any one of us and any resident of this Island, without reasonable excuse, to go into or remain in a public place during this present period of restricted movement. That is the starting point, it is an offence to be outdoors in a public place, but there is a caveat to that, which is that it is an offence unless an exception applies. If we want to know what the exceptions are, we need to look at the ministerial order restricting movement, the COVID-19 (Restricted Movement) (Jersey) Order 2020, Article 2 of which is entitled: “Exceptions from requirement not to go to or remain in public place”, which is the primary offence under the Regulations. For our purposes or your purposes, paragraph 2(1): “The following descriptions of person are exceptions from the requirement not to go to or remain in a public place: (d) any other person who is in a public place for the purpose of taking a period of absence from that person’s home (whether or not the period includes time during which the person is in a place that is not public) if: (i) the period of absence amounts, in aggregate with any other such periods in the same day, to no more than 6 hours.” Here is the important bit: “(ii) during the period of absence, while in a public place, the person remains at least 2 metres away from any other person who does not reside in the same home, and (iii) during the period of absence the person does not enter any building, other than business premises to which the person is admitted as a member of the public rather than as an employee.” It is perhaps not the most direct and convenient way of identifying criminal responsibility, but the effect is I cannot go without reasonable excuse into or remain in a public place during a period of restricted movement unless I am out and about for 6 hours, in which case I am exempt from that rule, but at the same time I must also observe a minimum 2-metre distance from others if I wish to remain exempt from the rule. If I do not remain 2 metres distant or more then I am no longer within the exemption from the Regulation 5 offence and I have then committed and I can be arrested by a Police Officer for not the offence of failing to safe distance but the offence of being in or remaining in a public place without reasonable excuse because I am no longer acting in accordance with one of the exceptions that the Order provides. That is a rather long answer, but I hope that is an answer or answers to the Deputy’s questions.

Deputy M. Tadier:

Thank you. That does help.

The Bailiff:

There are a number of other Members who are wishing to ask questions of the Solicitor General, but do you wish to have a follow-up question, Deputy Tadier, or is that covered now?

Deputy M. Tadier:

I do, Sir, because it relates so it is best to get it done now, I think. The first one relates back to the question of intent in legislation versus interpretation. If it were the case, for example, that the Minister made it quite clear and it was recorded as such in Hansard that the 2 metres was to be face to face or conversely that it was to be from the closest point, would it then be likely or in order for the judiciary to interpret that in a completely different way? That is my first question as a supplementary. The second one is just to get some further clarification on what we would be proposing today if the Law was passed is that, as I understand it, you need to have, first of all, been in breach of the 2 metres in a public place and then to maintain that 2 metres and not comply with a

request from a Police Officer to distance yourself. I understand that it is not technically the second part which is the breach. It is the fact that you need to have done both, so you need to be within 2 metres and not comply with the request to distance yourself from a further 2 metres. I guess the third question I ask arising from that is that, of course, you need to ascertain whether or not you have been within 2 metres of the person in question. If the Order to move and distance yourself is based on a faulty accusation of the fact that you were within 2 metres then you have not breached the law, because they are both necessary conditions rather than either of them being a sufficient one in its own right. I do not know if that makes sense to the Solicitor General.

The Bailiff:

Solicitor General, can you provide further clarification?

The Solicitor General:

Yes, I will endeavour to do so. I hold to the view, and I think it is a fairly long-established principle of judges understanding what a statute means, that they do not stray beyond the bounds of the statute where its meaning on its face is clear, and that remains my view. I add to that the fact that the Minister for Health and Social Services has not said anything, in fact quite the opposite. He seemed to eschew the invitation to try to give a further definition to 2 metres. I remain of the view that a court looking at this will say: “What is the plain meaning of that provision?” The plain meaning is that you must not be bodily closer than 2 metres to another person and it matters not, I would think, for a court as to which, as it were, extremity of the body might be within those 2 metres. The element of the offence is made out if it can be shown that that distance has not been preserved. As for the Deputy’s second question, I think he is quite right that the offence requires a number of elements to be established, first of all that the person, as a matter of fact, has breached safe distancing and that, second, having been directed to stop doing so by a Police Officer, that person wilfully refuses to do so within a reasonable time. The points the Deputy makes are really questions that touch upon the possible difficulty in any particular case of proving to the criminal standard that the element of breaching social distancing is made out. I think most States of Jersey Police Officers, if not all of them, on active duty now wear shoulder cameras, so it may be the forensic difficulties are less than one might imagine. I am not so sure of the position with the Honorary Police. Leaving that fact aside, forensic difficulties of that sort are the sorts of difficulties that courts of law encounter on a very regular basis and are well equipped to deal with and resolve. They have a panoply of safeguards in place to ensure that injustice is not done in any particular case. I say that noting that, leaving aside the court system for one moment, there is always the option, whether the Centenier is given a power to issue a summary fine under the amendment, that matters of this sort can be dealt with at the Parish Hall. One would think that in the majority of instances where action was necessary by the police the matter would be sufficiently minor that many instances would fall well within the purview of the Parish Hall to deal with. I hope that is a helpful answer.

Connétable R.A. Buchanan of St. Ouen:

I think most of the points were satisfied by the previous answer to Deputy Tadier, but I just want to be absolutely clear that as a prosecuting Centenier you would have to satisfy 3 tests: firstly, that safe distancing had been breached; secondly, that the potential offender had been directed by a Police Officer to cease that breach of safe distancing; and, thirdly, that he or she had wilfully disobeyed that direction. Only with the satisfaction of those 3 conditions could a prosecution be successfully brought against a person. Am I correct in that?

The Solicitor General:

The Centenier I think is correct. If we look at the terms of the draft Regulation 2(2) and 2(2)(a): “A person commits an offence and is liable to a fine on the standard scale, if the person (a) breaches safe distancing.” That is then defined as within 2 metres. That provision is not if in a Police Officer’s

reasonable opinion, he breaches safe distancing. It means what it says, he has to breach, as a matter of fact, safe distancing. That has to be proved to the criminal standard. It must be proved to the criminal standard that a Police Officer has given a direction to that person to cease breaching safe distancing and it must be proved to the criminal standard that notwithstanding that direction the person has wilfully failed to comply with that direction within a reasonable time.

Deputy L.M.C. Doublet:

Can the Solicitor General clarify whether the definition of a home ... it says it includes any outdoor space to which the public do not have access without permission? Would this include things like vehicles and gazebos?

The Solicitor General:

The home provision requires one to look at the definition of "home" in the Residential Tenancy Law, and I have got that to hand. That defines a home as a residential unit and then residential unit is further defined as: "A self-contained dwelling, that is, a dwelling that has, for the exclusive use of the inhabitants of the dwelling, a minimum of all of the following, whether or not in separate rooms: a shower or bath, a washbasin, a kitchen, a sleeping space and a lavatory." Then it says this: "For the purposes of [that definition], the fact that a dwelling has (or is associated with the use of) a garden, a swimming pool, a parking space, a garage or other space or facility does not make the dwelling any less a residential unit." That probably raises more questions than it answers but to answer specifically the Deputy's question, if a gazebo sits within a private garden then the gazebo, along with the garden, is a home or part of a home, in my assessment, for the purposes of these Regulations. A motor vehicle would not be a home for the purposes of these Regulations because it does not, to my mind, fall obviously within the definition that is given of "home" and I am not sure that trying to stretch the definition to include, for example, motorised home ... I am not aware that anyone in Jersey uses a motorised home as a residence or a permanent residence in that sense. I think that would be to stretch the definition too far. The definition is concerned with domestic dwellings and gardens and yards and outdoor space that is directly appended or is appended to that dwelling house. I hope that is helpful.

Deputy L.M.C. Doublet:

Can I follow up, please? Would a vehicle not come under the category of outdoor space that is associated with a residential unit?

The Solicitor General:

Not on the definition that is provided. I am just looking again at the regulations. Regulation 1, paragraph (1) in the interpretation section: "Home means a residential unit, within the meaning of the Residential Tenancy (Jersey) Law 2011, in which a person resides, and includes any associated garden, yard or other outdoor space to which the public do not have access without permission." One does not reside in a motor vehicle, is the first point, and one cannot fit a motor vehicle into an "associated garden, yard or other outdoor space".

[12:30]

It is none of those things and so I think the better view, and it seems to me fairly clear view, is that a motor vehicle, a motor car is not included within the definition of "home" for the purposes of the draft regulation.

The Deputy of St. Mary:

Taking these Regulations in isolation, it would seem that the definition of a home would enable something like a wedding reception to take place. In his introduction, the Minister did refer to other statutory provisions such as nuisance laws that might restrict such measures, but could the Solicitor General advise, in fact, whether I am right in thinking that this does give the go ahead, at least

statutorily, to such receptions taking place and what other statutes are in place to maybe modify that possible use?

The Solicitor General:

I am mindful of the fact that there may be - and I hope I am not wrong about this - some Regulations in draft that deal with the issue of marriages, but as matters presently stand and if these Regulations were adopted today, they would not on their face prevent a meeting or a gathering of persons in a home for the purposes of either a civil ceremony, if such were allowed in a private home, or for the purposes of a reception to celebrate. Those things could happen. The Deputy then asked that let us assume for the moment that matters might get out of hand or that for whatever reason such a gathering might give rise to an unacceptable risk in the present pandemic. I think the answer is that there are other laws that exist to which recourse can be had. The Minister for Health and Social Services, rightly I think, in my view, mentioned the possibility of a breach of the peace to deal with what might be particularly rowdy instances of private gatherings, which overstepped the line and became criminal by virtue of being an offence against public order. The other way of possibly policing that would be under the Statutory Nuisances Law. Of course, it is a necessary precondition to any prosecution under that law that Ministers for Environmental Health have issued a desist order. I forget for the moment the precisely correct terminology but an order that people should desist from engaging in a nuisance. Now, if such an Order is issued - and really that is whether they should be and in what circumstances is a matter of policy for Ministers to determine - and it is either breached or in any other way not complied with, that may give rise to criminal offences under the Statutory Nuisances Law. In that eventuality it would be a matter for the Law Officers to look at the case and decide quite independently of any ministerial policy whether in any given case there was sufficient evidence to afford a reasonable prospect of conviction and, if there was, whether a prosecution was in the public interest. So, there are other, as it were, tools in the toolbox that would enable extreme or unacceptable instances to be policed and enforced.

The Deputy of St. Mary:

I thank the Solicitor General for his answer. My concern is not so much to seek a conviction after the event but to discourage large gatherings from taking place in the first place. If I have understood the Solicitor General correctly, there is nothing presently on the statute book that would prevent a well-run wedding reception taking place, which is perhaps not what the health authorities want.

The Solicitor General:

The advice I can give, and I think limited to this, is that on the face of the draft Regulations, provided it is conducted in a peaceable and responsible manner, a wedding reception of some number of people could be held in a private dwelling house. In terms of anything wider than that in terms of prevention, I think that is really a question of what message is given by the Government about other options if matters escalate in a way that is undesirable. I am not sure that is necessarily a helpful answer, but I think it is the only one I can properly give.

The Deputy of St. Mary:

Thank you for clarifying the position, Solicitor General.

Senator J.A.N. Le Fondré:

I was wondering, if it was helpful for Members, if perhaps the Solicitor General could just outline what the offences are under the present law, the one that is presently in force. If I have understood it correctly, it is imprisonment of up to 6 months and a fine at Level 3, but perhaps he can correct my understanding on that, versus the proposals that we are presently debating. Could he just outline what the penalties are under the 2 if found basically guilty, in layman's language?

The Solicitor General:

Yes, I am happy to do so. There is no imprisonment for the present offence under Regulation 5 of the isolation regulations. The offence is the one I explained of going into or remaining in a public place without a reasonable excuse unless an exception applies. The fine is Level 2 on the standard scale, which if my memory serves me correctly is up to £1,000. The exceptions to that are the ones I touched upon earlier, if I can find my way back to them. In other words, you commit the offence of being in or going to or remaining in a public place when you should not, if when you are in the public place you stay out for longer than your allotted 6 hours, you fail to stay beyond 2 metres from another person, you enter any building, so that would include other people's homes, other than shops and so on to which you are given access other than as an employee. That offence in terms of restriction on movement carries some, I suppose one might say, fairly marked restrictions on people's liberties. The replacement that is envisaged by the draft Regulations is, from a lawyer's perspective and a criminal lawyer's perspective, markedly milder in its effect because if this is adopted and the Ministerial Order, restraint order, falls away, the only offence that can be committed will be that of failing to safe distance in a public place or if you are an adult together with children in a public place and you are the responsible adult, failing to ensure that children do in both instances, failing to cease or take measures to stop that breach happening when asked to do so by a Police Officer. But it does not prevent going into houses, it does not prevent going into shops. It is a great deal more, shall I say, liberal in terms of its ambit. It envisages a punishment - I am just trying to find the provision now - of a fine I think also - I will be corrected if I am wrong - at Level 2 on the standard scale, so £1,000, caveated with the points I have already made, which is that one would anticipate that the majority of such infractions would be appropriate for being dealt with at Parish Hall. Unless there is a power added to the draft Regulations for the Centenier to impose a summary fine, then the only powers open to a Centenier would be to caution or to offer words of advice, in other words something of a slap on the wrist, but the summary fine that is proposed under the proposed amendment is, I think, level 1, which is a maximum of £200. If matters were to proceed in the way it would seem probable they would, then not only would the penalty for the majority of infractions be lower because it would be more likely than not dealt with at Parish Hall, but the restrictions on civil liberties have been markedly reduced. I hope that is helpful.

Deputy R.J. Ward:

As this has gone on, there is a number of questions that have come up. I may have more than one. Is that okay? Perhaps if I come back.

The Bailiff:

If you ask them now, Deputy, then if we run out of time and Members wish to come back at 2.15 p.m., the Solicitor General can think about them over the lunch hour.

Deputy R.J. Ward:

It regards Deputy Doublet's question. Driving a group to school from another household would not be allowed because you could not 2 metre distance unless you have a very large car. The second one is more complex and part of it was answered from Senator Le Fondré's question. It is about the fact that we are replacing the current powers with powers that effectively open up all workplaces and inside places for people to attend them and the protection would be through the Health and Safety at Work Law to protect from COVID-19. It also means that the current Regulations would open up homes for as many visitors as is wanted and the only regulation would be about social distancing in open spaces as defined. I just want to make sure that that is a correct interpretation of the changes to these Laws, because we do really need to understand what it is we are voting for and that may well generate some other questions.

The Bailiff:

Did you wish to address those questions now, Solicitor General?

The Solicitor General:

Yes, I am happy to do so, Sir. I do not think a motor vehicle for the school trip falls within the definition of a home under the regulations and, therefore, it would not be permissible under these Regulations and it would amount to ... I am just trying to think things through. It is not a residential unit, it is not a home for the purposes of the Regulations, and so I do not think it falls within the purview of what would be additionally permitted under the draft Regulations. I hope the Deputy will forgive me, I slightly did not follow the second question, which is my fault not his. I wonder if he would be kind enough to repeat it.

The Bailiff:

I think I am right in saying, Deputy, it is the question of whether the effect of the new Law is to open up the workplaces and only have them policed by Health and Safety at Work Regulations and other enclosed spaces such as a home.

Deputy R.J. Ward:

Yes, Sir, I think that is what I was asking.

The Solicitor General:

Thank you. Workplaces are subject to the Workplace Restrictions Regulations, which as presently drafted are limited to restrictions on who can open for business. In terms of safe distancing in the workplace, the Deputy is quite right, that would be covered under the Health and Safety Law where there is a general duty upon employers, so far as is reasonably practicable, to ensure that employees' health and safety is protected. That is under Article 3 of the Health and Safety Law. There is also Article 5, reasonably practicable steps to ensure the health and safety of third parties with whom an employer comes into contact, which might, for example, include customers in a shop or visitors to commercial premises. I understand that there are guidelines in place in the United Kingdom that specifically focus upon the health and safety issues raised by social distancing or physical distancing in workplaces. I understand there are similar guidelines in Jersey and I understand that the view taken in the Environmental Health Department is that that gives sufficient power to enforce compliance with safe distancing in workplaces. If that compliance is not there, then it is conceivable that that could found a prosecution under the Regulation 3 offence of failing to take reasonably practicable steps to ensure the safety of employees and under Article 5, as well as, I should say, civil liability against employers who put their employees' health at risk. So, I think that is a separate question from the nature and ambit of the Distancing Regulations, which are solely concerned with gatherings in public places by members of the public.

[12:45]

The Deputy is quite right; workplaces can be policed by different statutory provisions.

Deputy R.J. Ward:

Can I follow up on one thing, just to get real clarity? By removing the Stay-At-Home Order, there will be no restrictions on people's homes and who they could see with these proposed changes to the Regulations for social distancing. Am I correct in saying that?

The Bailiff:

I will allow the Solicitor General to answer that at this point, although Members are proposing the adjournment. Mr. Solicitor, are you able to give a very brief answer to that?

The Solicitor General:

Yes, I am. I think that is the effect of the draft Regulations. If the Stay-At-Home Order lapses and it is replaced with a Regulation that provides that you may go out for any purpose for any length of

time, but you must observe safe distancing when in a public place in a gathering of 2 or more people, that is the effect of it. I think the Deputy is right.

The Bailiff:

We have reached that point where the adjournment is normally proposed. Does anyone propose the adjournment?

LUNCHEON ADJOURNMENT PROPOSED

The Bailiff:

The Assembly stands adjourned until 2.15 p.m.

[12:47]

LUNCHEON ADJOURNMENT

[14:15]

The Bailiff:

Before we proceed, I have received a message from the Solicitor General that he would like to amplify on some of the advice he gave just before the adjournment. So, Mr. Solicitor General.

The Solicitor General:

Thank you. It was in respect of the question that Deputy Doublet asked about sharing motor vehicles; for example, the school run. I just thought it might be helpful for Members if I just expanded on that. I remain very firmly of the view that motor vehicles cannot be fitted within the definition of “home” in Regulation 1, paragraph (1), but I note this. Regulation 2, which creates the first of the 2 offences, also creates not only a number of exceptions to the offence, but at paragraph (3)(d) empowers the Minister by Order to add to the list of exceptions after consulting with the Medical Officer of Health. It may be that, in theory at least, it would be possible for consideration to be given to including exemptions, for example, to share motor vehicles for certain purposes. I thought I would just add that. I hope it is helpful.

The Bailiff:

Thank you very much, Mr. Solicitor. Very well, we now start the debate in connection with the Principles, and I call on the Connétable of St. Brelade.

5.1.1 The Connétable of St. Brelade:

I speak in support of this somewhat draconian but temporary legislation. As Constable of a Parish with numerous areas attractive to groups wishing to congregate, I can assure Members that my Honorary Police are tearing their hair out trying to manage the present non-compliance with physical distancing and are 100 per cent behind the proposals. It is observed as being not so much about children, and we take comfort in this, but more about the 18 to 21 age groups, well laced with alcohol and completely oblivious to the dangers to themselves and others as the necessity of physical distancing. The police have no tools to reinforce the engagement, encouragement and enforcement process, and I am keen that my team in the Parish are not compromised by being powerless to enforce these temporary regulations. I would add that I would encourage the Minister via the Comms Unit to use whatever social media channels they think appropriate that may relate to these offending age groups. In conclusion, I would encourage Members to support this legislation.

5.1.2 The Connétable of St. Ouen:

I would firstly just like to amplify the comments of my fellow Constable of St. Brelade because, as Members may know, the western area is made up of St. Brelade, St. Ouen, St. Peter - must not forget St. Peter - and St. Mary, and we all have the same problems. I have listened to the pre-debate, as I

call it, with some interest and I know Members are expressing a lot of concern about the constitutional implications and the implications on people's rights from introducing this. The first thing I would say is I would just remind Members this is only temporary legislation and it is to deal with the falling away of another piece of temporary legislation which falls away this weekend. I think it is quite clear from the letter that we have had from the Medical Officer of Health that maintaining social distance is vital if we are to come out of this crisis as well as we are at the moment. Otherwise, we are likely to face a spike, which I think would be unfortunate from everyone's point of view. There was a point to me asking questions of the Solicitor General, and the point is that there are 3 tests required to bring a prosecution under this Law and the Solicitor General made that very clear. If I might say so, the Law is quite cleverly worded because the 3 tests are quite difficult to get through. We have to commit the safe distancing breach. We then have to ignore the directions of a Police Officer to cease that, and then you have to wilfully disobey that Officer. So, there are 3 clear steps which take place, which in my 12 or 13 years of experience of honorary policing makes it quite difficult for a person to commit this offence unknowingly or without wilfully wanting to do so. I think if we are realistic the number of prosecutions under this offence will be few and far between. I think also it is important to remember that the amendment, which I know we have not debated yet, brings the Parish Hall very much into play as most of these offences will almost certainly be dealt with at Parish Hall level. My experience of having done innumerable Parish Hall Inquiries is that if you look at the nature of the offence and what we are trying to achieve, which effectively is to keep people distanced, I cannot see it very likely that unless somebody is unbelievably difficult or unbelievably awkward about this that a prosecution is going to result. I would confidently expect the outcome of most Parish Hall Inquiries would be a verbal caution, which, as most Members will know, does not appear on people's criminal records. I think also the involvement of the Parish Hall in this is vital when we come to look at children because, as I am sure most Members know, the purpose of the honorary system in one sense is to ensure children and minors do not get a criminal record. Over the years, and certainly in my experience, the Parish Hall system has proved remarkably adept at doing that. I think most Centeniers would feel that if they have to take a child to court and criminalise them that they have essentially failed. There are, as most people will know, a number of tools available to a Centenier to avoid doing that, the most useful of which is a deferred decision, which allows the person who has committed the offence to go away and reflect on their actions and realise that if they do it again they are certainly going to face prosecution. So, those Members - and I am thinking of Deputy Doublet here - who quite rightly are concerned that we could be criminalising children with this legislation I think should be comforted by the fact that it is going through the Parish Hall system to have as an unwritten rule the avoidance of criminalising children unless it is absolutely necessary. So, I think certainly from my point of view I would feel comforted by that. I think, however, we need to heed the words of the Minister for Education. This is an essential bit of legislation because at the weekend the previous legislation, which the Solicitor General described very accurately and very well, falls away. So, as the Constable of St. Brelade said, Police Officers will be out patrolling this weekend if this does not go through without any backup or legislation to enforce when they come across groups of people socially gathering. Certainly, in my reports back from my Chef de Police this weekend most of my Honorary Officers spent most of the second half of Saturday and Sunday and, indeed, Monday moving on groups of young adults and children who had congregated and were having parties and generally had got to the stage where they felt that the emergency was over. My Centenier spent most of the weekend moving these groups on and, indeed, was called to duty in St. Brelade to do the same thing. So, I think if anyone thinks it is not necessary, unfortunately in the current restrictions this piece of legislation is very necessary, and I would strongly urge Members to back the Minister for Health and Social Services. I think also, having said that, please bear in mind also that these Regulations do fall away on 30th September, so it is not a permanent thing. It is a temporary thing. Finally, my plea before I finish is I would ask the Solicitor General and/or the Attorney General to produce some guidelines for the Honorary Police as to how they can prosecute this Law because it is a new law. None of the Honorary Police have any particular experience of dealing with it and

guidelines from the Attorney General will be incredibly helpful in dealing with offences under the legislation. So, in summary, in my mind this is an essential piece of legislation and allows us to move through lockdown and towards the exit while at the same time giving Police Officers out and about, who, particularly the Honorary Police and the States Police, have spent hundreds of hours dealing with COVID infractions or potential infractions, and they do need some tools in the toolbox to deal with these types of offences. But, having said that, there are the safeguards to ensure that people will only be prosecuted in my mind in the most extreme circumstances. So, I would urge Members to support this.

5.1.3 The Connétable of St. Mary:

People are asking me: “Why are we introducing extra enforceable regulations when we are apparently reducing lockdown?” This type of Regulation should have been introduced some weeks ago. Many people feel that this is too late and not easily policed. I do not think I will be voting for this.

5.1.4 Connétable D.W. Mezbourian of St. Lawrence:

I was debating whether to speak or not because most of my opinions have already been expressed by the Constables of St. Brelade and St. Ouen. However, hearing the Connétable of St. Mary, it has compelled me to respond because I am not sure that he realises the difficulties that the Honorary Police and the States of Jersey Police have been facing in policing the regulations as they are to date. We have heard from both St. Brelade and St. Ouen, who have given us examples of the difficulties that their Honorary Police are facing, and I would just like to enlarge a little on that. It is extremely frustrating for them to police the current safe distancing guidelines, and I know that over the last Bank Holiday weekend there were many, many gatherings of people and large groups and it was making it impossible for them to enforce the guidelines. My understanding is that it has been noticeable over the past couple of weekends when we have had the very good weather that the age ranges of people gathering in these large groups is increasing. So, I understand that initially it was younger people, but the thoughts are now that there are older adults in the 30-plus age range who are gathering together. It is very noticeable to the Honorary Police, from the reports that I have heard, that people are beginning to resent what they see as an intrusion into their lives. The Honorary Police have been following the same strategy as the States of Jersey Police by engaging, explaining and encouraging, before the final enforcement part of the strategy if that is necessary. But what they have been finding is that if groups do disperse, they simply regroup elsewhere. Now, they are not saying that everyone is not compliant when they speak to them, but the number of those not complying is increasing. I think that is why it is important for us to be aware of that and to support these Regulations that have been brought today. I think one of the Constables who spoke earlier mentioned that these are a tool, and that is exactly what it is. We will be providing the police with the tools that they require to do their job, which is to keep law and order, keep the peace and to protect the public. We know that these draft Regulations are intended to help control the transmission of COVID-19. That is what the Scrutiny Panel tell us in their report.

[14:30]

I would like to just take a moment to thank the Panel who have produced the report for these Regulations as well as all other Scrutiny Panels who have been working so diligently and under so much pressure during the past few months. Because I am sure Members will acknowledge that it is very helpful and reassuring to have the Scrutiny reports before we debate major issues, because they have had the opportunity to ask the questions that many of us want to ask ourselves and the answers very often are there in the reports. I would just like to come back to something that the Minister for Health and Social Services said in his introduction to this debate because, to me, it is very important. He said that these Regulations are intended to replace the current restrictive movement order and to introduce a lighter touch. He told us it is no longer a proportionate response to restrict people’s movements in their own homes and the efforts that have been made so far, as we know, have flattened

the curve of infection. That is supported by what I believe to be the very helpful comments of the Medical Officer of Health. I would just like to refer Members to the second paragraph down on page 3 of the M.O.H. (Medical Officer of Health) report, when she tells us that there is no easy way through a pandemic. Of course, that is what we are now beginning to understand. She goes on to say that what we need to follow are: "... reasonable measures to suppress the transmission of the virus, a controlled, cautious, protective strategy, while at the same time to balance the risks, safely allowing more freedom of people and more access to services." That is exactly, to my mind, what the Minister for Health and Social Services is bringing forward with these Regulations, so it is a lighter touch, but it is a controlled and cautious protective strategy because it empowers the police to protect us by having the authority to tell people to physically or to socially distance. We have just heard that there are 3 parts to that. Someone has to wilfully disobey an instruction from a Police Officer before further steps would be taken, the reason being is it is to protect us all. I do not want to labour the point because we have already heard it, but what is absolutely key in my mind is that if we do approve these Regulations this afternoon, we must communicate it clearly. It needs to be made exceptionally clear to the public that any lifting or easing of the restrictions are there for a purpose, but the physical distancing that is required is key to preventing the spread of COVID-19. Members know that I sit on the Emergencies Council, and I think possibly in every meeting that we have had I have spoken to the effect that communication is key. Whatever is decided to manage this pandemic must be made very clear to the public. So, I will just repeat: if these Regulations are approved - and I believe they should be - we must make absolutely best endeavours to ensure that the public understand what their responsibilities still are because at the moment we all have responsibility to each other. Before closing, I would just like to take the opportunity to offer my thanks to all front-line staff who are managing for the public. We have spoken about front line health staff on many occasions, but I think, particularly debating these Regulations today, the Honorary Police and States of Jersey Police must be given due recognition for the work that they are doing on our behalf. I heard yesterday that some members of the public have assaulted police by spitting at them, which is absolutely unacceptable. Nobody would condone that at all, and I believe it is in instances such as that that the offenders are arrested. Because at the moment enforcement is being dealt with with a very light touch, but if somebody spits at a Police Officer, they really must be arrested. It is on those occasions that arrest is taking place. I think I have rambled on a little bit there, my notes are all over the place, but I would urge Members to support these Regulations. I hope that the Constable of St. Mary recognises that they are a tool for his Honorary Police to help to protect us from the spread of COVID-19.

5.1.5 The Deputy of St. Mary:

My basic point is that if we are to be serious about having these distance measures in place, then we must have rules enforcement as well, otherwise they are of no value. To that extent, I do support the measures introduced, which are not draconian. As the Minister for Health and Social Services mentioned in his introduction, the offence is one of not obeying a direction or request by police to disperse, so it is not as if they have not had a second chance. So, as I say, I do support these measures in principle. The one concern I have is that which I raised with the Solicitor General: are we sending out a mixed message by introducing these restrictions in public places on the one hand and giving much more latitude as to private homes on the other? I did mention the question of occasions like weddings being celebrated in the home, as to which there would appear to be no restriction. It might be pushing it too far, but I can anticipate that some homes might join the summer season for charitable events, *et cetera*, which I hope a charity would not take advantage of, but there are these possibilities. As I say, my real concern is that we are sending out a mixed message. So, I would ask the Minister in his summing up if he is contemplating introducing any guidelines or other perhaps stricter measures to counter any such interpretation.

5.1.6 Deputy J.H. Young:

I had hoped earlier that we would have more time to consider some of the detail, but nonetheless I want to say straight up that I am absolutely convinced of the need to have these Regulations to deal with I think what is an increasing matter of concern, where we are seeing lockdown fatigue and we are seeing a lot of groups in public behaving in, frankly, a way which does the Island absolutely no credit whatsoever. I think that, frankly, we have to have those measures and certainly the people, our Honorary Police and the police and others who have the difficult and horrible job of having to deal with these, need the powers to do so. My concern is the issue, if you like, that the Deputy of St. Mary has just identified. I do worry that we are cleaning up a situation that takes place outside of people's houses and completely abandoning all measures absolutely of what could go on in people's homes. Now, I am convinced that 99 per cent of people will be very sensible and understand that just simply acting as if the pandemic were over is not sensible. We run risks and the risks are quite clear in the medical officer's excellent report but, of course, the M.O.H.'s report is predicated on the decision to relax and go to Level 3 of a Safe Exit Framework and, therefore, the advice she sets out very clearly - and I congratulate her on it - is that that can only be done if we introduce the 2-metre distancing. Her letter does go on further and say that in the event that Ministers were not disposed to introduce this particular legislation she would not support the relaxation to Level 3. So, I think it shows how important it is that we get ... the Deputy spoke about the need for advice, and I am absolutely sure, and I think the Minister in his opening statement said that he would do that. In fact, when I first raised this with him, he said so as well. But I still have a question as to why Article 2 of the Law, which we will go on to deal with, puts a complete blanket exemption for individual homes. I really would have much preferred to see some kind of amendment in place to be able to at least put some limits in that. The reason why I think this is important is because my own personal preference is health first, but I understand economy first is a balanced view. What we cannot afford in our economic recovery is to see the infection rate start to rise again. Our community has lived through, frankly, huge privations in the last 3 months. We have given up a huge amount. To throw that away and to relax unacceptably fast is a real problem. Of course, what we have is our neighbours. We have our neighbours in Guernsey now going on national media, on Radio 5 today, Radio 4, that they are now a virus-free island by criteria. We have the B.V.I. (British Virgin Islands) doing that. We have the Isle of Man saying they only have 6 cases. We have this whole issue internationally about travel, and clearly, I think what we are going to see is that travel is going to be linked to the area of risk from which people are going. If we do not maintain that adequate control and let the controls go too quick and our cases go up, we are going to be disadvantaged there. I would have very much liked to have seen, and I am disappointed that we did not have the Guernsey personal bubbles because I think that is an issue that has been picked up. It has been picked up by the U.K. It has been picked up by other places. Of course, if we could have got ourselves into the same position as Guernsey, we could potentially have had a travel bubble in the Channel Islands, which would have been to all our benefit. But it looks as if we are not going to have that because we are in different routes. So, I shall be voting for this because we absolutely need those controls, but I ask the Minister to think seriously about that gap, the gap that is identified in Article 2 that provides this exemption, unlimited exemptions for people to assemble in private homes in a way that I think potentially could put us at risk. Because, after all, if that happens, none of us know when people come to our own homes where people are, where they are circulating. We do not have that measure of control, so I would like the Minister to give that further thought. But I will be supporting this. I think that is all I need to say at the moment.

5.1.7 Deputy L.M.C. Doublet:

Like the Constable of St. Lawrence, I am going to do my best to gather my thoughts. I have already raised that I am concerned about the way that this has been brought in so quickly without the chance to properly scrutinise it, and that relates to the chances to properly write a speech on the subject. So, I will do my best to keep some clarity to my thinking. I do absolutely see the need for this legislation and the general principles of it and I do not disagree with the gist of it and what it is intending, but I

wanted to refer to something that Deputy Morel spoke about in the last sitting. He spoke at length about making potentially bad laws because we are rushing things. I really listened to that, and although there are a lot of good points and a lot of necessary things within this legislation, there are some really big problems.

[14:45]

I spoke about some of them earlier when we were discussing whether to reduce the lodging period, and I just wanted to speak in slightly more detail about some of the points I made. Although I do see a need for the legislation, there are problems and Members will not be surprised that it is children that I am thinking about. It seems to me like we have almost abandoned one of the core principles that is supposed to be guiding us, supposed to be guiding Ministers, and it is guiding many of the Ministers, but I do not see that children have been put first in this legislation. It seems to me that children are an afterthought and, in fact, if we did not have the Children's Commissioner speaking up and sending us advice, then we would not have had the insights into how this might affect children that we have had. This legislation is a problem for children I think for 2 reasons. The first one is it is not practical. Children from nought to 18 ... children are different to adults and it is because they are different to adults that that is why they have their own set of rights. They are not just miniature adults. They have their own developmental needs and their own developmental features. Take, for example, a 3-year-old. Under this legislation, a 3-year-old is required to comply with the 2-metre distancing and if that 3-year-old does not comply, their parent could be held liable. It has been made clear today that there are quite a few adults that do not really understand how the 2-metre rule applies, so how on earth are we supposed to explain to a toddler what the 2-metre rule is? It is completely impractical and as much as we might be able to explain to them and help them to understand and get them to a place where they understand that, toddlers do not retain information like that in their head when they are playing. There is going to be incidental touching between children when they are playing, and that incidental touching is a really important part of children developing normally. This situation that we find ourselves in at the moment is not normal, and as an adult I can get my head around it because I know and I can rationalise to myself that we will be returning to some sort of normality where I will be able to hug my friends and comfort my mother when she is upset and have that physical touch as a part of my life again, but a 3 year-old does not have that understanding, that concept of time passing, to know that that normality will return. It is potentially really harmful to their development that they should have to gain an understanding and accept that they have to behave in a way that they are not touching anybody around them. So, I am concerned about it from that point of view. Teenagers are another matter altogether. I have heard it said that teenagers and toddlers are very similar in the sense that they both have high needs in terms of the amount of parenting that is needed because of the levels of brain activity and brain development that is going on and the transitions that they are going through at those ages. So, teenagers, I think it is the prefrontal cortex, the part of their brain to do with being rational is still not fully developed, and that is why they are still classed as children. They might look like young adults to us, but they are still children. I am really concerned, and the second main reason why this is a problem for children is that I do not think it is proportionate. I do not think it is proportionate to be making children liable, and whether it is criminally liable or not, I know that is perhaps a grey area as to whether some people think the Parish Hall system that we will have with the amendment is a criminal system. I think it is because it is part of the criminal justice system. Sorry, I am trying to keep my train of thought. So, going back to the practicalities of it, some children have additional needs. It is simply not practical for those children to physically distance, so are we going to end up with autistic children, children with behavioural needs, having to be completely isolated until this legislation expires? Is that proportionate? I do not think it is. I am extremely grateful to the Children's Commissioner because she has taken the time to consider this legislation and write to States Members, and I have had some further correspondence with her because I think there was maybe some confusion about whether she was content with this legislation. So, I asked her for some clarification and she gave me that

clarification and she has given me permission to share this. Her words - and I quote - are: "I have not indicated that I am content. The Amendment proposed regarding the Parish Hall Inquiries is an acceptable mitigation." She has given me the formal advice that she gave to Officers within the relevant States department and she has given me permission to share that with you as well. She states that the Office of the Children's Commissioner: "... are concerned that children could be criminalised under the draft regulations, including acquiring a criminal record and possible arrest and detention for not maintaining physical distancing. This goes against the specific advice issued by the Committee on the Rights of the Child that states should prevent the arrest or detention of children for violating states guidance and directives relating to COVID-19. Instead, an approach based on support and understanding to identify why a child or young person may be spending time out of the house without observing distancing would be more conducive with a child's rights-based approach." Her second point in this advice was: "Children do not have the same economic powers as adults, making the impact of fines disproportionate on children and young people. They also face additional barriers to challenging the legality of fines, including access to legal advice, which raises significant concerns." Her third point is necessity: "There are already a range of police powers which are available to keep the public safe, which have pre-existing pathways and safeguards in place, and it is unclear why the new regulations are required. As previously noted, the approach in England is that physical distancing is advised but that it is not a criminal act to breach this guidance. It is worth noting that there have been reports of fines wrongly being issued to children and young people with respect to the health protection regulations. In Scotland, a recent Amendment has been passed to ensure that no child or young person under the age of 18 would be subject to a fixed penalty notice and that strong public health messaging would continue to be promoted. We have, however, been greatly reassured that the police will continue to de-escalate situations and note that there have been no arrests of children and young people in Jersey with regards to COVID-19 regulations to date. We would, therefore, continue to advocate for children to be protected and supported and not criminalised." So, just to go back, other jurisdictions are not criminalising children in this way and ... I am just trying to get my train of thought. Sorry, one second. Yes, okay, so the Children's Commissioner mentions the necessity, that she is not sure the necessity is there. I wanted to test this, so I went to the medical advice which very helpfully was forwarded to us by the Medical Officer of Health. I scanned that document and I did a search on it for the word "children" and the word came up I think twice or 3 times, but it was only incidentally in relation to talking about the harm that is being done in terms of people smoking inside with children present. There was nothing in there, in fact contrary to what the Minister for Health and Social Services stated this morning, that says children spread the virus in exactly the same way as adults do. So, I am completely in the dark in terms of what the medical advice is as to how children impact on our infection rates and whether they still need to social distance outside the home. I am completely in the dark. I have asked via email twice, yesterday and today, if I could have that medical advice in relation to children. I still have not had that. So, all I can do is cast my mind back to what the Medical Officers have stated recently. I recall hearing from one of the Medical Officers that when we closed the schools, which I do believe was the right thing to do at the time, the school closures had absolutely minimal impact on the direction of the curve. So, that medical opinion tells us something, does it not? We were also operating under the impression that children were super spreaders, as they often are, and it has been confirmed medically that they are not super spreaders. So, I am trying to weigh up the evidence here with regards to whether this Law should apply to children. To me, the evidence is overwhelming that it should not apply to children, and I am really disappointed that it appears that this has not been considered. I wonder if the Minister for Children and Housing has considered it. I think he probably has, and I would like to hear from him, please, and to hear his views. But I do not think that including children anymore in the physical distancing ... it is not practical. I fully understand this legislation, by the way. I think there has been an inference that those speaking against do not understand that this legislation is lessening the restrictions. I fully understand that, and I am behind that, but I think it is time to make the restrictions less onerous and I think it is time that these restrictions stopped

infringing on children's rights. So, I do not think children should be included in this and I am trying to work out how I can achieve this and what the options are available to me. Now, of course, one option is to amend this, but I have almost been disenfranchised from doing that because of the small amount of time that we have had to read and scrutinise and analyse this, so that option was not available to me, even though I probably would have done that. The other option is, and I hope that the Scrutiny Panel might consider this, and I know they probably have discussed this at length, but I really urge them to call it in, please, because their comments were excellent. I did a lot of work on this yesterday morning and then when the comments came in I was relieved that I had not been barking up the wrong tree with some of my concerns. But that comments paper is excellent in raising a lot of questions. What has not happened is the Scrutiny Panel have not had answers to those questions, which surely is the purpose and the function of Scrutiny. We ask questions and we expect to get the answers to those questions and to get some resolution, and then we move forward with a kind of compromise. That is democracy, surely. But what we have is Scrutiny trying to do their job and excellent effort, but all these questions are still up in the air. So, I would like to hear from the Scrutiny Panel Chair, please, and I would really like her to call this in. If she is not going to call it in, if the Panel are not going to call it in, then I really think there should be a full explanation as to why not, given that the Children's Commissioner has not indicated that she supports this. I think I am nearly finished; Members will be pleased. Another option is to propose a reference back, and I am told that in order to request a reference back I need to ask for specific information that I need to make a decision on this piece of legislation. It is quite clear to me what I need. I need medical advice on why this should apply to children, which I have requested, I have not had, and I need a Children's Rights Impact Assessment. So, I am considering a reference back, but I would like to hear from the Scrutiny Panel Chair first. There is another option, which I think the S.G. (Solicitor General) mentioned when he was responding to a question. I think I wrote this down. Yes, he mentioned that there was an option for the Minister to add to the list of exemptions by way of an order.

[15:00]

So, I would also like to hear from the Minister, if that is a possibility, could he make that decision and add children to the list of exemptions. If he does not want to do that, I would like him to justify why not and address the points that I have made. So, I am considering a reference back, but I will wait to hear from the Scrutiny Panel Chair. I also really would like to hear from the Minister for Children and Housing and also the Minister for Health and Social Services on the points that I have made. I hope that made sense.

Deputy G.J. Truscott:

Just listening to the Deputy's comments, I am wondering if it is prudent that I take my place a bit later on and if the Scrutiny Chair would like to have a say at this point. Is that within order?

The Bailiff:

Not really, Deputy. The Chair of Scrutiny has not indicated a desire to speak at this point. You are next up to be called. What I can do is defer the matter slightly, though, because I note Deputy Maçon has a question for the Solicitor General and that can be asked at any stage. So, Deputy Maçon, did you want to raise a question with the S.G.?

Deputy J.M. Maçon:

Yes, please, Sir. I just wanted to have a better understanding because I believe that in these Regulations the public interest test would still apply, but I would like to ask the S.G. whether it would be in the public interest to prosecute a child under the age of criminal responsibility, if I can ask that because it relates to Deputy Doublet's speech.

The Solicitor General:

It is not possible to prosecute a child under the age of criminal responsibility. The age of criminal responsibility begins at the age of 10. In terms of whether prosecuting a child for these infractions who is over the age of 10 would be in the public interest, I cannot, and neither could the Attorney give any blanket answer to that question because what is in the public interest is always a question that falls to be considered on a case-by-case basis in which a number of different factors need to be considered. But it may help Members if I remind them that there is, in fact, a direction from the Attorney General which dates back, I think, to March 2016 dealing with the prosecution of offenders under the age of 14 years. The guidance that the Attorney then gave is as follows. He says: "Although the age of criminal responsibility remains 10 years in Jersey, henceforth I direct (1) that in relation to children aged 10 or 11 years prosecution should only occur in the most exceptional of cases and only with my consent; (2) in the case of children aged 12 or 13 years there should be a presumption against prosecution and prosecution should only take place with my consent or the consent of the Crown Advocate or Legal Adviser from my department, and that consent needs to be given in writing." Those directions were given mindful of the Parish Hall Inquiry system and views I think expressed by the Children's Service and the Probation Service. So, in answer to the Deputy's question, the sensitive issue of very young offenders is very much at the forefront of this department's mind, especially when dealing with what on any view are relatively minor matters such as the infraction that we are concerned with in these draft Regulations.

The Bailiff:

Thank you very much, Mr. Solicitor General.

Deputy J.M. Maçon:

Thank you, Sir, I am much obliged.

5.1.8 Deputy G.J. Truscott:

I am happy to contribute my penny's worth. I just wanted to compliment the Constable of St. Lawrence for her very balanced speech on the subject earlier on. I likewise will follow my Constable on this one and back him fully. We have had some problems in the Parish, particularly at Winston Churchill Memorial Park, where I think on the Saturday past there was an incident where there were 80 to 100 people plainly not self-distancing, causing a bit of a public nuisance. No objection to people enjoying themselves, absolutely 100 per cent for that, but when there is public safety concern, then everybody should abide by the recommendations from the Public Health Officer. As I say, these measures are being proposed to protect public health, and that is the whole point. There are many people out there that are genuinely scared to go out. It is because of the small minority, and quite rightly they should be frightened of them, that just do not conform to the 2-metre distancing. When that happens, it gives people genuine fear. So, I think any measure to enforce that recommendation has to be a good thing, and I think particularly when a Police Officer is confronting an individual, let us face it, it is going to be a request to self-distance and it will be put, I am sure, very politely. It will be a: "Please, for public health recommendations we request you distance." So, so long as the individual conforms, there will not be any charges and that is all we are looking for from the public is compliance to a health safety issue. Let us face it, COVID has claimed many lives of people before their time, and I think just because there is little evidence currently of cases in the Island, it does not mean that we should take the pressure off. I think right now is the most important time to keep our foot effectively on the neck of this virus to stop it rising up again. So, as I say, I am fully behind the recommendations this afternoon so happy to back them.

5.1.9 The Deputy of St. John:

I take note of the last speaker's comments latterly in that we should be trying to keep our foot on the neck of this virus. I am broadly in agreement with the proposed new legislation, but I do have some issues with the exceptions. It is the first exception I have an issue with, that being that if a person is

in that person's home or in another person's home, they do not need to self-distance. The effect of this exception has the potential to move the barbecue from the beach into the backyard or back garden or for people to party even indoors. The numbers of people that could be involved has no limit and there will be no infringement of the law. There has been nothing built in to regulate the numbers of people involved in a house party, for example. The Minister is relying on the Health and Safety Law to plug the gap, but he suggests that the party would have to be noisy or of inconvenience to other people around. He does not cite the matter of virus transmission as a reason for Environmental Health intervention and I ask why not as the whole reason for introducing the rules in the first instance was to limit the spread of infection. Is it now possible to switch off the spread of infection if we go into another person's home and then switch the capacity to spread back on once again when we re-enter a public area? The effect of the exception will be to give some who have the capacity to remove their party from site and give them the opportunity to increase their potential to spread the virus within the confines of their home or garden. Unfortunately, there are large numbers of people who do not have the enjoyment of spacious houses and gardens. These are the people who will be targeted disproportionately because they are out there. It seems to me to be grossly unfair that a certain group of people can with impunity arrange gatherings and potentially spread the virus on their own domestic premises but that another group of people, who may arrange a similar activity in a park or on the beach, risk being arrested, charged and fined £1,000. The Minister referred to restoring civil liberties, but by not imposing limitations on contact activities in the home he is allowing an infringement of the civil liberties of people who become infected as a result of the omission.

5.1.10 Deputy I. Gardiner:

I would like to say thank you to the Constable of St. Lawrence and Deputy Doublet for both of their speeches because I found myself in between. I wish that we had time to scrutinise this and the time and opportunity to fill the gaps and concerns that we have. Where I found myself, I am in the position that on bigger picture I am absolutely in agreement with the Government that we have to have this legislation in place that gives States and Honorary Police a tool to deal with physical distancing offenders without arresting them, which is clearly not appropriate in the promotion of physical distancing. Also, it is important that now this Law allows us to visit each other's homes and we do not criminalise people in their homes, and my 3 main concerns - and I will be really brief and short because they have been mentioned, some of them at least - are children and education. Preparing for this debate, I have looked at a document that I received as a parent which is called learning goals for the end of Reception. At least 3 out of 7 goals in the prime areas will be not achievable for the children in Reception if we keep physical distancing. I personally struggle to explain to my 4-year-old daughter how to play Hide and Seek or the game You Eat It with keeping this physical distancing. Another point: if children will go to schools, they will touch each other. They will be allowed to touch each other with bubbles, without bubbles at schools, but when we take them to the park it will not be allowed. It is some inconsistency. I would like to ask the Minister if he would consider physical distance in bubbles, as Deputy Young mentioned in his speech, with other households or maybe within the schools that allow our children to have some social interactions with other children. The second point, and this is what the Deputy of St. John raised, I feel that this is a Law that might allow discrimination against the people who live in flats. Most of the Members raised concern for the residents in St. Helier living in small flats. The people without outdoor private space do not have any other choice than to go to the park and socialise there. How can parents with 2 children under 10 be encouraged to exercise their children in the park with a penalty of £1,000 hanging over them if they are unable to stop their children breaking social distancing rules? I would like to thank here Deputy Doublet who brought to our attention various jurisdictions' legislation. Lastly, I think there is some clarity that I would like. I would like to see the practicalities and clarity around the mixed messages. Firstly, it will be the last resort, it is only if not stopped within a reasonable time. How long is reasonable? How much is the last resort? I kind of have this feeling no worries, that will not be that strict, and I am worried that we just can create another new regulation which will also not be

enforced or be enforceable. Then what will happen if people will not be able to pay a £1,000 fine? Are we really going to take a £1,000 fine from the mother with 2 children under 10? What is the appeal process? I know we are in a difficult and rapidly changing situation, but I cannot help but feel that the Law has been brought to us before it has been finished, the practicalities. Again, I wish we would have more time to debate, and I agree absolutely with the Constable of St. Lawrence when she said we do need to give this tool to the police to protect us from the spread of COVID-19. I am absolutely with this. It is the practicalities that I am worried about. Also, I put it in my speech before the ... if the Minister can indicate in his summing up if any exemptions or any other Orders can be done to address the issues and concerns that were raised by me and other States Members.

[15:15]

5.1.11 Deputy M. Tadier:

I think that up until now it was only the Deputy of St. John who touched on one of the key issues which is of the most concern to me. The issue about the criminalisation of a certain section of Jersey society and what I think is a disproportionate fine I am not that comfortable with anyway, and that may have been sufficient for me to vote against this. But certainly, it is the exceptions to this Law which give me the biggest worry. My concern is that it will certainly be an unintended consequence, but we will be creating a 2-tier community. We have seen some issues in Jersey about how COVID has affected different groups of people differently, certainly different socioeconomic groups. But, by and large, up until now there has been a generally good spirit of kind of Jersey is in this together and we have seen that it has also worked. The strategy that has been employed has been one of, by and large, good direction and good medical advice and a good spirit from people to adhere to that. I think that we are going one step too far here, maybe even 3 steps too far. As I said, I think the provisions have worked. The interesting thing about the COVID virus and this kind of pandemic is that it really brings out some of the fundamentals in our personal politics and what we are willing to accept and what we are willing to impose on our community and on our constituents, wherever they might live. It is kind of ironic I would say that the Minister for Health and Social Services, who I would have down as a social democrat of sorts and also a libertarian who takes people's civil liberties very seriously, should be bringing this. I know the argument has been made and I, like Deputy Doublet, fully understand that this can be portrayed and, to a certain extent, is a levelling-up, if you like, of giving people more freedoms but the truth is that it does create that 2-tier system. What it means is that if you are lucky enough or well-heeled enough to live somewhere where you have got some outdoor space, or you have got multiple rooms in your house, you can now say to your group of people, your friends, your loved ones, your close ones: "Why do you not come round? We are having a barbeque on Saturday and we can all sit in our garden and we can have something to drink, it could be tea, it could be white wine. We can have a barbeque, we will put the crisps out in the middle and you can all share the crisps, so long as you are 2 metres apart. Even if we get closer than 2 metres no one is going to be looking at us because this is our place and we have privacy." But what about the people who do not have that? If the only way you have got to socialise with the people you have not been able to see throughout this whole ordeal is to go down to the beach or to go somewhere where you can have that picnic, or you can have the barbeque and there might be some of your extended family and friends there. The reality is as soon as we said you can start meeting up with people, you put the 2-metre rule out the window, certainly in legalistic terms because people are people, they are human, they will want to get close. Sometimes you will be closer than 2 metres, but you are sensible about it. If someone is sneezing, you probably do not go the barbeque anyway if you are ill; you have common sense. People are being tested now as well, people might have had it and I know that we cannot get complacent. But the reality is that people, whether in their own private gardens or in their own private homes having a party or out on the beach, will infringe the 2-metre rule. Then you come into the argument, well, that is where the police step in and if someone is persistent ... but of course this is where the human side kicks in; do we want to have police going up to, effectively, poorer socioeconomic people and saying: "You are too close, move aside."?

say: "No, we are not too close, we are perfectly well." This idea that there is going to be a polite word here and there, well I hope that is the case, but I have seen some of the shocking behaviour in the U.K. from the U.K. police force where nobody is really doing anything wrong and the police have aggravated the situation. That is not a personal slight on what we might expect from our own police, but it is really important to be generally cautious about giving any one authority any more power to do what they should. I want to read an email out that I got from a constituent on this particular issue, which I think emphasises the fact that we are going too far. I will start part of the way through: "I know that you are aware the vast majority of Islanders have made massive sacrifices for the sake of the few most vulnerable since lockdown began. The effects of lockdown have been, in many circumstances, negative for a large number of people; mental health issues, addiction issues, money worries, destroyed businesses, home issues and separation of loved ones are just a few to mention." I will pause there and of course the Minister will say: "That is why we are letting people visit each other in their own homes." But of course, as I have already said, for many people that is not an option. If you live in that bedsit or in fact if you live with people that you are caring for and you want to get out and socialise, that is not an option for you, so they will be criminalised. He goes on to say: "This proposal will introduce a new crime, that of not social distancing. Indeed, there is something inherently non-human insisting that people keep apart from loved ones through a draconian Law. The proposed Law will turn ordinary people and ordinary action in public, being close to members of the same species, into criminals. Who rightly wants to live in a society where the police patrol with their every public action and where people are constantly looking over their shoulder? I certainly do not want to live in a society like that." He goes on, but I think you get the general gist. He finishes by quoting and I would not normally quote this individual, he said: "At this time Matt Hancock M.P. (Member of Parliament) has stated that in the light of the Dominic Cummings' fiasco, he is considering a review of those families that were fined for breaking the lockdown rules for childcare reasons." I started earlier by saying I see it as slightly ironic that the Minister for Health and Social Services is bringing this, given his own personal politics. But I would really like to put an appeal out to my own Minister for the Environment and my Parish colleague, Deputy Young, and say that, does this not concern him? I know that there are other Members in the States that this should quite rightly concern. This is going to create serious divisions in our society. We have already seen, I think, understandably but some of the less palatable side of human nature where we are almost seeing people grassing each other up. This is slightly disturbing, we are getting lots of emails about littering and glass and all sorts on beaches, which is really serious but that has always been an issue and it is because we have never got to grips with policing beaches. Deputy Maçon will know that he chaired a Scrutiny Panel that I worked with, which came up with various recommendations about the policing of parks and beaches, one of which was about a dog warden and, similarly, the fact that nobody has ever been prosecuted for dropping litter. We have already got certain laws in place, for example, that are not being used, so we are just adding more laws here which are going to be applying to certain groups of society and not to others. Remember there was a question to the Solicitor General earlier about a gazebo. I cannot remember the exact context, but some people are worried about whether they are going to be able to put a gazebo up in their garden and whether that counts, or in a field and whether that counts as being on their property. There will be people out there sitting in their bedsits not listening to this or not sitting in their bedsits because they are out at work and they will get home and go to their bedsits later. This will be completely alien to what we are talking about. Please, I would say that this is not the law that we want to see. It would have been better if we had not debated this today. I am still wondering whether somebody is going to move on to the next item or work a reference back. I have been the one that has supported the Government by and large in this. I have accepted that we live in unprecedented times, but I think a point comes when a line in the sand has to be drawn and says enough is enough, it is not a well-drafted Law. If we had had another 5 or 6 days I think there would have been serious amendments, like we saw last week, that would have improved the quality of this legislation and we have not had the time to do that. There is an Amendment and that does not deal with all of the issues that I have

raised or that people are raising. I cannot support this and say enough is enough, there has to be a better way of doing this. That is not to question the intent of the Minister, but I think this is a flawed piece of legislation and it is too flawed for even these strange and urgent times.

5.1.12 Deputy K.F. Morel:

I am pleased to follow the last speaker because Deputy Tadier and I share a great deal of concerns when it comes to excessive legislation and civil liberties and certainly we have already conversed about this piece of legislation. I do very much understand Deputy Tadier's concerns but I sit here at the moment and I am going to speak at odds with Deputy Tadier on this. The reason being is that we are currently in a worse place today for civil liberties than we will be tomorrow if we adopt this Law. I feel that at the moment Islanders' civil liberties, whereby we can be prosecuted and imprisoned for up to 6 months. We can suffer a fine higher than £1,000; Level 3, I am not sure where Level 3 finishes, I think it may be £10,000 but certainly it is more than Level 2. Today we are all, as Islanders, under much greater restriction than we will be tomorrow should we accept and adopt this Proposition. I have spent a lot of time thinking about this. Indeed, yesterday I spoke to a parishioner, who was very much against this legislation because they also felt that a fine of £1,000 for breaking the safe-distancing guidelines was too great. I would suggest that 6 months' imprisonment for breaking the current guidelines is far too great and that we want to see that diminished and reduced to the £1,000 fine at the very highest. I think it is really important that Members do understand where the Minister for Health and Social Services is coming from on this. I sat, as a member of the Scrutiny Liaison Committee, alongside the Health and Social Security Scrutiny Panel, in a briefing on this legislation and we asked plenty of significant and serious questions. Indeed, it was from our conversation then that we suggested rather than criminalising people automatically and giving them a criminal record, would the Parish Hall system not be a far better way to go, whereby criminal records do not follow? Indeed, the Minister came forward with the Amendment that we see, and we will be discussing later. It is to his credit that he has listened to the Panels and done exactly as was suggested. The Minister for Health and Social Services was quite clear at the outset of this crisis that he did not enjoy placing the restrictions on people's liberty that he felt had to be done because of the public health crisis. At the time I and many others, many other Islanders, I do not know about Members of the Assembly but many other Islanders, we were unable to tell whether the Minister would hold to his word on that or whether indeed he would just let these Laws lie in place for the full 6 months or until 30th September. But we have seen, not just for the legislation before us today but also the previous Amendments that the Minister has brought to existing emergency legislation, that he is very much held to his word on the fact that he does not wish to maintain any infringements on people's civil liberties longer than has to be the case. When I look at this legislation, rather than seeing something which is taking away our civil liberties, those liberties have already been taken away. This legislation helps to restore those liberties and I am extremely grateful for that. When I heard Deputy Doublet refer to my speech last week about bad law I understood absolutely where Deputy Doublet was coming from. I started that briefing with the Minister last week by mentioning exactly the same kind of comment. But I do think what we have here is a time-limited Law that is not perfect because no law brought forward in this time can be because it is time-limited and because the effect of the Amendment to go through the Parish Hall system will severely curtail the criminality that is associated with anyone prosecuted under this Law. I believe we now find ourselves in a place where the Law is acceptable or should be acceptable to the Assembly. I think it is also worth mentioning that there is, essentially, a triple lock on enforcements of this Law. Not only does somebody have to be within 2 metres of somebody else, they also have to have been requested by a Police Officer to move further than 2 metres away from somebody else and then, thirdly, they also have to have then refused to comply with the Police Officer's direction.

[15:30]

In my opinion that triple lock should give all States Members the sense of security that they would feel that Police Officers are not going to exceed their authority in the application of this Law. Indeed, when having in the middle of a public health crisis for someone to refuse to comply with the Police Officer's request I think is a serious offence. Given that that would be their third infraction in that moment, then being taken down the Parish Hall route would be an appropriate sanction. I have listened to Deputy Young and Deputy Pointon and indeed Deputy Tadier talk about the aspect of people's homes and I appreciate there is an element of inequality that arises there for people with a large country pile and extensive grounds, they can, essentially, once this Law comes in, erect a marquee and have a party. I appreciate that, but that problem of inequality exists already in our Island. It is not a problem that has been created by this Law. Everybody in a public place will be subject to the sanction of this Law equally, whether they are a millionaire or not. We cannot shape people's homes in that way. Indeed, when I heard Deputy Young talk about removing the exemption for homes, I then become very concerned indeed. In fact, the first version of this Law that never got to the point of lodging but which I did see did have a ban on people visiting homes. I can assure the Assembly I would have fought tooth and nail against any ban on people visiting homes being placed into law. Equally, I will fight tooth and nail against any move to remove the exemption on people's homes within this Law. If you take to its logical conclusion and then quite simply it is taking law enforcement into people's bedrooms and that is not a place, unless you are in China, that law enforcement is ever expected to be. Because it may come as a surprise to this Assembly, not everyone who has relations with somebody else is of the same household necessarily. I just do not believe that when Deputy Young reflects on his request for an exemption, the exemption to homes being removed, I do not believe that he would even himself be able to think that that is a good thing. I really do ask Members to trust the Minister for Health and Social Services on this. He has throughout held to his word of minimising the impact on civil liberties and this Law is yet another example of that.

The Bailiff:

Deputy, I have a point of clarification, I think, from Deputy Young ...

Deputy K.F. Morel:

It says correction, Sir.

The Bailiff:

He says correction but there is no such thing in Standing Orders, so I am assuming he means he wishes to make a point of clarification of his own speech.

Deputy J.H. Young:

Yes, Sir, if I may. If the Deputy will give way ...

The Bailiff:

Just this one moment, that is up to Deputy Morel if he is prepared to give way.

Deputy K.F. Morel:

Absolutely, Sir.

Deputy J.H. Young:

I certainly did argue that I was concerned about the exemption, the blanket exemption is people's homes. I think probably I did not make my argument clearly enough, what I was arguing for was some qualification to prevent the kind of elements happening that the Deputy of St. John and others have highlighted, certainly not removing it entirely, just having some conditionality in there and that was the line of my argument.

The Bailiff:

Thank you very much indeed, Deputy. Deputy Tadier, did you have a point of clarification that you were going to ask of Deputy Morel?

Deputy M. Tadier:

Yes, Sir. The Deputy said that only it would be tyrannical for policing of what happens in someone's house and bedroom but could he just state whether he thinks that there are times when that is necessary for things like domestic violence?

The Bailiff:

Did you wish to offer any clarification on that point, Deputy Morel?

Deputy K.F. Morel:

I did not use the word tyrannical and I am not speaking about domestic violence.

The Bailiff:

Very well, do you wish to continue with your ...

Deputy M. Tadier:

I thought I heard tyrant being used, "only a tyrant", but maybe I missed that.

The Bailiff:

I am sorry, Deputy, but ...

Deputy K.F. Morel:

No, I said China.

The Bailiff:

It has been responded to by Deputy Morel. Do you wish to continue with your speech, Deputy Morel?

Deputy K.F. Morel:

With great apologies, Sir, yes.

The Bailiff:

Not at all in the slightest, please continue.

Deputy K.F. Morel:

Just to go back to Deputy Tadier's clarification. No, sorry, Deputy Tadier, I referred to China and I was referring to the one-child policy. I was making an implication about the one-child policy in China, which saw law enforcement literally entering people's bedrooms. I wanted to say that during the briefing that we received I also raised another concern, which is allied to Deputy Doublet's concerns about teachers and nursery workers and I do wish the Minister for Health and Social Services had brought an amendment for this. I asked for a kind of blanket exemption on teachers and nursery workers from being prosecuted under this Law. The reason for that is because while the Minister was able to quite clearly say that in the workplace the Workplace Restriction Regulations apply and so in a school or in a nursery no teacher or nursery worker could be prosecuted under this Law and that is good. I was concerned for those that there is a small loophole whereby a teacher who takes their classroom outside or takes their class outside of the school grounds for whatever reason, as used to happen when you had to walk to the playing fields or something along those lines, they would, theoretically, be liable for prosecution if such a situation arose whereby the children under their charge did break those 3 levels of the triple lock that I mentioned earlier. Because I am keen to get children back to school as soon as possible, I do wish the Minister for Health and Social Services

would bring an amendment to remove that small loophole whereby teachers or nursery workers could be prosecuted outside of the school grounds while in charge of a class and so I do ask him to revisit that. Referring back to people's homes and we have seen the example of Guernsey whereby I do not believe they are legislating so much as they are just giving extremely strong guidance to people, I think they have said. We saw today Deputy Maçon circulated a small illustration of people being 1-metre distance or 2-metre distance and so in Guernsey they are taking a much more communicative approach and perhaps a less legalistic approach and I do applaud that. I would hope that Deputy Young or Deputy Pointon, when thinking about people's homes, they would agree with me that the Government should communicate strongly really about the need to maintain distance in their own homes. I think this Law does need to go alongside extant communication about conduct in people's homes. While that conduct cannot be prosecuted, or any negative conduct cannot be prosecuted under this Law in people's homes, that should not stop the Government putting the communication system into overdrive to remind people that if they invite neighbours or friends into their home, that they should still remain at a safe distance from each other. Yes, that might mean closer than 2 metres, as we are seeing in Guernsey. They are saying 1 metre is safe, but 2 metres is safer. I think that is a very clever and clear message that perhaps we should be communicating here. I will wind up; I think I have said all that I wanted to say. I think it would be a huge shame if Members did not adopt this Law today. Islanders do need their liberty back. We celebrated Liberation Day this month without the freedom that we are so used to, and this Law takes us one step closer to regaining some of that freedom. I do believe that Islanders have got us to this point and I do believe that Islanders can be trusted to take us safely through the coming months where we do not want to see a resurgence of the virus in Jersey. I ask Members to trust Islanders and to trust the Minister, who has shown us that he can be trusted with regard to people's civil liberties and to please support these Regulations in their First Reading.

5.1.13 Senator S.Y. Mézec:

I was not going to start with this point but since the previous speaker ended on this subject I thought I would address it first. It is just to say that I think this point about liberty is a complete red herring. We are talking about measures which, ultimately, are temporary but which we, as an Assembly if we choose, can make even more temporary and can come up with alternatives, whether that is in the form of amendments to Regulations or withdrawing and proposing slightly different regulations that take into account some of the considerations that have quite legitimately been raised by other Members in this debate. I would not accept any attempt to portray it as those who are in favour of liberty and those who are relaxed about it because certainly from my perspective that is not the case. I think that my record in this Assembly at least demonstrates a very clear commitment to civil liberties and it is in that spirit that I have come to the conclusion that I have on these Regulations, which I will try to explain on. This debate is a very difficult one because it has a point at its heart which is extremely important. We have all read the note sent by the Medical Officer of Health yesterday about some of the rationale behind maintaining 2-metre distancing, why, even in the changing context we are in with how some of the restrictions are being changed as time goes on, it is still important and how that has to be maintained. You can, I think, quite reasonably make a case that says that because it is so important and because the consequences of failure here are potentially so dire that taking it into the realms of criminal sanction can be an appropriate thing to do. I think that is a fair argument and, if I am perfectly honest with myself, I think I accept it. But there is one quite significant caveat and when the Council of Ministers had quite a long discussion on this subject I made some of my concerns clear there. They are concerns which I think are very similar to those that were made by Deputy Doublet in her excellent speech, where she made a lot of similar points. I want to add some extra points to the ones that she made and perhaps provide a slightly different angle on some of the ones she did raise. I think, fundamentally, I have a very broad concern about criminalising children, full stop. I think that in the discussions we were having before this crisis hit about the youth justice model, moving away from what we currently have and focusing on a model that is focusing on

restorative justice and supporting children to eventually become adults who are not burdened by some of the mistakes of the past and have been supported and equipped to be able to put that behind them, which is not just in their own interest but for the interests of the whole of society as well. I am uneasy about criminalising children. I am particularly uneasy about it when we are talking about an action which is, ultimately, about human nature. It is completely normal for people, particularly children, to want to be close to other people, whether they are playing with them or hugging them or something like that and to impose a criminal sanction on that for young people and particularly children who will think about these things differently to how adults do. Deputy Doublet gave a good explanation as to how that works, I think that sends off absolutely the wrong message there and I am troubled by it. There are, I think, some reasonable points against that that the Solicitor General dealt with and I think the Minister for Health and Social Services, either in his opening speech on this or perhaps in previous discussions as well, has made what I think is a reasonable point about the Law applying equally to adults and children and how carving out exceptions is very difficult and pointing out that there is an age of criminal responsibility below which you cannot be prosecuted for. But remember that our age of criminal responsibility is way too young. At 10 it is too young, it needs to change, it will change, it is just on that list of changes that we have got to make over the coming years that we just have not got to yet. I think that puts us in a worse position there by not having dealt with that. It is, I think, largely because of that broad concern about criminalising children and the inconsistent way that this will be applied, as other Members have spoken about, where in some contexts it will be okay for children to behave a particular way around others and in other contexts it will not be, is extremely problematic.

[15:45]

I worry that it will cause difficulties for those children and their parents and it is, unfortunately, a step too far. I have come to the position that I regret that I will not be able to support these Regulations. The other angle that I wanted to add to it, that I do not think Deputy Doublet did refer to that I think is an important angle, is the potential effect this could have on children and young people who are in our care. We very regularly have situations in Jersey, more regularly than people realise, where children go missing, where they leave their home, whether that is their family home, a foster home or a children's residential home and disappear for a period of time. Eventually they are found safely and then a whole process has to ensue to work with that child to understand what happened, why it happened and how they can be helped to make them feel like they do not need to do that again, to make them feel like they can be secure, safe and happy where they are. That is difficult work; a lot goes on, particularly with the Youth Service, to work with those children. But it is a fact that occasionally we get children who have, frankly, had a really difficult life for whatever reason. It might be that they had an abusive parent or it might be that they were very unlucky and became an orphan at a young age or something like that or have experienced trauma, will have gone through a system that they will not have liked, will potentially be very upset and troubled from time to time and decide to leave the people who are looking after them, perhaps go and spend time with friends, be physically close to them. Sometimes these will be friends who are not a good influence on them and sometimes these will be people who because of their emotional difficulties they will be having will probably not react very well to Police Officers coming to them and instructing them to behave a particular way and could then not respond as we would want them to in that situation. Rather than doing what we know is the right thing to do, which is to work with the child to help them, to provide them with support, emotional support as well that they need to help them, instead we are going to put them through a criminal process. Great, what exactly is that meant to do to them? I have in my head visions of these young people who have had a really difficult time, who for all sorts of reasons may have a particular moment, decide to go out against the rules, behave in a particular way, not respond well to authority when that authority attempts to impose itself on them and then our response I think will be one which is not tailored appropriately to people in that situation. It may well be the case that for certain adults it is absolutely fine to just give people a fine or prosecute them

and perhaps they will learn their lesson. But there are instances where I simply do not believe that that will do anything, other than harm those children and young people's chances in life. There is a point that we can talk about parental responsibility but in some instances, it is not their birth parents who have responsibility for them but others, including the State. It is the case that C.Y.P.E.S. (Children, Young People, Education and Skills) does not feel that it was consulted adequately on these proposals, given that there could potentially be an impact on that department where it retains parental responsibility for some children. I am thinking about the situations we have now in our children's residential homes, which is quite an interesting silver lining to this situation, where despite all the horrible things that many of us and the rest of society have gone through throughout these restrictions and the lockdown, it is the case that in some of our children's residential homes the atmosphere has improved quite a bit, where the young people there have been able to develop better relationships with the people who work there and who look after them than they had been able to before, which is a really, really positive thing, where they are able to build those relationships and get that support and spend time with these people, which is really, really good. Now we are throwing in a possibility though that if those young people decide to go off and do something that, ultimately, they should not but will potentially be inevitable and something that cannot be stopped, we then run the risk of damaging those relationships and bringing criminal proceedings into it, which I do not think is the right thing to do. There is the point that I think was alluded to by the Deputy of St. John, and Deputy Tadier reiterated it as well, this will inevitably have a disproportionate effect on poorer people, on working-class people, people who live in homes that do not have access to that lovely outdoor space that many people who are more affluent or who live out in some of the country Parishes get to enjoy much more, it will inevitably be focused on those situations, which I do not think can be a good thing. I regret the conclusion that I have reached is that I will have to vote against this. I accept that that is a difficult decision, but I hope that something better could be brought back that takes into account those concerns. For that reason, I will be voting against it today and hope that other Members will do so as well.

5.1.14 Connétable R. Vibert of St. Peter:

I will be supporting this legislation. St. Peter has 2 areas where the Parish is bordered by beaches, both on the Five Mile Road and at Beaumont. There are various areas along here where historically people have gathered and on Tuesday the Chef de Police reported to me that during the Bank Holiday they were unable to effectively police safely in regulations. In some cases, they were met by the response, sadly, of: "What are you going to do about it?" The fact is this legislation will give them the tools to do something about it, if absolutely necessary. The legislation has a number of safety measures incorporated within it, so that you do not immediately get a criminal conviction. Firstly, you have to have failed to respond to a previous warning. If the person is referred to the Parish Hall, then they are likely to receive a caution on the first occasion; that can be either a verbal caution or a written caution. A verbal caution is not used by our Parish, but some Parishes do use it. In each case the caution does not make it a criminal offence and it will not appear on your criminal record. Likewise, if a person under the age of 18 is sent to the Parish Hall and it does reach the point where they are given a caution, this would not appear on their criminal record either. We are not criminalising people unnecessarily. There are a number of measures ...

The Bailiff:

Connétable, I am afraid you have faded out.

The Connétable of St. Peter:

Sorry, Sir, I do not know what happened there. I am still here; can you hear me now?

The Bailiff:

Yes, we can hear you now. If you could perhaps ...

The Connétable of St. Peter:

It could be the internet connection. I have not gone away anywhere. Where did I fade out, unfortunately?

The Bailiff:

About 15 seconds ago.

The Connétable of St. Peter:

Okay, so I think I will cover again. I have covered the Parish Hall and it is not a criminal offence to receive a caution, nor does it appear on your criminal record and, likewise, for a person under 18 that applies as well if they do reach the situation where a caution is given. There are other measures like restorative justice before you issue a caution. I believe there are sufficient measures that allow it not to criminalise individuals unnecessarily. I would also like to mention the mental health effects of people failing to self-distance. I speak with some experience, as I have mentioned in Assembly before, one of my children suffers from mental health issues and they are currently terrified by the thought that people do not self-distance and that they may have come into contact with them and that when returning home to myself and my wife they would pass the virus on to us by some means. To us, logically, that might seem very remote but to my child, who is an adult, is in their mind something that they believe will happen. I also have a relative who is about to celebrate their 90th birthday and I can see the effect that the restrictions have had on their mental health. This legislation will in fact ease things for them and once again they will be able to visit some of their friends and have some of their friends visit them in their apartment and so that that is a very positive part of this legislation. I would ask Members to support this legislation, as it provides the tools that the police do now require to enforce social distancing.

5.1.15 Deputy R.J. Ward:

I am always pleased to follow Constable Vibert because he raises some really interesting points and gives some real humanity to the debate. I think this is one of the issues we have, so we have to go back, and we have to look at what this piece of legislation does. At first sight it is very simple, it enforces outside the home, it enforces a 2-metre distance between people, warnings will be given if they do not move on and eventually there is a fine. It seems absolutely proportionate to take those steps and to give those opportunities for groups. I do not have a huge problem with that at all. It will give some opportunity for police and Honorary Police to deal with gatherings at the beach and at the park and perhaps deal with the littering that has been very prominently shown on social media, for example. It is useful, and it is a temporary piece of legislation. But I just feel we need to look at the consequences that are linked to this. I seem to have used that a lot today and over the last few weeks where we have had legislation that has been brought forward so quickly. I will say I think it is incorrect to say that this piece of legislation does not mean it is not this piece of legislation that is allowing people to visit each other's homes. It is the ending of the Stay-At-Home Order that will allow people to visit each other's homes and they are 2 very different things. What that does is it allows social gatherings within the confines of a home. We have been told that this piece of legislation, P.66, is about limiting COVID-19 transmission because it maintains 2 metres of distancing outside. But I believe that the least spread of the virus is in very open spaces because it is more diluted obviously when you have a large open space and you are very unlikely to contract COVID-19 walking past somebody on the seafront, for example. It is the confined spaces and the amount of time that you spend together, I believe more than anything over 15 minutes, that increases the likelihood of contracting the virus. What concerns me is that with the removal of the stay-at-home orders, I want the Minister to just confirm that we do not have a confusion of message here. Because if we remove the Stay-At-Home Orders we are saying to people it is okay to gather now but it is just not okay to gather outside. I am fearful that we may create the idea that the real crisis is over. Although we are very pleased to see there are only a few cases coming up each day, this is

during the time where schools are closed, the borders are closed, the shops have been closed, most people are not at work and there is real social distancing going on.

[16:00]

It is, as many people have said, being obeyed very well by the vast majority of Islanders and it is down to their hard work that that is happening. I do have a concern that yet again we have been ... I did not know how to express this but all I can say is that we have been brought to the brink with regulations. The Orders we are on now, we need to put something in place, otherwise we are left with nothing. That concerns me that the Assembly, with such a short time to look at this and not moving it forward to the next sitting, then has to make decisions in a very hurried and very panicked way, one might say and that, I do not think, leads to good laws. I think we need to be very, very careful of that. There are also contradictions; I am not so sure whether this does address the COVID threat in detail. I read the letter - I am just getting the letter, I clicked on the wrong button there - from Dr. Turnbull and at the end it does say: "To maintain public confidence it will be important for a Government to be able to show that it is acting reasonably to protect Islanders and keep COVID under control, while at the same time being aware of the potential wider collateral harms to health and well-being but acting reasonably to protect the population from these too." Then it goes on about: "A cautious and phased way, closely monitoring the impact and aiming to keep the virus at very low levels in our community." It also mentions proportionate legislation. I understand the idea that what we have at the moment is very restricted but by increasing the contact within homes, I would like the Minister for Health and Social Services to say whether he believes that will increase the likelihood of viruses being spread. I will give an example, if schools are to go back it is inevitable that they will go back with social distancing and they may have some form of bubble within the school, and that will be taken very seriously, and risk assessment will happen, and children will go to school. But then, theoretically, with the ending of the Stay-At-Home Order they will be able to go home and then mix with all their other friends around somebody's house in one pounce because they will be inside. That makes a bit of a mockery of social distancing, until we are at the point where we are absolutely certain that we are not going to increase transmission and have that second peak that we are all so concerned about. I get the civil liberties arguments, I am not sure if we have missed the civil rights argument around that, sections of our population that would be disproportionately affected because that is a reality. Some people will not have large gardens and they will not have access to the outdoor space to not be policed in, only in outdoor spaces in which they will be policed. As an Assembly, we have to decide whether we are happy with that. I wonder whether this is targeted incorrectly and has poor consequences because of the speed it was brought through. The Amendment does improve this by looking at children. The answer in regards children in cars going to school; when somebody says "in theory" it concerns me that in theory with a piece of legislation it is something with regulations that will affect people's lives. We should not be theoretical because the devil is in the detail and that is my concern about the message. I have no idea how this message is going to be got across to the public. It seems to me if we are not careful we will send a confused message that says if you are outside be 2 metres apart and you can be fined if you do not do that, and I understand all the reasons for doing that. But if you go to your home and you invite all your friends round and you have got a big enough garden, knock yourself out, have a barbeque, get all your friends round and you will be fine. That is a confused message, it is a confused health message, it is a confused message for our society. That is exactly what we should have learnt from from other jurisdictions who may have made mistakes in this area. The problem with this legislation for me is exactly the consequential impact of other pieces of order being lost and all we are left with is this piece of legislation that talks about enforcing outside. I think if we would have had this piece of legislation to give enforcement for outside social distancing with some sort of meaningful addressing of what happens inside the home in between homes, the bubbles, setting up ways in which that can be gradually increased so that people are safe, then this would have been much more powerful. But at the moment it is not, and I am concerned that we are getting more and

more pieces of legislation in this Assembly that go through the same issue. I think the phrase is more speed, less haste. What we have got is hasty legislation, a hasty Regulation, which I think has got so many holes in it, it is very difficult to support, regardless of some of the issues that have been raised. I am very wary of this piece.

5.1.16 Deputy J.M. Maçon:

Along with other Members I am deeply concerned about the impact this is having on people who cannot get out of their houses because they live in small properties, *et cetera*. I absolutely share those concerns of Members. Also, on the other hand, I have spoken to our Chef de Police here in St. Saviour and we have had law and order issues in the Parish around this. They are finding it incredibly difficult under the existing framework in order really to be able to do anything. I absolutely take the points that many of the Constables in this debate have been making in that they do need a solution. I agree with the points that Deputy Ward has just made, so I will not go into them you will be pleased, you can breathe a sigh of relief, but the Government, rightly or wrongly, has had a huge amount of criticism about communication. We definitely should learn from the U.K. where they have had that criticism where someone can come into my house, they can do something and then as soon as they go out of the property and you break the 2-metre rule, then you have created an offence. This, we know in the U.K., has caused a deep, deep confusion among the public and this has caused complete irregularities in what people are thinking. Now, of course, add a child into the mix, granny comes into the home, plays in the afternoon with a child, then goes out and because they are from different households, the child goes up and runs and hugs granny and there is a problem there. That is going to cause more confusion, and this is the point. I think the best speech has come from Deputy Pointon, the Deputy of St. John, who raised this and for me this is my greatest concern. I probably would have supported a reference to Scrutiny on this point but, as Scrutiny had submitted comments, therefore I would imagine that Standing Order 79(1)(a) would not apply. Sorry just to throw that one in.

The Bailiff:

You are asking for a ruling as to the application of 79(1)(a) here, Deputy.

Deputy J.M. Maçon:

Yes, please, Sir.

The Bailiff:

One moment, please. No, the fact that a comment has been put in by Scrutiny does not prevent the operation of Standing Order 79(1)(a): “A Member of the States may propose, without notice, that the debate on the Proposition be suspended for all the purposes of reference to Scrutiny.” It is now the exceptions apply, it seems to me.

Deputy J.M. Maçon:

Thank you, Sir, and I do not mean to muddy the waters and, Deputy Doublet, I probably do want to hear from the Chair of the Scrutiny Panel to know what is going on because I do have huge concerns around that issue about the communications. I think it was good to have this debate today just to flush some of these issues out because we do need a sounding. I will not be making that proposition at the moment because I do want to hear from the Chair of the Scrutiny Panel, like Deputy Doublet as well. I have been incredibly supportive of all my Ministers. I do not like to vote against them at all but this one does make me concerned. We know also from social media, if you look at examples of the supermarkets where it is difficult to maintain social distancing in supermarkets and I would be more than happy to give way to Deputy Tadier.

The Bailiff:

Yes. Deputy Maçon, would you give way to Deputy Tadier who wishes to raise a point of clarification?

Deputy J.M. Maçon:

Yes, Sir.

Deputy M. Tadier:

I hope this is in order, Sir. It was just to ask the Deputy whether he, being an Assistant Minister for Education and given the fact that his fellow Minister, the ...

The Bailiff:

I have to pause you, Deputy. This is either a point of a clarification of your speech or a point of clarification of the Deputy's speech. It is not a question posed to him that is outside those parameters because there is no ...

Deputy M. Tadier:

No, it is something he has raised in his speech, Sir, that I would like to ask him. The Deputy spoke of a reference back and would the reference back not be one that a general reference back so that information could be sought about what consultation has taken place, in particular the consultation ...

The Bailiff:

Deputy, I do not think the Deputy did speak about a reference back, I think he was speaking about a reference to Scrutiny, which was the Standing Order he referred to. Deputy Doublet raised the possibility of a reference back.

Deputy M. Tadier:

Thank you, Sir. But I guess the question ...

The Bailiff:

It is not a question; it has to be a point of clarification.

Deputy M. Tadier:

My clarification is: did he mean that he wanted to refer it back to the Minister to seek clarification about what consultation had been done with C.Y.P.E.S.?

The Bailiff:

I think, again, that is not a legitimate point of clarification because the Deputy has said he does not wish to move the Proposition for a reference back at this time.

Deputy M. Tadier:

Thank you.

The Bailiff:

Thank you very much. Yes, very well, do you wish to continue with your speech, Deputy Maçon?

Deputy J.M. Maçon:

As I say, I am deeply concerned about the communication message here. I think the Government would be opening itself up to a huge amount of criticism, despite all the good work that I think this legislation could achieve and I am not convinced that if the Minister for Health and Social Services has to extend the Order for another week, that we have a chance to look at this in a bit more detail, get a bit more guidance out there, I would be much more comfortable with that. That saying it, I

would like to hear the Minister for Health and Social Services respond because that might be there already, and he may be able to respond to that. If you could just give me a moment, I ...

The Bailiff:

I am afraid you have faded out, Deputy Maçon.

Deputy J.M. Maçon:

Yes, thank you, Sir. Can you hear me now?

The Bailiff:

Yes.

Deputy J.M. Maçon:

Just to say it might be better that in Second Reading the Chair of the Scrutiny Panel might find it appropriate at that point to bring in the Regulation, considering the concerns of Members; that is all I wanted to say.

The Bailiff:

Very well, thank you, Deputy.

5.1.17 Deputy G.P. Southern:

As a member of the relevant Scrutiny Panel, I put in a plea not to overload it anymore but to take courage and vote for this particular piece of legislation; vote it out. It is always a pleasure to speak after Deputy Pointon and he has already received some praise from others but as far as I am concerned he has certainly nailed the key arguments and that shortens my speech. My speech is this, I suspect this is bad Law, it has been made in haste and I believe it is likely to be repented at leisure. I shall vote it down and encourage others to do so.

5.1.18 Deputy L.B.E. Ash of St. Clement:

I shall keep this fairly brief. The last time I spoke in this virtual Assembly I praised Deputy Perchard for her open-minded approach and today I find myself breaching an old adage of self-praise is no praise when I congratulate myself on my own open-mindedness as I came to this debate fully intending to vote against this Proposition. But having heard the Minister's speech and his reasons for this Law, coupled with the views of others, including Deputy Morel, I find myself agreeing with the methodology. We find ourselves requiring this in order that we may manoeuvre ourselves back to normality with the minimum of grief. We have to realise that there are very important reasons why people should now be able to de-isolate. The elderly particularly now need to be socially included, as do many others suffering mentally under what we have been forced to do.

[16:15]

I will not labour the point, but this is a lighter touch on that which is currently available to Law Enforcement Officers who would have to take much more severe action should they be forced to do so under the current Law. I fully take on board what Deputy Tadier said, his comments on a big advantage to those with gardens are very true. But, unfortunately, and I speak as one with no outside space on my property at all, that has been the case throughout this crisis. Fortunately, we have been blessed with fantastic weather in April and May, which has negated this to a large extent, which we have, as I say, been very fortunate. But this time I would like to take an opportunity to salute the response from Islanders thus far, which has been absolutely enormous and a credit to them. This is a temporary legislation that I will now support and, like a raft of others that we have brought, I will be glad to see it disappear in September, if not sooner.

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

I would like to draw Members' attention to the Quarterly Scrutiny Hearing yesterday with the Minister for Home Affairs. We asked the Minister to please confirm how many individuals have been arrested to date for breaching the rules in relation to lockdown, and we learned from the chief of police that 1,531 - I think I am right with that number - words of advice were given resulting in 21 arrests. Of those 21 I believe the chief of police suggested 2, maybe 3, were aged under 18 and also that not all of those arrests were subsequently charged. The point I am making is it is very much the minority who have not adhered to the advice that the Officers have been trying to give during this crisis. So, I am happy that these Regulations will achieve the desired effect and those statistics support the approach taken by Officers - that being engage, explain, encourage - and at a very last resort enforce the measures. These are working and are proportionate. We also learned from the Chief of Police, who had spent a long time studying video and bodycam evidence taken over the weekend, that the majority of the miscreants were the young who would normally be entertained elsewhere, probably in the bars and nightclubs of the Island. This supports the Constable of St. Brelade's experience that he referred to earlier. As the Chief of Police also stated, we are fighting the virus, not the people. Let us not forget, these Regulations are temporary and are there to support our Officers who are doing a very, very difficult job - as my Constable of St. Peter described the experience down at St. Ouen over the weekend - in these extremely trying times. Let us face it, these Regulations if passed will take us one step closer to enabling our Ministers to take us to Level 2 of the Safe Exit Framework, and I am sure everybody in this Assembly knows the benefits that that will bring to everybody in our Island. I will, therefore, be in full support.

5.1.20 Senator J.A.N. Le Fondré:

I think it has been quite a good debate, but I have been listening with interest and I will hopefully bring some thoughts together for Members as well. I think we have had quite a balance of views from 2 competing directions. One part of the Assembly seems to be arguing that the Regulations should be stricter, for example in dealing with people in people's homes, and then others seem to be arguing that they should be looser, for want of a better expression. That, to an extent, has always been our dilemma. It is worth reinforcing the point that was made much earlier in the debate; this is still a public health emergency. We are in a really good position and that is why we can ease matters, but that does not mean that we are out of the emergency and that we can completely remove measures. I think it is fair to say that when we first saw original proposals around this type of regulation in terms of just dealing with physical distancing, Ministers - including myself and the Minister for Health and Social Services - were not supportive for all the reasons that have been alluded to around human rights and all the rest of it. That is why what is in front of the Assembly is different to what we were originally presented with and, if I recall correctly, does take some of its basis from, for example, New Zealand legislation around gatherings. But I really want to stress that as we are seeing in other jurisdictions coming out of the crisis, it is almost as hard if not harder than going in, in terms of what we are trying to do is ease matters in a proportionate way without losing control. So, it is all about balance and again it is that balance of civil liberties and continuing to control the infection. These Regulations, and this is for me quite an important point, basically only kick in - and using layman's language obviously rather than legalistic - if someone wilfully ignores the direction of a Police Officer. That is the important aspect and then we have also got the balance of the rights of people to do what they wish to do within their own homes, which again has been a challenge and it has been an issue that has been becoming more and more prevalent as we go through the crisis. But again, to reiterate, the 2-metre physical distancing is very, very important and that is the whole purpose of these Regulations is to maintain the 2 metres but in a lighter way, if that is the right way of putting it. I suppose what Members should also consider is what happens if for example this legislation does not go through today, and I know some people simply would just roll over the existing order but that does mean expressly saying - with all the issues we have heard about enforcement and what the Connétables have referred to - that we are going to continue requiring members of the public to only be allowed out of their homes for up to 6 hours; then the restrictions

on people coming into homes and all those types of things. That is why I keep saying it is about balance. The whole issue all the way through the crisis has been the balance of dealing with the problems of COVID-19 versus the overall health and well-being of the Island. The virus does not distinguish between adults and children, as far as I am aware, and there are differing views as to who is more susceptible and what age and all that sort of stuff. I think the Connétable of St. Ouen quite nicely addressed that. But the principle of 2 metres has been in the guidance for a very, very long time, no one has challenged it to date, and it is a very important tool in the toolbox we have to deal with the crisis and the virus as we go forward. I do want to refer, as other Members have, to the letter from Dr. Susan Turnbull, obviously that reflected the advice she gave to Ministers and I was very pleased, and I asked her if she would be prepared to share it with Members and obviously she was. But if the concern - and this is my perspective - is to protect children, then in my opinion we should be supporting the new Regulations as basically it raises the bar, and that applies to anyone, not just for children. At present, as I understand matters, 2 people who are not distanced could be committing an offence because they are not 2 metres apart, but in the new regulations they will have to wilfully ignore the direction of a Police Officer before they commit an offence. I think that is a significant change and I believe the comment from the Solicitor General earlier today was that it was markedly milder, and that is from the perspective of a criminal lawyer. Some reference has been made but I think it is worth just choosing some slightly different points from the letter from the Medical Officer of Health which went to all Members very recently. What she does say is that: "Without 2-metre distancing as part of the advice I believe S.T.A.C. would have recommended a slower, one very cautious measure at a time approach to easing lockdown. It would thus take much longer to proceed safely through the levels allowing increasing freedoms, always with the proviso that COVID-19 transmission is remaining under good control." She does say much further down that there is still as much potential as there was at the outset for a substantial surge of COVID-19 if we drop our guard and conditions change to allow this, and with all the associated ill-health consequences. But she then continues in the next paragraph at the bottom of page 2, going into page 3: "At the same time, however, there has been a growing disquiet about the negatives impacts on health and well-being of the COVID-19 response to date." She lists a long list, loneliness, lack of exercise, long periods of reduced mobility, social isolation, loss of independence for some older people, loved ones living apart, likely increased alcohol consumption, children exposed to passive smoking, exacerbation of mental health problems, delayed outpatient appointments; and the list goes on. That, as I keep saying, has been always this balance about dealing with the crisis of COVID-19 and then dealing with the other consequences that come as a result of some of the actions that have been taken. She does say, which I think is also worthwhile repeating: "A key question in debating these Regulations will be whether legal powers are necessary or not." A number of people have addressed that. But she says: "Some may argue that any restrictive Law is disproportionate to the size of the particular problem here in Jersey and that the vast majority of the population have voluntarily complied with guidance. We know also that a minority recklessly may choose not to do so and in the past in the public health arena we have argued that it is important to have certain things enshrined in law, signalling the importance that Government and indeed the people attaches to an issue." For example, she quotes the Compulsory Seatbelt Law. But what she says, and starting to wrap up, is that: "These Laws signalled the right behaviour but also allow remedies for any miscreants deliberately ignoring them, even though some argued against those laws on the basis of being difficult to police." She is drawing an analogy between previous legislation that we have passed and obviously what we are trying to do today. That is really coming down to the point; as I say, it is a balance, it is about ... as some Members have, in my view, rightly alluded to which is these are an improvement from my perspective, or to use the Solicitor General's comments again, markedly milder from the perspective of criminal law. So, it is an improvement if they were to be approved today from where we are under the present legislation in comparison to what we are debating today. I think that hopefully sends the right message. It is about easing and improving the civil liberties part, it is about easing the lockdown even further, but it is about retaining an element of control while we still navigate through what I

hope is the tail end of the health crisis, and obviously then we will start preparing for the knock-on consequences that we are seeing globally as well. But there is still a way to go and that is why we feel that we need to make sure that that message still goes out to the public; that the 2 metres is still crucially important, and part of that is having a level of enforceability behind it, but it is only an issue of somebody wilfully ignoring the directions of a Police Officer. There is a quote in the letter which I will use to conclude, which is: “The best outcomes the Government can strive for are maximum benefit and minimum harm from COVID-19 directly and from the collateral harms associated with COVID-19 control.” I think that is what we have always been striving to achieve and in my view these Regulations meet that requirement. It is about minimising the harm but maintaining a degree of control. This is an improvement on the legislation that is presently in force and I really do urge Members to please consider supporting these Regulations. Can I also say, hopefully for the comfort of some Members and to reiterate comments from others, that they should be under no illusions that the Minister for Health and Social Services does not challenge - if I have got the negatives in the right place - on legislation when he believes that they go too far or are not supportive of human rights. He is under this continual balance challenge, which as a lawyer I am very relieved that he is vastly used to, of considering the public interest and the health of the Island, and that he takes his job very seriously and he does say no, that he does not agree with a form of action if he feels the need to. That I very much welcome. But in this instance, he has given his support to these Regulations, I have given my support to these Regulations and I want to continue supporting my Minister in this instance.

The Bailiff:

Chief Minister, can you now hear me?

Senator J.A.N. Le Fondré:

Yes, Sir.

[16:30]

The Bailiff:

Chief Minister, I have tried to interrupt you on more than one occasion during the course of your speech but apparently you could not hear my interruptions. Is there a reason for that, could I ask?

Senator J.A.N. Le Fondré:

I could not hear you, sir.

The Bailiff:

Well, a point of clarification was raised. I do not know how that happened, but you have not been able to hear me at all while you have been speaking and I am not sure, as I say, what the explanation is for that. A point of clarification was raised early on by Deputy Ward, I believe.

Deputy R.J. Ward:

Yes, thank you, and I am okay waiting. It is important to be well-mannered in these circumstances. The point of clarification was in regard to the words “ease and remove”. Can I ask the Minister to clarify whether or not he believes that there have been measures removed with the end of the Stay-At-Home Order, i.e. the measures around households intermingling so to speak, they have been removed? So, there is an issue, is there not, that there have been measures removed, not just eased?

The Bailiff:

Are you able to clarify your speech in that regard, Chief Minister?

Senator J.A.N. Le Fondré:

I think there are 2 things being conflated; one is that what I said is we can ease measures. What I was trying to say is we cannot remove all measures, meaning for those who wanted us to go faster

we are trying to do this through a balanced way, which is what I call the easing of measures as opposed to a wholesale removal. However, in terms of easing there is I think a removal aspect in this instance which is that previously there were restrictions on people going into households and now that is no longer the case; keeping it very simple.

Deputy R.J. Ward:

I will say I think I should have insisted on the interruption because I am not entirely sure ... but we have gone past that now, thank you.

5.1.21 Deputy M.R. Le Hegarat:

As already stated, the Health Panel has had a full briefing in relation to this legislation, along with the Scrutiny Liaison Committee, in order that we could question the Minister and representatives about this legislation. There were a number of questions raised but in particular in relation to children and young people and the fact that we did not want to see them criminalised within this system. I have first-hand experience in relation to this matter having served as a Police Officer for 25 years and tried on a number of occasions to ensure that that happened. That is why during the course of our briefing we all raised the point about the Parish Hall Inquiry. Now, as I said, my experience showed that if a young person or child committed an offence and they were sent to the Parish Hall Inquiry it gave an opportunity for them to be able to be advised about their behaviour, but more importantly it also gave them a second chance. That is why I have always been a very high supporter of that particular system. What we did ask for clarification was in relation to how that could be dealt with, and quite clearly what we received back was the fact obviously that there is always an option to have a verbal caution, a written caution or a fine, and that that fine would be no higher than £200. However, this would only come if those individuals failed to obviously recognise the steps which were taken, as in asked to do the social distancing along with being spoken to and advised by a Police Officer. It is encouraging that the police have taken the approach in relation to the stay-at-home measures as explained in our comments paper about the engaging, explaining, encouraging and enforcing. It is quite clear that not all of the Health Panel share the same views in relation to this matter, but as individuals we obviously speak in our own right. We did raise, as I said, a number of things in relation to social gatherings outside of people's homes and whether or not that would create the 2-tier society in relation to those incidences outside. But, having listened to others this afternoon as well ... and this is difficult, as I say, in relation to this legislation but we are in this position and it is enlightening to listen to somebody who says they have no outdoor space, but there is an opportunity to go out. I am very minded that a lot of people have had strict restrictions on themselves, first of all 2 hours, then 4 hours, then 6 hours. I can still see the need potentially to be able to monitor and keep us in check. The Medical Officer of Health provided a very good report to us yesterday, and that encouraged me from the perspective that she was saying that the reason they felt at S.T.A.C. that they were able to move forward was because (a) people were doing the right thing, but more importantly that this legislation was on the table. It is, therefore, my position, as I said, that I do not feel that I would be calling this in because I do feel that we need to move forward, and something has to be put in place. I listen to what the Honorary Police say and also obviously my ex-colleagues at S.o.J.P. (States of Jersey Police) and do feel that we have to put something in place so that these matters can be dealt with based on the way that it has been dealt with so far. So, therefore, I am supportive of the legislation, however, as it will have been seen, some of my colleagues may not. So, we vote as we are as individuals, and we have provided a comments paper. I do not feel that calling this legislation in will make a difference. I think it is how it is at the moment and so, therefore, that is my position.

The Bailiff:

Thank you very much, Deputy. A point of clarification is sought by Deputy Doublet of your speech, Deputy Le Hegarat. What is the point of clarification, Deputy?

Deputy L.M.C. Doublet:

I wanted to clarify, and I made reference to this earlier, the Panel's views on the fact that the Children's Commissioner has not indicated she is content with this legislation.

The Bailiff:

Are you able to clarify the position, Deputy Le Hegarat?

Deputy M.R. Le Hegarat:

I do not believe during my speech that I did say that the Children's Commissioner was content with the legislation.

The Bailiff:

So, you did not say during your speech that the Children's Commissioner was content with the legislation?

Deputy M.R. Le Hegarat:

I do not believe so, Sir. The Commissioner has spoken to the media yesterday and will have made those comments, but during my speech I did not say, or I do not believe I said the Children's Commissioner was content and if I had then that is incorrect.

The Bailiff:

Thank you very much, Deputy.

5.1.22 Senator I.J. Gorst:

I do not wish to prolong this debate too much, but I do just want to raise one particular point. The Minister faces a conundrum, as he has faced often throughout this crisis. You, Sir, will recall that I think at the last Emergencies Council or the one before, Ministers had a long debate about falling back on legislation to ask Islanders to behave in a certain way. For my part, reading the current legislation - so not the one before Members today, and I alluded to this in my comments about requesting this legislation to be taken today - but for my part it would seem no longer proportional and appropriate for the Minister to re-sign a stay-at-home order. I would find it very difficult that he could do the mental contortions that would be required, looking at the evidence of the current spread of the virus, looking at the number of active virus cases which remains below 50, looking at the new number of cases in any given week over the last 2 or 3 weeks, it is very difficult to make a rational argument that Islanders should be forced to remain in their homes except for 6 hours for certain circumstances. Yet that is the position the Minister will find himself in. If Members do not support this new piece of legislation today he will have to seek revised advice from the Medical Officer of Health - and it is far from clear from the note that she circulated to States Members that she would be able to produce that evidence that that order should be extended for another week or maybe even longer hearing some of the concerns of Members today - or his other alternative is to not extend that order and have no legislative base to provide for the health advice which will remain and does remain, that Islanders should be physical distancing for 2 metres. So he will be moving from a stay-at-home order that says we have all got to stay at home except for 6 hours otherwise we are committing a criminal offence, and at the end of this week saying: "Well we are going to have no legislative base for the health advice when it comes to individual actions and we are going to ask all Islanders to rely on their good common sense." Now, I started this argument with my colleague Minister saying I think he should just go to that stage because Islanders are behaving incredibly responsibly, apart from the minority, and we know from the police that that minority is increasing and some of us have alluded to that during the course of this debate. Is now the time at the end of this week for the Minister to move from the legislative base of the stay-at-home order to no legislative base but just to rely on the health advice that we should continue to social distance because it is in everybody's best

interest to keep the virus under control? What the Minister has done here is find a halfway house and he is saying: "Okay, it no longer seems reasonable to have that legislative approach to what people do in their own homes, albeit let us remember the health advice to Islanders is not changing. The health advice remains that we should stay physically distanced from Members who are not in our own family, so the ones that we live with." We have seen elsewhere of course this concept of bubbling, and as we move through Level 3 I hope that Jersey health advice will reconsider the issue of bubbling, whether we can start to bubble with other families in an appropriate way. I think that that would help very much with some of the concerns that some Members have raised during the course of this debate. Asking the S.T.A.C. and the Medical Officer of Health to reconsider the issue of bubbling advice, that might go a long way to dealing with some of the concerns that Members have rightly raised. I would support the Minister going away and doing this post this debate because it seems to me very sensible, deals with a lot of the issues perhaps around physical touch of relatives. I know we have all spoken before about our children not being able to hug their grandparents and those sorts of damaging issues.

[16:45]

It can deal with mental health issues and it can also help in ensuring that we can do it in a proportionate and stepped approach. But, fundamentally, if Members do not agree this legislation today the Minister will be presented tomorrow with that conundrum. As we sit here, I am not sure which would be the right way for him to go. I think he would be under a lot of pressure to go with just the guidance, other than the medical advice and the advice coming from the S.T.A.C. to the Medical Officer of Health has been very clear that in order to continue through the Safe Exit Framework, through the levels, and to continue to keep the virus controlled and suppressed - and I will use this term again, virtually eliminated - we need to maintain physical distancing. So even though there are perhaps some unintended consequences in this legislation, I do think that it is appropriate for Members to support it today and to allow this ever such gentle easing of Islander civil liberties in an appropriate way; that they become again later this week freer to move in and out of their own home in an appropriate way and to act in their own home in an appropriate way, following the guidance, and it not having to be in legislation and it not being a criminal offence. At the same time this legislation allows the law enforcement agencies to deal with some of the growing minority and the actions that they have taken over the last number of weeks because they themselves are seeing the evidence in front of them through this daily publication of statistics, and asking themselves: "Does it seem credible anymore?" So, law enforcement agencies can appropriately issue words of advice, say to Islanders, to that minority who are not following social distancing: "Look, come on, it is quite clear, we all need to continue to follow social distancing." Of course, we know that from time to time on a coastal walk we might have to just reduce that 2 metres just because of the narrowness of the path, and we will do our best, one of us will jump into the hedge. We all know the experiences that we have all had in our own lives to try and maintain social distancing. It is not easy; it is not straightforward. I believe that the Honorary Police and the States Police understand that. It is where people are wilfully choosing to congregate in a way that means it is impossible, or they are wilfully choosing not to social distance at all, that they need the continuing legislative base. But let us not kid ourselves; this is not a draconian introduction of legislation. This is a relaxation of what has been legislation with a Stay-At-Home Order. It is a releasing and a relaxation of that to help us continue to control the virus and at the same time move through the Safe Exit Strategy. The Minister and this legislation have my support for those reasons. But if we do not agree it today - and the Minister will talk about this no doubt in his summing up - I think the options available to the Minister are very limited and the more I think about it I do not think either of those options are very palatable. So, I ask Members to think very, very carefully before the vote against this proposal.

5.1.23 Deputy J.H. Perchard of St. Saviour:

I just wanted to touch upon a couple of points made throughout the debate and some of the language used. We have heard a lot about striving for balance; we have heard a lot about wanting to prevent a 2-tier society and about proportionate response. But something that I think has not been accurately portrayed is the fact that through the response that we have chosen to take to the pandemic we have maintained a division that was caused by the pandemic, but we have chosen to maintain through our response to it, and that is the division between those who have comorbidities and who are at risk and those who do not. Already over the weekend I have been made aware of the fact that doctors have phoned up high risk and vulnerable patients to tell them that they predict that they will need to isolate perhaps until the end of the year, and that they predict a spike around the autumn because of the ways in which we have chosen to manage the virus. That is coming from a G.P. and obviously there will be different views on that and no one has the ability to accurately predict the future, but we can certainly develop a sense of what is likely or unlikely to happen based on science and research and our own monitoring of our own situation. But what does worry me is that every time we have these kinds of debates that have an impact on people's freedoms and lives we neglect this group of people who are the high-risk people. We have heard even just then from the Senator about the fact that ... he used the phrase "all Islanders" repeatedly, and that is inaccurate because Islanders who will not be affected in any way whether this passes or fails are those who have received organ transplants, are those who are going through chemotherapy, those who have severe respiratory conditions like C.O.P.D. (chronic obstructive pulmonary disease) or cystic fibrosis, those people who have had congenital heart disease, those people who are pregnant with any of the above, people with severe asthma. That list is quite a great list of people and those people's lives are not going to be made any easier or any freer by this particular legislation. It distresses me that we have not made provision for those people in this emergency legislation, and that they have been largely ignored as a body of people who have a shared experience which is harsher than that of wider society. These people cannot leave their homes and these people are now being told by their doctors that they should continue their isolation, not just for the 12 weeks they were originally told in a letter a while ago, but for months more throughout this year while the rest of us slowly ease back into a kind of life where we get to see other people. I do not think that is a really acceptable way forward for us. I think that every time we bring this kind of legislation that group of people, that high risk vulnerable group of people have to be considered and mentioned. We have to understand the Government's perception of that group and how they intend to provide for those people and their relatives, because relatives of high-risk vulnerable people who are told to continue isolating will also consider a continuation of isolation so that they are able to run the errands and do the care that they need to do for those vulnerable family members. The other point I want to just touch on lightly is that there is clearly division in the ranks. The Council of Ministers are divided, Scrutiny are divided, and we have a strategic priority of putting children first and yet the Minister for Children and Housing does not feel he is able ... and I know this is regretful, but he does not feel able to support this either. I do not think that that instils confidence enough for me to support it because if a Minister with an area that is significantly affected by any legislation stands up and says: "I am not ready to support this, I understand the principles and I think we do need to go in this direction, but the way it is I cannot support it" that is a huge red flag and it should be for all of us. Because the Ministers are the ones with the advisers and the resources to know how these bits of legislation will play out. So those were the 2 main points I wanted to raise about what has already been said. Just on the idea that this is a decision about whether we maintain the legislative base of the stay-at-home order or not, and that is a really fair point to raise and I think that it is a really helpful thing for each of us to consider. My personal perspective is that I currently do want to maintain the legislative base of the stay-at-home order because I do not think the vulnerable have been given adequate consideration in the development of this Law. I think that they are more greatly protected by continuation of that legislative base, and I am quite happy to wait a week for the control strategy to be published, which is due on 3rd June. I am quite happy to wait for that before I agree to taking this next step. For me the priority now is considering the people whose lives are still going to be hard, whose lives will not

change and whose freedom will not be given back to them, even when the rest of us can experience greater liberty. That is my priority now as a Back-Bencher is focusing on that group of people, and I really hope that the Government take that on board and whenever they bring any COVID related legislation that that group of people is at the forefront of their minds and detail around their well-being and their mental health is given great weight. Because again, we consistently hear the argument that this is good for well-being and good for mental health, but completely neglect to talk about the well-being or the mental health of those people who have to stay in lockdown because this disease is most likely to kill them if they catch it.

The Bailiff:

Thank you, Deputy. Deputy Doublet, you wish to propose a reference back?

5.2 Draft COVID-19 (Safe Distancing) (Jersey) Regulations 202- (P.66/2020) - reference back

5.2.1 Deputy L.M.C. Doublet:

Yes, please. I would like to propose a reference back to the Minister for Health and Social Services and the information that I am requesting are the things that I spoke about in my speech, so I will not go into too much detail. First of all, I would like the medical advice please around why children should be included within P.66 and the reasons why they still need to be maintaining physical distancing. I would also like to see a Child Rights Impact Assessment please.

The Bailiff:

Very well. Standing Order 83(1) provides that a Member of the States may propose without notice during the debate on a Proposition that the Proposition may be referred back for further information, and that is what you are seeking to do. A reference back would not prevent the matter being dealt with on a subsequent occasion and, therefore, it is for me to ask is the reference back seconded? **[Seconded]** Very well, then there is now a hopefully short debate on the merits of the reference back only. The debate is to be limited to the merits of the reference back, but does any member wish to speak on the matter of the reference back?

5.2.2 The Deputy of St. Ouen:

I have to say I do not feel that the reference back will assist this debate. When Deputy Doublet first spoke, she remarked that children were not mentioned in the Medical Officer of Health's advice except tangentially, and she is correct because there is no distinction drawn between children and adults in the advice. The Medical Officer of Health is responsible for giving public health advice. That advice is that people should observe physical distancing. That is what she is clear about. But the Medical Officer of Health is not responsible for giving advice on what should or should not be a criminal offence and who any criminal offence should apply to. That is not her role; that is a political decision that is for us to decide at the end of this debate. It seems to me that a reference back for advice about children and whether they should be subjected to a criminal offence is not an appropriate role for the Medical Officer of Health.

The Bailiff:

Deputy Doublet, you are seeking a point of clarification on the speech of the Minister for Health and Social Services.

[17:00]

Deputy L.M.C. Doublet:

I am not sure if this is clarification, but I believe the Minister is misrepresenting me. I was not implying that ...

The Bailiff:

Deputy, you are making an application for reference back, you will have a right of speech and reply at the end.

Deputy L.M.C. Doublet:

Am I allowed to seek clarification on the Minister's speech?

The Bailiff:

You are, but please do bear in mind you have a right of reply at the end if you need to clarify something that has been said about your speech, but if you wish a point of clarification of the Minister's speech, yes.

Deputy L.M.C. Doublet:

I feel this needs to be clarified at the beginning of this debate. Can the Minister clarify for me that he understood in my speech that I was not asking or implying that the medical officer would make any political decisions, but that the medical information that I am requesting is how ...

The Bailiff:

That is a point of clarification of your speech, Deputy. It is not a point of clarification of the Minister's speech in my judgment, so that is something that you could deal with at the end when you have the last word on the whole matter.

5.2.3 The Deputy of St. John:

I support this reference back because I feel that it needs to be further worked on to look at the rules surrounding gatherings in people's homes. I am not suggesting for a moment that people should not have a relaxed ability to gather in their homes, but simply having a carte blanche to potentially gather hundreds of people in the confines of your home is rather frightening. I think that this would be a point that the Minister should look at in relation to beefing up marginally the regulations in relation to gatherings at home.

The Bailiff:

Deputy of St. John, the debate on the reference back is relating to reference back for the information sought by Deputy Doublet. It is not a general idea, or it is not open to this debate to say that the Minister should look at a whole host of other things as well. The debate should be restricted to whether it is appropriate to refer this matter back to the Minister to answer the 2 points raised by Deputy Doublet when she proposed it.

The Deputy of St. John:

Sir, I do apologise as merely an inexperienced Back-Bencher.

The Bailiff:

No, I am not being critical of you at all, I am merely clarifying the position. Does any other Member wish to speak on the matter of the reference back? If no other Member wishes to speak then, Deputy Doublet, would you like to respond?

5.2.4 Deputy L.M.C. Doublet:

I will respond to the Minister for Health and Social Services and I think it is astounding that he is continuing to minimise the issue of children's rights here, and his speech was an attempt to deflect from my requests. The fact remains I am not asking for the Medical Officer of Health to give a political view; I am asking for medical advice. All the Minister for Health and Social Services has restated in his speech today is that children are the same as adults. I am sorry but there is a whole body of science and psychology that says otherwise. So, I would like to see medical advice specifically around children and why they need to physically distance and why they cannot be

exempted from P.66, and I would like to see a Child Rights Impact Assessment please. I maintain the reference back.

The Bailiff:

Very well, I will ask the Greffier to put a link in the chat on the matter of the reference back. A vote *pour* will mean the matter is referred back to the Minister for the purposes set out by Deputy Doublet. I now open the voting and ask Members to cast their vote in the usual way.

POUR: 18	CONTRE: 28	ABSTAIN: 0
Senator T.A. Vallois	Senator I.J. Gorst	
Senator S.Y. Mézec	Senator L.J. Farnham	
Connétable of St. Helier	Senator S.C. Ferguson	
Connétable of Grouville	Senator J.A.N. Le Fondré	
Connétable of St. Mary	Senator K.L. Moore	
Deputy G.P. Southern (H)	Senator S.W. Pallett	
Deputy M. Tadier (B)	Connétable of St. Clement	
Deputy M.R. Higgins (H)	Connétable of St. Lawrence	
Deputy J.M. Maçon (S)	Connétable of St. Saviour	
Deputy L.M.C. Doublet (S)	Connétable of St. Brelade	
Deputy R. Labey (H)	Connétable of Trinity	
Deputy J.H. Young (B)	Connétable of St. Peter	
Deputy of St. John	Connétable of St. Ouen	
Deputy J.H. Perchard (S)	Connétable of St. Martin	
Deputy R.J. Ward (H)	Deputy J.A. Martin (H)	
Deputy C.S. Alves (H)	Deputy of Grouville	
Deputy K.G. Pamplin (S)	Deputy K.C. Lewis (S)	
Deputy I. Gardiner (H)	Deputy S.J. Pinel (C)	
	Deputy of St. Martin	
	Deputy of St. Ouen	
	Deputy S.M. Wickenden (H)	
	Deputy of St. Mary	
	Deputy L.B.E. Ash (C)	
	Deputy K.F. Morel (L)	
	Deputy G.C.U. Guida (L)	
	Deputy of St. Peter	
	Deputy M.R. Le Hegarat (H)	
	Deputy S.M. Ahier (H)	

5.3 Draft COVID-19 (Safe Distancing) (Jersey) Regulations 202- (P.66/2020) - resumption

5.3.1 Deputy S.G. Luce of St. Martin:

There has been much talk this afternoon about bad law and when we started work on Brexit matters, what seems an eternity ago now, we accepted then that a lot of bad laws may well be written. We are now in the middle of this COVID crisis and our ability to spend time and consult on new law is considerably less than it was during the days of Brexit. I think we have to accept that, in these times of having to take decisions so quickly, the good law that is well-researched and well-consulted on just is not going to happen and we have to sort of get over it in a way. We know that laws are written for 5 per cent of the population, if you will, but usually when it comes to things like speeding or seatbelts or mobile phones in cars or even burglary, matters like that, the effect of the laws being broken by those 5 per cent is only on a very small number of the population. But in this case the effects that the 5 per cent may have on the rest of the population by their misdemeanours could be grave to the extreme, and there is no doubt in my mind that the reason why we need this legislation to be put in place is a public health issue. Their bad behaviour could well lead to the other 95 per

cent being very badly affected by this virus. For that reason alone, I will be supporting it. We do not have the time to go into detail with this Law; we do not have the time to get it perfect. We do not have the time to consult. We need it in. We need to make sure we can keep this virus under control, and it is time limited. For those reasons I will be supporting the Proposition.

The Bailiff:

Thank you, 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 on the Minister for Health and Social Services to reply.

5.3.2 The Deputy of St. Ouen:

As the Connétable of St. Lawrence remarked, quoting the letter from our Medical Officer of Health, who says there is no easy way through a pandemic. I think we are seeing that today. The debate has reflected the conundrum that I and other Ministers and Members have wrestled with. There is the concern of possible mixed messages, and I do understand that, and I acknowledge there is a dilemma between the way we treat the outdoor environment and people's private homes. This cannot be resolved perfectly; we are trying to achieve a balance between the infringement of civil liberties, our citizens, and the public health imperatives. That difficulty may make communication more difficult; it is more difficult to explain. We have to redouble our efforts to explain. The Connétable of St. Lawrence is quite right; communication is so important, and I have it before me now, but I have not had a chance to go over it, the communications plan we want to introduce if these Regulations are adopted. But this is not the first time we have been in such a dilemma like this, if I can remind Members of the legislation around smoking. Smoking was banned in indoor places, but it was not banned in people's homes even though we recognised the harm that could be caused to health outcomes there. But that is not to say we supported smoking in homes; the guidance was still very strong and the harms that can be caused by smoking in homes were recognised and stressed. The guidance is still that it is harmful to smoke in people's homes, but we have not legislated to prevent it. So, we are adopting a similar approach here. We are not saying it is okay to gather together, to have parties or to have barbecues. The health advice is not changing. Keeping your physical distance is the most important, wherever you are. Do not mix or gather with other households. But where should law operate? I think it should be where people are most at risk. As I have said, in their private homes they have a degree of control, they can prevent who comes in and out, they can decide whether to go into other homes. So, we legislate for shops and workplaces, which we have done, and the Assembly Members have accepted that, and these Regulations will be our legislation for outdoor areas. Some have said that we are creating a 2-tier society, and I disagree because we are asking all people to observe the guidance, whether they live in a manor house or a bedsit in town. We are not giving that permission to throw parties or have barbecues. We are going to be saying that people should not mix with other households. I will ask Members to bear in mind the change here; we are not creating an offence that says people must not be within 2 metres of each other. The offence is not that. The offence is a wilful refusal to follow the orders of a Police Officer. That is not creating 2 tiers in our society. Anybody can be guilty of offending in that way. It has been said that this Regulation ignores the vulnerable and the seriously vulnerable people who still need to be shielded, and I do not believe it does for that reason, that guidance still remains the same. This legislation does no harm to them, and I do understand why the doctors may have written or advised them as such because we are learning more and more about this virus as time goes on. It is right that their G.P.s contact them, and we want still to shield those who are vulnerable, and observing the guidance - all of us, whether we are youngsters, middle age, or fit and well but older - we all have a duty to take part in the shielding of those most vulnerable. I was asked specifically by Deputy Morel to comment on whether teachers and nursery workers might be exempted taking their charges out of the classroom. I have been advised that it is very unlikely, and in fact it is not proposed that should children return to school that teachers and nursery workers will be escorting them out of their schools

on any sort of extracurricular activities while this Regulation would be in force. But even if that happens there is a provision in Regulation 2(3)(d) that would allow me to make an order providing an exception, so there is that degree of flexibility. I have acknowledged that difficulty over regulating indoor spaces, whether it is proportionate to regulate people's behaviour in their own homes.

[17:15]

If it becomes the case that the virus is spreading in an uncontrolled way as a result of people throwing parties, holding wedding receptions in their expansive gardens, just holding noisy parties indoors, we will pick that up because our testing and tracking teams will be able to find out if there is any sort of outbreak of positive cases, where did they come from. We might pick it up from calls to the helpline. We might pick it up from calls to G.P. surgeries or admissions to the hospital. If we see such a scenario happening, we have the ability to introduce further Regulations or make new Orders. I have not spoken much about Regulation 4 at this stage but I do point out to Members that under Regulation 4, first of all it requires me to keep the operation of the Regulations under review, but in a different way to previous COVID legislation. It requires the Medical Officer of Health to prepare a report every 14 days on whether there is any change in the risk of the spread of COVID-19 and whether there is any foreseeable likelihood of any change in the next 14 days. If the Medical Officer of Health thought that there had been a change ... well, no, with or without any sort of change, I need to lodge that report with the Assembly, so the Assembly will see how the Medical Officer of Health is advising me. If the Medical Officer of Health considers there is a change and makes a recommendation to consider action on my part, I will need to prepare a statement and lay that before the Assembly also, a statement of what my response would be to the Medical Officer of Health's recommendation, so that is a safeguard. If the Medical Officer of Health tells me: "The weather is fine. Too many people have been holding outdoor parties in their own homes. It is proportionate to introduce some regulation around indoor homes" I will need to respond, and States Members will know the advice I am receiving, and they will see how I propose to respond. My wish would be, as always, to try to keep control and suppress this virus. It may be possible in such circumstances ... we would try to gauge the best way of suppressing those sorts of outbreaks, which might involve those further controls over people in their private homes. Exactly how would have to be a matter for discussion, but that possibility remains, and I hope would give comfort to Members. If I might address the understandable issues that have arisen over children and the speech of Deputy Doublet and Senator Mézec in particular. Deputy Doublet is concerned about the practicalities of explaining this to children. I would point out that the Regulation only requires an adult having responsibility for the child to take reasonably practicable steps. The Deputy was worried about explaining to a 3-year-old toddler the need to keep that distance. If it is reasonably impracticable to stop the contact that that toddler is wishing to make, the adult would not be guilty of any offence. That word "reasonable" is often used in legislation. We often pass laws and regulations with that word in it. It is a word that is understood by Police Officers and courts when they come to interpret offences and make decisions as to charging, so there is that important safeguard. An individual who has responsibility for a child has to take reasonably practicable steps. It is not an absolute offence on the part of that adult. Deputy Doublet was also concerned that this legislation is not proportionate because of the implications for children but I would remind Members that our present legislation, what we have today, is in fact worse for children. They could offend by simply coming closer than 2 metres to other persons. What I am now proposing is that the offence is only constituted if there is that wilful refusal that we have spoken about to obey a request of a Police Officer and I have spoken about the deliberate use of the term "wilful." I do understand the concerns about the age of criminal responsibility - I probably share them - but I think it is right that children should play their part in our efforts to suppress the coronavirus and safeguard Islanders. There is no difference in the capability of spreading the virus between a 17-year-old, who is deemed a child, and an 18-year-old, who is deemed an adult. Both can spread the virus in exactly the same way. Each of them must take responsibility for preventing the unnecessary spread of that virus. I have to ask, if a 17-year-old and an 18-year-old are gathering

together in a place, would the 18-year-old accept a Police Officer warning when the Police Officer cannot give that warning to the 17-year-old, who is exempt from it? That would seem to make the Police Officer's life even more difficult and I think we begin to make this legislation less effective. Senator Mézec spoke about the tensions within him and eventually resulting in him being unable to - with regret, I think - give support to this legislation. He spoke about the difficulties that some children have gone through in their lives and he will probably know much more about that than I do, though we all of us have knowledge of much of that. I understand the difficulties children, particularly those who might be in our care, have faced. The Senator's worry was about putting them through a criminal process, but the Regulations we passed at the outset of this emergency did just that and that criminal process exists today. We have involved children before, we have made them criminally liable - if we wish to use that expression - but in the 2 months or so that have passed, have children been harmed by the actions of the police? I do not believe so. I believe our police have enforced the Regulations sympathetically and they engage with everybody and I believe they will especially engage with children. Why would our Police Officers not understand the needs of children? Perhaps they understand and know many of the children that the Senator is referring to. This is a lighter touch for children and young people, so they are not automatically offending if they are in close proximity. As I have said, they are only exposed to the commission of an offence if they somehow wilfully refuse, after having been warned. I think that is appropriate and proportionate.

The Bailiff:

Minister, if I could interrupt, we are coming up to 5.30 p.m., when Standing Orders require that I ... I am not trying to stop you and I am not trying to say that you should not complete, but if I could draw the time to your attention, that is all.

The Deputy of St. Ouen:

I think I am coming to an end, just reviewing notes. I think I would just like to say ... just to comment on something that Deputy Perchard mentioned, in case there is any misunderstanding. I think she spoke about doctors contacting their patients and predicting a spike in the autumn. Perhaps the Deputy did not mean to use that word, but I have not heard of any such predictions and I think I would have been told by the public health team. I do not think there is any prediction. I would not want anybody to go away thinking that is the case, but there is of course ...

The Bailiff:

Minister, will you give way for a point of clarification brought by Deputy Perchard? Deputy Perchard, is it a clarification of your speech or the Minister's speech?

Deputy J.H. Perchard:

My speech, Sir.

The Deputy of St. Ouen:

I am happy to give way.

Deputy J.H. Perchard:

Thank you. I just wanted to clarify that I was not stating that G.P.s have predicted a spike. I think I did elaborate to say that no one can predict the future.

The Bailiff:

Thank you very much indeed. Would you like to carry on, Minister?

The Deputy of St. Ouen:

Yes. I am very grateful to the Deputy for making that clear and I do remember her comment that no one can predict the future. We are trying to avoid risks here and mitigate the harms caused by the

previous restricted movement order. I believe this is a proportionate response and I do commend the principles to the Assembly.

The Bailiff:

Thank you very much. Minister, I will ask the Greffier to put a vote in the chat, the voting link. The link is there. I open the voting and ask Members to vote in the normal way on the principles of these Regulations.

POUR: 36		CONTRE: 12		ABSTAIN: 0
Senator I.J. Gorst		Senator T.A. Vallois		
Senator L.J. Farnham		Senator S.Y. Mézec		
Senator S.C. Ferguson		Connétable of Grouville		
Senator J.A.N. Le Fondré		Deputy G.P. Southern (H)		
Senator K.L. Moore		Deputy M. Tadier (B)		
Senator S.W. Pallett		Deputy M.R. Higgins (H)		
Connétable of St. Helier		Deputy J.M. Maçon (S)		
Connétable of St. Clement		Deputy L.M.C. Doublet (S)		
Connétable of St. Lawrence		Deputy of St. John		
Connétable of St. Saviour		Deputy J.H. Perchard (S)		
Connétable of St. Brelade		Deputy R.J. Ward (H)		
Connétable of Trinity		Deputy K.G. Pamplin (S)		
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy 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 M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy C.S. Alves (H)				
Deputy I. Gardiner (H)				

The Bailiff:

It is now sufficiently close to 5.30 p.m. Standing Order 47 requires me to ask and invite Members to decide whether or not they continue, adjourn immediately to continue on the next continuation day - and there is no continuation day for this sitting - and if there is no continuation day either to agree a continuation day and adjourn to continue on it or after considering the arrangement for business for future meetings close the meeting.

Senator J.A.N. Le Fondré:

I would like to propose that we continue.

The Bailiff:

Very well. The Minister for ... **[Seconded] There** is a proposal to continue until the matter is finished.

Deputy J.H. Perchard:

It is Deputy Perchard here. Sorry, I wrote in the chat I propose the adjournment before the Senator proposed the continuation. I just wanted to draw your attention to that, Sir.

The Bailiff:

Thank you, Deputy. That is a perfectly proper interjection. Under the normal rules, the first proposition is the Proposition that gets considered first. The adjournment is proposed.

Deputy J.H. Perchard:

I believe Deputy Maçon proposed ... sorry.

The Bailiff:

If I may say, Deputy, if we propose the adjournment then the meeting is closed and there is no continuation of this debate, so if the States merely adjourns without fixing a continuation date, then the matter is adjourned, and it may or may not be capable of being raised at the next meeting.

Senator J.A.N. Le Fondré:

Can we propose either a continuation date or continue until 6.00 p.m.?

The Bailiff:

It is open to Members to propose that there be a continuation date. What I will do is ... so are you proposing that we adjourn to a particular time or date, Deputy Perchard? You have proposed the adjournment. That was your first proposition.

Deputy J.H. Perchard:

I am happy to propose a continuation to continue - where we are we, 27th - tomorrow or at a suitable date the Assembly agrees to, if that is possible.

The Bailiff:

I think it has to be to a specific date at this point, Deputy, so that people know when they are continuing.

Deputy J.H. Perchard:

In which case, may I propose that we continue this debate at the next appropriate scheduled sitting time? That way we know that our diaries will be clear.

[17:30]

The Bailiff:

Very well. The Proposition is to adjourn now and continue the debate, which will be next Tuesday, I believe.

Deputy K.F. Morel:

A point of order, if I may.

The Bailiff:

Yes.

Deputy K.F. Morel:

Sorry, it is Deputy Morel here. As we are using the chat for who asked for the adjournment debate - for want of a better word - first, it was Deputy Maçon who proposed the 6.00 p.m. first.

The Bailiff:

Thank you for drawing my attention to that. That indeed appears to be correct. I am afraid I have not been following the chat at the same time as I have been thinking and reading the Standing Order and I apologise for that. It is quite correct, and I apologise for misleading you on that point, Deputy Perchard. It is correct that Deputy Maçon, to the extent that we were considering using the chat to indicate who made a proposition first, indicated the first proposition to carry on until 6.00 p.m. Deputy Maçon, do you make that proposition?

Deputy J.M. Maçon:

Yes, Sir. Can I make the Proposition that we continue until 6.00 p.m. and if the business is not finished that we reconvene tomorrow?

The Bailiff:

That is 2 separate propositions.

Deputy M. Tadier:

Can I interject? I did ask a point of order. It is the normal course that the Chair - as you did - the President proposes the adjournment or asks for someone to propose the adjournment. We had someone to propose the adjournment. It seems logical to decide whether to adjourn or not before deciding what time or which day we come back, so that limits the binary options, obviously. It seems to me the Assembly may vote to continue rather than adjourning, so can we not simply have a vote on the adjournment and then take these incrementally?

The Bailiff:

Just a moment, please. In my view, the way I shall deal with this is to deal with Deputy Maçon’s proposition first, which is to carry on until 6.00 p.m. and then I think, Deputy, to carry on tomorrow morning if we are not finished by 6.00 p.m. Is that correct?

Deputy J.M. Maçon:

Yes, please, Sir.

The Bailiff:

Is that seconded? **[Seconded]** Very well. Unless anyone particularly wishes to speak on this, it is much more sensible to put the matter directly to the vote because there is 25 minutes to go if it is adopted and we need to consider what we are doing if it is not. Very well, I will ask the Greffier to put a voting ... I am afraid my chat is not keeping up to date. Excuse me. All right, there is a link there for the vote on the Proposition to continue until 6.00 p.m. and that is 6.00 p.m. to adjourn until tomorrow morning at 9.30 a.m. I therefore open the voting and ask Members to vote in the usual way.

POUR: 31		CONTRE: 13		ABSTAIN: 1
Senator I.J. Gorst		Senator K.L. Moore		Connétable of Grouville
Senator L.J. Farnham		Senator S.Y. Mézec		
Senator J.A.N. Le Fondré		Connétable of St. Mary		
Senator T.A. Vallois		Deputy G.P. Southern (H)		
Senator S.W. Pallett		Deputy M. Tadier (B)		
Connétable of St. Helier		Deputy M.R. Higgins (H)		
Connétable of St. Clement		Deputy L.M.C. Doublet (S)		

Connétable of St. Lawrence		Deputy J.H. Young (B)		
Connétable of St. Saviour		Deputy of St. John		
Connétable of St. Brelade		Deputy J.H. Perchard (S)		
Connétable of Trinity		Deputy R.J. Ward (H)		
Connétable of St. Peter		Deputy K.G. Pamplin (S)		
Connétable of St. Ouen		Deputy I. Gardiner (H)		
Connétable of St. Martin				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (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 M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				

The Bailiff:

We therefore continue until 6.00 p.m. and adjourn at that stage until 9.30 a.m. tomorrow morning. Very well. I think it is a formality to ask you, Deputy Le Hegarat, but your Panel does not wish to call this matter in, does it?

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

No, Sir.

The Bailiff:

Very well. How do you wish to deal with the Regulations in the Second Reading, Minister? There is an Amendment, which is your own Amendment. Presumably you would wish to take this as read and if Members are not satisfied with that Amendment, then they can vote against it individually as it is put to the vote.

The Deputy of St. Ouen:

Yes, if I may take it as amended.

The Bailiff:

Very well. Did you wish to speak or just to answer questions? Minister for Health and Social Services, did you wish to speak on the Proposition or did you simply wish to answer questions?

5.4 The Deputy of St. Ouen:

I think we have covered a great deal about the individual provisions in 2 and 3 and the amendment will allow the Parish Hall Inquiries to take place and fines to be imposed by the Centeniers, if appropriate, up to a maximum of £200. That was the suggestion of the Scrutiny Panel, which I was happy to support. I spoke in my summing up about the new Regulation 5, previously 4. Rather than me make orders renewing legislation, as in previous COVID Regulations, this will not be renewed

every fortnight. What the Assembly will see is the advice given to me by the Medical Officer of Health, and if she recommends a change, I must respond and tell the Assembly how I propose to respond, and I must make an order or bring a further proposition to the Assembly. So, I think that is a very transparent way of proceedings. I would recommend it to the Assembly. Article 6 is simply the normal citation and the important provision that all of this ceases on 30th September. So, unless Members wish otherwise, may I propose the Regulations *en bloc*?

The Bailiff:

Yes. Are the Regulations seconded? **[Seconded]** There is a question for the Solicitor General from Deputy Tadier.

Deputy M. Tadier:

It specifically relates to the Amendment that is being proposed and I understood adopted by the Minister. Is that the case? Yes, I can see you nod. The question that I had for the Solicitor General would be why is it necessary for an Amendment and what would happen if there were not an Amendment to this or the Amendment were not successful? Is there not an automatic right for things to be referred, matters to be referred to the Parish Hall Inquiry in the first instance? If, for example, you have a Police Officer in town, let us say down at the La Fregate, and people are enjoying themselves there but too close and they refuse to desist from their proximity to each other and the police issue ... they arrest them, could that matter not be automatically dealt with at the Parish Hall anyway? Of course, understanding the fact that a Parish Hall Inquiry is optional, and it is never obligatory for somebody to attend a Parish Hall Inquiry, it is simply an option as an alternative to going to court. Would that not happen anyway and why not?

The Bailiff:

Mr. Solicitor General, can you assist?

The Solicitor General:

Yes, Sir. The effect of the Amendment ... well, rather the Amendment is not necessary for any infraction to be dealt with at a Parish Hall in the usual way. All that the Amendment does is give to the Centenier the power to inflict a summary fine if the offender agrees to that course. That power has to be created by this Amendment to the Regulation because it does not arise naturally otherwise, so the purpose of the Amendment is not to introduce the Parish Hall system into the mix. That is already in the mix. It is simply to give the Centenier an additional power of punishment or sanction which he would otherwise lack.

Deputy M. Tadier:

Sorry, can I ask a supplementary arising from that?

The Bailiff:

Yes, indeed you can.

Deputy M. Tadier:

So is it the case that we are effectively, with this Amendment ... because obviously I need to decide, along with other Members, whether it is better with or without the Amendment that we are effectively passing on the spot fines today. I understand that the Centenier can inflict and levy a fine of Level 1, but is that done on the spot or is it done by the Centenier at a Parish Hall Inquiry? Any clarification on that would be helpful.

The Solicitor General:

Yes, of course. It is not an on-the-spot fine. There is no such thing in Jersey law as an on-the-spot fine. It would all take place at a formal Parish Hall Inquiry in the usual way. A person will be

arrested by either the Honorary or States of Jersey Police. A decision will be taken by the Centenier or by the States of Jersey Police to refer the matter or the offender to a Parish Hall Inquiry. At that Parish Hall Inquiry, the Centenier, with the agreement of the offender, would have the power to impose a £200 fine or up to a £200 fine.

The Bailiff:

Very well, does any Member wish to speak on the Regulations or any of them?

Deputy J.H. Young:

I found this a very ...

Deputy M.R. Le Hegarat:

Can I interject? I would like a clarification of the S.G. Is that possible?

The Bailiff:

Yes. I mean, you can ask the S.G. at any time, but Deputy Young had begun to speak.

Deputy M.R. Le Hegarat:

Sorry, Sir.

The Bailiff:

That is all right, Deputy. We will leave the point of clarification until after Deputy Young has made his speech.

5.4.1 Deputy J.H. Young:

I am always happy to give way to the Deputy, but I was going to say that I have struggled with this debate because my overriding concern is this question of mixed messages. Nothing focuses more clearly than that than on Regulation 2(3)(a)(i) that currently exempts entirely for any person either in their own domestic property or somebody else's, which of course leaves it wide open to gatherings which, in my view, have the potential - and I have heard nothing in debates so far - to spread the infection. What I am struggling to understand here is why we do not have an Amendment that links this particular exemption to, for example, the guidelines that the Minister has promised us and says will still be in place. But we do not have clarity about that at all, because it seems to me that would have been a sensible Amendment because there is clearly power in the Law for the Minister to give advice and guidance, codes, directions. I really cannot see why we have got such a blanket exemption under that provision and we should not link it ... well, you have not taken the opportunity to link it in any way to the guidelines, which I personally would have hoped we would have done, if we had allowed more time, to end up with some law which avoids the risk of mixed messages. I do not know if I can vote separately on a subparagraph of Article 2, but having supported the Minister thus far, for all the reasons that Members spoke to so far ... because this is a no-win situation for us, I feel that I really have got to register my concern about that. I would have liked to have heard the Minister give some commitment that he will at least take that point that I made seriously because I think the points being made by Deputy Perchard and others and the Deputy of St. John are absolutely right, and we need to make sure we do not solve one problem and create another. Being told we can wait 2 weeks to find out whether or not we need to reintroduce something else is, frankly, not good enough.

The Bailiff:

Thank you very much, Deputy. There was a point of clarification for Deputy Le Hegarat of the S.G.

Deputy M.R. Le Hegarat:

Yes, I would like to clarify that I think the S.G. said that somebody would be arrested. Is that correct, from the perspective of that person could not be reported for the Parish Hall Inquiry?

The Solicitor General:

My understanding was that it would be following an arrest for the offence a decision would be made that the matter was suitable to be dealt with at the Parish Hall Inquiry.

[17:45]

The offender would be given a date to attend and would attend at the Parish Hall Inquiry, where consideration by the Centenier of dealing with the matter by way of a summary fine would take place. I am not aware of a process or a power which enables the States of Jersey Police, as matters presently stand, to simply issue a notice on the street telling someone they must attend at a Parish Hall Inquiry. In any event, it might be unlikely that that would be practical, given the nature of the offence for which that person would be apprehended, which contains an element of wilful disobedience with a police order. One would think that in practical terms such offenders are likely to need to be arrested in order to ensure that the proper process is gone through and that they are sufficiently under police authority that they can be given a date to attend a Parish Hall. That is certainly my understanding of how it would work in practice.

The Bailiff:

Deputy Tadier, you have a question for the S.G.

Deputy M. Tadier:

It might be me being obtuse, I do not know, but the question is who decides whether or not the offence committed is suitable for referral to a Parish Hall Inquiry or whether a more serious approach, let us say, is going to be taken?

The Solicitor General:

My understanding is that that decision will be made between the States of Jersey Police and the Centenier. Whether that is done by a phone call from the police station I would imagine is a matter on the day. In terms of whether to charge someone at the police station and bail them to attend a court, that would be a decision for the Centenier. It is the Centenier with whom the power to charge lies, subject to the Attorney General overruling the Centenier, but it would be for the Centenier to decide, rather than charging at the police station and bailing a suspect to appear before the Magistrate's Court, to say instead: "No, I think you should appear before a Parish Hall Inquiry and here is the date on which you will attend if you wish to." Of course, bearing in mind that Parish Hall Inquiries proceed on a voluntary footing and so the person would have to agree to be dealt with at the Parish Hall Inquiry. That is my understanding of how it would work.

Deputy M. Tadier:

I did have a question. Is there not a conflict of interest in the Centenier, who ... so if I get this straight, the scenario where you are down at the beach, someone gets arrested or stopped by the police and they refuse to desist, then the police - who could be the States Police or presumably the Honorary Police - would then pick up the phone, call up a Centenier and the Centenier would then say yes or no: "This is suitable for a Parish Hall Inquiry" or it is not and then if it were suitable for a Parish Hall Inquiry, would they be sitting in front of that Centenier or a different Centenier?

The Solicitor General:

The Centenier who brought the charge - and it is Centeniers alone who have the power to charge anyone with an offence in the Island, subject to the Attorney General overruling them on that issue - it will be the Centenier for the Parish in which the infraction occurred, who in the ordinary course of events would come to the police station or advise over the phone about whether it was appropriate for the matter to proceed to the Magistrate or more appropriate for it to be dealt with at the Parish Hall. There would be no conflict of interest and it occurs routinely, I suspect, in the Centenier who

makes a decision being the Centenier who then deals with the Parish Hall Inquiry. That I am sure happens on a frequent basis and I do not think that the issue of conflict of interest arises at all in that situation.

The Bailiff:

Deputy Higgins, do you have a question for the S.G.?

Deputy M.R. Higgins:

Yes. I am hoping he can allay my confusion and my ignorance. If a person is arrested - because he mentioned a person can be arrested and go to the Parish Hall - an arrest surely would appear on a criminal record. We are told that the Parish system stops people getting a criminal record if they take the punishment meted out by the Centenier. Can that be clarified, please?

The Solicitor General:

Yes. An arrest does not appear on a criminal record. An arrest is not a conviction. Often someone is arrested, and they are then released without charge and they hear no more about it, so I hope that answers the question. An arrest is not a conviction; it does not give rise to a criminal record and frequently people will be arrested and released without charge. If they then go, following arrest, and are dealt with at the Parish Hall Inquiry, the Parish Hall Inquiry is not a court of law, it does not result in a conviction. Although decisions made at Parish Hall Inquiries are recorded and will sometimes be recorded or noted in a court record, they do not count as convictions and they do not need to be disclosed as such to potential employers, for example. If one goes to the Parish Hall Inquiry and is dealt with there, it does not result in a criminal record any more than being arrested and released without charge would result in a criminal record.

The Bailiff:

Thank you very much, Mr. Solicitor. I next have listed to speak the Connétable of St. Ouen.

The Connétable of St. Ouen:

Mine was a point of clarification from the S.G., if you will permit me to do that.

The Bailiff:

Yes, indeed.

The Connétable of St. Ouen:

I just wanted the S.G. to confirm that at a Parish Hall Inquiry the person is firstly charged with the offence, subject to the judgment of the Centenier, and then has the option of pleading either guilty or not guilty. If they plead guilty then, if this legislation comes into force, the Centenier will be able to impose a fine within the scale proposed, but if they decide not to plead guilty they then would be referred to the Magistrate's Court, where if they decided not to plead guilty there, they would then be entitled to a trial. Is my outline of that procedure correct?

The Solicitor General:

Yes, it is.

The Bailiff:

Thank you very much, Mr. Solicitor. Now, did you wish to make a speech, Connétable of St. Ouen, at this point or was it purely a point of clarification you were seeking?

The Connétable of St. Ouen:

No, it was just a point of clarification. Depending on who else speaks, I may ask to make a speech if that is permitted.

The Bailiff:

Very well. The next person to speak is Deputy Tadier.

Deputy M. Tadier:

Can I just clarify, we are debating the Articles now, is that correct?

The Bailiff:

Yes, you are debating all or any of the Regulations, Deputy.

Deputy M. Tadier:

Okay, thank you, the Regulations. The Minister is taking them *en bloc*, is he not?

The Bailiff:

Yes, but there is no reason why they cannot be voted on separately when it comes to the vote.

5.4.2 Deputy M. Tadier:

Thank you for the clarification. I am still not 100 per cent clear in my head about the Amendment and why it is necessary because it seems to me that at any point without this Amendment - and I might be wrong, so I am happy for any further speaker or the summer-up, so to speak, to clarify or correct me - I was under the impression that when deciding whether or not to prosecute and how to prosecute, a Parish Hall Inquiry was always an option and then, as I said earlier, a Parish Hall Inquiry is always optional. I think it is worth adding at this point that it is not always made clear. I have seen letters that have been sent to constituents, which they do not use the word "summons" to a Parish Hall Inquiry because, as I said, you cannot be summonsed to one, but it does, I think, say: "You are requested to attend." It does not say "required" because again that is not the case, but there is certainly an inference on the part of the reader that one should attend, so I would just like to clarify that people do not need to attend the Parish Hall Inquiry. The reason I say that is that I have concerns. I know that Parish Hall Inquiries are often lauded as a really great thing and I am sure in some cases that they can be if they are well-managed, but there is a tension. I have got a saying, it is that you never get justice at a Parish Hall Inquiry. I think that should be put on the curriculum and taught as part of the education programme about children's and adults' human rights, in fact. The reason I am talking about it and the reason it is germane is that I am reluctant to give any further provisions to that particular method of quasi-judiciary or quasi-justice and I will explain why. I once sat as a kind of McKenzie friend at a Parish Hall Inquiry in St. Peter a long time ago, whereby an accident had occurred. It was a road traffic accident. It was an elderly woman who had put on the brakes at a particularly narrow part of the road down by Le Quétivel Mill and because the road was wet, she braked, but unfortunately went on to the other side of the road and there was a collision. Nobody was hurt. A few days later she received a letter requesting her to attend a Parish Hall Inquiry and I went with her; she was a constituent of mine. I must admit, I was treated quite rudely at the Parish Hall by the Centenier, who is no longer there. First of all, when I tried to speak on behalf of the lady, he said: "Look, I have not told you you can speak" and I said: "Well, I am here to represent, to give moral support to my constituent" and he accepted that, and he let me speak. He said: "We are prosecuting you for dangerous driving" and he said to the woman: "Do you accept the charge of dangerous driving?" I looked at her. She was quite vulnerable and that is why I was accompanying her. She said: "No, I was not dangerous driving. I was not driving dangerously. I simply tried to stop, and I could not because I crashed, and it was an accident." He said: "Look, you have to accept this otherwise you are going to go to court. Now I am going to ask you again" and at this point I realised that he was applying undue pressure to my constituent. I said: "Look, you are being out of order. This is not a valid way to proceed" and again I thought he was quite rude to me. At that point he said: "Look, you either sign this or the woman is going to end up in court" so I said to the lady: "Look, this is really tough. This is how the Jersey justice system works. It is not up to me to do it,

but you might want to consider just signing this because otherwise it is going to be hanging over your head.” She did not want the prospect of going to court to deal with this because she was already quite shaken up, so she decided that she would agree to sign a piece of paper which said that she had done something which she did not think she did. That happens time and time again. I am concerned that this is exactly what some people might unwittingly opt for if we amend this proposal, that it will be automatic, you get referred to the Parish Hall. Of course, it is the luck of the draw, is it not, so you might end up in one Parish Hall and we have got absolutely no idea whether there is going to be consistent approaches being taken across the Island. So anyone listening, I certainly would urge any of my constituents never to attend a Parish Hall Inquiry, to go for the court option because at least you get your day in court and you will get to put your charges, and at least that they have to bring the evidence for the prosecution rather than the other way around, you defending yourself, because sometimes it can be very Kafkaesque in these kind of situations. But similarly, I have sat in Parish Hall Inquiries with people and they have gone swimmingly, and they have worked really well, so sometimes it is good, sometimes it is bad. That is the point of the Amendment and why I have got some concerns.

The Bailiff:

If I could interrupt you, Deputy, there is a point of order from Deputy Guida. Sorry, Deputy Guida, I did not notice that the Connétable of St. Brelade had raised a point of order before you.

The Connétable of St. Brelade:

Is it correct that the Deputy is asserting the Parish Hall Inquiry system is unfair, unjustifiable? I think he should withdraw those comments in due respect to the Honorary Police of the Island. I think it is disgraceful.

The Bailiff:

I am afraid that ...

Deputy M. Tadier:

I could go on to add to that.

The Bailiff:

Excuse me, if the Presiding Officer might get a word in edgeways, I do not think that is a point of order, Connétable. The Deputy, as I understood his speech, he gave an example in which the Parish Hall was unfair. In one of his examples, he also said in other places it can be fair. He was using that speech as a reason to urge people not to allow legislation to go through which placed matters in the hands of the Parish Hall. It seems to me that no matter what people’s individual views might be on what the Deputy has said, that is a matter for all individual Members. It is not outside the boundary of legitimate political comment.

Deputy M. Tadier:

I will add though that I think there are institutional and systemic difficulties with the Parish Hall system when you have a prosecutor who is also a *de facto* Police Officer and there is no separation between the prosecution and the policing services. It is fine if the Centenier’s only job was to be a prosecutor, but his or her job is not, they are also Police Officers. But this is a more fundamental problem in the Jersey system and that is perhaps a question for another day.

[18:00]

Moving on to Regulation 3, I do have some concerns about responsibility. Sorry, I have lost my place now; I have got some technical difficulties here.

The Bailiff:

I am afraid, Deputy, I have to interrupt you. It is 6.00 p.m. The Assembly has already resolved to adjourn at 6.00 p.m. It will be open to you to continue with your speech tomorrow morning, but that is the resolution of the Assembly and accordingly we stand adjourned until 9.30 a.m. tomorrow morning.

ADJOURNMENT

[18:01]