

STATES OF JERSEY

OFFICIAL REPORT

TUESDAY, 21st APRIL 2020

| | |
|--|-----------|
| COMMUNICATIONS BY THE PRESIDING OFFICER..... | 7 |
| 1.1 Welcome to His Excellency the Lieutenant Governor | 7 |
| 1.2 Using camera when speaking..... | 7 |
| QUESTIONS | 7 |
| 2. Written Questions..... | 7 |
| 2.1 Deputy G.P. Southern of St. Helier of the Minister for Health and Social Services regarding the provision of personal protective equipment: (WQ.140/2020)..... | 7 |
| 2.2 Deputy G. P. Southern of the Minister for Social Security regarding the Covid Related Emergency Support Scheme: (WQ.141/2020) | 8 |
| 2.3 Deputy J.H. Perchard of St. Saviour of the Chief Minister regarding the organisational structure of Government groups dealing with the Coronavirus outbreak: (WQ.142/2020) | 8 |
| 2.4 Deputy J.H. Perchard of St. Saviour of the Chief Minister regarding the long-term impact of Government decisions during the Covid-19 outbreak: (WQ.143/2020) | 9 |
| 2.5 Deputy J.H. Perchard of St. Saviour of the Minister for Treasury and Resources regarding emergency procurement processes: (WQ.144/2020)..... | 10 |
| 2.6 Deputy J.H. Perchard of St. Saviour of the Minister for Health and Social Services regarding the number of nurses in the Island:(WQ.145/2020) | 10 |
| 2.7 Deputy J.H. Perchard of St. Saviour of the Minister for Health and Social Services regarding the number of medical gowns available to the States of Jersey: (WQ.146/2020) | 12 |
| 2.8 Deputy K.F. Morel of St. Lawrence of the Minister for Treasury and Resources regarding States income in 2020: (WQ.147/2020) | 12 |
| 2.9 The Connétable of St. Martin of the Chief Minister regarding the Government's exit strategy from the Covid-19 outbreak: (WQ.148/2020)..... | 13 |
| 2.10 The Connétable of St. Martin of the Minister for Health and Social Services regarding the provision of antibody tests for Covid-19. (WQ.149/2020)..... | 13 |
| 2.11 The Connétable of St. Martin of the Minister for Health and Social Services regarding the care and wellbeing of frontline healthcare staff. (WQ.150/2020) | 14 |
| 3. Oral Questions | 15 |
| 3.1 Deputy M. Tadier of St. Brelade of the Chief Minister regarding the consultation with States Members in respect of the Field Hospital: (OQ.108/) | 15 |
| Senator J.A.N. Le Fondré (The Chief Minister): | 15 |
| 3.1.1 Deputy M. Tadier:..... | 15 |
| 3.1.2 Deputy S.M. Ahier of St. Helier: | 16 |

| | |
|---|-----------|
| 3.1.3 Deputy R.J. Ward of St. Helier: | 16 |
| 3.1.4 Deputy R.J. Ward: | 16 |
| 3.1.5 Deputy K.F. Morel of St. Lawrence: | 17 |
| 3.1.6 Deputy M.R. Higgins of St. Helier: | 17 |
| 3.1.7 Deputy M. Tadier:..... | 18 |
| 3.2 Deputy G.J. Truscott of St. Brelade of the Minister for Home Affairs regarding the measures taken at H.M.P. La Moye against Coronavirus: (OQ.107/2020)..... | 18 |
| Connétable L. Norman of St. Clement (The Minister for Home Affairs):..... | 19 |
| 3.2.1 Deputy G.J. Truscott:..... | 19 |
| 3.2.2 Deputy S.M. Ahier:..... | 19 |
| 3.2.3 Deputy G.J. Truscott:..... | 19 |
| 3.3 Deputy K.M. Morel of the Minister for the Environment regarding the decision to locate a temporary hospital at Millbrook Playing Fields: (OQ.99/2020) | 19 |
| Deputy J.H. Young of St. Brelade (The Minister for the Environment):..... | 19 |
| 3.3.1 Deputy K.F. Morel:..... | 20 |
| 3.3.2 Connétable D.W. Mezbourian of St. Lawrence:..... | 20 |
| 3.3.3 Deputy J.M. Maçon of St. Saviour: | 21 |
| 3.3.4 Deputy J.M. Maçon: | 21 |
| 3.3.5 Deputy R. Labey of St. Helier: | 21 |
| 3.3.6 Deputy R. Labey: | 21 |
| 3.3.7 Deputy K.F. Morel:..... | 21 |
| 3.4 Deputy I. Gardiner of St. Helier of the Minister for Treasury and Resources regarding a review of Jersey’s tax system once the Covid-19 pandemic had concluded: (OQ.95/2020) | 22 |
| Deputy S.J. Pinel of St. Clement (The Minister for Treasury and Resources): | 22 |
| 3.4.1 Deputy I. Gardiner: | 22 |
| 3.4.2 Connétable A.S. Crowcroft of St. Helier: | 22 |
| 3.4.3 Deputy M. Tadier:..... | 23 |
| 3.4.4 Deputy M. Tadier:..... | 23 |
| 3.4.5 Deputy K.F. Morel:..... | 23 |
| 3.4.6 Deputy G.P. Southern of St. Helier: | 23 |
| 3.4.7 Deputy G.P. Southern: | 24 |
| 3.4.8 Deputy R.J. Ward: | 24 |
| 3.4.9 Deputy R.J. Ward: | 24 |
| 3.4.10 Deputy I. Gardiner: | 24 |
| 3.5 Deputy M.R. Higgins of the Minister for Health and Social Services regarding the Covid-19 testing equipment and kit that had been acquired for Jersey: (OQ.104/2020) | 25 |
| Deputy R.J. Renouf of St. Ouen (The Minister for Health and Social Services):..... | 25 |
| 3.5.1 Deputy M.R. Higgins:..... | 25 |
| 3.5.2 Deputy G.P. Southern: | 26 |
| 3.5.3 Deputy G.P. Southern: | 26 |
| 3.5.4 Deputy M.R. Higgins:..... | 26 |
| 3.6 The Connétable of St. Helier of the Minister for Infrastructure regarding the provision for walkers and cyclists on the Island’s roads: (OQ.106/2020) | 26 |
| Deputy K.C. Lewis of St. Saviour (The Minister for Infrastructure):..... | 26 |
| 3.6.1 The Connétable of St. Helier: | 27 |

| | |
|--|-----------|
| 3.6.2 Deputy R.J. Ward: | 27 |
| 3.6.3 Deputy R.J. Ward: | 27 |
| 3.6.4 The Connétable of St. Helier: | 27 |
| 3.7 The Connétable of St. Lawrence of the Chief Minister regarding the assistance provided to people wishing to make a will during the Coronavirus pandemic but who could not afford a lawyer: (OQ.103/2020)..... | 27 |
| Senator J.A.N. Le Fondré (The Chief Minister): | 28 |
| 3.7.1 The Connétable of St. Lawrence: | 28 |
| 3.7.2 Deputy M.R. Higgins:..... | 28 |
| 3.8 Deputy G.P. Southern of the Minister for Health and Social Services regarding the budget allocated to stock personal protective equipment (P.P.E.): (OQ.101/2020) | 28 |
| The Deputy of St. Ouen (The Minister for Health and Social Services): | 29 |
| 3.8.1 Deputy G.P. Southern: | 29 |
| 3.8.2 Deputy M.R. Higgins:..... | 29 |
| 3.8.3 Deputy M.R. Higgins:..... | 29 |
| 3.8.4 Deputy R. Labey: | 30 |
| 3.8.5 Deputy R. Labey: | 30 |
| 3.8.6 Deputy R.J. Ward: | 31 |
| 3.8.7 Deputy R.J. Ward: | 31 |
| 3.8.8 Deputy G.P. Southern: | 32 |
| 3.9 Deputy R.J. Ward of the Chief Minister regarding the planning that had been undertaken for the end point to the ‘stay at home’ order: (OQ.93/2020) | 32 |
| Senator J.A.N. Le Fondré (The Chief Minister): | 32 |
| 3.9.1 Deputy R.J. Ward: | 32 |
| 3.9.2 Deputy M. Tadier:..... | 33 |
| 3.9.3 Senator S.C. Ferguson: | 33 |
| 3.9.4 Senator S.C. Ferguson: | 34 |
| 3.9.5 Deputy I. Gardiner: | 34 |
| 3.9.6 Deputy J.H. Perchard of St. Saviour:..... | 34 |
| 3.9.7 Deputy J.H. Perchard:..... | 35 |
| 3.9.8 Deputy G.P. Southern: | 35 |
| 3.9.9 Deputy G.P. Southern: | 35 |
| 3.9.10 Deputy R.J. Ward:..... | 36 |
| 3.10 Deputy C.S. Alves of St. Helier of the Minister for Economic Development, Tourism, Sport and Culture regarding the support available to non-States-owned utilities during the Coronavirus crisis: (OQ.110/2020)..... | 36 |
| Senator L.J. Farnham (The Minister for Economic Development, Tourism, Sport and Culture): | 36 |
| 3.10.1 Deputy C.S. Alves:..... | 37 |
| 3.10.2 Deputy R.J. Ward: | 37 |
| 3.10.3 Deputy R.J. Ward: | 37 |
| 3.10.4 Deputy G.P. Southern: | 37 |
| 3.10.5 Deputy K.F. Morel: | 37 |
| 3.11 Senator K.L. Moore of the Minister for Economic Development, Tourism, Sport and Culture regarding the operation of the business support scheme during the Coronavirus crisis: (OQ.97/2020) | 38 |

| | |
|---|-----------|
| Senator L.J. Farnham (The Minister for Economic Development, Tourism, Sport and Culture): | 38 |
| 3.11.1 Senator K.L. Moore: | 38 |
| 3.11.2 Deputy I. Gardiner: | 38 |
| 3.11.3 Deputy K.F. Morel: | 39 |
| 3.11.4 Senator S.C. Ferguson: | 39 |
| 3.11.5 Deputy J.M. Maçon: | 39 |
| 3.11.6 Deputy R.J. Ward: | 39 |
| 3.11.7 Deputy J.H. Perchard: | 39 |
| 3.11.8 Senator K.L. Moore: | 40 |
| 3.12 Deputy R.J. Ward of the Minister for Economic Development, Tourism, Sport and Culture regarding the Government bodies involved in planning the response to the economic impact of the Covid-19 pandemic on Jersey: (OQ.94/2020) | 40 |
| Senator L.J. Farnham (The Minister for Economic Development, Tourism, Sport and Culture): | 40 |
| 3.12.1 Deputy R.J. Ward: | 40 |
| 3.13 Senator K.L. Moore of the Minister for Health and Social Services regarding an audit of personal protective equipment (P.P.E.): (OQ.98/2020) | 41 |
| The Deputy of St. Ouen (The Minister for Health and Social Services): | 41 |
| 3.13.1 Deputy S.G. Luce of St. Martin: | 41 |
| 3.13.2 Senator K.L. Moore: | 41 |
| 3.14 Deputy I. Gardiner of the Minister for Health and Social Services regarding the strategy to ‘control the curve’ of the prevalence of Covid-19 in Jersey: (OQ.96/2020) | 41 |
| The Deputy of St. Ouen (The Minister for Health and Social Services): | 41 |
| 3.14.1 Deputy I. Gardiner: | 42 |
| 3.15 Deputy G.P. Southern of the Minister for Health and Social Services regarding the vacancy rate amongst qualified nursing staff, health assistance and other health professionals: (OQ.102/2020) | 42 |
| The Deputy of St. Ouen (The Minister for Health and Social Services): | 42 |
| 3.15.1 Deputy G.P. Southern: | 43 |
| 3.16 Deputy K.F. Morel of the Chief Minister regarding the tender process for a ‘One Gove New Office Developer Partner’: (OQ.100/2020) | 43 |
| Senator J.A.N. Le Fondré (The Chief Minister): | 44 |
| 3.16.1 Deputy K.F. Morel: | 44 |
| 4. Questions to Ministers without notice - The Minister for the Environment: | 44 |
| 4.1 The Connétable of St. Helier: | 44 |
| Deputy J.H. Young (The Minister for the Environment): | 44 |
| 4.1.1 The Connétable of St. Helier: | 45 |
| 4.2 Senator K.L. Moore: | 45 |
| 4.2.1 Senator K.L. Moore: | 45 |
| 4.3 The Deputy of St. Martin: | 45 |
| 4.4 Connétable M.K. Jackson of St. Brelade: | 46 |
| 4.4.1 The Connétable of St. Brelade: | 46 |
| 4.5 Deputy R.J. Ward: | 46 |
| 4.5.1 Deputy R.J. Ward: | 46 |

| | | |
|-----------|--|-----------|
| 4.6 | Deputy K.G. Pamplin of St. Saviour: | 47 |
| 4.7 | Deputy K.F. Morel:..... | 47 |
| 4.7.1 | Deputy K.F. Morel:..... | 47 |
| 4.8 | The Connétable of St. Brelade:..... | 47 |
| 5. | Questions for Ministers without notice - the Minister for Health and Social Services | 48 |
| 5.1 | Deputy M. Tadier:..... | 48 |
| | The Deputy of St. Ouen (The Minister for Health and Social Services): | 48 |
| 5.1.1 | Deputy M. Tadier:..... | 48 |
| 5.2 | Deputy M.R. Higgins:..... | 48 |
| 5.2.1 | Deputy M.R. Higgins:..... | 49 |
| 5.3 | Senator S.C. Ferguson: | 49 |
| 5.4 | Deputy G.P. Southern: | 50 |
| 5.5 | Deputy I. Gardiner: | 51 |
| 5.6 | Deputy K.G. Pamplin: | 51 |
| 5.7 | Deputy R.J. Ward: | 51 |
| 5.8 | Deputy L.M.C. Doublet of St. Saviour: | 52 |
| | PUBLIC BUSINESS..... | 52 |
| 6. | Reduction of minimum lodging periods | 52 |
| 6.1 | Senator J.A.N. Le Fondré (The Chief Minister): | 52 |
| 6.1.1 | The Deputy of St. Martin: | 52 |
| 6.1.2 | Senator K.L. Moore: | 52 |
| 6.1.3 | Deputy R.J. Ward: | 53 |
| 6.1.4 | Deputy K.F. Morel:..... | 53 |
| 6.1.5 | Senator J.A.N. Le Fondré: | 53 |
| 6.2 | Deputy M. Tadier:..... | 55 |
| 6.2.1 | The Connétable of St. John:..... | 56 |
| 6.2.2 | Deputy M. Tadier:..... | 56 |
| 6.3 | Senator K.L. Moore (Chair, Corporate Services Scrutiny Panel):..... | 57 |
| 6.4 | Deputy R. Labey: | 59 |
| | LUNCHEON ADJOURNMENT PROPOSED | 60 |
| | LUNCHEON ADJOURNMENT..... | 61 |
| | LUNCHEON ADJOURNMENT..... | 61 |
| 7. | The Communications (Jersey) Order 2020: extension to Jersey by Order in Council (P.14/2020) | 61 |
| 7.1 | Senator S.W. Pallett (Assistant Minister for Economic Development, Tourism, Sport and Culture - <i>rapporteur</i>): | 61 |
| 7.1.1 | Deputy K.F. Morel:..... | 63 |
| 7.1.2 | Senator S.W. Pallett:..... | 63 |
| 8. | Draft COVID-19 (Emergency Provisions – Courts) (Jersey) Regulations 202- (P.41/2020) | 64 |
| 8.1 | Senator J.A.N. Le Fondré (The Chief Minister): | 64 |
| | Deputy R.J. Ward: | 67 |
| | Mr. M.H. Temple Q.C., H.M. Attorney General: | 67 |
| | Deputy K.F. Morel: | 68 |
| 8.1.1 | Senator K.L. Moore: | 68 |

| | |
|---|-----------|
| 8.1.2 Deputy M.R. Le Hegarat of St. Helier: | 69 |
| 8.1.3 Deputy M.R. Higgins: | 69 |
| 8.1.4 The Attorney General: | 70 |
| Deputy M. Tadier: | 70 |
| Deputy J.H. Young: | 71 |
| Deputy M.R. Higgins: | 72 |
| Connétable R.A. Buchanan of St. Ouen: | 73 |
| 8.1.5 The Connétable of St. Ouen: | 74 |
| 8.1.6 Deputy M. Tadier: | 74 |
| Deputy M.R. Higgins: | 75 |
| The Attorney General: | 75 |
| Deputy M.R. Higgins: | 76 |
| 8.1.7 Deputy K.F. Morel: | 76 |
| 8.1.8 Deputy R.J. Ward: | 77 |
| The Attorney General: | 77 |
| 8.1.9 Senator J.A.N. Le Fondré: | 78 |
| 8.2 Senator J.A.N. Le Fondré: | 80 |
| 8.2.1 Deputy K.F. Morel: | 80 |
| 8.2.2 Deputy M. Tadier: | 81 |
| 8.2.3 Deputy M.R. Higgins: | 82 |
| 8.2.4 Senator K.L. Moore: | 82 |
| 8.2.5 Deputy R.J. Ward: | 82 |
| 8.2.6 Deputy J.H. Young: | 83 |
| The Attorney General: | 83 |
| 8.2.7 Senator J.A.N. Le Fondré: | 84 |
| 8.3 Senator J.A.N. Le Fondré (The Chief Minister): | 90 |
| 8.4 Draft COVID-19 (Emergency Provisions - Courts) (Jersey) Regulations 202- | |
| (P.41/2020): Amendment (P.41/2020 Amd.) | 91 |
| 8.4.1 Deputy M. Tadier: | 91 |
| 8.4.2 The Attorney General: | 92 |
| 8.4.3 Deputy M.R. Higgins: | 93 |
| 8.4.4 Deputy L.B.E. Ash of St. Clement: | 94 |
| 8.4.5 Deputy R. Labey: | 94 |
| 8.4.6 Senator K.L. Moore: | 95 |
| 8.4.7 Deputy G.P. Southern: | 95 |
| 8.4.8 Deputy M.R. Le Hegarat: | 95 |
| 8.4.9 Deputy J.A. Martin of St. Helier: | 96 |
| 8.4.10 Deputy J.H. Young: | 96 |
| 8.4.11 Senator S.Y. Mézec: | 97 |
| 8.4.12 Senator J.A.N. Le Fondré: | 98 |
| Deputy M. Tadier: | 99 |
| The Attorney General: | 100 |
| Deputy M.R. Higgins: | 101 |
| 8.4.13 Senator T.A. Vallois: | 102 |
| 8.4.14 Deputy J.H. Perchard: | 102 |
| 8.1.15 Senator I.J. Gorst: | 103 |
| Deputy M. Tadier: | 105 |

| | |
|--------------------------|------------|
| ADJOURNMENT | 109 |
|--------------------------|------------|

[9:34]

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

Firstly, on behalf of Members, I would like to welcome His Excellency the Lieutenant Governor to the virtual Chamber this morning.

1.2 Using camera when speaking

I would like to mention to Members that when Members speak, where it is possible, a still photograph of them will be placed upon the screen, as it was last week, but if Members particularly wish to be seen over the camera, so that they can be seen as they speak, then you can turn your camera on and provided no more than 9 cameras are active at any time the system will cope with that. If any more cameras become active then there will be a lag. So we strongly recommend that Members turn off their cameras unless when they are speaking they wish to be seen instead of a photograph of them.

[9:45]

QUESTIONS

2. Written Questions

2.1 Deputy G.P. Southern of St. Helier of the Minister for Health and Social Services regarding the provision of personal protective equipment: (WQ.140/2020)

Question

Will the Minister –

- (a) explain how, if at all, the Government's management of issues around the provision of personal protection equipment (P.P.E.) adheres to World Health Organisation (W.H.O.) or National Health Service (N.H.S.) standards to ensure that staff are not at risk of exposure to Covid-19;
- (b) advise whether this management includes the rationing of P.P.E. in the Hospital or other healthcare settings; and
- (c) explain how the Government's co-operation with care homes ensures that staff in such homes (including those delivering domiciliary care in people's homes) are properly protected from exposure to Covid-19?

Answer

- (a) PPE use and application under the Covid-19 pandemic is aligned to the advice and guidance issued by Public Health in Jersey. The Jersey guidelines are based closely on those for the NHS, as developed by Public Health England. The purpose of the guidelines is to support and protect health and care and other essential workers who are working with confirmed COVID-19 cases and suspected cases. The guidance provides staff with information about the most effective and efficient use of PPE for the various actions they are required to deliver as part of their work.
- (b) A PPE coordination 'Cell' has been created to manage the demand on PPE across all in-scope organisations that require PPE to continue essential services (including HCS, private health care providers and utility companies). The Cell will prioritise the distribution of stores, with advice provided by a specialist Risk Stratification Group (RSG) made up of clinical and logistic experts.

This RSG will ensure approval of PPE in line with current PPE advice guidelines at the time of processing the request.

- (c) A PPE portal has been created that is available to in-scope organisations agreed by the Government of Jersey. (This scope encompasses some 150 organisations with varying degrees of PPE requirements.) This approach has been taken to ensure that the available supply is managed and issued appropriately in support of the published PPE guidelines, responds to the requests of the organisations in scope and, in turn, provides assurance to the Government of Jersey of the island's preparedness. The portal can be accessed by a confidential link and will provide access to a list of prescribed PPE – masks, gowns, gloves etc.

2.2 Deputy G. P. Southern of the Minister for Social Security regarding the Covid Related Emergency Support Scheme: (WQ.141/2020)

Question

In respect of the Covid Related Emergency Support Scheme, will the Minister –

- (a) provide an estimate of the number of workers who are now unemployed, who have been resident in the Island for less than 5 years, and who are therefore eligible for this benefit;
- (b) state how many people have applied for this scheme;
- (c) state how many of those considered eligible are estimated to be in some form of tied accommodation linked to the job they have lost; and
- (d) advise how much it is estimated will be spent through the scheme to alleviate hardship?

Answer

- (a) The potential number of applicants to the Covid Related Emergency Support Scheme (CRESS) has been estimated taking into account the likely maximum take-up of the Payroll Co-Funding Scheme. The funding for CRESS is based on an estimate of 400 claimants.
- (b) 237 people have applied for CRESS.
- (c) This information is not collected as part of the application process.
- (d) A one-off budget of £710,000 has been allocated to the scheme.

2.3 Deputy J.H. Perchard of St. Saviour of the Chief Minister regarding the organisational structure of Government groups dealing with the Coronavirus outbreak: (WQ.142/2020)

Question

Will the Chief Minister –

- (a) outline the organisational structure of any Government groups and 'cells' involved in dealing with the Coronavirus outbreak, including those supporting the Emergencies Council, the Strategic Command Group, the Strategic Co-ordination Group, the Tactical Group and the Recovery Group;
- (b) state which third-party organisations, if any, are participants in these groups or 'cells'; and
- (c) advise whether there is a 'business cell' within this structure and, if so, state which sectors are directly represented in this 'cell'?

Answer

- (a) There a number of working groups / cells that have been implemented to support the Government in dealing with the Coronavirus outbreak namely: Community, Workforce, Travel, Construction, Children, Young People, Education and Skills, Personal Protective Equipment (PPE), the Nightingale build and Excess Deaths. These are supported with other government teams that remain working within their areas of expertise, for example Commercial, Modernisation & Digital, Public Health, Communications. It is worth noting that the States of Jersey Police are part of these groups as appropriate.
- (b) The main third-party organisations represented are: JT Global, Jersey Water, Jersey Gas, Jersey Electricity, La Collette Terminal Ltd, Andium Homes, Ports of Jersey, Jersey Post, Channel Islands Co-operative Society Ltd, Alliance, Waitrose and Sandpiper and other organisations are invited as an when appropriate. In addition, there are a number of volunteer organisations working with the Government.
- (c) There is not a ‘business cell’ but the recently combined Financial Services & Digital and Economy teams have re-allocated resource to lead on the business support and engagement activity. An external group was established to assess the impact of the package of measures that was developed and there is now a delivery group in place for implementation. There is also a Business Liaison Group with the Chamber of Commerce and Retail and Supply Chain Working Group. Sectors directly engaged in this work are Hospitality, Wholesale & Retailer, Agriculture and Fisheries.

2.4 Deputy J.H. Perchard of St. Saviour of the Chief Minister regarding the long-term impact of Government decisions during the Covid-19 outbreak: (WQ.143/2020)

Question

Which strategist, or strategic group, if any, is responsible for looking at the long-term impact of the every-day Government decisions being made in response to the outbreak of COVID-19?

Answer

It is clear that the pandemic will have a profound long-term impact, but the exact nature and scale of that impact is however not yet clear. Officers in both our strategic policy and economic development teams, as well as the Chief Economist’s analysts, are responsible for reviewing the positive and negative impacts of both the public health measures and legislation in place, and future options. These officers will report to the Competent Authorities Ministers regularly.

In addition, Government wrote to the Fiscal Policy Panel (FPP) on 18 March, requesting advice on their economic assumptions and policy for economic planning through the crisis. The FPP advice, including their updated economic assumptions and long-term forecasts, was [published](#) on 23 March, and is outlined below:

“The Panel noted the measures announced by the Government of Jersey to date to combat Covid-19 and mitigate its impact, including support to GPs, deferral of GST and Social Security contributions and a number of new funding mechanisms to support businesses. It is important that government spending can respond quickly to the changing situation and therefore fiscal policy decisions to respond should not be limited by the usual fiscal guidelines. Nevertheless, long-term fiscal sustainability remains paramount, and the focus of fiscal support should be on mitigating structural damage to the economy and alleviating hardship among the Jersey population. A short-term cyclical downturn cannot be averted.”

“The impact of the reduction in tax revenues and additional expenditures to support the economy should be drawn from the Stabilisation Fund in the first instance. Given the risk that a short-term

demand shock could lead to longer-term structural weaknesses, the Panel advises that these are the exceptional circumstances in which drawing on the Strategic Reserve is also appropriate.”

2.5 Deputy J.H. Perchard of St. Saviour of the Minister for Treasury and Resources regarding emergency procurement processes: (WQ.144/2020)

Question

Will the Minister –

- (a) state what emergency procurement processes are currently being used within the States of Jersey, if any, and explain how they differ from ‘business-as-usual’ processes, if at all;
- (b) state which post, if any, has been identified as the lead on ‘emergency procurement’;
- (c) advise what provisions within the Public Finances (Jersey) Law 2019, if any, restrict the speed at which procurement processes may be followed and further advise whether she will bring forward amendments to the Law in order to speed up procurement processes during the Coronavirus outbreak; and
- (d) advise whether the Government is currently taking the due diligence undertaken by other parties (such as the U.K. Foreign Office) as sufficient for the Government’s procurement processes in order to avoid having to repeat such due diligence?

Answer

- (a) The Public Finances Manual allows for emergency procurement in the existing framework and therefore this process is being adopted where required. For example an emergency process could be utilised where an existing corporate contract supplier cannot fulfil requirements. In this case an exemption would be sought to source from another supplier. Existing contracts are being used as much as possible and existing procurement processes are agile enough to respond.
- (b) The lead for emergency procurement is the Director of Commercial Services working alongside the States Treasurer
- (c) In the Minister’s view there are no provisions within the Public Finances Law which restrict the speed at which procurement processes may be followed. The Public Finances Manual, issued under the Law, includes a number of controls to safeguard the probity and value for money of public procurement. These requirements can be waived where the need to buy goods and services is urgent through completion of an exemption form, authorised by the Accountable Officer and Director of Commercial Services.
- (d) There is guidance on due diligence outlined within the procurement toolkit which varies depending upon the individual procurement activity with factors including risk, value, source of supply, etc. There is always a need to strike an appropriate balance between expediency and diligence. When an urgent procurement is needed, for example for protective equipment, there is still a need to carry out an appropriate level of diligence due to the volatility of the global marketplace and to document the decision-making process. The Comptroller and Auditor General has highlighted the enhanced risk of fraud during the current extraordinary circumstances, and that risk is taken seriously.

2.6 Deputy J.H. Perchard of St. Saviour of the Minister for Health and Social Services regarding the number of nurses in the Island:(WQ.145/2020)

Question

Will the Minister –

- (a) advise how many nurses are required to resource the Hospital if all beds and the Intensive Care Unit are full; and
- (b) state what plans are in place to ensure that an adequate number of nurses for the hospital is resourced and maintained and that any field hospital established during the Coronavirus outbreak can also be resourced?

Answer

- a) If all of the hospital beds and intensive care unit are full, the number of staff to resource these beds would be our current budgeted establishment of 533 registered nurses.
- b) At the outset of the COVID 19 pandemic, the regulatory bodies in the UK produced a joint statement for all of their registrants. This included the General Medical Council (GMC), the Nursing and Midwifery Council (NMC) and the Health & Care Professions Council (HCPC). In their joint statement, they set out the position from a regulator's perspective for professionals who will be required to work differently during a pandemic. Working differently includes working in different care settings than usual, working in different roles, and working differently to manage an increase in demand.

<https://www.nmc.org.uk/news/news-and-updates/how-we-will-continue-to-regulate-in-light-of-novel-coronavirus/>

The layout of the field hospital, as with Nightingale Hospitals in the UK, is based on open wards with patient beds in rows. This enables the nurse to have sight of a large number of patients at once and enables the registered nurse to manage more patients, supported by other staff, such as healthcare assistants. This means we would be able to spread the limited registered nurse resource across a greater number of beds. This is the same as the centres in the UK and other countries.

As part of HCS preparedness, we have been identifying staff who can support front-line care and growing our number of staff available to support care delivery. Initiatives have included:

- i) Recruiting retired nurses to return to work – the NMC has a COVID-19 register and retired nurses can resume working for the period of the pandemic.
- ii) Employing student nurses as healthcare assistants; this is in line with the guidance from the university.
- iii) Training other professionals so they can support staff on the wards – to date we have trained 37 Allied Health Professionals in this way.
- iv) Recruiting and training to our Healthcare Assistant workforce – these are on-island candidates and we have had 30 through this route already and are currently recruiting
- v) Identifying those nurses who are not currently in clinical facing roles – these staff will be updated through a compressed training programme and redeployed to the clinical workforce.
- vi) Using existing teams differently – an example of this is the theatre nurse team, some of whom are supporting their intensive care colleagues as part of an extended team.
- vii) Continuing to recruit temporary registered nurses into Jersey – these are few in number and anyone new to Jersey will be required to self-isolate for the required period before starting work.
- viii) Working with partner organisations to identify staff with key skills such as critical care nursing so they can be redeployed to intensive care or to support front-line care delivery.

On-island testing will provide a greater opportunity to get staff back into work promptly and will assist significantly in some of our workforce challenges, particularly in relation to the registered nurse workforce.

If Jersey is in a position whereby all beds are open in the general hospital, ITU is full and those on the Nightingale site are fully occupied, we will be required to work with registered nurse ratios that will be much lower than the normal, and we will be providing a higher level of healthcare assistant support than normal. We are currently doing everything we are able to do within the restrictions currently on us as a result of the global pandemic, limitations on travel and the pressures in the UK. Our position in this regard will reflect practice elsewhere across the NHS when in the peak of the surge in demand.

2.7 Deputy J.H. Perchard of St. Saviour of the Minister for Health and Social Services regarding the number of medical gowns available to the States of Jersey: (WQ.146/2020)

Question

Will the Minister advise –

- (a) how many gowns the States currently has;
- (b) how many gowns it is projected will be needed; and
- (c) from where, and when, additional gowns will be obtained?

Answer

- (a) At the time of responding to this question there were 32,992 gowns in stock.
- (b) Current usage is, on average, 621 a day, with peak usage (should that peak occur) estimated to be around 3,000.
- (c) Gowns form part of the core PPE requirement and therefore gowns are a standing requirement with regular orders of PPE. Orders are made through a number of supply chains, including the NHS supply chain coordinated in the UK.

2.8 Deputy K.F. Morel of St. Lawrence of the Minister for Treasury and Resources regarding States income in 2020: (WQ.147/2020)

Question

Will the Minister provide details of known States income for the first quarter of 2020 (or, if income is not currently known, forecast income) and the current assumptions, or forecasts, being used by the Treasury and the Comptroller of Taxes to estimate States income for the rest of 2020?

Answer

States income is forecasted by the Income Forecasting Group (IFG) which is chaired by the Treasurer of the States and draws together key officials and external members.

The IFG is currently reviewing its 2020-24 forecasts for submission to Ministers and subsequent publication. The IFG forecast will be founded on the March 2020 economic assumptions of the Fiscal Policy Panel. This forecast will be made public once finalised and presented to the Council of Ministers in the coming weeks.

This forecast will include income which will not normally be received into government bank accounts until 2020, for example personal income tax from prior-year basis taxpayers, corporate income tax and so on.

The income forecast therefore differs significantly from payments received and receivable in 2020. The total tax monies received and processed into the Governments accounts in the first quarter of 2020 is in the region of £211 million. This comes from:

- personal income tax (tax and penalties);
- corporate income tax (tax and penalties);
- GST (tax and penalties);
- International Service Entities (fees); and
- Customs and excise duties.

This is essentially the “cash” received and should not be confused with the income forecast, as explained above, as some of this relates to prior years’ taxation and in the case of GST, for example, the last quarter of 2019.

It would be premature to issue forecasts or assumptions before the report of the IFG is finalised.

2.9 The Connétable of St. Martin of the Chief Minister regarding the Government’s exit strategy from the Covid-19 outbreak: (WQ.148/2020)

Question

Does the Chief Minister intend to publish an outline exit strategy for the Government of Jersey from the COVID-19 outbreak once a marked decline in the spread of infection is achieved?

Answer

The primary goal of our public health strategy is to suppress the spread of Coronavirus – to ‘flatten the curve’ of cases in order to protect our health system and shield our most vulnerable Islanders. We must *delay* the spread of the virus, *contain* it where cases arise, and *shield* the most vulnerable from it. Our collective focus must remain Staying at Home for the rest of this month.

Second, we are acutely aware of the strain the current public health measures are placing on families and businesses across Jersey. We do not want these measures – while undoubtedly necessary now - to remain in place any longer than is required, and we will be presenting a plan for a safe exit from the pandemic towards the end of April.

It is important to highlight that every step we take at this critical time is informed by all the available evidence on the spread of Coronavirus – and we will only begin to dial down the current public health measures when we are confident transmission is under control.

2.10 The Connétable of St. Martin of the Minister for Health and Social Services regarding the provision of antibody tests for Covid-19. (WQ.149/2020)

Question

In respect of the Covid-19 outbreak, which supplier, or manufacturer, is the Government of Jersey using for the provision of the 150,000 antibody tests that are on order?

Answer

The Government of Jersey has ordered 150,000 antibody tests from DNA Workplace Ltd. of Frome, Somerset.

2.11 The Connétable of St. Martin of the Minister for Health and Social Services regarding the care and wellbeing of frontline healthcare staff. (WQ.150/2020)

Question

Following the COVID-19 outbreak, what plans are in place to promote the care and wellbeing of frontline healthcare staff?

Answer

A range of measures is in place to support the care and wellbeing of frontline healthcare staff. These include:

Staff who are at increased risk due to an underlying health condition and/or who are aged 65 or over

A number of our frontline healthcare staff fit into this category. In most cases, reasonable adjustments have been made that enable them to continue to work. This could be through working in a different way – for example, undertaking telephone consultations – through working in a different role away from direct clinical contact, or by working in a different setting such as working from home.

Health and Wellbeing Support

During and following the COVID 19 outbreak, it is recognised that we need to support HCS staff so they are best placed to continue working. We recognise HCS staff may be experiencing a range of challenges and emotions. As part of our preparedness, a HCS Wellbeing Team response to COVID-19 has been set up to offer general support to all HCS staff and specialist support to Critical Care workers – our HCS staff who are likely to be exposed to the most challenging and stressful of work environments. Since being established this team has undertaken nearly 900 wellbeing checks on staff.

Our wellbeing offer of support for all HCS staff (our general offer)

Working in an environment that is responding to COVID-19 can be anxiety provoking and stressful.

- All HCS staff have been sent a Wellbeing pack. (This provides suggestions on how staff can look after themselves in the current environment. It includes practical information on, for example, hydration, nutrition, dealing with stress, anxiety and depression, as well as mindfulness and sleep improvement strategies.)
- A Wellbeing link has been set up on HCS intranet specifically to guide HCS staff for support
- Access to a range of online resources to help maximise their self-care and mental health support
- The Wellbeing Team is offering phone support as and when needed
- Daily bite size emotional coping strategies or mindfulness is being delivered through The League of Friends room, providing available individual support 7 days a week for HCS staff at work
- Remote outreach support from the Wellbeing Team via telephone and Starleaf
- Our HCS Spiritual Team offering 24/7 phone support and practical help
- Our community partners – Listening Lounge, Jersey MIND, Samaritans providing phone support
- Wellbeing Wednesday 12 midday Halliwell Theatre with social distancing– 30 minutes to look after ourselves.

Our wellbeing offer to our Critical Care staff who will be responding directly to COVID-19

We recognise that HCS staff directly caring for COVID-19 patients are likely to be the most affected.

- A bespoke offer of wellbeing for our critical care staff has been set up through our Wellbeing Team.
- Wellbeing checks and strategies have been offered to all staff to help them understand what their physical and psychological needs are. This personal wellbeing plan optimises their preparedness, wellbeing and functioning during the peak phase of COVID-19
- The Hospital Chapel has been set up as a rest and wellbeing room for critical care staff, providing them with refreshments and daily led mindfulness practices
- Individual trauma-focused sessions as and when needed
- Remote outreach support from the Wellbeing Team via telephone and Starleaf
- We will be offering specialist Trauma Risk Management (TRiM) support during the recovery phase of COVID-19.

3. Oral Questions

3.1 Deputy M. Tadier of St. Brelade of the Chief Minister regarding the consultation with States Members in respect of the Field Hospital: (OQ.108/)

Will the Chief Minister provide a list of the States Members who were consulted before the decision to build the field hospital was signed off?

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

The decision to approve the construction of a Nightingale hospital in Jersey was ratified by the Emergencies Council on 8th April. The decision was duly and properly taken with broad ministerial involvement and leadership and followed the decision of the Competent Authorities Ministers, who had approved the matter previously. The decision to construct a Nightingale hospital was necessarily a prompt one given the time required to construct, fit out and fully staff the Nightingale hospital and the necessity to do so before Jersey's current critical care capacity came under any significant pressure. Furthermore, the Minister for the Environment was consulted, as per the answer which is coming in an oral question, before the Emergencies Council made their final decision. All States Members were informed of the decision in advance of the public announcement and all have since received briefing on the subject. So to be specific, in terms of the Emergencies Council, the political Members of the Assembly who were present: the Chief Minister, Deputy Chief Minister, i.e. Senator Farnham also as Minister for Economic Development, Tourism, Sport and Culture, Minister for Health and Social Services, Minister for External Relations, Minister for Home Affairs, Minister for Infrastructure. Also the Chair of the Comité des Connétables. Other political Members of the Assembly, the Minister for Education and the Minister for Treasury and Resources, had been invited to that particular meeting. In addition, bearing in mind I have also mentioned the Minister for the Environment [**Interruption**] ... I have got an interruption there by someone. On top of that, in terms of non-voting Members of the Assembly, His Excellency the Lieutenant Governor, yourself as Bailiff, Sir, the Attorney General and Solicitor General are also members of the Emergencies Council. I believe that is the list who were consulted at that point in time and all party to the decision.

3.1.1 Deputy M. Tadier:

I thank the Chief Minister. If I may have a supplementary. The Chief Minister has effectively just listed the members of the Emergencies Council there. But we were told on 16th April, so last week, in a briefing by one of the Chief Minister's officers while the officer was present, that although the main discussions happened in the Emergencies Council in between that time, the officer said that he was aware that the Chief Minister, the Minister for Health and Social Services and others had various discussions with various groups of States Members. I am trying to establish who those various groups

of States Members were other than the Emergencies Council who might have known about the field hospital and why they were chosen to be informed and not all States Members.

Senator J.A.N. Le Fondré:

I cannot honestly recall the statement by the officials. What I have given are the States Members who were a party to the decision that was made on that particular evening, which is the important point as to when that decision was ratified by the Emergencies Council and then it was signed off by the Minister for Treasury and Resources from the funding point of view on the following day.

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

Did the Chief Minister have access to the projected number of COVID-19 patients that would need to be hospitalised prior to the decision to build the field hospital and, if so, why was this information not supplied to all Members?

Senator J.A.N. Le Fondré:

There is a projection, which I thought had previously been shared with States Members, because it is the projections on the graph as the curves come through. But obviously the bed numbers projections that we are presently operating on is up to potentially 450, but I think that is deemed to be the extreme level. The anticipation is less than that but there was still a requirement for the field hospital. What we have explored is the existing in-patient capacity at the Jersey General Hospital, the capacity of the Jersey field hospital, the Nightingale hospital at 180 beds, and in addition what else can be found either in the wider Health and Community Services community hospital capacity, which means Overdale, Sandybrook, *et cetera*, and also within the private sector. Sir, unfortunately, I cannot hear anything.

The Bailiff:

Can anybody hear me? **[Members: Yes, Sir.]** I am assuming that everyone can hear me? **[Members: Yes, Sir.]** And people are marking “yes” back on the chat but I cannot actually hear anybody myself. We left the matter when I was asking Deputy Ahier if he wished to have a supplementary question. Do you wish to have a supplementary?

Deputy S.M. Ahier:

Nothing further, Sir.

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

When the decision was made over the building of the hospital was the ability to staff the facility also fully considered and planned for?

Senator J.A.N. Le Fondré:

Yes, in terms of the ability to staff it was obviously taken fully into account. As we have said, this is one of the issues around not laying too much pressure on staff is important and that is where that has been translated into the term using resources efficiently, which is a fairly horrible term. But, yes, it has been taken into account. Exact details are being worked up this week, and I will have some more information. But as an overall principle, the staffing levels have been taken into account for the hospital.

3.1.4 Deputy R.J. Ward:

Was the consideration taken to have the correct staff available, i.e. fully trained nurses, a right ratio to make the Nightingale hospital safe at the time of the decision being made to build a facility? Because that is absolutely vital if this is going to be a success.

Senator J.A.N. Le Fondré:

On the basis of the interest on the subject and the importance I will make sure this, as a subject matter, is included in the next briefing to States Members. But in terms of the ratio, the Council of Ministers did receive a briefing on a variety of staffing ratios that may or may not apply as pressures increase. But the whole principle of the Nightingale layout is to use a ratio of greater patients to a nurse under the scenario. Because it is not single rooms the requirements on staff that results from using single rooms is slightly less. Therefore that enables one to have a greater ratio of patients to that member of staff. What that means is that patients can still be properly cared for within all that context. I think, on the basis before we go down a whole set of questions on that area, I will arrange in the next States briefing for this to be fully presented to Members because it is quite a complicated subject. But the short answer is that we have had presentations from the health professionals and the nursing professionals as to how the ratios for staff will be managed as matters potentially move through the curve.

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

I am just keen to get a full answer to Deputy Tadier's question. Would the Chief Minister please explain outside of those present at the Emergencies Council, which States Members were consulted upon the Nightingale hospital in advance of the announcement being made public?

Senator J.A.N. Le Fondré:

I do not think I can add to the list I have already given. In terms of, as Council of Ministers, there are 9 with the Minister for the Environment. Can I just pause one second; I am just looking for another sheet of paper? Sorry, I was also just checking. We did have Council of Ministers immediately after the Emergencies Council so obviously all of C.O.M. (Council of Ministers) were present for that. Some of the Assistant Ministers would have known about it as well. But I think that is probably all I can elaborate on at this stage unless the Deputy wishes to infer anything else.

[10:00]

Obviously the Chair of the Comité des Connétables is the Connétable of St. Lawrence and so therefore she was aware, as a result of those presentations/decisions at the Emergencies Council, of the impact from her parochial perspective as well.

The Bailiff:

Do you want a supplementary, Deputy Morel?

Deputy K.F. Morel:

No, Sir, but no inferences were being made; just asking for an answer to the question.

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

Will the Chief Minister confirm to Members that the reason why the decision was taken at the time it was, was the importance of having the facility in place? Can you give Members an indication that the reason why they had to make the decision is the time lag and can you give the time that it would have taken had we needed to get a hospital at a later stage?

Senator J.A.N. Le Fondré:

I thank the Deputy for his question. He is absolutely right, provided I have understood the question correctly. But the point is that you cannot magic one of these things up overnight. There is a time lag in getting hold of the building structure and obviously the kit that goes into it. We are working on 3 to 4 weeks. So obviously from the date of the announcement and the get-go on the Thursday/Friday, the first part of the field hospital is due to be operational on something like I think it is 4th May. That gives Members an indication of the time lag that you have to take into account. That is why, bearing in mind at that point in time, that is the projection of where we were on the curve. We have obviously subsequently seen some other results from the testing but obviously we

put caveats on that. So to date that is what we have got to plan for. Obviously if the curve goes through slower, yes, we could have delayed that decision. But I think we would have had a lot more criticism and, most importantly, risked more lives if we delayed that decision and then the curve had come through a lot quicker. So the decision needed to be made. It needed to be made swiftly, which we did, and I am very pleased at the progress which we are seeing that is going on down at the Millbrook Playing Fields. So, I thank the Deputy for his question.

The Bailiff:

Supplementary, Deputy?

Deputy M.R. Higgins:

No, the Chief Minister has answered my question fully. Thank you.

3.1.7 Deputy M. Tadier:

If I can just preface this role. I think the decision to build the field hospital is the correct one and I congratulate and thank the Chief Minister and his team for all the hard work they are doing. But the purpose of the question is to ensure that when States Members are given information at a briefing and we are told that apart from the Emergencies Council discussions were being had with various groups of States Members - and I am glad that I wrote those exact words down so I could follow up on them - it is important that we know who the States Members are so that we can check the process and that information is ...

The Bailiff:

Deputy, I am sorry to interrupt you, we have encountered time difficulties, as I am sure all Members know. I want to try and get all the questions out if at all possible. Is this a question or is this just merely a statement as to why you asked the question? Because if it is a question, could you please ask it?

Deputy M. Tadier:

I understand, Sir, thank you. It is more difficult over the time lag. The question is: does the Chief Minister think it is important that when information is given in briefings that it is accurate?

Senator J.A.N. Le Fondré:

It is always important that information given in briefings is accurate. I suspect, and I honestly do not recall that particular response, but it may have been ... obviously a number of these decisions will be, I suppose the word is sometimes socialised among relevant Ministers almost as a sounding board or if there are specific issues that might be rising within that Minister's remit, and I think that was probably what was being referred to. But unfortunately that briefing is a few days away now and I honestly cannot recall the exact context in which it was said. But the principle that any information given to States Members in a briefing needs to be accurate is absolutely true and valid. I always do make the point that we are in very swift moving times. We act on the best advice we have at that point in time, sometimes things do change. That is not necessarily because information was given that was inaccurate, it has just moved on. But the basic principle that the Deputy is referring to is absolutely correct.

3.2 Deputy G.J. Truscott of St. Brelade of the Minister for Home Affairs regarding the measures taken at H.M.P. La Moye against Coronavirus: (OQ.107/2020)

Will the Minister advise the Assembly whether H.M.P. (Her Majesty's Prison) La Moye has adequate personal protective equipment provision and whether testing for coronavirus will be carried out on all staff and inmates?

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

In answering the question I would like to publicly thank all of the staff in the emergency and front line services; that is the prison, police, customs and immigration, fire and ambulance, for their work in tackling the coronavirus pandemic. I am sure all Members will agree with me that they are doing an excellent job in very challenging circumstances. But to directly answer the question, I can advise the Deputy that the Prison Service has adequate personal protection equipment for any eventuality, as do all the Home Affairs services. I can also advise that all services, including the prison, are first in the queue for testing after patients and health workers.

3.2.1 Deputy G.J. Truscott:

Plainly it is of paramount importance that the virus is kept out of the prison. On 26th March the U.K. (United Kingdom) Government issued updated guidance for COVID-19 in prisons and other prescribed places of detention. Could the Minister confirm that H.M.P. La Moye will be adopting those very stringent guidelines outlined in the paper and, if not, could the Minister explain why not?

The Connétable of St. Clement:

The prison has taken very active steps from very early days to protect both the staff and the prisoners at La Moye. That included stopping all visits, having courts dealt with over video link, isolating those prisoners who might be vulnerable because of a certain age or underlying health conditions. So far so good; no cases have been reported at the prison.

3.2.2 Deputy S.M. Ahier:

With more than 250 prisoners in the U.K. testing positive for COVID-19 has the Minister considered early release for non-violent offenders to relieve the pressure on prison staff during the epidemic?

The Connétable of St. Clement:

The answer to that is yes. I will be signing appropriate orders today to enable prisoners to be released on licence early to reduce the prison population if this becomes necessary.

Deputy S.M. Ahier:

That is very reassuring. Thank you, Minister.

3.2.3 Deputy G.J. Truscott:

We are indeed fortunate to have such a well run prison. Will the Minister - and he already has - join me and the rest of the Assembly to publicly thank the Governor, his officers and staff for all their efforts and professional dedication to the cause? They have our total admiration and respect, as do all our front line workers in the Island. We are indebted to them all for helping us all to keep safe and well at this difficult time.

The Connétable of St. Clement:

I certainly do that. In fact, I said so in the preamble to the answer to the question. I also contacted all of our front line staff by email last week to thank them and to wish them well in the weeks ahead.

3.3 Deputy K.M. Morel of the Minister for the Environment regarding the decision to locate a temporary hospital at Millbrook Playing Fields: (OQ.99/2020)

Was the Minister consulted upon any planning policy and planning law implications prior to the decision being made to locate a temporary hospital at Millbrook Playing Fields; and, if so, under which policies and statutes did he provide authorisation for the construction of the hospital?

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

On the Monday, 30th March, it was the first advice that I had from the acting Director General of G.H.E. (Growth, Housing and Environment) that there was a need to consider amending legislation in order to allow for the building of a temporary hospital. Obviously with urgency. Then the next was on the Thursday, 2nd April, when I, as Minister, was advised by the officers that they were preparing an amendment to the Planning and Building (General Development) (Jersey) Order, in order to allow for the building of a temporary hospital. In layman's terms, that is the Order which exempts various types of developments from making applications. The next step was on my weekly briefing with all officers on Wednesday, 8th April, when I did have a briefing about the implications for a planning order, the potential planning issues and indeed, at that time, it was clear that the Draft Planning and Building (General Development) (Amendment No. 5 - COVID-19) (Jersey) Order 2020 was amended and I was given details of that information. I saw an early draft and I raised a number of questions, particularly the period in which the hospital would be arraigning on the site, because the legislation of course is temporary, and indeed the period that the use could continue. I reduced that from 6 to 12 months (sic). I have to say I was rather cheeky and I was not told the site at that time and I asked the direct question: "Where was being considered?" and I was advised, in confidence, that it would be proposed to be on Millbrook Playing Fields. I did ask at that time, obviously I was given that information in confidence, and I asked that the Constable be informed and the Deputies for the area because there is no question that there was impact on residents and I pointed out that those things need to be properly dealt with. On the next day, of course, it was the emergency States sitting for Easter on Thursday, 9th April, I formally signed the Planning and Building (General Development) (Amendment No. 5 - COVID-19) (Jersey) Order 2020 and I was told that the decision was going to be made later that day because contracts would be signed. So I felt that I had been given that information. Indeed, I think the announcement was done that day. Of course I am continuing to be given briefings about it and, in particular now, looking at building control aspects, which of course are not exempt because building controls are essential for safety.

The Bailiff:

Minister, I appreciate that that question probably did require a fairly lengthy answer but could I remind Members that the usual rules of question and answers apply and that if it is at all possible, questions should be succinct and answers should not normally last longer than one minute and 30 seconds. I say that in the interests of getting through all of the questions on the question paper and for no other reason. Do you wish a supplementary?

3.3.1 Deputy K.F. Morel:

Yes, please, Sir. Firstly, just very quickly, sadly the Deputies were not consulted, as requested by the Minister. Would the Minister confirm whether or not that Order that he signed on 9th April was then forwarded to Scrutiny for their attention?

Deputy J.H. Young:

I cannot confirm that because all my communications have been through the officers and virtual and I asked them to ... so I was presented with that just before lunch, I think, roundabout lunchtime on Thursday the 9th and, as Members will know, I think the announcement was made later that day. So I cannot confirm that.

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

I would just like to know whether the Minister was advised whether or not his request that the Deputies and the Constable be put on notice about the potential preferred site was actually carried out? Because we have just heard from Deputy Morel that he was not advised and my recollection is that I was told that the preferred site was the Millbrook Playing Fields, and that was 10 minutes before the meeting of the Emergencies Council. So the question is to the Minister: was he advised whether his request had been actioned?

Deputy J.H. Young:

The short answer is no. As you heard from my longer answer, which I gave because I think it is important, that the timescale was very short and I made the request and I was given that information on 8th April in confidence and not able myself to communicate it. But I do rely on the officers to do the necessary. Obviously if that has not happened that will need to be followed up. But at the moment, I cannot confirm that.

[10:15]

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

I appreciate for the Minister obviously this is a quick moving situation but can the Minister please explain how this decision and any other decisions are going to be made in order to keep Assistant Ministers fully informed and know what is going on?

Deputy J.H. Young:

My recollection, and I struggle with this, is I believe that at the meeting on 8th April I think my Assistant Minister was present.

3.3.4 Deputy J.M. Maçon:

We know that I think all Ministers now have at least 2 Assistant Ministers behind them. Is the Minister able to confirm which Assistant Minister he was referring to?

Deputy J.H. Young:

Certainly my recollection is Deputy Guida was there. I cannot recall whether Deputy Tadier, who had been recently added to our weekly briefly, was included. But there was no question there were a number of people present at that virtual meeting the first time when I asked that question what was the site and I was told in confidence.

3.3.5 Deputy R. Labey of St. Helier:

Does “in confidence” mean you cannot disseminate the information to your own Assistant Minister?

Deputy J.H. Young:

No, that is why I am saying that I think ... my recollection was Deputy Guida, my Assistant Minister, is involved with all my meetings. Of course he is a Deputy of St. Lawrence so he was there. But I think he was probably put under the same confidence that I was given.

3.3.6 Deputy R. Labey:

Quick supplementary. I was referring to Deputy Tadier.

Deputy J.H. Young:

I cannot confirm ... of course, I try and make sure that all the Assistant Ministers receive and they all should be invited to meetings but whether they are actually present I cannot confirm at the moment. I need to check back through the record.

3.3.7 Deputy K.F. Morel:

Picking up on Scrutiny, does the Minister believe that, given the short timescale that there is for rescindment motions of Orders, when he signs Orders and indeed when all Ministers sign Orders at the moment, they should be flagged directly with Scrutiny?

Deputy J.H. Young:

Yes, that is the normal process. But I have to say, on this occasion, I was presented this with a short timescale. I certainly was told that this was an absolute emergency. It was not a sign off on the

Millbrook hospital as such, it was a sign off on the amendment to the law, which allowed the States to do any development on any land and change any use without consent. I think purely for emergency what I did was to limit the timescale. But I cannot, at the moment, because I am not in possession of that information, know when and what time that was sent through to Scrutiny. I am sorry, I do not have that information.

3.4 Deputy I. Gardiner of St. Helier of the Minister for Treasury and Resources regarding a review of Jersey's tax system once the Covid-19 pandemic had concluded: (OQ.95/2020)

Will the Minister undertake to review Jersey's tax system, once the COVID-19 pandemic has concluded, including the Zero/Ten regime and G.S.T.(Goods and Services Tax), in order to ensure that the system is fair, has few anomalies, avoids a disproportionate burden on those with less income and fewer assets, and is consistent in respect of residence?

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

It is likely that we will need to raise taxes in the aftermath of the COVID pandemic to help restore government finances. Such an increase will need to be balanced against the need to stimulate the economy and requires careful consideration to ensure that our overall tax regime maintains the international competitiveness of our economy, remain stable and sustainable, is fair and equitable, and continues to enable us to deliver vital services for Islanders. COVID-19 has emphasised what we already know, that is how reliant Jersey is on the health of the finance sector and on the taxes we receive from employment income. As part of the recovery work, I will be reviewing options for raising taxes with ministerial colleagues, looking at which areas of taxation ought to be reviewed in the short to medium term. The tax policy principles set out in the last Government Plan will guide our work. Significant reviews of aspects of Jersey's tax system are already in train, most notably the ongoing review of personal tax, which now includes examination of the case for removing the so-called prior year basis of taxation. Work in respect of the latter I have asked to be accelerated. I have also asked officials to accelerate work on a planned review of the international services entity scheme, which forms part of our G.S.T. regime.

3.4.1 Deputy I. Gardiner:

Thank you for the Minister for the answer. I would like to ask if she could also reassure Jersey's average owners that the burden of replacing the funds taken from the resource will not be placed upon them?

Deputy S.J. Pinel:

Yes, obviously we have to, as I have said in my opening remarks, do an across the board review. It will not just concentrate on one area and will remain balanced. The major part of the tax revenue is from the finance sector, as I alluded to, and there is a large proportion of the population that do not pay any tax at all because our tax threshold, almost £16,000 for an individual, is one of the highest. So there are a lot of people on the lower end of the scale who do not pay any tax at all. The middle earners, to which the Deputy refers, we are very aware should not carry the burden.

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

Would the Minister confirm that while it is important of course to build up the economy and our key services like health and education, we must resist any attempts in an age of austerity to starve the environment of funds needed to maintain and improve its quality?

Deputy S.J. Pinel:

I think the environment has benefited hugely from the lockdown so we can probably be a step towards our carbon neutral as this carries on. However, it has to be a very balanced approach, as I have said twice now, hence a review, so everything would be considered.

3.4.3 Deputy M. Tadier:

Is the Council of Ministers - of full Ministers of course - committed to income inequality now and in the short and medium term? Reducing income inequality that should be, as per the Strategic Plan?

Deputy S.J. Pinel:

Yes, I thought there was a bit of a word missing in the question. Yes, we are moving absolutely towards equality across the board.

3.4.4 Deputy M. Tadier:

Will the Minister for Treasury and Resources therefore do all that she can while she is in post to make sure that any changes in the future to the tax system only support reducing income inequality and do not seek to exacerbate it?

Deputy S.J. Pinel:

I shall do what I can but, equally, the population has to be aware that there is a huge demand on our resources at present and that will have to be replaced. We cannot drain the resources and leave it for future generations to pick up the pieces. So it is going to have to be a very careful review as to what we can do that does not harm those who can least afford it but equally will build up the coffers, for want of a better word, that we will have not necessarily drained but certainly used considerably during this crisis.

The Bailiff:

I have had a number of Members who have indicated a desire to ask further questions as supplementary to this. I have already called last question for Deputy Gardiner by listing those who are already noticed. I am afraid we are well over the time for this question so I cannot allow any more time. But the ones I have already called I will allow.

3.4.5 Deputy K.F. Morel:

Given that this is a period of immense uncertainty with people losing jobs and businesses collapsing, does the Minister believe that now is the right time to create greater uncertainty among Islanders by referring to changes in the tax system, by referring to tax rises, as the Assistant Minister for Treasury and Resources did just a week or so ago? Does the Minister agree that now is a time when Islanders want reassurance and not greater uncertainty?

Deputy S.J. Pinel:

Yes, I understand Deputy Morel's question but it is a question that is consistently asked of me and my colleagues as to how we are going to repair the financial damage that this pandemic is causing. It would be wrong of me not to answer. I do not think it is causing panic, if you like, as the Deputy referred. It is just to reassure the Islanders that we are going to have to review this and to be transparent now to warn people that this is what we are going to have to review and taxes of some sort of description, we do not know which yet, will have to increase in order we do not have a massive black hole.

Deputy K.F. Morel:

Brief supplementary. I did not refer to panic. I just wanted to correct the Minister. But I will avoid the supplementary.

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

Does the Minister agree with me that the fairest means of raising tax is through income tax and that far from being a rich island we appear to be an island of rich people and that the wealthy should pay a little more?

Deputy S.J. Pinel:

I think that there has always been that question from the Deputy but we have to appreciate that the wealthy or very wealthy residents that we have do provide a huge amount of our income tax and that should not be ignored. They provide, I think from memory, about 62 per cent of the income tax based on 2017 figures. I think we have to be careful about how we define who pays tax and who does not and, as I mentioned in a previous answer, there is a considerable amount - 30 per cent - of Islanders who do not pay tax at all.

3.4.7 Deputy G.P. Southern:

Would the Minister have a date in mind in which she can bring to the House estimates for income for the coming year?

Deputy S.J. Pinel:

No, not at this stage I do not.

Deputy G.P. Southern:

Shame.

3.4.8 Deputy R.J. Ward:

The Minister mentioned an across the board review, who does she see as the main influencers over this review as she undertakes it?

Deputy S.J. Pinel:

Sorry, I am not quite sure I understood that. Who are the main influencers?

Deputy R.J. Ward:

Yes, who are those that you will consult on during this review and give priority to their opinions?

Deputy S.J. Pinel:

OK, thank you. It will be a very broad range of people that will be consulted on this and we have only just really sort of come to the conclusion of the personal income tax which will feed into this. That review will feed into the next one, so there is a lot of work to be done and obviously it will be the officers in the Tax Department who will decide who they consult.

3.4.9 Deputy R.J. Ward:

Apart from the fact it seems to me it is the officers who are the influencers. Given that it was pointed out twice that a number of people on very low incomes do not pay tax, will these people be listened to rather than ... it may be suggested that changing or making the tax regime more punitive for those on low income?

Deputy S.J. Pinel:

Of course they will. That is the whole point of a review, is to be across the aboard so that everybody is consulted. You cannot consult 100,000 people so there have to be representatives from all Departments, all angles, all taxpayers or non-taxpayers. So across the board, as I have said.

3.4.10 Deputy I. Gardiner:

How will the Minister ensure the financial burden is spread fairly over the generations and when the Minister is planning to bring to the Assembly the plan to replace the funds taken from the reserves during the pandemic?

[10:30]

Deputy S.J. Pinel:

The funds will have to be replaced and there must not be an additional burden on any sector of society. We are all in this together, as the phrase currently goes, and it will be across the board. As I keep saying, that we will have to make sure that everybody pays their dues and pays them fairly.

Deputy I. Gardiner:

Supplementary?

The Bailiff:

No, I am sorry, Deputy, that was your final supplementary.

Deputy I. Gardiner:

No, but I ask if the Minister can indicate when ...

The Bailiff:

No, I am sorry, Deputy, there is an answer to the question. There is no availability on final supplementary for another supplementary. The trick is in the word “final”.

3.5 Deputy M.R. Higgins of the Minister for Health and Social Services regarding the Covid-19 testing equipment and kit that had been acquired for Jersey: (OQ.104/2020)

Given the U.K. Secretary of State for Health and Social Care has stated that no test is better than having an unreliable test, will the Minister confirm whether the testing equipment and kit acquired for Jersey has been checked and approved by the Centre for Applied Micro-Biology and Research at the Defence Science and Technology Laboratory at Porton Down; and if not, why not?

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

The Centre for Applied Micro-Biology and Research now forms part of Public Health England and I am pleased to confirm that all of Jersey’s diagnostic P.C.R. (polymerase chain reaction) testing for COVID-19 is either conducted by Public Health England or is undertaken using a platform which is recognised by Public Health England.

3.5.1 Deputy M.R. Higgins:

The Halogen company or test kit that we are using is part of, and I apologise to anyone who is Chinese, Zhejiang Orient Gene Biotechnic, can the Minister tell us how accurate that test is based on the results from Public Health England? Is it 10 per cent, 20 per cent, 50 per cent, 90 per cent, 95 per cent?

The Deputy of St. Ouen:

Yes, those are the different tests. They are not the diagnostic tests that are currently in use. They are test kits that have come into the Island, which will test whether people have antibodies in their blood and thus indicating whether they been infected and recovered from COVID-19. So those tests are not in general use at the moment. They are being validated in the hospital lab. But in recent tests undertaken by the World Health Organization the kits we have purchased were the only tests that demonstrated 100 per cent specificity, meaning there was no cross-reactivity with other human coronavirus strains. If I could just add, the Medicines and Healthcare products Regulatory Authority

has confirmed that the kits we purchased are safe to be placed on the U.K. market but to the best of our knowledge neither of the kits we have purchased have yet been evaluated by Public Health England. That concludes my answer.

3.5.2 Deputy G.P. Southern:

Could the Minister indicate whether stocks or orders prior to the outbreak of the epidemic were in stock in plentiful supply before the outbreak of this current epidemic?

The Deputy of St. Ouen:

I do not think they could have been because this is new to the whole world community. So these tests for a new virus have only been developed in recent months. As the Deputy will know, there is pressure worldwide to source these testing kits.

3.5.3 Deputy G.P. Southern:

The presence of P.P.E. (personal protective equipment), whether it is visors or other, was that in plentiful supply prior to the outbreak?

The Deputy of St. Ouen:

Yes, that is moving away from testing but we did have stocks of P.P.E.; I refer to the written question that I have filed today. But of course the need for additional P.P.E. or personal protective equipment has become apparent and there are huge challenges at the moment in every country to source the P.P.E. that is needed. But in that respect I believe hard work put in by the teams in Jersey is putting us in a good position, so huge challenges remain.

3.5.4 Deputy M.R. Higgins:

As coming out of the lockdown depends on accurate antibody tests, when will the Minister be in a position to tell us how accurate our tests are so that we can evaluate the extent of the contagion within the Island?

The Deputy of St. Ouen:

I would like to assure the Deputy that a programme is being planned which will allow a sampling of what is presently considered a sample of 2,000 people from across the Island in order to give us a picture of how the infection may have spread across our community. This sample testing is being developed with Statistics Jersey by our public health team and Ministers have had an early briefing on it, lots of work to be done, but we hope in the next month, in just perhaps a few weeks, that we will be able to commence that sort of sample testing.

3.6 The Connétable of St. Helier of the Minister for Infrastructure regarding the provision for walkers and cyclists on the Island's roads: (OQ.106/2020)

Given that creating extra space for people wishing to exercise while observing social distancing is becoming the norm the world over, how, if at all, is the Minister planning to make better provision for walkers and cyclists on the Island's roads?

Deputy K.C. Lewis of St. Saviour (The Minister for Infrastructure):

In the short term during the coronavirus crisis, we are focusing on limited resources on essential services such as maintaining safety, critical infrastructure, providing facilities for essential healthcare workers and ensuring emergency service and delivery vehicles can carry out their functions. We have kept open the parks and beaches to provide exercise space, which has not been the case in some other jurisdictions. In the longer term, we look forward to working with key partners such as Parishes to deliver the outcomes of the Sustainable Transport Policy.

3.6.1 The Connétable of St. Helier:

In the short and medium term, will the Minister look positively at any schemes brought forward by Parish Roads Committees or in the case of the capital by the Shadow Conseil Municipal, to restrict vehicular access in certain residential streets in order to promote active travel on a trial basis?

Deputy K.C. Lewis:

Always keen to promote active travel. People have been very good at the moment when they pass each other in the street keeping a good social distance apart. However, in some of the narrower streets it is more difficult and people are forced to walk in the road to keep a safe distance from the person coming the other way. So something we are more than happy to look at with the Roads Committee on Parish roads.

3.6.2 Deputy R.J. Ward:

Does the Minister see hopefully the rapid end to this contagion, does he see us just returning to normal, as in the congestion and the problems that we have, or is this an opportunity that he is willing to grasp, to change the way in which we travel?

Deputy K.C. Lewis:

I think this was well ahead of itself, in the sense that we had the Sustainable Transport Policy to do that very thing. Nobody saw the coronavirus coming. It is one of those things. As I say, we are very keen to promote active travel.

3.6.3 Deputy R.J. Ward:

There has been a distinct change in mode of transport. Will he commit to add to the Sustainable Transport Policy to take on board these changes that have been made by individuals and try to encourage them into the future now that people are experiencing them?

Deputy K.C. Lewis:

Things have changed dramatically. Just a few months ago I was encouraging people not to use their cars but to get on the bus and now we are saying: "Please do not use the bus unless you have to." But as there is less traffic on the road we encourage people to get the bikes out of the bike shed, make sure it is serviced properly and to use sustainable transport. More than happy to encourage that.

3.6.4 The Connétable of St. Helier:

The Minister appears to be suggesting that work has effectively stopped on practical schemes to reallocate road space towards walking and cycling. I understand how busy it is but does he not agree with me and with Deputy Ward that the current reduction in vehicle use provides an ideal opportunity to put in place traffic management schemes that will make walking and cycling practical alternatives for many journeys, including school trips, and the commute once the lockdown is over?

Deputy K.C. Lewis:

Indeed, more than happy to look at it on a road by road basis but we must keep the Island's arteries open, which are the roads, but there are some roads that are not completely necessary, and more than happy to look at that with the Parish.

3.7 The Connétable of St. Lawrence of the Chief Minister regarding the assistance provided to people wishing to make a will during the Coronavirus pandemic but who could not afford a lawyer: (OQ.103/2020)

What assistance, if any, is being given by the Government during the coronavirus pandemic to those people who want to make a will but who cannot afford to go to a lawyer?

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

The Government recognises it is important particularly at this time of uncertainty for people to be able to execute wills. If approved by the Assembly the Draft COVID-19 (Signing of instruments) Regulations 2020 would permit wills to be witnessed over an audio-visual link. This will allow individuals, especially those who are most at risk from COVID-19, to execute a will while maintaining a safe social distance. In terms of financial assistance, the Government does not provide direct financial assistance to individuals for the purposes of making a will, however Jersey's Citizens' Advice can provide information and support to those who cannot afford the usual costs associated with making a will. Citizens' Advice also propose individuals for free consultations lasting either for 30 minutes or one hour with legal professionals. Depending on their means and circumstances they can also link up some clients with legal practices which will provide simple wills for a reduced flat fee.

3.7.1 The Connétable of St. Lawrence:

I am pleased that the Chief Minister used the word "uncertainty" in his response to me because it is clear that there is so much uncertainty and there is a lot of worry by many older people in the Island. I would like to ask the Chief Minister please to make all of the information that he has just given me available on the States website. So my question is: will the Minister please ensure that there is more information on the States website regarding how people can make wills and the assistance that is available to them?

Senator J.A.N. Le Fondré:

Absolutely, I will arrange for that to be in place. I have not looked recently at the C.A.B. (Citizens' Advice Bureau) website either but I would imagine there is something on there. If there is not I will also ask them to update that side as well.

3.7.2 Deputy M.R. Higgins:

The Chief Minister mentioned about simple wills but Jersey wills are not that simple compared to, for example, the United Kingdom where in the United Kingdom both movable and immovable property can be in the same will. In Jersey they are 2 separate documents and lawyers have to be involved certainly with immovable property, and it is not cheap. Will the Chief Minister look at this further because I am not convinced that the assistance he has mentioned through the Citizens' Advice Bureau is adequate and if he could please, as the Constable has said, publish the information so we can see how cheap or how expensive it is?

Senator J.A.N. Le Fondré:

I have absolutely got no problem of publishing it. As I said, I do understand that a number of lawyers do offer a simple consultation in which certain instances will be free for the first hour or half hour to enable simple circumstances to be addressed.

[10:45]

But I will arrange for the items that both the Connétable and the Deputy refer to, to be on not only the gov website but I will check on the Citizens' Advice Bureau side as well.

The Connétable of St. Lawrence:

I do not have a supplementary, just thank the Chief Minister for agreeing to publicise this information.

3.8 Deputy G.P. Southern of the Minister for Health and Social Services regarding the budget allocated to stock personal protective equipment (P.P.E.): (OQ.101/2020)

Will the Minister inform Members what budget was allocated year on year over the period 2014 to November 2019 to fund the provision of emergency personal protective equipment for medical and other staff to protect against the prospect of a flu-like pandemic, such as we have since witnessed?

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

I am grateful to the Deputy for his question but if I may just pick up on the very last few words he has used, “a flu-like pandemic, such we have since witnessed”? Coronavirus is not flu. We are still learning a great deal about it and how it behaves. But we do know that it transmits far more rapidly than flu. So I would have to say to the Deputy we have not witnessed a “flu-like pandemic”. This is something that the world is grappling with because it has not experienced the likes of this before, at least in living memory. But to answer the specific question, if I can provide some context going back to 2009 when Jersey was undertaking H1N1 pandemic preparations, that was known as the Swine Flu, and during that time H.C.S. (Health and Community Services), or whatever the Department was at the time, saw the establishment of a pandemic inventory. Now Swine Flu had a less serious impact on the Island than expected, so much of that inventory was not used. But in the years from 2009 it has been recognised that a flu pandemic was a serious risk to the Island and so the approach was then adopted that rather than having 2 separate stores - one pandemic, one business as usual - the pandemic store was integrated into the business as usual store and the business as usual inventory was increased by 10 per cent. So what this means that given the pandemic stock was incorporated into the wider stock holding we cannot identify any further spend specifically on stock for pandemics in the years that the Deputy has asked about. I can tell him in normal circumstances just under £200,000 a year is spent on P.P.E. Of course during this recent period we have procured P.P.E. and we have got stocks which have cost several millions of pounds, and there is about £5 million worth of P.P.E. either in stock or in the pipeline for delivery. That answers as best I can, I hope, the question put by the Deputy.

3.8.1 Deputy G.P. Southern:

That is hardly an answer but is the Minister aware that in the U.K. under austerity measures, for example, in this period the budget for flu-like pandemic outbreak P.P.E. went from £850 million to £500 million, a cut of 40 per cent over this time period? Can the Minister assure Members that such an austerity driven cut was not engaged with in his Department during this period?

The Deputy of St. Ouen:

I am not aware of any cuts to the P.P.E. provision in recent years.

3.8.2 Deputy M.R. Higgins:

Can the Minister tell us, following the pandemic emergency exercise in November and December of last year, were any changes made to P.P.E. equipment or levels and did they consult the World Health Organization beforehand, regarding the current level of risk of a pandemic?

The Deputy of St. Ouen:

Our Medical Officer of Health is logged into all those channels such as the World Health Organization, Public Health England and the network that is spread internationally. The Medical Officer of Health would have been aware of pandemic preparations and any worldwide changes to that preparedness and would have been reporting to the Department and to Ministers. The results of last year’s exercise on preparation, I do not know whether that immediately led to any increase in P.P.E. stocks. We would have held a normal P.P.E. stock check at that time, including the reserve for pandemics.

3.8.3 Deputy M.R. Higgins:

Could the Minister reveal that information in a written answer to Members? He was not fully aware of the facts on either and if he could put a written answer to Members that would be very much appreciated. Will the Minister please do so?

The Deputy of St. Ouen:

Can I just clarify, the question is: were any changes made to P.P.E. stocks in my Department following the exercise last year? Is that the question?

Deputy M.R. Higgins:

That is correct and also what steps were taken to speak with W.H.O. (World Health Organization) and analyse the possibility of a pandemic arising, which happened within, I think, a month.

The Deputy of St. Ouen:

I think I have answered that last part in that our Medical Officer of Health ...

The Bailiff:

The actual question to you, Minister, is whether you would do it in writing subsequently?

The Deputy of St. Ouen:

I will write that out.¹

3.8.4 Deputy R. Labey:

What was the motivation locally for downgrading the level of P.P.E. offered to ambulance staff?

The Deputy of St. Ouen:

I am not aware that P.P.E. has been downgraded to ambulance staff. There is a guideline for emergency services and their P.P.E. requirement is set out in that. I am not aware that that has been challenged. I refer to the Minister for Home Affairs, who answered a question earlier, who confirmed that the emergency services have the stocks they require. There did not seem to be issues from him. The stock they have mirrors guidance for ambulance staff. It is under regular review. If the ambulance service has any concerns they are able to raise them, but we have not been informed of any concerns.

3.8.5 Deputy R. Labey:

I find that interesting. Categorically, the Minister is saying that if there was any reduction in the level of P.P.E. for paramedics and ambulance staff that was not driven by a lack of maximum P.P.E. to go round?

¹ Following the meeting, the Minister for Health and Social Services provided the following information:

Q. Were any changes made to PPE stocks in your department following the table top exercise last year?

A. November's exercise – which was looking at the response to an influenza pandemic – did not lead to any specific increase in PPE stocks. In normal times, orders are placed for PPE stock amounting to just under £200,000 a year.

Q. What steps were taken to speak with the World Health Organisation and analyse the possibility of a pandemic arising, which happened within, I think, a month?

A. We always keep a close eye on emerging infections and events – not just after exercises. Additionally we automatically receive information about infections from various sources. A cluster of pneumonia cases of unknown origin in Wuhan appeared to have started on 21.12.19. It was first reported by the Chinese CDC on 21.1.20. There were other communications about this cluster in the interim. On 14.1.20 WHO reported that there was insufficient evidence of person to person spread. On 30.1.20 WHO reported it as a public health emergency of international concern. On 11.3.20 WHO declared a pandemic.

The Deputy of St. Ouen:

I wonder if the Deputy is referring to an email sent to all States Members recently by a member of the public that included pictures of ambulance staff. We have established that those ambulance staff are not from Jersey. Those are N.H.S. (National Health Service). We know that by looking at the uniforms worn. The concern raised by that member of the public, who is emailing us, is general because that member of the public has picked up on the concerns nationally, but what has happened in England has not happened in Jersey because we have adopted our own guidelines and there has been no reduction, so far as I am aware, of P.P.E. for ambulance crews. They do not always need to use the highest level of P.P.E. but they have it available for the circumstances in which that is needed.

Deputy R. Labey:

For the record, the motivation for my question did not come from that email but from within the Minister's Department, but thank you.

3.8.6 Deputy R.J. Ward:

We are all learning from this current situation. Would the Minister agree that the decision to combine stocks of P.P.E. was simply a mistake and will he commit to future separate stocks being maintained so that we are better equipped should anything like this happen in the future?

The Deputy of St. Ouen:

I am sorry, can I ask for clarification? Who was combining with who and in what circumstances was the ...

Deputy R.J. Ward:

You mentioned in a previous answer that a decision was taken some time ago to take the P.P.E. stocks and combine them with general stock but just to increase the amount by 10 per cent, thus not have a division between them. Do you agree that that was a mistake and we should go back to the system that we had?

The Deputy of St. Ouen:

I do not think I can agree that on the hoof. That needs careful discussion on how these things are managed logistically as supply and demand. For example, P.P.E. has a limited shelf life in some instances, so if we had a separate warehouse labelled "the pandemic warehouse stock" and it just sat there awaiting a time when a pandemic might arise, that stock would quickly become out of date. There needs to be a throughput of stock but there needs to be adequate margin, it seems to me, to ensure exactly how we use it and to ensure we have preparedness for a pandemic. I would be very willing to speak with the Deputy but I think we would need officer advice on exactly how to best prepare.

3.8.7 Deputy R.J. Ward:

A simple stock rotation, I am sure, can be used but is it not that we have to be cautious in the coming years and think about this preparation and learn from where we are now? I understand hindsight is a wonderful thing, and it is not a criticism of the Minister for that, but commitment to learning from it I think is very important for the people of Jersey.

The Deputy of St. Ouen:

I would wholeheartedly agree with that. We must learn and we would want to learn because it is all about protecting Islanders' lives and making sure that we are in a position to respond adequately. I am sure there will be lessons to learn and we will learn them.

The Bailiff:

Before I call on Deputy Southern, a number of Members again have indicated that they wished to ask questions when I had already announced who the questioners will be with the final supplementary. We are really losing time so I am afraid I cannot allow more supplementaries on this particular question.

3.8.8 Deputy G.P. Southern:

Given the chaos that we saw in the early days especially of the outbreak of the pandemic, does the Minister not consider that he ought to revisit the recommendations that came out of the pandemic simulations recently and that whatever level that we have got in preparedness for P.P.E. is inadequate and we should do better next time?

The Deputy of St. Ouen:

I will certainly revisit those recommendations. The whole of the Government, the whole of the Assembly must, with Scrutiny's involvement also, when the time comes, look back and carefully examine. I will commit now to saying that we had insufficient stock and that needs to be looked at, I do agree with the Deputy.

[11:00]

3.9 Deputy R.J. Ward of the Chief Minister regarding the planning that had been undertaken for the end point to the 'stay at home' order: (OQ.93/2020)

What planning is being undertaken to put in place an end point to the stay at home order and what modelling and key indicators will be used within this planning to allow a return to normality?

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

The strategy is always to delay the spread of the virus, contain it where cases arise and to shield the most vulnerable from it. The primary goal is to suppress the spread of coronavirus, to flatten the curve of cases in order to protect the health system and shield the most vulnerable Islanders. Our second vital task is to exit the pandemic safely, as the Deputy is alluding to, and I will be making an announcement on Jersey's safe-to-exit strategy hopefully by the end of April or shortly thereafter. That will set out a phased approach to get us all back to normal life. The monitoring evidence and indicators we will be drawing upon to inform each phase of the exit strategy will be set out in detail. The Deputy will be aware, hopefully, of the health survey that Islanders are completing at present. That will be one of the indicators and the other, subject to all the caveats we have said previously, will be the antibody testing regime, I believe. But at present we are monitoring closely how the virus is developing on Island and I very much want to reassure Members that we will only begin to dial down the current public health measures when we are confident that transmissions are under control.

3.9.1 Deputy R.J. Ward:

Can the Minister confirm that he is confident that modelling is taking place and there are specific key indicators that will be used so that the people of Jersey can have confidence that we will come out of this lockdown at the right time?

Senator J.A.N. Le Fondré:

I am very confident that there is a lot of statistical modelling being either used or being generated. I think I have alluded to that previously in briefings to States Members. I have certainly referred briefly to the last update we had for Scrutiny and I think we have offered them a briefing on the subject as well as to what is being done. What the intention at present is, and I might be mixing messages here, is that we have the antibody testing. Provided that the evaluation comes back on that, which I am expecting, I think, from the Minister for Health and Social Services in the next, I will say, 2 to 3 days, that means we can then go on a sample basis to probably 1,000 or 2,000 samples,

which will then give us an indication as to how far the virus has spread throughout the community. We are hopefully expecting that to come back in the middle of next week, the analysis thereof, and that will give us a variety of indications, including whether the data gathering structures that we have put in place or are being put in place are working. When we have got those initial results back, I think that will be the time when we will be able to give Members a full and proper briefing, firstly on the outcome, hopefully whether that outcome has matched our expectations, but also around the other modelling that we are doing. Because by that point we will have a lot more information from the health survey and that will also be able to be presented to Members, at the very least, in some form of meaningful manner.

3.9.2 Deputy M. Tadier:

Trying to follow the curve on the Government website, it seems to me that there is a bit of time delay, perhaps by a week, of the actual where we are on the curve graph. Certainly, I think, as of 12th April it seems that we are not following the normal distribution curve that has been put out in the model but in fact we seem to have one peak back in March and then a lesser peak earlier in April, and the number of daily cases is on a downward trajectory. Could the Minister talk to this and how it informs an exit strategy?

Senator J.A.N. Le Fondré:

The recording of the testing statistics against the curve will not be the only measure that is used in the testing strategy. If the Deputy recalls, and as Members hopefully recall, at the presentation last week there were some elements of caution stated about the results that came out last week, partially because of a delay in some of the testing. I believe we are now back up to 120 tests a day but we also want to try and expand that. Obviously, as one increases the tests that one takes, that potentially skews the result the other way. I think there are 2 other bits to talk to at the request of the Deputy. Number one is to re-emphasise the fact that at present we are still dealing with low numbers in terms of the positive cases. Two, which I have certainly alluded to publicly, I do not know if it was at the time to States Members or not because it depends when we were given the information relative to when the last briefing was with States Members. Some of the anecdotal remarks that are coming out, an issue from some of the work that the G.P.s (general practitioners) are doing - I do emphasise anecdotal at this stage as opposed to evidence based - is that there is an indication that they may be seeing what they believe to be more corona cases in the community than are being identified through the positive testing regime. That raises the question as to whether our rule of thumb, that for every one positive test we have there are 10 out there in the community, is absolutely valid for Jersey. That is where the antibody testing will be important. As soon as we get that initial outcome from the sample tests ... as I said, the last update we had earlier this week was that there was an intention to do testing towards the end of this week and early next week and then for us to get the results, which will take 2 or 3 days thereafter. That will give us the first of, let us call it, a statistical evidence base, and I emphasise hopefully, that will then start giving us some better information as to what we think the spread of the virus is through the community. At that point, we can then start taking account of the health survey, bring all that together and that will then inform us towards the exit strategy. Sorry for the long answer there but it is quite a complicated subject.

3.9.3 Senator S.C. Ferguson:

It seems to me, and perhaps the Minister would confirm this, the problem at the moment is that many people are relying on the data and the models. Given that we have incomplete data, what sort of margin of error are we working on? How reliable can we say the models are at the moment?

Senator J.A.N. Le Fondré:

On the issue around the model in terms of, let us call it, the curve, I think we are fairly comfortable on how it is being applied to Jersey. The issue we do have, which is what we are aware of, is around

collecting and getting the testing done of people who have had and tested positive for the virus. We are very much alive to that. That is effectively what I was referring to in my response to Deputy Tadier and what was alluded to in the presentation to Members last week. We will get a better position again towards the end of this week. We are updating that particular work on a weekly basis. We are also trying to increase the capacity to get more testing done, whether on-Island or off-Island, which will give us an overall better picture. However, I go back to the earlier point I made that the modelling against the curve is not the only tool in the toolbox. The other 2 bits are being worked on and when they are in a better state they will be presented to Members. One is the health survey and the results from that and the second one is the use of the initial samples from the antibody tests that have recently arrived on Island, of which we now have 50,000 kits on Island. The evaluation is just being completed in these next few days and then the expectation is we will move to an initial sample test of probably between 1,000 and 2,000 people.

3.9.4 Senator S.C. Ferguson:

How sure can you be that the antibody tests that you are going to be using are reliable, given that they are from China and given the Chinese unreliability?

Senator J.A.N. Le Fondré:

There are 2 sets of tests. That is why a lot of my answers at the moment are caveated because it depends on the outcome of our own evaluation, which is being done on Island. As Dr. Muscat has referred to in previous presentations to Members, we have been looking at antibody testing for quite some time and I think he said at the time it came up in meetings and discussions probably 4 times each day. One of the first ones that was certainly brought to my attention, which had an element of credibility attached to it, when it was evaluated there were some cross-contamination issues and in the end that was not a route we went down. The 2 lines we are receiving, both ultimately do come from China. One is through the media contact and a Jersey contact through an American supplier who has sent us the 50,000. The other one is through an existing contact that we use for I think it is blood and drug testing, which is a British supplier but they are using their own Chinese producer of the kits. Therefore, the ultimate source of the kits is a known supplier, but we are also evaluating those on a sample basis essentially as we speak. We will know the outcomes of that testing, I am informed at this stage, some time this week.

3.9.5 Deputy I. Gardiner:

We can see now different exit strategies adopted by different countries. I understand that we need first to get our numbers right. Would the Chief Minister indicate what measures are being considered in the short and medium term plans for Jersey's exit strategy when we will have these numbers?

Senator J.A.N. Le Fondré:

The exit strategy has not yet been discussed at the Council of Ministers but there are discussions starting to take place, if that makes sense. As I said, the expectation is that that will be finalised by the end of April and then we will put all the details together on that. In the short term - and in my terminology the short term is the next week or so in our present scenario that we are going through - there will not be any changes. I also made the point that in certain instances, without identifying the jurisdictions, where certain jurisdictions are looking at release out of lockdown they are possibly moving to where we are. For example, it might allow window cleaners to go back because they can still socially distance. We have never stopped window cleaners from operating because the social distancing could be applied. So one needs to be quite careful as to what jurisdictions mean when they are talking about coming out of lockdown. We have never gone into complete lockdown, I emphasise "as yet", because it always depends on the medical advice and everything we do is based on the medical advice.

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

The Chief Minister has mentioned the exit strategy a couple of times in his responses so far. Does he anticipate further waves of the virus in Jersey over the next 12 to 18 months as we await a vaccine? Therefore, does he anticipate the stay at home order to be implemented on a rolling basis over this time?

Senator J.A.N. Le Fondré:

I think that is too early to comment on because the suggestion around the recurring waves as I have understood it, and my understanding on this is not perfect - as I said, we are advised by the medical professionals - is where there has been a suspicion of a second wave, it has come from countries that have effectively tried to lock down completely and prevent the spread of the virus through their society and then when a lockdown has been eased, particularly from people coming back into the country, that has caused new infections. What we have said is that we are trying to slow the speed of the transmission of the virus through the community so as not to overwhelm our health services, but that is not to stop that spread. To date, that advice remains the same and, therefore, we have to be quite careful.

[11:15]

I think we may be looking at different jurisdictions having followed slightly different strategies.

3.9.7 Deputy J.H. Perchard:

Does the Chief Minister anticipate that the stay at home order will need to be implemented again, even if just for particular groups of people, over the next 12 to 18 months?

Senator J.A.N. Le Fondré:

I reiterate the point that I think we are in too early a state to say. As I have always said, the medical advice on this updates frequently. When we have come out through the exit strategy and we are in September, October time, if the medical advice then came that we do need to do greater social distancing or some form of stay at home, if that is the medical advice of the day, then I rather assume that Ministers at that point in time would go with that medical advice. At the moment I need to focus on, and as Ministers and as politicians we all need to focus on, what the medical advice is going to be basically for between now and, I would say, September and how we can ease the stay at home policy and the social distancing. The exit strategy will identify the measures that we need to take into account before that easing commences.

3.9.8 Deputy G.P. Southern:

The Minister has made much of the testing regime and indicated what we will derive from that. What role, if any, does contact tracing play in his determination to get back to normal?

Senator J.A.N. Le Fondré:

Contact tracing is part of the strategy and at the last meeting - I was trying to remember whether it was Competent Authorities or Council of Ministers, I think it was the Competent Authorities - members received a briefing on the various parts of the overall strategy that is being pursued and the contact tracing team is being doubled in its capacity so that we can put greater resource into that. We are also looking at whether there can be an automation of more tracing. That has a whole range of issues attached to it. Once we identify some of those issues they will come back to Ministers and then we will be briefing Members on them should we consider that to be the right way to go.

3.9.9 Deputy G.P. Southern:

Doubling of the team means what in terms of contact made or established?

Senator J.A.N. Le Fondré:

We are increasing the team from 24 to 48 people.

Deputy G.P. Southern:

What would be the result of that?

Senator J.A.N. Le Fondré:

What that means is that as hopefully the testing regime increases, we can then apply greater rigour or even more greater rigour, because there has been quite a lot of contact tracing going on, to the whole contact tracing process.

3.9.10 Deputy R.J. Ward:

I note the quality of the questions that have been asked by States Members. Therefore, I would like to ask the Chief Minister would he commit to including and being absolutely transparent with States Members, and indeed the public of Jersey, as we plan for coming out of lockdown? We are reliant on people taking the actions that they are asked to now and we will be just as reliant on people following instructions that they must be confident in.

Senator J.A.N. Le Fondré:

I would also emphasise I am not aware that I have not been transparent or that Ministers have not been transparent to date. We have tried to give the best information we receive to members of the public at the right time and in the appropriate manner. But the Deputy is right in that once that exit strategy has been, firstly, agreed but, secondly, when we need to come round to starting to implement it, the public will need to understand how that is going to work, because that is the way we make it most effective.

The Bailiff:

Before we move on to question 10, we are just over the halfway point but we have only approximately a quarter of the time allocated available to us to get through it. In part, that is as a result of a large number of people, very understandably, wishing to ask questions. In part, it is a result of the length of the answers, which, as I say, normally should be one minute and 30 seconds. If I could ask Members to bear that in mind. I will, within my discretion as Presiding Officer, be allowing an additional 10 minutes to the normal time to allow for injury time, as it were, because of the technical difficulties that we have had, but in any event it may be necessary to disallow supplementaries if we cannot pick up the pace a little bit.

3.10 Deputy C.S. Alves of St. Helier of the Minister for Economic Development, Tourism, Sport and Culture regarding the support available to non-States-owned utilities during the Coronavirus crisis: (OQ.110/2020)

What support, if any, is being given to the non-States-owned utilities to ensure that services are maintained during the coronavirus crisis?

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

I presume the Deputy is referring to Jersey Gas in this context and I can confirm that we have been in regular contact with Jersey Gas since they raised the concerns in early April. A positive dialogue is ongoing and officers, as I have said, are in regular contact and working very closely to discuss the financial challenges that they are facing as a result of the COVID emergency. We are very conscious that Islanders' jobs could be at risk. We are currently awaiting financial information from Jersey Gas and its parent company in the Isle of Man so that we can properly assess the level of assistance that can be given or they might require. We want to make sure we find the most appropriate form for that. Can I just finish by saying that we recognise that Jersey Gas is a critical infrastructure provider to the Island and is requesting assistance either through the payroll funding scheme or something

equivalent, perhaps under the loan guarantee or the special recovery fund. However, it is important we complete the relevant due diligence.

3.10.1 Deputy C.S. Alves:

Does the Minister accept that its ownership structure means a severe disadvantage when compared to other utilities whose resilience is strengthened by the fact that they are public owned?

Senator L.J. Farnham:

Not necessarily, and that is why we are carrying out the in-depth due diligence. I think the nature of their business and the strength of their business lies within the market that they are servicing. They are quite different in many ways to the supply of electricity or other utilities and we have seen changes in behaviour over the recent years with a swing towards electricity. Outside of the COVID-19 pandemic and the challenges that presents, Jersey Gas is also facing stiff competition in the energy sector.

3.10.2 Deputy R.J. Ward:

Given that the Minister referred to Jersey Gas as the vital infrastructure service that it is, does not the private ownership model of that leave the Island vulnerable to times of crisis like this?

Senator L.J. Farnham:

That is what we are going to find out with the financial due diligence that we are carrying out now. Having said that, I want to stress that Jersey Gas have always been a strong and stable company, providing a very good service to the Island.

3.10.3 Deputy R.J. Ward:

There are many companies that have been strong and stable for the Island but this has hit them and this is another example of that. Would the Minister commit to looking very seriously at the ownership of Jersey Gas with it being such a vital infrastructure for the Island?

Senator L.J. Farnham:

Yes, I would. Those conversations are being had now as part of the overall discussions we are having with Jersey Gas and its parent company.

3.10.4 Deputy G.P. Southern:

Does the Minister agree that there are 2 levels, if you like, one long term and one short term, that need addressing? One is the response to the 50 per cent drop in its sales of gas because of the reduction in holidaymakers and hotels and also one longer term because when we are over this crisis then there is a long-term infrastructure need in this particular area. Does he agree?

Senator L.J. Farnham:

Yes, I do very much agree with the Deputy and that is why it is important that the discussions we are having now provide a solution that covers not just the short term but ensures that Jersey Gas is able to sustain itself into the longer term as well.

3.10.5 Deputy K.F. Morel:

Does the Minister agree that it is part of Jersey's strategic energy plan - I am not sure that is the correct wording - to move away from gas as an energy supply in the Island?

Senator L.J. Farnham:

I am not sure that I do. I am not sure that that has been agreed. As I said previously, Jersey Gas does currently fulfil and provide some essential infrastructure, but of course I think that is a different debate for another time under our environmental aspirations.

3.11 Senator K.L. Moore of the Minister for Economic Development, Tourism, Sport and Culture regarding the operation of the business support scheme during the Coronavirus crisis: (OQ.97/2020)

Will the Minister consider revising the business support schemes as time progresses during the coronavirus crisis to ensure the needs of local businesses are met?

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

The Council of Ministers recognise that this is a fast moving situation and, as Members will have seen, we have evolved the levels of business support from what was initially announced. The aim from the outset has been to protect as many Islanders' jobs as possible and to help Jersey businesses survive the challenges that the COVID-19 pandemic is providing. We will, of course, monitor the support measures put in place and will be taking feedback from businesses and other stakeholders in the days, weeks and months ahead and we will work closely to ensure that we make any further changes as necessary.

3.11.1 Senator K.L. Moore:

Given that only 25 per cent has been taken up of phase 1 of the payroll support scheme, notwithstanding that phase 2 is, of course, much anticipated by businesses in the Island, is the Minister looking to other ideas that have been implemented in other countries, such as tailored packages for small businesses and large businesses that will better suit their needs?

Senator L.J. Farnham:

The level of all the measures currently put in place provide significant fiscal support for businesses of all sizes and we are especially keen to help the small to medium sized enterprises. But as we move into this and we start to work towards the recovery stages, which is what we have been looking at now, we need to be as politically agile as we possibly can. We will consider all or any measures that are going to help our businesses and especially the jobs and livelihoods they provide to get through this pandemic. So the message to Islanders and to businesses is that the Government will be as agile as possible as we learn day by day of the increased challenges that are being put upon businesses and will look to act accordingly.

[11:30]

3.11.2 Deputy I. Gardiner:

Would the Minister advise if he is considering to introduce a furlough status or similar in the Jersey employment law to support businesses?

Senator L.J. Farnham:

No, there are no plans to introduce a furlough type situation as they have done in the U.K. Having said that, I would say that our phase 2 scheme is better than furlough. It is far more flexible for employers and employees. I can say that following a week of consideration and meetings over the weekend, culminating in the Council of Ministers meeting last night, the Council of Ministers have agreed in principle to make some refinements to the phase 2 scheme that will lead to, I believe, even more jobs being protected during the period. We are just waiting for the final details of that to be put together and signed off by the Minister for Treasury and Resources and hope to make an announcement soon.

The Bailiff:

I am sorry, I have reached the point now, I am afraid, where I cannot allow any supplementaries to the questions. We have a number of people still to ask on this and at least another 5 or 6 questions to go and we simply will run out of time if people ask supplementaries.

3.11.3 Deputy K.F. Morel:

With regard to developing and refining business support packages, and also with regard to the economic recovery process and the strategy that the Minister will surely want to develop, will the Minister commit to engaging with business groups and businesses themselves, as well as think tanks and other interested bodies, in order to ensure that the packages he offers and the strategies he offers are the best that they can possibly be?

Senator L.J. Farnham:

I will absolutely commit to continue to doing that as best I can. I can also undertake to work closely with colleagues, Ministers, Assistant Ministers and indeed all States Members. I think it is important we work closely together and share information as much as we possibly can. I cannot stress enough the importance of listening to the daily feedback from businesses and Islanders so we can learn from it and provide the appropriate levels of support.

3.11.4 Senator S.C. Ferguson:

Has the Minister thought of taking steps like Guernsey where for the first 12 months there are going to be interest only loans for small businesses and they are also providing an initial grant as well to get the small businesses back going again? Has the Minister not thought of this?

Senator L.J. Farnham:

We have thought of very many ideas and possible solutions for additional support and that is part of the ongoing economic recovery programme that we are looking at. I undertake to keep Members updated of that as we develop the ideas.

3.11.5 Deputy J.M. Maçon:

With regards to business support packages, we have seen places such as Denmark, for example, banning companies that are registered in tax havens from accessing the funds. Has the Minister considered putting similar strings on in Jersey where, for example, companies that do not pay any tax here will not be prioritised in receiving Government support and, if not, why not?

Senator L.J. Farnham:

We have not considered that as far as I am aware, unless something has been discussed in the Treasury but I am not aware it has. But I want to also emphasise that our aim here is to help protect jobs. I think that answers the question.

3.11.6 Deputy R.J. Ward:

Would the Minister envisage any change to the issuing of business licences at the end of this situation?

Senator L.J. Farnham:

I think it is difficult to rule anything in or out at the moment. We have to be open minded and we also have to look forward through these really severe difficulties and challenges we have now to embrace and take advantage of any opportunities we do have to improve our systems.

3.11.7 Deputy J.H. Perchard:

In answer to my Written Question 142 regarding the business support schemes, it stated that an external group was established to assess the impact of the package of measures that was developed.

Is this group still constituted, who leads it and how can businesses actively engage with it in order for their feedback to get back to the Minister on the visions needed to respond to business needs?

Senator L.J. Farnham:

I think events have overtaken that and we have as recently as yesterday, in fact, had preliminary discussions on economic recovery and the propositions do suggest a new political structure to address the situation. Again, I undertake to share with Members further details of that once it has gone to the next stage, but it is sort of a hybrid of what we have had and it is aimed at making sure that we have the appropriate political officer and, if necessary, outside individual expert advice to help us rebuild our economy.

3.11.8 Senator K.L. Moore:

What reassurance can the Minister give to businesses who are concerned about their future in the Island?

Senator L.J. Farnham:

I think over and above the support we have put in place now to help businesses deal with the challenges in the height of the crisis, we are developing support packages to take businesses through the immediate recovery phase and, as I alluded to in Deputy Perchard's question, we are putting in place a strong framework to deal with the economic planning for our longer term future. I would like again to stress to all Members and businesses and employees that as our economy recovers we will need to work very closely together to replenish our reserves in the coming years and we will work with businesses to make sure this is done in a sensible way and in a way that is fair and affordable for us all.

3.12 Deputy R.J. Ward of the Minister for Economic Development, Tourism, Sport and Culture regarding the Government bodies involved in planning the response to the economic impact of the Covid-19 pandemic on Jersey: (OQ.94/2020)

Which Government bodies and positions are involved in planning the response to the economic impact in Jersey of the COVID-19 pandemic and who is engaged at a political level in this planning?

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

Planning for the Island's economic recovery is the core responsibility of the Economy, Financial Services and Digital teams, working with colleagues from the Treasury and Customer and Local Services, regarding the affordability and delivery of any economic support measures. Ultimately, the Council of Ministers have overall responsibility and have approved all the economic support measures put in place so far. The economic recovery plan, in whatever form it takes, will also be subject to the Council of Ministers' approval. As I alluded to in previous answers, consideration is being given to forming an appropriate political oversight group and structure to sit below that to steer the recovery planning process.

3.12.1 Deputy R.J. Ward:

What does the Minister see as the political drivers? Where does he see his political drivers coming from? Does he have a group in mind, because that will be very significant in the way that we plan? This is a political decision.

Senator L.J. Farnham:

I think the drivers are alluded to when we understand the advice we have received from the Fiscal Policy Panel and we understand our revised forecasts, we understand the O.E.C.D. (Organisation for Economic Co-operation and Development) analysis of the immediate impact or the immediate hits

to G.D.P. (gross domestic product). From that information, we discuss and agree the priority considerations for Government and ultimately the States Assembly. Those are the key drivers in building a new economy. I also agree that any structure where we put groups together has to be very representative of the Island and contain the local and global expertise that we are going to need to rely upon to rebuild the economy.

3.13 Senator K.L. Moore of the Minister for Health and Social Services regarding an audit of personal protective equipment (P.P.E.): (OQ.98/2020)

Has any audit of personal protective equipment been carried out within the last 6 months and, if so, what were the results?

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

Having made enquiries within my Department, I am not aware of any audit of P.P.E. equipment being carried out in the last 6 months.

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

Can I ask the Minister if an audit had been done, do you think it would have identified a shortage of disposable fluid resistant gowns?

The Deputy of St. Ouen:

An audit not having been done, we cannot know the answer to the question asked by the Deputy and it depends on the timescale that he is looking at. Obviously, before COVID-19 was identified we would probably have held the stock we normally hold. Once the pandemic is identified there is a greater need for all sorts of P.P.E. stock.

3.13.2 Senator K.L. Moore:

Forgive me for not giving the precise date but the Minister did, at a press conference, propose that he would conduct an audit of P.P.E. at this time so that he could assure himself and reassure the public that adequate stocks of P.P.E. were available and the appropriate orders could be placed. Why has the Minister not done this?

The Deputy of St. Ouen:

This is happening, as I hope Members will know. The new procedures that have been put in place are there now to meet the needs of all Island organisations who have a need for P.P.E. and that is being co-ordinated centrally and we have a good visibility on what stock levels we have on a daily basis, what orders are coming in and what orders are expected.

3.14 Deputy I. Gardiner of the Minister for Health and Social Services regarding the strategy to 'control the curve' of the prevalence of Covid-19 in Jersey: (OQ.96/2020)

Will the Minister explain how there can be confidence that the Island is controlling the curve of the spread of COVID-19, given that testing capability in the Island is limited and there is insufficient data to establish how much community transmission there has been?

[11:45]

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

I acknowledge that just at the present time our testing capability is limited. A number of data sources are being regularly monitored to understand the infection rate across the Island. Positive test results are one of them and our statistics have always assumed that there are more cases in the community than the numbers proven by positive testing. We are also working on the development of an

Island-wide testing programme that will expand testing and provide additional data in the understanding of a range of issues, including the rates of community transmission. That has been the subject of earlier questioning this morning, particularly of the Chief Minister. We have spoken about the establishment of a rolling antibody survey of about 2,000 households. That will provide regular information about the prevalence of the virus in the population in a robust way. It will inform statistics and understanding about how we are controlling the curve and, as the Chief Minister has said, the first survey may even be completed during next week. It is being worked on very rapidly. Aside from that, we also understand our trajectory by monitoring the number of COVID-19 hospital patients and COVID-19-related deaths. That data is now published on the website and they are a reflection of overall infection across the community. All those measures assist us in understanding our trajectory and the influence of the curve.

3.14.1 Deputy I. Gardiner:

It has been indicated that a majority of us need to catch COVID-19 at some point. Would the Minister advise what future measures are being considered to ensure that we maintain an acceptable level of COVID infection going through the community and not overwhelming our health services?

The Deputy of St. Ouen:

We do not talk about an acceptable level of infection. We know infection will be an outcome so, of course, the policy has been to control and delay and to shield so that we do not climb that curve too rapidly and have our hospital services overwhelmed. There is no strategy to infect members of the community. I think that is the best I can state at the moment.

The Bailiff:

Are you able to ask your question, Deputy Tadier?

Deputy M. Tadier:

No, Sir. Can we swap questions, if that is possible? I do not want to delay anyone when I am having trouble getting the screen up.

The Bailiff:

I will have to put you to the end and if we run out of time we run out of time.

Deputy M. Tadier:

I am sorry for the inconvenience.

3.15 Deputy G.P. Southern of the Minister for Health and Social Services regarding the vacancy rate amongst qualified nursing staff, health assistance and other health professionals: (OQ.102/2020)

Will the Minister inform Members of the current vacancy rates among qualified nursing staff, health assistants and other health professionals, and state whether agency nurses will need to be recruited in order to ensure that safety limits are not breached, such as staff to bed ratios, and will he further state what the rate of absence currently is for hospital health staff?

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

Yes, I have figures. Ideally I would have thought that this comes over better in a written question but I can try and give these figures orally. Currently vacancies rates across Health and Community Services are as follows: registered nurses 6.5 per cent vacancy rate; healthcare assistants 4.6 per cent vacancy rate; allied health professionals 10.4 per cent vacancy rate. Absence rates fluctuate on a daily basis. The figure for yesterday, has an overall absence of 9.5 per cent across the Department. That is a total of 288 staff. That figure of 288 is broken down as follows: 134 unavailable due to

COVID-19, 66 on sickness absence, 88 on leave. Your question also asked about staff to bed ratios, which we prefer to say staff to patient ratios, and that is something that is closely monitored on a shift by shift basis through the use of an e-roster. So outside of a pandemic situation we would normally have a skill base of 65 per cent registered nurses to 35 per cent healthcare assistants but at this time we have to recognise that we only have the registered nurses that are in Jersey. The Island's Chief Nurse has been working with others on plans for how we would manage the nursing workforce in the event of a significant peak in demand and has put in place a number of measures, for example, the return to the front line of a number of registered nurses who have come out of retirement or having left the profession. Secondly, an essential list of all nurses with critical care experience who can be called in to support the intensive care team. Thirdly, training and supporting staff who normally work in the theatre environment to become part of an extended intensive care team. Lastly, employment of third year student nurses into the workforce. Thank you, that concludes my answer.

The Bailiff:

Final supplementary then, Deputy Southern?

Deputy G.P. Southern:

Hang on, final supplementary, are you sure? I just started this question.

The Bailiff:

Yes, I know but no one else has indicated any question, I am not allowing supplementaries ...

3.15.1 Deputy G.P. Southern:

All right, so can the Minister assure us that he can spread this ... nurses and other professionals, health carers, through an extra 180 beds possibly on the Island in the new Nightingale ward and still keep safety standards up to scratch and not have his entire workforce exhausted after the next couple of weeks?

The Deputy of St. Ouen:

Deputy, I want to pay tribute to the resilience of our staff, to their willingness to step up to a hugely challenging situation. We do care for our staff. We are very mindful of their needs, their mental health and their levels of capacity. There is very detailed planning about how we will do that. It is not the back of an envelope job. All parts of the service have been involved and if we need to stretch we will stretch. I commend the staff for their ability to adapt to these changing circumstances and to provide readily and willingly care for Islanders.

Deputy G.P. Southern:

Commending the staff is no answer to that question.

The Bailiff:

That was the final supplementary. Could I just mention someone has indicated they want a point of clarification? That is obviously a foreign concept in question time. There can be a question but there is no opportunity as there is in speeches for clarification to be given. The final question on the list is to be asked by Deputy Morel of the Chief Minister.

3.16 Deputy K.F. Morel of the Chief Minister regarding the tender process for a 'One Gove New Office Developer Partner': (OQ.100/2020)

Will the Chief Minister advise the Assembly whether the tender process for a "One Gov New Office Developer Partner" was completed this month, as planned, and if so, how many firms submitted a tender and were any of them Jersey based?

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

The commercial process to source a development partner to support the development of a new One Gov office building is still ongoing. A contract notice inviting submissions from interested organisations was published via the Government's e-tendering portal in February 2020 along with the procurement documentation and timelines. The first stage submissions responding to this notice were received by the Government on 14th April 2020 as scheduled and these submissions are therefore presently being evaluated. This matter is the subject of ongoing live procurement in line with the guidance contained in the Public Finances manual and the Government will not be commenting on commercially sensitive matters relating to numbers of organisations tendering.

3.16.1 Deputy K.F. Morel:

Final supplementary? The project timetable states that this month, as well as the tender process being finished on 14th April, that the site development agreement will be completed. Has it been completed and, if so, how is that possible given that a site has yet to be chosen?

Senator J.A.N. Le Fondré:

I cannot inform the Deputy on the technical detail on that. I have been somewhat focused more on the whole coronavirus matters that have might have escaped the Deputy's attention that we have been dealing with. But I will come back and get that piece of information for him.²

Deputy K.F. Morel:

If I may, this project is continuing so we have a right to ask questions about it.

The Bailiff:

That does, in fact, I am afraid, even with the allowance of 10 minutes for injury time, bring the time allowed for questions to an end. We now move on to questions without notice.

4. Questions to Ministers without notice - The Minister for the Environment:

4.1 The Connétable of St. Helier:

I think we are to infer from the Minister for Infrastructure's reply to my question earlier in this session that he believes the Island's arteries, for which we read the main roads, should be kept clear so they can be clogged up once more with congestion and polluting traffic. Is that the Minister for the Environment's view or would he like us to be putting in place the kind of radical measures that we are seeing all across the world in places like Brighton, Brussels, Milan and so on?

Deputy J.H. Young (The Minister for the Environment):

² Following the meeting, the Chief Minister provided the following information in relation to OQ.100/2020:

The Development Agreement will be prepared by the Government of Jersey and will govern the relationship between the Government and the Development Partner. The Agreement will set out the obligations of the Development Partner in relation to the delivery of the new building, its design and specification, the target programme and agreed cost. The Agreement will also set out provisions for how various issues could be managed, including performance concerns, dispute resolution, retention provisions and contract variation.

The project schedule allows for the preparation of the draft Site Development Agreement between February and April 2020.

The draft Site Development Agreement will be included within the Invitation to Submit Detailed Solutions, which will be issued to shortlisted bidders in late May 2020.

I think the short answer is that none of us know what the new normal is going to be like but I am quite clear, reading commentators just about everywhere, we can expect to see a new normal. I think part of that will be the change in the way we move around and transport policy and so on. I think that will have to be a matter that will have to be dealt with in terms of our policy as we go forward, particularly when we are able to pick up those policy initiatives, particularly carbon neutral strategy and the Island Plan. The time is not now but those are feelings now.

4.1.1 The Connétable of St. Helier:

The Minister says the time is not now and yet how does he respond to the fact that numerous communities believe that now is the time to help people have more active travel, to pursue more home working and generally to take advantage of the fact the streets are now pretty empty to put it in place measures that will change the way we move about when we come out of lockdown?

Deputy J.H. Young:

I think the Constable makes an excellent point. I think myself that the drive will come from the community itself. I think, all of us have seen the disadvantages and advantages from working from home and there are very considerable gains for people and for businesses and I think we will see adaptations. The question is who takes the lead on that. Myself, I think it is very difficult for Government to take a lead at the moment when we are all grappling with a crisis but we are going to have to start to plan for not just the exit but the recovery. I think that is where we will need to get our policy initiatives organised. When I say “now”, I mean not now this minute when survival of our community is the number 1 issue.

4.2 Senator K.L. Moore:

What consideration has the Minister given to request the funds from the Climate Emergency Fund?

Deputy J.H. Young:

At the moment, none.

4.2.1 Senator K.L. Moore:

Could I ask the Minister if he would do so, please? It is ...

Deputy J.H. Young:

Well, at the moment the situation I face is obviously business as usual particularly in the area of environmental policy has been very significantly affected as a result with the emergency.

[12:00]

Where effectively staff have had to be, the leading staff have been reallocated to work on our health planning, on the sort of work we are doing with the Minister for Health and Social Services and his team and, indeed, on contact tracing and so on. So I am afraid what has happened is those resources are, effectively, not available to us at the moment to proceed. The other thing that I think has to be recognised, I think people’s minds are not on major policy issues and we are going to have to clearly look at our financial priorities for this year. I think that is where our immediate intention will be going. My mind is not closed to it but I do not see we can progress it as a number one priority at the moment.

4.3 The Deputy of St. Martin:

As well as being the Minister for the Environment, the Minister is also the Minister for Regulation, does he agree with me that there is going to have to be a huge reduction in red tape and regulation if we are going to help get the economy reinvigorated again?

Deputy J.H. Young:

I would not personally throw our regulatory benefits away. I think what we need to do is there are areas where we can benefit from revising those and revising those with relaxation. So I do agree. But I certainly think that maintenance of our environmental standards generally has really put the Island in a good place in the past so we should be very careful about abandoning that at the present time. So a selective approach where it is justifiable. I think the main issue for me about our recovery is about getting our policy base right. Of course, what regulation does it seeks to implement policy and it is trying to make sure that at the right time we can regenerate our policy work. At the moment I fear business as usual has very much gone onto the back burner but I am doing my best to make sure it does not stay that way.

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

Is the Minister in a position to let Members have a revised timeline for the new Island Plan? If not, would he give it some thought?

Deputy J.H. Young:

Certainly I think the Connétable has put his finger on a very significant problem. The officers have looked at that programme in detail and assessed what is possible now under our changed situation. I have a briefing organised for this Thursday with the Council of Ministers where we are going to go through that in detail because there is no question the Island Plan is ... the timetable that we originally proposed is now unachievable. What I would like to do, if I can, is promise the Connétable I will come forward with those details once I have had the opportunity to discuss this with the Council of Ministers, because I believe it is crucial and it affects all my colleagues and the whole Island.

4.4.1 The Connétable of St. Brelade:

Would the Minister agree to let Members know of the timeline as soon as possible?

Deputy J.H. Young:

Yes, absolutely, I give that commitment.

4.5 Deputy R.J. Ward:

The Minister is right, we do not know the new normal but is this not a chance to create that new normal in a more sustainable and positive form? Is it not a chance as Minister for the Environment that he should not miss?

Deputy J.H. Young:

Yes, I absolutely agree but I absolutely believe that these fundamental changes, they have to be ... I do not think it is a question of Big Brother, as a States, can lay this down for people. The challenge is to work with the community and pick up on the initiatives and, if you like, the feelings that people have that they do want to have a different new normal. That, I think, is our challenge and I shall be working with the officers and my colleague Ministers to try and see that we can pick up on that and not be, you know, on the back foot entirely. That is a difficult call to make, but he is absolutely right, there are very significant opportunities to create a new sustainable future and that does not mean not having a decent economy. I think we can have both.

4.5.1 Deputy R.J. Ward:

Would the Minister therefore agree that the model of constant and unsustainable growth that does so much environmental damage has failed and that we need to redefine economic success as we emerge from this pandemic?

Deputy J.H. Young:

That is my view and I do not think I am alone in that. If you look internationally all over the world experts are realising that and I think that is my own position. The relentless drive for financial growth

on its own I think has led to unsustainable practices and damaging effects on our community, our society and our economy. There are definitely limits to that and we have got the opportunity to reshape that into a better, new normal that is good for people but also respects our world and our planet.

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

Is the Minister now seeing an opportunity to align the Island Plan with the census that is planned for 2021? There were concerns raised earlier in the year about the overlap of the census and the Island Plan. Given that when we get out of this situation the Island will be a very different place, there is an opportunity to align these 2 very critical parts of the Island's future.

Deputy J.H. Young:

I think the Deputy is absolutely right and it is in the detailed planning that the officers have done and they have looked at this in very great detail. There is the opportunity there and that is one of the matters I will be discussing with the Council of Ministers of a new timetable. But the key thing, I think, we have to address in the Island Plan, a decent Island Plan has to have the robust support, involvement and buy-in of the community. I think the problem we have is it is extremely difficult, if not impossible, to try and sort the process properly, because the public mind is not on that yet. They are not there and we are all facing the day to day problems of this awful situation we are all in. That will change and that is what we need to do but, yes, the Deputy is right.

4.7 Deputy K.F. Morel:

Following on from the Minister for the Environment's response to Deputy Ward, in an Island of very limited size and very limited resources, would the Minister describe the view that he was espousing as being one where the Island should seek to attain an economic system that delivers prosperity rather than growth?

Deputy J.H. Young:

I would like to give some thought to that question. I am not really entirely sure the difference that the Minister (sic) has there. He is more expert in the terms that he means but if he means a more sustainable economy, for example, we have got opportunities in our fishing and agriculture industries to rely much more on serving our own Island and our own community as an example and avoiding unsustainable transport, which just uses resources and pollutes the planet. Those sort of things, yes, I would expect to see there but I will come back, if I may, with a fuller answer later on.

4.7.1 Deputy K.F. Morel:

Prosperity means an opportunity for individuals, people, families to prosper rather than just seek financial growth and does he intend that the Island Plan should also be aligned to delivering prosperity rather than growth?

Deputy J.H. Young:

I like the Deputy's ideas very much. I think the one thing that we have ... an Island Plan that is successful can only be so if it has the full support and buy-in of the community and that is why we have all these extensive public engagement processes and we go to great lengths to make sure the policies are in line with where our community is. What I am expecting to see is our community's attitudes and views, and as a result of the experiences that we are all having, are going to be changed and they are going to tell us things, that they want to see things done differently. There will be opportunities in there and there will be some things we stop doing. I think that is where the Island Plan is one of our major tools to help us in our recovery programme.

4.8 The Connétable of St. Brelade:

Given that P.106, the Public Health and Safety (Rented Dwellings) Regulations, is still lodged for 8th September this year, would the Minister agree that in the light of significant sacrifices landlords are being obliged to make at present it would be reasonable to defer the proposition for 12 months?

Deputy J.H. Young:

Certainly this is a matter my office is giving a great deal of thought to. I think it is absolutely clear that the original details of the mechanics of the scheme need to be revised. Nonetheless, the way I see it at the moment, the principles of us having a decent register of what properties are rented is an important one and I think it will be necessary and helpful for the Island Plan and everything else to have that register. What it is at the moment, I have asked my officers to review that. Certainly, it is quite clear in my mind that there should be no imposition of charges of registration, but that is only my thoughts on it at the moment. Nonetheless, the principle of registration ... because we have a law that says you have to meet decent standards, that is the current law, all we are saying is that we need to register, but that is a matter that I will give further thought. At the moment we have put September but before that the date the intentions will be clearer.

The Bailiff:

Very well, that brings the period of time for this Minister to an end. We now turn to the questions for the Minister for Health and Social Services.

5. Questions for Ministers without notice - the Minister for Health and Social Services

5.1 Deputy M. Tadier:

Let us see if I can have more luck this time. Has the Care Commission undertaken any visits to the Island's care homes since they were locked down in March? If not, why not? What steps, if any, are being taken to ensure general safeguarding in homes given the absence of third parties being able to visit the homes?

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

I do not believe that the Care Commission has visited homes. I think this has been the subject of an inquiry or a written question previously which has been ... this answer has been given. The reason they have not visited homes is that homes are shut to visitors and only essential staff should be there to minimise risk for residents. Of course they are still in touch with care home managers and our care homes in the Island will be very conscious of the standards to which they must adhere.

5.1.1 Deputy M. Tadier:

It seems to me that at these times in particular when most people cannot access the homes for understandable reasons that it would be even more important for the Care Commission to be able to visit the homes. So the supplementary question is: are the Care Commission allowed to go into the homes during this period of lockdown and if they are why have they not?

The Deputy of St. Ouen:

I should make clear to the Deputy that the Care Commission does not fall under the remit of the Minister for Health and Social Services, and I am not in a position to direct them. They are also an independent body but any political supervision of them is from the Chief Minister. Yes, I am sure if they were alerted to a concern and the only way they could address it was to come into one of the care homes then I am sure the overriding need would be to address that concern, that fear about safety or whatever may be the concern. I would urge the Deputy to look at the website of the Care Commission, which I understand explains their current position.

5.2 Deputy M.R. Higgins:

I apologise, earlier I lost all communications with the Assembly. I do not know if the question I had originally posed has been discussed but I am going to ask it again. Will the Minister explain the rationale for currently having more ventilators than continuous path airway breathing equipment given that ventilators are more invasive and more staff are needed to monitor and operate them and thus potentially limiting treatment options?

The Deputy of St. Ouen:

Yes, I was sorry to miss the Deputy's question but I can help now. In his question we have interpreted the statement "continuous path airways breathing" as continuous positive airways pressure breathing, which is often abbreviated to C.P.A.P.

Deputy M.R. Higgins:

That is correct.

[12:15]

The Deputy of St. Ouen:

So patients requiring hospitalisation who are experiencing difficulty in breathing sometimes progress to having respiratory failure which can necessitate the need for assisted ventilation or full mechanical ventilation, often called invasive ventilation. The level of a patient's respiratory failure will determine whether they require full ventilation or non-invasive ventilation and that decision about the associated staffing is based on clinical need in order to maintain patient safety and deliver the optimum care. All of Jersey's ventilators have different modes of ventilation and are multifunctional providing various treatment options. For example, an invasive ventilator can be set to deliver non-invasive ventilation. So we know that in respect of COVID-19 some invasive ventilation will be required but in other cases non-invasive ventilation may be beneficial. So that is why we are working to get in further invasive ventilators but also C.P.A.P. devices. Both of those are on order and expected.

5.2.1 Deputy M.R. Higgins:

Could the Minister again tell the public how many ventilators we have got and C.P.A.P. machines, how many are on order and when he expects them? Would he agree that they are a limiting factor when it comes to the most critical cases that we will have during this pandemic?

The Deputy of St. Ouen:

We have 24 ventilators now and 15 are on order. As to the C.P.A.P. machines, we have 9 at present and 20 are on order. Remember also my comment that the invasive ventilators can be used non-invasively also so there is good flexibility. The real constraint around this equipment is the staffing levels. So with those orders fulfilled that is about the maximum that we could staff in our critical care unit. It requires detailed training and a constant monitoring of patients on these machines.

The Bailiff:

I have 8 people wishing to ask questions and only 10 minutes left in which to ask them so I will not be allowing supplementaries.

5.3 Senator S.C. Ferguson:

What a spoilsport. We have had numerous offers of help from 2(1)(e)s among others, why was a proper system to deal with these not set up sooner? Many of our 2(1)(e)s have experience in relevant industries and they are not even being listened to. Why has it been so disorganised?

The Deputy of St. Ouen:

Senator, we are extremely grateful to everybody who is approaching us with proposals and ideas and suggestions, all of them are investigated. It may take some time because there are many that are coming through. As time has gone on we have been able to consolidate the team together and that work is being looked at very carefully to ensure that what is offered is valid, meets our needs, meets British standards and the like.

Senator S.C. Ferguson:

Rubbish.

5.4 Deputy G.P. Southern:

I have not started yet, Sarah. How many agency nurses are already being employed in the States to cover a vacancy rate of 6.5 per cent and an absence rate amounting to nearly 300 people, half of which are COVID victims? How many agency workers will need to be employed if we are to change our patient to nurse ratio away from 1:1 in the I.C.U. (intensive care unit), 1.6 normally, routine in hospitals?

The Deputy of St. Ouen:

Deputy, there are 54 agency nurses presently working in H.C.S. which is 8.5 per cent of the registered nurse workforce. Agency nurses are free to come to Jersey if they wish but there is not a great deal of travel and we are not anticipating sourcing further agency nurses from anywhere during this period. The planning around the nurse patient ratios has been using our existing staff, including those agency nurses in the Island and were we under significant pressure you would have to stretch to 1:8 or 1:10 even in the Jersey General Hospital but this is all planned, considered and undertaken with the utmost care.

Deputy G.P. Southern:

Could you let us have those figures on paper, please, that you have been quoting from?³

³ Following the meeting, the Minister for Health and Social Services provided the following information:

Current vacancy rates across HCS amongst:

- (a) Registered Nurses 41.79 (6.5% vacancy rate)
- (b) Health Care Assistants 16.14 (4.6% vacancy rate)
- (c) Allied Health Professionals 25 (10.4% vacancy rate)

There are 54 Agency Nurses working across HCS (8.5% of registered nurse workforce)

Absence rates fluctuate on a daily basis, therefore the figure for 20 April 2020 has an overall absence of 9.5% (288 staff) across HCS, broken down as follows;

| | |
|-----------------------------|-----|
| Unavailable due to COVID-19 | 134 |
| Sickness absence | 66 |
| Unavailable Day Off/AL | 88 |

A breakdown of the 134 'unavailable due to Covid':

| | |
|--|-------------|
| Cat 1 – Self-isolation for 14 days following return to island | 6% |
| Cat 2 – Self-isolation for 14 days following someone you live with returning to the island | 1% |
| Cat 3 – Self-isolation with symptoms (not tested) | 11% |
| Cat 4- Self-isolation due to other members of the household with symptoms | 12% |
| Cat 5 – Confirmed COVID-19 with positive test | 7% |
| Cat 6 – Self-isolation to care for dependent | 13% |
| Cat 7 – unavailable for work (social distancing etc) | 30% |
| Cat 8 - Self-isolation due to contact with infected person | 11% |
| Cat 9 – At home unable to work – but available for alternative work | 7% |
| Not Recorded | 2% |
| | 100% |

5.5 Deputy I. Gardiner:

Following the Minister's previous answer to Deputy Labey regarding P.P.E. for ambulance crews, can the Minister confirm that the ambulance crews who are taking suspected COVID patients to the hospital have the same P.P.E. as the front line critical staff in the hospital. For example, long sleeves, aprons?

The Deputy of St. Ouen:

I believe an assessment is made of the need for P.P.E. or the level of P.P.E. at the time the ambulance is called or meets the patient. In the critical care unit, staff have to be gowned and wear P.P.E. to meet aerosol effusion, because patients may be coughing violently because of treatment they are being offered. It must depend on the state of the patient when they are being transported by ambulance and an assessment will be made. What I do know is that P.P.E. is available to them to meet what the assessment requires.

Deputy G.J. Truscott:

My question was regarding C.P.A.P. devices and I think Deputy Higgins and the Minister covered that.

5.6 Deputy K.G. Pamplin:

This morning the Office for National Statistics said there was almost a 20 year high of deaths recorded in England and Wales, they also noted that other causes of death have increased, suggesting the lockdown may be having an indirect impact on health. Does the Minister agree with me that we now need to be reassuring the Island public that if they have any concerns for their own health that they must contact their G.P., their consultant and, if needed, hospital treatment?

The Deputy of St. Ouen:

I am very grateful to the Deputy for his question because the hospital in all departments, including A. and E. (Accident and Emergency), is very quiet at the moment and it is important if people feel they are ill not to be afraid of coming into hospital. Our hospital is organised that business as usual is carrying on, they need not fear infection, they must come in if their health requires it. I also pay tribute to the G.P.s now working with us, they are moving around the community, they are seeing patients in their homes, they will be addressing health needs as well. G.P.s are also working our urgent treatment centre and providing service to members of the public there. Yes, I want to put the message out, if you are unwell and you need the hospital services or G.P. services do call.

Deputy K.G. Pamplin.

A brief supplementary if I can?

The Bailiff:

I am sorry, Deputy, I am not allowing supplementaries at this point, we are running out of time.

5.7 Deputy R.J. Ward:

My question really was covered, it was just about the day to day running of the hospital given that it is very quiet and I have had communications with people working at the hospital who say there a number of empty beds ...

The Bailiff:

Is there question coming, Deputy?

Deputy R.J. Ward:

The question is: are day to day operations and day surgeries, for example, happening at the hospital before we reach any sort of peak in the pandemic?

The Deputy of St. Ouen:

No, we are only taking urgent procedures, urgent cases, at the moment in preparation for more serious cases coming in with COVID.

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

Further to my email of 8th April, which as yet has gone unanswered, can the Minister please advise if he would agree to temporarily suspend the 7 day wait clause currently imposed upon women seeking an abortion, as this carries the risk that women who present at 10 to 11 weeks of pregnancy may go over the 12 week limit within which safe and legal abortion is available on Island.

The Deputy of St. Ouen:

Yes, Deputy, I am grateful. We have had an email exchange and the gynaecologists have been involved also. I thank the Deputy for drawing our attention to this and her concern. The specific issue the Deputy raises is with the Law Officers or with the legislation team considering what legislation, if any, needs to be amended to ensure that there are these protective measures in place during the COVID emergency.

PUBLIC BUSINESS

6. Reduction of minimum lodging periods

The Bailiff:

That brings the time available for questions to this Minister to an end and brings question time in general to an end. There is nothing under J and K. We then come on to Public Business. As usual when we start Public Business there are a number of items that have been lodged outside of the required periods for lodging and it is a question of whether the Members agree to take those items at the present sitting. Chief Minister, do you wish to make the Proposition for the ministerial items?

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

Yes.

The Bailiff:

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

6.1.1 The Deputy of St. Martin:

I am becoming increasingly uneasy about questioning and lodging periods. I understand that we are sailing in uncharted waters but I worry that the opportunity is being taken by some to make the decisions and bring Propositions without proper time for consideration, consultation, discussion and scrutiny. Two of the Propositions on today's Order Paper only came yesterday, one came out halfway through yesterday afternoon. Lodging periods are there for a reason and it is more usual for us to be asked to shorten them by a few days but this is not shortening lodging periods, this is eliminating them altogether. I accept that sometimes we have to make these extraordinary decisions but I am really getting very concerned about time for scrutiny and wider consultation when some things that are being done clearly have the time available for that. I am not going to vote against today but I just put on record that I am going to be looking much more closely at the importance of some of these Propositions which are coming out under the heading of this virus crisis that we have.

6.1.2 Senator K.L. Moore:

I thank the Deputy of St. Martin for his comments. He is quite right and we do have to, as Members, be very mindful that adequate scrutiny is undertaken at this time. I can reassure the Deputy to an extent that in the most part most Panels have very good relations with their respective Ministers and

Departments have given Scrutiny Panels advance notice in the main of the forthcoming pieces of emergency legislation, which has enabled Panels to prepare comments, to seek the views of stakeholders and to conduct, if somewhat limited, some acceptable scrutiny in the circumstances. If and when it has arisen that more time has been needed, as we have seen with P.41 which is the next item on the Order Paper, more time has been granted to the relevant Panels. I have to also at this time commend the work of the Scrutiny Officers [Committee and Panel Officers] who have been fantastic during this time.

[12:30]

It is often said that the Assembly does not do enough legislative scrutiny and the officers have certainly proven that they are more than capable of conducting very excellent work and assisting their Panels in doing so. I hope that these comments give some reassurance to other Members.

6.1.3 Deputy R.J. Ward:

I just want to point out that when these lodging periods are reduced in this way there needs to be some assurance that the pieces of legislations or changes that come to us are known by all Ministers that they may involve. Increasingly changes are happening that cross ministerial boundaries and cross Scrutiny Panels and it is very difficult to track who knows about them, who does not know about them and the possible implications that have not been thought through because of the lack of scrutiny and because of the speed at which these changes are coming. I would like to also pay the Scrutiny Officers [Committee and Panel Officers]... and say what excellent work they are doing in tracking these changes and getting these messages across Scrutiny Panels that are working more together. I think it is very important we have some assurance from the Chief Minister that all Ministers know of the changes that are happening in these pieces of legislation and other pieces that come to us. I think it is very important that awareness is there. If that has not happened in the past then look back, learn from it and make the change that is necessary.

6.1.4 Deputy K.F. Morel:

As the Chair of a Scrutiny Panel that has just had to undertake very swift scrutiny of some proposed legislation, I just wanted to say that I feel, while appreciating the pressures that Ministers and their officers are under, I do feel that we need to still have a minimum lodging period perhaps of 48 or 72 hours. I would just like to ask the Chair of P.P.C. to go off and to think about bringing in a Standing Order for this emergency period where there is still a minimum lodging period provided, because having less than 24 hours or less than 48 hours really is not sufficient for any meaningful scrutiny to take place.

The Bailiff:

Does any other Member wish to speak on this Proposition? Then I call on the Chief Minister to respond.

6.1.5 Senator J.A.N. Le Fondré:

Can I just thank the people who have spoken for their comments and I do note the concerns expressed. I also welcome the comments from Senator Moore on the liaison work that goes on between Scrutiny and Ministers at this particular difficult time. In relation to Deputy Ward, I am not aware of the circumstances he is referring to. If he wants to speak to me offline that is not a problem. I would certainly be expecting that any Minister who is directly affected by one of the pieces of emergency legislation that has been brought forward would obviously be signing off on it and be consulted with, spoken to ... you know, and the whole issue discussed before it goes anywhere near lodging. I noted the other comments that have been made. On that, I maintain the Proposition.

Deputy L.M.C. Doublet:

May I seek clarification on something, please?

The Bailiff:

Yes.

Deputy L.M.C. Doublet:

Are we voting to reduce the lodging period for all of the Propositions today from P.41 to P.52, I think it is?

The Bailiff:

We are at the moment voting on all Propositions brought by Ministers. All the ministerial items. We will then come on to consider the backbench items after that, Deputy, if that assists you.

Deputy L.M.C. Doublet:

Yes, could you just clarify exactly what the P numbers are for each of those for absolute clarity, please?

The Bailiff:

Well, I will now turn to the Order Paper. The ones that are ministerial will be P.41, P.43, P.45, P.46, P.47, P.48, P.49, P.50, P.51. The others, which comprise Amendments and indeed P.52, Deputy Southern’s Proposition, and Deputy Tadier’s Proposition on web streaming will be taken subsequently.

Senator J.A.N. Le Fondré:

May I just make a correction there? You referred to P.43.

The Bailiff:

Yes, that is Deputy Tadier’s Proposition, that is not a ministerial Proposition.

Senator J.A.N. Le Fondré:

Also P.51, which is Deputy Labey, although he is Chair of P.P.C. (Privileges and Procedures Committee) it is not ministerial.

The Bailiff:

Thank you for that correction, Chief Minister, in both cases that is correct. Very well, as you know we have a voting system which has changed somewhat and in a moment the Greffier will add a vote to the chat channel. If you can just bear with us for a moment. The vote has come through. If Members can see that on the chat, I ask the Greffier to open the voting.

| POUR: 47 | | CONTRE: 0 | | ABSTAIN: 0 |
|---------------------------|--|------------------|--|-------------------|
| Senator I.J. Gorst | | | | |
| Senator L.J. Farnham | | | | |
| Senator S.C. Ferguson | | | | |
| Senator J.A.N. Le Fondré | | | | |
| Senator T.A. Vallois | | | | |
| Senator K.L. Moore | | | | |
| Senator S.W. Pallett | | | | |
| Senator S.Y. Mézec | | | | |
| Connétable of St. Helier | | | | |
| Connétable of St. Clement | | | | |
| Connétable of St. Saviour | | | | |
| Connétable of St. Brelade | | | | |
| Connétable of Grouville | | | | |
| Connétable of St. John | | | | |
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| Connétable of St. Peter | | | | |
| Connétable of St. Mary | | | | |
| Connétable of St. Ouen | | | | |
| Connétable of St. Martin | | | | |
| Deputy J.A. Martin (H) | | | | |
| Deputy G.P. Southern (H) | | | | |
| Deputy of Grouville | | | | |
| Deputy K.C. Lewis (S) | | | | |
| Deputy M. Tadier (B) | | | | |
| Deputy M.R. Higgins (H) | | | | |
| Deputy J.M. Maçon (S) | | | | |
| Deputy S.J. Pinel (C) | | | | |
| Deputy of St. Martin | | | | |
| Deputy of St. Ouen | | | | |
| Deputy L.M.C. Doublet (S) | | | | |
| Deputy R. Labey (H) | | | | |
| Deputy S.M. Wickenden (H) | | | | |
| Deputy G.J. Truscott (B) | | | | |
| Deputy J.H. Young (B) | | | | |
| Deputy L.B.E. Ash (C) | | | | |
| Deputy K.F. Morel (L) | | | | |
| Deputy G.C.U. Guida (L) | | | | |
| Deputy of St. Peter | | | | |
| Deputy of Trinity | | | | |
| Deputy of St. John | | | | |
| Deputy M.R. Le Hegarat (H) | | | | |
| Deputy S.M. Ahier (H) | | | | |
| Deputy J.H. Perchard (S) | | | | |
| Deputy R.J. Ward (H) | | | | |
| Deputy C.S. Alves (H) | | | | |
| Deputy K.G. Pamplin (S) | | | | |
| Deputy I. Gardiner (H) | | | | |

Very well, we now come on to the other items which need to be taken without a sufficient lodging period. The first to be considered would be Deputy Tadier's Amendment to P.41. Deputy, do you wish to make that Proposition?

6.2 Deputy M. Tadier:

I do not think my Amendment needs to be reduced because it is within time.

The Bailiff:

It is only within time if it is dealt with tomorrow, Deputy.

Deputy M. Tadier:

Is that right, Sir? I thought it was lodged on the 4th. Are we the 21st today, Sir?

The Bailiff:

We are the 21st. I have lodged on the 8th.

Deputy M. Tadier:

Let me check, I thought it was ... yes, it says the 8th. So, I do wish for it to be reduced in that case. I just make the point that we are obviously reducing the lodging period so if the substantive

Proposition had been lodged with the normal lodging period I would have had plenty of time to amend it. I think a day or half a day is not bad going under the current circumstances.

The Bailiff:

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

Connétable C.H. Taylor of St. John:

May I speak?

The Bailiff:

Yes, indeed, but you should really go on to the chat and say: “Speak, please” or something like that, otherwise we cannot tell that you wish to speak.

6.2.1 The Connétable of St. John:

It seems logical that if a Proposition has the lodging period reduced one cannot expect the Amendments to that Proposition to comply with the longer or normal lodging period. We see many Scrutiny Amendments coming through, which have to come through more or less the day before because the Propositions themselves were only lodged a few days before. I think it would be reasonable under the circumstances if one accepts the substantive Proposition, one by default is automatically accepting the shortened lodging periods for any Amendments.

The Bailiff:

Does any other Member wish to speak? Very well, do you wish to respond, Deputy Tadier?

6.2.2 Deputy M. Tadier:

No, I think the Constable of St. John summed that up very well. There is no way I could have lodged this in time so it is up to Members whether they want to support the reduction in time for the main Proposition. I do not need a recorded vote necessarily, just a standing vote as we call it now.

The Bailiff:

Unfortunately we think that the only voting system that works efficiently and does not require the Greffier to do a huge amount of counting very quickly to come up with any sensible result is the normal one by link. So we will do the vote by link in the normal way. Very shortly the Greffier will place the link for voting. No, please do not indicate a *pour* or *contre* on the chat, you need to click on to the link, the link is now on the chat. If you click on to the link you will go through to the ability to put your vote. So the voting is now open.

| POUR: 44 | | CONTRE: 0 | | ABSTAIN: 0 |
|---------------------------|--|------------------|--|-------------------|
| Senator I.J. Gorst | | | | |
| Senator L.J. Farnham | | | | |
| Senator S.C. Ferguson | | | | |
| Senator J.A.N. Le Fondré | | | | |
| Senator T.A. Vallois | | | | |
| Senator K.L. Moore | | | | |
| Senator S.W. Pallett | | | | |
| Senator S.Y. Mézec | | | | |
| Connétable of St. Helier | | | | |
| Connétable of St. Clement | | | | |
| Connétable of St. Saviour | | | | |
| Connétable of St. Brelade | | | | |
| Connétable of Grouville | | | | |
| Connétable of St. John | | | | |
| Connétable of Trinity | | | | |

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

The Bailiff:

The next matter to be taken would be the Amendment of the Corporate Services Scrutiny Panel to the same piece of draft legislation. Does the Chair wish to make that Proposition?

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

Yes, I do. I hope that Members will agree to take the Proposition today.

[12:45]

As has been referred to, we had a very short period of time within which to respond and I am grateful to the Chief Minister for agreeing to give us extra time and move to this sitting.

The Bailiff:

Thank you, is that Proposition seconded? **[Seconded]** Does any Member wish to speak on the Proposition? Very well, I will ask the Greffier to put on a vote. The voting is now open. Could Members please use the link on their chat screen to get to the voting page?

| POUR: 47 | | CONTRE: 0 | | ABSTAIN: 0 |
|--------------------------|--|------------------|--|-------------------|
| Senator I.J. Gorst | | | | |
| Senator L.J. Farnham | | | | |
| Senator S.C. Ferguson | | | | |
| Senator J.A.N. Le Fondré | | | | |
| Senator T.A. Vallois | | | | |
| Senator K.L. Moore | | | | |

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

The Bailiff:

The next matter to be dealt with is P.43 brought by Deputy Tadier, Provision of Live Streaming for sittings normally held in public related to court proceedings. Deputy.

Deputy M. Tadier:

I do not wish to ask for the lodging period to be reduced on this one. I am happy for it to stay to be debated in time on 12th May.

The Bailiff:

Very well, you do not wish that to be debated at this point, Deputy, you are deferring or permitting it be lodged for the normal date?

Deputy M. Tadier:

That is right.

The Bailiff:

Very well. Thank you very much indeed. The next item is P.51, COVID-19: questions without notice to all Ministers on the response of the Government of Jersey, P.51, lodged by Deputy Labey.

6.4 Deputy R. Labey:

Yes, thank you. This standardises what we have all become accustomed to over the last few weeks in terms of questions without notice during the sittings during the pandemic and will give us all certainty until 1st October.

The Bailiff:

Is that seconded? **[Seconded]** Does anyone wish to speak?

Deputy R.J. Ward:

Is this just on reducing the lodging period of it?

The Bailiff:

It is purely on reducing the lodging period.

Deputy R.J. Ward:

I thought so, just to confirm that because ...

The Bailiff:

It is nothing more than that. Very well, I ask the Greffier to place the vote. Voting is now open, Members will see the link on the chat screen, would you please click into and vote *pour*, *contre* or abstention and submit.

| POUR: 47 | | CONTRE: 0 | | ABSTAIN: 0 |
|----------------------------|--|------------------|--|-------------------|
| Senator I.J. Gorst | | | | |
| Senator L.J. Farnham | | | | |
| Senator S.C. Ferguson | | | | |
| Senator J.A.N. Le Fondré | | | | |
| Senator T.A. Vallois | | | | |
| Senator K.L. Moore | | | | |
| Senator S.W. Pallett | | | | |
| Senator S.Y. Mézec | | | | |
| Connétable of St. Helier | | | | |
| Connétable of St. Lawrence | | | | |
| Connétable of St. Saviour | | | | |
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| Connétable of St. Peter | | | | |
| Connétable of St. Mary | | | | |
| Connétable of St. Martin | | | | |
| Deputy J.A. Martin (H) | | | | |
| Deputy G.P. Southern (H) | | | | |
| Deputy of Grouville | | | | |

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

The Bailiff:

I understand that the Chair of P.P.C. wishes to propose the adjournment. I might observe that there is one other item I think that needs agreement to take today. It might be worth taking that first? Very well. Deputy Southern, this is your Proposition, P.52 for Jersey Gas. Do you wish it to be taken at this sitting?

Deputy G.P. Southern:

I have got it lodged and that was there to promote debate on this issue. I think it is an important issue, however, since I lodged it yesterday afternoon I have been contacted by the Minister of Economic Development, Tourism, Sport and Culture and he has asked me to defer it until later on while he does some due diligence and sees exactly what the situation is with Jersey Gas and particularly to provide the correct funding to support whatever the outcome may be. Yes, at some stage if it looks like it is going to be as a standalone Proposition, it may well be that I would like to shorten that lodging period but it does not appear to be urgent this week. I can defer, I think, pending some further information from Economic Development and that would be the appropriate way to proceed, I think.

The Bailiff:

Thank you very much, Deputy. In which case that stands deferred until the time when it is listed. Is the adjournment proposed?

LUNCHEON ADJOURNMENT PROPOSED

Deputy R. Labey:

Yes, can I propose we adjourn for an hour to give everybody - yourself, the Greffe staff and the stenographers, *et cetera* - time to have a bit of lunch and reset things. So perhaps back at 1.50 p.m.

The Bailiff:

Is that seconded? [**Seconded**] Does any Member wish to comment? Not on the adjournment, which is clearly correct in time but for the fact is it for an hour? No, very well, the States stand adjourned until 1.45 p.m.

[12.52]

LUNCHEON ADJOURNMENT

[13:51]

[12.52]

LUNCHEON ADJOURNMENT

[13:51]

7. The Communications (Jersey) Order 2020: extension to Jersey by Order in Council (P.14/2020)

The Bailiff:

Very well, we will start the afternoon session. The first item is The Communications (Jersey) Order 2020: extension to Jersey by Order in Council, P.14, lodged by the Chief Minister and I ask the Greffier to read the Proposition.

The Assistant Greffier of the States:

The States are asked to decide whether they are of the opinion to signify, pursuant to Article 31 of the States of Jersey Law 2005, that they agree that a request be made to Her Majesty in Council for the making of an Order in Council that would extend to Jersey, with appropriate modifications, the Amendments of the Communications Act 2003 made by section 89 of the Digital Economy Act 2017, as summarised in the Minister's report attached to this Proposition.

Senator J.A.N. Le Fondré:

Senator Pallett is acting as *rapporteur*.

7.1 Senator S.W. Pallett (Assistant Minister for Economic Development, Tourism, Sport and Culture - *rapporteur*):

As Islanders face the challenges of COVID the importance of everyone having the ability to access news and other public service content has never been clearer. It is in this context that Government has been working to ensure that all Islanders have access to BBC television, radio and internet services and that licence fee payers in Jersey are treated equally to their counterparts in the U.K. and the rest of the British Isles. The proposed Order in Council will enable the BBC to offer and pay for a T.V. (television) licence fee concession for all the people in [**offline**] to benefit from Jersey's scheme will continue to do so. If I may, it is important to give some background as to why we are now proposing to extend section 89 of the Digital Economy Act to Jersey. In the past, Jersey, the U.K., and other Crown Dependencies have all separately set and funded T.V. licence fee concessions for their older people. The existing T.V. licence fee concession in Jersey falls under my colleague the Minister for Social Security and is managed by the Customer and Local Services Department. Individuals are able to apply for this scheme if they are 75 or over and their income as an individual is below £16,070 *per annum* or if a couple it is below £26,170. Some people can also qualify if they

are under 75 but permanently live with someone who qualifies as they can claim on their behalf. In 2016, as part of the negotiations for the renewal of the BBC charter, the U.K. Government transferred responsibility for payment of the U.K. over 75 T.V. licence fee concession to the BBC. At that time the former Assistant Chief Minister, Senator Philip Ozouf, authorised negotiations that resulted in the BBC agreeing to contribute to the free T.V. licences in the Crown Dependencies. Contributions commenced in 2018 and have continued since. But this was always a temporary measure. It was also agreed at that time that when the BBC took over responsibility for the U.K.'s licence fee concession it would seek to offer parity to Jersey and to other Crown Dependencies and it is in order to allow this to happen that we are seeking to extend Section 89 of the Digital Economy Act. The BBC plans to conduct consultation later this summer with all the Crown Dependencies, which will consider the operation and thresholds for the future of the free T.V. licence concessions. Being part of the consultation with the other Crown Dependencies is dependent on having the relevant legislation in place. Not being included within the consultation at this time would cause a delay in any scheme being introduced in Jersey and could potentially mean Jersey loses out on free T.V. licences from the BBC. This Order in Council therefore allows for Jersey to be included within the consultation, which will then allow the BBC to fund the subsequent agreed concessions. Both the Isle of Man and Guernsey have already extended the relevant legislation by Orders in Council, approved by the Crown on the advice of the Privy Council in February and March of this year. As I hope I have already made clear, at present and going forward Jersey has and will retain complete autonomy in establishing and dictating the eligibility for its means-tested free T.V. licence scheme, which is governed by the Social Security (Television Licence Benefit) (Jersey) Law 2006 and the Social Security (Television Licence Benefit) (Jersey) Regulations 2009 and is managed by the Pensions and Care team at C.L.S. (Customer and Local Services). There are currently no plans to change the current scheme. I want to be absolutely clear; this Order in Council will not affect Jersey's absolute autonomy over its means-tested scheme. Such power will continue to remain exclusively within the Government of Jersey. The concession merely allows the BBC to effectively write off the fee for those who meet the scheme requirements rather than the Government of Jersey having to fund the costs of the licence fee. The Government of Jersey will continue to have the power to amend the scheme at any point, however it is important to recognise that the forthcoming BBC consultation will agree to what extent the BBC will offer concessions and at present the BBC are only considering a concession that is equal to the existing one in the U.K., in other words to those over 75 on a comparatively low income. So if we were to amend our scheme local government would have to pay any remainder above the level agreed during the consultation. As Members will recall, this Assembly approved in the Government Plan 2020 to 2023 to maintain Jersey's means-tested scheme for Islanders over the age of 75 on a low income. Therefore the Order in Council will allow the Government to potentially benefit from a saving of up to £300,000 *per annum*. If this Assembly votes not to extend Section 89 via this Order in Council the BBC will not have the power to offer any concession to Jersey residents and the cost of the existing concession will continue to be fully funded by Jersey taxpayers. To conclude, extending Section 89 via Order in Council will allow the BBC to offer and pay for a T.V. licence fee concession for over 75s in Jersey. This Proposition asks for the agreement of the States that a request is made to Her Majesty in Council for the Order in Council to be made extending the section the Greffier just read out to be extended to Jersey. This Order in Council, if agreed, would not of itself impose any restriction on the scheme we already have in place in Jersey. We are entering into the scheme and extending this Order in Council voluntarily. That is why it is before the Assembly today. We have the choice, the absolute right to accept it or reject it, but to reject it I think is not in our best interests as we are effectively turning down the potential of £300,000 *per annum* from the BBC, which would mean our current free T.V. licence scheme does not cost us anything. I hope that Members will be able to agree that the request be granted for this Order in Council to be made and I make the Proposition.

[14:00]

The Bailiff:

Seconded? [**Seconded**] Does any Member wish to speak on the Proposition? Deputy Morel, is that an indication you would like to speak?

7.1.1 Deputy K.F. Morel:

Yes. I just wanted to advise the Assembly that the Economic Affairs Panel had undertaken scrutiny on this when we received the briefing. As this was an extension of legislation from the U.K. I will happily say that I approached the scrutiny with a suspicious mind, not being one to ever like seeing the U.K. trying to encourage us to take up their own legislation. But I have to admit I agree with everything that Senator Pallett just said. Jersey does retain the ability to operate our own scheme, so say for instance, as an example, if we wanted to have a scheme, which was for the over 65s, then with this legislation we would be able to do that with Jersey’s Government funding the 65 to 74, 364 days old, aspect of it and the BBC funding the rest of it. So there is no question that Jersey does retain its autonomy to bring in its own schemes in the way that it wishes to do so and that the upshot of this scheme is, as Senator Pallett said, that the Government will be saving £300,000 a year as the BBC will take on that payment. So, with that in mind, I fully agree that this is in Jersey’s best interests and I will be happy to support the Proposition.

The Bailiff:

Does any other Member wish to speak on the Proposition? If no other Member wishes to speak then I call on Senator Pallett to respond.

7.1.2 Senator S.W. Pallett:

I thank Deputy Morel for his comments. I am with him in many regards that I can also be suspicious around U.K. legislation, bringing it in, but in this particular case it is extremely beneficial to Jersey. We do retain the autonomy over what we could do in future and the Deputy is absolutely quite right, we could extend the scheme to over 65s if we want but, as he says, we would have to fund that particular difference. There are potential savings of £300,000 per year here and in the current financial climate any extra financial funding that we can secure is going to be of benefit to the Island moving forward, so I thank the Deputy for his comments and I ask for the *appel*.

The Bailiff:

If Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. If anyone is not able to vote then please do put *pour*, *contre* or abstain, on the chat line and I ask the Greffier otherwise to close the voting.

| POUR: 45 | | CONTRE: 0 | | ABSTAIN: 0 |
|----------------------------|--|------------------|--|-------------------|
| Senator I.J. Gorst | | | | |
| Senator L.J. Farnham | | | | |
| Senator S.C. Ferguson | | | | |
| Senator J.A.N. Le Fondré | | | | |
| Senator T.A. Vallois | | | | |
| Senator K.L. Moore | | | | |
| Senator S.W. Pallett | | | | |
| Senator S.Y. Mézec | | | | |
| Connétable of St. Clement | | | | |
| Connétable of St. Lawrence | | | | |
| Connétable of St. Saviour | | | | |
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| Connétable of Trinity | | | | |
| Connétable of St. Peter | | | | |
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| Connétable of St. Ouen | | | | |
| Connétable of St. Martin | | | | |
| Deputy J.A. Martin (H) | | | | |
| Deputy of Grouville | | | | |
| Deputy K.C. Lewis (S) | | | | |
| Deputy M. Tadier (B) | | | | |
| Deputy M.R. Higgins (H) | | | | |
| Deputy J.M. Maçon (S) | | | | |
| Deputy S.J. Pinel (C) | | | | |
| Deputy of St. Martin | | | | |
| Deputy of St. Ouen | | | | |
| Deputy L.M.C. Doublet (S) | | | | |
| Deputy R. Labey (H) | | | | |
| Deputy S.M. Wickenden (H) | | | | |
| Deputy G.J. Truscott (B) | | | | |
| Deputy J.H. Young (B) | | | | |
| Deputy L.B.E. Ash (C) | | | | |
| Deputy K.F. Morel (L) | | | | |
| Deputy G.C.U. Guida (L) | | | | |
| Deputy of St. Peter | | | | |
| Deputy of St. John | | | | |
| Deputy M.R. Le Hegarat (H) | | | | |
| Deputy S.M. Ahier (H) | | | | |
| Deputy J.H. Perchard (S) | | | | |
| Deputy R.J. Ward (H) | | | | |
| Deputy C.S. Alves (H) | | | | |
| Deputy K.G. Pamplin (S) | | | | |
| Deputy I. Gardiner (H) | | | | |

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

The Bailiff:

Very well, the next item is the Draft COVID-19 (Emergency Provisions - Courts) (Jersey) Regulations, P.41, lodged by the Chief Minister. I will obviously retire from presiding at this point for the duration of this item and I ask the Greffier to read the citation.

The Assistant Greffier of the States:

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

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

I assume I am going to be starting. These are important temporary draft Regulations, which aim to ensure that Jersey's courts can continue to remain operational throughout the COVID pandemic. As Members will know, our courts perform a number of vital functions and enable action to be taken for a range of purposes; these include commercial transactions, safeguarding children and adults from harm, and ensuring that alleged criminal offences can be dealt with swiftly and appropriately. I have just realised that I was meant to turn on my camera. It is imperative that our courts are able to

function throughout this pandemic and that we as an Assembly take action that enables this to be the case to the greatest possible extent. Accordingly these draft Regulations would allow the courts to swiftly implement some practical and pragmatic solutions to help get them through the coming weeks and months. Importantly, the draft Regulations have been developed in close liaison with the judiciary so as to ensure that the proposals are workable in practice and do not have any unintended negative consequences. As with all COVID-19 related legislation, these are temporary emergency provisions and they will expire on 30th September. Just to really sum up before I do add some detail around the principles, these are designed overall to minimise the physical proximity of people within the court system wherever possible and to help maintain social distancing requirements and so this is all about protecting the health as far as possible of the judiciary, court staff and everyone that comes into contact with the court system and, for those who have read the Report, that is a direct quote out of page 3. The draft Regulations are subject to 2 Amendments proposed by the Corporate Services Panel and also by Deputy Tadier. I am very grateful to both the Corporate Services Panel, who I understand worked in partnership with the Education and Home Affairs Panel, for all their work and comments and I am pleased to advise Members the Government will be accepting the Scrutiny Amendments in full. They are well thought through, reasonable and are based on consultation with the judiciary and the legal profession. So on the second reading or when I call the Articles I therefore intend to propose the draft Regulations as amended by Scrutiny. Unfortunately we are unable to accept Deputy Tadier's Amendment given the nature of the change it proposes and, to an extent, the lack of research in terms of what he was able to do on it and also lack of consultation relating to it because it does generate some quite significant unintended consequences if it was to be approved. Deputy Tadier has lodged a separate Proposition, which obviously he is letting run the normal lodging process, so is down for debate in May, and you will see that both myself and the Attorney General have submitted comments on that particular proposal, but basically those comments, or particularly the general principle behind those comments, should also be applied to this Amendment. But obviously we will be discussing that matter in more detail when we come to consider that particular Amendment. So it is a way of just putting some context around the proposals that I am putting forward today. The draft Regulations take account of the reality that the judiciary in Jersey is made up of a finite number of individuals and that those individuals are all subject to the same requirements as other members of the public, the same challenges, and they are equally as vulnerable in the current circumstances. Members of the judiciary are for several reasons not all going to be available to the same extent as they would be in ordinary times to serve our courts and they will come under pressure in the coming months and consideration therefore will need to be made for this and appropriate action taken. The courts also have a requirement, as we all do, to adhere to the requirement of social distancing and to ensure that the health of its employees and all those who come into contact with the system is protected as far as possible. So the draft Regulations, as amended by Scrutiny, all make important provisions in these respects. I think it is worth just running through those in certain detail now. So the first key point is that the draft Regulations ensure that the Royal Court can be constituted by a television or telephone link, if you like it is very similar to what we are doing today, as long as the members of the court are able to both follow and participate in the proceedings. Equally, court proceedings generally can take place if participants, and that includes the parties, their legal representatives and witnesses, are able to communicate with the court. This establishes the legal basis for remote e-meetings of the court. Such a way of working has been fairly central to all of us these past few weeks and obviously that will continue to do so and essentially that is the principle we, if we approve this legislation, are then allowing the courts to start adopting. A safeguard is built in for criminal trials where a defendant must be able to both see and hear the proceedings, which is obviously a reasonable expectation when a person's liberty is potentially at stake. Overall the provisions in this respect ensure that, where it is not appropriate to adjourn a trial to a later date, court proceedings can take place without the members and participants all needing to be physically present inside the court. That minimises the personal interaction where possible and supports efforts to uphold the requirement for social distancing. The draft Regulations make clear

that before any hearing is held by television or telephone link the relevant parties must be able to make representations and that will ensure that the arrangements made are workable and suitable for all participants. The second key aspect is the provision for a single judge to be able to sit alone for certain limited key proceedings. To be clear, the norm in civil and criminal proceedings is for the Royal Court to sit in what is referred to as the Inferior Number, which is a presiding judge and 2 Jurats, to make determinations of law and fact respectively. An exception is made in the Royal Court Law however allowing the Bailiff to sit alone in civil matters involving questions of law and fact, so in ordinary times this happens with the agreement of the parties and if the Judicial Greffier grants the certificate. It is proposed that this existing provision for a single judge to sit alone for civil matters be extended so that a single judge could also sit alone in certain limited criminal proceedings for the duration of the pandemic. It is important to be clear that any decision for the Bailiff or another judge to sit alone for a criminal or civil matter would not, for the duration of the pandemic, need the agreement of the parties or a certificate from the Judicial Greffier. While this is an important part of the proposal to get the courts functional during the crisis, a number of safeguards are nevertheless built into this proposal. So a judge could only sit alone if it was not appropriate to adjourn the matter to be heard at a later date and the primary thinking in terms of this proposal is for the single judge to be able to consider matters such as bail applications and other interlocutory decisions in criminal proceedings sitting alone. The judge could not sit alone for a criminal trial, the imposition of a sentence, when hearing an appeal against a sentence imposed by the Inferior Number, or any appeal against conviction or sentence from the Magistrates Court.

[14:15]

A further key provision is with respect to jury trials and here I am grateful for the input of the Scrutiny Panel. As Members will know, all jury trials that were due to take place up to 30th June have been adjourned until later in the year. That does not mean however that the trials that were due to be heard before a jury cannot still potentially take place on time before the Inferior Number of the Royal Court. There are 2 means by which a trial will take place before a jury, either when a defendant so elects if an indictment lists only customary law offences, or if the court so elects because a defendant has made no such choice for a jury trial or the case involves a mixture of customary and statutory offences. The Scrutiny Amendment means that where a defendant has opted for a jury trial they can choose instead to be tried by the Inferior Number. Similarly, if the court has made a decision for a jury trial but the Bailiff does not consider it appropriate to adjourn the case until a jury can be safely assembled, the defendant can be tried by the Inferior Number. Importantly, the position proposed by Scrutiny ensures that where an individual would usually be able to opt for or insist upon a jury trial this right remains in place. It should be kept in mind however in doing so the individual may have to accept being remanded in custody for a prolonged period until it is safe to assemble a jury. The draft Regulations also propose changes in the quorums for the Superior Number of the Royal Court and the Licensing Assembly. This relates to my earlier points about the finite number of individuals who make up the judiciary in Jersey and the pressure they, like all of us, will likely continue to come under in the coming months. So accordingly the quorum of the Superior Number would be reduced from a presiding judge and not less than 5 Jurats to the presiding judge and not less than 3 Jurats; that is obviously taking account of the Amendment by Scrutiny. This makes it more manageable to call upon the Superior Number if required and, as Scrutiny correctly highlighted, means that some distinction remains between the Superior and Inferior Number. Similarly, the quorum for the Licensing Assembly is temporarily altered. The Assembly is ordinarily constituted by the Bailiff, Deputy Bailiff, or Lieutenant Bailiff, sitting with 5 Jurats. It is proposed that this be temporarily reduced to 2. Applications to the Licensing Assembly could also be dealt with on the papers, which means that there would not need to be a hearing or anyone attending in person. Again this is all part of reducing physical interaction where possible. Equally it would be possible to conduct hearings of the Licensing Assembly remotely if that is required or preferable. Finally, given the provision being made to conduct remote e-meetings of the courts if it is considered appropriate to allow for these to

be recorded by audio or video and the Scrutiny Amendment clarifies that any such recording must be made at the discretion of the Judicial Greffier, which is a reasonable and important clarification. In conclusion, these are, in our view, pragmatic temporary arrangements, which will allow the courts to continue to undertake their crucial work throughout the period of this pandemic. These draft Regulations are viewed as being essential by the judiciary and are agreed by Scrutiny and representatives of the legal profession. They will make a big difference in keeping an important part of our States structure open and operational in these unprecedented and challenging times. On that basis I would like to move the principles.

The Greffier of the States (in the Chair):

Are the principles seconded? [**Seconded**] The principles have been seconded. There was a question I noticed from Deputy Ward that he wished to put to the Attorney General, so I call Deputy Ward to raise his question.

Deputy R.J. Ward:

This is a question for the A.G. (Attorney General), which may increase clarity I hope. When a defendant is granted a jury trial, and perhaps the A.G. could briefly explain the circumstances where they are entitled to a jury trial, will the defendant be able to insist on it being postponed even if they know that they may remain in remand and that they can change to the Inferior Number, but if they choose to they can keep their jury trial, i.e. can they maintain their right to a jury trial up until 30th September?

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

In summary, yes, with the effect of the Corporate Services Scrutiny Panel's Amendment. The effect of that Amendment is that where the defendant is indicted with a customary law offence, so that is not a statutory offence in general terms, although there are some, for example offences under the Sexual Offences Law, which are treated as customary law offences, then that indictment will mean that the defendant has the right to elect a jury trial rather than a trial by the Inferior Number. The effect of the Corporate Services Scrutiny Panel's Amendment is that in those circumstances the defendant does continue to have the right to a jury trial where they have made that decision. The consequence for the defendant is that they will remain on remand for a considerable period of time until it is safe for a jury trial to be convened. There are obviously consequences, both for the defendant and for the witnesses and the victim, in those circumstances. So, for example, if there is a victim who is a vulnerable witness, who is a child or perhaps has some mental health problems, then that means that the trial will have to continue to wait until it is safe to convene a jury and the victim, the witness, has to accept those consequences. Where, however, there is a mixed indictment, so for example it will contain a customary law offence together with a statutory offence, then that is treated differently and in those circumstances the defendant does not have the right to insist on a jury trial. The court can take the decision for the defendant and the court can decide that it is appropriate for there to be a trial by the Inferior Number. Where it is just a statutory offence that is on the indictment, or offences that are on an indictment, then the trial will be by the Inferior Number in the usual way. I hope that answers the Deputy's question.

The Greffier of the States (in the Chair):

Does that answer the question, Deputy Ward?

Deputy R.J. Ward:

Yes. There was just one tiny little bit at the end. In a mixed indictment would the trial only be on the non-customary law offence or would both of them be able to be pushed on to a trial by Inferior Number because there are a mixture of offences there?

The Attorney General:

No, both of the types of offences will go on to a trial by the Inferior Number.

Deputy R.J. Ward:

Thank you. That's clear, thank you.

The Greffier of the States (in the Chair):

I also had a question from Deputy Morel for the Attorney General.

Deputy K.F. Morel:

If I could ask the Attorney General, with regard to the Amendment that has been accepted from Corporate Services, the Attorney General was just asked about by Deputy Ward, with regard to new defendants, would that same right to elect the jury trial not be included, not be covered by that Amendment, so can I just check that all new defendants from now on would not have that right to the jury trial, is that correct?

The Attorney General:

No, that is wrong; in terms of new defendants they would continue to have that right where it is purely a common law offence.

The Greffier of the States (in the Chair):

Deputy Morel, I muted you because your microphone was causing feedback so you need to unmute yourself to come back.

Deputy K.F. Morel:

Sorry, I missed the last part, I got as far as "purely".

The Attorney General:

No, I said that where it is a new defendant that defendant, if it was purely a customary law offence, they would have the right to insist on a jury trial.

The Greffier of the States (in the Chair):

We now move into the debate and the first to speak is Senator Moore.

8.1.1 Senator K.L. Moore:

I am very grateful to the Chief Minister for accepting the proposals of the Corporate Services Panel. We are also most grateful to the Education and Home Affairs Panel who joined with us for the majority of the consideration of these Amendments and heard together from the Law Officers who were very forthcoming with their advice. It is appropriate to note today that in the United Kingdom the Lord Chancellor is considering changing tack whereby they had previously suggested to hold judge only trials in the United Kingdom during this period. They are now looking to Scotland where the Government has had a change of heart and decided that judge-only trials would be a disproportionate step and they themselves are looking at developing a method for having a smaller jury in the future. It is important to note that, Members, because this is a very fundamental right and the Panels were rather surprised by the ease with which the Government were intending to remove this fundamental right even at this very difficult time for the Island. We were reminded of comments made by a former Bailiff and at the time Senator Bailhache during the debate on the Sexual Offences Law 2018. This took place on 21st March. During the debate, the then Senator Bailhache defended the right to trial by jury by saying: "An important constitutional right, it should not be swept away on a whim without very serious consideration and the opportunity to look at the proposal in the round." So while the Panel acknowledges that the lack of a jury trial is not uncommon in other jurisdictions, as noted in the report to the draft Regulations, this should not justify the precedent it will establish given the stark differences in legislative history, custom and procedure. The Panel's

Amendment balances the needs of the courts to continue to operate safely and appropriately as well as the rights of the defendant to receive a trial in a fair and timely manner. The Panel agrees with the need to recall trials, however further clarification is needed to ensure that these can only be made and used at the discretion of the Judicial Greffier and this also includes potential broadcasting of trials as amended by Deputy Tadier, an Amendment that we support. Again, we propose our thanks to the Law Society of Jersey and to the Law Officers and the Legislative Drafting Office for their views and their great efforts in making a speedy turnaround for these needed and important Amendments.

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

My concern is in relation to the Licensing Assembly. Because of no public attendance at the Assemblies, I am concerned that new category licences and also those premises, which have been referred to the Licensing Assembly by the police under the Article 9 referrals, may not get full scrutiny. In order to ensure the full process and that all licensing applications are fully reviewed, can the Minister confirm that the States of Jersey Police and the Fire and Rescue Service will have adequate time to provide reports if they are unable to attend remotely. This of course will also be in relation to Environmental Health as well. I would also like to ask the Minister, how will the public be able to contribute to the Licensing Assembly as they would normally do in relation to the granting of new licences and also the Article 9 referrals? Obviously the Assembly will be aware that, if we attend at a Parish Assembly where new category licences are being requested, a member of the Parish is able to raise matters and therefore is allowed to speak at the Licensing Assembly. So, if the Minister would be able to provide answers to those questions for me, I would be grateful.

8.1.3 Deputy M.R. Higgins:

Although I took part in the scrutiny with the Education and Home Affairs Panel, I have, since our discussions, been looking a bit further into what has been happening in the U.K. because it was a question that we were asking at the time and we had very little information on it, other than jury trials involving cases that were expected to last more than 3 days were being adjourned or delayed. Although the courts in the U.K. are going to various types of remote trials in terms of using audio-visual links, jury trials have not been done away with totally.

[14:30]

So, in other words, they are not doing them for the online trials; they have just delayed them. I do think that perhaps we were jumping into this rather quickly in doing away with jury trials. I accept however there is the argument that our court was built in previous years and the facilities for jurors, judges, Jurats, counsel and spectators, are such that you could not have the social distancing rules. But some cases could go ahead in the form of a jury trial even if it was using the States Chamber and using the gallery as well. Cardiff, I know, is looking at trying to continue trials but using different facilities and I do think we have jumped into this rather quickly. So that is one observation. Also, following on from Senator Moore, yes, the Lord Chancellor, Mr Buckland, is wanting to get back to jury trials as soon as possible and I know that the Lord Chief Justice is also asking and has a consultation on it coming back pretty quickly. There are moves afoot in the U.K., which I think we can learn from, and if we do this then it should be very temporary because we need to maintain jury trials. I might also say that under Article 10(2) of the 2018 Law the Bailiff, or whoever is hearing the case, does have the power to delay the cases rather than go over to remote trials or using the judge with 3 Jurats. So I do question why we have not delayed the cases as opposed to going for this particular move. Also, in the law it makes reference to certain types of cases can be dealt with when there is an audio link. To my mind the old maxim was justice needs to be seen to be done and so we know that communication is more than just oral communication, body language counts for an awful lot and we all learn what underlying positions are, attitudes are, and so on, and if it is just an ordinary audio line you cannot see perhaps facial expressions or discuss what is going on. I really do believe that we should be making sure that any trial that takes place, if we are going to do it remotely, involves

video as well. I am just looking if there are any other points I wanted to make. There is. No, in the main I have made it. I would like clarification on the use of just telephone lines as opposed to visual as well as audio trials. Again, I do have reservations about this and it is something that we need to monitor very closely and, to be perfectly honest, if we do not think it is going appropriately, we need to come back and amend it rather quickly but the courts should be looking at alternative ways of carrying out these trials.

8.1.4 The Attorney General:

I just wish to make some comments in relation to Deputy Higgins' comments in relation to the practice of the courts in England and Wales. I am aware that the Chief Minister has been asked by Deputy Le Hegarat about the Licensing Assembly and if it assists the Chief Minister I can also speak about that because I am familiar with licensing proceedings. In relation to Deputy Tadier's Amendment, I do wish to speak in relation to that; I am not sure about the appropriate place in which I do so, but a number of the comments that have been made are veering into this concept of livestreaming and broadcasting. It may be that I should wait until Deputy Tadier's Amendment has formally been called, so perhaps I should deal with that point separately. But, in relation to the practice of the courts in England and Wales, England and Wales in terms of its use of livestreaming in video proceedings, in relation to video proceedings they are using video proceedings but we are also using video proceedings at the moment here in Jersey. So, for example, in the Magistrate's Court essentially all proceedings are being dealt with by way of videoconference and that is being used very successfully and members of the press are attending. As far as the Royal Court is concerned, proceedings are largely still taking place, as I understand it, in person, although I think there is now some use of video proceedings. But in England and Wales, yes, video proceedings are being used extensively in England and I understand that is being used relatively successfully. In terms of livestreaming, it is perhaps best if I leave my comments until Deputy Tadier's Amendment. But in relation to the Licensing Assembly and Deputy Le Hegarat's question, my understanding is that the effect of these Amendments is that Licensing Assembly proceedings will be able to be brought by videoconference. Under the Licensing Law, members of the public who satisfy the requirements of the Licensing Law can address the Assembly and raise their concerns with the Assembly directly when it comes to a Licensing Assembly hearing. In a similar way, as I understand it, there is no contemplation for a change in the arrangements for the police or fire services for any difference in terms of their arrangements for assisting the court with their observations in relation to particular licensing applications. So I hope that assists for the moment but, as I say, I will speak more extensively in relation to the livestreaming issue when it comes to Deputy Tadier's Amendments.

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

Deputy Tadier, I understand you had a question for the Attorney General.

Deputy M. Tadier:

The question is relating to the change to the Superior Number. Is this the right time to ask that question or should it be done when we get to that particular matter in the Articles?

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

While you have the Attorney General on the spot then maybe now is an appropriate time.

Deputy M. Tadier:

Clearly there is a rationale that was used at some point to determine which offences, and presumably based on the seriousness of the offence, were heard before the Superior Number, which was a judge plus 5 Jurats as a minimum, versus what could be heard by the Inferior Number. It seems to me that what we are doing is we are changing the definition of the Superior Number to effectively become the Inferior Number, so if the Attorney General could perhaps address the original rationale for why

it was thought that certain cases of a certain seriousness needed to be heard by a minimum of 6 people so that we can deliberate fully about whether it is the right thing to do to change the number of judges hearing the same type of cases.

The Attorney General:

Thank you for that question. The rationale for the distinction between the Superior Number and the Inferior Number these days, the main reason is in relation to the sentencing powers of the court. The Inferior Number has the jurisdiction to impose a maximum sentence of up to 4 years of imprisonment and anything beyond that is not within its power but is within the jurisdiction of the Superior Number, which currently consists of the Bailiff and at least 5 Jurats. So the effect of the Scrutiny Panel's Amendment, which has been accepted by the Chief Minister, is that the distinction between the Inferior Number and the Superior Number is maintained so that numerically the Inferior Number consists of the Bailiff and 2 Jurats but the Superior Number now under the revised Scrutiny Panel Amendment will consist of the Bailiff and 3 Jurats, so there is still a distinction. So the Superior Number consisting of the Bailiff and the 3 Jurats will, while this Amendment, if it is passed, and while it is in force, then the Superior Number will be able to impose sentences of in excess of 4 years.

Deputy M. Tadier:

Thank you. That is useful and that is why, certainly when it comes to the Scrutiny Panel Amendment, it is useful. Is it OK to maintain the right to speak; I can finish my speech now if that is OK with the Chair.

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

I had you down as wanting another question from the Attorney General. Is that your question asked already, Deputy?

Deputy M. Tadier:

Yes, that is my question. Perhaps I can leave it there and then I will just reserve the right to speak. Is that OK?

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

That is absolutely fine. I also have Deputy Young and Deputy Higgins who want to ask questions of the Attorney General. Perhaps if Deputy Young would like to ask his question of the Attorney General now.

Deputy J.H. Young:

It is a very simple question. Obviously these changes are going to mean in layman's terms that the normal standards of trials may not be possible to do. What I wanted to know that if there was a conviction during this period that a defendant and/or their lawyer considered that the particular circumstances of the trial fell below that which would normally apply had they not been tried in the emergency, whether that would be a matter that could be considered as part of any grounds for an appeal after the expiry of these Regulations. That is my question.

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

Mr. Attorney, are you able to help the Deputy?

The Attorney General:

Yes. So the Deputy said the normal standards of trials are not going to be maintained. I would take issue with that. The only thing that is really being changed is the mode of attendance for trial and obviously the numbers for the Superior Number is being varied. But the key change with this is in relation to attendance and trials by videoconference. But all the usual standards of the courts, all the usual rules that govern admissibility of evidence, the procedure in trials, all of that is staying the

same. So they are still significant changes that we would not choose to do unless we were forced to by these very unusual circumstances, but I would stress that the vast majority of the protections that are built into the court's procedures for the protection of defendants, witnesses, and so on, they all are being maintained. As far as the Deputy's question in relation to appeals is concerned, I myself would be surprised if there was an appeal that was founded purely on a change in relation to the changes that are being made under this Proposition because this Proposition, if it is passed, represents the democratically elected views of the Island's Parliament.

[14:45]

It is being properly debated, it has been properly scrutinised, and in all the circumstances it is a measured and sensible response to the challenges that are being faced by the courts in these extremely unusual times. Obviously if there is a breach of the rules that form part of these Regulations, so if for example in fact a defendant was not able to see and hear the court during the course of their criminal trial, that in itself, yes, would be a proper basis for an appeal. So it is only in quite limited respects that the Deputy's question concerning appeals would in fact apply. I hope that helps.

Deputy J.H. Young:

Thank you very much. That is very helpful, thank you.

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

I also had a question listed for Deputy Higgins to ask of the Attorney General. Deputy Higgins, do you have a question?

Deputy M.R. Higgins:

I did not get the opportunity to get quickly online to ask the first round of questions. Going back to my comments about the parties in a trial being able to see and hear what goes on at trial, we have a distinction in the law as it is written between criminal trials and other trials. Can you explain the rationale why you should not be able to see and hear what is going on in any proceedings rather than just in criminal proceedings? It strikes me, as I made the comment earlier, communication is more than just spoken words, it is also the reactions of people to things and obviously they are used by judges with defendants and jurors when they are reviewing trials and they look at the reaction of the defendants and prosecution.

The Attorney General:

Again it is a good question, Deputy, and I am happy to answer it. In relation to the distinction that is made in Regulation 6, Paragraph 3, of these Courts Regulations, and what is an additional protection for a defendant in a criminal trial, being able to see and hear the court, there are 2 main reasons for that. The first is that the rights to a fair trial; those are guaranteed in Article 6 of the E.C.H.R. (European Convention on Human Rights), which we have given statutory effect to in our Human Rights (Jersey) Law 2000, so there is a particular need to protect the rights of defendants in criminal trials, which are enshrined in the E.C.H.R. and other jurisdictions who are outside the E.C.H.R., but they have similar sorts of rights, which are guaranteed in their relevant conventions. But the second reason for the distinction is that in civil proceedings there are frequently defendants, so there is a plaintiff and a defendant, but the defendant in a civil trial, while they may frequently come and give evidence, they only really attend for part of the proceedings and so they are treated differently because they do not have to see, and they usually do not see, the entirety of the civil trial, unless they particularly want to. So I think that is the reason for the distinction that is made in practice. I would strongly suspect that when it comes to the practical arrangements for trials by videoconference that in fact a defendant, say in a civil trial, or indeed a plaintiff in a civil trial, who wished to be able to see and hear all of the proceedings of the civil trial, they would be able to do so. I would be amazed if that was not the case. I am sure that the practical arrangements, which will be left to the Greffier

and the courts, they would encompass the ability for parties in civil trials, who wished to be able to see and hear all the proceedings, to do so.

Deputy M.R. Higgins:

Supplementary, could I just ask the Attorney General, is he aware of any trials in the U.K. or elsewhere that are just done with an audio link?

The Attorney General:

I am afraid I cannot really speak on that. My understanding is that trials in the U.K. were being conducted by video links rather than audio links. But I am afraid I could not say conclusively that there were no trials in the U.K. that were being conducted by audio link.

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

Thank you, Mr. Attorney General. Next on the list I have the Connétable of St. Ouen to speak.

Connétable R.A. Buchanan of St. Ouen:

My speech is really a question for the Attorney General. Earlier when the Attorney was speaking, and indeed during the earlier part of this debate, there was discussion about jury trials, if I read this correctly, being delayed until such time as conditions allow these to take place. Firstly, could the Attorney confirm that is the case and that only trials that are going to be done in the Inferior Number with 3 Jurats and the Bailiff present will go ahead? If that is the case and the trials are going to be delayed, it has always been a maxim of law that justice delayed is justice denied. How long will the Attorney tolerate delays in a trial before he forces the issue and brings the matter to court? Clearly if a trial, we do not know how long this lockdown is going to last, it could be a year, and if trials are held over for that long then clearly there is some element of a major delay, which fundamentally affects the principles of justice. So if I can ask the Attorney perhaps to answer that question?

The Attorney General:

Just to clarify, in terms of a trial before the Inferior Number, that would be with the Bailiff and 2 Jurats, not the Bailiff and 3 Jurats. Because the Superior Number under the revised Scrutiny Panel Amendment, the Superior Number is the Bailiff and 3 Jurats. In terms of the substance though of the Constable's question, in terms of the amount of the delay that is tolerable, that was very much a factor that was in the Chief Minister's original formulation of the Regulations before they were amended by the Scrutiny Panel. There is very much concern, particularly with criminal trials, they do need to be progressed expeditiously and it is not desirable to have defendants, and particularly defendants who are remanded in custody, on remand for considerable periods of time, months or let alone years. So that was very much the thinking that was in the Chief Minister's original version of the Regulations. There was a reluctance to adjourn trials indefinitely in circumstances where we just do not know how long it is going to be before we can safely empanel a jury. In terms of the revised arrangements as set out in the Amendment, and accepted by the Chief Minister, from the Corporate Services Scrutiny Panel, I would say that there are some safeguards. Obviously it is the decision of the particular defendant who has just a customary law offence indictment to insist on a jury trial and it may be that, as time passes, they may wish, with the benefit of advice from their advocate, to change that decision and, if the delay carries on for an extensive period of time towards late this year or into next year, they may well wish to change that decision. In terms of mixed indictments, so where there is a customary law offence and also statutory offences, as I have said earlier in relation to Deputy Ward's questions, that decision is not ultimately in the hands of the particular defendant. So those trials can go ahead if it is appropriate to do so before the Inferior Number. I should stress that an Inferior Number trial is not in any way inferior to a jury trial. That point has been taken to the European Court of Justice and in the case of *Snooks*, which is referred to in the Chief Minister's report, a trial by the Inferior Number has been approved as a perfectly human rights compliant form of trial. In terms of how long I would tolerate a trial being adjourned, that very much depends on the

nature of the trial. If there is a trial, which involves, for example, a child and whether as a victim or as a material witness, then it may be that we would see if that child's evidence could be successfully taken by way of video recording, but if the defendant is insisting on their right to a jury trial and the ability to cross-examine that child in a jury trial then I may well be bringing back applications before the court, insofar as I am able to do so, asking for this issue to be ventilated. But ultimately it is not my decision; it is the court's decision and in the case of a defendant with a customary law offence it is the defendant's decision. That is as far as I can answer the point.

The Connétable of St. Ouen:

That has provided a great deal of clarification. Am I allowed to finish off?

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

Is this your speech now, Connétable, that you are making?

8.1.5 The Connétable of St. Ouen:

It is going to be a very short one; I suppose you could count it as a speech. It was just to say that I just want to thank Scrutiny for the Amendments that they have made and when I first read this bit of legislation I felt distinctly uncomfortable and I know that the Attorney General knows that I felt distinctly uncomfortable; but the proposals made by Scrutiny turn this into what I believe in the current circumstances is an acceptable piece of legislation. I am still concerned about the fact that it does interfere with some basic fundamental rights that defendants have but we just have to accept in the current climate that this is the case and it is not here forever. I will be supporting it.

8.1.6 Deputy M. Tadier:

I understand that we are in difficult times but when we make fundamental changes to the way that we deal with some of the most serious offences in our community that we have to be mindful of the fact because we have been told in other contexts that changes that are made in emergency times sometimes end up sticking, so we have to be aware of that. Some of these changes that we make might influence further changes that we make down the line. I have concerns about the right to a jury trial and I know that the term "right" has perhaps been slightly contradicted or it has been critiqued by the Attorney General in the comments saying that there is no fundamental human right to a jury trial. But I think it is accepted in the British and Jersey system that certain offences do give rise under normal circumstances to people opting to have a trial by jury. Presumably the reason that the defendant would have the right to a trial by jury is because they think it might give them some benefit.

[15:00]

I know this has come up in the relatively recent past when we have had debates about changing what offences automatically give somebody a right to a jury trial or normally would give a defendant the right to a jury trial. We have to also start from the basis that people are innocent until proven guilty, so of course that is notwithstanding the fact that there is a high-level test before somebody is charged about the case succeeding, but it would seem logical to me that it should be up to the defendant still to decide if they are allowed to have a jury trial or not, even if it means that they might have to stay on remand a bit longer. So, for example, if I were in custody and if I were on remand but I maintained my innocence, so I was being charged for something that I knew I had not done, I would be much more interested in getting a normal and public hearing with a jury, if I wanted to, and that would obviously be something for discussion between myself and my lawyer, if I thought that was going to give me the best chance of being acquitted for the crimes, which I had been falsely accused of. It seems that if that is available under normal circumstances, if the defendant is quite happy to stay on remand for that period of time, even if it means that they might have been in for an unusually long period of time simply so that they could have the kind of hearing that they wanted to, I think that is a reasonable thing that we should allow an innocent person to do. COVID or not should not get in

the way of that. I also do question the fact whether or not certainly whether it is by the original Superior Number with its 5 Jurats as opposed to what it is being now recommended at 3, or by jury, it should not be beyond the wit of technology to have a jury sit either in analogue format, spreading them out as somebody suggested in the States Assembly, or indeed by allowing them to join virtually, which I accept would perhaps produce some technical issues, but should not be beyond the wit of mankind. So I do have those concerns and I have to consider very carefully whether or not I can support what is being proposed by the Chief Minister. What I would add is that it seems to me, and we will come on of course to the issue of the option of livestreaming because what my Amendment does here is it does not ask for the courts to livestream, it simply asks for the option for them to livestream publicly if they wish to. It seems to me we already have a system whereby journalists can join in the Magistrate's via something, I think it is called StarLeaf, one of the very many conferencing systems, so they can already join in and listen via a login system and it would seem that would be desirable in the Royal Court as well. There is this kind of mismatch at the moment where journalists are expected to meet physically in the Royal Court but they are offered the option of taking part in hearings in the Magistrate's Court if they want to via a link. So perhaps I am pre-empting the last debate there, but it is not good for these kind of Amendments to go through with little debate and without some kind of dissent because these are fundamental human rights issues and even if we agree with them it should not always be 100 per cent black and white. It is important to have those voices, which do say: "Hang on, let us proceed with caution here." That is the end of my contribution.

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

Deputy Higgins, did you have another question for the Attorney General?

Deputy M.R. Higgins:

It was just trying to clarify the Attorney General's response to the Constable of St. Ouen. First of all, the Constable of St. Ouen was worried about trials being delayed for any length of time but the law does say, does it not, that it is time limited, 29th September. If the pandemic goes on, it will have to come back to the Assembly to be extended and it could be changed at that point and I would hope that we can have jury trials returning. Secondly, I was slightly concerned on what he was saying with regard to trials going on for some time. The court has the ability, in both criminal and I assume civil trials, to chase the prosecution, in the case of criminal trials, to say: "Bring your case; you have taken a long time gathering it, you should not be delaying it any further, bring that information." In civil cases there is a balance of rights obviously between the defendants but the point I am trying to make though is this is, is it not, temporary legislation and if it is going to be reviewed on 29th or 30th September then we do have the right to amend it at that time? Is that correct?

The Attorney General:

Yes, I am happy to answer that question. Yes, I entirely agree, Deputy Higgins, this is temporary legislation. If there is a need to extend it beyond 20th September it will need to come back to the States Assembly for this to be debated again. I entirely accept that it is time limited. In my comments I omitted to mention that point but my concerns in relation to delays, yes, they apply equally in relation to criminal proceedings as they do with civil proceedings, if not more so. Generally speaking, criminal trials, unless they are exceptionally complex and involve a lot of documents and witnesses, they are generally concluded quicker than civil trials for obvious reasons. Now that we have or the Assembly has approved and brought into force the majority of the Criminal Procedure Law, that includes express provisions concerning the overriding objective and the need for cases to be dealt with expeditiously in accordance with the overriding objective. The courts do ... they already did, but that gives them an extra stick, effectively, to beat parties over the head with to make sure that cases are being progressed expeditiously. I think my concerns were only in relation to that it is a minority of cases. If a defendant is insisting on their right to a jury trial, my concern is only in relation to a minority of cases where the victim or witnesses in those cases are vulnerable, so they are children,

people with mental health problems, and delays to trials in those circumstances, the court always bends over backwards to ensure that does not happen. This Amendment though from the Corporate Services Scrutiny Panel, while I can see that it is a reasonable compromise in the circumstances, I am simply drawing to Members' attention that this may have some consequences for that small minority of cases which do involve vulnerable witnesses. That was really to explain I suppose why the Chief Minister's original formulation of the Regulations was phrased as it was in relation to ultimately allowing the court to determine that a trial should take place by way of an Inferior Number trial rather than a jury trial because it would be very much those sorts of cases where there are particularly vulnerable witnesses with mental health or a child, where the court would be really concerned to ensure that those witnesses are not further sort of prejudiced by extensive delays with a jury trial.

Deputy M.R. Higgins:

Could I just clarify one other point? With court procedure, is it normal for a hearing to come before the court and if a case is going on an inordinate amount of time that the court would decide at that particular point to strike it out or would they give the prosecution the opportunity to bring forward ... to either drop the case or bring it forward, rather than to make a ruling in the first instance?

The Attorney General:

I think there is a distinction between civil cases and criminal cases. In civil cases, where there is an inordinate delay of the parties to progress a case, the court, usually the Master of the Royal Court, has the power to strike out those cases. He always does so on notice to the parties so they can make an application to him to persuade him why he should not do so. Criminal cases are a little different, but they are very actively monitored. They are always monitored by my Department anyway, so we make sure that we are always trying to reduce delays with criminal cases. Now with the new legislation in terms of the Criminal Procedure Law, our main aim is to frontload work, to make sure that delays further down the line once a prosecution has been started are minimised. The court does not really have a power to strike out criminal proceedings as far as ... I think the prosecution can, as a result of ... if there are difficulties with the prosecution case which are resulting in extensive delays, ultimately it might be that I might decide not to offer evidence in relation to that particular criminal case and the case would stop, but that would be very unusual for that to happen.

Deputy M.R. Higgins:

But again, if in a civil case the Master decided to stop the proceedings, is that appealable to the full court?

The Attorney General:

Yes, it is.

Deputy M.R. Higgins:

Thank you. I am complete.

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

Thank you, Deputy, and thank you, Mr. Attorney General.

8.1.7 Deputy K.F. Morel:

Thank you. I am struggling with some areas of this because I think, as many of us know, these are very important matters that we are debating here, but I am keen to support the principles because I know that most of my concerns arise from particular Regulations. However, in order to do that, I do need the Chief Minister to answer one particular question, which is when coming up with these Regulations, how much work went into looking at different methods in which juries could gather to meet? By that, as we have heard, it is more spaced out, in separate rooms or by video link. It does

strike me as ironic that part of this Proposition is about bringing the court together virtually and at the same time we are kind of crossing off that option for juries. So I would just like, in his response, the Chief Minister to tell the Assembly not just what work went into it, but what options did they look at and why did they discount them, because at the moment I struggle to understand why juries could not be convened virtually, given that we are saying the court can be convened virtually. So I really need that response in order to be able to support the principles. Thank you.

Deputy R.J. Ward:

Hello, can you hear me? Because I had to change my earphones over.

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

Yes, we can hear you.

8.1.8 Deputy R.J. Ward:

OK, thank you. One of the things, I was involved with Scrutiny with this and I thank the A.G. for his replies to the questions that have been asked because it is quite detailed at times. I think we have to look at the numbers that may be involved here. There were reports this morning that there are 37,000 trials postponed in the U.K. but I believe that what we are looking at are numbers less than double figures and so it is a manageable number and there is a very important time limit of 30th September. I think the way I see this - and I would like the Chief Minister to answer whether he sees it the same way - is that this gives the ability for somebody who is held on remand while there is a postponed trial to say: "I am happy to be tried by the Superior Number" or Inferior Number it may well be, and perhaps you can clarify that, so that they do have a trial and are not waiting on remand for a long, long time, so it gives the option to do that so that people are not in prison for longer than they need to be. So that was one of my concerns.

[15:15]

I do share the concern regards whether we have looked further enough into ways in which trials can happen, given that there are effectively, I believe, a small number of trials and so the flexibility that could be built into our system to give both the right to trial by jury and the option of moving to a different trial. I believe it could work in that way and I would like to get the Chief Minister's views on that and see whether he thinks that is the case. Thank you.

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

Thank you, Deputy. I understand the Attorney General wishes to respond to Deputy Morel's questions. Mr. Attorney, we cannot hear you.

The Attorney General:

Can you hear me now?

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

Yes.

The Attorney General:

Yes, I thought it might assist in relation to the questions that are raised, both by Deputy Morel and also Deputy Tadier on why we cannot introduce virtual arrangements for jurors. I think there are particular concerns in relation to jurors that mean that it would be very difficult for us to do so and they were specifically considered when framing the original Regulations in draft and very much with the input from the Viscount, who is the court officer who has particular responsibility for dealing with juries. Essentially the Viscount was strongly of the view, based on her dealings with jurors, that it is very difficult to persuade juries to come, certainly physically, into a building where they are going to be held ... well, not held, but where they have to stay inside for prolonged periods of time

with other people in these times where there is a risk of infection. In relation to the question: “Why can they not just go online?” there is also a concern in relation to that because they are not in a building under the supervision of the court and its officers. If, for example, they were to attend remotely, then the court has absolutely no control over who may influence those jurors, who may be sitting with them in the room, who may be influencing their decisions and all of that would undoubtedly find a pretty cast iron appeal to an appeal court if we were to allow those sorts of arrangements to be brought in. So I can assure Members that that point was thought about very carefully but for the reasons I have just mentioned, it was certainly not thought to be appropriate to deal with jurors in that way. I hope that helps.

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

Thank you, Mr. Attorney General. Does any other Member wish to speak on the principles? No. In which case, I ask the Chief Minister to reply.

8.1.9 Senator J.A.N. Le Fondré:

I will not address all the points that have been addressed by the A.G., which leaves me with very little to say, which I am sure will be a great relief to Members, but on a more serious point, as I said, I am only going to I think address in the round 2 remarks. One was from Deputy Ward, which was his part one, in other words, what was the general purpose of what we are trying to do, and the short answer is, yes, he is correct. This is not meant to be a massive rewrite of the overall principles of the existing Law; this is really to try and negotiate the courts through this crisis and that is what these Regulations - and obviously as amended hopefully by the Scrutiny Amendments - are intended to do. I think it is certainly worth making the point again which I read from page 3, which is they are designed to minimise the physical proximity of people within the court system wherever possible and to help maintain social distancing requirements and that is to protect, to the greatest extent possible, the health of the judiciary, the court staff and everyone who comes into contact with the court system. What we are talking about is obviously potentially it could be members of staff, it could be members of the judiciary, it could be people who are appearing before the courts. If they do have underlying health conditions, that can be more serious than for people who are fit and well. I think it is just also worth reiterating the points that Scrutiny have obviously raised which are on there, 16, Part 2, which is: “The Panel are seeking the following Amendments” and one of them is: “To make it the choice of the defendant to waive the right to a trial by jury in favour of a trial by an Inferior Number where a defendant has previously elected for a jury trial under Article 48(2) of the Criminal Procedure (Jersey) Law 2018.” In other words, in their language, it was putting more measures, I think, to protect the defendant in place. In relation briefly to juries, I do not really need to add much more to what the A.G. has said, but I suppose one example might be is that when one goes into the court in a jury, one’s phone is taken away and if one is sitting remotely, it is a lot harder to enforce that kind of rigour, as it were, in ensuring that juries are not influenced by external views of the trial that might be going on. I think I am not going to take up too much more of Members’ time. I think it has been a healthy debate. I thank the A.G. very, very much for all of his comments. It has made my life a lot easier - to date, anyway - and I would maintain the principles and I guess we call for the *appel*.

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

Very well. In a moment the Greffier will add a vote into the channel of this meeting.

Deputy R.J. Ward:

I am sorry to interrupt. May I ask, are those the principles as amended?

Senator J.A.N. Le Fondré:

Deputy Ward, no, we are debating ...

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

There was no Amendment to the principles. The Amendments were to the Regulations which followed.

Deputy R.J. Ward:

Yes, of course, sorry. Thank you.

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

So the vote is in the chat channel if Members wish to click on it and open the link and cast their votes. Very well. If all Members have had an opportunity to vote, I ask the Greffier to close the voting. OK.

| POUR: 45 | | CONTRE: 0 | | ABSTAIN: 0 |
|----------------------------|--|------------------|--|-------------------|
| Senator I.J. Gorst | | | | |
| Senator L.J. Farnham | | | | |
| Senator S.C. Ferguson | | | | |
| Senator J.A.N. Le Fondré | | | | |
| Senator T.A. Vallois | | | | |
| Senator K.L. Moore | | | | |
| Senator S.W. Pallett | | | | |
| Senator S.Y. Mézec | | | | |
| Connétable of St. 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 M.R. Higgins (H) | | | | |
| Deputy J.M. Maçon (S) | | | | |
| Deputy S.J. Pinel (C) | | | | |
| Deputy of St. Martin | | | | |
| Deputy of St. Ouen | | | | |
| Deputy L.M.C. Doublet (S) | | | | |
| Deputy R. Labey (H) | | | | |
| Deputy S.M. Wickenden (H) | | | | |
| Deputy G.J. Truscott (B) | | | | |
| Deputy J.H. Young (B) | | | | |
| Deputy L.B.E. Ash (C) | | | | |
| Deputy K.F. Morel (L) | | | | |
| Deputy G.C.U. Guida (L) | | | | |
| Deputy of St. Peter | | | | |
| Deputy of St. John | | | | |
| Deputy M.R. Le Hegarat (H) | | | | |
| Deputy S.M. Ahier (H) | | | | |
| Deputy J.H. Perchard (S) | | | | |
| Deputy R.J. Ward (H) | | | | |

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

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

Does the Corporate Services Scrutiny Panel wish to scrutinise this matter, Chair?

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

No, thank you, Ma'am.

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

Then we move to Second Reading. Chief Minister, you have already mentioned that you are willing to accept the Amendments that the Scrutiny Panel has put forward. That is correct?

Senator J.A.N. Le Fondré:

Yes, Ma'am.

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

In which case, can I suggest that you take Regulations 1 to 7 first as amended?

8.2 Senator J.A.N. Le Fondré:

I would be delighted to, and I am open to Members, but if I could take those *en bloc* and then just take any comments that Members have on Regulations 1 to 7.

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

Very well. If you want to propose those Regulations.

Senator J.A.N. Le Fondré:

Yes, as amended.

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

As amended. Are the Regulations ... do you wish to speak on those?

Senator J.A.N. Le Fondré:

No, I think I will save it until we get to Article 8, Ma'am, or deal with any comments that Members make.

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

Very well. Are the Regulations seconded? **[Seconded]** Does any Member wish to speak on the Regulations? I have got Deputy Morel first, please.

8.2.1 Deputy K.F. Morel:

Apologies that I want to speak, but I did not speak much in the principles because it is the issue of the trial by jury that is vexing me. I appreciate the problems with virtual juries and so on and I am still slightly confused, because obviously the real analogue version of juries go home each evening and can be spoken to by people outside the court during that period of time as well, but I will take what the A.G. said as is. My issue with this is that one of the worst things that a society can do to its citizens, it is to judge them and punish them incorrectly. One innocent person incorrectly convicted is one too many and is for ever a stain on that society's conscience and that is the position I am coming from with regard to the Regulation which restricts the trial by jury. I do note that the Amendment calls a variation of a trial by jury, whereas the original Chief Minister's Proposition called it a limit to the trial by jury, so it is interesting that there has been a slight change in title there.

While the A.G. said that this is about a small minority of cases with vulnerable witnesses and so from his perspective he believes that the Bailiff would only refuse to a delay of the trial because of the vulnerability of witnesses or victims, I understand that. But my concern then comes that under the crisis conditions and during this period of time up until the end of September that this could become the default, so whenever a request for a trial by jury is put in place that the presiding judge just moves to strike out that request each time, regardless of the situation and regardless of the types of witnesses, victims and so on, and so I am really struggling. Because we see too often that when something is brought in to deal with an exception or to deal with a small number of people that it swiftly becomes the default and the norm. Being tried by your peers, while not a fundamental right, is something that, to be honest, I think in the popular imagination, it is an important right that we do all have and enjoy for the most serious of crimes. I think it is really important to say there as well when we are talking about trial by juries, we are talking about the most serious of crimes and so this is not about lesser crimes that may attract, let us say, a 4 year or 5 year sentence. This is about the most serious of crimes. While we heard the Constable of St. Ouen talking about justice delayed is justice denied, I would counter that by saying justice incorrectly applied is no justice at all, and in fact what happens when you convict someone incorrectly is that you create 2 victims, not one. These are neither the defendant nor the victim themselves gain from a matter where a person has been incorrectly convicted. I know that jury trials are not perfect and therefore we do have this Superior and the Inferior Number operating trials as well, but I do think that right to elect to a jury trial is very, very important and one that we have seen ourselves as an Assembly trampling over various rights over the past month or so. We are now at home because our rights are being taken away from us and I am struggling to see that this is something that we need to do right now and I do feel that we can continue without the need to vary the rights to the trial by jury, particularly if we are talking about very few cases, as other people have said.

[15:30]

So I would just like to ask Members to really think extremely hard about this. Someone incorrectly convicted is not justice at all, it is the creation of 2 victims and certainly in society's mind that right to a jury trial is a vital right and one that pretty much I would have thought all 100,000 or so people on this Island would expect to be offered if they were ever in a position where they were being charged with a serious crime that would ordinarily allow them to be tried by a jury. So I ask Members to think hard about that when it comes to voting on that particular regulation. Thank you.

8.2.2 Deputy M. Tadier:

I think this is one area where Deputy Morel and I have similar thoughts and I think he has put it very eloquently already. I would simply add that although I was happy globally to support the overall packages put forward by the Chief Minister and I was also grateful for the Attorney General just clarifying the problems of a virtual jury, I fully understand that. I am glad it was thought through, because of course you do not know, similarly to when you are making a speech as a States Member, you could be sitting next to somebody and they could influence you, but that is not a problem, of course, but when it is a juror, that is a problem. But I am still not convinced that not having physical juries or not having the option to access a jury trial is correct, and while it might be said that access to a jury trial is not a right and not having access or being offered a jury trial when you want one is a breach of your human rights, it might well be that all of the changes cumulatively ... so it is being said also that we do not have public hearings anymore in the true sense of the word, because the public cannot attend the court. Some journalists may be able to attend some hearings if they click on the right link or if they manage to get to the Royal Court, but of course we know, for example, that they are not. It could well be that by degree all of these changes that we are making, again, not having access perhaps to the Superior Number, as it were, they could cumulatively be seen to be sufficient for an appeal. It is not just sufficient of course for Jersey to say: "Oh well, we do not think that there has been a breach of human rights, therefore there have not been" because we still at this moment I

presume ... well, there are higher courts certainly in the U.K., even if the European courts are not able to be appealed to anymore. So this is one step too far for me, quite simply. As I have said previously, somebody should be able to expect a right to a public trial, even if it means waiting until after September if they or their lawyer think that it is in their best interests to get them the verdict that they want and that they think is correct, so I will not be supporting that part, so if I could ask for that in advance to be taken separately and to be flagged up as to how we might vote on that separately.

8.2.3 Deputy M.R. Higgins:

In fact, just following on from Deputy Tadier, I think the way that we can address this particular thing is asking the Chief Minister to have the vote on Article 6 broken into 3 elements because 6(1) basically says that: "... the court that is due to hear proceedings considers that it is not appropriate to adjourn the proceedings to be heard at ..." sorry, no, I have read it wrong there. The thing I am trying to say, I have got reservations as well about aspects of this and I am still not happy with the idea of what is referred to in 6(2), where it says: "... if the participant is able to communicate with the court by way of a live television link, telephone or otherwise." I do not know what the "otherwise" is. I do not think we have got C.B. (citizen band) radios anymore. I also do not accept that a jury trial still cannot be held, given the particular model as we have at the moment. We are all scattered around in our own homes and dialling in to the Assembly, but a jury trial could be done with the jury with the Viscount officer in ... I do not know, it could be the theatre on the Waterfront or it could be a school in terms of their Assembly. It could be broadcast to them. They can all be observed and they could have social distancing in a place like that. I am not convinced that we have looked at all the alternatives and so I would ask anyway that if we can, I would like, when the Chief Minister comes to look at it, that Article 6(2) and (3) ... sorry, 6(2) definitely can be voted on separately, if that is possible. Thank you.

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

Deputy, I do not think it is possible to vote on the individual elements within each of the Regulations. The Regulations have to be voted on as a whole, so you could take Regulation 6, for instance, as a separate vote, but you cannot then break it down further into the individual elements of that.

Deputy M.R. Higgins:

OK. Although it does destroy what the Regulations are trying to achieve, I may have to vote against that part of it. Thank you.

8.2.4 Senator K.L. Moore:

I simply wanted to clarify for the benefit of some speakers that we are debating now the proposals as amended by the Corporate Services Panel with the assistance of Education and Home Affairs, which in Regulation 5, the right to jury trial, does amend to give the choice to those defendants who had been allocated a jury trial or taken that decision previously to elect for a jury trial, as is their right. Through this Amendment, we are now maintaining that right and so the defendant will be asked again by the court if they wish - admittedly, wish - to remain on remand, as will most likely be the case, for a slightly longer period to await a jury trial or if they would be content to be heard by the Inferior Number. I simply wanted to make that very clear before we move to a vote.

8.2.5 Deputy R.J. Ward:

I think one of the points I was going to make has just been made, that we are debating the Amendment. I think that has to be clear and I have asked if that can be just posted in the chat of this meeting so that people are clear as to what they are looking at.

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

Sorry, Deputy, you are not debating the Amendment, you are debating the Regulations as amended.

Deputy R.J. Ward:

Yes, sorry.

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

The Amendments have already been accepted by the Chief Minister.

Deputy R.J. Ward:

Sorry, my wording was wrong. Thanks for that correction, you are absolutely right. That is what I mean, we are debating as amended, so the point previously made by Senator Moore is relevant. I do believe that the trial by jury is still maintained and it is the choice of the defendant. If I am not correct in that, perhaps the Chief Minister can say that as he sums up. I would ask regards Regulation 2 just to give some sort of example of when the Bailiff may sit alone to determine matters of fact in law or the type of case if the Bailiff considers that an adjournment is not appropriate, what sort of situations would the Bailiff sit alone. It is clear that it is not for trial and the imposition of a sentence, hearing of an appeal, so I think there is some clarity needed around those things. I do share the concerns that have been expressed about changes being adopted and then sort of surreptitiously staying in the statute, and I think that that is something we have to be very, very careful of. I want the assurance on record, if one likes, from the Chief Minister that this will end on 30th September. Indeed, if there is a facility to form a trial by jury even when this is passed, if it is passed as amended, then that would still be attempted to happen because there is nothing in this change which says that that cannot be possible. So I think we are looking for the best possible scenario, given the difficulties that we are having at the moment in a wider context. Thank you.

8.2.6 Deputy J.H. Young:

I apologise for being slow on the uptake, but having looked now on the amended Regulation 5, I wanted, please, to query subparagraph (3) where it seems to suggest ... having listened to the Chairman of the Scrutiny Panel, I am very content that the defendant has a choice and they can remain on remand pending things to come back to normal if they wish, but subparagraph (3) of the substitute, that says that right to choose will not be available if it is considered that the defendant must be tried by the Inferior Number. Now, is that the Bailiff or is that the Royal Court that decides that? Can some guidance be given in what sort of circumstances it is intended that that power, the right of a defendant to remain on remand pending a trial by a jury at a later date, will be taken away? Thank you.

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

Attorney General, are you able to assist Deputy Young with his query?

The Attorney General:

Yes, Ma'am, I can. If it also helps, I can assist with Deputy Ward's question on Regulation 2, but it is up to Deputy Ward whether he wants me to answer that rather than ...

Deputy R.J. Ward:

I think that would be a very practical thing to do, thank you.

The Attorney General:

OK. If I take first your question, Deputy Ward, in relation to question 2, as I understood it, you wanted some examples of situations where the Bailiff can sit alone to determine certain matters. As it stands, Regulation 2(1) carves out a number of points where the Bailiff cannot sit alone, but examples of where the Bailiff can sit alone would be, for example, if it is a civil case and there is, for example, an interlocutory application, so an application that has been dealt with part way through the case, it is not the full trial of that civil trial, but where there is some evidence - that is usually in the

form of affidavit evidence - that comes from the parties. That would be an example of where the Bailiff can sit alone and decide those matters of evidence and points of law obviously also. That would be an example. Another example would be in relation to bail, so at the moment bail applications in the Royal Court at least are always dealt with by the Inferior Number. Under these changes, the Bailiff would be able to determine bail applications sitting alone without the Jurats. Those are 2 examples. I hope those assist Deputy Ward. In relation to Deputy Young's question, I understood that to relate to Regulation 5(3) of the Regulation, as substituted by the Corporate Services Scrutiny Panel. As I read that Amendment, that is not varying the right of a defendant who has elected a jury trial to continue with that jury trial. That Regulation is directed to a situation where there is a mixed indictment, so that is where there is a customary law offence and a statutory offence on the same indictment. It also relates to a situation where the defendant has not made a choice, he or she has declined to make a choice as to their mode of trial, whether it be by jury or whether it be by Inferior Number.

[15:45]

So it relates to those 2 situations and not to the situation where the defendant has made a clear choice that they want a jury trial where they are facing and they are answering an indictment which contains customary law offences, not statutory offences. So I hope that answers Deputy Young's question.

Deputy J.H. Young:

Thank you. Yes, it does.

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

Does any other Member wish to speak? If no other Member wishes to speak, then I call upon the Chief Minister to reply.

8.2.7 Senator J.A.N. Le Fondré:

I think on that basis, I thank everybody who has spoken. I particularly thank the Attorney General again for interceding and explaining the various questions. I think really to try and reiterate particularly around the issues raised by Deputy Morel is that there is no change in the right of someone to call for a jury trial if they are at present entitled to do so. That would be my summary of the position and I hope that is about as English as we can make it. As I have said, these are important changes that we are doing. They are driven by the crisis; they are driven by a desire to protect the judiciary, the staff of the courts and obviously anybody else who comes before those courts in a time particularly for those who may or may not have underlying health conditions. I do not need to say any more. I think we have covered it very well and on that basis I would like to therefore to maintain the regulations 127 as amended. I call for the *appel*.

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

Do you wish to ...

Senator J.A.N. Le Fondré:

Sorry, I do apologise. Yes, certain Members did ask for a separate vote on ... I think it was Regulation 5.

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

Regulation 5 I think it was, yes.

Senator J.A.N. Le Fondré:

Is it acceptable to propose ...

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

Regulations 1 to 4?

Senator J.A.N. Le Fondré:

Yes, as amended.

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

OK. Do you wish to have an *appel* for that?

Senator J.A.N. Le Fondré:

Yes, Ma'am.

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

OK. In a moment then the Greffier will place a vote in the chat channel and Members are asked to use the link. This is vote on Regulations 1 to 4 as amended. The vote is there and we will give a few moments for Members to load that link.

| POUR: 46 | | CONTRE: 0 | | ABSTAIN: 0 |
|----------------------------|--|------------------|--|-------------------|
| Senator I.J. Gorst | | | | |
| Senator L.J. Farnham | | | | |
| Senator S.C. Ferguson | | | | |
| Senator J.A.N. Le Fondré | | | | |
| Senator T.A. Vallois | | | | |
| Senator K.L. Moore | | | | |
| Senator S.W. Pallett | | | | |
| Senator S.Y. Mézec | | | | |
| Connétable of St. Helier | | | | |
| Connétable of St. Clement | | | | |
| Connétable of St. Lawrence | | | | |
| Connétable of St. Saviour | | | | |
| Connétable of St. Brelade | | | | |
| Connétable of Grouville | | | | |
| Connétable of St. John | | | | |
| Connétable of Trinity | | | | |
| Connétable of St. Ouen | | | | |
| Connétable of St. Martin | | | | |
| Deputy J.A. Martin (H) | | | | |
| Deputy G.P. Southern (H) | | | | |
| Deputy of Grouville | | | | |
| Deputy K.C. Lewis (S) | | | | |
| Deputy M. Tadier (B) | | | | |
| Deputy M.R. Higgins (H) | | | | |
| Deputy J.M. Maçon (S) | | | | |
| Deputy S.J. Pinel (C) | | | | |
| Deputy of St. Martin | | | | |
| Deputy of St. Ouen | | | | |
| Deputy L.M.C. Doublet (S) | | | | |
| Deputy R. Labey (H) | | | | |
| Deputy S.M. Wickenden (H) | | | | |
| Deputy G.J. Truscott (B) | | | | |
| Deputy J.H. Young (B) | | | | |
| Deputy L.B.E. Ash (C) | | | | |

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|----------------------------|--|--|--|--|
| Deputy K.F. Morel (L) | | | | |
| Deputy G.C.U. Guida (L) | | | | |
| Deputy of St. Peter | | | | |
| Deputy of Trinity | | | | |
| Deputy of St. John | | | | |
| Deputy M.R. Le Hegarat (H) | | | | |
| Deputy S.M. Ahier (H) | | | | |
| Deputy J.H. Perchard (S) | | | | |
| Deputy R.J. Ward (H) | | | | |
| Deputy C.S. Alves (H) | | | | |
| Deputy K.G. Pamplin (S) | | | | |
| Deputy I. Gardiner (H) | | | | |

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

So we then move on to Regulation 5 as amended.

Senator J.A.N. Le Fondré:

Yes, Ma'am, and *appel*.

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

If we wait a few moments for the Greffier to place a link, so it is Regulation 5 as amended is the next vote shortly.

Deputy R. J. Ward:

Sorry to interrupt. Some people are asking if it can be read out as amended. It may help the situation. I wonder if that is possible.

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

Yes. If you just give us one moment to find a copy.

Deputy R. J. Ward:

Many thanks.

The Assistant Greffier of the States:

5. Variation of right to jury trial. (1) This Regulation applies despite any other enactment whenever the Bailiff considers that at the time when a defendant's case is expected to be ready for trial it is likely not to be practicable to assemble a jury. (2) Despite having elected under Article 48(2) of the 2018 Law to be tried by the Royal Court sitting with a jury the defendant may instead elect to be tried by the Inferior Number of the Royal Court sitting without a jury. (3) If the Royal Court is decided under Article 48(4) of the 2018 Law that the defendant should be tried by the Royal Court sitting with a jury but the Bailiff, having heard any submissions from the defence and the prosecution, considers that it is not appropriate to adjourn the case to be heard with a jury at a later date, the defendant must be tried by the Inferior Number of the Royal Court sitting without a jury. (4) In this Regulation, 2018 Law means the Criminal Procedure (Jersey) Law 2018."

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

Thank you, Greffier. So in a moment the Greffier will place a vote in the chat channel and this is a vote on Regulation 5 as amended. So the vote is now in the chat channel if Members wish to then download and cast their votes. I will give it a few moments.

| POUR: 43 | | CONTRE: 3 | | ABSTAIN: 0 |
|----------------------------|--|---------------------------|--|-------------------|
| Senator I.J. Gorst | | Connétable of St. Saviour | | |
| Senator L.J. Farnham | | Deputy R. Labey (H) | | |
| Senator S.C. Ferguson | | Deputy K.F. Morel (L) | | |
| Senator J.A.N. Le Fondré | | | | |
| Senator T.A. Vallois | | | | |
| Senator K.L. Moore | | | | |
| Senator S.W. Pallett | | | | |
| Senator S.Y. Mézec | | | | |
| Connétable of St. Helier | | | | |
| Connétable of St. Clement | | | | |
| Connétable of St. Lawrence | | | | |
| Connétable of St. Brelade | | | | |
| Connétable of Grouville | | | | |
| Connétable of St. John | | | | |
| Connétable of Trinity | | | | |
| Connétable of St. Peter | | | | |
| Connétable of St. Ouen | | | | |
| Connétable of St. Martin | | | | |
| Deputy J.A. Martin (H) | | | | |
| Deputy G.P. Southern (H) | | | | |
| Deputy of Grouville | | | | |
| Deputy K.C. Lewis (S) | | | | |
| Deputy M. Tadier (B) | | | | |
| Deputy M.R. Higgins (H) | | | | |
| Deputy J.M. Maçon (S) | | | | |
| Deputy S.J. Pinel (C) | | | | |
| Deputy of St. Martin | | | | |
| Deputy of St. Ouen | | | | |
| Deputy L.M.C. Doublet (S) | | | | |
| Deputy S.M. Wickenden (H) | | | | |
| Deputy G.J. Truscott (B) | | | | |
| Deputy J.H. Young (B) | | | | |
| Deputy L.B.E. Ash (C) | | | | |
| Deputy G.C.U. Guida (L) | | | | |
| Deputy of St. Peter | | | | |
| Deputy of Trinity | | | | |
| Deputy of St. John | | | | |
| Deputy M.R. Le Hegarat (H) | | | | |
| Deputy S.M. Ahier (H) | | | | |
| Deputy J.H. Perchard (S) | | | | |
| Deputy R.J. Ward (H) | | | | |
| Deputy C.S. Alves (H) | | | | |
| Deputy I. Gardiner (H) | | | | |

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

So, we move to Regulation 8, Chief Minister.

Senator J.A.N. Le Fondré:

Actually, Ma'am, do we not do Regulations 6 and 7?

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

Sorry, yes, I am getting ahead of myself. The excitement is getting ahead of me. Yes, if we could return then to Regulations 6 and 7, are these to be taken together or are you wanting separate votes on these as well?

Senator J.A.N. Le Fondré:

If Members are happy for me to take them together that would be ideal.

Deputy M.R. Higgins:

Separate, please.

Senator J.A.N. Le Fondré:

Separate, OK, in which case can we go for Article 6, please, and I am guessing on the *appel* again.

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

OK, I will give some moments here. So Regulation 6 as amended, and in a moment the Greffier will place a link on the chat channel.

Senator J.A.N. Le Fondré:

The next Amendment is 8, as I understand it, from Scrutiny. There is no Amendment to Article 6 or to Article 7.

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

Oh, right, OK. So the link is now in the chat channel, if Members wish to download and cast their votes. This is Regulation 6.

| POUR: 43 | CONTRE: 2 | ABSTAIN: 0 |
|---------------------------|---------------------------|-------------------|
| Senator I.J. Gorst | Connétable of St. Saviour | |
| Senator L.J. Farnham | Deputy M.R. Higgins (H) | |
| Senator S.C. Ferguson | | |
| Senator J.A.N. Le Fondré | | |
| Senator T.A. Vallois | | |
| Senator K.L. Moore | | |
| Senator S.W. Pallett | | |
| Senator S.Y. Mézec | | |
| Connétable of St. Helier | | |
| Connétable of St. Clement | | |
| Connétable of St. Brelade | | |
| Connétable of Grouville | | |
| Connétable of St. John | | |
| Connétable of Trinity | | |
| Connétable of St. Peter | | |
| Connétable of St. Ouen | | |
| Connétable of St. Martin | | |
| Deputy J.A. Martin (H) | | |
| Deputy G.P. Southern (H) | | |
| Deputy of Grouville | | |
| Deputy K.C. Lewis (S) | | |
| Deputy M. Tadier (B) | | |

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

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

I will give the Greffier a few moments to reset the system and shortly there will be a link for a vote on Regulation 7. So, the link is now there if Members wish to download and cast their votes.

| POUR: 43 | CONTRE: 1 | ABSTAIN: 0 |
|----------------------------|---------------------------|-------------------|
| Senator I.J. Gorst | Connétable of St. Saviour | |
| Senator L.J. Farnham | | |
| Senator J.A.N. Le Fondré | | |
| Senator T.A. Vallois | | |
| Senator K.L. Moore | | |
| Senator S.W. Pallett | | |
| Senator S.Y. Mézec | | |
| Connétable of St. Helier | | |
| Connétable of St. Clement | | |
| Connétable of St. Lawrence | | |
| Connétable of St. Brelade | | |
| Connétable of Grouville | | |
| Connétable of St. John | | |
| Connétable of Trinity | | |
| Connétable of St. Peter | | |
| Connétable of St. Ouen | | |
| Connétable of St. Martin | | |
| Deputy J.A. Martin (H) | | |
| Deputy G.P. Southern (H) | | |
| Deputy of Grouville | | |
| Deputy K.C. Lewis (S) | | |
| Deputy M.R. Higgins (H) | | |

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

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

So we now move to Regulation 8, Chief Minister.

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

So, Regulation 8 is as amended by Scrutiny, but we are not accepting Deputy Tadier’s Amendment, so that will be a separate debate, I assume. So, on that basis, I presume it is appropriate for me, in proposing Article 8 as amended by the Scrutiny Amendment, to address why we are not accepting Deputy Tadier’s Amendment.

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

Well, it is a matter for you but it would probably be more appropriate to speak in the debate on that on its own.

Senator J.A.N. Le Fondré:

If it is a matter for me, I would like to do it in one go if that is OK and attempt to keep Members’ time to a minimum as it were.

Deputy M. Tadier:

Can I interject? Sorry to interrupt the Chief Minister, but that would effectively be a second speech and it would also be not on the topic. Could you rule on that, Ma’am?

Deputy K.F. Morel:

Sorry, yes, the Amendment is proposed by Deputy Tadier so he gets to speak first on the Amendment.

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

I would think that it would be more appropriate, Chief Minister, for your speech where you are advising that you do not support the Amendment from Deputy Tadier to take place during the debate

on that Amendment in itself and for you to restrict your comments in this instance purely to Regulation 8 as amended already by the Scrutiny Panel.

Senator J.A.N. Le Fondré:

Then I think you have just done my job for me, Ma'am, and I make no further comments. I propose Article 8 as amended.

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

Is Regulation 8 seconded? [Seconded]

8.4 Draft COVID-19 (Emergency Provisions - Courts) (Jersey) Regulations 202- (P.41/2020): Amendment (P.41/2020 Amd.)

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

So, there is, as we know, an Amendment brought by Deputy Tadier and I ask the Greffier to read the Amendment.

The Assistant Greffier of the States:

Page 13, Regulation 8 - In Regulation 8 - (a) in the heading after "recorded" insert "or broadcast"; (b) after "court" insert "or to broadcast the proceedings live on a website that is accessible to the public."

8.4.1 Deputy M. Tadier:

I thought I would just go on video for this purpose. It is probably easier to follow somebody who is speaking on camera for an Amendment. What I would like to do is keep this very short because I think this is a very simple matter. What I would remind Members is that we are not debating P.43 today, which I agree is a much more nuanced and complicated argument. That is to say I am not asking that we ask the courts to livestream. That will be asked in a couple of weeks, but there will be some time for discussions between myself, the Chief Minister and stakeholders in the court for that. What we are doing today is a very simple permissive change in wording which is supported, I note, by the Scrutiny Panel, which is simply to allow not only for the recording, which is currently what is being asked for, of proceedings of the courts but also for livestreaming if the court and the Judicial Greffe wish to do so. So, I could quite easily make a speech about what I think the pros are in terms of the court doing that, but I would not be speaking to the Amendment today, so I am going to show that amount of restraint at the moment. I also hope that Members, including the Attorney General who I know has submitted some very detailed comments to P.43, would keep comments to this particular Amendment, which I have said is permissive. Of course, if Members stray into P.43 and the pros and cons of doing that, then I will have to address that in my summing up, but I see this as quite a simple matter.

[16:00]

I guess I should perhaps give some context. The reason that the court might in the future wish to introduce albeit limited livestreaming to allow some members of the public to join is because there already exists a system in place for journalists to join the Magistrate's Court. So, the question I really would ask, I guess, is the fact that Regulation 8 in itself is asking for the ability to broadcast ... to record, sorry, but we already know that the courts must record in terms of the Magistrate's Court for journalists to be able to join by livestream. That is effectively a recording. All I am saying is that there may be a time in the future where the court wishes to livestream and this would be the appropriate juncture to make that permissive change. So, I do make the Amendment and ask hopefully for a seconder.

The Greffier of the States (in the Chair):

Is the Amendment seconded? **[Seconded]** The Amendment is seconded. I have the Attorney General who wishes to speak on the Amendment.

8.4.2 The Attorney General:

Bearing in mind Deputy Tadier's second Proposition which is to be debated separately, I will strive to keep my comments as brief as I can.

The Greffier of the States (in the Chair):

Can I just say, Attorney General, I believe that Deputy Tadier's Proposition has been deferred to a later sitting?

The Attorney General:

Yes, exactly. I am only speaking in relation to his Amendment to Regulation 8, so I will attempt to confine my comments to that and be as brief as I can. I do wish to stress that although Deputy Tadier has put this as a simple Amendment and one that is a sort of version of arrangements that are being made for the press to attend a Magistrate's Court for proceedings there, in fact it is not simple and this is something that is radically different. It is not supported by the judiciary, the Magistrate or, indeed, in the limited time that we have had to consider the Amendment, anyone really who is a practitioner within the criminal justice or, indeed, the civil justice system. The reason that I say that it is not straightforward or simple is that when you livestream to a public internet site, that is something that is radically different from a member of the public attending the public gallery to observe proceedings in either the Magistrate's Court or the Royal Court. The reason that it is radically different is that the court can control what members of the public do in those circumstances. It can prevent them from taking photographs of the proceedings. It can prevent them from recording the proceedings and punish those, if it is necessary, as a contempt of court. Similarly, as regards the press, the arrangements for the press in the Magistrate's Court and I think in the Royal Court are that they are just there to listen to the proceedings. As far as the arrangements for the press are concerned, the press are in this jurisdiction and there are provisions that are in the law that prevent them from reporting certain details that would, for example, identify a child, whether it be by way of a process of what is known as jigsaw identification, where bits of information come out in court proceedings and allows people in this small Island community to be able to identify that child, or whether they inappropriately and directly name the child. So the press are subject to ... they behave responsibly in the vast majority of cases, but where they do allow a child to be identified, they can be subject to control. That is why livestreaming is something that is completely different from ... and broadcasting proceedings to a public website is something that is completely different, and I do wish to stress that. In terms of other points that I wish to make, when something is livestreamed, it means that it can be recorded by the public and it can be distributed via social media extremely widely. The recording will be out on the internet potentially indefinitely, for ever, and in those circumstances how that impacts on users of the court and particularly on witnesses, victims, that amounts to an extremely radical change to the current way that court proceedings are conducted in this jurisdiction. There is no support for this jurisdiction in terms of the Law Society has not requested it. The judiciary are against it. The Bailiff, Deputy Bailiff, Magistrate, they are all opposed to it. As far as I am aware, no defendant has requested it and there is no public demand for it. I have been told specifically by the Magistrate that no member of the public has contacted the Magistrate's Court to ask about what has happened in relation to a particular case. So, there is no public request for this sort of thing. In terms of other points, I do just wish to stress that introducing this sort of thing, while it is put by Deputy Tadier as some sort of permissive change and it is not mandatory for the courts to go down this route, it is sending a message. It raises a concern in the minds of users of the courts that potentially their evidence could be subject to livestreaming to a public website. We have been working for a number of years to try to protect victims, witnesses, children - particularly children -

from the sorts of pressures that are involved with court proceedings. It may be that Members are not particularly familiar with the pressures of court proceedings, particularly in a small jurisdiction such as this one. So, court proceedings, they are subject to a wide degree of media reporting that may not really take place to the same extent in a much larger jurisdiction. That creates pressures on witnesses and victims and they are already quite nervous and reluctant to go through, in many cases, the ordeal of court proceedings. But adding to that this suggestion that their evidence might be livestreamed to a public website is going to raise in their minds, even if it is put in this permissive way, it is going to raise real concerns with them about giving evidence and pursuing justice. So, I have real and fundamental concerns about this Amendment. It may be that Members will recall some years ago there was a practice where defendants, for example, in domestic violence cases or domestic abuse cases were named and shamed in the Magistrate's Court. That, unfortunately, resulted in bullying of children at school. Children would find out that another child's parents had been involved in a domestic violence case, and it was found that those children were bullied. If we were to go down this sort of route of livestreaming proceedings to a public website, I think that is significantly augmenting the risk of that sort of behaviour. So, I have real concerns about this Amendment. It is put as a simple Amendment but it is not a simple area. This is a very complicated area and it needs time to think about it very carefully indeed. It is not just a problem that will apply to trials. It applies throughout criminal cases. If we were to do this, it would apply from start to finish. So, for example, if you take a typical criminal case, the process of that case is that if it is a serious offence, it is indicted ... well, firstly it is charged in the Magistrate's Court and then it is indicted. There is a considerable level of detail that is read out in court when the indictment is put to the defendant. So, if it is a sexual case, there are very personal details of what the offence is, whether it be a rape, if it is a penile or digital penetration or if it is anal rape or if it is oral rape, how many times it was done, who it was done to, where it was done, when it was done. All that is very sensitive information that is read out in open court, so you can imagine how a victim would feel about that sort of information being broadcast to a public website where it will be available on the internet indefinitely. The problem will arise throughout the court process. It is not just limited to indictment or the trial. For example, if as frequently happens there is a pre-trial review or a plea and directions hearing, we go into detailed argument over admissible or inadmissible evidence. Basically, we would be broadcasting potentially evidence that gets excluded by the court from the trial, but it is broadcast to a public website, so the defendant is left with this information being broadcast to the public at large which the court is going to huge lengths to exclude from the trial. It applies to things like victim impact statements, where the victim sets out the impact of the offending on them when it comes to sentencing. At sentencing, details of the defendant's criminal record are read out, and it would pose huge implications for the rehabilitation of that particular defendant if that sort of information had been broadcast to the public at large. Now, in normal circumstances that information would become spent to allow the defendant to be rehabilitated. So, I just wish to stress to Members that this is a very complicated area and it is not something that is simple, that is rushed into in an emergency situation like this one. It needs very careful thought and, in particular circumstances where members of the public are not pressing for this, practitioners are not pressing for it, I would urge Members to show very considerable caution about this and not support the Amendment. If we were to go down this sort of route, I think as a jurisdiction we would be very much on our own. So, no common law jurisdiction that I am aware of, certainly not Guernsey, Isle of Man, England and Wales, is planning to broadcast Magistrate's Court trials, Royal Court trials, to a public website. We would be very much on our own and I think that is significant. I would urge Members not to support this Amendment.

8.4.3 Deputy M.R. Higgins:

It is very interesting listening to the Attorney General. Yes, there are a lot of issues to be dealt with in this particular area. However, Deputy Tadier is not laying down that it should be unconditional broadcasting. He made no statements, as I see it, as to how the broadcasting could be done. For example, could not the judge in the case have a mute switch? Could there be a delay on the broadcast?

Then if a matter is coming up which should not be broadcast to the public or which could be prejudicial or was not going to be put before a jury, then the judge himself could pause any possible broadcast and to prevent it going out.

[16:15]

So, I think the issue is worthy of consideration but I do not think it should be dismissed out of hand. Furthermore, I have my own concerns about recordings in court. In fact, I may have to bring an Amendment myself, perhaps in the next sitting, the May one, on the issue of recordings. Because we have a system in Jersey whereby justice is being denied, in my view, to many people who cannot afford to go and get a copy of the transcript. That is one consideration. You have to pay, and I think it is £60 or whatever it is per transcript. Many people, especially litigants in person, cannot afford that. The lawyers, I believe, may get the transcripts as a matter of course, but individual litigants may not. So, if they cannot afford to get hold of the transcript, how can they decide whether they wish to appeal or to question various aspects of what went on in the trial? So, from that aspect there is a denial of justice. Equally, under the system as it stands, the court recordings, if a person wishes to go and listen to the recording, they have to get the consent of the trial judge to do so. Now, I am not aware at this moment of any judge who has refused it, but at the same time it should be a matter of right that anybody who has taken part in a court case should be able to go and listen to the hearing and should be able to get hold of a copy of a transcript so that they can be on an equal par with the lawyers or the prosecution, who automatically get these things. So, there are issues here which are not straightforward, but I will go back to the point I am making. The broadcasting of justice ... well, in fact, the Americans do broadcast many of the courts. The courts themselves can come up with proposals as to which part of the hearing should be broadcast or not. As I say, by having a mute switch and a time delay, then the sort of abuses or concerns that the Attorney General is talking about could be dealt with, so it should not be dismissed out of hand.

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

When I first heard about this, I have to confess that I was very much against it, and in some ways I still am. I would hate to see our courts become some sort of Jersey version of “*Judge Rinder*” and I feel the public would struggle with certain concepts in trials anyway. If you had a murder trial, the concept of *actus reus, mens rea, et cetera*, are complex ones and can lead to misleading situations for the public to be placed in. But I take on board the A.G.’s comments. I think they are very salient, but this does not have to be where you just click in and see something as though it was Channel Television. This could be done on a basis as we have, say, for Teams, where members of the public would have to fill in a form to sign up to watch this. As part of that form, they would be informed that it is a criminal offence to broadcast that information. So, I think we can get round that. As I say, am I in favour of it? No, I am not particularly and it is at a time when we have passed a huge amount of legislation such as we have just seen with the trial by jury, that I am not in favour of at all but I have had to go with because these are extraordinary times. Now, I think the reason I am going to have to go with this and back it is because at a time when we are removing a lot of civil liberties from people, it is very important that perhaps occasionally we give something back as far as civil liberties are concerned. It is important that our judicial system is not only fair and just, as I fully believe it is and I am sure everybody in the virtual Chamber feels it is fair and just, but it also has to be seen to demonstrate that publicly. So, I will, therefore, support this Proposition, as I have others, or Amendments, sorry, but I will be supporting it on a temporary basis only.

8.4.5 Deputy R. Labey:

Well, I think it is going to be very difficult for Members, after hearing from the Attorney General just now, to support this, even Members like myself who support the idea behind it. It is something I would like to see because I think it can humanise court proceedings. We have all seen Frank Caprio, the Chief Municipal Judge of Providence, Rhode Island, become an internet sensation with the way

he administers justice in that part of America in a very kindly way. There are things that are happening in the Royal Court, good things, things like the swearings in and the *Assize d'Héritage*. Stuff like that would be great to livestream eventually. I am sure that Deputy Higgins is right; there are ways and means of trying to avoid the worst fears of the Attorney General in terms of broadcasting, in terms of a delay, if you can take stuff out, and all sorts of measures that you can put in so that, for example, a trial that involves anybody under the age of 18 is simply not broadcast. But we have seen it done elsewhere. It is done a lot in Scotland. I am not an expert on it, of course. This is something I would like to see done. I do not know why we do not have a Minister for Justice here for the States of Jersey and I would really like to see ... somebody has got their microphone on. I would really like to see that. The Chief Minister is our Minister for Justice. Now, does the Chief Minister at this moment in time have the time to look into the justice side of things? Of course he does not, and I do not know why it is such a fearful thing, having a Minister for Justice. I think it is a really important thing and we should move toward it, and I do not think it is going to start unpicking the entire framework of our judicial system. I am broadly in favour of this kind of thing and I think it could be really important and it is going to happen eventually. Why do we not start getting the hang of it and trying it out? I just worry that the I think possibly inevitable negative vote here I say to Deputy Tadier is not going to do the cause of broadcasting our courts any benefit, any good and he might want to consider withdrawing this and framing it in a better way so that we can start the process of beginning to open our courts up in a broadcasting kind of way to the Island.

The Greffier of the States (in the Chair):

Can I just offer another gentle reminder to everybody to please turn their microphones off when they are not speaking, otherwise the Island gets to hear all kinds of domestic noises, which do not need to be shared?

8.4.6 Senator K.L. Moore:

I am grateful to the Attorney General, who provided a very helpful commentary earlier. It did almost persuade me of the case against this Amendment, however there is an important word in the Amendment of Deputy Tadier, which is “or” and in my understanding and reading of the Amendment as it stands it would leave the situation that the Judicial Greffier was able to make a decision as to whether the broadcast was available in a recording only or broadcast publicly and live on the internet. I think that is a very important distinction and in these unprecedented times where there is a lack of public access to the Royal Court that is available to any person who has the time, the ability and the inclination to attend in normal circumstances it does make it very difficult to in my perspective vote against this Amendment and so I will maintain my support for the Amendment.

8.4.7 Deputy G.P. Southern:

Strange, this speech by Deputy Labey, who was very keen on this Proposition, so keen that he wanted it withdrawn. An interesting device, that. I say to Deputy Tadier whereas you may choose to do what with your own Proposition suggests that Deputy Labey withdraws whatever he supports, because that is a confusing position to be in. What it comes down to is this word “permissive” again. We have got a long litany of things that might go wrong and things that we might not want to be broadcast. Then he said: “Yes, but we would have to give some time to working out what we can or cannot broadcast and what is appropriate for certain cases and not for other cases” but access to the courts and seeing justice being done is one of our bedrocks, I believe. This permissive, either/or, yes, take a look at it by all means, decide on the limits and the conditions that might apply and then get on with it. It does not say get on with it now and tomorrow we will be having broadcast court cases as of tomorrow. So bear with this. I think it is probably worth investigating. It will need preparation, it will need work to finally deliver, but I think it is worth a vote.

8.4.8 Deputy M.R. Le Hegarat:

Having worked very closely with vulnerable victims, both children and of domestic violence, I have real concerns about any broadcasting in relation to this matter. Over the last 30 years significant work has been done with multiple agencies to help support and encourage all victims of crime to come forward and support those prosecutions. I do not think that this is a positive way forward, even on a short-term basis. This could put all of that work back significantly. I think we really need to consider exactly what we are asking in relation to this broadcasting. If there have been no requests from defendants or prosecution or defence I query why we are putting this forward, and I have to say I shall not support it, because I could not put at risk what I think multiple agencies have worked so hard to do over the last 30 years to get us to where we are today and be able to have those people come forward and be encouraged to come forward. A lot of work is done with those victims of crimes in order that they visit the courts, they are encouraged and supported significantly. I do worry that this will, maybe, prevent them from doing so in the future. For that reason I could not support this.

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

I could not agree more with the last speaker. I thought she put that really well and she has obviously worked with the people and a lot of work has been done. We do allow the Associated Press to hear, record and then they can disseminate what they think goes out to the public. That might not be working as well at this point in time, because there are a lot of other things to report but they are there, they are the Associated Press, they work to certain rules and I would be quite happy for that to continue. I am very concerned that this is absolutely a step too far. People are telling me if it does not happen it is an infringement of someone's human rights, and I think if it does happen it is an infringement of someone's human rights. I have weighed it all up and I cannot support the Amendment and I really urge people to think about this. It could be just one case and that will live with somebody for the rest of their life, and if it is not done right, we rush it, if you listen to the Attorney General, vulnerable children involved where their parents are on film, it is all very well saying once it is streamed we can have control of it. Yes, well, that works well, does it not? We see so much fake news. They look like the person, the person is not saying what they said and then the next 10 minutes is cut out and then it jumps to another piece. I am really uncomfortable with this, and I am sorry, I will not be supporting it.

[16:30]

8.4.10 Deputy J.H. Young:

I think we are presented with a very tempting Amendment here, because there is no way of avoiding it. Our courts do need, I believe, to have more modern processes and do rather better at being able to help people with the processes of justice and information. For example, the point that Deputy Higgins has said is right. It is very difficult to get hold of transcripts of matters of particular interest and of course I do not believe there is always a situation where you have even got an audio transcript. The principle of greater access through to the court is tempting and Deputy Tadier relies on the word "permissive". Permissive, i.e., there is permission, but of course also the Corporate Services Scrutiny Panel Amendment means that that decision of whether it would be or not would be made by the Judicial Greffe. I think we absolutely have to look at the points made by the Attorney General. There are many matters where you would certainly not want to put those proceedings in detail into social media, for all the reasons that the Attorney General and other Members gave. Equally there are other matters that I think should be in the public interest, like major civil cases and indeed things like licensing of the Assembly and so on, and sometimes these things, although minor, are quite contentious. I think myself that unfortunately this is an interesting idea but it is the wrong proposal. We are dealing with the context of emergency legislation here and as a very minimum I would certainly have preferred if the Amendment was that there should be an audio-recording available not for the public but for those affected by cases during the emergency procedures, particularly, for example, where there is no trial by jury. The idea, that it is permissive there, is to me not satisfactory.

It should be compulsory that the Judicial Greffe arrange that where there is no jury trial that there is some sort of record kept that can be looked at, at a later date. On balance I think that we have a situation here where unfortunately the principle of trying to make our courts more accessible and there will be things that I think the public would like to see, but not criminal trials and absolutely for the reasons the Attorney General has said, I think this is the wrong proposal at the wrong time. At a later date I really do hope and it may be if we ever get a Minister for Justice, somebody who takes on these issues because they fall between all ministerial stalls, we can have some guides, we can have some rules, guidance on this and regulations about where and when it is permissible and when not, and the rules and so on about safeguards. We do not have that now, we do not have that choice to vote that, so I am afraid I am going to vote down the Amendment.

8.4.11 Senator S.Y. Mézec:

Some disappointing comments to follow there, to be perfectly honest. The old adage from Lord Hewart that not only must justice be done, it must also be seen to be done, let us be frank because of the difficult situation we are facing now with the pandemic that is a principle that we are moving away from, and that is not a good thing. The courts, and our justice system, is one of our branches of government and all of those branches have a duty to be as accessible as is appropriate given the nature of what they do. When we are in the situation we are in that is obviously going to be difficult and it requires us to operate in a different way to try to maintain some degree of accessibility. This Assembly as one of the other branches of government has had to think very quickly and move very quickly to try to still be accessible and still conduct our work in public and that has been done very successfully. I simply do not understand why it is wrong to deprive another branch of government from having the opportunity to do that. The courts obviously have to continue to operate and justice has to carry on, but accepting that we are in a unique situation now and keeping options open to still abide by some of those fundamental principles is what we have got to do and what some of the rest of the debates on these Regulations have been. Ultimately the point here, as Deputy Tadier said in his proposal speech for this, and this has got to be the winning point as far as I am concerned, is that this is purely permissive. It is not dictating the terms under which this has to happen. It is not dictating that every single word uttered in court has to be broadcast. It is not dictating that there has got to be close-up shots of each member of the jury's face or every victim as they are giving evidence or being questioned. It simply says that there ought to be an option and that is what it is. It is purely an option. For courts to go back or withdraw some of the limited accessibility that there already is, the fact that you can just turn up to court, you do not have to be anything to do with the case and go and sit in the public gallery and observe it, learn from it, watch it, and be aware ultimately of what has happened in it. To move back from even having that access is I think objectively an infringement of democratic processes that we are used to and on human rights, but of course there is a lot of that going around at the moment. We are limiting various aspects of democracy and human rights in how people are allowed to live their lives in Jersey and that is OK, and only OK if you can demonstrate that the action was proportionate, that infringements on human rights are done for a proportionate reason, to achieve a legitimate aim. So if that aim is to keep people's health safe, so they are not at risk of catching the virus, you can do other things to mitigate the other consequences there are. We have done it with this Assembly by livestreaming it over a video conference. This tiny line or couple of words that Deputy Tadier is trying to put into these Regulations must surely fit that proportionality test, because they do not require the court to undertake any action that has a negative or unintended consequence anywhere else, but simply allows there to be an option for livestreaming if and when it is appropriate, so that some degree of accessibility to our courts and to our justice system can be maintained when otherwise there would be very limited accessibility. I cannot understand an argument to say that that is not proportionate. It clearly is and many of the examples that have been shown to suggest there will be negative consequences are, frankly, just as valid with having open court sessions anyway. If there is information that should not be known by the public or if there are identities that need to be protected or this, this and that, that is as much a risk in having an open court

session as there is for it to be a livestreamed court session. Where there are instances where things cannot be held in public, like certain Family Court matters or Youth Court matters and so on, you just apply the same principle that you would to an open court session to the livestreaming, which is that you have restrictions where it is appropriate. It is not rocket science. There are ways of getting around this, and I think that all of the issues that the Attorney General listed are ones that there is still perfect ability to address within this very minor change to the legislation that Deputy Tadier is proposing. I will say, though, that I am in favour of the broader principle that court should be made more accessible even in normal times. I would like to see an element of livestreaming introduced in the future, even though that is not what we are discussing today. Deputy Ash made a point about T.V. show court programmes which as somebody who has studied law I often find very frustrating, how they are not portrayed particularly realistically but Deputy Ash made the point that there are often complex legal principles that lay people can struggle to understand. He spoke about *actus reus* and *mens rea*. I find it routinely frustrating when I hear people say: “That person who was charged with murder got away with it because he was only convicted of manslaughter” when if you are convicted of manslaughter you have not got away with it. You have still been convicted of something serious, and there are lots of misunderstandings like that, that people have in criminal law and other areas of law as well. Surely if you make these processes more accessible that can only have the effect of making people better informed about these processes by being less intimidated by these institutions and processes and understanding why they are there, how they work and if you ended up there one day what would be expected of you in terms of protocol or etiquette or how you have to conduct yourself. That can surely only be a positive thing. I have no other points to make apart from reiterating that this is a couple of extra words which give the ability, if and when it is appropriate, for courts to be streamed. It makes no prescription whatsoever on what format that has got to be done in. It requires absolutely nothing to be done if it is inappropriate. If there are court proceedings or ways of doing things that ought not to be livestreamed then there is nothing in this proposal mandating that that ought to happen when it defies common sense or the rights of victims or the rights of whoever else, but to not accept it means you rule out the ability of the court to take responsible and proportionate action to maintain its accessibility and openness through this crisis, where their ability to operate is infringed because of the health concerns which do not necessarily require them to also make withdrawals on principles of openness and transparency. The first point does not have to lead to the second point, but it will lead to that second point if this Amendment is rejected. To leave that ability for that potential to be there, voting in favour of this Amendment offers us that. It does not lead to any of those negative consequences that people are worried about automatically. It leaves an option open for this to be done sensibly and proportionately where it makes sense. Since there are no negative consequences of this Amendment because of that it simply leaves the option open and I cannot understand a reason for voting against it, so I will certainly be voting in favour of it.

8.4.12 Senator J.A.N. Le Fondré:

There are times when I welcome and sometimes support the motions from Deputy Tadier and agree, perhaps, with the words of Senator Mézec. Unfortunately, as may well be predictable from the comments I issued on P.43, this is not one of those occasions and unfortunately I am going to have to agree to disagree. I absolutely concur with the comments by Deputy Le Hegarat and obviously with the Attorney General. I think Deputy Le Hegarat, from the point of view of absolute experience and a concern about all the good it could undo, has hit the nail on the head. I think the other point which she also referenced but needs reinforcing is this is temporary legislation. It expires on 30th September and what has also been very clear, as the Attorney General has already expressed, is that the courts, the Judicial Greffier, as I understand it the Bailiff, the Deputy Bailiff, the Law Society, do not support this. I would be surprised, if anybody involved in Victim Support and people like that would be supporting it. I would be surprised if Probation supported it. I think that is fundamental. It is all very well saying this is permissive, not prescriptive, but if you are not going to do it, if you

are not seeking to impose it on the courts, why are we bringing this into temporary legislation? I think that is the fundamental there.

[16:45]

I think the other fundamental in that side of things is that there has been references to the various arms of government - and obviously it is government with a small “g” - and it is pretty well the case that Government with a big “G”, i.e., the Council of Ministers these days, do not try to interfere with the judicial system or the courts, well, as little as possible, but when legislation does get introduced, which obviously then comes to the Assembly, that is after very wide scale consultation, which obviously includes the judiciary. There has been no consultation with the courts/judiciary on this subject. There has been no discussion and I think that is one of the issues. Also just a point that the Proposition does talk about broadcasting the proceedings, which I think the Attorney General has spoken to already, which means it captures a lot of functions of the court and live. Those words are very clearly as written. I do not really want to reiterate all the various cases that the Attorney General referred to, but it is worth going back to the point that also Deputy Le Hegarat referred to, if you are dealing with vulnerable adults as witnesses, if you are dealing with children, and particularly if you are dealing with rape victims, you have taken a lot of time under the present system to try to persuade someone to come as a witness to ensure that justice is done, does this undo a lot of that good work? I think the risk is that it does. Some people would say: “Oh, no, of course not” but there is a fundamental difference, I think, between a witness being heard in open court in front of people that they can see and over which the court ushers do have a degree of control versus a link that is potentially broadcast to the entire world. I know that is not a technical or legal argument but it is I think a political argument. The evidence for children particularly it would have a severe impact on, and I think also of abuse and rape victims. We may just say: “Oh, no, surely that would not be the case” but surely as politicians we are probably all aware of the bullying that can occur over social media. Now, it might be just someone who has had a glass of wine too many on a Friday night and thinks they are being funny, but it might also be someone who is vindictive, and potentially vindictive to a witness or to one or other of the parties. We have already had the point around as well about evidence that is ruled inadmissible and that would obviously be subject to live broadcast which then, I think, severely damages the innocent until proven guilty premise that a number of us operate under. We have seen how nasty some of the social media comments can be and how quickly people are to react on incomplete information. All that would do is basically feed, in my view, that risk of bullying and intimidation that could then be applied to anybody that is identified through a livestreaming exercise of the court process. It is something you do very carefully. You do it after exceptional consultation. You do not do it, as far as I am concerned, even if you are saying it is permissive. As I have said, in my view, if you are making it permissive you are intending to do it at some point, or alternatively one has not researched the issues and one has not thought it through. I will say that I originally did have some sympathy towards the Amendment and I was looking to see what solutions are there that one could possibly apply. However, I did speak in the limited time I had available to some of the people who are on the sharp end of this and for all of the reasons that have been identified that is why I cannot be supporting this Amendment. Yes, I do have half an eye on P.43, but I think that is absolutely relevant in the context of what is in the mind of the proposer, and for all of the reasons and that is around protection of victims, of women who have been raped, of children who have been abused, of vulnerable adults, this is not the time to be doing this as an Amendment and I really do urge Members to vote against this.

The Greffier of the States (in the Chair):

Before we carry on with the debate Deputy Tadier has a question for the Attorney General.

Deputy M. Tadier:

The question is to do with court cases that already take place routinely in private, if you like, so I want to know from the Attorney General what kind of cases would normally be closed to people in Jersey in the public gallery in a normal period of time?

The Attorney General:

Yes, Deputy, the normal cases that are closed to members of the public are family proceedings, so divorce cases or cases where there are applications in relation to children. In relation to criminal trials and most other civil cases those are all open to the public and in relation to the point mentioned by Senator Mézec you are not changing anything really, you can just adopt the same rules that you apply to those sorts of sensitive cases, that is just not correct. Some trust cases are held in private and some cases that concern, for example, mental health issues and capacity issues. Those are held in private generally. The presumption is for open justice. Most cases are heard publicly. The difficulty is, in relation to Deputy Higgins' points about just pressing a button and screen out certain bits of evidence, because that is just not a practical solution. When one is dealing with criminal cases, the defendant has a right to know the case that he or she has to answer. That means reading out or saying in court very sensitive bits of information and the court would continually be pressing buttons. It would not be able to concentrate on the case at all, because it would continually be screening out bits of evidence that are sensitive. The fact is that sensitive information is routinely heard in court cases and for criminal cases it just has to be.

The Greffier of the States (in the Chair):

Attorney General, could I just stop there? You have already spoken debate and it is very important that beyond that you only answer questions. Otherwise you are getting a second or third speech, which is not something which other Members are going to be able to benefit from.

The Attorney General:

I agree. Sorry if I strayed beyond the precise question.

The Greffier of the States (in the Chair):

You did stray a bit. Deputy Tadier, do you have any follow up to that?

Deputy M. Tadier:

The Attorney General would make a very good politician. That is meant as a compliment. I do have a further question about the public trials, what provisions are currently made for victims and witnesses who are made vulnerable to shield their identity already under normal circumstances.

The Attorney General:

Yes, of course, I am happy to answer that question. There is a regime that the courts have developed over a number of years that has been given statutory effect in the Criminal Procedural Law that the Assembly approved last year. It is a scheme of special measures. Where there is a vulnerable witness then, for example, there is a liaison person, an intermediary, who is appointed by the court, who assists that witness to make sure that they give the best evidence. The defendant can be prevented from personal cross-examination of the witness. There are measures by which questions have to be put in and the court controls the questions that are put. The witness can be screened from having to have sight of the defendant, but the witness is not screened from the jury or the members of the court or the lawyers who are having to cross-examine that witness. It is very important, in particular for the court, that they see the witness and they see the witness's demeanour when they are having to answer questions. While there are special measures, I do wish to stress the members of the court still have to see the witness giving evidence.

Deputy M. Tadier:

Sorry for a further question. Does that extend to the public gallery? For example, if there were people in the gallery who might be related to the defendant, would the victim have to sit there in front of those people?

The Attorney General:

Where a witness is, for example, giving evidence remotely by way of a video link, so they are not present in court, they are giving their evidence from another room in the court building, where they are subject to supervision by members of the court staff, then the jurors or the Jurats have screens in front of them so that they can see the witness giving their evidence. They can see their face. The camera is pointed on their face. Generally, unless it is a very sensitive case, it is a bit awkward in terms of the layout, certainly of the Royal Court, for members of the public who are sitting in the public gallery, to see those screens. However, they can hear the evidence and they can probably see the screens, albeit from a distance.

The Greffier of the States (in the Chair):

Thank you. We also have a question to the Attorney General from Deputy Higgins.

Deputy M.R. Higgins:

I was interested in the Attorney General's comments about trials that ... Deputy Tadier asked him about which would be heard in open or in closed sessions. One of the problems we have with our court system is the fact that members of the public do not always trust the courts. They do not trust politicians. They do not trust the courts. They do not trust the press. One of the reasons, I believe, why Deputy Tadier has brought this forward is to get more openness ...

The Greffier of the States (in the Chair):

Deputy Higgins, we need a question not a second speech.

Deputy M.R. Higgins:

Sorry, I forgot what I was doing then. Thank you. The question is: why did the court in a data protection trial against former Senator Stuart Syvret prevent that being in open court and basically prevent any knowledge of what was going on in that case in public? States Members were left with the situation ... we heard about it indirectly and no one to this day knows what went on in that data protection case other than the fact that he was convicted. The question is: how can situations like that be acceptable in a democracy? Why should cases like that, if it is in the public interest, be televised?

The Greffier of the States (in the Chair):

The first part of the question is a specific question about why a certain type of procedure is appropriate. The second is really a much more general, philosophical question, which I fear will let the Attorney General stray back into a third speech. I would like to continue with the debate. If the Attorney General could perhaps answer the first parts of that question then we can get back to the general debate.

The Attorney General:

I am unable to assist in relation to that specific case mentioned by the Deputy. In terms of when the court decides to sit in public or unusually sit in private, there is considerable case law that is developed in this jurisdiction, whereby the court makes those decisions. The basic presumption is that the court sits in public. It is only in unusual cases, for example, if there is a particularly sensitive case involving a trust and family members and personal family information or if it is a mental capacity case concerning the appointment of a guardian or a delegate taking decisions on behalf of someone who has lost mental capacity, then those sorts of cases are generally held in private. The court is always careful to publish a judgment that contains as much information as possible that can be put

into the public domain. It is generally anonymised, so that the names of the persons and parties involved are screened out, to preserve that confidentiality.

[17:00]

8.4.13 Senator T.A. Vallois:

I am not going to spend long on this particular piece. I would just like to challenge the argument that this is quite simple or it is just a case of we are only suggesting and it is not dictatorial. One of the concerns that I have is even in the English justice system, when you look at the amount of years that they have been fighting over this position around openness in terms of the place of justice, usually the cardinal rule has always been the place of the courtroom. In particular, the most intervening piece of work that was done was the Ministry of Justice paper from 2012, which led on to multiple changes, in terms of the Crime and Courts Act and the orders that followed that. There was still prohibition applied in terms of those pieces. What does concern me is that what we do not have here is something that enables ... if it was to happen, if we were to livestream or broadcast, whatever the terminology may determine from this Amendment, under the U.K. Coronavirus Act, they specifically placed in Amendments under that which referred to the courts being able to direct that proceedings be wholly video or audio proceedings and provide the courts ability to direct proceedings be broadcast and made direct recordings. However, under Section 85B, they stated a criminalisation of any unauthorised recording or transmission of an image or sound which is broadcast under 85A, which was their ability to do so. For example, things like social media, taking clips and taking them out of context. Also, 85C determined criminalisation of making unauthorised temporary recordings and copies. Considering what the Attorney General has said, I doubt that there is any possibility in terms of the feedback from the judiciary or whether it is through Probation or whether it is from the Attorney General, the Law Officers, themselves, that even if we were to amend what is temporary legislation that I feel would need a number of practice directions and orders placed around it in order to protect the material. I do not believe it is appropriate for temporary legislation. I look forward to having the debate further on the larger debate around how we deal with this going forward. In terms of this legislation, temporary legislation, I do not feel it is appropriate.

8.4.14 Deputy J.H. Perchard:

I have found this debate a little bit confusing at times. One of the key questions that got me thinking about which way I was going to go was raised by Senator Mézec when he implied that there is not really a difference between the public being able to attend a particular proceeding and the public being able to watch it as it is streamed live online. If I have misunderstood him, he can clarify with me. That was a reasonable question. It is the question that seems to underpin, for me, where this debate should go. The fundamental difference between those 2 scenarios is permanence and control. Of course, in court proceedings that the public can attend in person there is always a possibility that that member of the public could then leave the court and assume some sort of control over the narrative of what they have witnessed by writing about it or taking it to social media. However, there is quite a difference between that and a member of the public perhaps capturing footage of a person by way of capturing it on their screen as it is livestreamed and altering the narrative in that way. The ways in which that narrative can be altered, for me, marks the fundamental difference. This is something I have been grappling with throughout this debate. I do believe that having that level of control, that ability to edit, download, share, cascade, publicise and keep hold of footage of individuals from a court proceeding compared to the ability not to do that in favour of being able to, yes, witness something first-hand and, yes, maybe seek to gain control of the narrative following the event, but still not being able to take ownership of that footage. That is a fundamental difference. The idea of permanency is a real problem when it comes to putting things on the internet. I have spent several years of my life trying to convince students and young people not to send each other inappropriate photographs and not to put pictures that they would not want anyone to see in the future, be it parents, relatives, teachers or future employers to see online. The idea of permanence is not

something that they fully understand. I appreciate and I am thankful for the clarification that when it comes to children they are protected and so this would not necessarily apply. However, I do take the point that the Attorney General made that there are children whose parents will go to court. Again, there is a difference between others hearing about that through reading it in the media and maybe having other adults witness the court proceedings and talk about it ... the difference between that and giving the populace, including other children, the ability to watch that happen on the internet. That, again, is something that is worthy of pointing out as a fundamental difference. You absolutely could have other minors, other children, watching their friend's parents, for example, going through court proceedings and that being levied and used as a form of bullying. I am surprised that the nuances of the impact on children do not seem to have come out in this debate. Maybe I am missing something and maybe the Deputy can clarify for me in his summing up some of the concerns I am agreeing with or have raised in addition to other concerns being raised. The idea of permanent control over the narrative and the access of this footage and potentially inappropriate access to minors who have access to the internet are a great concern to me. Therefore, I feel I cannot support the Amendment. Thank you, Sir.

The Greffier of the States (in the Chair):

Thank you. Deputy Tadier, you wanted to raise a point of order.

Deputy M. Tadier:

I am not exactly sure which Standing Order it relates to, I should, but I do not have it in front of me. I would like to ask permission to withdraw the Amendment.

The Greffier of the States (in the Chair):

Thank you. It is your Amendment. Obviously it has been proposed, so it is up to the Assembly to decide whether or not they wish to allow it to be withdrawn or not. We do have 2 other Members who wish to speak. At the same time, as Members know, but the public will not, we have a slight dilemma in that we have about 20 minutes left before our technology will close this meeting anyway. It would be helpful if the Members who wish to speak could indicate to me on the chat whether they still wish to speak, in which case the debate can carry on until it reaches its conclusion and Deputy Tadier has an opportunity when it winds up to withdraw at that point or whether they wish to withdraw their wish to speak, in which case I can call on Deputy Tadier and we can go through it procedurally in the right way.

8.1.15 Senator I.J. Gorst:

I am not sure whether what I am going to say might be helpful. It is simply this: one of the things that we have shown ourselves, in Government, not to be during this crisis, at the very time when you want us to be, is flexible, pragmatic and use a bit of common sense. I say that because I understand the reasonings that the Chief Minister has brought forward, having consulted with the judiciary and the Attorney General, about all of the problems that livestreaming could create without appropriate time to do so. Let us just remind ourselves: this is a problem created by the closing of the public gallery, because it is felt that that would create difficulties. Let us also remind ourselves: it is absolutely essential that during this crisis that the courts function. What Deputy Tadier has done is slightly overkill of the problem. He is right, there is a problem. Justice must be done and must be seen to be done. Therefore, for me, Deputy Tadier should withdraw it, but he should get a commitment from the Chief Minister that they will think about a pragmatic solution. That pragmatic solution could be a simple streaming into a separate room where social distances can be observed or it could be a simple limiting to the number of people in the public gallery. You could perhaps have 5 people in the public gallery in the Royal Court. You could have one or 2 in the Family Court, where space is much more constrained. Let us think: what is the problem that has caused justice not to be seen to be done? I make no criticism of the judiciary at all, because justice will be done, it just

will not be seen to be done. That is how either the existing public gallery is managed and public presence in those galleries is limited, as I say, possibly 2 in the Family Court and 5 in the Royal Court. If that is not possible, you have a simple room in the Royal Court or at another place where you livestream the proceeding, following the existing processes that the court would follow. So you cover all of the concerns that the Attorney General and Chief Minister has rightly raised. Sitting down, finding a pragmatic solution will enable all of us to rest well knowing that justice in our Island is being done and will continue to be seen to be done. Thank you.

The Greffier of the States (in the Chair):

I had hoped for an indication of whether Members wished to withdraw their request to speak, but in fact we got a speech from the Senator. Deputy Tadier, you propose that you wish to withdraw the Amendment. That is something which can be debated. Members have some questions as to why you want to do that, which is fair enough, I suppose. We do have very limited time. Given that that has been proposed, does any Member wish to comment on that?

The Chief Minister:

It is more an administrative question. If the system does throw us all out in ... I do not know how many minutes we have left, can you take 10 minutes and send round a new link, so that we can re-confer? I would rather we did not get cut off in the middle and leave it all hanging.

The Greffier of the States (in the Chair):

You will not be left hanging, Chief Minister. I am very conscious of that. As I have already said to Members through the chat, it is entirely possible for us to create an evening meeting of the Assembly. We would need 15 minutes at least to get that set up and working properly. I would like to reach a conclusion on whether this Amendment is going to be withdrawn. Given the time, I will call for the Deputy of Grouville to ask her question about that. Deputy Tadier could answer and then we could move to a vote on that, if that is what is necessary.

The Deputy of Grouville:

It is just a very quick question. We have been sitting here for the best part of the afternoon. Deputy Tadier has now proposed that we withdraw his Amendment. Could he enlighten us and tell us the reasons why?

[17:15]

I appreciate he does not have to, but if it is going to be put to the vote as to whether he should be allowed to withdraw then surely he should give us the courtesy of a reason.

The Greffier of the States (in the Chair):

Before Deputy Tadier comes back, let me be clear about it. The Amendment, having been proposed, is in the ownership, if you like, of the Assembly. It is up to the Assembly to decide whether or not it is withdrawn. If the Assembly votes not to allow it to be withdrawn, we carry on with the debate. Deputy Tadier, do you have anything to say in relation to the withdrawal or do you just wish to maintain the withdrawal?

Deputy M. Tadier:

I am happy, as a courtesy to respond to the Deputy of Grouville, but it might be best for me to address all the comments that are made at the end of what I hope is going to be a short debate about whether to withdraw or not. I am happy to address all the comments at the end of this section.

The Greffier of the States (in the Chair):

We do not really have time, Deputy, for a debate about whether to withdraw it or not. Looking at the chat function there is one question which is being asked by a number of Members, which is what the

reason is for the request to withdraw. I am seeking to wind this up in an orderly fashion with you replying to that. Then we can get a decision on whether or not to withdraw, which can then inform a decision as to whether the Assembly wishes to carry on beyond 5.30 p.m. or not.

Deputy M. Tadier:

The overriding reason I wish to withdraw is because this debate has become something different to what I envisaged. I did ask at the beginning to limit the comments to the permissive nature. The argument that Senator Gorst has made is very much what I had in mind, in that there is a problem currently that the public cannot access the public gallery and there should be an innovative solution that the courts can come up with at their discretion to try and resolve that issue, without us telling them what to do. This is simply an Amendment to that Article which would put the ball in their court. The Assembly seems to have taken this down a completely different route. In order for me to respond to that, I need to sit down and go through that and respond as if it were P.43, because that is what the Assembly has made it, if you like. I would need time to do that, so the easiest thing is just to withdraw it. I hope that helps. That is the reason. I understand if Members just think that they ... like a gambling game, you throw in so much money that you want to put some more money in after bad. Excuse the mixed metaphor. I am happy either way to conclude that it will need to be tomorrow and I will need to make a longer concluding speech to be able to do it justice.

The Deputy of Grouville:

Sir, I am grateful to the Deputy for his explanation. Thank you.

The Greffier of the States (in the Chair):

Thank you. In that case, we will move to a vote on the withdrawal of the Amendment. I ask the Greffier to prepare the usual link. While she is doing that, can I just say that if Members have problems accessing the link, we have had a handful of that this afternoon, please just indicate your vote in the chat box and we will make sure that that is added in after the event. We are just waiting for a moment or 2 while the voting form is prepared. The form is now available and Members are now requested to cast their votes.

Senator L.J. Farnham:

The form I am seeing, Sir, suggests it is closed.

The Greffier of the States (in the Chair):

That is fine. Let us have a look at it. I want to do another form, which will be out in a moment.

Deputy S.J. Pinel:

Greffier, can we make clear on what we are voting on, please?

The Greffier of the States (in the Chair):

We are voting on the withdrawal of the Amendment. If you vote *pour*, you wish the Amendment to be withdrawn, *contre* means you wish the debate on the Amendment to continue. Sorry for the delay. The form is now available, hopefully in full working order.

| POUR: 42 | | CONTRE: 4 | | ABSTAIN: 0 |
|-----------------------|--|--------------------------|--|-------------------|
| Senator I.J. Gorst | | Senator J.A.N. Le Fondré | | |
| Senator L.J. Farnham | | Connétable of St. John | | |
| Senator S.C. Ferguson | | Deputy of St. Ouen | | |
| Senator T.A. Vallois | | Deputy K.F. Morel (L) | | |
| Senator K.L. Moore | | | | |
| Senator S.W. Pallett | | | | |
| Senator S.Y. Mézec | | | | |

| | | | | |
|----------------------------|--|--|--|--|
| Connétable of St. Helier | | | | |
| Connétable of St. Clement | | | | |
| Connétable of St. Lawrence | | | | |
| Connétable of St. Saviour | | | | |
| Connétable of St. Brelade | | | | |
| Connétable of Grouville | | | | |
| Connétable of Trinity | | | | |
| Connétable of St. Peter | | | | |
| Connétable of St. 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 L.M.C. Doublet (S) | | | | |
| Deputy R. Labey (H) | | | | |
| Deputy S.M. Wickenden (H) | | | | |
| Deputy G.J. Truscott (B) | | | | |
| Deputy J.H. Young (B) | | | | |
| Deputy L.B.E. Ash (C) | | | | |
| Deputy G.C.U. Guida (L) | | | | |
| Deputy of St. Peter | | | | |
| Deputy of Trinity | | | | |
| Deputy of St. John | | | | |
| Deputy M.R. Le Hegarat (H) | | | | |
| Deputy S.M. Ahier (H) | | | | |
| Deputy J.H. Perchard (S) | | | | |
| Deputy R.J. Ward (H) | | | | |
| Deputy C.S. Alves (H) | | | | |
| Deputy K.G. Pamplin (S) | | | | |
| Deputy I. Gardiner (H) | | | | |

Deputy M. Tadier:

Sir, could I just thank Members for agreeing to withdraw. It is nice to win something, albeit not the one I expected to win. Can I just emphasise that P.43 is still on the table and Members seem to have a lot to say on the issue of access to justice and whether it should be livestreamed or otherwise. I look forward to their engagement, as well as with the court, so we can find a constructive way out of this, what I would call an enigma, something perhaps along the lines of what Senator Gorst envisaged. Thank you.

The Greffier of the States (in the Chair):

Thank you, Deputy Tadier. In view of the time, the Assembly needs to make a decision at this point on whether to carry on this evening, which means we do need a break in order to set up an evening meeting, or to return tomorrow at 9.30 a.m. for the rest of the business.

Senator J.A.N. Le Fondré:

I was just wondering, on the basis that Article 8 needs to be voted on, if we could proceed to Article 8, Article 9 and Third Reading, which I would have thought would be fairly swift, if we are lucky, and then conclude at the end of the debate on P.41, Sir.

The Greffier of the States (in the Chair):

No, Chief Minister, we are not going to do that, because there is very limited time available. The only way we could achieve that is by not permitting people to speak at all, which I do not think is reasonable.

Senator J.A.N. Le Fondré:

Sir, I did mean even if that means setting up a new Teams link.

The Greffier of the States (in the Chair):

Sorry, I misunderstood. In that case, does anybody wish to second the Proposition to meet additionally this evening? **[Seconded]** Does any Member wish to speak on that Proposition?

Senator L.J. Farnham:

I am just speaking for myself, there is a lot of work to be done. We have been sitting now for many, many hours. I would favour returning tomorrow morning to deal with the rest of the business. It is unhealthy to go into an evening session after such a long day. Thank you.

The Greffier of the States (in the Chair):

We have room for one speech in favour, if any Member ... the Chief Minister has already voted in favour. I would rather just move to a vote, if at all possible, otherwise we will end in a chaotic fashion, which I would rather avoid. Unless the Chief Minister wishes to come back with some comments ...

Senator J.A.N. Le Fondré:

In fact, very, very briefly, Sir, for Senator Farnham's benefit, all I was talking about was concluding on P.41. We have literally got the end of Article 8 and Article 9 to conclude on, which is the commencement and citation, and then, I presume, Third Reading. I may be wrong, but I would hope we could deal with that fairly swiftly, even if we just have to do a 10 minute break or whatever it is to set up Teams again. It would not be my intention to go beyond P.41.

Senator L.J. Farnham:

Would it be in order to propose that we finish P.41 and adjourn until tomorrow?

The Greffier of the States (in the Chair):

That is, in a sense, the Proposition. There will have to be a break of around 15 minutes, because we need to set the meeting up. As Members know, some time is taken to ensure that Members find their way to the right channel in Teams and to inform the public of what is going on. We would need at least a 15 minute break, 5.40 p.m. or so would be about right. It is in the hands of the Assembly at the moment as to what the Assembly then does. The original Proposition was simply to carry on into the evening. If Members wanted to carry on after the end of P.41 they could do. If they wish to adjourn they could do as well. At the moment it is quite clear that we would have that separate meeting, which would start in about 15 minutes. There is a general call for there to be a vote on this. We will prepare the voting form, which will appear in a moment.

Deputy R. Labey:

Sir, could we be clear on what we are voting for? In terms of if we think we should return tomorrow and not continue at all after a 15 minute break and a reset up then we are voting *contre*. Is that correct?

The Greffier of the States (in the Chair):

Sorry, I was listening to advice from my colleague, can you repeat that?

Deputy R. Labey:

If we are of the opinion that we should not do a reset and a 15 minute break and resume, that we should in fact meet tomorrow at 9.30 a.m., do we vote *pour* or *contre*? What is the Proposition before us?

The Greffier of the States (in the Chair):

If you wish to carry on, you vote *pour*. If you wish to come back tomorrow, you vote *contre*, and after the vote, we will adjourn in the normal way.

Deputy R. Labey:

Thank you, Sir.

The Greffier of the States (in the Chair):

The form is available for Members to vote. As I said, *pour* is to carry on, *contre* is to stop.

| POUR: 5 | | CONTRE: 39 | | ABSTAIN: 1 |
|---------------------------|--|----------------------------|--|-------------------------|
| Senator J.A.N. Le Fondré | | Senator I.J. Gorst | | Deputy G.C.U. Guida (L) |
| Connétable of St. Clement | | Senator L.J. Farnham | | |
| Connétable of Grouville | | Senator S.C. Ferguson | | |
| Connétable of St. John | | Senator T.A. Vallois | | |
| Deputy K.C. Lewis (S) | | Senator K.L. Moore | | |
| | | Senator S.W. Pallett | | |
| | | Connétable of St. Helier | | |
| | | Connétable of St. Lawrence | | |
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| | | Deputy J.A. Martin (H) | | |
| | | Deputy of Grouville | | |
| | | Deputy M. Tadier (B) | | |
| | | Deputy M.R. Higgins (H) | | |
| | | Deputy J.M. Maçon (S) | | |
| | | Deputy of St. Martin | | |
| | | Deputy of St. Ouen | | |
| | | Deputy L.M.C. Doublet (S) | | |
| | | Deputy R. Labey (H) | | |
| | | Deputy S.M. Wickenden (H) | | |
| | | Deputy of St. Mary | | |
| | | Deputy G.J. Truscott (B) | | |
| | | Deputy J.H. Young (B) | | |
| | | Deputy L.B.E. Ash (C) | | |

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| | | Deputy K.F. Morel (L) | | |
| | | Deputy of St. Peter | | |
| | | Deputy of Trinity | | |
| | | Deputy of St. John | | |
| | | Deputy M.R. Le Hegarat (H) | | |
| | | Deputy S.M. Ahier (H) | | |
| | | Deputy J.H. Perchard (S) | | |
| | | Deputy R.J. Ward (H) | | |
| | | Deputy C.S. Alves (H) | | |
| | | Deputy K.G. Pamplin (S) | | |
| | | Deputy I. Gardiner (H) | | |

The Greffier of the States (in the Chair):

Thank you very much. We are skating very close to that 4 hour limit for this technology, so I am going to adjourn the meeting now and we will reconvene at 9.30 a.m. tomorrow morning, where we will finish off the remaining bits of P.41 and carry on with the Order Paper. Thank you very much.

ADJOURNMENT

[17:28]