

STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 13th MAY 2020

COMMUNICATIONS BY THE PRESIDING OFFICER.....	3
1.1 Welcome to His Excellency the Lieutenant Governor	3
1.2 Ruling with regard to written answers under Standing Order 12(4)	3
PUBLIC BUSINESS.....	4
2. COVID-19: questions without notice to all Ministers on the response of the Government of Jersey (P.51/2020) - rescindment of paragraph (a) (P.53/2020)	4
2.1 Deputy R.J. Ward of St. Helier:	5
2.1.1 Deputy R. Labey of St. Helier:	5
2.1.2 Senator S.Y. Mézec:	7
2.1.3 Deputy G.P. Southern of St. Helier:	8
2.1.4 Deputy J.A. Martin of St. Helier:.....	8
2.1.5 Senator J.A.N. Le Fondré:	9
2.1.6 Deputy M. Tadier.....	12
2.1.7 Deputy L.M.C. Doublet of St. Saviour:	13
2.1.8 Connétable K. Shenton-Stone of St. Martin:	13
2.1.9 Deputy J.H. Perchard:	14
2.1.10 Deputy J.H. Young of St. Brelade:.....	14
2.1.11 Deputy J.M. Maçon:.....	14
2.1.12 Deputy S.G. Luce of St. Martin:	15
2.1.13 Deputy K.F. Morel of St. Lawrence:.....	15
2.1.14 Deputy R.J. Ward:.....	17
3. Arrangements for questions without notice to all Ministers (P.54/2020)	19
3.1 Deputy R. Labey:	20
3.2 Arrangements for questions without notice to all Ministers (P.54/2020): Amendment (P.54/2020 Amd.).....	22
3.2.1 Deputy J.M. Maçon:	22
3.3 Arrangements for questions without notice to all Ministers (P.54/2020) - resumption	22
3.3.1 Connétable C.H. Taylor of St. John:.....	22
3.3.2 Deputy M. Tadier:.....	22
3.3.3 Deputy K.G. Pamplin:	24
3.3.4 Deputy R. Labey:.....	25

4	Draft COVID-19 (Capacity and Self-Determination) (Jersey) Regulations 202-	
	(P.58/2020)	26
4.1	Senator S.W. Pallett (Assistant Minister for Health and Social Services - <i>rapporteur</i>):	26
4.1.1	Deputy M.R. Le Hegarat:	31
4.1.2	Connétable M.K. Jackson of St. Brelade:	32
4.1.3	Deputy K.F. Morel:.....	32
4.1.4	Deputy R.J. Ward:	33
4.1.5	Senator K.L. Moore:	33
4.1.6	Senator I.J. Gorst:	34
4.1.7	Deputy R.J. Renouf of St. Ouen:	35
4.1.8	Deputy L.M.C. Doublet:	37
	LUNCHEON ADJOURNMENT PROPOSED.....	37
	LUNCHEON ADJOURNMENT.....	37
4.1.9	Deputy J.M. Maçon:	38
4.1.10	Deputy T. Pointon of St. John:	38
4.1.11	Deputy K.G. Pamplin:	39
4.1.12	Senator S.W. Pallett:	41
4.2	Senator S.W. Pallett:	47
4.2.1	Deputy K.F. Morel:.....	47
4.2.2	Senator S.W. Pallett:	48
4.3	Senator S.W. Pallett:	50
	ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS.....	51
5.	Deputy R. Labey (Chair, Privileges and Procedures Committee):	51
	ADJOURNMENT.....	52

[09:43]

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

COMMUNICATIONS BY THE PRESIDING OFFICER

1.1 Welcome to His Excellency the Lieutenant Governor

The Bailiff:

On behalf of Members, I would like to welcome His Excellency once again to the virtual sitting of the Assembly.

1.2 Ruling with regard to written answers under Standing Order 12(4)

The Bailiff:

Before proceeding with Public Business, I have been asked to make a ruling with regard to 5 written answers which had been referred to me yesterday under Standing Order 12(4) on the basis that each contravenes Standing Order 12(2)(a), which requires that an answer is directly relevant to the question asked. The first 2 questions were referred to me by Deputy Ward. Question 158 asked expressly about the payments of a subsidy to LibertyBus and whether that subsidy is used to pay wages. The 2-line answer refers to contractual payments generally and their use. It is not clear on its surface that it covers or refers to a subsidy. I rule that that answer is out of order and I direct the Minister for Infrastructure to file an answer to the question by 9.30 a.m. tomorrow morning. Question 161 asks for a list of groups, boards or think tanks established to address recovery planning. The answer provides an apparently comprehensive list of groups and then goes on to discuss other groups in the process of being set up. There is no mention, as such, of think tanks, but it is to be presumed that there are none. It appears to me that the answer does directly address the question and I rule it to be in order. Deputy Alves raised the matter of Question 168, which asks about the financial support available for those who could be working at a place of work that is operational but are unable to do so because they are at high risk or live in a household that has a high-risk member. The answer refers to a number of existing schemes and assistances, but concentrates on the co-funded payroll scheme. The answer may encompass some of the persons referred to in the question, but it does not, on its surface, directly answer the whole of the question and I therefore rule it, to that extent, out of order and direct the Minister for Social Security to file a further answer by 9.30 a.m. tomorrow morning. Senator Moore raised Question 155, which asks about the number of people on full-time contracts or engaged as consultants working remotely from the U.K. (United Kingdom). The answer deals comprehensively with consultants, but does not deal with people on full-time contracts. Accordingly, to that extent, I rule it out of order and direct the Chief Minister to provide a fuller answer by 9.30 a.m. tomorrow morning. The Deputy of St. Peter raised Question 172, which asked about the guidelines to landlords and landlords' agents in place with regard to prospective tenants referred from emergency housing to be shown properties or during the conduct of condition reports. The answer expressly states that there are no formal provided guidelines and each matter must be dealt with on a case by case basis. This appears to me to directly address the question and I rule the answer to be in order. Very well, we now proceed with Public Business. The next item ...

Deputy M. Tadier of St. Brelade:

Sorry to disturb. I put something in the chat, that I would like a point of order arising from your ruling, which I thank you for, like other Members. The first point is that when one submits a question, written or oral, it is necessary that it is checked to see that it is in order. Would it be possible to check the answers to make sure that they are also in order when they are submitted? I have a further point, but I will let you answer that.

The Bailiff:

Tell me the second point as well then, Deputy.

Deputy M. Tadier:

The second point - and I appreciate the complexity of these matters - is that there have been many times when oral questions, either with or without notice, have been asked and similarly incomplete answers have been given, which either address part of the question or do not address the question at all. The answer usually given is that the Minister has answered as he or she has chosen to answer, but it seems to me, notwithstanding the difficulties about immediacy and the lack of transcripts, is that the same rules should apply to oral questions as apply to written questions.

The Bailiff:

The matter is expressly dealt with in Standing Orders. I would have to turn and look at it and it is not a matter that I need to rule upon at the moment because obviously we are past the time for oral questions, but I will look at it prior to the next meeting and consider what the correct response would be to that aspect. I will discuss with the Greffier of the States whether it is feasible to review answers, but it seems to me that that may well be practically very difficult. Also it is not necessarily the case that either I, as Presiding Officer, or members of the staff of the States Greffe will be aware with a sufficient level of particularity as to what is relevant as an answer and what is not. It may be apparent in some cases, but there may be cases in which it is not apparent and it will be important then for Members to raise it. The Standing Order provides that it is for Members to raise the question of whether or not an answer is a proper answer or not and if one looks at Standing Order 12, that must be done prior to 12.30 p.m. on the morning of the first day of the States sitting. Standing Orders then are clear, and I am not sure that it would not add an unnecessary area of complexity were there to be an informal scan of the nature of the answer, but I will consider that also over the adjournment, Deputy.

PUBLIC BUSINESS

2. COVID-19: questions without notice to all Ministers on the response of the Government of Jersey (P.51/2020) - rescindment of paragraph (a) (P.53/2020)

The Bailiff:

We now come to the next item of Public Business, which is COVID-19: Questions without notice to all Ministers on the response of the Government of Jersey - rescindment of paragraph (a), P.51, lodged by Deputy Ward and I ask the Greffier to read the Proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion - to refer to their Act of 22nd April 2020, in which they made new arrangements for Questions Without Notice to Ministers, and to rescind paragraph (a) of that Act.

Deputy J.M. Maçon of St. Saviour:

I have a point of order on this Proposition.

The Bailiff:

Sorry, Deputy Maçon, did you wish to raise a point of order?

Deputy J.M. Maçon:

Yes, Sir. It is about this Proposition. In both the Proposition and the report, the intention is quite clear, to rescind a States decision, and it was my understanding under Standing Order 23 that a Proposition of that nature requires it to be countersigned by 3 other Members. I do not believe that has happened in this point, so I wonder if you could just explain - in the past, when there has been an intention in the report to make things quite clear, I have had things not approved by the Bailiff - why in this case, when the word "rescind" is used twice, this does not comply with Standing Order 23.

The Bailiff:

Thank you, Deputy. The position that I think is the correct one is that no matter what word is used, rescindment or otherwise, one has to look at the real nature of the Proposition. The Proposition came in 2 parts. The second part was perfectly capable of withstanding the loss or otherwise of the first part and therefore the view that I have taken, after consultation, is that this is in fact an Amendment, in reality, a change, but not a rescindment of the entirety of the Proposition that was before the Assembly and consequently I agreed that it was in order even though it did not have the full number of signatures that a true rescindment Proposition would have required. Very well, Deputy Ward.

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

Thank you for that judgment. I will just get my speech up. This Proposition is very simple and, if adopted, it would reinstate the periods of questions without notice of 2 Ministers, as per Standing Order 64 and as published. During the debate on P.51, it was clear that a period of questioning regarding COVID-19 was required for at least the period of the pandemic. However, as we drew to the end of the debate, we ran into an issue of time for the broadcast and at the end of scheduled sitting for the day. For myself, and I believe for many others in the Assembly, there is a distinct preference to vote on the Proposition parts separately. I can understand why the decision was taken not to do this, but I do not believe it was the correct decision. It led me to vote against a Proposition even though I see the period of questioning it has produced as a step forward and I do not believe I was alone in this last-minute change of vote. Indeed, the vote won by just 3, with 23 *pour*, 20 *contre*, one abstention and 5 absent from the vote. For an important change to the way we conduct our process of democracy, this is a disappointing outcome.

[10:00]

The Proposition to rescind part (a) maintains the period of questioning that was introduced in P.51, but also maintains the published periods of questions without notice for Ministers on a rota, therefore increasing access to questions, transparency and accountability, all vital factors in any democracy and in particular in times of crisis. We must maintain some business as usual, even in the shadow of COVID-19. There will be issues and questions that arise that need to be aired in the public arena that is the Assembly. The Government Plan, for example, remains a yearly document. Indeed, written Question 151/2020 from Deputy Luce detailed a number of ongoing non-COVID projects that may generate questions: questions on provision of mental health facilities, air links, Competition Authority, our hospital and so many more. One argument for removal of questions without notice is that we will be dominated by COVID-19 questions and therefore it is not necessary, but it has been the case for questions without notice that if Members do not have a question, the time simply passes to the next Minister or we move on. However, part (a) of P.51 removed the opportunity for any questions in this structure. It must be returned. Another issue raised was the use of Ministers' and Officers' time away from COVID-19 to prepare for the questions without notice. My apologies, but democracy, transparency and accountability cannot be another victim of this virus. I would have thought Ministers will be even more informed regarding their responsibilities and remit at this time. How else are important and sometimes rapid decisions being made? Remember that we have given many emergency powers that allow Ministers to make significant decisions almost unilaterally. I am sure Ministers are fully informed in making those decisions. It has never been more important for this Assembly to come to a consensus. Supporting this Proposition corrects an error made and re-establishes a structure for questioning which has served us for a long time and it maintains the additional facility of COVID-19 questioning to the Minister and therefore I make the proposal.

The Bailiff:

Is the Proposition seconded? **[Seconded]** Very well, I call on Deputy Labey.

2.1.1 Deputy R. Labey of St. Helier:

I thank the Deputy. He is right in a lot of aspects and there was a flaw, I think, with P.51. The responsibility for that is mine. Like an idiot, I realised too late the oversight and I take full responsibility for that and I apologise to you and to the Assembly that we are back here this morning talking about this issue, but at least we are doing it with more time and a greater examination of all the issues, rather than trying to get it into that short space of time, as was the case last time. No excuses, *mea culpa*. I apologise again. But now we have the benefit of yesterday and seeing it work in practice and I would like to ask the Assembly what was wrong with question time yesterday. I can think of one thing that was wrong with the questions with notice, the oral questions, in that we had 2 repeat questions and that was a little administrative error because of overwork. I am not having a go at the Greffe, who are magnificent, but we could have weeded that out and we would have finished questions probably at 12.50 p.m. or 12.45 p.m. as we normally do. So it seemed to me that the hour of question period worked extremely well. A lot of Members were able to ask 2 questions, plus the supplementaries. We went up to the hour perfectly with Senator Ferguson coming in to fill the last 2 minutes with her questions, so it seemed to work very well. Now, the question is, I think, for Members with this Proposition from Deputy Ward is whether you feel you would have had an appetite yesterday at 1.00 p.m. for half an hour more questions without notice, so we will be going to a period of an hour and a half of questions without notice and reinstating the 15-minute ministerial rota. Now, the flaw that there is with P.51 is there is going to be a time very soon, definitely by September, when we are going to want to ask questions that are not COVID-19 related to Ministers without notice and the remedy for that, I put it to Members, comes in my Proposition which will follow this one, not in, regrettably, Deputy Ward's Proposition. Deputy Ward's Proposition takes us to an hour and a half of questions without notice. My P.51 and the one that will follow this one, increases by half an hour to one hour and provides the remedy for any question on any subject to be asked without notice, so do Members feel we need an hour and a half, that extra half hour on yesterday? I thought it worked perfectly yesterday and people have said that. So I think it would be a shame, given that Members have gone for this innovation, to throw this innovation away when we have a trial period here, a gift period, to persevere with it, see if Members are happy and of course it dissolves on 1st October. Before that time, we can consult and think about whether we need to make adjustments. I can think of some. In the normal course of events and normal life when we are free of this virus, I can see that there could be some adjustments that could be made, but I just do not believe that there is an appetite for an hour and a half of questions without notice. So just to mention too to Members that this was not just my bright idea, one eureka moment one morning, I did ask for this to be implemented for special sittings of the States during this period and it seemed to go down well and it seemed to go down very well. I did consult with Members, individual emails to all Members on a couple of occasions, and the replies I got were overwhelmingly in favour of this sort of arrangement, overwhelming. I mean, I got over half of Members replying, which is good, over half of them replied and some of them spoke to me and there were a few caveats, but in general this was the overwhelming option for people. They liked the idea, they had seen it working in the unscheduled sittings and they liked the idea; as I say, a big take-up. Some people did not reply. That always happens. That is absolutely fine. It is a Member's prerogative. A couple of people find my questions irritating. That is also fine. I find myself irritating too; I know how you feel. It is not a problem, but I do try, wherever I can, to consult with Members. So I would like us to pursue with this innovation. I do ask Members to think back to yesterday. It felt right, it felt good and I think, regrettably, like Deputy Ward, I am going to have to not vote for this because I believe the remedy lies in just making that small adjustment and that we can ask any Minister any question, so regrettably I cannot support Deputy Ward. If the membership of the Assembly wants to go with this, have an hour and a half of questions without notice, it is absolutely no problem and fine with me. I will accept that. I am not the master, I am a servant here. But I think we should hold our nerve and pursue this, not throw the baby out with the bathwater, because this baby is innovative and I think is the way forward.

The Bailiff:

Does any other Member wish to speak? A point of order, Deputy Ward, yes.

Deputy R.J. Ward:

I just feel I should make a point of order that this is in addition to what we have and I think that point may have been missed, and I think it is very important we have clarity. I can do that in my summing up.

The Bailiff:

Deputy, I must interrupt you. The fact that you think something means something is not a point of order. A point of order is a ruling you ask the Presiding Officer to make and of course you do have the chance to make all the points you wish when you respond to the Members' speeches on this Proposition. So do you have a point of order within that sense?

Deputy R.J. Ward:

No, Sir. Apologies for that. Thank you.

The Bailiff:

Thank you very much indeed. Does any other Member wish to speak on the Proposition? Senator Mézec.

2.1.2 Senator S.Y. Mézec:

I will be backing this Proposition. As a Minister, I welcome the opportunity for tough challenges and to be held to account and this Assembly is the best place for that to happen because the States Assembly is the sovereign decision-making body of the Island, not the Council of Ministers, and it is one of its jobs to hold the Executive to account. Out of all of the Propositions and variations that we have to choose from today, it is this Proposition that offers the Assembly the maximum opportunity to do that. It offers the maximum opportunity both in terms of time and in terms of structure and so I disagree with Deputy Labey in that what concerns me is that as time goes on and we have an hour for unstructured questions without notice on whatever, whether that is the coronavirus response or any matter of responsibility for any Minister, I worry that we will not end up with the best use of that time because it will not be focused by not having that distinction between what is an hour of questions without notice on COVID versus the half hour of questions without notice on all matters of responsibility, we can quite easily end up in a situation where in that hour too much is asked about non-COVID related business because there was not that focus. So I am in favour of splitting the 2 and providing more time to do that. I think that when you have the rota system of Ministers coming before the Assembly for their 15-minute session, as a Back-Bencher, the fact you know that that is coming up offers you the opportunity to focus your mind and think: "Right, this opportunity is coming. How can I use this to ask those questions and hold them to account?" whereas what could otherwise happen, if it is a free for all, is that inevitably the focus will be on the Chief Minister and the Minister for Health and Social Services, which is absolutely fine, but I think that other Ministers may not get questioned as much as they rightly should during this period of time. Deputy Ward's version provides that maximum ability to do that, whereas the other versions provide less of an opportunity. When we are making such crucial decisions about the wellbeing of people on the Island, it is right that we are subject to the maximum amount of challenge as possible. As we start looking towards the horizon and looking at normal business, I think combining them into a single hour rather than separating them could end up muddying the waters, so I do not agree with what Deputy Labey says and I do not think that we will necessarily naturally find an equilibrium that we are all satisfied with, whereas Deputy Ward's Proposition offers us that flexibility. If we choose not to use the whole hour on COVID questions, that is fine, we have still got the other half hour, or if we choose not use that half hour, that is fine, but to try and squeeze things into an hour as other

issues are arising, we may end up missing stuff out and that is not good for democracy, so I support Deputy Ward's Proposition.

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

I am reminded today in this conversation about the words of Tony Benn, who used to say things like: "Who gives you power and how do I hold you accountable to that power?" So the essential question here is does this give more or less power to Back-Benchers to hold Ministers to account? Because that is what we are here for. I would argue that the argument given: "Would you want another half an hour of questions yesterday?" Yes, I would. I got very tired towards the end, gone 6.00 p.m., rushing to a decision on a vote which was vital. I did not want that, but certainly during the day half an hour's extra time for me to hold Ministers to account is absolutely vital to what I do, as far as I am concerned. It is the bulwark of our democracy and the ability to hold Ministers to account, if we let that go bit by bit, we lose our fundamental uniqueness as an Assembly and our ability - probably unique in the world - to hold Ministers to proper account week in and week out.

[10:15]

I am reminded that the whole world may well have stopped for COVID, but it will restart. We have to get a method of delivery of primary healthcare up and running this year. We are committed to it. That is going to take hours of fine-tooth assessment and invigilation of what is proposed so that it works. To name just the Jersey Care Model and the hospital attached to it is to set a format, set a formula, for the next 5, 10 years down the line as to how this Island progresses. So to give up time to do that I believe would be fundamentally undemocratic and I am surprised to see Deputy Labey offering us something which I can describe as such. I think we have to go with the option that gives us the ability and clear rights to control the Executive. I support this Proposition and I urge all Members to support it. It is a plus, not a negative.

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

Sorry, I thought someone was before me. That is fine. Yes, I really was not going to get involved in this, because at the end of the day we can answer whatever you want. Deputy Southern said: "How dare Deputy Labey take away our fundamental rights?" Now, come on, the Deputy must remember we used to have and we still do ... we had exactly, I think, 34 written questions yesterday, 23 orals. Unfortunately I was number 23 and poor Deputy Alves did not get her answer. That was timed out. Then we had an hour of questions to anybody, yes, on COVID, so if we go with Deputy Labey's at the end, this is extra now. We did not have an hour to anybody, so to me it is either or. We are not taking anything away. The Deputy is right, yes, you have got to hold people to account and the best way to do that is with questions with notice, oral or written, and you have got time and you get the right answers. You already know the supplementary. I have been a Back-Bencher as well and that is when you drag out the actual information you want. You can have as long as you like. I am sorry, Sir, you can make as many rulings: if the answer to the question is: "I am sorry, I have not been working on that this month because of COVID" that is the answer. So Deputy Southern is now telling the Assembly that we are losing something. No, you are not, you have already gained something and he wants to gain more and more and more. As I say, the Minister for Children and Housing said he wants to be held to account. Very few questions went to the Minister for Children and Housing yesterday on the questions without notice. I am not sure if any did. I got one or 2, which is probably about the second or third week I have had one, so it is all concentrated on the Chief Minister and the Minister for Health and Social Services and that is absolutely right, but what are these Back-Benchers trying to achieve to have ... those 15 minutes are not going to be the Minister for Health and Social Services and the Chief Minister every time. The Chief Minister already does an extra rota. So I am very sorry, we are taking nothing away. You have got all those questions, the whole morning absolutely rightly taken up with writtens, we have got writtens to go back now and then orals and then an hour with our orals. Nothing is being taken away. It just will not work and it is just too much

time. People were tired at the end of the day, they wanted to go home. If we had had the right amount of questions, we were in the normal place, we would have got that finished by 5.30 p.m. so I am definitely not supporting this. I might support Deputy Labey and I think where we were yesterday, we ran out of questions, people did not want any more in the hour and that somebody found a question to fill in the last 2 minutes. So working well for me. I could support Deputy Labey, it could be on anything, but no more time. Thank you, over.

2.1.5 Senator J.A.N. Le Fondré:

Yes, that will teach me to hit the “speak please” and then suddenly I realise I am coming in behind Deputy Martin, because she has spoken commonsense, as she always does. What I thought it might be helpful to do is just remind or outline to Members how we got to where we are today. It is a bit of a salutary reminder for me in terms of how quickly things have evolved. There was what I will call a regular States sitting on 9th March and in the week before we did our first briefing at St. Paul’s Centre for Members. That started to outline the things that are being prepared for and you had some Officers present who obviously Members were able to ask questions of. By the 18th we had the first ... it was a special sitting and it is the first question session, as far as I could see, which had an hour of questions to the Ministers and obviously that was in particular on COVID. On the 24th we had what is called a scheduled sitting up at Fort Regent and then on 27th March, 2nd April and 9th April I think they were all requested sittings, emergency sittings, and those, as far as I can tell, had that hour question time built into the process. That was very much based on ... in certain circumstances, Members will recall we had an officer briefing for some time beforehand, usually also about an hour, and that kind of obviously developed to give Members the ability to then question Ministers on the issues that they had often been briefed on just before. 21st and 22nd April was a scheduled sitting. We did not do the hour, as far as I can see, and obviously yesterday, although it was a scheduled sitting, it was the first time we saw Deputy Labey’s Proposition implemented. Really what was becoming apparent in the time in that period of March and April was first the potential impact on business as usual, as they call it, and trying to prepare at the same time for the crisis. That was on Ministers, on Members and on Officers. Obviously within all that lot is the ability of Members to ask a wide range of questions of any Minister. As I said, we evolved into the briefings with questions to Officers and then to the hour questions on the virus, but it was Standing Orders, I think, that prevented us, or made it very complicated, from doing that hour of questions to any Minister during a scheduled States sitting and hence where we got to Deputy Labey. What I think sometimes Members may or may not appreciate is the sheer impact on Officers and on Members when we are doing parallel work on business as usual and preparing obviously for States sittings and trying to deal with the virus. In fact, Members may recall one of the first things we did, I think Deputy Labey brought in the Standing Orders to allow ... I think it was around a quorum or something of how many could be present and that was when we had that first sort of virtual sitting, I think it was, and then obviously we have evolved to where we are today. But also Members will recall that we tried to clear anything that was non-critical from a Ministers’ perspective just to clear the decks. We could see even then potentially what was coming through in terms of demand on the system. I will say even now Officers and Members are working 12, 14 hours a day, I would suggest, in dealing with the crisis and that wonderful thing that used to be called a weekend or a bank holiday I would say has not existed for a number of months. We have kind of evolved into a rhythm, if one likes, of confidential briefings, usually weekly - it depends - in conjunction with the States sitting to Members and questions thereon and obviously now the regularisation as to where we are of an hour of questions without notice to Ministers. But to kind of build on I suppose 2 aspects, one is what we are discussing today is only going to apply for 7 more sittings at the moment and basically we are scheduled to meet ... we have an extra sitting on 19th May, we have 2nd, 16th and 30th June, 14th July, 8th September and 22nd September. Then obviously on 30th September a lot of legislation ceases and 1st October these particular Standing Orders that Deputy Labey essentially amended I believe also cease. But if we have say 40 written questions in a week, it is not an exaggeration to say that it is probably an hour

of preparation time for each question and therefore that is basically a full working week being taken out of the system to deal with ... I will rephrase that, so a full working week not being spent on dealing with the crisis, and it usually tends to fall on the same Officers. That is fine, because that is part of the democratic accountability that Members want to hold the Executive to account for and that is absolutely the case. But I think in terms of looking then ... and I believe we have been allowed to talk to the individual propositions that are ahead of us on this subject, it does not seem to me, even under the present circumstances, to be beyond the wit of any Member to manage to couch their question under the phraseology or applicability of COVID-19 to widen it out to cover the area they wish to bring up to hold that Member to account on a particular issue: "During the COVID-19 crisis, Minister, has the price of jam increased or not?" and I am sure that would be an appropriate question if it was applicable to the scenario we are in. But I think again, it is just worth just reminding Members where we are and I again reiterate what Deputy Martin said. We have added half an hour of questions within this process, so we are not taking away anything. I think that is important. So then it comes down to very much a matter for the Assembly as to how they want to hold Ministers to account, but if I have understood and if I have got it right, and this is assuming that the questions without notice session to Ministers will last an hour as well as the changes we are going to have, obviously at the moment we have 2 hours of oral questions with notice on any subject, we have the questions without notice, which will be an hour. Deputy Ward would, I think, add half an hour to that, so we would have an hour and a half of questions without notice, half an hour on anything, but to 2 scheduled Ministers and an hour on COVID to any Minister, plus obviously we have got the 2 hours of oral questions on notice. Deputy Labey would keep us at an hour, so we would have 2 hours of oral questions with notice on anything, but he then gives an hour of questions without notice on anything. Obviously then Deputy Tadier just adds in an extra 15 minutes to the Chief Minister. That is, as I said, very much to Members how much time they want to spend questioning Ministers on anything they wish or on what subjects, but if it helps Members - certainly where I am going to be - I think in preference, I will be supporting Deputy Labey's Proposition. That basically suggests that we keep the hour, but it will be for any subject, it will not be COVID-19 specific. I will talk to Deputy Maçon's Amendment in that debate and on that basis, I will not be supporting Deputy Ward's Proposition or Deputy Tadier's Proposition. I think a lot of it is around flexibility. The hour of questions without notice that Deputy Labey is proposing without stipulation it has to be on COVID-19 does allow ... (a) it will keep Ministers on their toes - I am sure I will regret saying that at some point - but (b) it allows that flexibility for Members to decide what they want to choose, who they want to question and how long they want to question that Minister for. For me that is probably, from my ...

Deputy R.J. Ward:

May I have a point of order, please?

The Bailiff:

Chief Minister, if I can interrupt you, I have notice of 2 individuals ...

Senator J.A.N. Le Fondré:

I am nearly finished.

The Bailiff:

Well, 2 people are asking for a point of order. The first I have here is Deputy Perchard.

Deputy J.H. Perchard of St. Saviour:

I just wanted to ask whether the Minister was accurate when he said that you can couch any question in relation to COVID-19, because the wording of the Proposition would be such that it is about the Government, the response of the Government, so I think to take his example, the price of jam, I do

not think that that would be an appropriate example and I think that it would be a lot more narrow than the Minister suggests. Is that a fair reading?

The Bailiff:

To the extent that it will be the responsibility of whoever is in the Chair to determine whether a question can properly be asked during that period, for the assistance of Members, in my view, there are clearly certain kinds of questions which cannot be asked during that period.

[10:30]

The question period is reserved to the Government's response to the coronavirus situation and therefore the question, even if it has the word coronavirus or COVID-19 in it, is not related to the Government's response or the way the Government are dealing with it, then it may be that the Presiding Officer would rule it out of order. I do not want to give any suggestion as to what particular question might be the case because I do not want to tie either my hands or that of any future Presiding Officer dealing with that particular section, but that is my view at this point. Now, you had a point of order; was it Deputy Ward?

Deputy R.J. Ward:

May I ask, is it not the case that when we speak to a Proposition we speak to that Proposition? I just want to check that for this debate and future debates.

The Bailiff:

Thank you, Deputy. The general rule is of course inarguably it is only a speech that is relevant to the Proposition that is currently before the Assembly that can be made by any Member speaking to it. In the instant case it is difficult in the present circumstances not to realise that there is a sequence of propositions all directed very close to the same area. It is not unreasonable, it seems to me, for Members to touch not upon the merits particularly of the forthcoming propositions, but on the way they might interplay with the line that the particular Member is taking in connection with this Proposition. It may be that speakers in the past have stretched a little bit across that line, but in my judgment, it must be reasonable to make some reference, but that reference should not really go to the merits, but rather to the interplay between the various propositions. Does that assist, Deputy Ward?

Deputy R.J. Ward:

It does, Sir. I was concerned that the Chief Minister is talking to the merits of a different proposition though during this and I am concerned that we have to be consistent across the Assembly for all Members when we are talking about propositions.

The Bailiff:

You are entirely right and I am sure the Chief Minister has heard that point. Chief Minister, do you wish to continue with your speech?

Senator J.A.N. Le Fondré:

Yes. Thank you for the direction. I assume that in establishing why I was not going to be supporting Deputy Ward's Proposition, it was not unreasonable for me to indicate the reason why, which is obviously that I will be supporting Deputy Labey's Proposition. Just to address Deputy Perchard's ... and I appreciate the issue of jam may not have been the best one. I was trying to illustrate my view under the present circumstances, but if I have understood matters correctly - and hopefully I have - Deputy Labey's Proposition changes matters to questions may be put to Ministers on any subject within the official responsibility of the Government of Jersey, so hopefully that means that issue would also fall away because in that instance it gives better flexibility to Members, in my view, than under the present Proposition that we are debating. I hope that addresses Deputy Ward's concerns.

Sorry, I was about to wrap up, I hope. I think, as I said, it is very much a case of being in the hands of the Assembly as to which way they wish to go and what they consider to be obviously the best use of Members' time. Even though we are at this stage in a very good position within dealing with the crisis, there will still be changes as we go through the next weeks and months. I am sure we can almost guarantee that. Our concern is obviously as we ease the levels, the phases that we are easing, is to make sure we can keep control on the increase of potential cases that may or may not arise as a result of the actions we have taken and that means then we are still in a crisis. It will move through to dealing with the financial side of things and, in other words, Members may be lulled slightly into a false sense of security in that we are through the worst. I do not know that yet. I very much hope we have. I think we are about as best prepared as we can be, but I do note that we know that things can change quite swiftly. So with that in mind, I will wrap up. So, for the record and if it assists Members, I will not be supporting this Proposition. I will be supporting Deputy Labey's, and on the basis of that, I will not be supporting Deputy Tadier's, but I shall listen to the views of the Assembly with interest. I will stop there, thank you.

2.1.6 Deputy M. Tadier

I just want to bring Members back to why we are here at all today. It is because for some reason at the last moment Deputy Labey had a seizure of intransigence, where he was going to win the substantive Proposition. Lots of Members had expressed concern about part (a) and said: "Look, we agree with part (b) and there needs to be more accountability here during COVID for questioning of Ministers, but we do not think that you should take away our right to question all Ministers on different subjects and we want to be able to ask them about that" and for some reason that was taken away from us and therefore you had the vote, which was on a knife-edge. So, all we are doing today effectively is rewinding the clock and giving Members a second chance to vote as they would have wanted to on that Proposition. I certainly know that I was supportive of the general thrust, but that I wanted to have the maximum possibility and I wanted the Assembly and my colleagues to have the maximum opportunity to ask questions that they thought were relevant to whichever Ministers were there. So that is why we are here today. This is not some kind of crackpot Proposition that we cannot possibly do, it is just what we were going to do anyway if we had been given the full voting choice and (a) and (b) had been separated. Now, I think there are many ways to do it today. We have got the whole gamut of possibilities of extending or restricting question time. What strikes me is that we meet every couple of weeks, sometimes every 3 or 4 weeks, depending on if there are holidays intervening, and although there are special briefings, it seems to me that the media sometimes seem to have more opportunity to question Ministers than we do. We know that there are weekly briefings often for the media and a lot of us tune into the media sessions with Ministers just so that we can find out what is going on. That is not right. I am sure some Ministers will contest that, but we find out information sometimes from the media and they get to ask lots of questions where we, as elected representatives of our constituents, do not have an equivalent opportunity to grill Ministers, whether it is on COVID or COVID related or other issues that are urgent to us. Somebody messaged me this morning and I think we have all got people who follow and send us messages. Sometimes they are helpful. This person said: "But hang on, why are the Ministers voting on this? Are they not conflicted?" and I kind of chuckled to myself and I said: "It does not quite work like that." But of course in other places it might, so when Boris Johnson was the Mayor of London, he did not get to decide on how the London Assembly could or should hold him to account because there was separation of powers there. So the Assembly decides the rules, the Back-Benchers - if you like, the Scrutiny - would say: "We want as many opportunities as possible to ask the Chief Minister and/or the Mayor of London to answer these questions" and the Executive did not get to have a say in how that worked. Now we are being told that this is going to create more work. The point is these are questions without notice and effectively Ministers will either be aware of what ... they will not be aware of what is coming and they will answer as best as they can in the same way that they do to the media. So, I do not make quite as much protest, as somebody who might potentially be answering

questions myself on behalf of either Department that I currently work for. So those are just my thoughts. I think it is for a short term, it is about getting us back to where we would have wanted to be and it is about giving us the opportunity to hold Ministers to account, to get the information out there and personally I would have thought they would jump at the chance to do that. Remember, other places, Westminster included, but not limited to that, around the C.P.A. (Commonwealth Parliamentary Association), they have one hour of question time every day that they are sitting and that is usually Monday to Thursday, so that is 4 hours during the week where Members can hold the Executive to account and where the Executive can get vital information out. So, I think we are making heavy weather of this and we should be supporting every opportunity we can for greater accountability and greater clarity

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

I will be supporting this Proposition and voting the same way that I voted on Deputy Labey's original Proposition. Indeed, I was one of the Members that responded to Deputy Labey when he emailed asking our thoughts on this and I said right from the beginning that I thought it would be valuable to retain the opportunity to ask questions of Ministers on subjects not necessarily related to the current crisis. I think it is important that the public know that other work is going on. I understand that we are facing unprecedented times that require resources to be used differently, but there are projects and pieces of work that are really important that should and will still continue. I know in Scrutiny we have paused a lot of the work that we have been doing, but we are having discussions now about how we will continue with those pieces of work that we had started on, because it is important that normal life does continue, albeit perhaps in the background, and that we do not forget the values and things that were important to us and are still important to us. So I for one, as a Back-Bencher - and we all have different ways of doing things, different ways of holding Ministers to account - really value that opportunity to ask questions of Ministers without notice because I think it is almost the purest form of questioning, where you are on a level with the Minister and I just think it is really valuable. I want to retain that, but I also think it is important that we do have that time set aside to ask questions about the COVID-19 situation, so I think we do need that hour. Yesterday we used that question time. I could have asked more questions on that issue and if we had had that extra 30 minutes to the specified Ministers yesterday, because we are still quite in the middle of this crisis, perhaps we would not have used that 30 minutes. I think that is how it will probably go, is that while we are still really in the thick of it most of the questions will be about the virus and related issues and Members probably will only have a limited amount of questions and will not use that full time and then it will become more ... at the other end of things and we will have less questions on the virus. Hopefully one day we will get to that point where it is not dominating our day-to-day lives and we will be back to using all of that time to ask the questions without notice to those specified Ministers. So I really do urge ... I mean, Back-Benchers, as Deputy Southern made that point about power, and I have argued on this point before in that we do hold power, but it is not our power. We are only looking after it for the members of the public that we represent and even if you are on the fence a little bit about whether you might want to ask the questions, please vote to retain that power for your parishioners and your constituents, because I do not really think it is ours to take away. I think we should keep that for them and try to exercise that power on their behalf as much as we can. I will be supporting this Proposition and I thank Deputy Ward for bringing it. I will be supporting it and I urge other Members to do so.

2.1.8 Connétable K. Shenton-Stone of St. Martin:

I was not going to speak on this, but I felt that I have to. Yesterday I did really need to ask a question without notice, but it was not COVID-related. Unfortunately even in this extraordinary time life is carrying on and there are still really important questions to be asked that are not COVID-related. Yes, it is right that COVID dominates but we still need to carry on and, in our constituencies, and

with our parishioners there are still urgent matters that need to be addressed, so I will be voting for Deputy Ward's Proposition.

[10:45]

2.1.9 Deputy J.H. Perchard:

I too will be supporting the Proposition. I think not doing so on the basis that Deputy Labey's Proposition is preferable is understandable, but we cannot base our voting decisions on another vote that has not happened yet. If this vote fails and Deputy Labey's vote fails then we will be stuck with one hour of questions about the Government response to COVID-19 and nothing more. We absolutely have to support this in order to retain our democratic right to ask questions on any topic in a public forum and on the record, so I will absolutely be supporting the Proposition, slightly depressed about the fact that we are going to spend a lot of today talking about ourselves and the inner workings of the Assembly again. I do not blame the proposers for that but it is a very frustrating situation to find ourselves in. At the last debate I think it was made painfully clear that many Members would have preferred to support the Proposition in parts and this is why we find ourselves where we are today, because we voted for something that we wanted a part of and now we are backtracking and trying to get rid of the part that we do not like understandably. It is absolutely our democratic right. I am really astounded that there are ministerial Members who think that this is not something that Back-Benchers absolutely need. This is a fundamental need and right at the moment. Currently we do not have the right to ask questions on any topic in the way that we used to. As far as I am concerned Deputy Ward's Proposition just simply puts things back to the way they were, plus retaining Deputy Labey's proposal of an hour of questions without notice. As it stands if this passes we will get our 15-minute slots as normal plus an hour of questions on the Government response to COVID-19 specifically. That is the outcome of this specific particular proposal. Deputy Labey's would alter that to be an hour on anything, but as Deputy Tadier rightly said it does not require any more preparation. You are either briefed or you are not on the thing that is asked without notice and if you are not all you need to do is say to a Member: "Sorry, I do not know right now. I am going to get back to you" like we always normally do. There is no difference in the level of preparation that is required here and I really am quite disappointed that there are Ministers who think that this is not something that our democracy needs. I will be supporting it. Let us wrap this up as quickly as possible today.

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

I am pleased to follow the previous speaker. I think we are really making heavy weather of this. This Minister absolutely believes in accountability. I also believe that we need to have processes to ensure that we do not become so focused on COVID that nothing else matters. I think we have to look beyond COVID and bear in mind that we are working as Ministers for a 4-year term. We spent 2 years doing a lot of preparation. We have got 2 years left to deliver. Unfortunately we have had a big stalling effect on business as usual or important matters for probably 6 months but it is absolutely important that we do keep accountability there and Members should ask questions of where we are. I shall certainly be supporting this and this Minister is certainly not one for hiding away in this situation. I support this.

2.1.11 Deputy J.M. Maçon:

It is an interesting point that our colleague just made that of course until September there will be certain Ministers that will not be on the rota if this Proposition is successful and both this Proposition and Deputy Labey's Proposition put in place the ability for Members to ask Ministers questions on any subject that they want to. That argument works for both Propositions so for me that is not the deciding factor. The question is about this extra half an hour and given the current time, if you have a half-hour session from the Minister for International Development and the Minister for External

Relations when really we want to be asking questions from the Minister for Health and Social Services I really cannot see the benefit that that extra half hour ...

The Bailiff:

Deputy, you seem to be breaking up and I for one am having difficulty hearing you. I do not know if that is common with all Members but I wonder if you could speak a little bit closer to the microphone and see if that works.

Deputy J.M. Maçon:

I beg your pardon, Sir. Is that any better?

Deputy J.A. Martin:

It sounds like you are scrunching 15 bags of crisps.

Deputy J.M. Maçon:

No crisps. Okay, maybe come back to me and see if I can do something.

The Bailiff:

We can hear you now. That last exchange was quite clear.

Deputy J.M. Maçon:

Okay, sorry. Just to make the point that if this Proposition were successful some Ministers will not come up on the rota anyway. Both Propositions, whether it is Deputy Ward's or Deputy Labey's, restore that period that allows Members to ask Ministers questions on any subject and also ... I am flustered now, and I think the other thing we have got to consider is we have already gained half an hour of question time and also not to forget of course that the other function of the Assembly is to get on with Public Business, which is important as well. I think considering we have already gained half an hour and we are going to de-restrict on one or the other I am not going to support Deputy Ward's Proposition at this time.

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

I would like to think that my Written Question and answers helped to get the conversation going in these debates but I certainly for myself feel that we need opportunities to question all Ministers on all subjects. As has been pointed out, we could vote against this Proposition and vote against the next and go all the way through the series of Propositions and not vote in favour of any of them, so I am going to support Deputy Ward. I may even be tempted to support Deputy Labey as well. I think it is vitally important in these days when we are working remotely in our parishes away from town, without the opportunity to bump into other politicians or have a coffee or sit down and have a proper meeting, discussions, conversations with Officers, all these things are not happening at the moment and the ability of Back-Benchers especially to access answers, to pick up bits of gossip here and there, to find out what is going on, is becoming increasingly difficult in this day and age and working away from St. Helier and the heart of Government. I am going to support every opportunity to ask every question on every subject to every Minister and that is the way I will be voting this morning.

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

I do apologise for the slight delay. The mute button was not responding in the way I wanted it to. I think I have shown yesterday and previously that this Government have a real problem, in fact not this Government, government have a real problem with information sharing. The Chief Minister felt the same when he was in Scrutiny, so it seems to me that the problem is deeply embedded in the culture of Government at an officer level and that is then passed on to the ministerial level, because sadly successive generations of Ministers have failed to change this and we see the problem recurring time and time again. I do believe the Chief Minister would attest to that, or would have attested to

that 3 years or so ago. Sadly it comes down to Members to drag information from Government and we do that through the questions that we ask. The issue we are faced with in Deputy Ward's Proposition is basically one about enabling us as Members to focus on other issues outside of COVID-19. As I have shown in this Assembly business as usual is continuing, yet the one time I had the temerity to ask a question of the Chief Minister that was not about COVID-19 during questions without notice he responded with sarcasm, reminding me that there was a crisis going on. The truth is that work within Government was not just focused on the crisis and we needed to be able to ask questions about aspects other than the crisis. That is where the problems lie. It is too easy for Ministers and Officers to avoid being answerable for other elements of their work, even though those other elements of their work are continuing. It is a sad fact that our system sets up the Executive against the Legislature in a way that is, to be honest, quite frankly eroding democracy in this Island. The fact that it is Ministers speaking against this Proposition speaks volumes. I do note the one Minister who spoke in favour of this and I thank Deputy Young for doing so. At a practical level having 15 minutes of questions without notice focused on one Minister's portfolio helps Members focus their minds on questions on the whole breadth of that portfolio, whereas an hour for questions without notice on any subject will inevitably see the focus turn to COVID-19 and the wider portfolios will be forgotten. We, as States Members, owe it to Islanders to ensure that the Government are questioned on all that they do. Please remember that the Executive serves at the pleasure of this Legislature. Our Assembly gives the Executive this power and therefore the Executive is always answerable to us and must never forget that, but all too often it does. The situation is not the other way around, where the Executive gives the Legislature its power. That is not the case. We, as an Assembly, allow the Executive to do its work and we can remove that at any time. I ask Members to support this Proposition in order that we, through this crisis, have the opportunity to properly hold Ministers to account and get them to share the information that Islanders deserve to hear.

The Bailiff:

Thank you, Deputy. Does any other Member wish to speak on the Proposition? If no other Member wishes to speak then I close the debate. Is it a point of clarification you are asking for, Deputy Pamplin?

Deputy K.G. Pamplin of St. Saviour:

Yes, thank you. Sir, will you or the Greffier be able to help Members? Under normal circumstances we did have the rota of the schedule of the upcoming Ministers for questions without notice available to us and the public. Is that information still available, with our normal sittings as today is, and what would that order have looked like for the coming States sittings up until the end of September?

The Bailiff:

I understand, Deputy Pamplin, that there is a file normally in the Questions folder but it will also be on the States Assembly website, but I am not sure that I can help you any further than that. I certainly do not know it myself. Very well.

Deputy K.G. Pamplin:

Thank you. I was also going to speak as well but I cannot seem to type into the chat. Apologies.

The Bailiff:

I am afraid I have closed the debate, Deputy.

Deputy K.G. Pamplin:

That is fine.

The Bailiff:

I call upon Deputy Ward to respond.

2.1.14 Deputy R.J. Ward:

I may put my camera off in a moment because I am looking at my notes and it does not look good on the screen. I would like to thank everybody who contributed to the debate and that is a key point to the debate, to the questions that came around this, to the openness, to the transparency, to the fact that we are discussing the politics that we have on this Island. I will come back to Deputy Perchard who spoke so well and I agree it is a shame that we have to have this discussion but I am afraid we have to have it.

[11:00]

Deputy Labey, it is good to hear somebody apologise in this Assembly. I have no problem if somebody feels that they have done something wrong and they apologise. That is what life should be like, however there does seem to be some confusion still regarding this Proposition. We would maintain the one hour that we have now but we would just reinstate the 2 sessions of questions without notice for 2 Ministers on a rota of 15 minutes each. The argument over the fact that we have added time so therefore we do not need it I think is a red herring in this situation. It is not about time. It is about access to Ministers, access to topics and the freedom and the right for Back-Benchers to ask questions of Ministers who are on the rota and do know about them. With regard to the issue of them having full workloads at the moment, well, we all do, but we all have to still be accountable to our constituents and we have to be accountable to this Assembly, so we have to manage that time. The point is the argument from Deputy Labey seemed to be that yesterday there was no appetite for questions, but the point is there was no access to those questions without notice on topics not about COVID-19 yesterday, so therefore we did not have the choice. Also, in addition I will say that if there is no appetite for the questions then that is not a problem about extra time. You have just eroded the argument that this will take extra time. Then people will not use them. At the moment they may not want to but they may want to in the coming weeks and months and it is so important that we maintain it. Thank you to Senator Mézec, who was the other Minister who spoke in favour of it, so there was more than one Minister. Deputy Southern, and Deputy Martin ... I will come back to Deputy Martin in a moment. I was very disappointed with the Chief Minister's speech. I am not entirely sure what the point he was making was. We are maintaining, at the moment depending on what happens after this debate and I will come to that point ... and I thank the Greffier for the very clear email he sent out earlier today to give the position, which I think was clear. We maintain the questions without notice on COVID-19, which of course is front and centre to all of our thinking at the moment but we add additional levels of accountability, which were already there. There are 7 more sittings, we were told, before the end of this period of COVID questions. That is 14 periods of questioning which will be a significant amount of questions that at the moment we have stopped ourselves from asking. We are not allowing ourselves to ask those questions on behalf of our constituents. It was the Constable of St. Martin who made an absolutely correct and very good point, and Deputy Doublet, a really good point about that, and I will come to that in a moment. I am very concerned about this attack on accountability. I really do not want the COVID-19 position to be hidden behind by a Council of Ministers, or Ministers, to avoid questions on other areas. That I am sure is not the case and that is certainly not what anybody on this Island I believe would want to see. If you are too busy and you cannot address these questions then just say that, and that would give a clear picture to the public of the Island on how busy you are, how much you are doing on COVID-19 and the fact that there are certain areas that are not being dealt with by Government day-to-day. That is part of the accountability agenda. That is part of transparency and that is part of something that we need to continue to do. Deputy Doublet was absolutely correct when she said there were projects ongoing and in Scrutiny we have to make decisions about what we do now, what we do in the future. We have a fully finished report that we are ready to publish and we are looking for the right time and we are politely and sensibly thinking about when is the right time to publish that report, so that people get the opportunity to respond to it effectively. I think that Deputy Doublet voiced a very important phrase which is that she values that opportunity to question, values that opportunity

and that is the really key point about this. I also value that and I am very pleased that at least 2 Ministers stood up to say that they value the point or they respect the right for people to question and want to have that questioning. That is what will cut your teeth in terms of political effectiveness or not, that questioning. This idea regarding power, there was a very good point made, it is not ours to give away. It is not ours to vote away the opportunity to question that power at a whim. We should not be doing that. We need to move forward and we need to reinstate what was an opportunity to continue our accountability. An extra 30 minutes. Deputy Maçon said that we have Public Business to get on to. How many times are we here for the full 3 days? Very rarely. We can get through Public Business quite easily and if we have to extend that then we extend it. There seems to be at the moment a real drive to cut down on the time that we are in the Assembly. Why on earth are we doing that when we have these allotted days? Let us use the time effectively and let us get stuff done. Deputy Perchard was correct, we are discussing ourselves again. It is about an attitude, what I think we have, to democracy and whether or not we want to make things accessible. A couple more things, Deputy Young, it is good to see you speak and you are absolutely correct, we do need to look beyond COVID-19. Yes, of course, this is a huge issue for us at the moment but we will come out of it at some time and we will have the Government continuing and it has not stopped behind the scenes at the moment so we need to do something about it. I do not quite understand what Deputy Maçon was saying, that we keep the Ministers on a rota, that we keep to the hour but that we add the Ministers on a rota when all that does is give us more accessibility and we have plenty of time to do it. Thank you to Deputy Luce, you are absolutely correct and I put your questions in my speech because it just occurred to me that this is exactly the point I was trying to make, that we missed out on the last time. People have to ask questions regarding topics that are current but we have to put those questions in nearly 2 weeks in advance, so we lose a current opportunity to ask questions of a Minister, therefore we lose part of our democracy, in my opinion. Deputy Morel, thank you very much, I agree with your concern and the issue of the Officers'-Ministers' relationship and what we see at the end of that and the importance for us, as States Members, holding accountability for that, clarity of where ideas are coming from and who is instigating ideas. That is so important. A final couple of points. I think that we have a really clear choice here. We either maintain the hour that we have, which I am quite happy to do COVID-19 questions because it is topical and just have that, which is what we had yesterday, and we move normal business from the proceedings, or we reinstate what we had. This gives us 2 Ministers with questions without notice and increases accountability. We need to bring back that opportunity and this is not about time. We do not want to concede control from this Assembly to Ministers simply because of COVID-19 and we need to increase and maintain that accountability. I would say that if you want to make sure that you have a choice, and it is interesting that so many Back-Benchers have spoken in this, that I ask you to vote for this Proposition, let us reinstate questions without notice and then we can move on to the other Propositions. Can I make the point from the Greffier's email, you could vote for this Proposition and for the next Proposition, if you want, and have perhaps the best of both worlds, but certainly this Proposition opens up an opportunity that we should not have given up before. Thank you, and with that I ask for the *appel*.

The Bailiff:

Thank you very much indeed, Deputy. The Greffier will shortly put the link on the chat and hopefully ... very well, the link has now appeared and I would ask Members to vote in the normal way. I ask the Greffier to open the voting.

POUR: 35		CONTRE: 14		ABSTAIN: 0
Senator I.J. Gorst		Senator L.J. Farnham		
Senator S.C. Ferguson		Senator J.A.N. Le Fondré		
Senator T.A. Vallois		Connétable of St. Clement		
Senator K.L. Moore		Connétable of St. John		
Senator S.W. Pallett		Deputy J.A. Martin (H)		
Senator S.Y. Mézec		Deputy of Grouville		

Connétable of St. Helier		Deputy K.C. Lewis (S)		
Connétable of St. Lawrence		Deputy J.M. Maçon (S)		
Connétable of St. Saviour		Deputy S.J. Pinel (C)		
Connétable of St. Brelade		Deputy R. Labey (H)		
Connétable of Grouville		Deputy S.M. Wickenden (H)		
Connétable of Trinity		Deputy L.B.E. Ash (C)		
Connétable of St. Peter		Deputy of St. Peter		
Connétable of St. Mary		Deputy of Trinity		
Connétable of St. Ouen				
Connétable of St. Martin				
Deputy G.P. Southern (H)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
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 R.J. Ward:

May I thank the Assembly for adopting this Proposition? Thank you very much.

3. Arrangements for questions without notice to all Ministers (P.54/2020)

The Bailiff:

Very well. The next item is the Proposition Arrangements for questions without notice to all Ministers, P.54 lodged by Deputy Labey and I ask the Greffier to read the Proposition.

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

I know it does not matter but I cannot hear the Greffier reading.

The Bailiff:

That is all right, the Greffier has not started reading yet, Connétable, so nothing is lost.

The Greffier of the States:

In the paperless world I have to load the Proposition on to the laptop and it is taking a bit of time. The States are asked to decide whether they are of opinion - to refer to their Act dated 22nd April 2020, in which they agreed that, until 1st October 2020, every scheduled meeting of the States would include a period of questions without notice during which questions might be put to any Minister about the response of the Government of Jersey to the coronavirus crisis; and to agree to remove the

requirement that such questions be about the response to the coronavirus crisis so that questions may be put to Ministers on any subject within the official responsibility of the Government of Jersey.

3.1 Deputy R. Labey:

Congratulations to Deputy Ward. I am so much happier with a result that, even though I voted the other way because of the reasons I said, is a result that is a greater consensus of Members and that is important because Members guard their rights, privileges and procedures with great care and attention. I think if we are all happier it is much better for all of us. It seems to me the question before us now is whether that hour of questions without notice can be to any Minister on any subject or just restricted for an hour to COVID-19 questions. Can I just say one thing? It is an old chestnut and it came up again in this debate from Deputy Perchard about the navel-gazing and talking about ourselves. Every Proposition I have to bring to the Assembly is about how we work, and I do not believe any of them, electoral reform, this or any of them that I bring as Chair of P.P.C. (Privileges and Procedures Committee) are about me. Deputy Perchard might think the last debate was about her. I do not think it is about me or any other individual Member. I think it is about how effectively we represent the people who put us here. It does grate every time that is brought up because it is important. It is fundamental to our democracy that we get our procedures right. The question before us is whether we think we should be able to question any Minister on any subject during that hour before we do the ministerial rota. I will maintain the Proposition. It is entirely up to Members how they feel about this. I value questions without notice and I have liked how we have been doing it recently because I think it makes us respond to current situations, current events, current issues, better. Many is the time, and I am sure that other Members will feel the same, that the Thursday deadline for an oral question has passed and something happens on the Friday or the weekend and I have thought: "Well, I would really like to ask the Minister a question about that" and I am unable to really because they are not on the 15-minute rota. With that in mind, I will maintain the Proposition and will be very interested to hear what Members have to say.

The Bailiff:

Thank you very much, Deputy. Is the Proposition seconded? **[Seconded]** There is a point of clarification. You are seeking a point of clarification from the last speaker, Deputy Perchard?

Deputy J.H. Perchard:

Yes, Sir. I wondered if the speaker could clarify whether P.51 was lodged by the speaker as an individual Back-Bencher or as Chair of P.P.C.

[11:15]

The Bailiff:

It appears to be clear that it is lodged by the Deputy in his individual capacity from the front page of the paper itself, I think, Deputy Perchard.

Deputy J.H. Perchard:

Certainly, Sir. It was just the implication that the individual could only lodge things relating to the workings of the Assembly. I was confused as to whether he considered P.51 ... because that obviously ties with his role as Chair of P.P.C. but not as an individual Member.

The Bailiff:

Thank you very much, Deputy. Did you have a point of clarification, Deputy Ward?

Deputy R.J. Ward:

Yes, Sir. I do believe this will be useful for the Assembly, notwithstanding the email from the Greffe to make the point and confirm that if this Proposition is voted for it only changes part (b). We retain

what we have just voted for, which is the questions without notice for named Ministers, but it just changes the nature of the additional hour that we also have. I just want to make that really clear because ...

The Bailiff:

I am sorry, Deputy. On a point of clarification, you either ask for a point of clarification from the previous speaker on their speech or you offer a point of clarification on a speech you have already made and you have not made a speech yet. So I am assuming that you are asking for that point of clarification from the proposer.

Deputy R.J. Ward:

Yes, Sir, sorry.

The Bailiff:

It is quite all right.

Deputy R.J. Ward:

I am also trying to be very careful to go through the Chair, so it is the way I have worded it, but yes, exactly that, just to make that point of clarification from the speaker where his Proposition fits in.

The Bailiff:

Deputy Labey, are you able to offer a point of clarification on that?

Deputy R. Labey:

Yes, as I see it the 15-minute ministerial rota is back, thanks to Deputy Ward's Proposition, and this Proposition does not alter that. All this Proposition does is enable the questions without notice to any Minister period to be on any subject, not confined to COVID-19.

The Bailiff:

Thank you, Deputy. Yes, Deputy Tadier, you have a point of clarification as well?

Deputy M. Tadier:

Sir, I think that has effectively clarified it because I wanted to know the consequence of not voting for this versus voting for it, but can I ask Deputy Labey if he still wants to maintain this?

The Bailiff:

Sorry, Deputy, that is not a point of clarification.

Deputy M. Tadier:

That is fine, Sir. Thank you.

The Bailiff:

I think the Deputy has already entirely intended to maintain it by making the Proposition and having it seconded. I do not think that is appropriate. Deputy Young, is there a point of clarification?

Deputy J.H. Young:

Yes, if I could just ask the proposer to clarify. Obviously the change, I think what he has said, is that the one hour of questioning that at the moment goes to any Minister on COVID could go on any subject, but could he confirm whether or not the change he is proposing to have a broader field of questions and would be time-limited to 1st October 2020, or is this a permanent thing?

The Bailiff:

I am not sure that is a matter for clarification, necessarily, from the proposer. The reality of it is that what it is referring specifically back to is the creation of the period of questions relating to coronavirus and removing the requirement for the questions to relate to coronavirus, but it will be time-limited in precisely the same way as the original Proposition was. Very well. The Proposition is seconded. There is an Amendment by Deputy Maçon and I ask the Greffier to read the Amendment.

3.2 Arrangements for questions without notice to all Ministers (P.54/2020): Amendment (P.54/2020 Amd.)

The Greffier of the States:

Page 2 - After the words “; and to agree” insert the words “that this should be for an hour and” and after the words “Government of Jersey” insert the words “for 45 minutes and that the remaining 15 minutes should be allocated for questions without notice solely to the Chief Minister”.

3.2.1 Deputy J.M. Maçon:

Just to double-check, am I crackling still?

The Bailiff:

No, sounding good so far.

Deputy J.M. Maçon:

Thank you. In light of the decision that the Assembly has just made and that they will be re-establishing the ministerial rota, that means every other sitting the Chief Minister will have 15 minutes without notice, it seems to me that if this was adopted you would be in the situation whereby the Chief Minister would have 2 slots of 15 minutes without notice. I think that would just make a nonsense of the situation, so therefore I would like to withdraw my Amendment.

The Bailiff:

You are entitled to withdraw it at any point prior to the debate opening and so that is a matter for you, Deputy, and your Amendment is accordingly withdrawn. We then return to the Proposition of Deputy Labey, unamended of course, and I have notice of some wishing to speak, so I call upon the Connétable of St. John.

3.3 Arrangements for questions without notice to all Ministers (P.54/2020) - resumption

3.3.1 Connétable C.H. Taylor of St. John:

I would like to begin by congratulating Deputy Labey on his apology in the previous debate. It has gone a long way and is much appreciated, certainly by myself. I would, however, like to say that we have already had 2 States Assemblies that were at Fort Regent where one hour was set aside for questions to the Chief Minister and other Ministers on the COVID crisis. This was done with a gentlemen’s agreement between the Chair of P.P.C. and the Chief Minister and I see no reason why that agreement could not have continued throughout the COVID crisis. It has angered me that so much time and so many debates, P.51, P.53, P.54, P.57 all seem to relate to this issue and it is unnecessary and we could, in the meantime, have simply carried out the procedures we want with a gentlemen’s agreement and with your agreement, Sir, to have a question period for the Chief Minister. This is not what I think is good government and I do not think this is appropriate, which is why I am voting against all the Propositions simply because I do not think this is the way business should be conducted.

3.3.2 Deputy M. Tadier:

I am interested by the Constable’s speech. Firstly, I do not think you can rely on gentlemen’s agreements to decide how the business of the sovereign Assembly of the Island is run. That is not to say that a gentlemen’s agreement was entered into or proffered in good faith, but it is just not the way

things are done. The second point is that if it angers the Constable so much then what does he expect when you have got an Assembly which is largely composed of independent Members? It is like herding cats because you do not know how ...

The Bailiff:

Deputy, you seem to be cutting in and out of hearing for some of us. Would you like to make that last point again?

Deputy M. Tadier:

Yes, sorry, Sir. I am getting a notification saying that there is bad network quality, so I am not sure what I can do. I am pretty near the router but we will just try again. This is just a consequence of not having party politics. These kinds of procedural matters would be worked out by the Whips, normally. You would get the Whip of the Jersey Social Democrat Party talking to the Whip of Reform Jersey or the Jersey Conservative Party and these sorts of things would not need to come to the Assembly and if they did they would just be nodded through, because you would have the discussions behind the scenes. We are dealing with the system that we have, and I thought the Constable was a proponent of the *status quo*, so maybe I am wrong, and he is realising that the current system has its inadequacies. I am happy if he wants to change that and maybe he can form the St. John Conservative Party or Liberal Party or whatever. That aside, I think that we have got a much more technical decision here. If I understand correctly we have now got the normal 15 minutes of questions on any subject to a Minister based on the rota and every 2 sittings that will be the Chief Minister and every other sitting it will be 2 different Ministers. We have got an hour of questions as things currently stand that must relate to COVID. Is that correct? So the additional hour, just so I have got it clear in my head. I have had trouble accessing the Order Paper online, unfortunately, today. I am quite open-minded. I was really keen to make sure we still had the ability to hold Ministers to account as per the rota for 15 minutes each and that if there were to be an additional hour, which was only COVID-related, I could stomach that because it was in addition, so we are not taking any rights away from Members. The difficulty I have got now is to try to be philosophically consistent and rational. So, when we are presented with a choice between giving more powers to Members and more flexibility about what kind of questions they can ask versus what is currently on the table I am automatically inclined to go with the option that gives Members the greatest flexibility, which I would not have done if it had started from the *status quo*. That is why I think it has been a messy process. I do partly agree with the Constable of St. John in that respect. It is not what anyone would have designed. I think it has happened iteratively and imperfectly. I have to choose the fact that we can ask questions for an hour on any subject and there are 2 reasons for that. The first one I alluded to is that it gives Members the discretion to decide what they ask questions about and we are the ones who need to decide what is relevant and no one else, and there may be questions that come up from constituents that are not COVID-related, which come up and need to be answered after the lodging period for questions with notice has finished, but that are still urgent. The other thing is that there are often questions that come up that are partly related to COVID or exacerbated by the COVID situation, but which might be moot. One example is the question I asked yesterday to the Minister for Health and Social Services about smoking and smoking in flats or houses in public dwellings. That is a general concern that I have, but it is exacerbated by the fact that we are in lockdown, so I had to be very careful in phrasing my question to make sure that it was not ruled out of order. I could have easily phrased the question in a different way, which would have made it more susceptible to being ruled out of order. Sir, that would have put you or whoever the Presiding Officer was in a difficult position, because it meant that we would be in disagreement. I could decide that I was wrong or I could say: "I am right and I can tell you why I am right" or: "Can I reformulate my question?" That is unsatisfactory. In order to avoid this situation we need to give Members the trust to ask the questions they want and I think in 80 per cent of cases they are going to be COVID-related because that is the topic of the day, but as we start to come out of this crisis it is going to be more difficult to

judge what is and is not related directly to COVID because some things will be related to the economic difficulties that might be related to COVID and how do we decide what is what? I fully appreciate that this is time-limited and I am not going to die in a ditch over it either, but that is my position. I support the outcome which leaves the greatest flexibility to Members to ask the questions they want.

The Bailiff:

Thank you, Deputy. Have you concluded your speech? I was just worried that you may have faded unintentionally again. Deputy Tadier, do you still wish to continue with the speech or was that the end of your speech.

Deputy M. Tadier:

Sorry, Sir. That was the end. I should have been more definitive about: that is the end of my speech. Thank you.

[11:30]

3.3.3 Deputy K.G. Pamplin:

I was not really going to speak in this debate. The main thrust of why we are talking about such subjects was covered in the previous debate. I, again, thank Deputy Ward for bringing it and all Members who voted. However, I respond to the Constable of St. John's comments about a gentlemen's agreement, which concerns me. I understand what he was trying to convey, but it is unfortunate, because that sort of thing, a gentlemen's agreement, in legal terms is not really seen as a legal binding contract. As well the term also for many of our female colleagues was unintentionally not the best use of language. However, I can understand why the Constable went there, but just wanted to distance myself from that. The issue I have with this whole situation is ... and the Constable did refer to it again about our previous meetings in Fort Regent and the Chief Minister in a previous speech earlier about previous meetings. The past is in the past and, as we know, this crisis, the pandemic, is one of the fast-moving situations we have found in an age, because of how serious it is and how things have evolved and changed in how people are dealing with the situation and then something happens and then we have to move quickly again, because timing is everything. We just have to keep moving as the situation keeps moving. As we heard in yesterday's sitting, the Deputy Chief Minister made a statement about the Future Hospital project. So that has raised some questions on all of us as well as we go forward. It was alluded to by Deputy Southern, the Future Jersey Care Model that we are also scrutinising and there are other subjects that are coming up. As Deputy Young said, ironically, we are just days away from the 2-year, the halfway stage of this Assembly, and we have another 2 years before the next election. It is therefore important that all the work that is going on is being able to be constructively questioned in the public domain for our voters to see that we are taking their questions to help us in our format. Personally, every State sitting, used to stick to my own code of 5 written questions to oral. In respect to the situation, I have dropped written questions, in respect of how much work is going on by Officers. However, we do have Scrutiny, we have the ability to hold Ministers to account through our code of practice and the ways we do business, equally within the oral questions. It was notable, the last 2 times that we have done oral questions with notice, they seemed to start off slowly, then people get a feel for them and the technology, which sometimes at the beginning does not help, and then we seem to rush and try to get everything in. I just feel that having the questions without notice allows us to pick up any points, for example, if we did not get to your question, you could raise it in that period. The more we can do that, the better. In summary, I would just ask the proposer how he envisages this working now, because the situation of the pandemic has moved on and there are other things that have also moved on. So I am just wondering how he sees this will work going forward. That is just what I wanted to say at this time. Thank you.

The Bailiff:

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

3.3.4 Deputy R. Labey:

Deputy Tadier has hit the nail on the head. This is about removing restrictions from Members. How I see it working is that we have this period of questions without notice until 1st October and we also will have the 15 minute Ministerial rota. It seems to me that we will probably save our questions for specific Ministers to that period, if they are on the rota, and we will be able to ask any Minister anything in the other period, the questions without notice period. We shall be able to respond better to current issues and events and what is happening. It might be the case that we would not use the whole hour now that we have the 2 period of questions for Ministers. I have said in the Assembly before that I am a believer that we should be allowed to ask Ministers or anyone else in the Assembly any question we want. It is positive. These questions sessions to any Minister have been working really well. This just broadens the scope and takes the restriction off Members about what they can ask. Another thing I see working, to answer Deputy Pamplin, is that 80 per cent of our questions are, for the next few months, going to be COVID related, or it seems that is the case for me. Sometimes these Ministers do not come around on the rota all that quickly, especially if you build in the recesses. It is sometimes quite a long time before we get to question some Ministers without notice. This will help to make them more available to Members, to Back-Benchers, to non-Executive Members. I maintain the Proposition and ask for the *appel*.

The Bailiff:

Thank you very much, Deputy. I ask the Greffier to put up the voting link. There is going to be a slight delay while that happens. The link is taking some little time to load. I would ask Members not to get concerned about that. It is not a failure on the part of your system, it is just taking a little bit of time to be transferred to the chat. Very well, Members will now see that there is a link on and will ask Members to indicate their votes using the link in the usual way. I ask the Greffier to open the voting.

POUR: 33		CONTRE: 15		ABSTAIN: 0
Senator L.J. Farnham		Senator I.J. Gorst		
Senator S.C. Ferguson		Senator J.A.N. Le Fondré		
Senator K.L. Moore		Senator T.A. Vallois		
Senator S.W. Pallett		Connétable of St. Clement		
Senator S.Y. Mézec		Connétable of St. Lawrence		
Connétable of St. Helier		Connétable of St. Saviour		
Connétable of Grouville		Connétable of St. Brelade		
Connétable of Trinity		Connétable of St. John		
Connétable of St. Ouen		Connétable of St. Peter		
Deputy G.P. Southern (H)		Connétable of St. Martin		
Deputy of Grouville		Deputy J.A. Martin (H)		
Deputy K.C. Lewis (S)		Deputy L.M.C. Doublet (S)		
Deputy M. Tadier (B)		Deputy G.C.U. Guida (L)		
Deputy M.R. Higgins (H)		Deputy of Trinity		
Deputy J.M. Maçon (S)		Deputy M.R. Le Hegarat (H)		
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				

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

The Bailiff:

Very well, as indicated in the informative email circulated this morning by the Greffier, as this Proposition has been adopted then there is no longer a question period related purely to the coronavirus and therefore Deputy Tadier’s Proposition falls away.

4 Draft COVID-19 (Capacity and Self-Determination) (Jersey) Regulations 202-(P.58/2020)

The Bailiff:

The next item of Public Business is the Draft COVID-19 (Capacity and Self-Determination) (Jersey) Regulations 202- (P.58/2020) lodged by the Minister for Health and Social Services. I ask the Greffier to read the citation.

The Greffier of the States:

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

Senator S.W. Pallett:

I am acting as *rapporteur* for this Proposition.

The Bailiff:

Yes, thank you, Senator.

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

The draft Regulations in P.58 bring temporary changes to the Capacity and Self-Determination Law, in light of the on-going impact of COVID-19 on our Island’s health care system. COVID-19 has resulted in restrictions on physical access to the Island’s hospital facilities and care homes, which is having particular ramifications for our Capacity and Self Determination (Jersey) Law 2016. You will recall that we debated the Capacity Regulations under P.47/2020 on 22 April. Indeed, we adopted the principles of P.47, but during the second reading, voted to move on to the next item of Public Business; a decision, I believe, taken in light of the very legitimate points of clarification raised by the Attorney General and unresolved concerns expressed by some external stakeholders. The draft Regulations before you today are the provisions as previously debated under P.47. However, they now include 2 additional provisions which are functional drafting points. In short, these additions serve to provide in an extraordinary period an order-making power separate to the Mental Health Regulations previously adopted by the Assembly. Plus, in accordance with the Attorney General’s points of clarification, they now make explicit the right to access to the Mental Health Review Tribunal and independent Capacity Advocates for those subject to interim authorisations under these draft Regulations. I now describe the Regulations to you and then respond

to the issues raised by the external stakeholders. These changes will ensure the continued protection of some of our most vulnerable Islanders during a time when it is not possible to access care premises without creating a very real risk to the health of vulnerable Islanders. The draft Regulations allow for temporary changes to the authorisation process associated with imposing significant restrictions of liberty on a person who lacks capacity and, in doing so, they provide the safeguards necessary to protect the rights of those individuals. A significant restriction on liberty could include, for example, a person not being permitted to leave their care home unaccompanied or their freedom of movement in the care home being limited to certain rooms or restrictions on their social contact. It is important to be clear that these draft Regulations do not have an impact on the way individuals lacking capacity are treated or restricted. Put simply, they temporarily alter the process in which the Minister approves any restrictions on liberty imposed on certain individuals in hospitals and care homes. Again, I would like to remind the Assembly of the temporary nature of these Regulations, as with other necessary regulations passed in the light of the COVID-19 crisis. These have a 30 September expiry date and will only apply if the Minister for Health and Social Services has declared an extraordinary period. As I mentioned earlier, the draft Regulations before you today differ from P.47 in that they separate out the extraordinary period from that of the P.46 Mental Health Regulations. Previously the powers in these draft Regulations would become active if the Minister for Health and Social Services declared an extraordinary period for reasons relating to the provision of mental health services. This separation of periods will ensure that the powers will only be enacted for the purpose of ensuring that the authorisation of significant restrictions on liberty can continue during the COVID-19 outbreak in Jersey. Once again, it is intended that any divergence from existing policy and practice is only permitted for the shortest possible timeframe. I would like to make clear that these Regulations have the backing of our front line staff, including our Chief Social Worker and Associate Medical Director for Mental Health.

[11:45]

In order to understand the changes, it may be helpful to the Assembly if I summarise the current position under the 2016 Law. The Capacity and Self-Determination (Jersey) Law 2016 sets out the processes in which the Minister may authorise urgent and standard significant restrictions on liberty. These can last up to 28 days for an urgent authorisation and 12 months for a standard authorisation. The latter standard authorisation requires a Capacity and Liberty Assessor to undertake an assessment on behalf of the Minister, along with a registered medical practitioner, if there is no medical evidence of the individual's lack of capacity at the date of assessment. The purpose of standard authorisations is to provide the Minister assurance that the individual concerned lacks capacity and it is necessary to impose restrictive measures in the interests of the individual's health or safety and the measures proposed are in the individual's best interests. These draft Regulations do not preclude the current authorisation processes from taking place. Indeed, the Regulations are written in such a way as to ensure that the current authorisation process is the preferred option and should be adhered to whenever possible. As it stands today, assessors cannot visit care homes and hospitals due to COVID-19 so the current authorisation process cannot be complied with and we simply need an alternative. While we are now in the fortunate position of having an exit strategy and beginning to ease certain restrictions, this will not alleviate the problems with carrying out assessments. As advised by the Medical Officer for Health, transmission of the virus will continue in the community for the foreseeable future. Many, if not all, the people in care who are usually visited by assessors would be considered either vulnerable or severely vulnerable and require further shielding. In the words of our Chief Social Worker, when considering what is in an individual's best interest, shielding has to be the factor in our determinations. This remains current medical advice and most likely what a person would choose for themselves. She goes on to say that the interim authorisation process set out in P.58 allows staff to, and I quote: "Act in a way that enhances health outcomes and preserves lives." As set out in P.58, the application for an interim authorisation can be made by the manager of a care facility, as there is no requirement for an assessment to be carried out by a Capacity and

Liberty Assessor. Statutory obligations are placed on the manager to demonstrate the appropriateness of the application and extra duties are placed on the Minister to check and consult on the appropriateness of the application. Care homes have been consulted on these draft Regulations via the Care Commission. The draft Regulations are intended to provide managers with the peace of mind that they can continue to work in the best interests of their residents, while also complying with the Law. The Adult Social Care Team will support care home managers to complete applications, plus written guidance is being developed. The interim authorisation process seeks to maintain the assurances of lack of capacity, necessary measures and best interests in the following way: a manager can only apply for an interim authorisation in relation to an individual if there is prior medical evidence of lack of capacity. This evidence of a diagnosis of mental disorder or impairment, which forms part of the capacity test, is an essential safeguard as the Minister cannot proceed with an interim authorisation without this evidence. Furthermore, the application must include a statement explaining why the significant restriction on liberty is needed. The draft Regulations require the manager to provide details to show that without the restriction the individual would suffer serious harm or would be a significant risk to others or themselves. This could be, for example, in the case of COVID-19 being identified in a care home setting where the manager would need to ensure residents potentially are confined to their rooms to prevent risk to themselves, other residents or staff. Finally, the manager is required to demonstrate that the significant restriction on liberty is in the best interests of the individual. Evidence of this could include meetings with family or clinical reviews to demonstrate that the individual's needs have been properly reviewed. The draft Regulations also place a statutory duty on the Minister to consult with anyone considered appropriate, such as the individual's health and welfare guardian. The additional provisions with these draft Regulations relate to access to an Independent Capacity Advocate and the Mental Health Review Tribunal. Taking into account the Attorney General's comments, the draft Regulations clarify the position on access to elements within the 2016 Law. Firstly, they ensure that an individual who is subject to an interim authorisation would be able to access the Mental Health Review Tribunal in the same way as those subject to a standard authorisation. Secondly, they make provision for the appointment of an Independent Capacity Advocate to represent the individual, in the same way as if a standard authorisation had been granted. The powers set out in these draft Regulations strike a balance between meeting the challenges posed by COVID-19 and enabling our health care system to continue to operate within a statutory framework. To be very clear, they do so while upholding the human rights of vulnerable Islanders. Now, I would like to address some of the key issues raised by external stakeholders. The Children's Commissioner noted 3 broad areas of concern, these being participation in scrutiny, proportionality and necessity, and lastly safeguards and wider international law. I shall speak though to the elements of her comments that relate to these draft Regulations. Firstly, I would like to express my apologies to the Commissioner for the oversight of not consulting her in the first place. While significant restrictions on liberty only impact a very small number of 16-25 year-olds, there were only 4 in total since 2018. This does not mean the rights of children and young people or her role in protecting those rights have been overlooked. They have not. The failure to consult was simply due to the challenges associated with moving at such a fast pace when developing emergency legislation. It is difficult to balance the need to move quickly and the need to give all parties sufficient time to consult and consider proposals. For that, I apologise. While we have successfully engaged with the Health and Social Services Scrutiny Panel, who I believe are in support of the Proposition, a dialogue with external stakeholders has proved a greater challenge. However, we have now received and responded to the external submissions to which States Members have been party. Law Officers are also working alongside other Officers to set up a facilitated meeting to consider the broader human rights issues which are not directly related to the Regulations before you, but which have been raised by external stakeholders. Regarding the proportionality and necessity of these draft Regulations, I reiterate they have been drafted in such a way that they will only come into effect when it is absolutely necessary to use them. As things stand though, that time has now likely come. Similarly, the Minister will turn off that power, by Order, ending the extraordinary period, as soon

as it is no longer necessary. The intention of changing the way significant restrictions on liberty are authorised is to protect the most vulnerable in our Island. As the Assembly will be aware, sadly we have had 25 deaths so far due to COVID-19; 11 of these were in the general hospital, but a further 12 were in care homes, the very place we do not want to risk additional infections becoming transmitted by Assessors and potentially others. Finally, the matter of safeguards and wider international law, this Government is acutely aware of its international law obligations and has been advised by Law Officers that these draft Regulations are human rights compliant and do not and could not amount to anything akin to torture, inhuman or degrading treatment, nor do they fall foul of discrimination legislation. Furthermore, and I quote here from Article 16 of the U.N.C.R.C. (United Nations Convention on the Rights of the Child): “No child will be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence.” If a young person was subject to an interim authorisation it must be determined that any restriction on their liberty was in their best interests. There is nothing in the draft Regulations to suggest that that would lead to arbitrary or unlawful interference with their right to have wider contact with their family. It is to be regretted that some external stakeholders were not fully engaged with the process of developing these temporary emergency safeguards. However, that does not mean that these draft Regulations are flawed or contrary to a person’s human rights. Rather they strive to continue to safeguard and protect some of our most vulnerable Islanders during what are very turbulent times. The Capacity and Self-Determination (Jersey) Law is without doubt a complex Law. I would excuse anyone who did not understand all elements of this extremely important Law that protects Islanders at a particularly difficult time in their lives. I believe the complexity of the Law was highlighted during the original debate on the draft Law P.79/2016, where a Law which has such far-reaching implications and included 73 Articles was debated in under 3 hours with only 14 Members speaking on the principles and then the Articles. Interestingly, not a single Member spoke of any concerns over human rights issues with any part of that draft Law. For those Members who were present in that debate, including myself, maybe this was because of the informative and detailed notes prepared by the Officers within the appendix to that Proposition that summarised the principle human rights issues arising from the contents of the draft Law and explained why in the Law Officers’ opinions the draft Law is compatible with the European Convention on Human Rights. The Primary Law and its benefits have now been in place for over 3 years. To my knowledge, during this period there has been no concerns raised in regards to the Capacity and Self-Determination (Jersey) Law in regards to human rights issues, prior to the recent lodging of P.46 and P.47, which we debated recently. This Amendment, as explained, abides by all the safeguards and procedures included within the Primary Law, but I am sure that the Attorney General will assist in regard to any Member’s concerns regarding human rights compliance. I will finish by asking Members to consider how they would feel if one of their loved ones were resident in a care home and they could not be legally shielded from the risk of infection at the time of a pandemic. I am in that position, so I do understand that removing any individual’s liberty, especially those who lack capacity, is a serious matter. However, in the middle of a worldwide pandemic, that could yet become more serious again, it is vital that we do what is in the best interest for our loved ones and properly protect the most vulnerable. I recommend these Regulations to you and I do urge Members to support a vitally important Amendment to the Capacity and Self-Determination (Jersey) Law. Thank you.

The Bailiff:

Thank you, Senator. Are the Regulations seconded? [**Seconded**] Thank you very much. I have notification of 2 questions directed at the Attorney General. The first is from Deputy Ward. Deputy Ward you have a question for the Attorney General?

Deputy R.J. Ward:

Basically, there is throughout the Amendment a reference to a manager of a care home, I wondered if there is legal definition of what that manager entails, whether it would be somebody named, *et*

cetera, and what that means. Secondly, I wanted to confirm that outstanding applications from before COVID-19 are not included and, if so, what is the legal cut-off date for the beginning of the COVID-19 crisis? Is it at the point where an extraordinary period is declared? Thank you.

The Bailiff:

Perhaps if I get all the questions in to the Attorney General in one go and then he can answer as he sees fit.

Deputy R.J. Ward:

I asked early to give time. I understand. Thank you, Sir.

The Bailiff:

I am most grateful, Deputy, and I am sure the Attorney General will be as well. Deputy Le Hegarat, you had a question also for the Attorney General?

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

Yes. The point that I wish to make or check with the Attorney General was that he made an input when we had the previous debate on P.47. I wish to ask that all the matters which he made in that briefing have now been addressed in relation to the Amendments now being brought forward. Also, as well, I want to clarify that, in his opinion, this legislation is compliant with human rights legislation. Thank you.

The Bailiff:

Thank you very much. Mr. Attorney, did you wish to answer those questions now or would you like a little bit more time and come to them later?

[12:00]

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

I think I would need a little more time in relation to Deputy Ward's first question, possibly his second, but certainly his first: the definition of a manager, I would just need to check the position on that. I am in a position to answer Deputy Le Hegarat's questions now. It may assist the Assembly in terms of speeding up its proceedings if I did that.

The Bailiff:

Very well then, Mr. Attorney, if you would answer those questions now and then indicate on the chat when you are ready to answer the other questions.

The Attorney General:

Thank you, I will do. In relation to Deputy Le Hegarat's 2 questions, yes, in terms of the concerns that I raised in the second reading of the previous debate back in April have been addressed. They have been addressed in a short additional regulation, which is a new Article, Article 60G, which expressly confirms that Articles 51 and 55 of the Capacity and Self Determination (Jersey) Law 2016 apply to interim authorisations, in the same way as they do to standard authorisations. To my mind, that is an important and helpful clarification, because it essentially confirms that with interim authorisations a person who is subject to that deprivation of liberty has access to a Mental Health Advocate and also to challenge any of the deprivation of liberty with the Mental Health Tribunal. So, yes, my concerns have been addressed. That was the intention in any event, but it is important that the Regulations are clear and that there is no room for ambiguity on those 2 important questions. As regards the wider question of compliance with human rights, the E.C.H.R. (European Convention on Human Rights), yes, I do consider that the Regulations are compliant with the E.C.H.R. The principle Article that is engaged is Article 5 of the E.C.H.R., which is the right to liberty and security. The key relevant point, for the purposes of this debate and these Regulations, is that there is an

exception to that right and that is an exception for the lawful detention of persons for the prevention of spreading infectious diseases, but that is not the relevant one, but persons of unsound mind. So there is an exception where a person is suffering from a mental disorder to a detention process. It is important that there is an additional right in Article 5 that everyone who is deprived of liberty, by arrest or detention, shall be entitled to stay proceedings by which the lawfulness of their detention shall be decided. That exception is preserved, because there is a right to the Mental Health Tribunal and ultimately to the court if there is a point which the person who is subject to the detention on liberty wishes to challenge. The first key point is that there is a basis in Human Rights Law for exceptions where a person is of unsound mind to the basic human right to liberty and security. Indeed, that was, as the Minister outlined in his speech, addressed in detail when it came to the debate and Proposition, the Law Officers' advice to the Proposition for the Capacity and Self Determination Law back in 2016. So, there is a subsidiary point which has been raised by stakeholders in relation to the basis for a detention and a question around if there has been a pre-existing diagnosis of unsoundness of mind, whether that would be a sufficient basis for a detention or for ... this initial authorisation that is contemplated by these emergency Regulations. That point is dealt with in these Regulations, because there will be an obligation ... when a person is presenting an application for one of these interim authorisations, there will still be an obligation on that person to include in the application evidence of unsoundness of mind, that there is a diagnosis by an appropriately qualified person to show that there is an unsoundness of mind and that has to be included in the application. The 2 provisions that cover that are in new Article 60D, which is the application for an interim authorisation. If we look at paragraph 3 of Article 60D, there is a need for a report which must accompany the application and it must set out E.M.S. (Emergency Medical Services) assessment regarding the matters in paragraphs 1B to E and include supporting evidence of diagnosis of impairment or disturbance in the functioning of the patient's mind or brain. So that is a key requirement. There has to be evidence of a diagnosis concerning disturbance in the functioning of the patient's mind. Then if we look on to new Article 60F that is included in the Regulations, again it is concerned with interim authorisations. There is a duty on the Minister. The Minister has to be satisfied that the application in Article 60D, which is the one I have just referred to, is duly made. The Minister has to be satisfied as to a diagnosis of impairment or disturbance in the functioning of the patient's mind or brain. As I understand it, those are the 2 key points that have been raised in relation to human rights in relation to these Regulations. As I have said, I am satisfied that the Regulations are compliant in the way I have just said. Thank you.

The Bailiff:

Thank you very much, Mr. Attorney. Indicate when you are ready to answer the other questions. Very well, the debate is open.

Connétable A.S. Crowcroft of St. Helier:

Sir, could I make a declaration of interest, please?

The Bailiff:

Yes, of course, Connétable, please do.

The Connétable of St. Helier:

It is simply that I have a parent in a care home. I am also responsible for St. Ewolds Care Home, as Constable of the Parish.

The Bailiff:

Thank you very much, Connétable. That will obviously be noted. The debate is now open. I have notification that Deputy Le Hegarat would like to speak. Deputy Le Hegarat?

4.1.1 Deputy M.R. Le Hegarat:

I thank the Attorney General for his assistance in relation to further understanding. The Panel have been fully briefed in relation to P.58, following the April sitting on P.47. I am fully aware that there were a number of concerns and it is with thanks that we spent some valuable hours with the policy team from Health in relation to this legislation. All of us find it very difficult when we are impeding on what we perceive to be people's human rights and to ensure that we make the right decisions when we vote for legislation or not. Having had that confirmation from the Attorney General and ensuring that those matters which he brought to our attention at the previous sitting and he is now satisfied that these matters have been addressed. I will say that as Chair of the Panel, I will be supporting this legislation moving forward. Thank you.

The Bailiff:

Connétable of St. Brelade, you wish to make a declaration?

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

Yes, just to say that I am on the management board of Maison St. Brelade. While I do not have an influence on its operations, that is my position. If I would take the opportunity of confirming that I have spoken with the manager who is content with the proposals on the table. Thank you.

The Bailiff:

Thank you, Connétable. As you have given a confirmation outside a simple declaration, you have started a speech. If you want to speak on this, would you like to continue with your speech?

The Connétable of St. Brelade:

No, Sir, that is sufficient. Thank you very much.

The Bailiff:

Thank you very much indeed. Deputy Morel?

4.1.3 Deputy K.F. Morel:

I come with not a speech, but a list of questions. I apologise to the Assembly for not having looked at this sooner, but it does not come under my Scrutiny Panel and quite simply with the amount of work that has been going on I have not really looked at this until this week. My concerns are that this gives enormous power to managers. I appreciate Deputy Ward's question of the Attorney General. These managers are often managers of private care homes, so I will shortly ask the Assistant Minister a number of questions about the powers and their relation to managers. The first question I would like to ask, I could not find it addressed in the Proposition, is: was the Children's Commissioner consulted on this? If so, what was the Children's Commissioner's response? Further questions include if the Minister could respond to these: how does the Minister confirm that all persons appropriate to consult with have been included on the application by the manager? The Regulations ask for the manager to include all appropriate people to consult with, but what mechanism is there by which the Minister can be sure that that has taken place? How does the manager meet with family or clinicians? How does the Minister confirm that the manager has met with appropriate family members and appropriate clinicians? On top of that, I would like to know how does the individual access the Mental Health Tribunal or their Independent Capacity Advocate when they are in a care home which is, in itself, isolated? So in that sense, regardless of the authorisation, they have had their liberty restricted already. How do they access those people groups and individuals? How also can we, as an Assembly, be assured that these Regulations will not be used to deal with the backlog that is, thankfully, mentioned in the Proposition? I ask that because those applications are surely as valid today as they were at the beginning of the year and so, surely, they would have to continue to be processed throughout this period and it is possible that these Regulations could be used to facilitate a speeding up of that process so how can we be assured? As part of that, what reporting mechanisms are there either to the Scrutiny Panel or to the Assembly for

us to understand as an Assembly how many people have had their liberty removed as a result of these Regulations?

[12:15]

I think it is really important that there is some element of reporting because otherwise, as an Assembly, we are in danger of passing Regulations which significantly remove people's liberty, are dangerous in that sense and we will have no idea how many times those powers have been used. We also will not have an opportunity to know whether these Regulations have been used to get through that backlog so please could the Assistant Minister tell us about the reporting mechanisms and who is monitoring the Department and the Minister's performance as well? I would also like to know how can we be assured that restrictions on liberty are placed on individuals in a humane way? That would include things like restrictions on liberty that are not causing a person either mental anguish or physical pain. I could not find much in these Regulations to assure us that those restrictions on liberty will be humane in that way and what way will the Department be ensuring that the restrictions on liberty, the practical application of those restrictions, are humane if the Department is unable to access care homes and so on. So those are my list of questions. I would be highly appreciative if the Assistant Minister could respond with answers to each individual question. Thank you.

The Bailiff:

Thank you very much. Does any other Member wish to speak on the principles? Deputy Ward.

4.1.4 Deputy R.J. Ward:

I would like to reiterate those questions. I thought they were very pertinent and just add perhaps a couple and it is questions just for certainty on what obviously is a very difficult area and I do understand that. The first thing I would like to know is as we lower restrictions to movement and come gradually out of lockdown, which we seem to be aiming towards, will this need for these Regulations be less likely and can we get some sort of view on that? Nothing changes until an extraordinary period is declared, I believe, and the Minister said: "As things stand, this time has likely come." So therefore are we at a point where we are likely to declare extraordinary powers immediately after this is agreed tomorrow or next week? It is about context. Are we in the context at the moment whereby even though we have a low infection rate from all the data that we have been given which has enabled us to lower lockdown a little, are we still in a situation where it is very likely in this very low case situation that we would need these Regulations? I think it is just so important for us to have a context of when these Regulations will literally start to kick in and be used because I think obviously we all have concerns about them being used. So there are those questions in addition to the ones to the Attorney General and I reiterate the point that they are genuine questions. It is strange to have a speech that is just simply full of questions. Thank you.

The Bailiff:

Thank you very much indeed, Deputy. Senator Moore.

4.1.5 Senator K.L. Moore:

I will not go back over the excellent questions that have been raised in previous speeches, but I would simply like to say, firstly, I am grateful to the Assistant Minister and the Officers who have been working on this who have engaged really well with the scrutineers and the relevant Scrutiny Panel. I know that some of the stakeholders are now content with the additional Article that has been provided in this Proposition so that is a good thing. However, it must be acknowledged that there are still some stakeholders who do have concerns and I believe that includes the Children's Commissioner and a Human Rights lawyer. One further question that I would like to ask the Assistant Minister is how and why can the Assessors not be allowed into care homes if they were to use P.P.E. (Personal Protective Equipment) or even meet the patients virtually? I am slightly confused by this situation following an answer to an oral question that I put to the Minister for Health

and Social Services yesterday and in his answer, he described that care homes, in the majority of course in the Island, are private businesses and therefore able to determine the procedures within the care home independently. So albeit my question was in relation to slightly different aspects of the care being provided within care homes at the moment and the feeling that many care home residents were being confined to their room and unable to circulate within those homes, it does seem somewhat unusual and difficult to understand that appropriate measures cannot be found for the professional Assessors to enter the homes to meet with patients when it is necessary. This is a very sensitive topic and although I am pleased that the Scrutiny Panel are content with the process that they have gone through - and I have to say I have not been party to all of the briefings although I have had communications with both the Assistant Minister and the Policy Officer who I respect greatly on this matter - I will still be voting against it because I maintain my concerns that on an issue such as this, to have stakeholders maintaining their concerns, I think is a really important matter. I simply find it very difficult to vote for it in those circumstances. However, I will of course listen to the Assistant Minister's summing-up and the additional points from the Attorney General. Perhaps they will convince me otherwise but, for the moment, I think that it all I have to add to the debate.

The Bailiff:

Does any other Member wish to speak on the principles? Yes, Senator Gorst.

4.1.6 Senator I.J. Gorst:

These are, as I said when the previous proposal was brought forward, extremely difficult decisions to make and they follow on from any number of extremely difficult decisions that we have made over the last 5 or 6 weeks. I think all Members strongly believe in the rule of law and we expect the law to protect and provide for our basic freedoms and I think we are rightly outraged when they do not. Some of the remedies of course are not always straightforward and they are nuanced and balanced and those decisions are made from a different place in which we are participating today and that is rightly so, independent of the lawmakers. The longer that we have been in this lockdown managing this crisis in the way that we have - and I am and have been fully supportive of what the Government has done - the more concerned I suppose in that deep inner place that we all have am I becoming because the law should rightly protect us. The law should rightly protect the most vulnerable in our community and we should not be able to simply easily and quickly amend the law. I well remember a conversation with one of your predecessors, Sir, or a number of conversations, when Islanders were critical of Government and the States were not moving quickly. He made the very pertinent point that when we are dealing with amendments to law, it is appropriate that we take time, that we consider, that we challenge Policy Officers' thinking, that we challenge the legal advice and that, ultimately, the States Assembly, through its formal Scrutiny function, scrutinises legislation and has appropriate time to do so and also the legislature, when sitting together as it is doing today, rightly scrutinises legislation. The longer we have been in this lockdown, the more concerned I suppose I have become and I was concerned when the Assistant Minister brought forward the original piece of legislation. I obviously understand that the Attorney General's concerns about that piece of legislation have now been addressed and some of the interested parties' concerns have been addressed but, for me, it comes back to the fundamental questions of the Government's policy in controlling the spread of the virus - and this will not be popular with some Members because they like to be critical - is working and has worked. We have seen the number of cases reduced. Of course that cannot be taken for granted and we need to continue to manage the spread of the virus in our community in an appropriate way. So in some respects, it was easy to make the initial changes to law to eliminate Islanders' freedoms. What is becoming challenging is now either maintaining those limitations on Islanders' freedoms or reducing them in a step by step basis and what is the best legal mechanism for doing that and here we are with a piece of legislation which affects the most vulnerable. This is, as the Assistant Minister said, complex legislation that involves many stakeholders to arrive at a decision in a normal situation - so even outside of COVID it is difficult -

to limit individual Islanders' freedoms against their own free will in some cases because the States believes that it is better for them to be taken into care in an appropriate manner and isolated in whatever way is thought to be appropriate. As I said during the last States Meeting when we discussed this, I know from personal family experience how traumatic it is to see a loved one deprived of their liberties in this particular way. Therefore, even though the Attorney General is now satisfied, the number of stakeholders is satisfied and I have every respect for the Assistant Minister and, as Senator Moore said, for the Policy Officers involved in this particular work, I cannot this afternoon bring myself to vote for this Amendment. I mean that out of no disrespect to those involved but, for me, it is just a step too far and I struggle to see that it is a necessary Amendment at this moment in time. If we lose control of the virus in the future ... and I hope we will not and I see no reason to believe that we will if we continue with the increasing testing numbers and if we continue with the manual tracing and the increased individuals doing all that work and I applaud those officials involved in all of that testing and tracing. They are doing an excellent job but they know they are going to need to do more and I hope introducing the tracing app in due course. I cannot myself come to the point of agreeing that today is the day that we should vote for that. I apologise, my dog is barking. In light of that perhaps I should come to an end before it all gets out of control. I recognise that this will probably go through today but I just wanted Members to understand why I, for one, cannot vote for it today. Thank you.

[12:30]

The Bailiff:

Thank you very much, Senator. Mr. Attorney, you have indicated you are ready to conclude your advice to the Assembly.

The Attorney General:

Yes, Sir, and thank you for the additional time just to allow me to check the position in relation to Deputy Ward's 2 questions. His first question related to managers and whether there was any definition of what a manager is for the purposes of these Regulations. I have checked the Capacity and Self-Determination (Jersey) Law and that is dealt with quite shortly in the Capacity and Self-Determination (Jersey) Law in Article 37 that "the manager" is just defined as "the manager of a relevant place" and then in Article 37(3) it gives a definition of "a relevant place" as "a hospital or approved care home or any establishment regulated under the Regulation of Care (Jersey) Law 2014." So that reference to the Regulation of Care (Jersey) Law of 2014 would mean that a manager has to comply with the fitness requirements in some Regulations that have been issued and approved by this Assembly under the 2014 Law so there are various criteria that the manager must satisfy such as qualifications and experience. A manager is someone who is regulated and that applies to both managers of care homes or other establishments regulated under the 2014 Law, so I think that answers Deputy Ward's first question. His second question was when these Regulations would have effect and the answer to that is the additional Regulations which are effectively the new Articles 60B through to 60H would only come into effect once the Minister has declared that an extraordinary period exists in accordance with the new Article 60A that is proposed to be introduced by these Regulations so I hope that answers Deputy Ward's second question. Thank you, Sir.

The Bailiff:

Thank you very much indeed, Mr. Attorney.

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

First of all, I would like to thank my Assistant Minister for the suitable lengths he has gone to understand the needs of these Regulations and to engage with Scrutiny and other stakeholders. I would like to thank the Scrutiny Panel for the time they have spent with my Assistant Minister and with Officers in properly scrutinising these Regulations because there is no doubt they are complex,

difficult and they raise important issues. They have caused anxiety and it is right that they are questioned to the degree that they have. It is not surprising that we have reached a situation where some are content and others not because this is one of those issues where you can properly take different views as to the extent to the measure of human rights and how human rights should be reflected in the practical application of procedures that are necessary in cases like this. I recognise the anxiety that Senator Gorst is feeling. I am of course sorry that he is not able to give his support but I absolutely recognise it and he will know from discussions that we have had as Ministers that we do feel anxious, all of us, and we talked through the implications on human rights of the various pieces of legislation that are proposed. I would like to stress that these temporary Regulations do not change the Capacity and Self-Determination (Jersey) Law 2016 which includes requirements to uphold the human rights of a person when determining if there should be significant restrictions on our liberty. Instead these Regulations propose an interim authorisation that sits in addition to the normal procedures within the Law and, insofar as those normal procedures of standard authorisation can be carried out, they will always be carried out as interim authorisation is only needed in cases where it is no longer possible to carry out that standard authorisation and it is wrong that somebody should be left in a position where those questions of their civil liberties cannot be determined because of the impact of COVID-19. These changes uphold individual human rights but they also overcome practical and logistical obstacles imposed by the virus. The 2016 Law, the principle Law behind this, is human rights compliant. The Attorney General told us today that these Amendments are also human rights compliant. Not everyone agrees because the framework of the conventions which protect human rights of citizens is complex and it is not expressed in absolute terms. It is a matter for the judgment of legislators and courts and therefore individuals can express differing interpretations and challenge them and that should always be so. Just because our proposals are challenged by some and some Members may not feel able to support them, it does not mean that we should not listen to our Attorney General, our adviser in this Assembly, to Law Officers also and dedicated operational staff who tell us that these proposals are necessary, they are proportionate and that they are human rights compliant. The Jersey Care Commission also has a role to play in this. We have entrusted them with safeguarding the rights of people who we receive into care and their core purpose is to hold us and other care providers around the Island to account in how we apply those standards and uphold the rights of those we place into care. The Care Commission is not raising any warning flags here, indeed they are working with us to get this right. In all these circumstances, notwithstanding the difficulty, I believe this Amendment will ensure that we have the ability to continue to protect those in our care. I believe it is a proportionate measure acting in the best interests of patients and fully compliant with human rights and I would urge this Assembly to adopt the Regulations. Thank you, Sir.

The Bailiff:

Thank you very much, Deputy. Deputy Morel, you have a question of the Attorney General.

Deputy K.F. Morel:

Yes, thank you. I was wondering if the Attorney General would be able to explain whether the very Regulations we are debating now would be applicable to care homes established under the Regulation of Care (Amendment of Law) (COVID-19 - Temporary Amendment) (Jersey) Regulations 2020 lodged as P.27/2020 and, if so, would that mean that managers of care homes not registered with the Care Commission, and so not inspected by the Commissioner, would have the right to restrict liberty under these new Regulations? If the Attorney General could confirm he has understood the question.

The Bailiff:

Mr. Attorney, are you in a position to answer that question at this point or would you like a little more time?

The Attorney General:

I would like a little more time please.

The Bailiff:

Do you need further elaboration on the question from the Deputy?

The Attorney General:

I do not think so, Sir, no.

The Bailiff:

Thank you very much.

Deputy K.F. Morel:

Thank you.

4.1.8 Deputy L.M.C. Doublet:

I wanted to refer to the letter which I think Deputy Pamplin may have just sent around to all States Members again which the Children's Commissioner sent to all Members and there is one point that I want to make which is mentioned in there. The Children's Commissioner talks about the Child Rights Impact Assessments (C.R.I.A.s) and how this would be a helpful tool to allow for consideration of the impact of decisions on children and young people. Now the Children's Commissioner goes on to state how implementing this process now will support better decisions and allow for children and young people's rights to be better protected throughout the COVID-19 situation. I totally agree with this and in the Minister's response - which I am just trying to bring up on my computer - there was a rebuttal to that argument in the Minister's response along the lines of: "In the midst of responding to a public health crisis, now is not the time for introducing hastily formalised C.R.I.A. requirements." Now, I have an issue with this because this is not an idea that has just occurred to the Children's Commissioner. This is something that I brought to the Assembly 3 years ago. It was approved by the Assembly and it should have been in place a long, long time ago. This is not something that the Children's Commissioner should still be asking for and I think if we had implemented that process earlier, then we perhaps would not be having this debate because an alternative would have been found. I just think it is unacceptable that we have committed to put children first but I am not seeing that happen in many instances. I am not going to be voting for this because I do not feel I have the confidence that that impact assessment has been carried out and I would like to see those impact assessments brought in as soon as possible, please.

The Bailiff:

The time has come where I ask the Assembly whether the Assembly wishes to continue with this debate or to come back at 2.15 p.m. adjourning over the luncheon adjournment.

Male Speaker:

Well, Sir, I have not consulted with the Members on chat. This is a really important debate and I do not think we should rush to a deadline to finish it in any terms so I am going to propose the adjournment.

LUNCHEON ADJOURNMENT PROPOSED

The Bailiff:

Very well. The adjournment is proposed. Is that seconded? **[Seconded]** On the chat, the majority of people are indicating an intention to adjourn. Very well. The Assembly stands adjourned until 2.15 p.m.

[12:42]

LUNCHEON ADJOURNMENT

[14:16]

The Bailiff:

Very well, we resume the debate on the principles of P.58. Prior to the adjournment the Attorney General was asked a further question. Mr. Attorney, are you in a position to advise the Assembly?

The Attorney General:

Yes. In relation to Deputy Morel's question I confirm that the relaxations that were in the Regulations that were passed by the Assembly that were in the P.27 Proposition, they do not have the effect of relaxing requirements in relation to managers of care homes. They have other relaxations but they do not affect the requirements for fitness to practise as regards managers.

The Bailiff:

Thank you very much. I have listed to speak Deputy Maçon.

4.1.9 Deputy J.M. Maçon:

Just in regard to this piece of legislation, I did virtually attend the Scrutiny briefing that was held between Senator Pallett and the Health Panel to talk through this legislation with Officers. It was more so I could be up to speed with it rather than anything else, and it was a very good and informative briefing and the Panel asked some very good questions. Just regards to how this debate is progressing, there is just a few points I want to chuck into the mix which have not really been mentioned yet. The comments so far have been about vulnerable people and I think mainly people have been thinking about patients who might be going through mental health mania at the time. But of course something which has not been mentioned is thinking about the workers and those people trying to provide care for these individuals. When an individual is going through these episodes they themselves then may become vulnerable. There is something which we need to think about with this legislation about how we protect those workers at these particular times. Now, things are going well and obviously we know with the pandemic we are getting less and less cases, but of course what we are not aware of is really how this virus is going to progress, whether it is going to mutate, whether we need to worry about a second wave, and if there is immunity how long immunity even lasts. So with all these unanswered questions, putting this legislation in place where we may not need to use it immediately but if it does need to be triggered, my thoughts are with that end of the telescope that looks at the workers and how we need to have something to protect them when they are dealing with someone who, through no fault of their own through a mental health issue, who even themselves may be scared and not understanding what they are doing, but if they are also infectious we have got to think about the workers who have to provide care, but also some form of safety for themselves. For those reasons I think they need to be added into this debate to be thought about when Members are debating this legislation.

4.1.10 Deputy T. Pointon of St. John:

I was getting a little frustrated with the concerns being raised about this legislation because essentially this is legislation that will expire at the end of September and will give the care sector an ability to protect the interests of their residents and to protect the interests of their staff, and the public as well. I have spent this lunch time just looking at the proposed legislation and I thought it would be useful to go over this. Members seem to be concerned about the powers that are associated that relate to "civil liberties". I have to accept that any legislation of this sort will have a resultant effect upon civil liberties, but here we are talking about civil liberties that are associated with individuals who have lost capacity. Now, this may relate to children in very small numbers but it more so relates to the large number of people that reside in our residential homes and nursing homes. These are people after all who are elderly and many will have received diagnoses that suggest an impairment of mental health. In other words, a medical practitioner has previously given a diagnosis of mental ill health or brain injury, and that there is some mental impairment as a result of the condition. It will not be

in the care home manager's gift to detain an individual for their own safety or the safety of others unless that individual has had a prior diagnosis of some brain or mental ill health. So there is a major safeguard there and it would not be under normal circumstances a problem for the care home or the individual. In my experience many people living in care homes, albeit they may have a mental health condition, may have a brain condition, are generally speaking compliant, enjoy their life and will retain the ability to receive guidance from the staff. Situations often occur where people with pre-existing health conditions begin to deteriorate. It is not that anything can be done about the deterioration because in the particular individual's case it has been established that they have a degenerative disease process going on. But in these situations people who have been assessed with maybe mild to moderate Alzheimer's for example, their perception over time may well become different and change and their perception of their surroundings may become different and change; their perception of their circumstances may become different can change. Now, if that situation arises and it becomes increasingly the case that an intervention from a staff member by way of guidance begins to be seen as a restriction on that individual's life, and that individual begins to respond aggressively to the guidance, what does the care home manager do when the individual decides they want to leave the care home and go home, however, home is the care home and their previously considered home has been sold? How would the care manager manage that situation if the care manager did not have the ability to detain that individual for their own protection and, if the individual is seriously aggressive, for the protection of others? Without this mechanism over a period when Assessors are not available and medical practitioners cannot easily get into the Island, how would the care manager deal with this situation without this legislation? The care manager would have to follow their head and detain the individual, but in doing so would be detaining the individual illegally as things stand. We need to create a situation in which the care home manager is protected as well as the individual who is the resident can be protected. Of course there would not be any situation in which the Minister for Health and Social Services would sanction such a move if there were not a pre-existing medical condition. I urge this Assembly to allow this legislation to go through, and it is time limited to the end of September, because this tool is needed in the hands of care managers. We have heard from the Attorney General that care managers have a certain level of experience and some have nursing qualifications and so on and so forth. So I would urge you to vote for this. It is an absolute necessity for the care home sector at this time.

4.1.11 Deputy K.G. Pamplin:

I am pleased to follow my colleague, the Deputy of St. John, who sits on the Health and Social Services Scrutiny Panel alongside me and my colleagues who throughout this whole COVID pandemic have been scrutinising anything that falls under the remit of course of the Minister for Health and Social Services and the Minister for Social Security. Throughout this whole process - it started back in February - when I stood to talk on behalf of our Panel, from the sittings in the Assembly and the ones at Fort Regent, I expressed how hard each Panel were working as much as the Government are doing under various constraints to how we would be doing things normally. We have gone above and beyond, and so have our Scrutiny Officers, and all of us - all of us have- in putting forward some democracy. We have had to take faith; there have been some Scrutiny Panels who have done work on some things which, because of how busy we all are, I have had to trust the judgment of various chairs and the Panel's comments papers and have voted with the speeches that sometimes we made if I have not read the comments paper. I would hope the same would be said for our work as well, for those Members who are quite rightly expressing their concerns about this issue, because they equally have not had the full time because they have been focused on their areas of work. I fully appreciate though, and it has to be said, that some of the frustrations that have been expressed is because not all information has normally been done. As one Member said earlier - I think it was the Deputy of St. Martin - as politicians we are regularly bumping into each other in the corridors of the States building and the coffee rooms, meeting up, having the time to share comments papers ... and what I tried to do as much as possible, and sometimes under limited circumstances, is

share all the correspondence and work that I have done on behalf of our Panel with Members as quick as I can. It is not the best, it is not great, but I have done my best, including today, to share information. I wish we had been able to compile that and put in a comments paper. It is just one of those things. We have been affected by an internal problem, which I know all Members know about, and we have had to manage that as well. So it is not for the lack of doing it and it is also not for the want to do that. But as our Chair said, we did compile a comments paper for the last time we were debating on similar issues and a lot of that comments paper does hold weight today. On top of that, what I have tried to do to help Members is share correspondence from various stakeholders. Following from the Deputy of St. John's helpful interjection there, he speaks of course with experience given his qualifications and his background in this area of work, and I hope some Members found what he said reassuring.

[14:30]

There are of course, however, concerns and Senator Gorst raised them and others did as well. They should be all of our concerns. I have said that throughout every debate where I have scrutinised regulations and laws that have come in that infringe on all of our human rights and those we care about. I remember standing in Fort Regent and talking about some of the things that we were passing as an Assembly, because in that moment when we go back to February and early March, we were all quite rightly concerned about the pandemic and the effect that that could have on all of us and our loved ones and those we did not wish to see affected because of the pandemic. So, we agreed, even though it went against some of our judgments - against some of these civil liberties - to pass regulations that I also cannot wait to get rid of as soon as is humanly possible, because this should not sit right with any of us. This is another one of those scenarios. The issue for me, yet again, and the reason why we are doing this ... and it is pleasing to me as somebody who this issue of mental health is so important because there are so many aspects to it. Finally we are seeing an Assembly and Members coming forward speaking with passion and concerns about this issue, and that can only be a good thing because it sees the Parliament, the Assembly, the voice of the Island are taking what is one of the most complicated and difficult issues - mental health and mental illness and the laws around it - and talking about it openly. That is a positive thing. The issue around the problem though begins with what we highlighted in our report, which we will go back to time and time again: our review of the Mental Health Services. It goes back even further if you look at previous Scrutiny Panels and other States Members who have raised this topic or subject for many years now about the underfunding and understanding of what the Mental Health Services needs of this Island are. Throughout the years that has been grappled with and it was welcomed that various Laws came in, the Mental Health (Jersey) Law 2016 and the Capacity and Self Determination Law of 2016. These are welcome contributions and starts to bring the Island forward where it should be. But as we saw in that report and as we see now, that Capacity Law is only as strong as the resources and the understanding from everybody involved in it; from a legal point of view, from a human rights point of view, from a health deliverable point of view, for us as legislators and members of the public. It is such a new area that we are all still understanding it. The problem though is it is an under-resourced area. Thanks to the briefing that we did have - and this was something that maybe we put into a Commons Paper because I think it is an important reality, and I thank Senator Pallett for his openness and transparency about the things behind the scenes of this issue - is there are currently 5 Capacity and Liberty Assessors on this Island. As the previous speaker has said and as we have put in our previous comments paper, we discovered through scrutinising that there are 107 outstanding assessments. So that is outside of this particular regulation but it touches on it, so it is really important. Therefore, what that obviously shows us is that since that Capacity Law came in 2018 [sic] in about a year and a bit time a backlog of 107 was quickly created. It is important and essential and thank goodness we have that Capacity Law. It is so important. But what is also important is when you bring forwards a law that it has to be fully resourced and we have to look at it and we have to review it and say: "We need to improve this." It is fundamental. It is so important. So thanks

again to Senator Pallett and for everybody being so open and transparent. I have had conversations with the Head of Mental Health Services, I have had conversations with stakeholders and care home managers, everybody has been crying out for this for a while and what this crisis has managed to do is focus once again, that if we are going to fully move forward and have laws and Capacity Laws that put us way ahead of other jurisdictions around the world, we need to fully get behind it and fully support it to help those who deal with this on a daily basis on the ground, these incredible nurses and professionals and home care private professionals, to do their job for our loved ones; for our people, like family and friends right now who we could all probably think about in that scenario. So I hope from this, out of all this crisis and what it has thrown up, that this is addressed going forward, that mental health is not just something that we just use all the time as something to get something done. It is important. We have to understand the whole complexities of it, and again this is one of those moments. The Deputy of St. John has outlined the issues and I know Senator Pallett will address quite rightly Deputy Morel's concerns, and we thank the Attorney General for making it clear. But let me also make it clear that the stakeholders involved with this are also right in the approach, their broad observations about this. I would like to see in the future, and even in a crisis, that when such important and sensitive policy is being drafted by Law Officers or policy people or the Minister himself, that they do that process and then before it goes to the next stage, or even during that first stage, bring in the people that we are working with to improve human rights and the ability to care for people on this Island. As we know now, we have a much better robust thing in place. Whenever we talk about the Government's response to the Care Inquiry, quite rightly the Minister for Children and the Government are quick to say one of the big successes is having a Children's Commissioner with all the powers that we know she does have and the role that she plays in positively improving and holding us to account on the rights of children, and in a larger world also the human rights on all policies. So hopefully from this process maybe going forward that is injected in the earlier stage, because they are not just stakeholders, they are important functions of this Island, the Children's Commissioner, Jersey Cares, My Voice, all these people who do that important work, they are not just over there, they have to be included in here as well. Let us hope it is another thing that comes out of this. So that is what I wanted to say on this process. It is frustrating and it should pull on all of us that at the end of the day this is not where we want to be, the outcomes and the measures of all of this are going to play out for a long period of time and the most fundamental part of this going forward - as I think many Members are picking up and many members of the public are now touching upon - is we may not know the true cost of the mental health of Islanders as we go through this. Again I would draw the distinction, there is mental health and there is mental illnesses. We are an Island and we are limited to the finite amount of resources so the people we do have, they need everything in their power to do what they feel it is right. It is up to us to hold the Government to account that they are doing that, but we should not be in this position. Let us - like we did in that in committee debate on mental health - just continue to beef up the Regulations and not be in this position. I do not want us to be in this position ever again. It is just not right. I pay tribute once again to everybody who has worked around the clock on this and also equally to all the stakeholders, and let us just hope that the positives that come out of this outweigh the negatives. I look forward to Senator Pallett's summing up. I said it before and I will say it again, as long as I am in this Assembly I will be doing whatever I can constructively to ensure that we do the best that we can, because you do not get that choice again. So I urge Members to listen to what the Senator says and listen to what the previous speaker spoke about again, and let us continue to challenge but this is so important. I pay tribute to everybody working in mental health on this Island.

The Bailiff:

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

4.1.12 Senator S.W. Pallett:

First of all I want to thank all those who have spoken because there has been some very passionate speeches, some very warm speeches from the heart around what this particular piece of legislation might mean to people's liberties. I am fully aware of that. I think from the speeches we have received all States Members now, and hopefully the wider community, understand the difficulties in taking away anybody's liberty, never mind those that lack capacity. So I thank all those who have spoken. I want to mention Deputy Pointon to start with because I think one of the benefits of this Assembly is that we have expertise in all sorts of areas within the Assembly, thank goodness. Deputy Pointon does have experience in this particular area and I think his experience has been of a huge benefit, not only to the Panel but also to myself as Assistant Minister and I think more widely in regards to the debate, not just only on the Capacity Law but also on the Mental Health Law. So I really want to thank him for providing a speech which I think has comforted many in regards to what this particular piece of legislation is setting out to do. Rather than go through individual Members I am probably going to go through some areas and maybe comment on some individual Members speeches, but I am going to start with the questions relating to the power of managers that both Deputy Ward and Deputy Morel brought up. To be clear, Regulations do not give any additional powers to the managers. They certainly do not change the way in which significant restrictions of liberty are imposed, I think they simply change the process for application. It is a new type of application which has to be authorised by the Minister. Care home managers, I think as have already been mentioned, are defined in a 2016 Law and they are registered with the Jersey Care Commission. The Care Commission publishes clear standards and qualification requirements for all managers. Just as a matter of background, registered managers will have or must complete within 3 years a relevant Health and Social Care Level 5 Diploma in Leadership or an equivalent. Registered managers who have not completed that relevant level 5 Diploma in Leadership must have completed a relevant Level 3 Diploma and be working towards a Level 5 Diploma in Leadership. So it is clear that managers need to have a high degree of skill and experience and knowledge in regards to running our care homes. I want to pay tribute to them at this point for the work that they have done through this particular pandemic, because I think we all know it has been difficult times in care homes trying to allay people's fears, allay their residents' fears and comfort residents that they will get through what is a particularly difficult period, many of whom are vulnerable and some of whom will lack capacity and quite often not understand why they can only stay in their rooms or why they can only go to certain places within their care home. We all understand that that is a really difficult issue for a care home manager to convey to people, which is why I think that in terms of managers and their ability to assess whether somebody needs an interim authorisation, they know their residents, they know them very closely. As the Constable of St. Brelade said, who is Chair of the Management Committee at Maison St. Brelade, as I was, and I had close contact with the same manager that there is there now during my time, and her love and dedication to those residents is absolutely total. She has nothing but total dedication to ensuring the best for each of those residents. That would include ensuring that none of them are put at risk from COVID-19. Deputy Ward also had questions around the access to tribunals and independent counsellors during this particular period. It has been confirmed to me that the Mental Health Review Tribunal is able to continue to sit virtually, it does actually sit virtually often because of using experts from outside the Island, and that independent advocacy can be provided virtually or remotely also. The face-to-face support is technically possible but it also carries the same risk of transmission so the preferred option as stated by the advocacy service is to do it virtually.

[14:45]

There is also the risk or worry I think that doing it face to face with those that lack capacity ... going to see somebody in a mask and P.P.E. is a frightening experience and I think we have to bear that in mind when we look at some of the risks of people going into care homes and some of the risks of the procedure, and ensuring that people are treated fairly and honestly. Deputy Moore also brought that issue up. I think one important point to make is that the Assessors can speak to people virtually, and

they will, but the issue is they cannot do the capacity test if it is not face to face. So what we need to understand here is that the proposed measure provides that flexibility but it only provides that flexibility absolutely where it is necessary. I just want to move on to another issue that Deputy Morel brought up and that is the question regarding transparency over how numbers of interim authorisations will be reported. In terms of reporting, it will take place in the same way as the current authorisations. The Minister will be notified, as will the Safeguarding Partnership Board. We also produce, I probably should have provided to all States Members, but I provided it to the Panel, a publicly available Capacity and Liberty Annual Report, which shows the numbers of people that are being assessed each year and gives some really useful information in regards to how that Law is progressing and any particular issues that are arising as the Law beds in. On top of that, in addition, the Minister has requested that the Mental Health Administrator produce a short report at the end of each extraordinary period and I am going to ask that that is done maybe on a weekly basis detailing when the powers under the Regulations were used. This report will be provided to the Chair of the Health and Social Security Panel, so that there is some scrutiny from States Members as to the degree to how often this Law or these Regulations are going to be used. I think that is an important safeguard, I think, for those that are considering which way to vote this afternoon. Deputy Ward mentioned, and I think a couple of others who spoke as well about, are these Regulations needed, given that we are now in a safe exit framework? To put it very simply I think the answer is yes. I think while the Island begins to ease restrictions for most Islanders, I think the vast majority of those in care homes do remain in the high-risk group; they are seriously vulnerable and are part of the shield element of that particular strategy. I think that limited contact will remain in place for this group, I think, for some considerable period. I know much has been mentioned of reducing restrictions and I think that is good for the vast majority of the general public. I think we all want to see those restrictions reduced as safely and as quickly as possible. But I think the important part is the safe part, we have to do it safely and we have to ensure that those who are most vulnerable are looked after. I think this particular regulation will ensure that if for some inexplicable reason or for any reason we end up with an outbreak in a care home, we can deal with it and deal with it legally and in a fair way to those that will be affected. We are not out of the woods with care homes, we can see from the U.K. that care homes are still being at risk and there are still people, unfortunately, dying in great numbers in care homes around the U.K. We have had 12 within our care homes and I think that is extremely sad and something that we all would have liked to have avoided but I certainly would not want to see us make that situation any worse by not having the necessary Regulations in place. Senator Moore, again, I know she did mention around the use of P.P.E. and I think that is very much about balancing risk. I think if it is safe for people to enter with P.P.E., I think they will use that opportunity. But I think in the cases right now, the risk for this assessment, I do not feel meets that criteria. I think we are not quite at that stage and I think, again, the need for these Regulations is made, although as the virus becomes less prevalent, then maybe there might be opportunities to do some of the assessments using P.P.E. Senator Gorst made some very passionate remarks and I have got total respect for Senator Gorst. He was the Chief Minister when this was originally debated, and I think he fully understands the issues involved with this particular Law and I respect his views. But these Regulations, I have got to point out, are a human right safeguard, that they are certainly not an interference. The Minister is not imposing restrictions. He examines and authorises proportionate restrictions and he will refuse to authorise those which do not meet the criteria. If there is criteria that are not met when put by a manager, I am sure the Minister will not approve of that particular authorisation. I think it has been quite clearly set out within the Regulations about what criteria needs to be met. I have no doubt, having been working with the Minister and knowing his background, how stringent he will be in ensuring that any particular assessment, any particular application meets the criteria. I do understand Senator Gorst's issue around the Island's freedom but it is not about limiting or changing Islanders' freedoms. I think we have got to be clear, it is purely about changing the assessment or the mode of authorisation within this particular Law. It is not an authority to restrict in general terms. This is not linked to wider human rights concerns, although there are some concerns from other stakeholders

and wider stakeholders that we have been quite honest and open, that we are prepared to discuss and we will do in due course. Because I think they do bring up interesting issues and I think Government has to be cognisant of international law and we will try to work with them. What I really want Members to consider is what would happen without these restrictions on care homes. Again, we all hope it does not happen but the consequence of a rapid spread of COVID-19 through a care home and obviously through such a vulnerable group. I really want Members to concentrate on that because it is something that Deputy Pointon, I think, explained extremely well and I think it is a really important point to make. Deputy Moore and Deputy Doublet both commented on the consultation with the Children's Commissioner and, as I said in my speech, it is regrettable that the consultation with the Commissioner was not considered early enough and was not considered comprehensive enough. The consultation requirement, I think, needs to directly concern children and young people. It is arguable that these Regulations directly concern children and young people, purely because this particular Law deals with those that are over 16 but there will be a very small number that will be potentially subject to an interim authorisation. It was only right that the Children's Commissioner made her comments and that we had a chance to respond and we will work with the Children's Commissioner to ensure that it does not happen again when we are considering future legislation as a Government, so I thank her for her comments. Staying on the Children's Commissioner and another issue that Deputy Doublet has brought up, was around the Children's Rights Impact Assessments (C.R.I.A.s). Members will not be aware but there was public consultation at the end of the year on the United Nations Convention on the Rights of the Child. Due Regard Law under which the C.R.I.A. recommendation will be implemented. C.R.I.A.s will become a reality in policy and legislative work in the near future. Deputy Doublet, I think, was asking and calling out for C.R.I.A.s to be rolled out. But at the moment, in the midst of what is a pandemic, one of the key risks that has been identified with the C.R.I.A. is if it is hastily implemented it becomes what could only be described as a superficial exercise. It will do little to bring about changes in policy where impacts in children are fully recognised. It is a vital tool for future development and it is something that Government will continue to work on and will continue to work with the Children's Commissioner to make happen as soon as possible. But I think to rush at this particular time would be a mistake. I do not think that would be a reason to necessarily not vote for these Regulations, although I can understand the frustration when we know something exists and it has not been rolled out locally. I have just got some of my written notes that I made and I will just quickly go through them. I want to thank the Constable of St. Brelade, who I have mentioned, for his support and the support of the manager at St. Brelade because knowing that there has been consultation, not just I am saying it but that it has happened, is important. Deputy Ward, again, made some comments about whether this is going to be needed. Again, I can only stress that I do not think we are out of the woods with COVID-19. I think it is likely that we will need to introduce these Regulations at some point through an extraordinary period. I think it is important that Members do support this because I think it is needed. I know we are getting to a point where we are beginning to relax restrictions around staying at home and people's liberties but I think it is important to realise that, as an Island, we have talked about herd immunity and we have talked about the numbers that have either caught it or currently being infected by COVID-19. I think as we start to relax it is likely that there will be more cases. I really do hope that we do not get to a point where we have more cases in care homes because that really would be, I think, very difficult. I want to, again, thank my own Minister. I am suffering from Senator Gorst's problem now with the dog unfortunately but they have been very good so far. Deputy Renouf, my own Minister, I want to thank him for support. He mentioned the Care Commission and the work that they do, and we will ensure that we are looking after the best interests of residents of care homes and those that are affected under this Law. Deputy Maçon made, I think, some really interesting points around staff and workers, not just in care homes but I think more generally within hospitals and around the risk of a second wave. I think we do need to look after our staff and workers and I think we should all respect the work that those dedicated professionals have done within care homes within very difficult times and periods. They are going to suffer. I think anybody that saw a quite

emotional, I think, and really hard-hitting programme last night around the Royal London Hospital and how they have dealt with COVID in London and the effect it is having on staff, will only realise that I think this will have an effect on staff for some considerable time. I think it is important that we do look after those that have dedicated themselves to caring and nursing those that are in ill health. But there is a time for that, I think, we can really appreciate those staff I think maybe when we have got through this crisis.

[15:00]

At the start of this summarising I thanked Deputy Pointon and I will thank him again. He knows the issues around civil liberties, he knows the issues around the risks to individuals. I do appreciate his knowledge. Lastly, if I would just mention Deputy Pamplin because I know his passion around mental health is unquestionable. He is right, we do need resources for this particular Law. We have 5 Assessors at the moment and we were, prior to COVID-19, beginning to reduce the number of outstanding assessments, standard assessments but, unfortunately, that was knocked back or put back by COVID-19. Again, he mentioned the cost of mental health and how people's mental health will be affected during this crisis. We do not know where we are with that at the current time but clearly I think, as we get deeper and further into restrictions and ...

The Bailiff:

Senator, I am afraid I will have to interrupt you, there is a point of order from Deputy Doublet.

Deputy L.M.C. Doublet:

Sir, I am happy to wait until the end of the Senator's speech.

The Bailiff:

Very well, thank you, Deputy. Please, do carry on, Senator.

Senator S.W. Pallett:

My apologies, I have virtually finished. He is right that there will be risks to those suffering from mental health during this crisis. Again, I have got the utmost respect for my Adult Mental Health team and the work that they are doing and all the other stakeholders, including Mind Jersey and the Samaritans and the work they are currently doing. I think I have tried to cover most of the points that people have raised; I hope I have. It is a piece of legislation I think that is needed. It will only be needed, hopefully, for a short period of time and it will only be needed if an extraordinary period is requested. Again, I urge Members to support this. I understand there is a point of order, so I will stop now, but I do want to thank those that have supported this piece of legislation and we will go to the *appel* when we have the opportunity.

The Bailiff:

Yes, Deputy.

Deputy L.M.C. Doublet:

I am not sure if this is a point of order or a point of clarification but ...

The Bailiff:

I am sorry, you have gone silent, Deputy. Hello, Deputy Doublet. Deputy Doublet.

Deputy L.M.C. Doublet:

Sorry, Sir, I got cut off there inadvertently. Yes, I am not sure if this is a point of clarification or a point of order. The Senator quoted me as saying that I wanted them to roll out the C.R.I.A.s at this time of crisis, when actually the point that I made was that they should have already ...

The Bailiff:

I am afraid we lost the last part of what you said there, Deputy. If you would like to say it again. It is not a point of order because you are not asking for a ruling from the Chair but you are entitled, if the Senator agrees, for you to give a point of clarification of your previous speech, which you are entitled to do.

Deputy L.M.C. Doublet:

Right.

The Bailiff:

Your point of clarification, if you would like to give it again.

Deputy L.M.C. Doublet:

Yes. The Senator quoted me as saying that I was urging them to put the C.R.I.A.s into place now at a time of crisis and roll them out now. But the point I was making is that they should have already been rolled out and it has been 3 years since my original Proposition on that. There comes a time at which we have to start expecting these and if they are not there then we have to start voting against Propositions if we do not have that information.

The Bailiff:

Thank you, Deputy, that is your point of clarification. Very well, the vote is called for and I ask the Greffier to put into the chat the link. The vote is on the principles of P.58 and the link is there and I would ask the Greffier to open the voting and Members to vote accordingly.

POUR: 42		CONTRE: 5		ABSTAIN: 0
Senator L.J. Farnham		Senator I.J. Gorst		
Senator S.C. Ferguson		Senator K.L. Moore		
Senator J.A.N. Le Fondré		Deputy L.M.C. Doublet (S)		
Senator T.A. Vallois		Deputy R. Labey (H)		
Senator S.W. Pallett		Deputy S.M. Ahier (H)		
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Saviour				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Ouen				
Connétable of St. Martin				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				

Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy 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 am assuming, Deputy Le Hegarat, from your previous speech that the Health and Social Security Scrutiny Panel does not wish to call this matter in for Scrutiny.

Deputy M.R. Le Hegarat:

That is correct, Sir, thank you.

The Bailiff:

Thank you very much. Then, Senator Pallett, how do you wish to deal with the matter in Second Reading?

4.2 Senator S.W. Pallett:

Sir, I am tempted to take all the Articles *en bloc* but maybe if I give a brief description of them; that might be beneficial.

The Bailiff:

Yes, it is a matter for you entirely, Senator.

Senator S.W. Pallett:

I will go through them very briefly. Article 60A deals with declaring an extraordinary period. Article 60B provides new provisions apply only when the Minister has declared an extraordinary period. Article 60C allows a restriction to be imposed under Article 36 of the Law where an interim authorisation be granted. Article 60D sets out the circumstances where a manager may apply for an interim authorisation. Article 60E provides when an application is received the Minister must consult with the person's Health and Welfare Attorney or uardian, if one exists and also any other persons that are appropriate. Article 60F provides for authorising of the restriction and the information that the authorisation must contain. Article 60G, this was something that was included in P.58 that was not in P.47, that is providing that Articles 51 and 55 of the Law apply to interim authorisations. Article 60H provides that the inserted Articles will expire, as has already been explained, on 30th September 2020. Regulation 2 provides for the title for which the Regulations may be cited. I am happy to take questions, if necessary.

The Bailiff:

Very well. Are the Regulations seconded in Second Reading? **[Seconded]** Does any Member wish to speak in Second Reading? Deputy Morel.

4.2.1 Deputy K.F. Morel:

It is just to go back to some of my questions. I am just wondering because I did not quite get answers to them all in the Senator's response. I just wondered, could he confirm how the manager will meet with the family or clinicians and how the Minister will confirm that? Would he also explain how the individual will access the Mental Health Tribunal or their Independent Capacity Advocate? Again, could he tell me how he will assure the Assembly that the Regulations will not be used to deal with the backlog that exists, as well as will he bring forward any amendment to ensure that the reporting on this is made statutory and is reported to the Assembly every month, once such a period has been invoked?

The Bailiff:

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

4.2.2 Senator S.W. Pallett:

In regards to the last point, yes, I think I would be quite comfortable with bringing an amendment to ensure that there is a statutory process for reporting; I have no issue with that. I think some of the other issues that the Deputy mentioned I did in fact go through. The Mental Health Tribunal can sit and does sit virtually and will deal with cases if necessary. I think in terms of a resident or a patient being able to access the advocate, again, I think there is an opportunity and the advocate is happy to do it through face-to-face contact using obviously P.P.E. if necessary. But, as I have said, that can be very frightening for somebody that is in a state where they have not got full capacity and they do not understand what is going on. I think there are better ways to do it and some of that could be virtually, where somebody can see somebody's face or that does exist. In terms of Assessors, that has to be done face-to-face, in terms of doing an assessment. In terms of family, again, I think that can be done virtually to some degree as well. I think that exists and the technology exists to do that. I wonder if the Deputy could just remind me, there was one or 2 other things he mentioned as well.

Deputy K.F. Morel:

May I, Sir?

The Bailiff:

Please, obviously not an opportunity for a further speech, Deputy, but if you want to just repeat the questions that have not been yet addressed.

Deputy K.F. Morel:

Thank you. How can we sure that the Regulations will not be used to deal with the backlog, as is mentioned in the report?

Senator S.W. Pallett:

Yes, so sorry, I knew I had missed that. I think it has been stated in the Proposition and I think when I have spoken previously that these particular Regulations are not there to deal with the backlog. They are only there to deal with new cases. There may be the odd occasion where somebody that is currently on the standard authorisation list presents in a way that needs to be dealt with through an interim authorisation but that is not what these Regulations are being introduced for. Deputy Pamplin pointed out there are 107 current standard authorisations that need to be dealt with and they were being dealt with, I think, in a professional way prior to COVID-19. But this is not a shortcut to that and I want to stress to the Deputy and assure him that there is no intention of using this as a shortcut to dealing with standard authorisations. I am hoping that once we get through this difficult period that we can deal with the standard authorisations by providing adequate resource to deal with this in an appropriate and expeditious way.

The Bailiff:

Very well. Senator, presumably you call for the vote.

Senator S.W. Pallett:

If I could, please, Sir.

The Bailiff:

Yes, very well. Shortly the Greffier will put her link in the chat, there it is, and the vote is on the adoption of the Regulations in Second Reading and I ask the Greffier to open the voting and for Members to vote in the usual way.

POUR: 39	CONTRE: 3	ABSTAIN: 1
Senator S.C. Ferguson	Senator K.L. Moore	Deputy R. Labey (H)
Senator T.A. Vallois	Deputy L.M.C. Doublet (S)	
Senator S.W. Pallett	Deputy S.M. Ahier (H)	
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. 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 S.M. Wickenden (H)		
Deputy of St. Mary		
Deputy G.J. Truscott (B)		
Deputy J.H. Young (B)		
Deputy L.B.E. Ash (C)		
Deputy K.F. Morel (L)		
Deputy G.C.U. Guida (L)		
Deputy of St. Peter		
Deputy of Trinity		
Deputy of St. John		
Deputy M.R. Le Hegarat (H)		
Deputy J.H. Perchard (S)		
Deputy R.J. Ward (H)		
Deputy C.S. Alves (H)		
Deputy K.G. Pamplin (S)		
Deputy I. Gardiner (H)		

[15:15]

The Bailiff:

Very well, how do you wish to deal with the matter in Third Reading, Senator?

4.3 Senator S.W. Pallett:

Sir, I maintain the Regulations in Third Reading. I will take any questions if people have them.

The Bailiff:

Is the matter seconded in Third Reading? [**Seconded**] Does any Member wish to speak in Third Reading? If no Member wishes to speak in Third Reading, then I close the debate and I ask the Greffier to put up a voting screen or voting link, I should say. The link is now there and I ask Members to cast their vote. The vote is on the Proposition in Third Reading and I ask the Greffier to open the voting.

POUR: 40	CONTRE: 3	ABSTAIN: 1
Senator L.J. Farnham	Senator K.L. Moore	Deputy R. Labey (H)
Senator S.C. Ferguson	Deputy L.M.C. Doublet (S)	
Senator T.A. Vallois	Deputy S.M. Ahier (H)	
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 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 S.M. Wickenden (H)		
Deputy of St. Mary		
Deputy G.J. Truscott (B)		
Deputy J.H. Young (B)		
Deputy L.B.E. Ash (C)		
Deputy K.F. Morel (L)		
Deputy G.C.U. Guida (L)		
Deputy of St. Peter		
Deputy of Trinity		
Deputy of St. John		
Deputy M.R. Le Hégarat (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)		

Senator S.W. Pallett:

Sir, sorry, before we move on, Sir, would it be possible for me just to thank one or 2 people in regards to the regulation we just passed? I think it is important. I certainly want to thank the Attorney General and his Department and his Officers because they have done an incredible job in short order in providing comments and support, both for Officers and external stakeholders as well. I really want to thank them for their support. Obviously the Scrutiny Panel for working in very short order, as they have done with lots of other pieces of legislation, so I really want to thank them from the bottom of my heart. Senior Policy Officers that I have worked closely with over the last 3 or 4 weeks to get to the point where we could get this passed today. I do want to thank the stakeholders, as much as they asked some very difficult questions, they asked some very meaningful questions and we will be speaking to them. I just want to thank as well my ministerial colleagues for their support. Finally, let us not forget all those who work in care homes and I want to thank them for the work they do.

The Bailiff:

Thank you very much, Senator. Very well, that concludes Public Business for this meeting and I invite the Chair of P.P.C. to propose the arrangement for Public Business for future meetings. Deputy Labey.

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

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

Just before I do that, I wonder if I could mention that at our last sitting on Liberation Day there was another important anniversary, that of the 20th anniversary of Deputy Martin taking her seat in the Assembly, completing 20 consecutive years, which is a remarkable achievement. I am sure, on behalf of the Assembly, they would like me to pass on my congratulations to her. I have not seen any changes to the arrangement for Public Business, as published on the Order Paper. The next meeting of the Assembly is a requisition meeting next Tuesday but, as yet, I have not seen anything lodged that will be taken at that meeting. I know that if I read the Assembly correctly they are not minded at the moment to let any Propositions that are not lodged by the Thursday for Tuesday's sitting to have the Standing Orders lifted for them to be debated then. I hope those will come along in the next 24 hours and with that I propose the arrangement of Public Business.

The Bailiff:

Yes, thank you very much. Deputy Pamplin, did you want to say something about the arrangements for Public Business?

Deputy K.G. Pamplin:

Yes, Sir, just to clarify something but I also wanted to ask a point of order of you, Sir.

The Bailiff:

Yes, please do ask the point of order.

Deputy K.G. Pamplin:

It is a good one, Sir. If I could ask you to pay tribute to your staff, to Islanders and everybody involved in this year's Liberation Day celebrations under extraordinary circumstances. I think everybody, considering where we all were and what we hope for this year but it was remarkable and I pay tribute to your staff, Sir, and everybody involved. I just wish we could have the sound of foot stomping, not only for that but for Deputy Martin as well. As for the point of clarification of business, the next States meeting that the Chair of P.P.C. has just mentioned, will that include the new question Regulations that we have approved today?

The Bailiff:

Yes, indeed it will, those are adopted with effect from today and the next meeting will include what has been adopted today, Deputy Pamplin. I will, if I may, echo the congratulations to Deputy Martin. Having looked at the chat there is an enormous amount of virtual foot-stamping going on and that is surely well deserved and well merited. Thank you very much for the kind remarks about the work of my Chambers. If I can say so, without a lack of modesty and in certainly no way down to myself personally, my staff have pulled together incredibly well and done their very best indeed to put together what I believe, and I am told many other Islanders believe, has been a first-rate show on Liberation, given the current restrictions. I will pass on your congratulations with grateful thanks. Thank you very much. On the assumption nobody else wishes to speak on the arrangements for future business, then the States stands adjourned until 9.30 a.m. on 19th May 2020. Could anyone possibly who has an issue with voting and had difficulties at this meeting, stay online because a further test on an alternative method is going to be carried out and it will be helpful? Thank you very much indeed.

ADJOURNMENT

[15:24]