



OFFICIAL REPORT

OF THE

STATES OF DELIBERATION

OF THE

ISLAND OF GUERNSEY

HANSARD

Remote Meeting, Guernsey, Wednesday, 17th June 2020

*All published Official Reports can be found on the
official States of Guernsey website www.gov.gg*

Volume 9, No. 27

ISSN 2049-8284

*Published by Her Majesty's Greffier, The Royal Court House,
St Peter Port, GY1 2NZ. © States of Guernsey, 2020*

Present:

Sir Richard J. Collas, Kt, Bailiff and Presiding Officer

Law Officers

R. M. Titterington, Q.C. (H.M. Comptroller)

People's Deputies

St Peter Port South

Deputies P. T. R. Ferbrache, D. A. Tindall, B. L. Brehaut, R. H. Tooley

St Peter Port North

Deputies J. A. B. Gollop, C. N. K. Parkinson, L. C. Queripel, M. K. Le Clerc,
M. P. Leadbeater, J. I. Mooney

St Sampson

Deputies L. S. Trott, P. R. Le Pelley J. S. Merrett,
G. A. St Pier, T. J. Stephens, C. P. Meerveld

The Vale

Deputies M. J. Fallaize, N. R. Inder, M. M. Lowe, L. B. Queripel,
J. C. S. F. Smithies, S. T. Hansmann Rouxel

The Castel

Deputies R. Graham L.V.O, M. B. E. C. J. Green, B. J. E. Paint,
M. H. Dorey, J. P. Le Tocq

The West

Deputies A. H. Brouard, A. C. Dudley-Owen, E. A. McSwiggan,
D. de G. de Lisle, S. L. Langlois

The South-East

Deputies H. J. R. Soulsby, H. L. de Sausmarez, P. J. Roffey,
R. G. Prow, V. S. Oliver

Representatives of the Island of Alderney

Alderney Representatives S. Roberts, A. Snowdon

The Clerk to the States of Deliberation

S. M. D. Ross, Esq. (H.M. States' Greffier)

Absent at the Evocation

Miss M. M. E. Pullum, Q.C. (H.M. Procureur)

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States of Deliberation

The States met virtually at 9.30 a.m.

[THE BAILIFF *in the Chair*]

PRAYERS

The States' Greffier

EVOCAATION

CONVOCAATION

The States' Greffier: Billets d'État XIII and XIV of 2020.

To the Members of the States of the Island of Guernsey, I hereby give notice that a Meeting of the States of Deliberation will be held via Microsoft Teams Live on Wednesday, 17th June 2020 at 9.30 a.m., to consider the items listed in this Billet d'État, which have been submitted for debate; and Billet d'État XIV is convened pursuant to provisions of Rule 2(4) of the Rules of Procedure.

Questions for Oral Answer

COMMITTEE FOR HOME AFFAIRS

Housing licences for key workers

The Bailiff: Members of the States, we move straight into Question Time. I invite Deputy Gollop to pose the first of his questions to the President of the Committee *for* Home Affairs.
Deputy Gollop.

10 **Deputy Gollop:** Thank you very much. It is quite a quick start today.
My first question is: will the Home Committee for Home Affairs consider extending essential residential permit licences for diverse categories of staff in view of the current situation? And I will have a supplementary for this, sir, if I can.

15 **The Bailiff:** Deputy Lowe to reply please.

Deputy Lowe: Thank you, sir. I thank Deputy Gollop for these questions
The Committee recognises the need to support businesses at this time and that is more important than ever to ensure the hurdles for employers to recruit the right staff are minimised. Equally, the Committee is mindful that the impact of COVID-19 and the necessary lockdown has resulted in an increase in unemployment.

25 The Committee met with the Population Employment Advisory Panel (PEAP) on 8th June to discuss the role of Population Management in supporting industry and our economic recovery. It was agreed that any changes to the employment permit policy at this time may be premature, as there is currently insufficient data in terms of the numbers unemployed, their skills, the industry and their prospects for re-employment to make informed changes. The Committee is closely monitoring the situation in liaison with the Committee for Employment and Social Security and will continue working with PEAP to identify any changes that may be necessary to support industry.

30 Thank you, sir.

The Bailiff: You said you had a supplementary, Deputy Gollop.

Deputy Gollop: Yes. Thank you, sir, and thank you to Deputy Lowe for her answers.

35 As a member of the Committee for Employment and Social Security, I am aware of the evolving nature and rapidly changing nature of the data, which of course is constantly changing. But my question is: given the huge hit many businesses have taken, especially those in the events and hospitality sectors, is there not an urgency for good staff in key areas to be retained, rather than hoping that there may be locally unemployed people with the required skills? Business perhaps needs faster responses, I would ask; does the President agree?

40 **The Bailiff:** Deputy Lowe.

Deputy Lowe: Thank you, sir. Well, as Deputy Gollop has just mentioned, he is a member of the Employment and Social Security. And unfortunately, although he mentions data, there is not any.

45 And that is the problem that we have actually got. Whereas normally, we would be able to obtain that data, but the data is well out of date and I believe they are something like two months behind.

50 It is vital that we get that information to be able to make informed decisions as to the Population Management Regime. Therefore, it was a very helpful discussion that we had with PEAP last week, including the hospitality and retail, to explain the situation we have got and that we will not make any rash decisions and will do all we can to support, but equally mindful, we have an awful lot of people unemployed.

The Bailiff: Deputy McSwiggan.

55 **Deputy McSwiggan:** Thank you, sir.

60 Deputy Lowe's response focused on the needs of industry. But my understanding of Deputy Gollop's questions is that it was, in a large extent, about the needs of people who are here now in roles that have employment permits. (**Deputy Gollop:** Yes.) I would like to ask, sir, with the Population Management Regime, whether Deputy Lowe's Committee is thinking about recognising the people who have been with us throughout this pandemic in permitted roles and making any changes to the regime to recognise the contributions that those people have made to the welfare the Island and not forcing them to go back out into the world when they have been a critical part of our response to this pandemic.

65 **The Bailiff:** Deputy Lowe.

Deputy Lowe: Thank you, Deputy McSwiggan.

70 Yes of course, that is absolutely right, and that was the message we put out at the start of this pandemic and when we had lockdown, that all the permits were put on pause, so it would not be a case of the time is ticking away whilst we were through this pandemic. And then once we were able to see that operations were able to continue, whether that be in hospitality, retail and other sectors, the permits would then start working again. However, it was very key to us, bearing in mind we had people working right across the sector that would normally be in hospitality working in the hospital

75 and working in retail, and without these people we would not have actually been able to function because they were prepared to put themselves at risk and working in some of the areas that were a concern to many of us, and yet they were prepared to do so. That has been recognised, and we have actually sent that message out through the industries, again, to thank them. And it would not be a case that they would have to go back straightaway. There will be a transition period and that has not started yet.

80 **The Bailiff:** Deputy Inder, supplementary question.

Deputy Inder: Sir, I believe that this question arises out of Deputy Lowe's original answer to Deputy Gollop's first question. Since the start of the lockdown, and I have asked this question before, does the President via the Population Management contacts have any indication as to the loss of foreign workers from our workforce, in rough percentage terms?

The Bailiff: Deputy Lowe.

90 **Deputy Lowe:** No, I am sorry, I do not have that information available, sir.

The Bailiff: Maybe that is something you can pose discreetly, Deputy Inder, in writing.
Deputy Tindall.

95 **Deputy Tindall:** Thank you, sir.

This follows on from both Deputy Gollop and Deputy McSwiggan's question in the sense that I still do not feel it has been responded to in the sense that those who have supported us ... Is the President and her Committee considering not just extending this pause, but actually extending the length of their permit, in fact even reconsidering their right to stay on the Island?

100 Thank you, sir.

The Bailiff: Deputy Lowe.

Deputy Lowe: Thank you for the question.

105 It would not be for the Population Management to just do a standard extension to these permits. It may be the employer does not actually wish to have that permit extended because they are revisiting how they are operating.

By all means, whoever has any concerns please contact the Population Management Office and they will be able to help and assist. But we also have to bear in mind that we have an awful lot of people unemployed. So certainly we are not looking to actually send people back and cancel that permit with immediate effect. It is important that we actually also recognise that we have people who are unemployed and if we are able, those people also have to be taken into consideration for employers to employ those people, because they are currently claiming unemployment benefit and it is a cost to the States.

115 **The Bailiff:** Deputy Merrett.

Deputy Merrett: Thank you, sir.

120 I would like to ask the President if Home Affairs, not the Population Management Committee, but Home Affairs, are proposing to the States any changes to the Population Management Law to reflect the previous questions that Members have asked – so sir, for clarity, to reflect how we are able to retain and recruit people on the Island during the coronavirus and beyond, sir.

The Bailiff: Deputy Lowe.

125 **Deputy Lowe:** Thank you, sir.

No, we have not. We do not intend to bring a report at this moment in time. It is far too early. We are working with the industry – that is the idea that we have got a Population and Employment Advisory Panel. We had a very constructive meeting and we are meeting again, I think it is next month, to be able to continue this dialogue because we are conscious that we have to make sure that we do not put businesses in a position where permits would be rescinded, and that is not on the agenda.

130 I thought I made it pretty clear. Those permits have all been suspended and it will be kicked in again at the appropriate time, and once we have got the vital data from Employment & Social Security to find out exactly how many we have got unemployed and what skills and industry that they are involved in.

The Bailiff: Deputy Leadbeater.

Deputy Leadbeater: Thank you, sir.

140 Would the President agree with me that, until such time as we have the data from Social Security, it would be foolish for us to make any policy changes to the Population Management Regime?

The Bailiff: Deputy Lowe.

145 **Deputy Lowe:** Thank you, Deputy Leadbeater.

That is exactly what I said in my answer to the question earlier on, and I can only reiterate it. It would be irresponsible to actually change anything at this moment in time, until we have got the data from Social Security. That is why we are on the pause button for now.

150 **The Bailiff:** Nobody else seems to have a supplementary question arising out of ... Deputy Tindall.

Deputy Tindall: Apologies sir. It is just, Deputy Lowe has just confirmed that her answer to, I believe, Deputy Gollop, was that these permits will be put on pause until the data is available. Can we have some clarity perhaps at a later time on quite what data they are going to seek, how much they need, and when they believe that will be satisfied? Because clearly people will need to know how long the pause is going to last.

Thank you, sir.

160 **The Bailiff:** Deputy Lowe, are you able to answer that question?

Deputy Lowe: I can only repeat what I have already said, sir. We have the data normally weekly from Employment & Social Security. That has been out of the system now for two months because there have been problems with the data collection.

165 Employment & Social Security are working considerably hard to get this back en route and, until we have got that data, we are unable to make any decisions on the way forward. So, normally, how Population Management works, we will work very closely with Employment Social Security so, if job A ... and there are several people unemployed, that will not be part of the policy where an employer and employee would be able to gain a permit. It is so flexible that we are able to increase the permit requirements or decrease them depending on the unemployment. It has always worked that way, the flexibility, but we can only do it when we have Employment & Social Security data and when we work with the Population Employment Advisory Panel, which are the industry reps.

170 **The Bailiff:** As there does not seem to be anyone else now wishing to raise a supplementary question on that first answer from Deputy Lowe, I will invite Deputy Gollop to put his second question to the President of the Committee *for* Home Affairs.

Deputy Gollop.

180 **Deputy Gollop:** Thank you very much, sir. And whilst I thank Deputy Lowe for her answer, I would like to ask two supplementaries following it. My question is: will the population policy consider allowing key health and social care workers permanent rights residentially to remain on the local market if their role and performance merit some administrative change or discretion?

185 **The Bailiff:** President of the Committee, Deputy Lowe, to reply.

Deputy Lowe: Thank you, sir.

190 Many individuals, both locally qualified and those on permits, have done outstanding work to support our community throughout lockdown. The variety of roles that have been essential to keep our community functioning has not been limited to health care workers. The Population Management Law was intended to assist the States in managing the size and makeup of the Island's population by acknowledging either manpower or skill shortages for certain industries.

195 Indeed, one of the advantages of the Law is its flexibility in allowing the Committee to keep policies under review in order to be able to respond quickly to economic, social and environmental changes.

200 However, it is not within the gift of the Committee or Population Management Law to grant permanent resident status based on individual performance in a certain role. Strategic population policy is a whole Government responsibility and recognised as one of the policy priority areas detailed in the Future Guernsey Plan and such far-reaching policy change would more appropriately be considered in this forum.

200 Thank you, sir.

The Bailiff: First supplementary question, then please, Deputy Gollop.

Deputy Gollop: Thank you very much.

205 My first supplementary is, as Deputy McSwiggan identified, one key element of the question is a thank you to devoted workers, especially in the health and social care sector who have kept the Island going in difficult circumstances and therefore, I ask whether the President of Home Affairs and the Committee are considering perhaps a more flexible approach to licences as to the essentiality of the roles, in terms of keeping, for the sake of argument, care managers, nurses and other key personnel in positions whereby they have managed extremely ably during a unique period in our history.

The Bailiff: Deputy Lowe.

215 **Deputy Lowe:** Thank you, sir.

220 As has been recognised, there are certainly so many people that were in hospitality that have not only worked in health but in the supermarkets and retail, and at the meeting we had last week with the Population Employment Advisory Panel we were informed that 60 from retail had actually been working in the supermarkets helping there, from hospitality. We are extremely grateful, as is our community, for these people being allowed to be so flexible as well to be able to go into other areas of work.

225 It is not for the Population Management or myself to make that statement today that people can stay in those positions. Obviously, if Health felt that was appropriate, that they wish these people to be considered, an application would come forward. But it is not for me presently to be able to say, yes, that is fine, we can put these people in these positions – bearing in mind, the people that have been working out, and we are extremely grateful, their permit and their loyalty is to the employer that brought them over here to work in that industry.

Thank you, sir.

The Bailiff: And your second supplementary question then please, Deputy Gollop.

230

Deputy Gollop: Thank you very much.

In also, of course, thanking supermarket workers and people who work in sectors not necessarily employed by the States, my question is ... I accept there has been an IT issue in terms of managing detailed unemployment figures, but the figures in themselves and the jobs do not necessarily give an indication of the skill levels people need to fill jobs. My question really is: isn't a greater degree of rapid thinking and flexibility needed to ensure employers in all sectors, not just health, have staff with the qualifications, rather than trawling through people who are unemployed who may have different skills and abilities in different sectors?

235

240

The Bailiff: Deputy Lowe.

Deputy Lowe: I thank Deputy Gollop for that.

Obviously, it is important that we look after those that are unemployed and try and get them into employment and as a member of Employment & Social Security, I would hope that Deputy Gollop would be thinking that way because it is important.

245

I am led to believe there will be anything between 1,000 and 2,000 unemployed. Now, we have not got that data, that is all just a guess from the staff involved.

It is important, Deputy Gollop, that we have reduced the numbers that are unemployed, but we also recognise the help and the work that has been put in the community by those that are on permits. It is very much working together. It is not a case of, it is a line that we cannot cross and there is a certain date and that is it. There will be a transition period, it is working with the businesses, it is waiting for Employment & Social Security to give us that data and making sure that those that are unemployed have that opportunity to apply for a job that may be coming up in the employment industry.

250

255

Thank you.

The Bailiff: At the moment nobody else is indicating a wish to pose any supplementary question arising out of that answer to the second question. Therefore, I will thank Deputy Lowe for the answers to the questions put to her.

COMMITTEE FOR HEALTH AND SOCIAL CARE

Ability for boards and committees to meet other than virtually

260

The Bailiff: I invite Deputy Gollop now to pose a single question to the President of the Committee *for* Health and Social Care. Deputy Gollop.

Deputy Gollop: Thank you very much, sir; and apologies that some other questions were earlier placed that could not be answered.

265

My question is: in what circumstances of public health could a Guernsey general election be held or postponed? And I would like to have a supplementary please, sir.

The Bailiff: Thank you. The President of the Committee *for* Health and Social Care, Deputy Soulsby, to reply.

270

Deputy Soulsby: Thank you, sir.

The medical officer of health is happy to work with SACC and wider electoral stakeholders to support the work necessary to rearrange the election which had originally been scheduled for today,

275 and has recently provided advice in writing. I understand this will be appended to SACC's Plan policy letter.

In broad terms, an election taking place in either phase 5 or 6 of the Exit Framework would feel largely familiar to the electorate and candidates, with only minor adjustments necessary to follow the enhanced public health practices which we have all become familiar with over recent months.

280 An election within phase 4, while recognisable, would need more consideration given the restrictions in relation to gatherings and events, which may impact on opportunities to engage with groups within the community.

An election during phases 1 through to 3 would be more challenging, given the need to observe more restrictive requirements to safeguard the health of the community. It will be for SACC, and ultimately this Assembly, to consider what may be achievable within the legislative framework.

285

The Bailiff: Your supplementary question, Deputy Gollop.

Deputy Gollop: Thank you very much, sir, and to Deputy Soulsby for the answer.

290 A degree of thinking, I know, has taken place moving towards a consensus for a future debate on an early autumn date, perhaps as a possibility for Guernsey. How would Health and Social Care respond, if in the unfortunate event of such a date being chosen and legislated on by this Assembly soon, that there was an increase in COVID-19 activity on the Island, and it was felt necessary to return to phase 4, or phase 3, or phase 2? How would that impact upon an election once agreed upon, and in process, perhaps with two or three weeks to go until polling day, or whatever the scenario would be?

295

The Bailiff: Deputy Soulsby.

Deputy Soulsby: Thank you, sir.

300

I think, Deputy Gollop, I have responded to that within my answer to your earlier question. It will depend, what we are saying is the election will look different depending on what phase we are in. So if something untoward happened, we might find ourselves into phase 4, that would cause further restrictions on how the election could be conducted. Or even if we have to go directly to phase 3, that would be even more so. So, I mean, that is just what the situation will be and we will react, we will go into phase 3 and 4 – it will not be in consideration of having an election; it will be in consideration of the threat to public health.

305

The Bailiff: Once again I do not see any ... Oh, Deputy Inder, a supplementary question.

310

Deputy Inder: Just briefly, sir, on the same subject. I have got every impression that the conversation has moved from the sort of 'back to ground zero' which was effectively the phase 1, to variations of the phases. So my question really is, in Deputy Soulsby's responses to Deputy Gollop she spoke about individual phases, and phase 4 and phase 5, and possibly phase 3. Are there variations on those phases? Is there a 3.1, or a 4.2, or possibly a 5.1? Are we dealing strictly with just phases as we understand them, as wholly prescribed, should anything untoward happen?

315

The Bailiff: Deputy Soulsby.

Deputy Soulsby: Thank you, sir.

320

Yes, it will all be about risk. But, as things stand, we will be looking at ... we will be deciding what we do in relation to the Exit Framework and within that, there are certain adaptive triggers that we will take and consider before moving to each phase. Things might be slightly different. We might consider a 3.1 or a 2.9 but as things stand, and as set out in the Exit Framework, there are specific circumstances that will lead us to move back.

325 So, in respect of say, phase 2, it is related to how many cases that are unexplained, the
identification of new clusters, significant community non-compliance, if we have problems with
online testing, if we have got so many more hospital admissions. So, those are the criteria that we
will use. As things stand, we will be going through specific phases, so: 1, 2, 3, 4, 5, 6 to 6, 5, 4, 3, 2,
1; or skipping phases, depending upon what happens.

330

The Bailiff: As nobody else is indicating a wish to pose a supplementary question arising out of
that answer, Members of the States, that will conclude Question Time for this meeting and we turn
to the substantive business.

Greffier.

Urgent Propositions in pursuance of Rule 18

CIVIL CONTINGENCIES AUTHORITY

Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 3) Regulations, 2020 – Approved

The States are asked to decide:

*Whether they are of the opinion to approve the Emergency Powers (Coronavirus) (General
Provision) (Bailiwick of Guernsey) (No. 3) Regulations, 2020.*

335 **The States Greffier:** Item 2020/108 – Civil Contingencies Authority – Emergency Powers
(Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 3) Regulations, 2020.

The Bailiff: I invite the Chairman of the Authority, Deputy St Pier, to open the debate.
Deputy St Pier.

340 Deputy St Pier, you are currently muted. You might need to start again.

Deputy St Pier: There we go! Two buttons to press rather than one, forgive me.

The Bailiff: Thank you very much.

345

Deputy St Pier: Let me start again.

Sir, we are here again with another set of Regulations from the Civil Contingencies Authority.
Part I of the Regulations places the requirement for those arriving by air or sea into the Bailiwick on
the face of the Regulations themselves.

350 Up until now, the requirement is one that could be imposed by the Medical Officer of Health.
Responsibility for the decision to move from phase 5 into phase 6 will rest with the Civil
Contingencies Authority rather than has been the case for the moves through the Exit From
Lockdown Framework up to and including phase 5 by the Committee of Health and Social Care,
albeit as we know, with the political oversight of the Civil Contingencies Authority. Of course the
355 Committee of Health and Social Care did that by way of directions dis-applying the various
restrictions placed on gatherings, events premises and other activities.

Of course, in making those decisions in relation to the move into phase 6 the Civil Contingencies
Authority will need to consider the public health advice but also that in relation to the economy
and the fiscal position as well. The approach will ensure that the statutory role of Medical Officer

360 for Health does not become politicised, either in response to public pressure or indeed from political pressure. That will need to be a matter that the Civil Contingencies Authority itself handles.

The membership of the Civil Contingencies Authority does, I think, provide that wider strategic oversight needed when considering reopening the Bailiwick's borders in a sense it takes us right back to the beginning of this crisis when, of course, that was the very first control that was introduced. Under Regulation 3, the Civil Contingencies Authority will also have the power to vary the requirements generally, or for a particular category of persons, and the power the Civil Contingencies have will be subject to advice from both the Medical Officer of Health, but also of course Her Majesty's Procureur in relation to proportionality. I think this approach does build on that which has been followed by the Civil Contingencies Authority since it declared the COVID-19 pandemic as an emergency under the Law. The other changes which are set out in the composite Regulations which are now before Members are merely minor textual changes.

370 The Civil Contingencies Authority at its last meeting did consider whether, as we are scheduled to move into phase 5 on Saturday, those other regulations, for example in relation to gatherings, activities and events, should cease to have effect immediately this weekend. We concluded that actually, to all intents and purposes, they fall away anyway because the directions from the Committee for Health and Social Care will lapse and there was no mad rush to rescind the CCA regulations, particularly if something were to have happened this week that meant they need to be kept in place.

375 As I have previously advised the Assembly, work is already ongoing as to which of the other regulations may and should be repealed in phase 6 and the Civil Contingencies Authority will be meeting again tomorrow to make the next set of composite regulations for 30 days and to repeal those which are no longer required as part of our continuous review of the necessity, urgency and proportionality of them. I hope that, once again, does give those Members who are, understandably, concerned about the powers which had been taken on by and through the CCA, that it is the CCA's determined will to keep them in place for absolutely no longer than is necessary, and we will continue to move to rescind them just as quickly as we can.

And with that, sir, I will obviously respond to any matters arising in the debate.

The Bailiff: Deputy Gollop.

390 Deputy Gollop, are you there?

Deputy Gollop: Yes, I am here, can you hear me?

The Bailiff: I can. Thank you.

395

Deputy Gollop: Yes, I was muted then.

400 As always, I have nothing but awe and respect for the work of Deputy St Pier and the leading politicians and officials who are managing this crisis and doing, in many ways, the lion's share of the work. And I suppose that also contains an element of frustration that some of us more on the periphery of the process are not, perhaps, at the dining table or the virtual dining table, addressing these issues.

My question, or comment really, is on the issue on page 2 of the covering letter, '*Part 1 – screening, assessment and powers to detain etc.*'

This Part places a requirement to self-isolate on persons arriving in the Bailiwick, enables the Medical Officer of Health to place restrictions and requirements on other persons ...

405 I suppose I have three points to raise here. The first is that our sister island, Jersey, manfully tried to find some magical solution whereby people can perhaps have less than the mandatory fortnight and yet be safe to themselves and the community and I do not know how far Guernsey is proceeding with that.

My second point is, there was a report in the media recently that some people who come into Guernsey, presumably at Guernsey Airport, have not made clear to the appropriate authorities the forwarding address where they will stay in self-isolation, which struck me as curious because, I thought presumably, the only people coming in would either be home-based in Guernsey or have family or close friends here, or be staying in a recognised hotel or place of accommodation for essential reasons. So I could not make out why they did not have a forwarding address and how that would be policed under these emerging regulations.

And, my third point, is how far there have been discretions given for waiving these powers for good reasons, and how widespread that has been, and whether that could pose any risk to the community, although apparently, so far, it has not. So, I think, we as a community would like to learn more about the practical implementation of screening assessments and powers to detain.

But, in general, I do support these Regulations and the work that has led to them.

Thank you.

The Bailiff: Deputy Merrett, to be followed by Deputy Prow.

Deputy Merrett: Thank you, sir.

Upon reading the last iteration of these emergency powers, I felt, for the first time in months, sir, that I actually breathed out. It was with quite ... I will say utter relief, I was very relieved.

I agree with what Deputy St Pier said about the fines on arrival and changes to where it is sat, and I also agree that the CCA will recognise the need to change the phases. Obviously I was speaking very generically there, sir.

Further, sir, as I have had some of my Rule 14 questions answered, I am beginning, sir, to become more informed as to how these emergency regulations are, and will, affect our communities wider health and wellbeing which, sir, does feel like a drum I have been hitting for a considerable amount of time.

I hope, sir, that as a Government and as a community, we continue to work together to reflect and have full appreciation for how these emergency regulations affect some of our community's lives. I asked last time, sir, that when the States approved emerged these emergency regulations at the last iteration, that the CCA rescind them as soon as possible, and not only review them every two weeks. Again, sir, I am very grateful that Deputy St Pier has already confirmed that the CCA will be sitting in due course, as we are intending to go into phase 5 from this weekend.

So, with utter relief, sir, I actually feel I can approve these Regulations in the full knowledge that the CCA will be rescinding them further, they will be doing it promptly and they will be acting in a timely manner.

So, with utter relief, sir, I can approve these CCA Regulations today.

The Bailiff: Deputy Prow to be followed by Deputy Inder.

Deputy Prow: Thank you, sir.

I have asked speak for two reasons. One, Deputy St Pier in his opening mentioned travel and travel restrictions. This a follow-up from Deputy Gollop's good point, and his questions, and perhaps pose a further question to Deputy St Pier. Would Deputy St Pier agree with me that the regulations and where the regulations are being developed by the CCA, and the fact that we are moving towards phase 5, that the travel restrictions must completely underpin all the good work that has been done to enable us to move into phase 5, and how important it is that we have travel restrictions that are well understood by the community, and Deputy Gollop's point, and not only that but can be properly enforced by Law Enforcement?

Deputy St Pier has made the point that the travel restrictions were actually developed by the CCA before lockdown, and have been developed since. In that time, we have developed definitions of essential workers and critical workers, and through my work on HSC, it has become clear that not all people who are arriving are being treated the same. Would Deputy St Pier agree with me that

460 this needs to be made a proper, transparent policy, because moving forward, Deputy St Pier taking about basics, that we need to have well understood in our community exactly what the travel restrictions are? One because we need to make sure they are complied with, and two, business and everybody else needs to understand exactly what they are.

465 Could I also endorse the point that Deputy Gollop made, and I think when we talk about these Regulations and the difficult decisions, I can add my praise to that of Deputy Gollop, to every member of the Civil Contingencies Authority, and the leadership of Deputy St Pier. This is not easy stuff and there is no manual to provide it.

Thank you, sir.

470 **The Bailiff:** Deputy Inder, to be followed by Deputy Le Tocq and then Deputy Tindall. Deputy Inder, please.

Deputy Inder: Sir, thank you, I think it is a similar question to that from Deputy Prow. I noticed yesterday the States of Guernsey's social media output posted the following:

The Guernsey Border Agency is encountering a number of people arriving into the Bailiwick who do not know where they are going to be staying/self-isolating. Those arriving are required by law to provide their self-isolation ...

475 Yet the Regulation is pretty hard and it says:

places a requirement to self-isolate on persons arriving in the Bailiwick.

So, I think the question is: if we have got some fairly tough and very reasonable regulations given where we are heading towards phase 5, what happens to people who actually turn up with nowhere to go? Are they in breach? Are they sent back?

480 It just seems a bit odd that we have got quite, I suppose, 'small d' draconian laws, and I do not mean that unkindly; yet, it appears that people are still turning up in the Island with no address to go to. So I am intrigued to how that squares the regulation versus enforcement, sir, and I think that is sort of what Deputy Prow was alluding to.

Thank you.

485 **The Bailiff:** Deputy Le Tocq.

Deputy Le Tocq: Thank you, Mr Bailiff.

490 Sir, just briefly, I think it is worth mentioning here, I know Deputy St Pier will likely agree with me on this, it is conversations and discussions we have had around the Committee table. There has been a terrific amount of goodwill and public support for the measures, as we have brought in greater and greater restrictions. That is for our whole community to be commended on that.

495 As we begin to move out of those restrictions and the various parts of the legislation that have been enacted, just like the one we are dealing with now, begin to fall away, it is actually harder in terms of keeping people aware of that. I think our communications team has done a fantastic job under immense pressure to so far communicate to a wide cross-section of people, and even younger members of my family think the animations and things that they have done have been superb.

500 The communications now – and that is really my main point, sir – is more vital than ever. I am conscious of the fact, sir, that, in some of the recent public presentations, the numbers of people listening in, tuning in have been fewer than in previous occasions. And so, sir, I just want to flag up that the communications now are more important than ever, particularly when things in jurisdictions around us – and that alludes to comments that Deputy Inder and others have made – are different than ours and we have greater contact, and potentially involvement with people going back and forth in terms of travel. That causes extra confusion, and so our communications at every level are
505 absolutely vital now and I think particularly if things need to change further and the details involved

in those changes are complicated, we need to ensure that we have invested properly in communications to everyone concerned.

Thank you.

510 **The Bailiff:** Deputy Tindall, to be followed by Deputy Le Pelley.

Deputy Tindall: Thank you, sir.

As a member of Health and Social Care with Deputy Prow, I would like to echo his concerns. We have obviously had many a discussion about inward travel in respect of over the last few months and how we dealt with the Exit Framework. Obviously, going forward, it is with great ... well, to a certain extent, *relief* that we are handing the baton over to some extent; and, more importantly, that there will be the same membership of the CCA going forward. Dr Brink of course will be aiding all those decisions. The excellent communications team will continue, so there will be continuity of the message and, of course, our leader and President of Health & Social Care is also on the CCA. I would like to take this opportunity, with I am sure my colleagues on HSE, to thank her immensely for her leadership during this time.

But what is concerning, it is not just the consistency of membership, but it has got to be the consistency and, as Deputy Prow said, the transparency of this most important policy about inward travel. This must be seen in light of the difference between the critical and essential travellers, which has already been highlighted by Deputy Prow. I think it is so important going forward, because this is our first line of defence, the borders are where the virus will come back, that we must have a clear understanding so that all travellers that come in know what they are supposed to do. But also, we need to ensure that our residents are fully informed and understand the protection that is being given to them, because we want to be able to go back to the restaurants, to go back to the places where we love and see these Islands of the Bailiwick, really enjoy the freedom that the hard work of the last few months has been gained, from all of the hardship that we have put up with. We need to have that fear removed that the virus will be returned through the borders, and that transparency and consistency of message we hand over to the members of CCA and the team I have mentioned with great hope, but with a wish of this message to be heard.

535 Thank you, sir.

The Bailiff: Deputy Le Pelley.

Deputy Le Pelley: Thank you, sir.

540 I just want to follow up on some of the points that have been made by earlier speakers and that is that, the coming out of phase 4 or the entry into phase 5 on 20th June of this year is going to have an impact. We now move into a section of the Law – I move to read another title:

The Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) Regulations, 2020 provided for various local elections and various appointments to be made at parish level. As a result of that, some of the parishes did actually appoint people on a temporary basis, to positions that will actually fall, or have to fall, within 28 days of phase 4 coming to an end or phase 5 coming into effect. That actually means that we are going to have to have parish elections or parish meetings to hold those elections between 20th June and 17th July.

If, as several Members have already said, the borders are not as secure as they should be, and I have heard several stories of people coming over here who did not even know that they had to register, or that they have bothered to register since finding out that they should have done, I am just a bit worried that we actually could find ourselves with an outbreak – Jersey has had three very recently when they thought they were more or less through it – and this could impact on the parish elections that will now have to happen by law. And, of course, if we are going to be going into parish elections before 17th July, which we have to do at the moment, then also that may have an impact on the decisions made on when we have our General Election.

555 Thank you, sir.

The Bailiff: I am just pausing very briefly, Members, to see if anyone else wishes to speak on these Emergency Regulations.

560 Deputy Dorey.

Deputy Dorey: Thank you, Mr Bailiff.

565 One of the reasons given when the announcement was made about moving to phase 5, and the fact that it was not going to happen immediately, in fact it was delayed for just over a week, was that businesses needed notice of the change to phase 5. The hospitality and retail sectors are some of the businesses that have been most affected by the restrictions in relation to the lockdown and they would have clearly benefited immediately by moving to phase 5, and would have been able to increase the number of people within their businesses.

570 So I would just like Deputy St Pier to explain to explain why they did not immediately move to phase 5, as other countries who have made the announcement have done.

Thank you.

The Bailiff: If no other Member wishes to speak, I will invite the Chairman of the Authority, Deputy St Pier, to reply to the debate.

575

Deputy St Pier: Thank you, sir.

580 Perhaps I will deal with Deputy Dorey's point first because I can easily dodge that question, sir, on the basis that that is not a matter of either these Regulations or for the Civil Contingency Authority. That decision is one for the Committee for Health & Social Care in determining their directions. I know that Deputy Dorey has raised this point directly with Deputy Soulsby and obviously has expressed concern on the pace of movement really throughout this process so far.

585 So I think most of the comment that has arisen in debate has not really been around the regulations as such; it has really been about what happens next. And, unlike in previous debates, I have decided not to raise a point of order on that, because I think the points are, I do understand the public interest in that and indeed Members' interest in that, and therefore the necessity to allow it to be debated.

590 I think dealing with this question of the difference between already what will happen next on the borders, work is being undertaken, working with Public Health, and the Civil Contingencies Authority will be considering that this week in relation to so-called essential and critical workers, what kind of border testing policy could be effective.

595 The question of there being no address for those on arrival: I have to admit that, when the Civil Contingencies Authority met last week to consider the Regulations that are before Members, there was no evidence presented to us at that time that this was a problem. So, clearly to the extent that it has become a matter of public record and interest since, the Civil Contingencies Authority will clearly need to consider that, ascertain the scale of the problem and indeed of course consider whether the Regulations themselves would need to be amended to consider whether there was a necessity to deny entry to somebody not in a position to provide that address. So I think that hopefully deals with Deputy Inder's point. In other words, now it has been identified as an issue, I can give the assurance to Members that the CCA will consider what the implications could or should be for future regulations.

600 I am grateful to Deputy Merrett for her support. I know that she has, again understandably on behalf of the public, been concerned about the wide-ranging and sweeping powers of these regulations and I am glad she is reassured we are moving in the right direction.

605 Again, in relation to Deputies Tindall and Prow's comments, I absolutely can give I think the reassurance that they are looking that the members of the Civil Contingencies Authority do understand the significance of maintaining a tight border, at least until such time as the rate of prevalence and the rate of re-infection is under much better control in the largest point of origin for most travellers, namely the United Kingdom. There is not a significant public pressure in any event, from business. There is some social pressure from some areas from people who have good

610 reason to want to travel. Of course, people can travel, they just need to understand the obligation
to self-isolate on their return. But the Civil Contingencies Authority will be considering how we can
sensibly but safely manage any changes at the border.

But for example, if we were to introduce some kind of testing regime that was supported by self-
isolation, we need to make sure that we have got the resources to be able to do that, in terms of
615 additional testing capacity and of course the people to actually take the swaps to undertake those
tests, so there is quite, there is quite a lot a lot to do, but there is an absolute determination and
can give Deputy Tindall and Deputy Prow that reassurance.

Deputy Prow also sought an undertaking that there needed to be transparency around the
policy. I absolutely agree. I have said that publicly and there has been transparency throughout this
620 process up to this point. Even if some, like Deputy Dorey, do not necessarily agree with the decisions
and the framework, there has at least been clarity around how the framework has been presented
and we need a similar process now in relation to our borders and I did give that undertaking that
that is absolutely the intention to present that level of transparency, so that people can at least see
the basis on which decisions have been made, again, even if they do not necessarily agree with
625 them, there will be transparency around that.

I think the final point to make is: this there is work continuing to try and identify whether any air
corridors, air bridges so-called, can be established to points of safe destination that have similar
levels of infection to our own – i.e. at the moment, if course, none – but also the robust regimes,
track and trace, that enable reliability to be placed on the statistics from those points of origin. So
630 that dialogue is continuing and I hope that we may be able to make some progress on that fairly
quickly.

I think, as I say, most of what I have responded to is not about the Regulations; it is about future.
Nonetheless, with the support of Deputy Merrett and other Members, sir, I hope the Assembly will
now support these Regulations.

635 **The Bailiff:** Thank you very much.

Members of the States, there is a single proposition asking you whether you are minded to
approve the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 3)
Regulations, 2020. I invite you to go *aux voix* in the chat column.

Members voted Pour.

640 **The Bailiff:** Thank you very much, Members of the States. I am satisfied that there was an
overwhelming shout of *Pour*, I did not hear any *Contre*. Therefore, that Proposition is duly carried.

Billet d'État XIII

ELECTIONS AND APPOINTMENTS: APPOINTMENTS LAID BEFORE THE STATES

COMMITTEE FOR ECONOMIC DEVELOPMENT

Guernsey Competition and Regulatory Authority – Appointment of Mr John Curran as Chairman and Ms Caroline Chan as Ordinary Member

In accordance with section 1 (4A) of Schedule 1 to the Guernsey Competition and Regulatory Authority Ordinance, 2012, as amended, the following appointment by the Committee for Economic Development, to the Guernsey Competition and Regulatory Authority, is laid before the States of Deliberation:

- *Mr. John Curran as Chairman with effect from 27th April 2020.*

In accordance with section 1(4A) of Schedule 1 to the Guernsey Competition and Regulatory Authority Ordinance, 2012, as amended, the following appointment by the Committee for Economic Development, to the Guernsey Competition and Regulatory Authority, is laid before the States of Deliberation:

- *Ms. Caroline Chan as an ordinary member with effect from 22nd May 2020*

The Bailiff: We will now move on to the Appointments to be laid before the States and we will take both of those together please, Greffier.

645 **The States' Greffier:** Billet d'État XIII – the following appointments have been laid before the States: the Committee *for* Economic Development – appointment of Chairman of the Guernsey Competition and Regulatory Authority; and the Committee *for* Economic Development – appointment of an Ordinary Member of the Guernsey Competition and Regulatory Authority.

650 **The Bailiff:** Members of the States, both of those appointments are laid before you. I have not received any motion to annul either appointment under the terms of the Schedule to the 2012 Ordinance as amended. That can happen at the next meeting as well, if you are so minded. But those appointments are duly laid.

LEGISLATION LAID BEFORE THE STATES

**The Seat Belts (Exemptions) Order, 2020;
The Customs and Excise (Relief for Hand Sanitiser) (Guernsey and Alderney) Order, 2020;
The Liquor Licensing (Fees) Regulations, 2020;
The Prison (Guernsey) (Amendment) Regulations, 2020;
The Control of Poisonous Substances (Guernsey) (Amendment) Regulations, 2020;
The Driving Licences (Amendment) Regulations, 2020;
The Health Service (Benefit) (Limited List) (Pharmaceutical Benefit)
(Amendment No. 2) Regulations, 2020**

The Bailiff: Now we move to legislation laid before the States please, Greffier.

655 **The States' Greffier:** The following legislation is laid before the States: No. 22 of 2020, The Seat Belts (Exemptions) Order, 2020; No. 40 of 2020, The Customs and Excise (Relief for Hand Sanitiser) (Guernsey and Alderney) Order, 2020; No. 23 of 2020, The Liquor Licensing (Fees) Regulations, 2020; No. 49 of 2020, The Prison (Guernsey) (Amendment) Regulations, 2020; No. 38 of 2020, The Control of Poisonous Substances (Guernsey) (Amendment) Regulations, 2020; No. 46 of 2020, The Driving Licences (Amendment) Regulations, 2020; No. 55 of 2020, The Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No. 2) Regulations, 2020.

660 **The Bailiff:** Members of the States, similarly, all of those Statutory Instruments are laid before this meeting, I have not received any motion to annul in respect of any of them, but we note that they are laid at this meeting.

665 Greffier.

COMMITTEE FOR HOME AFFAIRS

I. The Sexual Offences (Bailiwick of Guernsey) Law, 2020 – Debate commenced

Article I.

The States are asked to decide:

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Sexual Offences (Bailiwick of Guernsey) Law, 2020", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

This Proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

The States' Greffier: Article I – Committee for Home Affairs – The Sexual Offences (Bailiwick of Guernsey) Law, 2020.

670 **The Bailiff:** And I invite the President of the Committee for Home Affairs, Deputy Lowe, to open debate. Deputy Lowe.

Deputy Lowe: Thank you, sir.

675 The Sexual Offences (Bailiwick of Guernsey) Law, 2020 represents the modernisation and reform of legislation in the Bailiwick, providing a clear and coherent framework of sexual offences. The Home Department's policy letter of 10th May 2011 detailed proposals which sought to: modernise and reform sexual offences legislation; and formalise and extend measures already in place to protect the public and reduce the risk posed to vulnerable members of the community.

680 The States approved the recommendations and directed the preparation of appropriate legislation. Work initially focused on the second of these two workstreams, which resulted in 2015 with the implementation of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013.

685 The subsequent focus has been on drafting the new Sexual Offences Law which will provide new substantive legislation to criminalise inappropriate sexual behaviour. This is the Law that this Assembly is considering today.

The Sexual Offences (Bailiwick of Guernsey) Law, 2020 was prepared in consultation with the Sex Offenders Working Group. The group included representatives of St James' Chambers, the

Committee for Education, Sport & Culture, the Children's Convener Office, the Police and the Probation Service, and the Committee for Home Affairs.

690 In drafting the legislation, the Sexual Offences Act 2003 was used as a starting point. The equivalent Scottish sexual offences legislation was also scrutinised.

The working group has been aware of the need to have regard to issues which have arisen as a result of continuing changes since the 2011 policy letter was drafted. It further acknowledged the additional sexual offences which have been introduced in England and Wales and considered
695 whether they should be included in the new Bailiwick legislation.

Following the debate in February this year, the Law now includes identified offences relating to voyeurism and up-skirting, extreme and revenge pornography, grooming, possession of paedophile materials and abusive position of trust. It has always been the intention that this legislation would update, and occasionally translate into English, the current Bailiwick sexual offences. Although the
700 new sexual offences legislation will introduce more targeted offences, Members and the public should be assured that it is not the case that defendants have been able to escape prosecution, as more general offences have been used to ensure the criminal behaviour has been prosecuted.

Society is constantly changing, as are the measures that jurisdictions put in place to protect the most vulnerable in our community. It is essential that this legislation is approved today, as it will represent the Bailiwick's commitment to modernise our outdated legislation and ensure that it is on par with comparative jurisdictions. However, this does not signal an end to this work. The Committee will continue to look at best practice and to learn from other jurisdictions, and will bring forward recommendations to make amendments to the Law in future if necessary.
705

The Committee hopes that the Assembly will show full support to this Law.

710 Thank you, sir.

The Bailiff: Members of the States, there have been two amendments submitted so far. I am minded to take amendment no. 2, which is a tidying-up one, first. If the Law Officers are both present at the moment – Madam Procureur? Mr Comptroller?
715

The Comptroller: Sir, I am present; Madam Procureur is not currently present.

The Bailiff: Would it be your preference then that we defer that now?

720 **The Comptroller:** Sir, that would be my preference and I will speak Madam Procureur, and we will make sure that we are both here later in the course of the debate. Thank you.

The Bailiff: Well, on that basis, Members of the States, I will invite Deputy St Pier, if he wishes to place amendment no. 1, to speak to that amendment, Deputy St Pier.

[Amendment 1](#)

In clause 4(2) of the draft Projet de Loi entitled "Sexual Offences (Bailiwick of Guernsey) Law, 2020" -

(a) in paragraph (f), for ".", substitute ", and", and

(b) insert a new paragraph after paragraph (f) -

"(g) B had voluntarily consumed alcohol or taken a substance which, having regard to when it was consumed or taken, was capable of causing or enabling B to be overpowered, stupefied or otherwise incapable of giving consent (as the case may be) at the time of the relevant act."

725 **Deputy St Pier:** Thank you, sir.

I should begin by advising that in the context of the draft sexual offences legislation before us, it is appropriate to use sexually explicit terms and I am unapologetic that I will do so in this speech, not least because this remains an area of significant social taboo, and the resultant silence and

730 reluctance to talk about the issues openly is ill-serving the very many victims of sexual crime in our community.

I do intend to speak in general debate too, but there is a significant preamble to this speech, to put our amendment in context. I will start by explaining the legal effect of this amendment, and I would ask Her Majesty's Comptroller to raise a point of correction whilst I am speaking, if he feels that my legal analysis is incorrect.

735 The foundation stone of criminal justice is, of course, that you are innocent until proven guilty, and this amendment does not change that. Members will know that if an individual is charged with a crime, it is the prosecution's job to prove beyond a reasonable doubt that the defendant committed the offence; and this amendment does not change that either.

740 In the case of a number of sexual offences, this includes proving that the complainant did not consent to the sexual act committed, and this is known as the 'burden of proof' and it rests with the prosecution. In this draft Law, there are already some exceptional provisions in section 4. For example, if the complainant was threatened with violence or given a so-called date-rape drug, such as Rohypnol, the court will presume that the complainant did not consent, so it will then be up to the defendant to prove that the complainant did consent or it was reasonable for the defendant to believe that the complainant had consented. In other words, the burden of proof on the question of consent in those limited circumstances has been shifted from the prosecution to the defence. All we are seeking to do is to add to those limited circumstances.

745 Now, before going further, I would just like to explain to which offences this applies. If Members turn to page 15 of the draft Projet, section 6 sets out the four offences to which this applies: sections 11, 12, 13 and 14, rape, assault by penetration, sexual assault and sexual coercion. Many of the terms, for example 'sexual', are themselves defined elsewhere in the Law. Rape is the intentional penetration of the vagina, anus or mouth with a penis, so it can only be committed by a man, but the victim can be male or female. Assault by penetration of the vagina, anus or mouth other than with a penis, sexual assault – which is, in essence, sexual touching – or sexual coercion can be committed by a man or woman.

755 Whilst it is true that the vast majority of sexual offences are committed by men, it should be remembered that women do commit them too, and of course many victims are male, whether the perpetrator is male or female. And I say all this because I want Members to get all stereotypes out of their heads, particularly in relation to this amendment, as I know some Members see this amendment as giving licence to drunk girls in short skirts to wrongly accuse poor young men of sexual crimes, saying, 'Boys will just be boys'. I know this because that is the language that has been played back to me.

760 This amendment is as it should be: blind to the age, gender or sexuality of the victim or the defendant. It is just dealing with the fundamental issue of how the question of consent is handled at trial if, as a proven fact, the complainant is incapable of giving consent. My contention – our contention – is simple logical and unequivocal. In the circumstances where the complainant cannot consent, then the responsibility must lie with the defendant to *prove* consent was given or that it was reasonable for the defendant to believe that it had been given under normal circumstances.

770 Sir, I met with the Committee *for* Home Affairs on 30th March in an attempt to persuade them to support this amendment and they by a majority refused to do so – and I take this opportunity also to apologise to Deputy Le Pelley, because I, through social media over the weekend, suggested that he was a part of that opposition, which was clearly not correct. He had reserved his position, so I apologise to Deputy Le Pelley.

775 There is still time for the Committee to withdraw their opposition and I hope that they will seriously consider doing so before this debate comes to the vote, because, win or lose, they will be on the wrong side of history. Their argument in essence is that the draft Law should on this point follow the law in England and Wales, the main statute being the Sexual Offences Act 2003, as the legal precedents and jurisprudence in England and Wales flow from that –

I will give way, sir, to a point of correction.

780

The Bailiff: Yes, Deputy Leadbeater, you have a point a correction.

Deputy Leadbeater: Yes sir. I do not think the Committee's main opposition to this amendment is that we need to follow the line of the UK. Certainly from my point of view, my opposition to this amendment is that I can see potential for it to be abused.

Now, I am not going to say that if I cannot be convinced in debate that I would not support it; but at this point it is unclear how that circle will be squared.

Thank you, sir.

The Bailiff: Deputy St Pier, I think you can just continue there. Thank you.

Deputy St Pier: Yes, that is fine. I do accept, sir, that it may not have been the Committee's main argument, but certainly it was *an* argument that was used and presented to me, that there was a preference to follow the jurisprudence of England and Wales because it could then be more readily applied in our own courts. What we want is what is right to protect the victims of sexual violence in Guernsey and we can, as a political body, make a legitimate policy choice to depart from a 20-year-old statute in England and what flows from that.

They also did express concern, and Deputy Leadbeater has highlighted it there, that the amendment could allow some individuals to unreasonably make false accusations. That is what I want to now deal with at some length, hopefully to convince Deputy Leadbeater and others that it is so fundamentally flawed as an argument that it must be robustly challenged and dismantled, any kind of sound basis for opposing this amendment, I will do this in two ways: first by presenting the statistics available on sexual crimes; and then by providing real life experiences of sexual crime. I am going to give you a barrage of statistics from a variety of sources and then try and settle on some of those that could be applied in the context.

The Sexual Abuse and Violence in Ireland Report from 2002 reported 42% of women and 28% of men reported some form of sexual abuse or assault in their lifetime, with one in six men reporting sexual contact abuse in childhood – and that actually is quite close to the UK's Office of National Statistics reporting 11% of boys under 16 experiencing some form of sexual abuse. The UK's Government Equality Office reported 40% women and 18% of men experiencing unwanted sexual behaviour at work.

In the UK it is estimated that 20% of women – 20%; one in five – and 4% of men have experienced some kind of sexual assault since the age of 16. And there is no reason to believe that Guernsey would be significantly different from the UK in this respect. So that would translate into 5,300 women and 1,100 men in Guernsey who have experienced some kind of sexual assault since the age of 16, on top of the thousands who would have experienced abuse in childhood.

When it comes to rape the National Crime Survey has estimated that are 90,000 victims a year, including 12,000 men. That is to say 0.5% of women and 0.1% of men. In a local context, that would mean about 125 women a year and about 20 men.

It is estimated that only 17% of female rapes and only 4% of male rates are reported in the UK. In 2015, our own independent Domestic Violence Advisory Service said 38% of clients have reported sexual violence, and in the same year there were nine officially reported rapes in Guernsey, which is actually the right sort of ballpark, working to the UK's reporting percentages. So overall, only 1.7% of UK rapes are prosecuted and of those, only 58% result in a conviction, and conviction rates are falling. So for every 1,000 rapes, only 13 perpetrators will be punished. Or to put it another way, 987 victims will not see justice. It is no comfort that things are even worse in the US, where only six out of 1,000 perpetrators will be punished.

Now, Guernsey's conviction rates may well be higher than the UK's because of the Jurat rather than the jury system. But even if we hypothetically imagine that our prosecution and conviction rates are five times better than the UK's, that would still leave 96.5% of victims with no justice.

Sir, what I am about to say is shocking but it is a tragic truth that cannot be ignored or unsaid any longer, because we have to do something about it. If you rape, statistically you will get away

with it. We need to wake up to the reality that when it comes to rape the system is not biased against men. It actually allows them to rape with near impunity. When 98.7% of victims do not see justice, there is no other conclusion.

But those are those are just statistics and percentages, and statistics as we know are just people with the tears washed away. So let's look at real life experiences and in my 53 years I have collected eight accounts of sexual offences; actually I have received a number more from Guernsey's public since Sunday, and I am certain that after this debate I am going to be contacted by members of the public with a whole lot more.

Where I can, I have not ascribed gender because it is entirely relevant. When I was 13, a friend confided in me that he had been play-fighting with a boy four years older than him. In the fight, he had, perhaps unsurprisingly, lost to the larger, older boy who had pinned him to the ground. The older boy put his penis in his mouth. We never spoke about it again. My friend had told no one and that of course would be an offence of rape under section 11 of the legislation in front of us.

When I was 16, someone I know was subject to an attempted rape. No one was told, and that would be an offence of attempted rape, under section 11. I did not join the dots.

A student at school was expelled, allegedly for compelling younger pupils to give oral sex. I would like to think that victims receive appropriate counselling, but I fear they would not have done. The authorities were not involved. The matter was forgotten. That would be an offence of rape under section 11 and I did not join the dots.

In my late teens, a friend told me they had been assaulted by a stranger in a public toilet. We never spoke about that again. No one was ever prosecuted, but that would be an offence under section 13, sexual assault and I did not join the dots.

In my early 20s, a girlfriend confided in me that she had been repeatedly raped in a previous relationship. She had not reported this and that would be an offence under section 11. I still did not join the dots.

In my 30s, I learned that a friend had been abused in childhood. It had taken years to be able to tell family. No one was held to account. I did not join the dots.

In my 40s, someone confided that their first sexual experience of 18 had been rape. A couple of years later their housemate had had the same experience. No reports in either case were made and I finally joined the dots.

Up to that point the previous six had been unrelated uncorrelated events and then the penny dropped. Societies like ours have had laws such as that which is before us today, which are designed to prevent and deter sexual offences, protect victims and secure appropriate punishment for the perpetrators. And yet in 100% of the sexual offences within my personal knowledge, the victims have not received any justice and the white heat of my anger gave way to a determination to use the enormous privilege of my public office as a States Deputy to speak out on the matter of sexual violence and I have done so in a couple of speeches in recent years; and importantly also to speak up for the thousands of victims of sexual offences who, it had become so obvious, live perhaps ironically, in a non-consensual co-conspiracy of silence with the perpetrators.

Why? Why the silence? I want to begin with a testimony from a victim, one of the majority who did not report: 'I don't regret not reporting. I know I wasn't strong enough to cope with the process and I am awed by those who are, but I wish I hadn't lied to others and myself and I hadn't slammed shut doors that had been gently opened to me. I wish I'd had therapy earlier because it has lessened the panic attacks and softened the guilt because even though I know what happened, knowing I couldn't have convinced a jury makes me feel on some level that it was my fault. I know from messages the perpetrator sent me much later that he knew he had done wrong. But now I wish I'd let him know I knew it too. He had taken so much from me – my confidence, my ability to trust in my late 20s and early 30s, as it turned out – but at the time it felt that letting him know would have been surrendering my final gram of dignity. I needed to show us both that he hadn't quite destroyed me.'

The victim may or may not be physically damaged but they will be psychologically traumatised. They may feel disgusted, ashamed, embarrassed or humiliated. That, sir, is the reasons these

885 offences go unreported. Dreading whether people might see them and treat them differently or
pity them or respect them less – those fears, sir, real or imagined, are the reasons these defences
go unreported. Is the victim making it up or is the victim exaggerating it? Those questions, sir, are
the reasons these offences go unreported.

For men, there is an additional barrier to reporting offences against them. Our culture teaches
890 us that men should be strong and should not themselves become victims and if assaulted by a man,
straight men may think others will assume they are gay or bisexual, and gay men may fear society's
conscious or unconscious bias, which says 'if he's gay, was he asking for it?' or 'If he's gay, it wouldn't
be so bad for him as it would for a straight man because that's what gay men do anyway, isn't it?'
Those attitudes, sir, are the reasons these offences go unreported.

895 Though I will not embarrass Members by asking them to put up their hands to admit if any of
those questions have ever crossed their minds on hearing about a sexual offence, because if no
hands went up I would not believe it anyway. Why not? Because these are the very questions I am
embarrassed to admit I have asked myself in the past when I have heard accounts of sexual assault,
not only in the media, but including some of the anecdotes I myself will give you.

900 Why would anyone be so stupid as to allow themselves to get that drunk? Why did they invite
them home? Those questions, sir, are the reasons these offences go unreported.

I am terribly, terribly ashamed to admit now that when that girlfriend told me she had been
repeatedly raped, I understood the words and I was deeply shocked, but in my head I questioned
whether she might have been exaggerating. 'Surely rapes don't happen within relationships, do
905 they?' I did not know, then, that in 97% of the calls to the National Rape Crisis line, the caller knew
or was in a relationship with the perpetrator. 'How can rapes happen repeatedly? Why didn't they
just get the hell out of that kind of relationship if it was so bad? That is what rational people do,
isn't it?' That, sir – those attitudes – is why these offences go unreported.

The woman in Cyprus who was jailed for accusing 12 men of rape and sexual assault after she
910 had had consensual sex with one, and the women imprisoned in Dubai after making a rape
accusation against two men – both these high profile cases and many others will understandably
be reasons, sir, why these offences go unreported.

In the 21st century, Internet trolls are yet another reason that these offences go unreported and
if a complainant does report an offence they may have to subject themselves to a very intrusive
915 physical examination at a time when they just want to feel clean and then they will have to retell
their story again and again and again, and each time they retell their story they will have to think
about it again, and each time they think about it again they can feel it, smell it, hear it all again and
again and again, and something that lasted seconds or minutes is now lasting hours, days and
weeks. Nobody wants that. They just want to forget it ever happened and just move on with their
920 lives. That, sir, is why these offences go unreported.

And the prosecution and the defence will want to see and interrogate every aspect of the
complainant's digital footprint, looking for evidence to prove their case, by trawling through their
devices and every social media post, text message, photo and dating app use. Some have described
that experience – and I use their language, not mine – as digital rape. Further massive intrusion of
925 their privacy and that, sir, is why these offences go unreported.

Consent is a simple and clear concept, but as law enforcement and the prosecutors will tell you,
it is much harder to apply in practice. There may be little circumstantial evidence available to prove
either the presence or absence of consent, particularly when the parties are known to each other,
as they are in over 90% of cases, in which event the case will often revolve around the victim's word
930 against the defendant's. This is, sir, the reason why these offences go unreported, and if they are
reported they may not be prosecuted, and if they are prosecuted they may not result in conviction.
And if the victim does report an offence and they do re-tell their story and the perpetrator is
prosecuted, having retold the story this time very courageously in public, they will be subject to
cross-examination by defence counsel. Counsel will, just doing their job, seek to take the account
935 part fact by fact. Counsel will question their integrity. Counsel may even be allowed to question the

most intimate details of their sexual history and preferences, which the victim will be expected to share with the court, as well as their own loved ones sitting supportively in the public gallery.

940 I received this account this week from a member of the public: 'I was 13 when I was sexually assaulted by a 21-year-old at a house party. One thing that always stuck with me with the court was them constantly asking me how much I had to drink, as in their eyes that was his only defence. I had two glasses of Smirnoff Ice and they kept pushing that I was drunk and that I may have forgotten that I consented.' She was 13 – not of an age to give consent – and that was her experience at trial. And that, sir, is why these offences go unreported.

945 A couple of years ago, the Domestic Abuse Strategy brought over a psychotherapist, Zoe Lodrick, to talk about the neuroscience of the victims of sexual assault, and I was lucky enough to attend, along with Deputy Graham and I think one or two others. Zoe explained that during a sexual assault, the brain's cortex – the part of the brain that controls logic and distinguishes us from others in the animal kingdom; the part of the brain that tells all of us, that is telling you right now, that if someone tried to sexually assault you, you would not let them, you would scream for help or kick or punch or bite – that part of the brain is not in control because the amygdala – the more primitive part of the brain which functions simply to react instinctively to ensure survival – is in control. Survival, the amygdala tells you, in these particular circumstances is not best assured by fighting or resisting as that may make the threat worse, so the passive defences of freeze or flop are often deployed.

950 Here is one victim's account from a rape: 'I felt petrified. I remained still, passive, incapable of reacting.' Here is another about a sexual assault: 'I felt unable to protest. It is very hard to know how to react. I felt like I was there quite a long time but in reality minutes, I'd say.' And one from someone who has contacted me since Sunday: 'a house party, a guy came in. I knew no one could hear me. I couldn't scream. I pretended to be asleep. He raped me. I lay there and pretended to be asleep.'

955 This means there may be no physical evidence of resistance, cuts and bruises, and defence counsel will ask the complainant and tell the court that if the complainant did not resist, surely that is evidence of the fact that the complainant had in fact consented. And that, sir, is one of the reasons why if the offences are reported so few result in conviction of the defendant.

960 And finally, victim-blaming is why offences are not reported. I gave these statistics before during a Policy and Resource Plan debate: one in two boys and one in three girls believe that there are some circumstances when it is okay to hit a woman or force her to have sex. But those are just children and the adults would know better, surely. The Fawcett Society asked 8,000 if a woman was to blame if she went out at night wearing a short skirt, got drunk and was sexually assaulted. 40% of men and 33% of women said there was total or partial blame. I cannot think of another crime where we, society, is so ready to blame the victim and I find that abhorrent and I guess along with 970 60% men and 67% of women who responded to that Fawcett Society survey.

That is not, as I have been told, left-wing, virtue-signalling, extreme feminism. It is *our* job as community leaders and policy makers ... [*A bell rings.*] Oh, forgive the clock, sir.

It is our job as community leaders and policy makers to stand up and shout, 'No, that is not acceptable. That is not who we are. We are better than this. The culture must change.'

975 And so this amendment is a first tiny step towards us changing that culture. Section 3 provides that a person consents if they agree by choice and has the freedom and capacity to make a choice. Someone who is incapacitated by drugs or alcohol would not have that capacity. This amendment would simply add to the circumstances in which the court will make presumptions on the basis of the evidence as it has been heard. It will still be open to the defendant to rebut that presumption by giving the court other evidence.

980 As the proposed law stands at the moment, if a victim goes into a bar and has something slipped into their drink that renders them incapable of consenting under section 3, the court will presume that consent was not given and the defendant did not reasonably believe the complainant consented. So the defendant will need to present other evidence to rebut that presumption. But if the same victim goes into the same bar and, of their own volition, has a number of drinks, rendering them just as equally incapable of consenting under section 3, then the prosecution will need to prove that the complainant was incapable of consent, did not consent and it was not reasonable

990 for the defendant to believe that the complainant had consented. This is victim-blaming, pure and simple. It is saying to the victim, 'If you go and get drunk, you are fair game. You need to keep yourself safe because if you don't and something happens to you, it will be your job to prove you did not consent.' Whilst it does seem to align with the 40% of respondents in the Fawcett Society's survey, I find it abhorrent and unconscionable.

995 Victim-blaming is all about placing unreasonable expectations to act in a certain way to keep yourself safe, whilst expectations are rarely placed on the perpetrator of the feelings of others above their own. If this amendment causes just a few perpetrators to stop, put the feelings of the victim above their own and question whether the victim is capable of consenting, it will have achieved its objective.

1000 Our amendment is simple. It says it really should not and actually it does not matter how a victim got into a state that meant they could not consent. The fact is they could not give consent and whatever the reason for that, the burden of disproving the presumption that consent was not given must lie with the defendant.

1005 Let's deal with the elephant in the room: the risk of false accusations. The risk that perfectly respectable young kids will have their lives ruined by this amendment. We need to keep in mind that anyone who wakes up regretting their decision will need to jump over multiple hurdles. They will need to be prepared to put themselves through the whole law enforcement and judicial system. They will need to go to the police station. They may need to submit themselves to a medical examination. They will need to hand over their digital footprint. They will need to be willing to put themselves in the witness box and submit themselves to potentially hours of intimate cross-examination. Does any Member seriously believe that there is a substantial risk that this amendment alone could lead to a spike in false accusations from people willing to go that far because of regret?

1010 Yes, in the national media, one or two cases do come to light each year of false accusation but that is the point: they are so rare that they are by definition newsworthy. Now clearly, for any of us, our families or friends to be falsely accused of any crime, but especially a sexual one, would be horrendous, and there are and will no doubt continue to be cases here where individuals will perjure themselves and they are rightly prosecuted and we have a law to deal with that. The very few men who are destroyed by false allegations are of course easily noticed. The very many victims whose lives are torn apart by sexual violence are not.

1020 It is estimated that one in 200, 0.5% of reports of sexual offence are false. But of course, we need to keep in mind that the number of reports, as we have said, is of course a tiny fraction of the overall number of offences. So it is understandable that the Office of National Statistics is estimating that a man stands a 0.0002% chance of being the victim of false accusation; or put it the other way round, a man spends a 99.9998% chance of not being the victim of false accusation. The reality is that that statistic of 0.0002% of a false accusation is entirely believable. And even hypothetically, if that risk doubled to 0.0004% as a direct result of this amendment, speaking personally as a man with a 99.9996% chance of not being subject to false accusation, I would be prepared to accept that increased risk to help some – just some – of the 98.7% of victims who never see justice.

1025 Our duty today is clear. It is to say, that statistic is no longer acceptable in our society. Behind it lie victims and we owe it to each of you and those that will follow. We are determined to help ensure more justice in the future.

1030 Sir, I asked the Law Officers to provide me with some comment on the impact of this amendment and Her Majesty's Procurer advised, as she always does, fairly. I am quoting now:

It is not clear, to be honest, how the amendment will work in practice so it will not necessarily make prosecutions easier and we will be an unknown territory. As you may be aware, our criminal sexual offences law is largely based on English legal principles and there is no similar precedent of that jurisdiction to usefully consider. Ultimately matters will turn on the individual facts of the case as is usual and the prosecution will bear the burden of proof in relation to proving any offence before the courts.

Sir, this amendment is one small step to begin a long journey to change culture, no more, and I implore Members to support this amendment.

Thank you, sir.

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The Bailiff: Deputy de Sausmarez, do you formally second the amendment?

Deputy de Sausmarez: I certainly do, sir.

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The Bailiff: Well, Members of the States, I think that is a good point – can I just remind Members that the chat function is not meant for comments – for us just to break as a mid-morning break and we will resume at 11.15, please, Members.

*The Assembly adjourned at 11.08 a.m.
and resumed its sitting at 11.15 a.m.*

The Sexual Offences (Bailiwick of Guernsey) Law, 2020 – Debate continued

The Bailiff: Thank you, Members of the States.

I will call Deputy Ferbrache to speak next.

1045

Deputy Ferbrache: Thank you very much, sir.

May I say, I thought Deputy St Pier's speech was excellent, it was sincere, clearly an emotional speech and was punctuated with many sentiments that I absolutely agree with. But sadly, I have to come to a different conclusion because in a court of law the most important concept is one of justice. The most important concept of law is that you have a balanced system and administration of justice.

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One of the things I will be coming to in my speech in due course is what I regard as an absolute abomination in our legal system, which is an injustice which I have mentioned many times before. I have now appeared, in the 39 years and three months that I have been a Guernsey advocate, before seven Bailiffs; I have appeared before seven Deputy Bailiffs, and I am sure the current Deputy Bailiff looks forward to the pleasure of me appearing before her shortly. I have appeared before a Judge of the Royal Court. I have appeared before Lieutenant Bailiffs. I have appeared before the Court of Appeal. I have spent hundreds and hundreds of days in courtrooms.

1055

Before I came back to Guernsey – came back to my community, which I value more than any other community in the world – I qualified as a barrister the day after my 21st birthday and I spent the first seven a half years or so of my legal professional career in courts in London and in the East Midlands. I was involved as a prosecuting lawyer in either carrying out the prosecutions myself or being junior counsel, junior adviser on very many serious sexual cases. Deputy St Pier said he would take the risk – the infinitesimal risk – of being falsely accused so that the victims could be properly heard. I am just as concerned as Deputy St Pier about the victim of any sexual crime. I am just as concerned that people do not feel able to and again I agree with Deputy St Pier about reporting various sexual allegations.

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Let me give you two practical examples in relation to two of the points that Deputy St Pier has raised. I can remember a case that I was involved in prosecuting in Nottinghamshire: a rape case – a very awful rape case on the face of it. I was absolutely convinced, as a prosecuting lawyer, that the defendant was guilty. I thought he was a vile individual. I thought he should be cast into jail for a very long time. I felt considerable sympathy for the woman. The man had lost his job. The sexual encounters had taken place outside of his marriage. He lost his wife. He lost his home. He spent nine months in custody. We were just shortly away from a trial – a trial in respect of which, if he had been convicted, he would have gone to jail for a very long time and if he had been rightly convicted he justifiably deserved such a long sentence.

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1080 Then the detective inspector who had been preparing the case file, because the Police prepared the files in those days, all those years ago, phoned me up at the weekend and said, 'Peter, I need to speak to you.' I said, 'Why? What's it about? I'm preparing this case with so-and-so QC, it's a very serious case, we want to get rid of it. I don't know why you're bothering.' He said, 'The *victim* has just contacted me. She has said these allegations are made up.'

1085 He said, 'I got her sat down with ... ' and he gave the name of two women police officers. 'I got her sat down with two women police officers. I then called in a social worker. I then called in ... ' some other, I think a medical professional, I can't remember the other one, it was such a long time ago. They were convinced that this girl, she admitted, that she made up these allegations. That man's life was absolutely ruined. The case was dropped at the very last minute. I was convinced, as I say, until I have a conversation with the police officer, and then I spoke later with the various people to whom he had spoken and to whom the *alleged* victim, as she then became – from victim to alleged victim – that this man was guilty. I had no doubt about it. You are not supposed to come to that conclusion as a prosecutor, but sadly because of my nature and because of the background I come from, I do take a view, and I took the view on many occasions that people were guilty of offences and it was my job, within the bounds of reasons when I prosecute cases, to do the best I could to ensure that the victim got their justice and the defendant got his just desserts.

1090 So let me tell you that. So Deputy St Pier may be one of the point zero, zero ... I can't remember how many zeros there were, before he came to that conclusion to take that risk. I am not sure he actually would if he was falsely accused. It is easy to say those words; it is different when you are actually so accused.

1100 Let me also ... He said of course about the ages, and he is 53 years, of people and he described them and I fully accept them, of people who have obviously suffered serious sexual abuse, the type of which should have been reported, the type of which should be visited again, with lengthy jail sentences. Two people who are *very* close to me and I have known for a very long time were the subject of serious sexual abuse. One: a young six-year-old girl went to play in a park with her friends, one summer's night. The neighbour who lived directly across the road, a man probably in his 30s or 40s at that time, seriously sexually assaulted her. She has carried those memories every single day, every single night, every single minute, from that time till this, and she will carry those memories until the minute that she dies.

1105 I am just as aware as Deputy St Pier of people that have suffered that kind of sexual abhorrence – because it is abhorrent – and I want everybody who is rightly convicted of sexual offences, particularly rape, because Deputy St Pier rightly took Members of the States to the instances in section 6 of the proposed Law, whereby consent is necessary. In my view, they are all serious but I will just mention rape in due course as well, because that is the one, again, that Deputy St Pier quite rightly talked about at some length in his speech.

1115 The other one was a child: her father, from a very young age, sexually abused her. Now, who could she talk to? There was nobody she could talk to. Who could she complain to? There was nobody that she could complain to. Who could she look to? The person who should have supported her, the person that she had every right to expect to protect her, to love her in a proper way, to nourish her and to bring forward her future, ruined her. And when she asked as a young child, 'Why are you doing this to me, Daddy?' he said, 'So you'll know what happens to you when you grow up and you're a big girl.'

1120 Now, Deputy St Pier I think is probably more liberal than I am, in some ways, because I would actually like to see that person taken out and executed. I am sorry but that is what I would like to see done. So do not take my remarks as anything other than a realisation of what has happened. Deputy St Pier is absolutely right: lots of victims – many thousands each year of victims - in the UK and elsewhere do not report sexual crimes. He is also right that very many people – and again, it is mainly men; it is not always men who commit these offences, but overwhelmingly it is – get away with it when they *should not get away* with it. They should go to jail, they should suffer all that social critique and the ruination of their lives that they have caused to others. Because *anybody* who has suffered sexual abuse, whether there is physical injury or not – and that is bad enough, of course, if

1130 there is physical injury – has a mental scar for the rest of their lives. They carry that with them until the moment that they can no longer consciously think. So I fully agree with him there.

1135 But as I say, what I am concerned about is the issue of justice. Where I think Deputy St Pier perhaps is a little more unworldly than me is when he said that he could not accept or he did not know that lots of sexual offences were taking place in relationships. Well, I have known that. I have known that from personal experience, to which I have already referred. I have known that from my professional life over the last 48 years, it will be, on 28th July – the day after my 69th birthday when I will have been a litigation lawyer who has appeared in court hundreds and hundreds of times and who has defended people with absolute vigour, even when I have not believed them, because it is my job to put forward their case as best I can, within the proper rules of propriety.

1140 But what concerns me in relation to this amendment is that I think Deputy Lowe – it is no criticism of her ... It has taken so, so long for this Sexual Offences Law to be promulgated ... 2011 she said was the initial starting point and we are now halfway through 2020. But if one looks at the amendment, the St Pier-de Sausmarez amendment and has open the other provisions of section 4 of the Law and considers those, then it is significantly different.

1145 Let me say also, I am in the same camp as Deputy St Pier. The fact that a young girl or any girl might go out in a short skirt and may be – to use the *ignorant* words of some people – ‘flaunting herself’ is absolutely no excuse for her not to be treated as a decent normal human being. The fact that you may go out in that way is your choice. You have absolute right to do so. And even – and I do not mean this disrespectfully – even a prostitute has a right not to be raped, not to be sexually assaulted. She has every right to be treated with complete respect. So again, there is no ... ‘Oh well, boys will be boys’ was another phrase that Deputy St Pier used earlier in his speech, on the basis of saying that attitude is unacceptable. I agree with him – completely unacceptable; abjectly unacceptable. But we have got to have regard to the concept of justice.

1150 I said I was going to refer, before I side-tracked myself, in relation to provisions of section 4(2). Now I am going to come back to the provisions of section 3, the meaning of consent, in due course but section 4(2) ... I want to talk about shifting the burden of proof. What it actually says is ‘evidential presumptions about consent’, rather than ‘burden of proof’. But in practical terms that is probably not going to make any difference.

1160 When the burden of proof is on the prosecution, as it is in almost every instance in criminal law, cases have to be proved beyond reasonable doubt. That means that the tribunal that is considering them has to be sure of the guilt of the accused. When the burden of proof is shifted to the defence, the standard of proof is generally the civil standard, which is on a balance of probability, i.e. which is more likely than not. Is it more likely than not that this set of circumstances occurred rather than that? It is not only in relation to sexual cases; that burden is shifted in other instances.

1165 There is something called the ‘negative averment rule’. For example, if you drive your car on a highway and a policeman stops you, because you were speeding or whatever, and he asks you to produce your insurance certificate, then if you are summoned before the court for no insurance, the burden shifts to you, once the police have proved you were driving the car, etc. on a public road, to prove that you have an insurance policy to cover you for driving the car on the road at the time the police officer stopped you.

1170 Now, if we look at section 4(2) of the proposed Law, it gives at the moment six examples of where the evidential burden would shift, and I think any sensible person would look at those and say absolutely, those are cases where the evidential burden should shift to an accused person. The first one is that the person at the time of the relevant act used violence against B or caused B – that is the victim – to fear that immediate violence would be used.

1175 Well, of course, if somebody says, ‘If you don’t let me have sex, I am going to punch you’, of course the burden should shift. Indeed, I cannot think there can be any argument that the victim ever could be said to have consented. Or even if the person does not actually utter the words, ‘If you don’t let to have sex, I am going to assault you’ but the person raises their fist and then the victim fears that she is going to be raped and has sex when she otherwise would not have had sex, 1180 of course the burden should shift.

The next one is a person who was:

at the time of the relevant act or immediately before it began, causing B to fear that violence was being used, or that immediate violence would be used ...

Again, the same principle.

(c) B was, and A was not, unlawfully detained at the time ...

(d) B was asleep or unconscious ...

(e) because of B's disability (whether permanent or temporary), B would not have been able at the time of the relevant act to communicate to A whether B consented ...

And:

(f) any person had administered to or caused to be taken by B, without B's consent, a substance –

1185 – in other words, they were slipped a rape drug, for example – then that person would not be deemed to have consented.

Now, consent itself is defined under section 3 of the proposed Law. It says:

For the purposes of this Part, a person consents if that person -

(a) agrees by choice, and

(b) has the freedom and capacity to make that choice.

That statement you slip into section 4 and section 5, which are not concerned with.

1190 Now, rape is defined under section 11 – and I appreciate this issue of consent does not apply just to rape, but let me just say what rape is. Rape is defined as:

A person ("A") commits an offence if –

(a) A intentionally penetrates the vagina, anus or mouth of another person ("B") with A's penis,

(b) B does not consent to the penetration, and

(c) A does not reasonably believe that B consents.

So you have got to put all that into the equation.

1195 Now, what this amendment says, if successful – and I think it probably will be successful – bearing in mind the English law – and I do not need to be told that we should not always follow English law because as I say, I am British, but I am not English; I am a Guernsey person and our judicial system in any event, we have got pronouncements from the Court of Appeal that Guernsey is entitled to have its own sentencing policy in relation to sentencing matters. We are a separate jurisdiction when it comes to criminal matters. We are entitled to make our own laws. For example, in relation to sentencing policy, our sentencing policy in relation to drugs is much stricter than it is in other jurisdictions. I support that. Our sentencing policy in relation to alcohol and sentencing people to jail is also stricter. I do not necessarily support that, but nevertheless, those are sentencing considerations and we are entitled to have them.

1200 But what Deputy St Pier's amendment says is that B – the alleged victim ... and it would be nice sometimes if we could just have 'the alleged victim' because although there are many victims, when you come to court it has started creeping into it that at the outset somebody is called the victim. 1205 Until the card has been concluded, they are the complainant. But anyway, there are lots and lots and lots of victims who have suffered as a result of sexual acts who are victims, even though the case, for the reasons that Deputy St Pier and I have explained, will never come within a million miles of a court.

But this is:

B had voluntarily consumed alcohol or taken a substance which, having regard to when it was consumed or taken, was capable of causing or enabling B to be overpowered, stupefied or otherwise incapable of giving consent ... at the time of the relevant act.

1210 Now, what does that mean? Okay, the person shouldn't be penalised because she had voluntarily had eight drinks; but that clearly means that she could be because of the amount she had had to drink, incapable, if I can use that word, of giving consent – perhaps. But how is the male? Because as I say, almost overwhelmingly A is the male. How is he going to know that?

1215 Two 25-year-olds go out, they meet up, they go back to a bedroom, they have sexual intercourse. He has had a lot to drink; she has had a lot to drink. If he were to use the fact that she had had a lot to drink and he suspected that she did not want sex and he had sex with her, he deserves to be convicted. If, though, he believed that she had consented and if ... Everybody's sexual experience is different. I have no absolutely no intention of saying what mine might or might not be, but everybody's sexual experience is different. But most people do not actually say, when they are in that kind of situation, 'Is it all right if we have sex?' That is not the way that it generally happens. I am sure that some people do that. I am sure it may have happened in people's lives, but that is not the general way that it happens.

1220 So the sexual act takes place. Next day, the 25-year-old, who has got a boyfriend, regrets it. She goes to the police station. 'I had eight gin and tonics last night. I went back to Bill's bedroom. We had sexual intercourse. I didn't tell him I consented. He should have known that my will was overpowered, stupefied, or I was otherwise incapable of giving consent because I had a lot to drink.'

1225 The onus then – and bearing the advice that Deputy St Pier said he had received from the Law Officers, because this is untrodden ground – but my view, as a lawyer with considerable experience in this field, would be that the burden would shift back to the defendant. How does he discharge it? As Deputy St Pier says, there are very few ... In most cases where these horrible, *horrible* offences take place, there are no witnesses. There were very few that there are. So A's word against B. She says what she says. He says what he says. The court then has to resolve that burden. Let us say the court is 50/50. In other words, he has not discharged the burden which is on him on a balance of probability, or evidential burden, or however else it is going to be explained. Assuming all the other elements are not disputed, there has been sexual intercourse etc., the court would then have to convict him. They would have to convict him because it is 50/50 and it was not 51/49. He would then go to jail, as any person rightfully convicted should go to jail for a sexual offence of this nature. His life would be ruined – on a basis that the court was not really sure one way or the other. This is an entirely different context to the other provisions that I have said.

1230 I do not speak as a paper lawyer. I do not speak as a professor at a university that has written lots of theses on legal matters. I sit as a lawyer that has been at the coalface on both sides of these types of things for nearly 50 years, and I have sat down with people from all social groupings, who have been charged with all kinds of offences. As I say a number of them were sexual offences and everybody wants the book thrown at the potential defendant, or the actual defendant. Everybody wants it thrown – until it is his brother, her brother, her husband, her son, their friend. And then the circle switches.

1240 Deputy St Pier has given his 99.9% recurring statistics. I will give mine: it is 100% when it is in those situations. I have had people sit in my various rooms; listening, it is 100% that that changes. One hundred percent. I have never had an example in all my experience, which I would have to respectfully say – and I do not mean to be immodest, because I am just saying from practical experience – is considerable in this field. It has always been the same.

1245 Now, I turn to other aspects of our criminal justice system. We have got an Appeal Law, which in my view is an abomination. It goes back to the time of Edward VII. It goes back to 1907, because what happened was that our Court of Appeal Law of 1961 was based on that statute. That Court of Appeal Law came into force in 1964 and section 25 of that Law reads as follows – and the same test is applied on an appeal against eviction from the Magistrate's Court to the Royal Court. Section 25(1) of the Court of Appeal Law says this:

The Court of Appeal on any such appeal against conviction

– that is an appeal in criminal matters –

shall allow the appeal if it thinks that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice ...

1260 So if the judge misdirects the Jurats, for example, in Guernsey and it is a serious misdirection ... because the court can correct it, because there is a proviso under section 25(1), which says that:

the Court of Appeal may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

1265 It can do so. But if the judge were to say – and I have never known a judge do this, because all our judges, and I mean this most sincerely, are competent and have done a good job in the 38 to 39 years that I have been a lawyer dealing with civil and criminal cases. They have got a set of directions, they give them. I have never known a judge in a sexual case in my experience misdirect the Jurats, but of course it can happen. So that is very rare.

1270 So you come back to this word ‘unreasonable’. That has got a very high bar, when you look at the judicial cases. Successful appeals, except when there has been a clear error of law, from the Magistrate’s Court to the Royal Court, and from the Royal Court to the Court of Appeal in criminal cases are very, very rare in Guernsey. That is because of our Law is still current in 2020, compared with the Appeal Law which they changed in England in 1968 by the Criminal Appeal Act.

1275 Now, this was highlighted by our Court of Appeal as far back as January 2003. In fact, it was highlighted before then, but there is a judgment of the Court of Appeal, in the *Law Officers of the Crown v. Guest*, which goes back to 9th January 2003, and the judgment of the court was given by a very distinguished jurist, Sir Christopher Clarke, eminent practitioner; and the other two members of the court were also eminent. Now, what Mrs Guest had been charged with, in the Magistrate’s Court ... She had been charged with other offences from which she was acquitted, but she was charged that between certain dates in 2001, in managing a pub that has now closed, called The Helmsman, which has a certain history in Guernsey, to those of us who are local folk, she knowingly suffered the smoking of cannabis at the pub. She was convicted and sentenced by the Magistrate
1280 to six weeks in jail. She appealed to the Royal Court; that was dismissed. She appeared to the Court of Appeal; they dismissed it. They said some interesting things in connection with that appeal – and those are still current in June 2020, because there have been no changes made between January 2003 and now. After reciting our provision, section 25, which I have already read to you, the learned judge who gave the judgment in the Court of Appeal, said this:

The position in England and Wales is now different. It is governed by section 2(1) of the Criminal Appeal Act 1968 (as amended), under which (inter alia) the verdict of a jury may be set aside on the ground that under all the circumstances of the case it is unsafe. As this Court indicated in *Ogier and Le Noury* the test in Guernsey is not as wide as is the current test in England and Wales. This Court is limited to the more confined terms of Article 25 (1) of the 1961 Law. Usually this Court is considering the verdicts of the Jurats in the Royal Court.

1285 Now, let me just pause there and I will continue reading from there. I have appeared before, from 1981 until now ... I don’t know how many Jurats it is. I would say many – all of them; many of them, and I would never ever question their integrity. Every single Jurat is a person of integrity, a person of intelligence and is striving to do what is right. But – and Deputy St Pier touched upon this
1290 in his speech – when you are a lawyer, when you are a practical lawyer doing a practical job advising people about the practical circumstances, you have got to advise them. And I, as somebody who has experienced juries in the UK and experienced the Jurat system in Guernsey, say to people who are charged with offences before the Jurats, there is a far higher likelihood – not because there is any fault in their system – a far higher likelihood of you being convicted in a Guernsey criminal court
1295 than there is in an English court, because the Jurats are a permanent body. They are treated as a jury. Their job is that of a jury in a criminal case, but they sit regularly, and they sit sometimes for many years. So your chances of being acquitted in a Guernsey court, whether you like the practicalities or not – and as I say, that is no criticism of our judicial system, which I think by and

1300 large is excellent. The calibre of the seven Bailiffs, the calibre of the seven Deputy Bailiffs – and I am sure the eighth, I haven't appeared before her yet, as I have already said – the calibre of the Jurats that we have here is beyond question. There is no criticism of any of them at all. I am just speaking about as the system actually operates.

But I go back to my citation from the Guest case – as I say, I will go back to paragraph 12, which is what I was reading from:

12. Usually this Court is considering the verdicts of the Jurats in the Royal Court. Such verdicts are not "speaking" verdicts, and it is not, therefore, possible to discern by what process of reasoning, or the lack of it, the Jurats have reached their conclusions.

1305 Let me pause there also. In England, to be convicted by a jury, it either has to be unanimous or it can, after the judge has given a further direction, be by a majority – 10 to 2, 9 to 2, whatever it may be – but the judge has got to give a specific direction. In Guernsey, it can be by the slimmest of majorities.

1310 Many years ago, I represented somebody who was charged with three serious sexual cases – three different counts on the same day. He was acquitted on two of them on a vote of 6 to 3. He was convicted on the third count – or maybe on the first count, but the one he was convicted on – by a majority of 5 to 4. As a result of being convicted by a majority of 5 to 4, he was sentenced to a lengthy jail sentence, which was the appropriate thing, because he had been convicted. That is the difference in our system of justice.

1315 Anyway, going back to where ... I keep interfering with myself. After the words I have read, the learned judge said this:

In those circumstances, if the summing up is sound, the Court may well not be able to interfere unless the verdict is obviously wrong.

That is a very high legal bar indeed. I emphasise those words, *obviously wrong*. But the judge went on:

But where, as here, the verdict is one of a legally qualified Magistrate it is a "speaking" verdict because the Magistrate has to state reasons for his verdict in his judgment. In such a case it is possible for this Court to review the Magistrate's process of reasoning, and to consider whether, by that process, the Magistrate has reached a verdict which is "unreasonable", or one which "cannot be supported having regard to the evidence" or whether "on any ground there was a miscarriage of justice".

And then they would deal with what the Magistrate said here.

1320 They said this in paragraphs 16 and 17 of their judgment:

16. We do, however, think it right to say that, had our jurisdiction been the same as that of the Court of Appeal in England, our conclusion would have been different. In such circumstances the question would have been whether the conviction was unsafe. As Widgery L.J. said in *R v Cooper* (1969) 53 CAR 2:

"That means that in cases of this kind the court must in the end ask itself a subjective question whether we are content to let the matter stand as it is, or whether there is not some further lurking doubt in our minds which makes us wonder whether an injustice has been done. This is a reaction which may not be based strictly on the evidence as such; it is a reaction which can be produced by the general feel of the case as the court experiences it".

1325 Let me just pause there: the general feel of the case as the court experiences it. We are not allowed to do that in our appeal system. If somebody is convicted by 5 to 4 on, say, a rape case and goes to jail for perhaps six years, and there could be a lurking doubt in England, in Guernsey because the court has to show in circumstances, as I have said, that the verdict is obviously wrong, when it is not a smoking verdict.

I have had Court of Appeal judges say to me, and rightly so, 'Mr Ferbrache, you have told us that these 16 points of evidence point to the accused being not guilty; but Police Officer So-and-So said this or Witness So-and-So said that. Were the court not entitled to make a conclusion on that and reject the other?' Now, I do my best not to answer that question but sadly I have got to on occasions

1330 because the Court of Appeal are very probative and make sure you answer questions, and you have got to say, 'Well yes.' Once you have said that, your client's appeal on an evidential basis, which is what I am talking about, is dead in the water.

What the Court of Appeal said, going back to the Guest case, which was not a sexual case, is this:

17. In this case each of the members of this Court does entertain a lurking doubt as to whether the conviction is safe but, on the law which we are bound to apply, this does not entitle us to set aside the decision of the Magistrate.

1335 Now, in England, that decision would be set aside. Mrs Guest would not have a criminal conviction. Thankfully, her jail sentence was set aside as it should have been, when the matter was sent back to the lower court. But she still had a conviction. Hopefully, it will not have ruined her life.

1340 But she can get over her conviction, I would have thought. I know Mrs Guest had no ... She could get over that; but a man who is convicted of a rape in circumstances, whereby the circumstances which this amendment seeks to put, where it is on a knife edge – it is 50/50. He has not quite discharged the evidential burden. He is convicted, he goes to jail for six years. That to me is not justice.

1345 I am concerned about victims – just as concerned, just as impassioned as Deputy St Pier. He was not lecturing, I know, but if he was, then I do not need to be lectured to by him or anybody else on this particular topic. I appreciate it fully. I appreciate the concerns of the many thousands of victims who have to suffer abuse, generally from men, in circumstances where they should not be suffering.

I cannot bring myself, for the reasons I have said, because I am concerned overall about justice. I do not say it as a liberal-thinking person because ... I think I am a liberal in most things, but I am a hardened criminal lawyer – a hardened criminal lawyer who believes that probably most people that go before the courts are guilty.

1350 I also do not deal with this as an elderly white man because I have got four children, two of which are female. I have got seven grandchildren, four of which are girls. I value those very much and I want my daughters, who are now grow up in their 40s, and I want my grandchildren to grow up in a safe environment where their rights are fully protected and they are not subject to abuse.

Thank you, sir.

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The Bailiff: I am going to call Deputy Gollop next, followed by Deputy Graham and then Deputy Green.

Deputy Gollop, please.

1360 **Deputy Gollop:** Thank you, sir.

We have heard two masterclasses of speeches, to say the least, from Deputy Ferbrache and Deputy St Pier, and we are faced with a very difficult judgement today. I cannot claim the legal expertise or experience of Deputy Ferbrache or perhaps the passion that concerns the subject that Deputy St Pier has identified.

1365 What I can say is that States' Members are always having to make challenging choices. We are always having to not just put policy into place but I think we sometimes underestimate our main role perhaps as legislators. I have sat on the Legislation Committee for 16 years and so I am perhaps more aware of this area than most and indeed, I did study Criminal Law at university and all of those elements too.

1370 What we have today is a complicated issue. I tend to agree with Deputy St Pier, and in a way Deputy Ferbrache, that Guernsey does not have to follow UK or English – England and Wales – legislation. Scotland has different legislation. Northern Ireland, as we will probably come to in another debate today, has different legislation. Not only does the English-speaking world have different legislation but one can look at progressive countries in Scandinavia and elsewhere that do things differently. This debate is not just about constructing cogent legislation that works for the equal protection for the Police, for the Bar, for the Judiciary, but it is one that reflects the concerns of society. There is no real right answer here, especially as there is not necessarily an ideal template to take from England and Wales.

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1380 One area where I do support Deputy Ferbrache is that he identified masterfully, I think, that there
are deficiencies in our current Law. I will not say deficiencies in our Jurat system, but I think that the
nature of the Jurat system, whereby an electoral college choose people generally of distinction in
public life, means that our juries are disproportionately made up of highly successful people as
distinct from the jury of one's peers. Of course one suspects that juries in the UK and in America
1385 and so on sometimes have persons of different kinds on juries, some of whom of course might have
similar issues to perhaps on occasion some of the defendants. That is a different question. I do not
think we can get lost in the merits of our excellent Jurat system today, but Deputy Ferbrache has
made a very cogent case for Policy & Resources, Legislation and Home Affairs to look, probably in
the next term, at perhaps updating the Appeals Law in concert with you, sir, and the senior judiciary
of the Royal Court. I think that would be a useful workstream for the future.

1390 But we are today looking in the immediacy at a key amendment of Deputy St Pier and
Deputy de Sausmarez have put before us – against, perhaps, the best advice of the Home Affairs
department. The way I look at the issue is that we have to weigh up and balance the requirement
of the defence for fair trials and for genuinely innocent people not to be found guilty and have their
lives ruined, as Deputy Ferbrache pointed out, with the rights of complainants, victims. There are
1395 clearly many victims of sexual crimes in Guernsey and I would like to suggest they are alleged
victims, although proportionately there may be instances whereby complaints – well, there have
been – have been made unjustifiably, but I am sure the vast majority of people who have made
complaints have had faith in the process and have made those complaints in good faith, believing
probably rightly that they have suffered severe abuse.

1400 And so, one has to look at the problem really holistically as not just one of an individual before
the court, but of society's response and I suppose if I get to speak generally on the Sexual Offence
Law, a lot of them reveal real concerns; others perhaps more fashionable issues; others more
undecided issues.

1405 But I think to my mind, the stronger arguments today go from the very powerful speech, very
personal speech which Deputy St Pier has made, because Deputy St Pier has really made the
argument that we need to send out a stronger message to society.

1410 I know many of my colleagues and Committee Members are exasperated sometimes, when I say
you cannot just base decisions on evidence, on official advice, on legal advice, on senior Civil Service
advice. You have sometimes to make a political statement – you could say a gesture. And the
gesture here is to right a wrong that such a low proportion of *reported* rapes and similar sexual
offences actually end up in prosecution and conviction. Now, we do not see that situation in other
areas, probably like financial fraud or importation of drugs or other kinds of violence. But the fact
that such a small proportion of cases end up before the courts and an even smaller proportion is
very concerning and very worrying.

1415 Although one cannot assert that anyone found innocent by the Royal Court or the Magistrate's
Court is anything other than innocent, because that is the way the fair and equitable judicial system
has gone, one has to question the low conviction rate, which is a factor in England and Wales; it is
a factor in other countries and I believe that it is a factor in Guernsey, although perhaps Deputy
Lowe or some other Member of Home Affairs could correct me on this. And so for all of those
1420 reasons – bearing in mind legislation is always a risk and we sometimes need the formal review of
legislation, if it is not working or it is deemed to be unfair – I would give the benefit of the doubt to
the amendment that Deputy St Pier and Deputy de Sausmarez have put forward. I think the message
it would send out is that people who are involved in relationships or coupling or dating or some
scenario need to be crystal clear on the ground rules of their relationship, the nature of consent
1425 and be extremely careful when entertaining themselves with alcohol or similar substances, and I
think that could be a game changer for personal relationships because one figure on social media,
for example, suggests that there may be nearly 300 alleged rapes in Guernsey a year. I am shocked
by the scale of that figure and we need as a society to do something to reduce that.

1430 So unless arguments convince me otherwise, I am very much on the team of the Deputy St
Pier/Deputy de Sausmarez amendment on this occasion.

Thank you, sir.

The Bailiff: Deputy Graham.

1435 **Deputy Graham:** Thank you, Mr Bailiff.

I am going to make one comment and then ask three questions which I would be grateful if Deputy St Pier would answer when he responds to the debate on his amendment, please.

1440 The comment I want to make is that I would not actually be asking to speak, were it not for the fact that before we started the debate, I had noted that the three voices that had publicly expressed concerns about this amendment were all from a legal background. I read an email from Deputy Ferbrache, and we have just heard his excellent speech. I have also seen an email from Deputy Green, who I note is speaking after me, indicating that were this amendment to be successful, then he would support Deputy Ferbrache's concept that we would need to look again with more urgency than otherwise would be the case at our Appeal Law ourselves.

1445 The third comment that I had noted was the email that we all received – a very comprehensive one – from a barrister in criminal law who had practised for many years in the United Kingdom in cases of this nature, now resident in Guernsey. I thought her email, comprehensive and thorough as it was, was certainly sufficient to reinforce my doubts about the wisdom of this amendment.

1450 And then we heard from Deputy St Pier himself, in placing the amendment, that he had asked the question of Her Majesty's Procureur what the outcome would be if this amendment were to be successful. The answer essentially was that the outcome is uncertain. So this is, in my view, a far from clear-cut issue and it prompts the following three questions for me.

1455 I did listen very attentively and was certainly moved by Deputy St Pier's account of the eight instances, varied as they were, that had occurred in his personal direct knowledge. My question to him is what difference to the prospects of a complaint having been made or the case heard and a verdict reached, what difference would his amendment have made to those eight circumstances that the new legislation proposed by Home Affairs would not itself have made? So how crucial is his amendment to really enhancing the prospects that those eight instances that he cites would not have occurred or would have turned out differently?

1460 The second question concerns this business of victim-blaming. I am fully with him that, if there is a problem here, it is essentially a cultural or societal problem, and since we are in the business of being frank, I think many of us – without actually going to the point of saying, 'Well, he or she were asking for it', and I think very few people go to that extent – many of us will have at least run through our minds the notion that this person, the alleged victim, put themselves in circumstances that made the danger or the risk to them greater than any sensible person would have contemplated. And to that extent, I suppose there is a notion of saying well, the victim contributed in some way, albeit involuntarily, to his or her fate. I think that is not a totally unhealthy element to confess to, but that is a cultural thing. My question related to that is this: is there a problem of that nature in our courts? Is there evidence that our Jurats are liable to allow victim-blaming to influence decisions that they come to or that the Law or the new Law as currently proposed will continue to inhibit them from keeping free of any such approach to their judgments?

1475 My third question is this: Deputy St Pier asserted that in no way was his amendment going to lead to the overturning of the convention that one is innocent until proven guilty; the burden of proof issue. I would ask him really to convince me that it is not. I hope Members of the States will not think me frivolous if I say that I know from personal experience how uncomfortable it can be to be accused of something that you know you have not done. The reason I mentioned frivolity is that I am not referring to a court of law and I am certainly not referring to anything where the consequences for me were really serious in the end. But when I was a Member of Home Affairs we had the governance review of Home Affairs and certain allegations were made against our collective conduct but also individual conduct and I was included in that. Now, I knew that they were false, that there was no substantive case behind them. But Deputy St Pier and his Committee, and in one or two cases with some enthusiasm, took the view that the accusations have been made, therefore

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they must be true. I know that in a court of law, which of course this was not, the accusations could not have been proved but I know also that it would have been damned difficult for me to disprove. 1485 That is a pretty uncomfortable position to be in. Although this was not in a court of law, I think the principle still stands and although the consequences to me were pretty insignificant, although they were inconvenient, I think the principle stands.

So if I could just repeat, the three questions that I would like addressed, please, when Deputy St Pier responds are: what difference would his amendment have made to the eight cases that he 1490 mentioned that the new legislation as proposed by Home Affairs would not have made? Is there a problem in our courts that our Jurats have been prone to victim-blaming in such cases? And in what way is this not overturning the principle of 'innocent until proven guilty'?

Thank you, sir.

1495 **The Bailiff:** Deputy Green, to be followed by Deputy Roffey.

Deputy Green: Mr Bailiff, thank you very much.

I first of all say, I think there have been some excellent speeches in this debate. I think Deputy St Pier's speech was truly excellent. I think also Deputy Ferbrache brought his significant experience 1500 to bear as well in some of these issues and there is no doubt that this is a very complex issue which will tax all of the States Members on this to the *n*th degree.

I start by saying I do have some sympathy for the aims of this amendment. I can see where this is trying to go. I can see what the kind of public policy basis for this amendment is. But I do think we need to be as forensic as we possibly can in debating this amendment and ensure that we tease 1505 out all the issues.

Just a few preliminary points, first of all. Obviously, this amendment seeks to add an additional evidential presumption to the law to include where a complainant has voluntarily, wittingly drunk to excess. That addition is or would be somewhat materially different from the existing evidential 1510 presumptions that are in the draft sexual offences law that we have before us. So one of one of the issues of principle is whether or not there should actually be a distinction between cases where there is voluntary or involuntary intoxication in this area. I think that is one of the key issues.

The other thing I just wanted to start off with, Deputy St Pier was good enough to refer to the advice that he received from Her Majesty's Procureur on this particular amendment, and I think it is worth re-emphasising the point that Her Majesty's Procureur has made, because as I understand it, she did speak with the draft of the legislation and had feedback with the criminal lawyers and the prosecution team at St James' Chambers. I think it is worth setting out that they are not clear about 1515 how this would work actually in practice. They have flagged up that it is unknown territory, legally speaking, because obviously the English statute does not have this particular provision, if this amendment is carried, and there is a fairly frank admission from the Procureur that it would not necessarily make prosecutions any easier. So, sir, the sort of presumption that this amendment 1520 would create, where it arises, I think it does create a degree of difficulty for a defendant who will need to produce sufficient evidence to show that that presumption is rebuttable. It is not necessarily sufficient for a defendant simply to assert that they believed that the complainant did consent. I think the experience of the statutory evidential presumptions in England under their sexual offences 1525 legislation, the 2003 Act, has meant that the ability for these evidential presumptions to be rebutted is actually quite limited in practice and in effect, and that can be problematic because in these sorts of cases, as others and Deputy Ferbrache certainly mentioned, they are not always that black and white. There are grey areas, for example, where consent is effectively given, but later the complainant then regrets that decision or has even, in some rare cases, forgotten that consent was 1530 so given and often in these cases, it is one person's word against another. Very often it is the case these days that technological evidence will be key in determining the issue of consent and as Deputy St Pier talked about, the digital footprint of a person will become more important, once that message or that text is there, or their social media output.

1535 This is a very complex area and I think notwithstanding the fact that this amendment might well be justified from a public policy point of view, for the reasons that have been discussed – the under-reporting of sexual offences like rape and the fact that it can be very difficult to successfully prosecute rape. My experience as a defence advocate, exclusively in Guernsey, for the last 18 years is that there are issues here to be concerned about.

1540 Now, I know that the statutory framework that we are talking about and the addition that this amendment would make create something which in law is referred to as the evidential burden on the defendant. I do not believe that that will create a legal burden of proof on the defendant in these situations. But I think that Deputy St Pier needs to clarify that when he sums up. An evidential burden on the defendant is not a burden of proof, as I understand it, but it is rather a burden of raising a particular issue with evidence as to the specific matter in question – in this case, whether
1545 there was consent or not. And in this context, if that issue can be properly raised by the defendant, it is then for the prosecution to prove beyond reasonable doubt that the issue did not actually take place. So that is the status of the English law which has been recognised in Guernsey many times – the statement of law being in *Sheldrake v. the DPP (2004)*.

1550 So I think it would be helpful if Deputy St Pier could respond to that when he sums up in terms of whether this is creating an evidential burden on the defendant, or a legal burden, because I think if it is indeed an evidential burden, then that perhaps makes it more acceptable. Nonetheless, I know that there is concern at the Guernsey Bar, the criminal bar, in terms of the fact that the effect of this amendment would in some ways seem to be undermining the presumption of innocence.

1555 There is another potential problem with this amendment, which I think is in terms of whether this amendment actually does what it purports to try to do. I think the issue is in terms of the wording of the actual amendment. The drafting in this amendment, the way I read it, seems to allow the evidential presumption to be made and to take effect, even if the for example alcohol that has been taken by the complainant has not stupefied that particular victim. The way the amendment seems to have been drafted, it looks to me like any particular consumption of alcohol, perhaps even
1560 only a few glasses of wine, would result in that presumption, but is that really what is intended or is it actual incapacity that is required, if I can put it that way? I think there does need to be some greater explanation about when that provision will actually kick in, in terms of what evidence will actually trigger that, and some greater clarity and precision about when that would actually bite, as it were, in a real world situation.

1565 I agree with other speakers: victim-shaming, for want of a better term, is absolutely abhorrent but miscarriages of justice are abhorrent as well and they are potentially a deep wound on our society when they do occur. The reality is the criminal justice system in Guernsey, as in other jurisdictions, is not infallible. Any system involving human beings is a fallible system and although I am a supporter of equal rights, I would like to believe that an individual complainant would never
1570 make a complaint of non-consent, of rape, that is malicious or downright incredible. My experience professionally as a lawyer in this regard has been somewhat different. Occasionally these very grey areas do occur. Although I do not fully understand why that is sometimes, occasionally perhaps, a complainant might wrongly claim non-consent after the event. It does sometimes happen. I think this is an area where ideally some further consultation may well have benefited this amendment before it was actually laid for debate. I have already alluded to the fact that some colleagues of mine at the criminal bar in Guernsey do have concerns about this.

1575 So I would ask Deputy St Pier to respond when he sums up in terms of does he think it would be beneficial for there to be further consultation with the criminal bar in Guernsey, with the judiciary in Guernsey, on this provision before it actually becomes part of the Sexual Offences Law in
1580 Guernsey, because I think that would have been beneficial, just to get a real practical sense of how this would actually operate in reality in the courtrooms of Guernsey in that very practical way, because there is this sense, I think, that the presumption of innocence is being undermined.

1585 As I say, though, I started off by saying I am sympathetic to the aims of this, and I am in a very real sense. I do think it is an idea that is worth examining further and in more detail. I can see the merit in it, because we know Deputy Gollop spoke about the problems with obtaining convictions

in this area and the under-reporting. We know that these are issues – they are societal and cultural issues that do need to be tackled and I give credit to Deputy St Pier and Deputy de Sausmarez for bringing this forward, with a view to trying to tackle that head on. I think they really deserve credit for that, and I am trying to think of a way of how I can support this amendment, notwithstanding my fairly deep seated concerns from a legal point of view and from a justice point of view, as Deputy Ferbrache talked about.

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So I think we do nonetheless need to proceed with some caution. I do need convincing and I do need some comfort about the fact that this really is about an evidential burden of proof or the evidential burden on the defendant, rather than the legal burden, because I think that does make a significant difference.

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I do entirely endorse the comments that Deputy Ferbrache made about the current statutory test for appeals against criminal conviction in this jurisdiction. I do think that requires some forensic review and particularly if this amendment is carried, I think that that would become a very urgent matter. I totally endorse what he said on that. The current test, if an appellant on appeal has to show that the criminal conviction is obviously and palpably wrong, that is just too much of a mountain to achieve in many cases, whereas the English equivalent of having to show that the conviction was unsafe is the modern approach to these things, I think.

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I am quite surprised that that did not come up as part of the Justice Review, which we will be debating in a few weeks' time, bearing in mind it is such a central flaw in our criminal justice system, so I endorse entirely what Deputy Ferbrache said on that. Deputy Graham referred to it as well. I think Members of the Home Affairs Committee, when they speak in this debate or indeed in general debate, I think they should clarify what the Committee's position is in that regard, in relation to the to the current state of the law in Guernsey on how a disgruntled appellant does appeal against a conviction because the law is hopelessly outdated. I think Deputy Ferbrache said that the Guernsey Law was adopted in the 1960's but it basically lifted a 1907 statute which ... Well, I am not sure it was even appropriate in 1907 in England, let alone in Guernsey, in the second decade of the 21st century.

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So to conclude, sir, I do have concerns about this. I do think this is a really complex issue but we do need to try to look at this as forensically as possible. I am all for trying to develop a culture where individuals should not have sexual intercourse with someone who is too drunk to give effective consent. I do think we need to go in that direction but we need to do that in a way which will respect the fundamental principles of the criminal justice system. We do need to ensure that people unjustly accused can defend themselves appropriately and rely on the presumption of innocence. I will require some comfort and some convincing before I consider how I will vote on this amendment.

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Thank you very much, sir.

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The Bailiff: Deputy Roffey.

Deputy Roffey: Thank you, sir.

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I want to start by addressing this issue of the Law of appeal against criminal convictions in Guernsey, because I have not just heard Deputy Ferbrache raise this today, but on several occasions actually over the last couple years, and I do not think we should conflate two things. If that Law is wrong, outdated and inadequate then it ought to be changed, or at least reviewed with a view to changing it. But I do not think we should then start saying we cannot pass this piece of legislation or that part of legislation because we have an outdated Law on appeals against criminal convictions. It is up to us to do something about that.

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So, through you, I would say to Deputy Ferbrache, if he is preparing a requête, he has not got much time, depending on when we decide to hold an election, but he will have a willing signatory in me, in at least reviewing the current Law in this respect, because I take his and Deputy Green's views seriously and I think that is something that could be done.

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But turning to the heart of the issue that we are discussing now, I have many of the same concerns as Deputy Green, although I think I am coming down slightly on the ... I am not quite sure

what side of the fence he was coming down on, but if I am right, I think I am coming down slightly on the other side of the fence.

1640 The central point made by Deputy St Pier I think is undeniable. Consent is absolutely vital and if consent is not given, then we are talking about rape and not consensual sex, and therefore if consent is not capable of being given, then clearly consent has not been given and therefore all of the consequences of the law should follow from that. That makes it really easy on the surface – right, this amendment is completely addressing something that everybody, I hope, can agree with and therefore I am going to support it.

1645 Well, I think I am going to support it, but I do not think it is that easy and that black and white and that clear for a couple of reasons. First of all, we are painting the picture this morning of a situation where one party to our sexual encounter is sober, calculating, taking advantage of another person's intoxication or incapability for whatever reason to give consent; and the other person is hopelessly incapable of giving that consent for whatever reason due to a substance that they have taken. Now, that might potentially occur and in those cases everything is pretty much black and white and straightforward. I think unfortunately, the reality is that a lot of these situations occur where both parties, usually young but not always, are intoxicated beyond the point where they should be, where it is seriously affecting their judgement and where it leaves memory confused afterwards, and it is a very much less black-and-white situation than has been said. That said, the basic fact remains that consent can only be given if it is capable of being given and if it is not given, then that is clear.

1650 Although 'given' is interesting. When the burden of proof is shifted, I think, in these situations to the person who is being accused to show that consent had been given, unless things have changed an awful lot since I was a young man a very long time ago, consent is very, very rarely in writing, pretty rarely actually orally sought and required. It is more implied from actions from both parties, which makes proof really quite difficult. I think we all know whether something is consensual and genuinely consensual or not – or we should do. If we do not, we need to look at ourselves. But actually proving it is slightly more difficult.

1655 The only other problem I see is that reading the words of the new subparagraph (g), that:

B had voluntarily consumed alcohol or taken a substance which, having regard to when it was consumed or taken, was capable of causing or enabling B to be overpowered, stupefied or otherwise incapable of giving consent (as the case may be) at the time of the relevant act."

– again if somebody has had a couple of glasses of wine, they may give consent where they wouldn't have done otherwise, it may be a disinhibitor. I think that this is clearly *not* covering that situation and I will ask Deputy St Pier to confirm that, but that is my understanding. It may lead to decisions being taken in the cold light of day, the next day, that either party, actually, might regret having been taken, but that is not, as I read what is being covered by the proposed new subparagraph (g).

1670 On the other hand, when you have somebody who is completely obviously three sheets to the wind, almost comatose, almost unconscious, obviously incapable of giving informed and proper consent, then that again is almost black and white because clearly paragraph (g) is engaged and I have no problem with it being engaged because that would be taking advantage of somebody in a situation where clearly they should not be taken advantage of.

1675 My difficulty, I suppose, is where down the scale of drunkenness does paragraph (g) start to be engaged. I know, I can read the words in front of me and I can sort of understand what is trying to be said, but I think it might be a real minefield. I mean, somebody has either been Rohypnol or they have not been given Rohypnol. Whether they have drunk enough to make themselves otherwise incapable of giving consent at the time of the relevant act, I think could be subjective.

1680 I am going to support this. I am going to support this just because the central point is that consent is vital and that if somebody is incapable of giving consent then they cannot. But I do it with an awful lot of reservations. I wish in a way that we were discussing this amendment at the policy letter stage, rather than the legislation stage, so that the sort of engagement with the criminal bar that Deputy Green spoke about could take place, but as I read it, once this legislation is passed,

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either as amended or not, that is what is going to go off for approval and it will be very difficult to do anything about it.

So I have wrestled with this but on balance I think my conscience says that I have to support this amendment, but I would appreciate it if Deputy St Pier could address a few of the practical problems that I have raised, when he comes to sum up on the debate.

Thank you very much, sir.

The Bailiff: Deputy Le Tocq.

Deputy Le Tocq: Thank you, sir.

I will be very brief, because Deputy Roffey has articulated far better than I the points that I wanted to raise in general, and I think I am largely where he finds himself on this issue.

So I will say, first of all, I think it is very important and I honour Deputy St Pier for bringing this issue before us. It may well be unfortunate that we are discussing it in this context, but I think it is important we do whatever the results of the vote on the amendments is. I say that, sir, because in his courageous and frank opening speech on this, he will have said things that resonate ... well resonate with me personally and no doubt family members of others as well in our community and maybe in the States as well, who are well aware of personal experience of this sort and the position that put them in, in the past.

Sir, wearing another hat as well, pastorally my wife and I have had to deal with sadly far too many instances over the years, particularly of girls who have found themselves in the situation that this amendment seeks to address and sadly too, sir, very few were we able to persuade to take the matter up within the criminal justice system, for the reasons that others have given and also primarily, sir, I think - and was addressed by others before - because the culture around us needs to change. I do think this is not just a legal issue; it is a cultural issue, and how you change culture is very, very difficult indeed, in this instance.

So, sir, I understand and in fact sympathise with those who feel that potentially this amendment might resolve one thing, but open up another can of worms somewhere else. So I do think there needs to be some quick movement elsewhere to ensure, if this is passed, that the correct safeguards are put in. But, sir, if I am going to urge on one side, I think I would rather, bearing in mind my experience, err on the side of those real victims whose voices are not heard and cannot be heard because our culture at the moment, as well as our justice system, seems to be against them or making it very difficult for their voices to be heard. I think on that level, sir, the issue of the grey area of the alcohol - I take that, because I do believe that alcohol is probably the worst and the most serious influencer in this state. Alcohol affects men and women obviously differently physiologically and that is a big problem in our culture as well that needs to be addressed more than we are currently attempting to do.

Also, as a father of three girls, I am sure other parents have found themselves saying to one of their daughters, 'You're not going out dressed like that!' and knowing that there is a risk element at stake in my mind is an issue of parenting, but I know that many will not have parents that even have a relationship where they can say that to their children. But that is something as well that needs to be far more clearly taught, I think, because notwithstanding the issue that is at stake here, that a crime is a crime is a crime, never mind the circumstances, I do think we need to teach far more to our children and our community that we should not glory in circumstances that are riskier than others. But that is a cultural thing as well, sir, and I will not go any further into that. I just raise it as the fact that this issue by itself I think is very important and that is why I will support this amendment, but I do think that it raises many other issues that also need to be addressed and obviously fairly rapidly.

Thank you, sir.

The Bailiff: Well, Members of the States, it has just gone half past 12. It is quite clear that we are not going to finish debate on this amendment before lunch, so I am proposing to take the luncheon adjournment now, before calling Deputy Prow immediately after lunch.

1740 Can I simply remind you that it is the Annual General Meeting of the Guernsey branch of the Commonwealth Parliamentary Association immediately following the close of business this afternoon, and if people are making arrangements for the remainder of the day, I would encourage as many Members as can to stay around and participate in that meeting, please.

We will now adjourn until 2.30 p.m.

*The Assembly adjourned at 12.32 p.m.
and resumed its sitting at 2.30 p.m.*

**The Sexual Offences (Bailiwick of Guernsey) Law, 2020 –
Debate continued**

The Bailiff: Good afternoon, Members of the States.

1745 I am going to call Deputy Prow next. Deputy Prow.

Deputy Prow: Thank you, sir.

1750 I would like to start by agreeing with Deputy Gollop: this States has often been criticised around the quality of some of our debates, but I think this debate has been of exceptional quality. I will be brief because I do not want to be responsible for actually diminishing that quality.

1755 If I can start with Deputy St Pier's opening, which I think was probably one of the stand-out speeches of this term, he certainly took me with him, particularly where he talks about the taboo and the general culture with regard to the offences that we have been talking about. Certainly he ran through the statistics about the lack of successful prosecutions and indeed about the very low rate of actually people coming forward and reporting those offences.

So, sir, he certainly made me aware and I think he used the expression 'joining up the dots'. I am certainly guilty of not joining up the dots and I thank him for an absolutely excellent, thought-provoking speech.

1760 Sir, I am not sure where I am with this amendment and I will listen to every speech and listen intently to the summing up.

1765 I think the problem that I have is the one thing Deputy Le Tocq mentioned, which is I would have preferred to have heard this speech and considered this speech at the policy letter stage, rather than when we are considering legislation. The fact of the matter is the only choice that we have, as far as I can see, is to insert the subparagraph (g) as outlined within the legislation, and I am not sure that all the points that Deputy St Pier has very powerfully hammered home will be achieved by that. I think Deputy Graham in the three questions that he asked has actually pinpointed this factor. So my dilemma is by adding this sub-section how does that actually take us forward? Are there no other steps that we need to take outside of the legislation in changing public culture and the way we think about these offences, and is this a real remedy?

1770 Deputy Gollop also spoke about Deputy Ferbrache's speech which again was an excellent speech and so useful. We are not debating a policy letter, sir; we are debating legislation. Deputy Gollop, I think, described it as a master class of forensic legal analysis. I just hope we do not all get the bill for that. But of course that is exactly what we need in this situation is to analyse the Law and the effects of it and indeed the consequences.

1775 Of course, another eminent lawyer that we are very lucky to have in the States, Deputy Green has also teased out the nuances around actually the wisdom of adding this to our legislation and what it actually achieves.

1780 Sir, also in great fairness to Deputy St Pier, he has noted HM Procureur's comments and that she has said this is unclear and unknown territory. Presumably that is because this would fall outside the jurisprudence that exists in England and Wales as far as courts having some guidance.

Through you, sir, I would perhaps find it useful if HM Procureur could actually address this and what she actually means by 'unclear and unknown territory' and how it affects jurisprudence.

I would also like to know her view on the wording in (g) of 'or otherwise incapable'. I am not quite sure in a legal sense what that would actually mean in practice.

1785 I would also ask, is this section proportionate when compared with the existing legislation, should it be passed, within subsections (a) to (f).

1790 Sir, rape is an appalling crime and there are other crimes on the statute book that are horrendous, but that is not a reason to override underlying principles with regard to prosecutions and that is the burden of proof and that must always be on the prosecution and a presumption of innocence.

Sir, my background is law enforcement and sadly, sir, witnesses as well as defendants also lie. We have a legal process which is well established that actually teases out whether it is safe to convict

somebody of an offence, and I think we have to be very careful around the question of burden of proof.

1795 In this case I would also like HM Procurer's opinion around the section, which is actually entitled 'Evidential Presumptions about Consent' and the ability of a defendant to be able to rebuff these evidential presumptions and what issues there might be with adding this subsection (g).

1800 By way of summary, I certainly have listened and taken heed of the excellent speech by Deputy St Pier. My question I think sits similar to those of Deputy Graham, we are really saying how safe in a legal context is it to add this new subsection? Does it have unintended consequences and does it do what Deputy St Pier is trying to do?

Thank you, sir.

The Bailiff: Deputy Inder, to be followed by Deputy Merrett.

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Deputy Inder: Thank you, sir.

Members, sir, it should come as no surprise to Members that I am going to come from a slightly different angle to most speakers.

1810 If I cast my mind back to when as teenagers I was going out on what was then a Monday, Wednesday, Friday and Saturday, this amendment has caused me to think back to what we were like as kids and young adults.

1815 The pubs were open from 7.00 to 11.00. Our sessions and social lives were largely around sitting in The Cosy, probably worried about how good we looked in whatever music fashions we had adopted that week – punk, two-tone, straights, casuals, whatever it was. I do not remember particularly my group of friends being as sexualised as today's children.

Going to a club and to use the words 'on the pull' was not really in our vocabulary and we were more interested in going back to our mates houses for a gathering of blokes and listening to whatever six-inch singles were out that week from Rough Trade, when no. 19 was our specials box.

1820 We had no mobile phones. Contact with whatever girlfriend you had was a twopence in a payphone somewhere and hoping her mum or dad did not answer the phone.

1825 I think, sir, and I know the past people say is always a different country, I have got a feeling we were just different kids, we had just different things in our minds and it was not always related around chasing girls. We were more interested in guitars, three chords and starting a band, probably playing euchre, brag poker, and belting round the Island on motor bikes at every opportunity. Boys did the drinking, girls were generally on halves and half the time I was probably with them because I am a bit of a one pint wonder myself, never been much of a drinker, and one or two of the girls in our group, if they ever managed to wangle a bottle of Blue Nun, Liebfraumilch or Woodpecker Cider and drink too much, we had to get them home via the motor bikes or whatever cars were available at the time, so there was, in our world, almost a protection element, our group was our group and we never left a man or a woman in the field as such.

1830 I want to touch on pornography for a moment. In terms of access to pornography, for us anyway, it was thing of myth, top-shelf magazines which we could never reach and would not dare buy. You might have found a magazine in a packing shed somewhere and there were things called blue movies that boys had heard about, pretended they had seen and no-one ever had.

1835 Jump forward 20 years and everything has changed, and I know this as I was there at the beginning of the internet in Guernsey, it was my job, and in Guernsey terms anyway, everything back then was on dial up, we had limited search engines and the internet was largely dominated by newer search engines and the reality is fairly unprotected sites which had all manner of vamp images and probably not videos, more images, back in that time because of the band-width lags.

1840 Sir, it was and still is pornography that drives the internet. It is one of the largest businesses combined, probably bigger than Google and what was inaccessible to me as a teenager is now accessible to every prepubescent teenager in Guernsey. The pornification of the female image has happened under our noses and probably un-helped by the broadcast media, objectification, pop culture and the more liberal way of life that we live now.

1845 A Friday and Saturday night in modern culture has changed immeasurably .The boys have more money in their pocket – well in fact they all do, the boys and the girls have more money in the pocket than they ever had. They are drinking longer, probably harder, in some areas they probably have less respect for women than they might have had in my day, or maybe it is just the case that they are all in the same sort of crowd and it looks like less respect.

1850 If you want any more convincing, sir, I would suggest any Member who does not think that there is a problem, just take the keys to any night economy taxi driver or just talk to them and they will tell you of some of the horror stories that they have seen.

I had one female – which I was not going to say but I have started so I will finish – but I do remember I did a year taxi driving, I have got a PSV licence, and I got a call from a link from a job. I can tell you quite a few stories but I will tell one of the more innocent ones. It was around 9.30 p.m. I got a call from the link from someone I did not know to pick some lass and take her ... well, I will not say where because the more I talk about it the more the person could be identified, but anyway take her three or four miles out of Town.

1860 I pulled up outside of the house, strangely the lass came round the front of the wagon and she jumped in the front passenger side – the front seat. Now you might think that is strange, but when you are a driver, weirdly enough, it is usually the boy ... If anything most people get in the back of the wagon and if anyone is going to get in the front of the wagon and sit next to the driver, it is usually the guy and only on the odd occasion do girls actually jump in the front of the car.

1865 So I sort of clocked that and bear in mind as a driver, all stone cold sober, happily, and we are all very attuned to the types of passengers that we get in the car, because as drivers we never know what is going to happen next, especially if you are working during the nights.

She got into the car. I asked her where she wanted to go and she sort of blurted out in tears this place west of the Island. I looked at her, I asked her if she was okay and she was in uncontrollable ... she basically broke down in the car before I left the wagon, so I stopped the car and I asked if she was okay, she was not what I would deem as drunk, she walked to the car perfectly well got into the side of the wagon, and she basically blurted out what had happened to her in the last two hours.

1870 She had been asked to go to a party at this place, she was called there by two friends, she then went on to effectively say it was a set up job by two of her girlfriends to get her with some chap who obviously had the hots for her. Long story short she had been sexually assaulted by the guy that she did not know at this party.

1875 Now she had obviously left very quickly, she was inconsolable, uncontrollable and she was trying to phone her father. Now she had an Apple iPhone, I remember, and the reason I know because I do not know how to use them I have always been a Windows user myself and she was trying to phone – she was shaking so much she could not even phone her father.

1880 So I asked her two things actually, I said, 'Look, if you have been assaulted ... ' – and why would she tell me? I was just a no-named driver. I asked her two things, do you want me to take you straight to the police station? She did not want to go and actually it struck weirdly enough – and it is Deputy St Pier's opening statement that reminded me of this – she said, 'No, I have had a few drinks.' Now I do not entirely know what that means but it may play into the idea that Deputy St Pier picked up, that I may have had a girl in the car that did not want to report a sexual offence to the Police because she might have been worried that because she had had a few drinks, she might not have been taken seriously. That may have been her rationale.

1890 Long story short, she did not want to go to the police station. I then asked if she wanted me to call her dad. I called her father I introduced myself, name and taxi number, and I just let him know that I was bringing his daughter home, there was nothing wrong with her but I asked him to come outside and collect his daughter because she has got something to tell him. Now, I do not know what happened after that, but there is no doubt that there are many variations on stories from people in the night economy, where effectively there are instances of types of sexual assault where that happens.

1895 So anyone who thinks it does not happen – and I do not think anyone does; it is the level of what happens – I believe it happens fairly regularly. So that is one of the, unfortunately I am going

1900 to say *many* stories of only working as a taxi driver for a night year, where I know there was a young lady who obviously had been sexually assaulted, she had run out of the house, would not go to the policy station and I can only suspect, sir, and Members, that the reason she did not go to the police station was because, my guess would be that the fact that she said she had had a few drinks she might have been taken seriously. So that is a fairly recent story and one of many I could convey today, but I could be here for a while.

1905 There are lots of things that have converged to put us where we are today. I mentioned the pornification of the female body, harder drinking, more liberal attitudes towards sex. I think we are in a position now where we have to seek to protect those who think fun and openness equals advantage.

We cannot deny that in a small minority of men – and it is important to say that – they will have a predatory nature about them and almost certainly seek to use the intoxication of women to that advantage. We cannot deny that that happens.

1910 Sir, it is fairly easy for me right now to pull the injustice card and vote against this amendment, it is a safe bet for me. I will sleep well knowing that I will not have been part of anything that looks like rough justice or could lead to unsafe convictions. But I do not think I can. This conversation has to have happened and I am glad Deputy St Pier has brought this amendment, imperfect as it is, and I am likely to support it.

1915 Of course, sir, I have concerns about what appears to be a fairly flaky appeals system in Guernsey. For many years the appeals system to me as a lay person has looked like more a function of the State than anything that looks like an opportunity to right previous judgment wrongs. We have two Deputies, Deputy Green and Deputy Ferbrache who have experience in that arena and have amply explained, to me anyway, why that perception exists – even though my perception may have been incorrect, it is my perception as a lay person.

1920 So here is the challenge for any future States, possibly through you, sir, or even to you, sir, is go and fix it then. If it is wrong just go and fix it.

1925 In Deputy St Pier's opening speech, he had taken advice from HM Procureur and I thank him for forwarding it to me. To sort of paraphrase the Procureur said: it is not clear to be honest how the amendment will work in practice, so it will not necessarily make prosecutions easier. We will be in unknown territory.

1930 Well that is kind of not great for Deputy St Pier but it does give me a little confidence, I think, that we are not walking into a trap of possibly the drunk sex law, where anyone who claims that they were potentially attacked is effectively going to find that they have found the perpetrator up before the beak and he is definitely ... Let's face it, we are talking about guys in the main.

1935 She also goes on: there is no similar precedent in jurisprudence to usefully consider. Well we may work by English rules and laws but I think there is something – I have always seen the scales of justice as sort of you have got to balance things with other bits and pieces and I do not think that is a killer line either. But the one that I am happier with I think was the last paragraph where: ultimately matters will turn on the individual facts of the case, as is usual, and the prosecution will bear the burden of proof in relation to proving any offence before the courts. Sir, that makes me more confident with some risk to support this amendment.

1940 I hope this does not turn into a drunk sex law and Deputy Green did raise the spectre and from within the amendment, of the level of intoxication – she said she had eight gins and probably only had one and of course there is the drunk regret rationale for making a complaint against a male.

1945 On the flip of that, how many drunk in charge drivers claim to the arresting officer that they only had one pint, but their blood count suggests they have had a skinful some hours later? Humans are what they are. They are capable of fibbing and I personally would not have the talent, patience, temperament, to work within the justice system at any level. So as a lay person we have to leave those arguments, as risky as they are, in an imperfect judicial system, to the Police, the prosecution, defence and judgment. It will never be perfect. We will never, ever get everything right, we know that.

It is a very tough call for all of us and for all the risks amply laid out before us today, all far more eloquent than I can express, I genuinely think the time is now.

1950 But I would caution Government and possibly ask them to kick in its considerable ability before any Law comes into play, before autumn I suspect of this year. There needs to be a considerable communication plan that explains to the citizens of this Island their rights, their responsibilities, the risks and the consequences. If I can offer any more advice to the Government marketing experts – I do not know why I put that in parentheses but anyway – do not turn this into the battle of the sexes. There are far more men out there that are on the girls' sides than debates like this would have you believe. Take the blokes with you, you may be surprised.

1955 Therefore, sir, Members, if this passes today and I suspect that it will, get into action a fair and balanced message. Do not condescend; do not patronise; just explain the decision that this Assembly is likely to make today, and on balance, sir, it is not without its risk, but I am more than likely to support this amendment.

1960 Thank you, sir.

The Bailiff: Deputy Merrett, to be followed by Deputy Parkinson.

1965 **Deputy Merrett:** Thank you, sir.

We appear to be speaking far and wide on this amendment, but it does ultimately – and I will bring us back to the amendment, sir – seek to change the evidential presumption so it is saying that whether a person is voluntarily or involuntarily intoxicated, the evidential presumption will be the same.

1970 So for the avoidance of doubt, many Members have focused on alcohol and this amendment includes alcohol but it also a substance that is consumed enabling them to be:

... overpowered, stupefied or otherwise incapable of giving consent ...

1975 It is very much about the ability to give consent. It is about consent and the ability to give consent or the other person is beyond reasonable doubt that the person has given consent. No means no but not saying no or not being able to say no does not mean yes. Reasonable belief of consent, how can anyone have a reasonable belief of consent if the person whom they are performing a sexual act on is actually asleep?

1980 Sir, I believe it was Deputy Graham asked if Deputy St Pier believes or has reason to believe that our courts are victim blaming. Our courts, our Jurats, make determinations based on fact. In all reality, sir, it is often the community that can victim blame but I would put to you, sir, that it is actually the victim themselves that will blame themselves the most. They will feel the blame, they will feel the shame, rightly or wrongly, they will blame themselves, 'Why did I put myself in that situation?'

1985 Now, for the avoidance of doubt, sir, the victim could be somebody that is accused and they are in fact innocent – in my world they are also a victim. They will also ask themselves, 'why ever did I put myself in that situation?' They will blame and shame themselves.

1990 I think it was Deputy Ferbrache that gave us an example of an accusation and then the person advised – actually they admitted, I think he said – that this person was lying, it was a falsehood. Sir, if somebody commits perjury, if perjury is committed, then that is actually an offence. So when Deputy St Pier sums up, if he could just give us more clarity on perjury, because it is not acceptable ... You swear to tell the truth the whole truth and nothing but the truth and if you do not do that and admit to not doing that, there are sanctions. There are sanctions.

1995 So as I said, the victim shaming or blaming usually, sometimes, the victim, whichever party it may be, will feel that shame, they will question why they were in that position, how it happened. We know from the figures Deputy St Pier gave that there are so few that actually get as far as going to court

Our community, Members of this Assembly are our community, are far more victim-blaming, as they do not have all the evidence that the court will. So I struggle with will the court do victim-

blaming because the court should have all the evidence before them, whereas members of our community clearly do not. So members of our community, unless they go and sit in the court, will make assumptions on victim shaming or blaming.

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Now the very foundation of our justice system is you are innocent – you are innocent until *proven* guilty and rightly so. It is for the courts to determine innocence or guilt. The conviction rate is based on evidence on a trial that is perceived to be fair. The key question is if an alleged victim was voluntarily intoxicated, rather than involuntarily intoxicated, should the evidential presumption be the same?

2005

Sir, we should not presume the alleged sexual offence or act is only by the person who allegedly intoxicated, involuntarily intoxicated, the alleged victim. This obviously, sir, is not correct. Sometimes a person may involuntarily intoxicate another not for their own sexual gratification, not so that they can take advantage sexually of the intoxicated state of the other person. They could do so for other reasons.

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Sexual abuse or taking sexual advantage of that person – they may have no intention of doing that. I put it to you, sir, that I have been out on an evening and said, 'Oh I will have a single please', my friend has very kindly bought me a double because I need to relax a bit. I have said, 'I didn't want a double', I did not know I was having a double, but I had a double. I could in theory, sir, be involuntarily intoxicated because I thought I had drunk three singles when in fact I had drunk doubles. If unbeknown to the third person or unbeknown to me that I am intoxicated involuntarily I would argue beyond what I intended to drink, my actions may therefore be different. So I could be willingly drinking for example everybody in the bar could see me having a drink and willingly so, but I would argue it was involuntary because I was not aware of the alcohol content or the fact that it was not a single.

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So this is not a simple scenario and every case, as alluded to by Deputy Inder has to be taken on the evidence of the case before the court. There are so many permutations.

So what it often boils down to, as Members have alluded to, is one word against another, whether a person or persons believe they were or they were not and the evidence that is given to the court, and that I think is where that should lay.

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But because each scenario, each case will have different nuances, different evidence, that is why I believe that we have to have the same law, the same presumption of evidence on whether it is voluntary or involuntary. I will explain why, sir, because ultimately to have a different presumption of evidence between voluntary and involuntary intoxication, to me, that is the ultimate victim-shaming or blaming.

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If you were involuntarily intoxicated so the evidence of presumption of consent is not on you, it is on somebody else; but 'You got yourself intoxicated? Well, what did you expect?!' You had the evidential presumption of consent – 'Oh, you can't though, can you? Because you were voluntarily intoxicated – shame on you!' When actually it should be shame on the other person.

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I have every intention of supporting this amendment and I thank Deputy St Pier for bringing it to the Assembly, and I also thank him for his openness and his honesty in what is a very emotive subject. But being emotive and having life experiences of such things, that does not mean you are not able to make an un-emotive decision on amendments such as this.

Now, I am pretty sure that every Member could give a scenario where they have been with friends or sometimes themselves or family members or uncles and aunts, absolutely – I have no intention of doing that today, I think we all have our life experiences. I think what we need to do is get away from the well if it is voluntary, tough; if it is involuntary, okay, we shift the burden.

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I think ultimately, that is what this amendment does. So I think if we do not agree this amendment it is the ultimate victim-shaming or blaming and it does send out a very strong message that if you go and get yourself intoxicated, really the presumption is on you; but actually somebody slipped you a drink and friend bought you a couple of doubles, then actually the presumption is on the perpetrator or the alleged perpetrator – which clearly might even be your friend. So we should not get confused with what this amendment is seeking. It is seeking something relatively simple

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2050 although how that is then interpreted and implemented into our laws clearly this is something as
2051 other Members have alluded to we are in unchartered territory.

But fine, great, let's lead the way, let's show the rest that we can actually lead the way and that
we can see that there is unfairness that if you are intoxicated voluntarily compared to involuntarily,
the courts will treat... that the presumption of evidence so therefore the courts will treat you
differently and that, sir, to me is an injustice in itself.

2055 Thank you, sir.

The Bailiff: Deputy Parkinson, to be followed by Deputy Leadbeater and then Deputy Tooley.
So Deputy Parkinson, please.

2060 **Deputy Parkinson:** Thank you, sir.

In thinking about this I have had to go back to first principles to try and get some clarity in my
own mind and I start with the basic principle that in the absence of the evidential presumptions that
we are considering about consent, the prosecution would have to prove beyond reasonable doubt
that the victim or alleged victim did not consent when presumably the defendant would be alleging
that he or she did.

2065

Now section 4, as we know, introduces a number of situations where the burden of proof is
reversed and in effect the defendant has to prove that consent was given and this new subsection
(g) if introduced would bring in the presumption that the burden of proof is reversed if the victim:

had voluntarily consumed alcohol or taken a substance which, having regard to when it was consumed or taken, was
capable of causing or enabling B to be overpowered, stupefied or otherwise incapable of giving consent ...

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So I am broadly supportive of the inclusion of this measure, but frankly I am wondering how
much it assists the prosecution because they are going to have to prove that the victim or alleged
victim:

had voluntarily consumed alcohol or taken a substance which, having regard to when it was consumed or taken, was
capable of causing [the victim] to be overpowered ...

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There will undoubtedly be cases where there is third party evidence, witness evidence that the
victim had consumed a lot of alcohol and was thereby incapable of giving consent. In that case I
wonder whether a prosecution would not have succeeded anyway. In many cases of course there
will not be that third party evidence that the victim had taken quantities of substances which would
be capable of causing them to be incapable – rather an ungainly wording of the amendment. If
there is no ... Clearly in many cases the victim does not come forward to complain until the following
day or later the same night and by then it may be very difficult to ascertain that at the time of the
alleged offence the victim had been rendered incapable.

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In that situation the prosecution are not that much further forward. Basically the battle moves
over: instead of the victim give consent the battle becomes a question of whether the victim had
consumed sufficient quantities of alcohol as to be incapable of giving consent.

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I think the circumstances where that might be demonstrable and where there would not
therefore otherwise have been reasonable grounds for a conviction in any event may with that be
quite limited.

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However, there will undoubtedly be cases as I say where third-party witness evidence suggests
that the victim had become incapable and it may be that in those cases the existence of this new
subsection (g) would assist the prosecution by effectively shifting the burden of proof to the
defendant and thereby secure additional convictions which would not otherwise have been
procured.

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I very much take Deputy St Pier's point that the present system does not protect potential victims
by securing prosecutions in enough cases. I am going to support the amendment as I think in

practice the utility of it may be relatively marginal, but even it only helps to obtain a few extra convictions where convictions should be obtained that is a good thing.

2100 I think the risks of a miscarriage of justice are slight, in that in circumstances where there is third-party evidence that the victim had consumed substances which were capable of making them incapable, if that evidence is available to the court then the defendant is basically going to be reduced to trying to argue – even in the absence of this section – that although completely drunk the victim gave consent. I think in reality that is going to be a very hard argument to make and I think for a defendant to secure an acquittal on the basis that although the victim was hopelessly
2105 drunk he or she gave consent will probably not be a very profitable line of argument for them.

So as I say I think the utility of this section is perhaps a bit debatable. I think the risks of a miscarriage of justice are probably exaggerated but I think nevertheless this amendment does deserve support because it will marginally improve the position of the prosecution in certain cases and secure some additional convictions when convictions ought to be secured.

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The Bailiff: Deputy Leadbeater.

Deputy Leadbeater: Thank you, sir.

2115 The difficulties I have had with this amendment have been articulated already, but it is mainly the guilty until proven innocent argument that concerns me, sir.

Deputy St Pier made a compelling speech and the statistics of current injustice he referred to are simply mind-blowing and totally unacceptable. But is this amendment the right tool to address that? I am unsure if it is, certainly given the cautionary legal opinion we have heard today.

2120 Sir, a few Members have mentioned that a cultural change is required and I fully agree. Maybe this amendment could help drive that cultural change, maybe it cannot.

I came into this debate certain that unless I heard some concrete reassurance to allay the concerns I have, I would not be able to support this amendment. However, sir, I am currently on the fence here and I will listen carefully to the remainder of this debate before I make my mind up which way I will be voting.

2125

Thank you, sir.

The Bailiff: Deputy Tooley.

Deputy Tooley: Thank you, sir.

2130 I will not speak at length, but I do feel I have some things that I can add to debate and so I apologise for elongating the discussion today.

In considering this amendment, I decided to speak to someone who has far more experience than I do, so I spoke to an active UK police officer who was until recently part of a squad which specifically dealt with crimes of a sexual offence nature. They told me that because rape happens in
2135 private it is almost impossible to know how many more rapes there are than are reported but the number is huge, and a tiny proportion of reported rape cases are prosecuted. This police officer told me that rape is the easiest crime to get away with.

They went on to say that they felt that the hoops that victims have to jump through and the scrutiny that victims are subjected to are huge barriers to false reports. They said that at present
2140 with the nature of the Law as it stands 'too drunk to consent' is almost impossible to prove. The standard is really very, very, very high and I am quoting now:

We pretty much have to show that the victim was not conscious rather than acting differently and making choices they would never otherwise have made. I have known of cases where we have CCTV of a woman being carried upstairs by a guy who then goes on to have sexual contact with her and is found not guilty.

The thing with low conviction rates is that people find it easier to believe that someone, usually a woman, can lie about that, than that someone can commit the crime and that is what is behind

2145 the resistance that you are encountering now. People are often more concerned about the damage caused by false allegations than they are about the damage caused by rape.

That is question we have to ask ourselves now, I think. Are we more concerned about the damage that might be done by a false allegation, which would still have to go through huge barriers before it became a prosecution, before it then became a conviction, than we are about the damage done by unprosecuted rape?

2150 Thank you, sir.

The Bailiff: Deputy de Sausmarez.

Deputy de Sausmarez: Thank you, sir.

2155 This a fairly harrowing debate, I think we would all agree with that. Deputy Ferbrache, what seems like quite some time ago now, gave us two examples of people known to him who were subject to serious sexual assault as children and one of the many factors that makes accounts of that kind of assault on children so abhorrent is that we know that there are no circumstances in which a child can give their consent to that kind of event. It is by no means the only factor that makes it abhorrent but it is certainly one of them, and there is no presumption about it. We have
2160 an age of consent below which it is legally impossible for children to give consent.

Now, of course, when it comes to adults, you are above the age of consent, it is more nuanced than that.

2165 Deputy Green gave us a good account, as did Deputy Ferbrache indeed, of the legal complexity around this, but to me the reality is not that complex. I think the reality can be nuanced, I think it can be obscured, I think it can be interpreted subjectively, but I think ultimately the kind of scenarios that this amendment addresses boils down to a fairly simple question: did the alleged victim consent to the act that took place? Now, by definition, a person consents if he or she agrees by choice and has the freedom and capacity to make that choice.

2170 Subsections from the draft Law set out various circumstances in which it can be presumed that the alleged victim would not have had either the freedom or the capacity to make that choice – although as Deputy St Pier explained, the defendant is of course free to put forward evidence to prove the consent had in fact been freely and knowingly given.

2175 The circumstances set out in the subsections include the use or threat of violence, unlawful detention, the inability to communicate consent by virtue of a temporary or permanent disability and the state of being stupefied or overpowered, or otherwise rendered incapable of giving consent by virtue of the non-consensual administration of a substance.

In all these circumstances it is a reasonable presumption that the alleged victim did not have either the freedom or the capacity to make that choice.

2180 The last circumstance is particularly relevant as others have noted, the logical basis that underpins subsection (f) is that the alleged victim would not have had the capacity to make that choice because they were intoxicated to the point that they could be stupefied or overpowered or otherwise incapable of giving their consent. I do not think anyone would disagree with that logic. It is reasonable to presume that someone who is intoxicated to that degree did not have that capacity.

2185 Sir, the clause that this amendment seeks to add has attracted some questions over the wording and of course as I think others have commented the wording in this amendment reflects the wording in that subsection (f) and I think questions about how many drinks is too many and where do you draw the line, and perhaps those are reasonable questions but of course as I think Deputy Prow pointed out the same question could and therefore should apply to subsection (f). It does not
2190 specify how much, for example, Rohypnol needs to be administered or imbibed for this clause to be engaged.

I am certainly not a lawyer but to me, it all relates to the effect – in other words if the substance was taken of causing that person to be stupefied or enabling them to be overpowered, for example, or in any other way rendering them incapable of giving their consent, then it is a reasonable

2195 presumption that that person did not have the capacity to give their consent and therefore did not consent.

That surely must be true regardless of how anyone came to be intoxicated. It surely must be about the destination rather than the route taken to get there. So the Law is clear that if someone's drink has been spiked, we should presume that that has rendered them incapable of giving consent, and that is equally true whether a drink might have been spiked with Rohypnol or spiked with alcohol.

Deputy Merrett touched on some grey areas around this. I have to say, it has been quite some time since I have been in the habit of hanging out in bars and potentially being chatted up, but I can recall all kinds of scenarios where that line between voluntary and involuntary consumption of alcohol or any other substance has been very much blurred and returning from the bathroom to find that someone has bought you a drink that you were not expecting or wanting – 'Oh, you wouldn't let that go to waste.' I mean there are all kinds of factors to contribute to consumption that is probably somewhere between voluntary and involuntary, so it is certainly not clear cut; it is nuanced.

2210 But I think what Deputy Merrett said really hit home with me. We tell people that no means no; but not being able to say no does not mean no? I mean, really! That is what lies at the heart of this, I think.

Deputy Parkinson and others have asked what practical effect will this have, how much will it actually help the prosecution? Well, as Deputy St Pier said in his excellent opening speech, it is just one of a number of measures that I very much hope will start to shift some of these cultural issues, start shifting those cultural parameters and I am really glad actually that some of those have been explored in this debate. I think it is incredibly good to talk about these things.

2215 The more relevant question than how much practical help will this be is perhaps how much does the unamended Law disadvantage alleged victims? I think we have to remember that sits in the context of a system that, as we have heard so powerfully, is already very much stacked against them. So I think every little helps.

Now, mindful of what Deputy Ferbrache said I have very carefully used the phrase 'alleged victim' all the way through so, to the elephant in the room, false accusations, I know that is a stumbling block for some. I think Deputy St Pier made some really good points about the statistical probability of that and Deputy Tooley has touched on it, as have others.

2225 I think it is also important to bear in mind that we have something called outlier bias, where we tend to notice the unusual far more and we give it far greater prominence. So I think we are all likely to think that false accusations are a far bigger problem in reality than they really are. So that is something I think that is important to bear in mind. Notwithstanding any of that, I think the inequity of false accusations could be mitigated and should be mitigated in other ways, for example by protecting the defendant's anonymity until, and only until, such a point that they are convicted, and we could and perhaps should consider whether people accused of this kind of legal infringement should be remanded into prison because that in itself is damaging and of course whether public trials are appropriate.

2230 So I think all those things along with the issue that many people have raised around appeals, a review of the appeals process, these are all things that this debate has brought to light that really could and I think should be looked at. I really hope that we will take the opportunity or a future States will take the opportunity to do that without delay.

2235 But I think in the meantime, it is supporting this amendment would be a really good step in the right direction and so I very much hope that my colleagues will do exactly that.

2240 Thank you, sir.

The Bailiff: Deputy Smithies.

2245 **Deputy Smithies:** Thank you, sir.

This is very difficult to work through. Like Deputy Parkinson I have had to go back to first principles. I think I have come to a different conclusion than him.

2250 I was brought up to believe that in a criminal case a person was innocent until proved guilty beyond reasonable doubt, and I am now faced with a dilemma. I cannot, on the grounds I have just stated agree with this amendment, which shifts the burden of proof, but can I in conscience now accept the premise that the alleged perpetrator be assumed to be guilty if violence was used or if a date rape drug was alleged to be involved? Well, to square that circle in my own mind, I have concluded that it is for the courts to decide.

2255 Deputy Ferbrache in a most erudite speech showed how the Guernsey system might give rise to anomalies which do not arise elsewhere and as a consequence some speakers have urged changes to our appeals system.

So in conclusion, regrettably, in the absence of those changes, I cannot accept the amendment and will probably vote against, unless Deputy St Pier or another Deputy can convince me otherwise.

2260 So basically I am sitting on the fence but leaning in the direction of voting down the amendment. Thank you, sir.

The Bailiff: Deputy Tindall.

Deputy Tindall: Thank you, sir.

2265 This debate could be an opportunity to express our own experiences but I believe Deputy St Pier has, through a powerful and well researched speech, said it all. Deputy Ferbrache and Deputy Green have also made well considered speeches. In fact there have been many excellent analytical speeches today, something I think the Assembly can be proud of.

2270 I touch on one thing first, which is what Deputy Smithies just referred to, and I wanted to refer to the point of strict liability. Strict liability is actually something in our criminal law, which means that there is no requirement for the proof of *mens rea*. The act alone is punishable. The duty is on the accused to have acted as a reasonable person and has a defence of reasonable mistake of fact – a due diligence defence. Generally speaking these are speeding, driving without insurance, so obviously of a lesser nature but I think it is worth noting that strict liability does exist in our law.

2275 So, sir, I am actually going to be ... having said that with my legal hat on, I wish to be emotive in relation to this amendment. I am swayed by the argument for action, not inaction. If a wrong has been around for so long and allowed to perpetuate, then sometimes direct action must be taken to right that wrong, and we have seen that quite rightly in the last few weeks.

2280 We need to improve the way both the parties are treated by the criminal justice system. Deputy Graham asked about how that system in Guernsey works here but for me this is about encouraging those who have been sexually abused to have the courage to come forward. When a major issue such as this gets the attention of such a debate we need to take action now.

2285 Deputy Ferbrache spoke about the problem of the appeals procedure, repeated by Deputy Green. These speeches highlight the need for action and I echo my huge disappointment that the Justice Review policy letter is late and ineffectual.

I wish to finish, sir, with a statement based on what may appear to be an irrelevant fact.

I have been a lawyer of 30 years with no criminal law experience, but I am a woman who has lived with fear all her life.

2290 Thank you, sir.

The Bailiff: Well, Members of the States, Deputy Prow in particular raised some questions for one of the Law Officers to respond to, if a Law Officer is able to do so.

2295 I do not see any other Member wishing to speak other than Deputy Lowe to reply to the debate and then turn to Deputy St Pier, so I am going to invite either the Procureur or the Comptroller whoever wishes to speak to try and deal with the questions that have been raised and then I will turn to Deputy Lowe.

HM Comptroller.

The Comptroller: Sir, thank you.

2300 I have made a note of the queries that I think Deputy Prow raised. I hope you will forgive me if I have missed anything. I think the first one was really for some further explanation of why Her Majesty's Procureur had suggested that the amendment might put us in some unknown territory. *[Inaudible]* advised, and I know a number of Members have seen, is that it was not clear how the amendment will work in practice.

2305 I think the issue there is that whilst the other circumstances which are set out in clause 4(2) of the Law more or less replicate UK legislation taken from the Sexual Offences Act 2003, the amendment does not, the amendment is new. Therefore there is not the jurisprudence to draw on and to guide us for the amendment or as to how one might interpret the amendment. So I think it was in that context that she was making that point.

2310 I think Deputy Prow also raised the issue of what might be meant by the phrase 'otherwise incapable of giving consent' in what would be the amended provision. I think it is quite useful just to look at section 3, clause 3 of the Law because the meaning of consent is actually set out in that provision and I will just read it out. It says:

For the purposes of this Part ...

This Part is a big part of this Law –

... a person consents if that person agrees by choice, and has the freedom and capacity to make that choice.

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So there are two arms to that definition. I think the issue here is one of capacity and how when one has consumed alcohol one actually has a capacity to give consent, and taking examples of how some people and in some circumstances and depending on the quantity consumed, how alcohol affects capacity and ability to think clearly, I think is a fairly obvious point. So I think it is capable of being interpreted by the courts and I think for a number of instances, as I say, thinking clearly or even speaking properly, those are issues that go towards consent.

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The final issue I think I recall Deputy Prow raising was examples of evidence that could be used for purposes or deciding whether consent might have been given and of course there are various ways in which consent can be indicated. There may be words, there may be gestures, there may be electronic messages, email, communications – these are all relevant in circumstances where consent is being considered. They are examples of evidence that are well known to the court. I think it is probably that sort of thing, that sort of evidence, that is relevant. I hope that helps to clarify to some extent the questions that have been raised by Deputy Prow.

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2330 **The Bailiff:** Thank you, Mr Comptroller.

Before I call Deputy Lowe, I see that Deputy St Pier wants to raise a question for the Comptroller to consider. So what we will do is we will just take a handful of questions, if anyone else has questions before going in to the wind up on this amendment.

So Deputy St Pier, do you want to pose your question to the Comptroller, please.

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Deputy St Pier: Sir, I am most grateful, it was something I was proposing to deal with in my summing up, but given that Her Majesty's Comptroller is in the zone, if you like, it probably makes sense to pose these questions to him now.

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He will be aware that I have, during debate, had an email exchange with the Procureur and really just to confirm that his understanding is the same, based on the comments which the Procureur has provided.

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In particular in relation to Deputy Green's question about the impact of this amendment, in particular the question of whether it was shifting the evidential burden on the defendant with the legal burden remaining with the prosecution and Her Majesty's Procureur's advice on that seemed to be very clear that it was the evidential burden. So it would be useful just for the Comptroller to confirm that.

2350 The second question, sir, was in relation again to Deputy Green's question in relation to the
meaning of the new 4.(g), in terms of the evidence that would need to be adduced in relation to
the terms consumption or taken or was capable of causing or enabling and how that might actually
work. Again the Procureur's advice was that the prosecutors would look at the evidence they are
presented with. The amendment combines objective and subjective elements and so whilst the
volume and time may well be relevant, ultimately if the complainant indicates that they felt
incapable of giving consent, that would form part of the evidence for the prosecution and ultimately
2355 the court to consider when relying on the presumption. Again, I just think it would be useful to deal
with that now and for the Comptroller to confirm that he is of the same opinion as the Procureur
on those two important points that Deputy Green raised, sir.

The Bailiff: Mr Comptroller.

2360 **The Comptroller:** Sir, thank you.

I discussed those issues with Her Majesty's Procureur before the advice was given and I concur
with her views of those two particular issues.

The Bailiff: Thank you very much.

2365 Deputy Parkinson, you also have a question for the Comptroller.

Deputy Parkinson: Yes, please.

2370 It may be that this has already been covered in the answers given but my question is, essentially,
does the burden of proof that the alleged victim has consumed substances in quantities which could
have caused or enabled them to be overpowered, stupefied etc. does the burden of proving that
remain with the prosecution?

The Bailiff: Mr Comptroller.

2375 **The Comptroller:** Sir, thank you.

I do not think it changes the burden of proof, ultimately the burden of proof lies with the
prosecution.

The Bailiff: Thank you very much, Mr Comptroller.

2380 I do not see anyone else wishing to raise questions at the moment, so I will now turn to Deputy
Lowe as the President of the Committee to reply to the debate on the amendment.
Deputy Lowe.

Deputy Lowe: Thank you, sir.

2385 **The Bailiff:** Apologies Deputy Lowe Deputy Trott has a question, so we might just take that first
whilst the Comptroller is still in the hot seat.
Deputy Trott.

2390 **Deputy Trott:** Thank you, sir.

I am not a lawyer so this question may have already been answered legalistically but maybe not
in simple language. If this amendment will not make prosecutions any easier, does it follow that it
will not make defence any harder? If the answer is no, what would happen as a consequence of the
amendment that will disrupt that balance in a negative way?

2395 Now the question, like I say, may have already been answered but I would like to express it in
that way, mainly for those of us that are not lawyers.

If this amendment will not make prosecutions any easier, does it follow that it will not make
defence any harder?

The Bailiff: Mr Comptroller, can you answer Deputy Trott's question at all?

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The Comptroller: I am not sure than I can help, because it really goes back to the point that has been made that we are in unknown territory. I do not see it making – well, it is a personal thing – a material difference, but until such time as the issue is raised in court, it is difficult to actually know how it will work out in practice.

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The other point that I would make and it is fair to make is the point that we made before: there has not been a lot of opportunity to consult particularly widely on the impact of this particular provision. So again it is something of an unknown quantity.

The Bailiff: Thank you very much, Mr Comptroller.

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I do apologise to Deputy – oh, Deputy Ferbrache now has a question as well. So Deputy Ferbrache's question, please.

Deputy Ferbrache: Thank you, sir.

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Just on that last point and it was a point well raised, if I may say so, by Deputy Trott. I just want to question what the Comptroller has said. Surely it must make a defence more difficult if it shifts the evidential burden to the defendant. How can it not make a defence more difficult if the evidential burden is notably so shifted?

The Bailiff: Mr Comptroller, do you wish to answer the issue once again?

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The Comptroller: Sir, I am not sure of the extent I can assist with this. I think it depends on the facts of each particular case in any event, as it might make defence more difficult. I think it is a situation that I think again consultation with members of the criminal bar would very much help.

So, I am not going to express a view either way in relation to that particular issue.

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The Bailiff: Okay, thank you, Mr Comptroller.

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I do not want to interrupt Deputy Lowe again, and pausing very briefly, but as nobody else amongst the Members wishes to pose any further question at this stage for Her Majesty's Comptroller to answer, I will now turn to Deputy Lowe, as the President of the Committee for Home Affairs, to speak on the amendment.

Deputy Lowe.

Deputy Lowe: Thank you, sir.

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The Committee is grateful to Deputy St Pier, who has taken a detailed interest in these proposals and shared with the Committee his views. The Committee met with Deputy St Pier in March this year to discuss the rationale of his potential amendment. It is an area the Committee has considered very carefully, along with the benefit of legal and operational advice.

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While recognising Deputy St Pier's view that the Committee was, and remains, concerned that the changes he would like to see would create greater scope for false accusations of non-consensual activity, it is accepted that drugs and alcohol will impair an individual's judgement and that such substances affect people differently. However, it is not reasonable to suggest that an individual who has willingly drunk alcohol or taken drugs is necessarily incapable of consenting to sexual activity.

The Committee is concerned that this amendment could potentially see another person facing a life-changing accusation for an offence which it would be nigh impossible for them to defend.

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The more intoxicated a person, the more susceptible they are to poor decisions and risk of harm. Accordingly, there would be a risk of potentially false accusations made by an individual who had voluntarily drunk alcohol or taken drugs and later regretted their decision. By way of illustration, that person could, after an evening of heavy drinking, willingly leave a venue and thereafter go to bed with someone other than their partner. The following morning they might realise they have now to explain the matter to their partner or a parent or a work colleague. The amendment would,

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if successful, make it much easier for that person, who might have been willing at the time, to seek to protect their own reputation by claiming that because they had been under the influence of alcohol, they could not have consented to sex and therefore an offence has automatically been committed.

2455 What Deputy St Pier seeks would be a fundamental change in the way intoxication is dealt with in the Guernsey Courts. We are not talking about situations where an individual has been subject to sexual activity after having been drugged or made drunk against their will, as the current and proposed legislation can adequately deal with that. Rather, what he proposes would mean that a person who became intoxicated through their own actions would gain a legal right to be absolved from responsibilities for their actions.

2460 By setting a precedent, if that was to be transposed to other areas, we would find that in street fights or even assaults against our police officers, the accused could argue that they could not be held responsible for throwing punches or kicking because they had been drinking. The ramifications of this amendment, if successful, changes the justice system for individuals, going from being innocent until being proven guilty, and in will come guilty until proven innocent. That is a serious scenario for anyone involved.

2465 In the light of the risks of injustice and having been guided by its legal advisers, the Committee's view that while what Deputy St Pier seeks is entirely well-intentioned, it has the potential to add significant complexity and create an offence that would be indefensible.

2470 Listening to the debate, sir, if this amendment was against a Home Affairs report for consideration and consultation, including with the Guernsey Bar, I could accept it. But this is not an amendment that is against a report; it is against legislation – changing our justice system.

2475 Deputy Inder said, 'this amendment, imperfect as it is'. Well, this is legislation and we have a responsibility to approve legislation that is workable, fair and relevant. Deputy Ferbrache explained the Guernsey Courts and how they operate and how fairly they operate. Deputy Green mentioned that the Criminal Bar had concerns and they have not been consulted.

2480 I would like to suggest to Deputy St Pier that he considers withdrawing his amendment, or for Members to vote against, if he is not prepared to withdraw, to allow Home Affairs to take this back, consult, including with the Guernsey Bar, and return as expeditiously as possible, for the States to have a number of questions which have been raised by Members to Her Majesty's Comptroller and have been raised in debate, and that this following report would reflect more information and would benefit Members to be able to take that forward, rather than amend, at the last minute, legislation, which I believe is a dangerous route to go when there are so many questions still unanswered and no consultation taken about with the Guernsey Bar. We have two practising advocates that have actually drawn attention to that today. None of us are practising advocates that are sitting here; we only have two out of 40.

2485 I suggest we take heed of what has been actually proposed and that we ask Deputy St Pier to either withdraw his amendment, or for Members to vote against it; that I give an assurance and an undertaking that we will come back as expeditiously as possible with a report that would have all the details that are missing so far from this debate.

2490 Thank you, sir.

The Bailiff: Deputy St Pier, as the proposer of this amendment, to reply to the debate on it. Deputy St Pier.

2495 **Deputy St Pier:** Thank you very much, sir.

2500 Sir, in the States of Deliberation we have many dreadful debates, but the States does seem to rise on occasion to deal with important and sensitive issues and I think it has done so on this occasion and I would like to thank colleagues and Members of the States for what I think has been a high-quality debate.

This is a sort slight light aside because I think we probably need it at the beginning of my response. Deputy Ferbrache was a great advocate for wanting justice, but he did seem very happy to take someone out and shoot them quite readily, which just amused me.

2505 More seriously, he did of course raise the point about the suggestion, he gave an example of two 25-year-olds and waking up the next morning and having regrets, and indeed Deputy Lowe in closing also similarly came up with a similar example.

2510 Sir, and I think Deputy Smithies has really identified the nub of the challenge here is the draft Law itself already draws some presumptions that exist already in the draft Law, that would enable an individual in that position to seek, with regret, to claim a lack of consent when they have in fact consented. They could of course claim that they had been sedated in some way or of course under 2.(d), which has not been referenced in debate, that they were asleep or otherwise unconscious and of course it would similarly be the prosecution's job to prove those facts before the presumption was established.

2515 Deputy Ferbrache also made reference to the dreadful state of the Appeal Law and I agree with Deputy Roffey. Deputy Ferbrache has been in the Assembly for four years, he has been in the Assembly before, he has been, as he said himself many times, a practicing advocate for a very long period. It is disappointing that nothing has been done about it and as Deputy Roffey said if this provides more urgency for that reform to be discharged, then so be it. It certainly should not be any kind of a reason for not accepting this amendment.

2520 I think defence counsel clearly, those that expressed a view either in email or today, have expressed some concerns. The reality is of course they are right in expressing it in this way. The defence counsel are the trade union for defendants; it is their job to represent them.

2525 If ultimately as we have established in this debate, these matters come down on consent to the defendant's word against the complainant's word, then of course a majority of those walking through the door of defence counsel are going to have to tell their counsel that the complainant is lying, because it is their only possible defence in responding to the claim that has been made against them, where it is one word against another. So defence counsel, of course, are used to receiving that and dealing with that on behalf of their clients and representing them as best they can. That is their job.

2530 Deputy Gollop spoke about the deficiencies in the current Law and I think he is right to have done that and again, that is irrelevant really; as he said, it does not provide a reason not to be passing this amendment. I think he absolutely nailed the understanding of what this amendment is about in terms of sending a political message to society, it is about that cultural change and I think Deputy Parkinson when he spoke also very much nailed what this amendment would do. It is only going to be a marginal improvement as he described it, its utility is limited and the risk of miscarriage have been grossly overstated. But I think his analysis was spot on.

2535 Deputy Graham posed three questions. What difference would this amendment have made to the cases which I cited when I opened debate? Having looked at those, I think it probably could have played a factor in possibly two out of the eight, to the extent that I am aware of all the details, which frankly I am not, I am not privy to them all. But the point really is that it would encourage more reporting and that is in essence what the case for a change of this nature is.

2540 Is there any evidence of victim-blaming in courts? Well no, there is not, but as Deputy Merrett said the victim blaming is in society and it is with the complainant, the victim themselves and it is supported by Law which is predicated that it is your problem if you fail to prevent yourself getting drunk. By drawing that distinction between voluntary and involuntary intoxication you are by definition creating that victim-blaming culture, if no less for the individual themselves, as Deputy Merrett said and as Deputy Inder cited in the case that he referred to.

2550 The burden of proof, I think we have dealt with that extensively through the debate and through the comments of the Procureur and Her Majesty's Comptroller: innocent until proven guilty, the responsibility of the prosecution to the legal burden remains with the prosecution. The evidential burden is shifted no more than it is in respect of the other items in section 4, including not only

violence, not only spiking in some way, but also being asleep or unconscious as I have referred to earlier.

2555 This challenge about we should have further consultation, well of course I have been engaged on this issue for a considerable period of time with the Committee for Home Affairs. There was not an opportunity to amend the policy letter, of course the original policy letter was 2012 before I was in the States. The supplementary policy letter came before the meeting that had been arranged for some time, at which I had the opportunity to discuss this draft legislation with the Committee. So I think they had plenty of opportunity – they knew this was a matter of concern for an extended
2560 period of time – for them to seek the advice if they had chosen to do so.

We have the opportunity to amend the legislation. There is no other way of dealing with the matter at this point and I think it is entirely appropriate that we take that opportunity to do so now. That is the purpose of this part of the process of scrutiny and review of legislation.

2565 Deputy Roffey raised a number of questions, in particular seeking confirmation that the amendment engaged only the situation where consent was incapable of being given due to intoxication, rather than one where alcohol acted as a disinhibitor, absolutely yes. That is correct and where I agree that at the two ends of the spectrum, a couple of glasses of wine versus being totally comatose, there is in essence a very grey area in the middle – absolutely of course there is, just as there is now. It is a minefield now. This whole area of consent is a minefield and it will be a
2570 minefield after this amendment but it will be once which at least has a level playing field between the question of self-intoxication or imposed intoxication and all that follows from that.

Deputy Inder pleaded that we do not have a battle of the sexes. I absolutely agree. I have certainly sought very careful use of language to avoid referencing gender wherever possible, and I think we do have to acknowledge, as Deputy Inder said, that this is a minority occupation, shall we
2575 say, for some men. The fact is that some 60% of men and 67% of women in that Fawcett Society Survey did not agree that a woman should be partially or fully blamed if they were drunk, so I think we should acknowledge that and I am grateful for him making that point. Also, that this will not create a drunk sex law as he put it.

Deputy Merrett, I think, made a very good point about perjury. We have a Law against perjury, it is used, people have been convicted for it, they will continue to be convicted for it if individuals
2580 choose to put themselves in the witness box to lie in the way they have.

I think as Deputy Tooley said and I made the point very clear in my opening speech, there are massive barriers to false reports. You have got to be very willing to drag yourself through a very long tortuous process to make that false report, hence Deputy Parkinson's analysis being right that
2585 that risk is overstated. I am grateful to Deputy Tindall for making that point about strict liability in response to Deputy Smithies.

Sir, this amendment is not a magic bullet it will not prevent all future sexual crimes, and I think I do want to remind Members of Her Majesty's Procureur's advice ultimately matters will turn on the individual facts of the case as is usual and the prosecution will bear the burden of proof in relation
2590 to proving any offence before the courts. I think the Comptroller has also spoken to that at some length.

This amendment is not driving a stake through the heart of our criminal justice system or centuries of jurisprudence. The central tenets hold, innocent until proven guilty. It is a minor amendment to a very large Law that simply adds one more presumption to the many that already
2595 exist in Law. It is much more about supporting the change in culture, with the legal change to do that.

Sir, since Sunday we have been lobbied by many Islanders on this topic. The very few who oppose this amendment are men and 100% of the defence counsel who have contacted us, who, in the event a complainant is rendered incapable of giving consent, will have to work just a little bit harder
2600 to produce evidence that the complainant did consent or it was reasonable for the defendant to believe that they had done so.

The vast majority are supportive, even if of course they may not fully understand the amendment or its consequences. That is not quite the point they are making; they are making the point that

2605 sexual violence is prevalent and it is unacceptable. Responses are running at about 4 to 1 from women over men. Why should that be? Because of course their gender present more victims in a ratio of 4 or 5 to 1 and many of those contacting us will have been victims themselves, whether they tell us or not, or their friends, or their daughters, or their granddaughters, or their partners, or their mothers, or their sisters.

2610 So, sir, for the 75% of us in this Assembly who are men, we need to shut up for once and listen to the women, and this is what they are saying.

2615 'Be a lady, they said. Do not get raped; protect yourself; do not drink too much; do not walk alone; do not go out too late; do not dress like that; do not show too much; do not get drunk; do not leave your drink; have a buddy; walk where it is well lit; stay in the safe neighbourhoods; tell someone where you are going; bring pepper spray; buy a rape whistle; hold your keys like a weapon; take a self-defence course; check the boot of your car; lock your doors; do not go out alone; do not make eye contact; do not bat your eyelashes; do not look easy; do not attract attention; do not work late; do not crack dirty jokes; do not smile at strangers; do not go out at night; do not trust anyone; do not say yes; do not say no. Just be a lady, they said.'

2620 Sir, I ask Members to support this amendment and I ask for a recorded vote.

The Bailiff: Members of the States, we now go to the vote which will be a recorded vote on amendment no. 1 proposed by Deputy St Pier and seconded by Deputy de Sausmarez. Greffier.

The States' Greffier: The voting this session, sir, begins with St Peter Port North.

2625 *There was a recorded vote.*

Carried – Pour 32, Contre 5, Ne vote pas 2, Absent 0

POUR	CONTRE	NE VOTE PAS	ABSENT
Deputy Gollop	Deputy Mooney	Deputy Leadbeater	None
Deputy Parkinson	Deputy Lowe	Deputy Meerveld	
Deputy Lester Queripel	Deputy Graham		
Deputy Le Clerc	Deputy Green		
Deputy Trott	Deputy Ferbrache		
Deputy Le Pelley			
Deputy Merrett			
Deputy St Pier			
Deputy Stephens			
Deputy Fallaize			
Deputy Inder			
Deputy Laurie Queripel			
Deputy Smithies			
Deputy Hansmann Rouxel			
Deputy Paint			
Deputy Dorey			
Deputy Le Tocq			
Deputy Brouard			
Deputy Dudley-Owen			
Deputy McSwiggan			
Deputy De Lisle			
Deputy Langlois			
Deputy Soulsby			
Deputy de Sausmarez			
Deputy Roffey			
Deputy Prow			
Deputy Oliver			
Alderney Rep. Roberts			
Alderney Rep. Snowdon			
Deputy Tindall			
Deputy Brehaut			
Deputy Tooley			

The Bailiff: Well, Members of the States, the voting on amendment no. 1 proposed by Deputy St Pier and seconded by Deputy de Sausmarez was that there voted *Pour* 32; *Contre* 5; with two abstentions. Therefore I declare amendment 1 duly carried.

2630 Members of the States, we will now take the mid-afternoon break. Can we keep it quite a short one today please and let's resume at 10 past four.

*The Assembly adjourned at 4.04 p.m.
and resumed it sitting at 4.11 p.m.*

**The Sexual Offences (Bailiwick of Guernsey) Law, 2020 –
Debate continued –
Proposition as amended carried**

The Bailiff: Thank you, Members of the States.

2635 We next come to what I think is going to be amendment 3 to this draft *Projet de Loi* and that is to be proposed by the Procureur, seconded by the Comptroller and hopefully we have got both of them this time.

Madam Procureur, you have a motion under Article 7(1) of The Reform (Guernsey) Law, 1948 first.

[Motion under Article 7\(1\) of The Reform \(Guernsey\) Law, 1948](#)

To suspend the Rules of Procedure to the extent necessary to permit the Proposition set out below to be considered.

*In the draft *Projet de Loi* entitled "The Sexual Offences (Bailiwick Guernsey) Law, 2020" (Article I of Billet d'État No. XIII of 2020):*

(a) in clause 60(1), for "Section 58" substitute "Section 59";

(b) in clause 61, for "section 58" substitute "section 59";

(c) in clause 90(2), for "this section", substitute "this Chapter";

*(d) in paragraphs 2(3) and (4) of Schedule 1, for "this subsection", substitute "this subparagraph";
and*

(e) in paragraph 3(b) of Schedule 2, for "section 1(2)(j)", substitute "section 1(1)(j)".

2640 **The Procureur:** Yes I do and I am here presently this is a motion to suspend the Rules of procedure please, sir, and it is seconded by HM Comptroller.

The Bailiff: Thank you very much.

Mr Comptroller, do you second that?

2645 **The Comptroller:** I do, sir.

The Bailiff: Thank you very much.

Members of the States, this is very much a technical process because of the timing, but it is appropriate to suspend the Rules of Procedure to the extent necessary to permit the technical amendment to put. Those in favour in the chat function, please.

Members voted Pour.

2650 Thank you very much, Members of the States, the motion under Article 7(1) of The Reform (Guernsey) Law, 1948 proposed by the Procureur, seconded the Comptroller is duly carried. There was widespread support for that.

So Madam Procureur, your amendment no. 3 then please.

[Amendment 3](#)

In the draft Projet de Loi entitled "The Sexual Offences (Bailiwick Guernsey) Law, 2020" (Article I of Billet d'État No. XIII of 2020):

(a) in clause 60(1), for "Section 58" substitute "Section 59";

(b) in clause 61, for "section 58" substitute "section 59";

(c) in clause 90(2), for "this section", substitute "this Chapter";

(d) in paragraphs 2(3) and (4) of Schedule 1, for "this subsection", substitute "this subparagraph"; and

(e) in paragraph 3(b) of Schedule 2, for "section 1(2)(j)", substitute "section 1(1)(j)".

The Procureur: Thank you, sir.

2655 This is an amendment to the Sexual Offences (Bailiwick of Guernsey) Law, 2020. It is a technical amendment. Could the Greffier please read it, sir.

The Bailiff: Greffier.

The States' Greffier read the amendment.

The Bailiff: Thank you very much.

2660 Madam Procureur.

The Procureur: Thank you very much to the Greffier, there is rather a lot of traffic outside my window so I am grateful to him for reading it out.

Sir, this amendment as stated is a technical amendment.

2665 Just to clarify, sir, there was an amendment previously circulated to Members and just to make clear what the difference in the amendments is they are virtually the same, save that the amendment before the States currently is amendment (a) to (e) and there was previously an additional paragraph (d). So I am grateful to Deputy McSwiggan who queried the need for that provision.

2670 What has happened, sir, is and I apologise to Members for bringing these technical amendments before them is this legislation, as has already been noted, spent several years in the making and in its final revisions these points were not picked up. An additional amendment in discussion with the Comptroller and I in the previous paragraph (d) was not considered necessary but these other types of amendments are, they are only technical amendments they should be have been picked up earlier, apologies to the Assembly for not doing so but hopefully Members will be satisfied that they are necessary and vote for them accordingly.

2675 Thank you, sir.

The Bailiff: Mr Comptroller, do you formally second the amendment 3?

2680 **The Comptroller:** I do, sir, thank you.

The Bailiff: Thank you very much.

Does anyone wish to debate any of these points or can I put them straight to the vote? No Member is indicating a wish to speak on this amendment 3.

2685 So Members of the States, we will go to the vote on amendment 3 proposed by HM Procureur, seconded by HM Comptroller.

Members voted Pour.

The Bailiff: Thank you very much, Members of the States, I am satisfied that there was great support of *Pour*, I did not see any *Contre* and therefore I declare amendment 3 proposed by the Procureur seconded by the Comptroller duly carried.

2690 We return to general debate on this draft *Projet de Loi*. Is there anyone who wishes to speak in general debate?

Deputy Inder.

2695 **Deputy Inder:** Just briefly, sir, and you may decide that it is not connected but I am going to give it a go.

On 26th February myself and Deputy Soulsby, and it is related to the Sexual Offences Law, we submitted an amendment to direct the Home Affairs as part of its ongoing review of the justice policy to consider the appropriateness of introducing legislation enabling pre-charged bail conditions to prevent a suspect from failing to surrender.

2700 I am wondering, sir, whether this is going to form part of the Justice Review and it is slightly related to the sexual offences legislation, even though I accept at the time the Home Department did not particularly accept that.

Thank you.

2705 **The Bailiff:** Just pausing very briefly, Deputy St Pier.

Deputy St Pier: Thank you, sir.

2710 Sir, I want to briefly draw attention to section 14 which deals with sexual coercion when an individual causes another to engage in sexual activity which of course has a very wide meaning, causative conduct could include force, abuse, humiliation or other exertion control, and this could therefore extend to what is sometimes referred to as forced penetration when a man is forced to have sex and of course the popular misconception is this is impossible on the basis that men can only have sex if they are aroused.

2715 But there are men who feel forced to have sex. It could be an abusive relationship where the man is humiliated for sexual inadequacy, or a gay man from a faith community that opposes same sex relationships who is threatened by his partner with exposure if he ends a sexual relationship.

So I hope that men who are in that position welcome the knowledge that they may have legal protection as victims under section 14.

2720 Sir, this legislation is very welcome and I commend all involved in bringing it to fruition, albeit that it has taken far too long. But we need to recognise what it is, which is no more than a bare-bones legal framework.

Ultimately sexual behaviour is about the interaction between nature and nurture, it is social and cultural norms that tell us, unlike domestic animals, it is not okay to have sex in public and it is neither good biologically nor socially permissible to have sex with those closely related to us.

2725 It is those social norms that teach us or ought to teach us about what consent is and the importance of obtaining consent. Consent is not nature, it is nurture and each generation needs to be taught its meaning.

2730 A culture of so-called men's locker room talk where it is normal and acceptable to talk about 'grab them by the pussies' is not a great starting point to that education and zero tolerance of that culture is not the same as political correctness, in the same way that we would never accept the use of the 'n' word to describe black people. Here is where one of the problems lies.

2735 Zoe Lodrick, who I referenced in the amendment debate, encouraged anyone with children to undertake the following experiment and I encourage you to do the same. I would suggest Members use a personal device not a States issued one so you do not breach States' policies and do not conduct this experiment in the presence of children.

If you go to any web browser and you type in four letters, P-O-R-N, click on return then click on the first link, so that is four key strokes,, two clicks away, probably less than two seconds away, there is a cornucopia of pornography, and frankly this is a lot easier to access than the efforts my generation had to go to, to get hold of a battered copy of Playboy or Mayfair.

2740 This experiment will almost certainly have taken you to a site called Porn Hub, the world's largest
porn site and if so, this is the site that 75% of boys aged 11 to 16 refer to as one of their sources of
sex education. And a poll last year in New Zealand showed young Kiwis mainly go online to learn
2745 about sex. So we need to see to understand how they are educating themselves. But the ease of
access from any internet enabled device is only part of the problem, it is the nature of the content
too which is of concern.

Frankly, if you are searching for images of consensual sexual intercourse between two adults, you may struggle, a third of the most popular pornography clips depict non-consensual activities. So as this is where our children are learning about sex and relationships, it is no wonder that some may be struggling to understand what consent really means.

2750 Zoe Lodrick – Deputy Graham may remember this – told her audience of a case she had been
helping a police force with. A boy had been arrested for rape, he had had sex with his friend's sister
at a party, she was drunk and had been sick, when questioned by the police he readily admitted
that he had indeed had sex, and when asked why he had done so when she was whimpering and
2755 crying, he just said that all girls cry when they have sex. Now you know where he could have got
such an idea from.

Sir, we all have a responsibility to talk to and educate our children and grandchildren as to the meaning of both giving and receiving consent. The earlier an age-appropriate conversation begins the easier it is to build on during the teenage years. We also need to educate children not only that no means no, but actually to seek active consent – yes means yes – rather than assuming silence means yes.

2760 As ever, we may be able to learn something from New Zealand who have this week launched a
campaign called 'Keep It Real Online' and addresses inappropriate content pornography and
grooming and I will actually circulate a link later.

2765 Sir, there is a final footnote to my amendment and indeed to this debate. I was one of the victims
of one of the accounts I told you. I always intended to speak about this in the debate on this
legislation but decided not to reference it in the amendment debate as the fact pattern was not
relevant to the amendment, and the experience was not my main motivation for the amendment
and does not provide my passion for this topic, that comes from another story that is not mine to
tell. I did not want to be accused of playing an emotional card in an attempt to win the amendment.

2770 It was a few minutes over 30 years ago, it has not defined me, I was not damaged, not physically
but certainly for a while I was psychologically traumatised, I cried, I was disgusted, I felt ashamed, I
felt embarrassed, I felt humiliated, I felt responsible and guilty. I took the hand of the trusty non-
consensual co-conspirator silence and said nothing.

2775 I have lived with the reasons people do not speak up. I understand how a few minutes lived can
turn into hundreds of hours of reflection. I told no-one, literally no-one, for 33 years. The average
period of silence for men by the way is 26 years. I have spoken to no-one about this outside my
immediate family until this debate.

2780 I was not, as I saw it, the stereotypical victim who became depressed and turned to drugs and
alcohol. I arrogantly thought I was stronger than that. In fact I am of course the norm. I did what
thousands do, I boxed it off in my mind, then moved on.

I have not spoken out today because I am seeking your sympathy, believe me please, I really do
mean it when I say I do not need it. Neither am I speaking out in some narcissistic search for
accolades as to how brave or courageous I am in doing so, please spare me those because I truly
am not. In all honesty there is absolutely nothing I would rather have done than stayed silent
2785 throughout this debate, but this is very firmly a head of the heart matter. When people ask me, as
the former Bishop of Dover Trevor Wilmot once did, why did you go into politics, I normally say
something like because I am arrogant or stupid enough to believe that I can make a difference and

improve people's lives, and I am arrogant or stupid enough to believe that today really is one of those days on which I truly can make a difference.

2790 So yes, I am shamelessly using my experience and my office as a Deputy and a platform of my role in this Assembly to raise the profile of this issue. With that platform comes opportunity and with that opportunity comes responsibility. I am hoping that sharing my experience will help break the social taboo and make discussion of these issues more open and acceptable.

2795 I do not know what my political future holds and whatever may follow. If I am able, I intend to champion improving the environment for the victims of sexual violence. For starters we really do need a justice policy that provides for a sexual assault referral centre, we need an Independent Sexual Violence Adviser (ISVA), we need a rape crisis line.

2800 Sexual violence is a major hidden and unreported and untalked of social problem in the heart of our community. We can and should ignore it no longer, we need systemic change to support victims, but most of all we need cultural change.

2805 If my speaking out empowers, encourages or enables merely one person to tell somebody they know what happened to them, it will have been worth my own personal discomfort; or if merely one person feels able to report to law enforcement what happened to them however historic it will have been worth it; or if merely one person feels just marginally better today than yesterday knowing that they really are not alone and there are many others out there who have been through what they have been through, then it will have been worth it; or if merely one person is comforted by the knowledge that their community and their Government really does recognise this is a problem that will now be taken seriously, then it will have been worth it.

Thank you, sir.

2810

The Bailiff: Deputy Gollop, to be followed by Deputy Green.

Deputy Gollop: Thank you, sir.

2815 It is always difficult to follow a great speaker and personality like Deputy St Pier, and even more so perhaps today.

2820 But I endorse everything he says, that we do need to have more frank conversations, more cultural change, and indeed not just a kind of liberation but of course as we approach an exit strategy from a difficult last few months and see what happens after that, it has been a fact not necessarily in Guernsey but I suspect it has been both in Guernsey and Jersey – it certainly has been in other places – that there has been a regrettable increase in violence, so-called domestic violence, sexual violence and all kinds of other ills of society.

I do not recall with great detail the scrutiny of this legislation through the Legislation Select Committee, beyond agreeing that it generally concurred with the States' report and the earlier debate that Deputy Inder and Deputy St Pier have alluded to.

2825 That does not mean to say I do not think there are not some aspects to it that I think need to be carried forward. I note in the States of Jersey they have a rather perfunctory first reading, second reading, third reading of legislation whereby relatively little is added and Constable Norman whoever it is on behalf of the Home Committee will respond to Deputy Tadier or Scrutiny or whatever.

2830 We do not do that, nor do we have the painstaking American or Whitehall style of committees in public questioning every aspect of the legislation, and perhaps for this kind of legislation we need more of that. Because I think when you listen back to the golden thread of this debate from Deputy Green, Deputy Ferbrache, Deputy Tindall and Deputy Smithies and so on, we need greater clarification on certain aspects.

2835 I am going to vote for everything here, but I just wrote a few notes that occurred to me going through it that perhaps raised questions in the chapters that have been identified, because there are number of significant changes coming in.

2840 One is of course the overdue issue of grooming, although as Deputy Lowe has rightly said, generally speaking the Island's Law Authorities have found ways of preventing or rather penalising those who have been identified as perpetrators under other pieces of legislation.

2845 The one snag of more and more detailed legislation on these subjects is it does satisfy a puritanical element of society which I first noted about 20 years ago in the Government of the Rt Hon. Tony Blair, for example, when he had a problem, he thought the answer was to construct a new law whereas actually a more nuanced approach looked at the conditions and the cultures behind these things and I think those points have been well made today.

2850 Some examples where I think there are possibly some issues with the legislation: if one turns to Chapter VII, Offences Involving Abuse of a Position of Trust, that is a new concept in a way, I think, to the jurisprudence of Guernsey but it has existed in the UK since about 1998, and of course has seen teachers and other similar people penalised for inappropriate relationships with persons who Deputy de Sausmarez might identify as technically above the legal age of consent defined as 16 but are still children and not adults.

2855 Now, I think generally society disapproves of teachers and other people who are in a position of trust, but there was an MP, I think, for the Conservative Party representing a Kent constituency, Ms Crouch MP, Tracey Crouch, who wishes to see and has recently laid a Bill before the Houses of Parliament, a Private Member's Bill, to extend that to sports coaches where there have been not as ... well perhaps there have been one or two cases in Guernsey I can think of, but there certainly have been cases in the UK of inappropriate relationships between sports ... *[Inaudible]*

2860 **The Bailiff:** Deputy Gollop, are you ... ? Oh, you are back.

Deputy Gollop: I am back, sorry about that, something went wrong.

Another issue that has cropped up is, for example, driving instructors and so on. I believe an Ordinance will be produced relating to these, it could well be that we will need to add additional categories of person to make this an effective Law and cultural change.

2865 We also later on see 'Offences against Persons with a Mental Disorder Impeding Choice'. But I have found even in my own personal life in dealing with constituents and looking at complicated situations, the phrase 'mental disorder' can cover a multitude of conditions from those who clearly have severe learning difficulties to those who could be defined as being on the autistic spectrum or bi-polar or temporarily in a situation.

2870 I think sometimes we have differential between a legal or a judicial definition of a word and the medical definition, and sometimes the psychiatric profession and medical science and other elements have a different definition of these things, and this is another area where we need, I think, greater clarification.

2875 I also note that we are effectively outlawing prostitution, as in the subject of exploitation, quite rightly, in Guernsey, but also across the whole rest of the world. So somebody who has a cavalier attitude to international travel and perhaps seeks experience of an inappropriate kind in countries near or far may find themselves – and we are not dealing with hopefully child sexual offences here but adult offences – in a situation where they could be prosecuted within Guernsey and that makes the point that other Members have made that we need greater education on the implications of this Law and how it works through.

2880 Similarly Deputy St Pier has made a number of points about dubious videos that are publicly and probably legally available, but the question is always what is legal in one country is not necessarily legal in another country? Where does acting theatre end and non-consensual exploitation begin? How legal is the adult industry? Should we have a stricter policy in Guernsey, or a more lenient or a more liberal policy, in terms of policing the World Wide Web? I think they are questions that we as a society probably have different perspectives on.

2885 If I can make a comment, I was always too short really to reach the top shelf when I was younger, but there you go!

2890 I do think this is useful legislation but we cannot necessarily know when we pass legislation what its implications will be to the law enforcement agencies and the courts.

Thanking you, sir.

The Bailiff: Deputy Green.

2895 **Deputy Green:** Mr Bailiff, thank you very much.

Deputy Gollop mentioned, as he often does, the processes that we have for legislative scrutiny and he talked about the possibility of having alternative approaches to that including multiple readings.

2900 I mentioned before that my Committee was hoping to do a review of the legislative scrutiny angle of our mandate, but it is probably worth putting on the record that if we are going to end up in an election in September or October, the ability of my Committee to progress that review is probably going to be extremely limited.

But that was not the reason why I wanted to speak in general debate. I have only got one point to make. I generally support and generally speaking very much welcome this legislation.

2905 I know that the amendment that we have just been debating, the Deputy St Pier/Deputy de Saumarez amendment, has perhaps stolen a lot of the attention, but the legislation that we are talking about here is a very welcome modernisation of this area of law in many aspects. The sexual offences legislation in Guernsey was very out of date and it needed a proper modern refresh.

2910 But the real point I wanted to make was this, which is the Resolution that the States made to draft a new Sexual Offences Law was made in 2011, we are now in 2020, nine years later. Why on earth, Mr Bailiff, has it taken so long to get from that States' Resolution to today?

I think personally it is completely unacceptable that it has taken quite so long. I would like an explanation as to why this has taken so long.

2915 We know that the legislation that we are debating here is to a great extent borrowed from the 2003 Sexual Offences Act in England and Wales. I would like to know exactly why this has taken so long.

The Bailiff: Deputy Tooley, to be followed by Deputy Ferbrache.

2920 **Deputy Tooley:** Thank you, sir.

I never intended this to be a long speech but Deputy Green has just made one of the points that I wanted to make, so that will make it even briefer. We do indeed need to know why this has taken so long.

2925 What I wanted to add, though, was that I support the things that are in this legislation and I am glad it is coming forward, but I am determined that there is more we must see done and there are other issues around sexual offences that must be discussed and must be looked at in detail in the very near future.

2930 So let's not work on the basis that we have just changed the Law and therefore we do not need to look at it for a while longer. This needs continued close review and close update and I really want to see that this remains on the agenda despite us voting this hopefully successfully through today.

Thank you, sir.

The Bailiff: Deputy Ferbrache.

2935 **Deputy Ferbrache:** Sir, I was not intending to speak but I am speaking because of the comments made by Deputy St Pier, with which I agree completely. There is never any difference in relation to those matters. There is too much sexual violence, there are too many sexual assaults and the matter should be addressed.

I will be voting for these proposals as they have been passed convincingly by the States.

2940 I mentioned in my initial speech, my speech earlier today, the fact that it has taken from 2011 to 2020 and now Deputies Tooley and Green have said the same thing. It generally takes too long for these things to come from the starting place to the finishing post. That is no particular person's fault but it is cumulatively the fault of the various States.

2945 In relation to the point I made before about what I regard – and I regard it with 100% sincerity and nobody is going to persuade me otherwise – the defaults of our appeal processes. We should have a system of review every year – that does not mean we have got to do something every year because there may be times when things do not need to be done – of our justice system to see if there is anything that needs to be changed, whether it be sexual cases, whether it be dishonesty, whether it be child porn, or whatever.

2950 What Deputy St Pier has said, for example, in relation to porn, he said you click on this and you click on that and most of the porn that is seen is 'not normal porn', if I can use that phrase – it is not his phrase; it is my phrase. And he is absolutely right. Is there not something we could do as this tiny independent jurisdiction to protect *our* citizens – we cannot protect the world – in some way from that kind of behavioural impressionism? Because when you are 11, 12, 14, 15, 16 you are very impressionable and you may carry those misguided values, misguided principles, misguided standards through to your adult life. If you can nip it in the bud, so much the better.

2955 That may be something we may be able to do – I do not know. I do not have the technical expertise in relation to computers that, say, Deputy Inder and Deputy St Pier may have, but if there is something we should do, we should do it, because this is a sexual offence piece of legislation; there will be others that need to come along, but we need to be addressing these problems in our society, to make sure that all we can do in our society, our little part of the world, is to create the best moral values that we can and protect our citizens as best we can.

2960 I *fortunately* have not had the experience that Deputy St Pier *bravely* – and I know he was not seeking any plaudits, but he might as well get one; he does not get too many from me – announced and published just a few minutes ago in his speech, but I do have, and I am not going to dwell on them again, the two individuals that I referred to, very close people that I know very well, that have had their childhood and their lives sincerely damaged because of bad behaviour of people who should have known better. Again if we need to look at that and take stronger steps in relation to that abusive families, abusive relationships, abusive instances, then we should be doing that.

2970 Thank you very much.

The Bailiff: Deputy Graham, to be followed by Deputy Dudley-Owen.

Deputy Graham: Thank you, Mr Bailiff.

2975 Very briefly, Deputy St Pier I think both in his response to the debate on his amendment but also in his contribution to general debate rightly commented that the States, by virtue of its vote on his amendment, had demonstrated its unwillingness to tolerate further the level of sexual offending that is generally accepted to be fairly prevalent here as elsewhere, and I concur with that.

2980 But I do hope that he was not implying in the same message that those who had voted against his amendment were more satisfied or less tolerant of the situation. It could not be further from the truth in my case.

2985 All of us have personal circumstances that make these discussions particularly acute and I no less than others. I would hate either he or others to infer that in voting against his amendment I was any less concerned or less tolerant than he of the situation that pertains in that rather murky world. I am certainly not. I merely felt that his amendment was not the best way of addressing it.

Thank you, sir.

The Bailiff: Deputy St Pier, you have a point of correction.

2990 **Deputy St Pier:** Yes, sir, it was really to address Deputy Graham's point. I was not remotely inferring that, and if in any way that impression was given, then obviously I do apologise to Deputy Graham and others. That was not what I was in any way suggesting, sir.

2995 **The Bailiff:** Thank you very much.
Deputy Dudley-Owen.

Deputy Dudley-Owen: Thank you, sir.
The legislation that we have had in front of us in the Billet has made for difficult reading, and I certainly think that the States' Members today have tackled this subject in an extraordinarily sensitive and mature way and actually it was a proud moment in my States' term, to be honest.

3000 I am really pleased that Deputy St Pier has had the courage today to speak out about some hugely difficult issues, including his own personal experience. He raised some very pertinent points around digital safety. I thought it was an opportune moment given what Deputy Ferbrache was also talking about us being a small jurisdiction to raise the spectre of how well we do in promoting digital safety in Guernsey. Every year we are holding a Digital ACE event which has up to 3,000 people attending and we are trying to increase the reach of that. Certainly there are an awful lot of public and private sector organisations involved in raising awareness about cybersecurity and pornography *really* importantly – the access and the ease with which our children are able to look online and trip into pornographic sites or deliberately access them.

3010 In the UK I had the privilege of going to the British-Irish Council on behalf of Guernsey in my capacity as the digital lead a few years ago and at that time the lead for the Department of Digital Culture, Media & Sport made an announcement that they had an extremely ambitious plan to introduce some pretty hefty online safety laws. I do not think it has worked because they were looking for an age verification, which I think Deputy Ferbrache was maybe alluding to, that type of safeguard for our young people, and it is so difficult to enact.

3015 For me, the place to tackle it is in our schools. The digital roadmap is absolutely essential and it is not the hardware of the digital roadmap that we approved some time back by a majority in the States that is the important bit; it is actually the soft side of things. It is allowing students to get together in groups to tackle these difficult issues, to look at body image issues etc., to look at attitudes between the girls and the boys and how that is permeated through social media and pornography sites.

3020 So that is really a very important place to start and I am afraid that lies at the door of Education, Sport & Culture, and I hope that they might be able to provide us with an update very soon as to where that digital roadmap is and how that is looking in rolling out in the schools.

3025 Thank you, sir.

The Bailiff: Deputy Merrett.

Deputy Merrett: Thank you, sir. I will be very brief.
3030 I just want to add my voice to the very fact that the majority of the Projet de Loi before us today is very similar to the Sexual Offences Act 2003, so it is not that we even had to create the legislation from the beginning. In fact we have done a very able job with a bit of – it sounds disrespectful, sir, I do not mean to be – but really a cut and paste job.

3035 I can put to the Assembly why I think it has taken so long. I think it has taken so long because we put our economic policies over social policies. We do not drive the same resource behind social policy making and policy making of this type as we do other areas of government – rightly or wrongly, sir, I would voice the opinion it is wrong - but I think that is why.

We need to really look at how we prioritise legislation and how we bring things that are so essential to our community, justice policy being one of them.

3040 I mean our economy is an enabler but it enables us to have the provisions in place to serve and provide things such as justice policy to our community.

3045 So when Deputy Lowe sums up, I would be very interested to know why Deputy Lowe believes that it has taken so long to bring this before the Assembly. But it is before us today and I hope it is passed unanimously, I expect it to be, but I do think we have to reflect and consider why these things take us so long.

Thank you, sir.

The Bailiff: Deputy Prow.

3050 **Deputy Prow:** Thank you, sir. I shall be very brief.

I would like again to congratulate Deputy St Pier on his speech. I think all of the points he made have made us all sit up and think, and I again congratulate him on that and thank him.

3055 I particularly take the points made around pornography which were also endorsed by Deputy Dudley-Owen, and I do note that there are improved provisions in some areas around pornography, but I completely agree that this is an area which does affect the social perception of sexual acts and it is something that we should be thinking about further.

Perhaps to put some balance around the speeches so far, I think that whilst this has taken a long time, this is a good moment to realise that we are going to agree pretty much unanimously the Sexual Offences (Bailiwick of Guernsey) Law, 2020, and I think that that is an excellent piece of news.

3060 Of course the Home Affairs Committee have been working on this all this term and of course there was a consultative group and perhaps one particular element that worried me about the previous amendment was the lack of consultation on that particular issue, but of course it was quite right that wide consultation has had to take place.

3065 But I am sure Deputy Lowe when she sums up will go some way to explaining why this has taken so long. I do share those concerns, this is a very important piece of legislation and I am extremely pleased that we are in a position to sign this off at this moment in time.

Thank you, sir.

The Bailiff: Deputy Le Tocq.

3070 **Deputy Le Tocq:** Thank you, sir. I will be brief as well.

3075 But just to add my thanks as well to those who have spoken. Deputy St Pier does not need my thanks, he has already said that, but I think it really has opened up something. Being able to talk about these things is even more important I think than just having a better Law, and we are certainly going to have a better Law.

3080 Sir, with some of the comments not just made in debate but that I hear today around the sorts of issues that this Law addresses, it does make me only think of my parents who were strong supporters, when I was in my teens, of Mary Whitehouse, someone who when I was that age I cringed to think that they would support and speak of her, and yet she would probably today be very pleased to hear some of the comments that have been made with regard to our society's behaviours and how things have changed since the 1970's and 1980's when a lot of things that have been alluded to here particularly in the area of sexual promiscuity and sexual behaviour are now no longer seen as acceptable.

3085 So that just leads me, sir, to say along with this, I think, and particularly this new legislation, it is really important that we couple it with education, and that has been alluded to already by Deputy Dudley-Owen and others.

3090 When I say education, sir, I am not just referring to school education, and I repeat something that I have said often in the past, because I think this is where we could be working more in tandem with third sector groups as well, because our whole community and particularly parents need educating as well. It is one of those things people say, you cannot be taught to be a parent: no, but you can be helped and you can be guided, and I think there are some things ... I have met many parents who are at their wits' end not knowing quite how to help their children with the myriad of access to dangerous things that they have today through the internet particularly.

3095 So we need to grab that nettle and seek to remove this problem to greater stability and I think we have had a lot of success with problem issues in our society over health issues, with for example tobacco in the way we have tackled that. I think alcohol which has been mentioned also in this debate is an area we need to again educate better on and find ways of communicating effectively so it can be discussed properly with younger people and with adults, and obviously the issue of pornography as well.

3100 So, sir, I look forward to not only this Law coming on the Statute Books but accompanying information, education and programmes that will help the whole of our society but particularly the younger generation not to make the mistakes that some of us older ones have made.

Thank you.

3105 **The Bailiff:** Deputy de Sausmarez.

Deputy de Sausmarez: Thank you, sir.

Hot on the heels of Deputy Le Tocq, I too would just like to pick up on what has become a running theme; and first of all also a running theme is to thank everyone who has spoken for their contributions in what I think is a constructive and forward-looking debate.

3110 But picking up on one of the other themes of a recent speech, which is that some of the most haunting conversations that I have had relating to this area have been with GPs who have explained to me the rise and incidence of young women in particular who have presented with injuries sustained in sexual acts that they had given their consent to because they had thought that that was normal.

3115 Now, this speaks to the fact about where those norms are formed. It goes back to the sheer volume, the sheer ubiquity of pornography on the internet. As other people have mentioned, this is something that I think needs to be counteracted at least. If it cannot be addressed at source, it needs to at least be mitigated in other ways, and I do think that we are going to need to try much harder than we currently are to reshape what is perceived as norms.

3120 I am concerned about the rise in various trends especially around rough sex and issues around consent and I think this is something this debate has shown it is an issue that we need to tackle head on and I very much hope that the States, this one the next one, takes that opportunity as soon as possible.

3125 Thank you.

The Bailiff: Deputy Lester Queripel.

Deputy Lester Queripel: Sir, thank you.

3130 Sir, in 2014 when we were members of the Scrutiny Committee, my brother Deputy Laurie Queripel and I instigated a review of the implementation of the Children's Law 2008 here in Guernsey. We did that because we had been approached by 33 local families who reported all sorts of problems with the system we had in place here in the Bailiwick, when neglect and sexual abuse of children are reported.

3135 The result of that review which was carried out by Professor Kathleen Marshall from the UK was that a report was published in November 2015 containing 21 recommendations for the States of Guernsey to pursue in an attempt to improve conditions for children and their families, who were all in absolute trauma and crisis because of those allegations of neglect and sexual abuse. Several of those 33 families who approached us had already had children taken away from them, pending a decision being made by the courts.

3140 In relation to those recommendations and that report, I recently submitted Rule 14 Questions to several departments, one of which was Home Affairs and I did that because I wanted to establish whether or not the departments had been able to pursue those recommendations made by Professor Marshall, and although there has been no media coverage of those replies they can be found on the States' website. The good news is that Home Affairs came up smelling of roses: they

came up smelling of roses because they pursued all nine recommendations in the report that related to them and I commend them for that.

3150 Sir, I have no hesitation whatsoever in supporting these recommendations before us and I will close by also commending Deputy St Pier and Deputy de Sausmarez for pursuing their amendment earlier on today.

Thank you, sir.

The Bailiff: Well, Members of the States, I will pause very briefly before turning to Deputy Lowe, just to see if there is any other Member who wishes to speak in general debate.

3155 There is not and therefore I invite Deputy Lowe as the President of the Committee *for* Home Affairs to reply to the debate.

Deputy Lowe.

Deputy Lowe: Thank you, sir.

3160 Sir, I will start with Deputy Inder, who asked about the bail amendment which he and Deputy Soulsby put forward, and it is not quite with this report but I am more than happy to give him an update. I gave him an assurance and Deputy Soulsby and indeed the States that it would be sorted by the beginning of next year and that is still the same, nothing has changed on that. I can still give him the same assurance that we are on track for that to happen next year. So no reason to change
3165 anything.

Regarding Deputy St Pier, it is interesting Deputy Graham picked up the same vibe, that it was a case of we voted against because we did not actually recognise the situation or were tolerant of that situation, and I want to put on record, sir, I am absolutely not tolerant of that situation and I noticed when Deputy St Pier came back and apologised to Deputy Graham, he did say he
3170 apologised to Deputy Graham and others. I hope I am one of the others, because there is no way that I was actually against; it was the process that it was going through and I felt the lack of consultation. So I want to put that on record, sir.

Deputy Green and Deputy Tooley and probably one other maybe asked about why is has taken so long to get back to where we are. Well, it was a big report back in 2012, one was to make sure
3175 we actually got it right so the initial focus was on introducing legislation to protect the public. This saw the introduction in 2015 of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013. This introduced the registration requirements for sex offenders and a number of preventative civil orders.

Following that there was a lack of resources and we all know about the lack of resources and a lot of that was to do with Brexit and so therefore there was a delay and has been a delay. But we
3180 also had to make sure that we were bringing forward to the States was up to date so again we went back out to consultation to try and make sure that what we were bringing bearing in mind parts of the UK had changed and updated theirs and we wanted to put before you as up to date as possible the legislation that you have before you. So that is why.

3185 I also said in my opening speech this morning that we have not finished, by all means – please let me give you those assurances. We have not finished. There is still an awful lot to do but we can do it in tranches, like we did at the beginning of this year: we added another six areas which were not in the original but we felt it was important to bring that up to date, and I listed those for Members this morning. So we are still on the case, it is not something that can stand still, absolutely
3190 not, and that is all I can say on that one, it is just to have faith that we are still working on that.

But if Members want it quicker, then please give St James's Chambers more resources, it is a simple as that. They have only got so many resources in St James's Chambers as we have amongst
3195 our committees. It is all very well for the nice sound bites that say we have got too many staff or to go out there and say, 'Actually we are reducing staff, aren't we good?' We are reducing staff, this is a ramification of reducing staff numbers. So you cannot have your cake and eat it.

We either want to be more efficient and slim things down and therefore take a lot longer to bring reports or legislation back to the States, or if you want things to move a lot faster recognise

3200 that things are getting delayed and put the resources in to get it done. You cannot have your cake and eat it. For me I would rather have the resources but that is not the thinking of the States at this moment in time. It is cut, cut, cut, which means we hold things up considerably.

When we get to areas like this, I think it is really important. Is it more important than Brexit? Well of course again we have got to prioritise, and St James's Chambers have to prioritise. So I just ask Members to please remember that it is very easy to shout, but it is not so easy if you have not got the staff.

3205 So then Deputy Dudley-Owen and I thank her for that because it is so important about the schools being involved on this and sending out the very clear message in it. I know from a Home Affairs point of view, she is absolutely right where the telcos were trying to do something about porn and the accessibility of it all and the UK were very keen to do that – of course the telcos in Guernsey are linked into the UK so it is not something we could do on our own. If we just did our own, we know that people have got contracts outside of the Island, how can we actually deal with that? It is too easy to get around that and therefore the UK also found that actually it was not as easy, and I think it has now been dropped, because it is not straightforward, they would like to do something about it and they have not come up with a solution yet. So if anybody can come up with a new solution let's have it, because it is definitely a problem, easy access of porn through social media and the internet.

3215 Deputy Prow he asked about consultation and I think I have covered that, where we put in a supplementary policy letter at the beginning of this year to again get some of these areas covered forward.

3220 Finally, sir, I would just like to thank Deputy Lester Queripel for his kind comments to say we came out smelling of roses. That was nice to actually get that feedback, because Deputy Lester Queripel, rightly so, has been on the back of Home Affairs for a considerable number of years doing what is right, chasing to make sure that everything is fair and just regarding looking after children and with the courts. As you know this is a court process but it is rather nice and I thank him for that compliment which all our Members can hear because they are in this Assembly, but I will pass that back to the staff, because I am sure they will be very grateful for that, Deputy Queripel.

I therefore ask for Members to support this legislation.

Thank you, sir.

3230 **The Bailiff:** Well, Members of the States, we come to the vote on the single Proposition as to whether or not you are minded to approve the draft Projet de Loi entitled The Sexual Offences (Bailiwick of Guernsey) Law, 2020 as now amended with the insertion of clause 4.2(g) and the tidying up of clauses 60, 61, 90 and both Schedule 1 and Schedule 2 as found in amendment 3. There has been a request for a recorded vote and therefore I will hand you over to the Greffier.

There was a recorded vote.

Carried – Pour 39, Contre 0, Ne vote pas 0, Absent 0

POUR

Deputy Gollop
Deputy Parkinson
Deputy Lester Queripel
Deputy Le Clerc
Deputy Leadbeater
Deputy Mooney
Deputy Trott
Deputy Le Pelley
Deputy Merrett
Deputy St Pier
Deputy Stephens
Deputy Meerveld
Deputy Fallaize

CONTRE

None

NE VOTE PAS

None

ABSENT

None

Deputy Inder
Deputy Lowe
Deputy Laurie Queripel
Deputy Smithies
Deputy Hansmann Rouxel
Deputy Graham
Deputy Green
Deputy Paint
Deputy Dorey
Deputy Le Tocq
Deputy Brouard
Deputy Dudley-Owen
Deputy McSwiggan
Deputy De Lisle
Deputy Langlois
Deputy Soulsby
Deputy de Sausmarez
Deputy Roffey
Deputy Prow
Deputy Oliver
Alderney Rep. Roberts
Alderney Rep. Snowdon
Deputy Ferbrache
Deputy Tindall
Deputy Brehaut
Deputy Tooley

3235 **The Bailiff:** Members of the States, the voting on that Proposition was that there voted *Pour* 39, no *Contre*, no abstentions or absentees. It is a unanimous vote and therefore I declare the Proposition duly carried.

POLICY & RESOURCES COMMITTEE

II. The Income Tax (Independent Taxation) (Guernsey) (Amendment) Ordinance, 2020 – Approved

Article II.

The States are asked to decide:

Whether they are of the opinion to approve the draft Ordinance entitled "The Income Tax (Independent Taxation) (Guernsey) (Amendment) Ordinance, 2020", and to direct that the same shall have effect as an Ordinance of the States.

The States' Greffier: Article II – The Policy & Resources Committee – The Income Tax (Independent Taxation) (Guernsey) (Amendment) Ordinance, 2020.

3240

The Bailiff: Deputy St Pier, do you wish to open debate on this matter?

Deputy St Pier: I have nothing to add, sir, but am happy to respond to debate.

3245

The Bailiff: Is there any Member who wishes to speak?
Deputy Tindall.

Deputy Tindall: Thank you, sir.

3250 I just really wish to point out that this particular piece of legislation is yet another piece requesting our approval during this meeting of the States which relates to the equality of treatment

and I would like to just note that fact and say finally thank goodness that we are being asked to do so.

Thank you, sir.

3255 **The Bailiff:** Deputy de Lisle.

Deputy de Lisle: Thank you, sir.

3260 This is to be supported wholeheartedly to provide that in the case of married persons, each individual's income and entitlement to allowances will be assessed independently and separately, thereby terminating the historic position that the income of the wife was considered to be the income of the husband.

Sir, this was in need of change and has been for some time and I am sure many will be very pleased to learn of that change.

3265 There is another aspect in this that I need to draw attention to: that the unused personal tax allowances of one party to the marriage or civil partnership may be transferred to the other party. That is extremely important to many couples. The fear was that an attempt had been made in the past at least a couple of times actually to try and remove that particular arrangement. Sir, we have to be vigilant in guarding against departing from that principle, that the unused personal tax allowances of one party to the marriage or civil partnership may be transferred to the other party.

3270 I think this is even more important because for some households it could save in the order of £2,000 a year. This is very important of course in the current circumstances given the difficulties many households are having with taxes and charges currently.

3275 So all in all, sir, let's be vigilant and maintain that particular responsibility to Guernsey people and households, but at the same time welcome the fact that this will provide that in the case of married persons each individual's income and entitlement to allowances will be assessed independently and separately, and that will of course include also it will apply to parties of same-sex marriages and same-sex and opposite-sex civil partnerships.

Thank you, sir.

3280 **The Bailiff:** Deputy Gollop.

Deputy Gollop: Thank you, sir.

3285 Perhaps people may have spotted a theme here because so far two Members of the Legislation Review Scrutiny Panel have spoken and I am the third. I also listen carefully to Deputy Tindall's pleas for gender neutrality in legislation and she is always amazingly acute in spotting the occasional anomaly. But this, not just in terms of its phraseology but in terms of its essence, is all about equality and the explanatory memorandum very much makes the case. This Ordinance further amends the Income Tax (Guernsey) Law, 1975 and that raises a point in itself. Perhaps with respect to Deputy Lowe who says sometimes we need more legislative resources and also directions from Committees to make sure that resource is wisely used, because sometimes the legislation lawyers find they have not necessarily had that great a brief.

3290 But I think perhaps in this instance we are dealing with a Law that is now 45 or 46 years old and maybe it is time for a new Income Tax (Guernsey) Law, but that is a side issue.

3295 It very much is about equality because it is quite outrageous that in 2020, or at any time in the 21st century, that the income of the wife is considered as a default position to be the income of the husband, except in certain situations. Now of course in today's society there are many wives, if one calls the woman spouse a wife, who is actually earning considerably more than their husband and that in itself shows what an old-fashioned kind of concept this was.

3300 I think ironically enough it has been the impact of civil partnerships, in Guernsey's case same-sex marriages, that have drawn attention to how ludicrous this piece was.

However, like other Members, especially Deputy de Lisle's well-made point, it is not proposed to depart from the principle that the unused personal tax allowances of one party to the marriage

3305 or civil partnership may be transferred to the other party, because I would hope that for the foreseeable future, at least until we have a more fundamental look at our taxation system, which Deputy St Pier and other Members of Policy & Resources in the longer term, I am sure, would wish to see, that we do not abandon that. I remember when I was Disabled People's Champion, one concern that members of the Guernsey Disability Alliance and others were acute to was you had to be very careful in reform of this area so that you do not adversely affect unusual partnerships or marriages or circumstances where they would actually lose money because one is updating and modernising the Law.

3310 So I would like Deputy St Pier in his summing up to explain how it is that the memorandum is correct and that it is not proposed to depart from the principle of the unused personal tax allowances. In other words, presumably if the wife half, or there might be two wives, if one half of the marriage is able to use a personal tax allowance and the other person is not, how that can be transferred and hopefully nothing that we are passing today would mean that due to an anomaly, rather than looking at the account jointly, we would effectively claw tax back from that kind of situation.

Thank you, sir.

3320 **The Bailiff:** Well, as no other Member is indicating a wish to speak in debate on this matter, I will turn to the President of the Committee Deputy St Pier to reply to that short debate.

Deputy St Pier.

Deputy St Pier: Yes, thank you very much, sir.

3325 I think there is really little to respond to other than perhaps Deputy Gollop's point there at the end, sir.

3330 Certainly the speed of progress on this matter obviously has been slower than anyone would wish, for reasons that I think have been well rehearsed before the States of Deliberation, but I am pleased that progress is now being made and of course it is tied in to the contributions and tax system which the States have approved. So I think things will pick up pace from here in the modernisation of these arrangements.

3335 But in relation to the last point that Deputy Gollop made, then the absolutely it does not matter which party to a marriage is earning more if any unused allowances by the lower earner will be available for transfer to the higher earner. That is the process by which we will ensure that ... as result of moving to a system of independent taxation. So I hope that gives Deputy Gollop the assurance he is looking for.

3340 **The Bailiff:** Well, Members of the States, there is a single Proposition as to whether you are minded to approve the draft Ordinance entitled The Income Tax (Independent Taxation) (Guernsey) (Amendment) Ordinance, 2020. I invite you to use the chat function to vote *aux voix*.

Members voted Pour.

The Bailiff: Thank you very much, Members of the States. I am satisfied that there was an overwhelming amount of support for *Pour*, I did not spot any *Contre* and therefore I declare the Proposition duly carried.

Greffier.

POLICY & RESOURCES COMMITTEE

3345

III. The Income Tax (Guernsey) (Approval of Agreement with Anguilla) Ordinance, 2020 – Approved

Article III.

The States are asked to decide:

Whether they are of the opinion to approve the draft Ordinance entitled "The Income Tax (Guernsey) (Approval of Agreement with Anguilla) Ordinance, 2020", and to direct that the same shall have effect as an Ordinance of the States.

The States Greffier: Article III – The Income Tax (Guernsey) (Approval of Agreement with Anguilla) Ordinance, 2020.

The Bailiff: Deputy St Pier, is there any wish to open debate on this matter?

3350

Deputy St Pier: Sir, I hope that it is sufficiently short and self-explanatory that it does not require too much debate, but I will obviously respond if there are any questions, sir.

The Bailiff: Thank you very much.

3355

Does any Member wish to speak on this draft Ordinance? No one is so indicating.

On that basis there is nothing to reply to, Deputy St Pier, and I would simply put the Proposition as to whether you are minded to approve the draft Ordinance entitled The Income Tax (Guernsey) (Approval of Agreement with Anguilla) Ordinance, 2020.

Members voted Pour.

3360

The Bailiff: Thank you very much, Members of the States. Once again overwhelming support *Pour*, I did not spot anyone voting against and therefore I declare the Proposition duly carried.

Procedural

The Bailiff: Deputy Ferbrache, can I just enquire of you as to how long you think you will be in opening on the next item of business?

3365

Deputy Ferbrache: Well, I will certainly be longer than the six or seven minutes before half past five.

The Bailiff: But will you be longer than 10 minutes?

Deputy Ferbrache: I may be, sir.

3370

I think I might be 15, it is difficult to say because I am going to try and sweep up both the amendment which is proposed by me and seconded by Deputy Le Tocq and my opening remarks in one speech.

3375

The Bailiff: Yes, well I was hoping that the amendment might simply just be approved without any debate because it is adding an alternative and then the debate can run on all three Propositions, if that is going to help.

3380 **Deputy Ferbrache:** Well, sir, again I was surprised that we had a 10-minute debate on an Ordinance just before but there we go, so I certainly cannot gainsay what people are going to say re the amendment.

The Bailiff: Members of the States, I am almost minded to suggest that we rise now. Deputy Le Tocq, you are indicating that you want to speak.

3385 **Deputy Le Tocq:** If you are going to suggest we rise now, sir, that is fine, I have a meeting, as does Deputy St Pier, with the Cabinet Office, so I will not be able to be around immediately after this.

3390 **The Bailiff:** Members of the States, rather than rush matters and force Deputy Ferbrache to consider curtailing anything that he might wish to say in opening debate on the next matter, because it is 5.20 p.m. and we do have the CPA AGM immediately following, I am going to propose that we now rise as near to 5.30 p.m. as possible today, get a fresh start in the morning on the Guernsey Airport Hold Baggage Screening System Upgrade matter, and therefore I will invite ... if you want to start voting on that matter ... I was simply going to invite the Greffier to say the Grace to close this.

3395 We will then have a break of about five or so minutes. I will check with Deputy Trott that he is ready to start the AGM and then we will get started on that.
Greffier.

The Assembly adjourned at 5.26 p.m.