



**OFFICIAL REPORT**

**OF THE**

**STATES OF DELIBERATION**

**OF THE**

**ISLAND OF GUERNSEY**

**HANSARD**

**Royal Court House, Guernsey, Thursday, 27th January 2022**

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N. R. Inder	A. W. Taylor
A. Kazantseva-Miller	L. S. Trott
J. P. Le Tocq	S. P. J. Vermeulen

**The Clerk to the States of Deliberation**

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

**Absent at the Evocation**

Deputy A.H. Brouard (*relevé à 9h 53*); Deputy Y Burford (*relevée à 9h 33*);  
Deputy A.C. Dudley-Owen (*relevée à 10h 07*); Deputy J.F. Dyke (*relevé à 17h 04*);  
Deputy J.A.B. Gollop (*relevé à 9h 33*); Deputy M.P. Leadbeater (*relevé à 11h 25*);  
Deputy V.S. Oliver (*relevée à 9h 33*); Alderney Representative S. Roberts (*absent de l'Île*);  
Alderney Representative E.A.J. Snowdon (*relevé à 9h 33*);

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# States of Deliberation

*The States met at 9.30 a.m.*

[THE BAILIFF in the Chair]

## PRAYERS

*The States' Greffier*

## EVOCATION

# Billet d'État II

## POLICY & RESOURCES COMMITTEE, COMMITTEE FOR HEALTH & SOCIAL CARE AND COMMITTEE FOR HOME AFFAIRS

### 1. Living Responsibly with COVID-19 – Debate continued

*Article 1.*

*The States are asked to decide:-*

*Whether, after consideration of the Policy Letter entitled "Living responsibly with COVID-19" dated 20th December, 2021, they are of the opinion:-*

*To direct the Committee for Health & Social Care to bring proposals as soon as is practicable to amend the Public Health Ordinance, 1936, to confer powers on the Medical Officer of Health to order the self-isolation of, and impose other restrictions or requirements on, persons already within the Bailiwick who are infected, or suspected of being infected (e.g. contacts of cases), with Coronavirus; and to confer on the Committee for Health & Social Care the power to make regulations to extend the powers to other notifiable diseases, further to its consideration of the clinical judgement of the Medical Officer of Health and the advice of Her Majesty's Procureur.*

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

- 5      **The States' Greffier:** Billet d'État II, Article 1, the Policy & Resources Committee, the Committee for Health & Social Care and the Committee for Home Affairs, Living Responsibly with COVID-19, the continuation of the debate.

**The Bailiff:** Deputy Gollop, you have just appeared. Is it your wish to be relevé?

10

**Deputy Gollop:** Yes, thank you, sir.

**The Bailiff:** We will take those who are appearing remotely and we will have them coming up on screen as they arrive. So, Deputy Burford, is it your wish to be relevée?

**Deputy Burford:** Yes, please, sir.

**The Bailiff:** Thank you very much. Deputy Oliver, is it your wish also to be relevée?

**Deputy Oliver:** Yes, please, sir.

**The Bailiff:** And Alderney Representative Snowden, is it also your wish to be relevé?

**Alderney Representative Snowden:** Yes, please, sir.

**The Bailiff:** Thank you very much, we will mark all of you present.

The next amendment will be amendment number 2, if Deputy Taylor wishes to move it. Is it still your wish, Deputy Taylor, to move amendment 2?

**Deputy Taylor:** Yes, sir.

**The Bailiff:** Do you wish it to be read at all?

**Deputy Taylor:** Why not.

**The Bailiff:** Greffier, would you read amendment 2 for us, please?

*The States' Greffier read out amendment 2.*

**The Bailiff:** Thank you very much. Alderney Representative Roberts, is it also your wish to be relevé? *(Interjection)* We will come back to the Alderney Representative. Deputy Taylor, if you want to move the amendment then, please.

**Amendment 2:**

*To insert the following Proposition immediately after Proposition 1:-*

*2. To direct the Policy & Resources Committee, having consulted as it deems fit but specifically with the Scrutiny Management Committee, to submit in time for consideration by the States at their meeting to be held on 27<sup>th</sup> April, 2022, a Policy Letter and suitable Propositions setting out proposals for a review of the States of Guernsey's strategic response and their effectiveness in the management of the impact of the COVID-19 pandemic on the Bailiwick and its residents, covering the period from the meeting of the Civil Contingences Authority on 12th March 2020 when an emergency was declared until the end of January 2022, to include –*

*(a) terms of reference, which should draw on and scrutinise as necessary the outputs of reviews established by the Tactical Co-ordinating Group that are establishing lessons learned in terms of emergency response on an operational level, but not duplicate effort to the detriment of resourcing the Bailiwick's continuing recovery, and*

*(b) details of the resources required to undertake such a review;  
for the approval of the States.*

**Deputy Taylor:** Thank you, sir. If I could start just by asking permission to remove my jacket as well. I have got more layers than a croissant today, based on yesterday's temperature, and I am cooking. Would that be okay?

**The Bailiff:** No. Just stay warm.

**Deputy Taylor:** Well, okay. First then, I suppose, a quick thank you for the input that all Members had in drafting this amendment. Particular thanks to Deputies Prow, Brouard and Soulsby for giving  
50 a bit of a review. And particularly Deputy Soulsby for assisting with the wording and amendments to make it a little bit more suitable. I would take this opportunity as well just to give an apology to Deputy Soulsby and Deputy Ferbrache for receiving notice of my questions and bits. I hope they do not take it personally but they are generally the people fronting this thing. I know they will not but  
55 it is the reason it is directed at them.

We have heard it read out. We have read through it. It is a very simple amendment, really. It is basically seeking a review. The amendment itself, for the benefit of doubt, is not directing the review to be done. It is directing for the terms of reference to come back and costs that would come back before the States and then we would approve it if we think it is necessary. Particular input from  
60 Deputy Soulsby on the Tactical Co-ordinating Group. I have to confess, it is not something I had even heard of, that there would be a review going on, but it is good to know that a review of what has happened was taking place. We are making it clear that we do not want to double up on work so anything that comes out of that review would hopefully then be included in the review that this amendment is seeking to bring.

The reason I think a review is sensible is partly borne out of what I view personally as a lack of scrutiny on the whole COVID situation, the pandemic over the last few years. That is just my view but I am conscious that various comments have been made and generalisations of how we have done. I am going to pick up on just a couple of comments. I do not want to talk for too long. I am going to pick on Deputy Inder and I apologise. There is very much just this 'us and them' situation  
70 that comes out and, in response to Deputy Parkinson's amendment yesterday, Deputy Inder started talking about the anti-vax crowd and people who just object to the actual Proposition – the final original Proposition – that they are somehow linked with the anti-vax crowd.

Deputy Inder is quite famously referring to middle 'Guerns'. There is a middle Guerns that have their concerns. Some of the comments that come through I do think are unfounded. I do support  
75 that. I do agree there. But the information that is given to the general public, I do not think there is a huge amount that has been put there to allay their concerns. I did have a point here just to ask Deputy Inder how likes his bath. If he likes to go in a bucket of ice or pour a kettle over himself when he washes. Just those such extremes that he is putting forward but there are a whole load of options in between. So to lump everyone into either an anti-vax group because of their stance on  
80 this or that they are fully in agreement.

Another issue I have kind of taken with this is often a comparison with Jersey from various people, and it is a natural comparison to make. We are in a very similar situation to Jersey, our demographics and all that. We have a lot of similarities. But it seems to be generally accepted that we have done better than Jersey. I do not think I have got enough information to really ascertain  
85 whether we have done better than Jersey or not. To give a little bit of an example here, on the surface of it, Jersey has had 29,000 cases compared to Guernsey's 11,000 cases, rounded marginally. So, Jersey's cases at 29,000 represents 27% of their population and Guernsey's represents 17% of their population. So on the surface, you say well yes, Guernsey has done well. Less of our population has had COVID. That has got to be a good indicator of success. But that is just one measure.

This is a thing that has affected huge areas of society, so to take that one measure does not take into account the fact that Jersey has tested 970,000 people which is nine times their population. So that is a huge amount more tests compared with Guernsey. We have tested the equivalent of 3.3 times our population. So Jersey has done a huge amount more testing and Jersey has also had a lot more visitors coming into their island. So, of that initial 29,000 cases, that does include people  
95 who are not from Jersey who have just come in. I do not think on these face-value numbers we can really draw a conclusion to say who has done better or not.

Another difference would be, in Jersey, the total deaths from COVID represented 0.09% of their population. In Guernsey it has represented 0.05% of our population. So, yes, again, more people as a percentage in Jersey have died. But we are talking 0.04% of a population difference. So I do not  
100 think that is enough to come to the kind of conclusions that some Members have come to.

I also think in terms of communication. Early days of communication, I think it was awarded ... I cannot remember the lady's title but she was awarded an OBE or an MBE for communication surrounding this. More recently though I do wonder if communication has got a little bit more complicated. I am referring particularly to the recent decision from Education to reduce the requirements and restrictions surrounding mask wearing in schools, (**A Member:** Hear, hear) and then only a couple of days later to have the whole thing removed anyway. I understand that there are secrecy rules around the CCA and communication getting put out, but communication there of late could be deemed a bit lacking.

In terms of the scrutiny that is available, questions can be asked in the Assembly. I have not felt particularly comfortable that my questions had been answered or my concerns been allayed. I am not picking faults there but I just think I have asked questions and they have not been answered.

And to pick up on – sorry for picking on Deputy Soulsby, but very few people speak on this – yesterday when debating the Emergency Regulations, the phrase 'now is not the time to go into these anomalies'. If the time of the Emergency Regulations being laid is not the time to discuss any anomalies in the emergency legislation then it absolutely has to be after it has all gone through. We absolutely have to review them afterwards. I have got another 'apologise' with underline under there, so I cannot apologise enough.

I think you all know my position on COVID. I do not think I have had information over the term so far to justify the restrictions that have been put in place. I have done my best to study all of the information put in front of me, ask as many questions as I can. But I fully accept that the majority of the Assembly disagree with my viewpoint on that. But I would like to take this opportunity to distance my own views and my viewpoints from this amendment. Because regardless of whether you agree with my viewpoint or not on the handling of COVID, surely we can all agree that this is the largest interruption to the lives of the Bailiwick over the last few years, probably since the Second World War. I cannot think of anything that has happened since that has had a bigger impact.

I feel like Deputy Vermeulen said something there. So to think that we can just move on without having a review and looking at ways we can learn from it, I think we can all agree that that will be necessary. I will take a seat and listen to the points raised in debate but I am hopeful that everyone will support this sensible amendment.

Thank you.

**The Bailiff:** Deputy Soulsby, do you formally second the amendment?

**Deputy Soulsby:** Yes, I think so, sir. *(Laughter and interjections)*

**The Bailiff:** Deputy de Sausmarez, did you have a procedural point to make at all or did you want to speak?

**Deputy de Sausmarez:** No.

**Deputy Soulsby:** Can I speak now, sir?

**The Bailiff:** Deputy Soulsby can speak next, thank you.

**Deputy Soulsby:** Thank you.

Yes, I am actually happy to support this amendment. The original amendment that came to us just asked for a whole, full review of absolutely everything. It could have gone into so much detail and cost a lot of time and we could have ended up with the equivalent of like a raw commission and we have the Lord-whatever turns up and three years later we might have a result. That might be alright for the UK, where we know they have had specific, quite well-published issues. Things like PPE and when they ran out and contracts that were had with PPE. Issues that they had with testing,



contact tracing; it is time when we all put in our own systems and that their Health Service was overwhelmed when ours has not been.

155 But absolutely we do need a review and I think it is important for people to understand that those professionals behind the scenes and officers are already considering the reviews that need to be undertaken. The Tactical Co-ordinating Group are a layer that comes through the whole emergency system, so whatever happens, if a plane falls out the sky and we have to deal with that, there is such a body called the Tactical Co-ordinating Group that mobilises and manages it. But there are also other reviews that are going to be done by the Medical Officer of Health, which I am  
160 aware of. Hopefully in the next few months that is work that she can start on.

I absolutely believe we do need a review. It has been two years that we have been going through this situation. Hundreds of thousands of man and woman hours have been spent on this. It has diverted resources and it has dominated quite a few people's lives over the last two years and had an impact on the community. For me, it is nothing to do with comparing ourselves with Jersey. I  
165 could do lots of different comparisons with Jersey but I do not think that is the point, neither is it to compare ourselves with the UK either. I think it is very much to see what we did, what did we do wrong, what did we do right? And the lessons learnt from that.

So I absolutely do believe that a review is needed and it should be in consultation with the Scrutiny Management Committee. So yes, I do support this amendment. And just to say, I support  
170 this amendment, as does P&R; it does not oppose this amendment. That also goes for amendments 3 and 4, if that helps make sure that we do not have an elongated debate unnecessarily.

**The Bailiff:** Deputy de Sausmarez.

175 **Deputy de Sausmarez:** Thank you, sir.

I will be brief because I do not think there is any merit in actually trying to pre-empt the review. My very simple request, I think, to the proposer is to confirm what the purpose of this would be. I think Deputy Soulsby has just touched on this and I think we have drawn out two useful elements. One is to establish the impact, but I think probably more importantly it is along the lines of the  
180 lessons learnt and what can we usefully learn from this experience going forward. I think it is also just worth making a distinction, in that respect: this is quite an unusual emergency or we would not be having this policy letter and this debate right now.

So I think maybe it needs to be focused on pandemic response in terms of the lessons learnt. I do not know how applicable it would be, a generic emergency response. But I just ask the proposer  
185 of the amendment to give us a little bit of clarity on whether that is the intention and, if so, whether that is what will carry through to the policy letter that is to be brought forward if this amendment carries.

Thank you.

190 **The Bailiff:** Deputy Burford.

**Deputy Burford:** Thank you, sir.

I thought it might be helpful if I speak early on in this matter. The Scrutiny Management Committee has not had time to discuss this amendment in any detail. However, should the Assembly  
195 wish for such a review to be undertaken, it is my view that the best way forward would be for P&R and SMC to jointly appoint a suitable third party to undertake this work on terms of reference agreed by this Assembly. Such a review would be a significant piece of work and discussions with SMC officers indicate a timescale of 12 months, depending of course on how wide the terms of reference are set.

200 This would include appointing a resource to do the review, possibly via formal tender, gathering information, holding hearings and seeking substantial legal advice. I am advised that it is unlikely that such a piece of work would cost less than £100,000 to do the job adequately. I have concerns that, if it were sought to add it to the Committee's normal workload, it would disrupt business as

usual, including important routine public hearings and our programme of forthcoming reviews.  
205 Finally, I wish to highlight one important point. Whoever undertakes this review will need access to CCA papers, as without these any reviews would be a largely pointless waste of taxpayer money.  
Thank you.

**The Bailiff:** Deputy Prow.

210 **Deputy Prow:** Thank you, sir.

I rise in particular to support the words of Deputy Soulsby and Deputy de Sausmarez. In fact, until I heard the speech from Deputy Burford, I was quite enthusiastic about a review. (*Laughter*)  
What I must say is that I am far more in favour of this amendment than the amendment that has  
215 gone before. I would say that, if this amendment is passed, it will make the amendment that was passed yesterday not relevant. Because I think this is a far more sensible way of going about things. I do like the explanatory note:

... depending on the precise terms of reference of the review, it is anticipated that a review of this nature would examine ... both political decision-making ... [and] evidence base and the legislative framework.

Why I like that is that the terms of reference for it – and I refer to Deputy Burford’s comments on that because I think this needs to have a much tighter timeframe than the one that was described  
220 and I personally think that is manageable. But what I do like about this approach is that we as an Assembly will have a say and can debate what the review is actually going to do and its scoping.

I believe that one of the things that is coming out loud and clear from this debate so far is the need for a closer examination by this Assembly of what is going on. I am bound to say this, I think the two iterations of the CCA, I believe, have handled this pandemic well. I am bound to say that,  
225 aren’t I? But I have not heard any discussion that really argues with that point and so why should we be fearful of a review? Particularly if it gives us ideas around how we can manage COVID in the future, not as an emergency. I think that will be of value.

Sir, I will be speaking to amendment 1, which is now going to be a Proposition, but I will do that in general debate and I do not want to jeopardise my ability to do that. All I will say is that I think  
230 this is a far more satisfactory way of this Assembly dealing with what has been termed a democratic deficit than the amendment that was passed yesterday.

Thank you, sir.

**The Bailiff:** Deputy Brouard, is it your wish to be relevé?

235 **Deputy Brouard:** Yes, please, sir. Thank you.

**The Bailiff:** I am going to call Deputy Roffey and then Deputy Trott.

240 **Deputy Roffey:** Thank you, sir.

I do support this amendment. I rather hope it might be agreed on if we approve the review slightly more cost effectively than Deputy Burford suggested. But I do think it is important that we do learn the lessons. This may not be the last pandemic that we ever face. I do not agree with Deputy Prow. I think this amendment deals with a totally different aspect to the one we were  
245 discussing yesterday. A route march out of an emergency treatment of the current pandemic is different to learning lessons of how we treated it when it was an emergency and what lessons we can take forward for possible – hopefully it will never happen – but for possible future pandemics. You have to plan even if you hope that planning will not be required.

My only criticism, I think, of this amendment is the start date. Not the start date of the review,  
250 the start date of the area that it is going to cover, which was the time that the emergency was declared by the CCA on 12th March 2020. To me, the big question – one of the biggest questions – is the preparation that went on before that. COVID-19 is called COVID-19 for a reason because this

novel coronavirus was identified in 2019. We all knew that there was a fair possibility that it was going to come our way within a period of time.

255 So, did the Island engage, for instance, with the care homes sufficiently to make sure that they were prepared for that eventuality? Did we buy enough PPE or at least get the orders in to be prepared for it? Had we done the planning at the Hospital? All of that, all of those questions relate to the period before the emergency was declared here. So, in voting for this, I note that despite the amendment today mentioning that date, we will be setting the actual terms of reference when it comes back to the States and I would hope that P&R and Scrutiny Management will not be so tied by that, because I actually think ... I agree that actually probably from the time the emergency was declared, of course mistakes would have been made. When you are facing something absolutely new, you always make some mistakes. But it has been really impressive, I think, the way the two CCAs have handled it.

260 My big question mark is whether Guernsey was a bit complacent actually from when the Wuhan outbreak happened, to it spreading to that region, then coming to Europe. I think we were all almost assuming, look at these poor fellows over there, it is not going to happen here. I hope I am wrong. I hope that the review shows that that is entirely wrong. But I think that is the sort of area that we need to focus on.

270 **The Bailiff:** Deputy Trott.

**Deputy Trott:** Sir, thank you.

275 I support this amendment wholeheartedly for three reasons. The first is that reviews are a fundamental part of public life and they should never be feared. But primarily there are two reasons. The first is that there are people and groups that we need to recognise and say thank you to. We have rightly highlighted and spotlighted frontline workers. They did a superb job but there were many other groups who were simply outstanding. The wording of the amendment says:

Guernsey's strategic response ... [to] and their effectiveness of the management of the impact.

280 That of course includes the economic and fiscal support measures which were very material, very substantial indeed. So a group of people went from nothing to a functioning support package in a matter of days. There were a number of unsung heroes. I am not suggesting that the report will name them individually but there were several civil servants who were working 16 hours a day for weeks on end. (**Several Members:** Hear, hear.) A quite superb performance!

285 But what that unearthed – and this is really my primary reason for supporting this review – is an underbelly to Guernsey's society, to Guernsey's fabric, that none of us really expected. That is just how many small businesses survive week to week. It was absolutely staggering how little reserves many in our community had. And quite frankly, without the economic support that the Government was able to provide, they would have collapsed and the recovery from the pandemic would have been an awful lot slower. So we do need to recognise just what a superb job the permanent Civil Service did and the amount of effort they put in. We also need to identify and consider just how weak some aspects of our economy genuinely are and how that can be remedied moving forward.

290 Thank you, sir.

**The Bailiff:** Deputy Fairclough.

295 **Deputy Fairclough:** Thank you, sir.

300 Listening to Deputy Taylor it seems as if we have already started the review. I am not against a review per se and I am certainly not afraid of one. But as with any amendment – and I appreciate the time and effort that goes into constructing meaningful amendments – I think there should have been appropriate consultation with the Scrutiny Management Committee, as the President has already said on this issue, and an opportunity for full discussion by that Committee. Maybe we could have bottomed out some of the issues that have been raised in this debate beforehand.

Tellingly, in the Rule 4(1) information we are told:

In preparing the proposition there has been consultation with a number of Members of the States, who are not members of the sponsoring Committees.

305 Is that a selling point or an admission of guilt? I am not quite sure. Why weren't the sponsoring committees – and I can only speak here for Scrutiny – consulted on this issue?

**Deputy Soulsby:** Point of correction, sir.

310 **The Bailiff:** Point of correction, Deputy Soulsby.

**Deputy Soulsby:** I think the genesis of these amendments came through to myself on Thursday, was it Thursday last week? I called Deputy Burford about the amendment as it stood and that we were proposing to do something different. I believe the head of Policy ... anyway, one of the senior officers spoke to the senior officer of Scrutiny to discuss it. But I totally understand it was last minute. 315 But that was nothing of our doing, it was very much how it took a lot of co-ordination, I think through Deputy St Pier who is co-ordinating all of the amendments, and there are a lot of people involved and trying to get them all into one place that we can see them on the Thursday and then we had discussed them on the Friday.

320 I cannot remember, it was a Thursday or Friday that I spoke to Deputy Burford and definitely at officer level I spoke to the senior officer at Scrutiny. But I absolutely understand how the whole of Scrutiny did not see it very early, neither did Policy & Resources, neither did Health & Social Care and neither did Home Affairs. I do know that Deputy St Pier did apologise for everything being last minute.

325 **The Bailiff:** Before I ask Deputy Fairclough to resume, it was not really, again, an inaccurate or misleading statement from Deputy Fairclough as such. It was an opportunity to make a give-way intervention but that particular paragraph of the Rules is not currently in play because this is a hybrid meeting. So I give a degree of latitude to try and explain that but it should have been somebody else who had the opportunity to speak to explain that in due course because it was not 330 saying that Deputy Fairclough had made an inaccurate or misleading statement, which is the purpose of a point of correction, and the only purpose of that.

Deputy Fairclough to continue, please.

335 **Deputy Fairclough:** Thank you, sir.

Nevertheless I welcome Deputy Soulsby's point of correction. However, I can say that I have spoken to the two individuals that she mentioned and there is still a feeling from all of those in the Scrutiny Management Committee that there was not appropriate consultation and how many times have we heard that plea in this Assembly when it comes to amendments? That if motions to direct committees to undertake work, particularly within short timeframes – and we have heard the call 340 for perhaps for an even tighter timeframe than that being put in the amendment – that they should at least be afforded the courtesy of some consultation, just so that we can come into debates like this more informed and perhaps address some of the issues that the Members are raising in debate.

345 It is not clear to me from the amendment exactly what is being asked of the SMC and I know that the proposal is for this to come back before the States. I am also not sure if the authors of this late amendment quite know themselves. It is clearly directing P&R in the first instance to consult with the SMC about a review of the States of Guernsey's strategic response and their effectiveness in the management of the COVID-19 pandemic response and I welcome that, but I do have a number of concerns which I am going to mention now.

350 Firstly it is noted that the Scrutiny Management Committee may require additional funding to complete the review in an acceptable timeframe. One has to question just how much of the SMC's time and resources will need to be engaged in such a review and at what cost in terms of other

aspects of scrutiny. Now that is rather an intangible thing. Who will set the terms of reference for such a review? For example, is it appropriate that those who have been involved in the strategic response are involved in doing so? And incidentally if the Assembly agrees to a review, I agree with my President that the best way to approach the review would be for P&R and SMC to appoint a suitable third party to undertake this work.

Too often, in my view, successive Assemblies have embarked on reviews so that lessons can be learnt, unaware of the full cost, both financial and in terms of often intangible amounts of staff time. Commitment, for example, has been made by committees to co-operate only for redacted minutes to be presented at hearings, by way of example. So I would want Members – and this is the reason that I am mentioning some of these aspects – to go into such a review with their eyes wide open to a potential six-figure cost, as we have heard my President say. It would be irresponsible to support work on this without knowing how much it could cost in terms of time and resources and again this is not clear from the amendment.

We are also told there are internal emergency planning reviews already established and that the outputs of these reviews are available to the reviewers. Essentially a review of reviews. I would suggest a truly independent body undertaking a review would want to consider all of the evidence itself. Clearly the parameters of any review need to be established early in the process, as well as its intended audience. Will all of the findings and evidence be made public? Will access be given to all of the necessary CCA papers and minutes? As a lack of such evidence could potentially render such a review largely meaningless.

Questions, of course, which will be posed in the formulation of any policy letter should the Assembly decide to support this amendment. But I would be grateful if Deputy Taylor could address these issues when summing up and for the time being I reserve judgement as to whether to support this amendment until I have learnt more about the motivation behind it and listened to debate.

I would like to request a recorded vote on this item, please, sir.  
Thank you.

**The Bailiff:** Deputy Dudley-Owen, is it your wish to be relevée?

**Deputy Dudley-Owen:** Yes, please, sir.

**The Bailiff:** Thank you very much, then we will mark you as present.  
Deputy Le Tocq.

**Deputy Le Tocq:** Thank you, sir.

On a more light-hearted note, on one of the social media games that people play, recently I saw a response to a question, 'Name a city that has changed your life'. The response was Wuhan, which I did think was quite funny. (*Laughter*) But obviously I am not against reviews, they can be really useful. It is interesting, nevertheless sir, to listen to two Members of Scrutiny effectively say, or try to put us off, scrutinising something. (*Laughter*) Although I do accept that the issue, as Deputy Fairclough was alluding to, is because primarily this has come rather late in the day for this particular debate.

As I said, I am not against reviews and I am not against this particular amendment. However, if we –

**The Bailiff:** Point of correction, Deputy Burford.

**Deputy Burford:** Thank you, sir. I hope this qualifies. (**The Bailiff:** So do I.) I am not trying to put anybody off voting for this and in fact I will be supporting this amendment. I am simply trying to lay out the implications. Thank you.

**The Bailiff:** Thank you very much. Deputy Le Tocq to continue.

**Deputy Le Tocq:** I thank Deputy Burford for that correction if I misunderstood her and that is useful from the point of view of the Assembly. But the point I was trying to make is this, we need to realise, as Deputy Trott alluded to, that we have had a crisis which has been managed very well – I have not heard anybody disagree with that – but by a very small group of people. Exceedingly small because we are the smallest of the Crown Dependencies and if we are looking to compare ourselves anywhere else, probably that is the first port of call, Jersey and the Isle of Man.

We have got a small number of public servants anyway but in terms of the specialists that were needed in this particular instance, they are very small in number indeed. Even if we were to outsource a review and find the six-figure sum or whatever it takes to undertake that review, these few in number will still need to be engaged. We do not know what the future holds. It may well be that in the next few weeks they will need to be busy again. I mean, they are still busy, many of them, at the moment. So we have got no guarantees that it can be done in the way in which people are imagining that it can be done.

I do think we need to take a breath, sir, before we lunge into the idea that this is going to be a really useful exercise. For example, if it does take a year to do it – and I can imagine that if it is done on the basis that Deputy Burford suggested it probably would take at least a year – and if it is done by an external agent in some way, the chances are that by the time we get there things will have passed, our focus will be on other issues and really the interest will have gone from that. The issues that really need addressing need addressing now and in an operational way. Those mini reviews, which, yes, will need broader reviews afterwards, will need dealing with but I think we have got to be realistic here and we have got to cut our cloth to what we can afford to do in the size of jurisdiction, the expectations that we should have.

So I am raising these issues of caution, sir, because on the face of it you can look at Deputy Taylor's amendment and say, 'That is a jolly good idea, we should be doing that'. But I have been in these sort of places before and the amount of time that it takes us as a Government, because of the smallness of the number of people involved in things, because of the size, we just cannot expect to do things as swiftly as they can in places like the UK and elsewhere because we have not got that number of people involved. I am certainly one that, if it comes to spending a huge amount of money on this sort of thing, I will not be supporting it.

I will not be supporting it because there are higher issues up on my agenda to actually get on with. That is a grave concern. That does not mean that we do not support this particular amendment but if it comes back and it looks like it is just going to be too expensive and take too long, that will not get my support.

**The Bailiff:** Deputy Kazantseva-Miller.

**Deputy Kazantseva-Miller:** Thank you, sir.

I think it has been very interesting to listen to the debate so far and how the Assembly is already trying to get itself out of actually doing something that actually might be quite important for the strategic future of the Island. I just wanted to, I guess, bring us back to where we are and partly perhaps the motivation for actually quite a lot of the amendments. Because this was supposed to be the big COVID policy that we were going to debate, laid over Christmas – so that is another thing, two weeks out of the five-week period have been, really, not utilised.

The Proposition of the policy paper is a bit underwhelming, so hence there are a number of amendments that are trying to address some of the kind of bigger questions with regard to the COVID situation. The situation is, as I think Deputy Taylor said or someone else said, Deputy Prow, we have just gone through the most unprecedented disruption to global life, human rights restrictions, economic disruption that could have ... we have not had such a shock to the world since the Second World War. So just to put it into the context, this has not happened before.

If you look at the global scientific community, doctors and so on, the expectation is that the pandemics will become more frequent and that they will become more severe. So perhaps this is all great. We are here today, we have just announced the blue print, it seems like it is all over, what

is the point, let's move on, as Deputy Le Tocq says. But actually the whole purpose for me of this, actually having a review of the biggest disruption we have ever had to this Island since the Second World War, is so that we can prepare better for future pandemics.

And do you know what? It might happen next year. It might happen at the end of this political term. It might happen bang on election day in three years' time. You do not know. And the pandemics, with what has happened right now, they should be one of the highest levels of risk registered for any government. Are we going to be able to go through a similar response like we have done today? I think there is a huge amount of lessons to be learnt – a huge amount of lessons to be learnt – and I think, to me, this is what this review is about.

I really disagree with Deputy Prow's observation that this amendment seems to be better than the previous because, actually, I think they are completely of a different magnitude. The previous amendment we have had on the blue print just deals with very much the short term of exit strategy, or ongoing strategy, in relation to managing COVID-19. This amendment, in my opinion, is about really having a wash-up of what we have done, how we have done, what we have done well, where we can improve. But more importantly, what are the kind of potential investments we need to start making, whether it is testing equipment or whatever it is, from implications on education, implications on the economy. Deputy Trott just mentioned about the underbelly of the economy. All of those are really real fundamental issues.

Will we be able to survive, in the same way, another pandemic? We do not know. And virologists around the world are actually saying thank goodness that COVID-19 has not been as deadly as it could have been. What we have all suffered around the world for two years actually could have been much worse. I think, if as a Government we do not think it is important to have a wash-up of the biggest disruption we have had to our society, economy and parliament over the last 70 years, then really what is the point of strategic risk management?

I think perhaps there are some issues with some of the terminology but I think, really, the motivation behind this amendment in my opinion is what I have described. Maybe the committees can work together to better the terminology, but I think let's not get distracted about the details and the words in this amendment. The principle of this is to see how we can do better going forward because these kinds of risks are not going to go away, they are going to be more frequent and they are going to be potentially more severe. Issues relating to climate change are potentially mixed in all of this, so this is highly complex. We cannot just brush it away.

Yes, I think we need a reasonable approach in terms of cost and how it is done but I think we would be abdicating responsibility as a Government if we did not take doing a review in a pragmatic and proportionate approach. We would not be taking our responsibility seriously.

**The Bailiff:** Deputy Brouard.

**Deputy Brouard:** Thank you, sir.

I basically would like to align myself with the thoughts of Deputy Le Tocq earlier on. I think we all have to be very cognisant that we have been through the Government Work Plan and the amount of resources we have to get on with our committees. The resources to do this both in cash but also, more importantly, in time. The very people that you are going to be wanting to push forward the economy, to push forward improvements to the social aspects of the Island, to push forward with the economy, are all going to end up being tied up in this review.

Because one of the first people that you will go to will be our Medical Officer of Health. You will go to the head of the Hospital, you will go to the head of the nursing homes. You will go to all of those people who are trying to do a day job. The pandemic has not finished yet and at the same time we want to put all of the improvements in that we as an Assembly have told our Islanders we are going to do. So I hear what Deputy Kazantseva-Miller says but I am probably moving more to Deputy Le Tocq's side.

I suppose it is hard to say but if we had really messed up on COVID and it had been a complete disaster and really we had got ourselves in a real mess, then I could understand us having a review

to see why on earth we got it all wrong. But to spend £100,000 to tell us 'I told you so' three years later after the event, I do not think is a good use of our time or resources (**A Member:** Hear, hear.)

510 so I will not be voting for it.

Thank you.

**The Bailiff:** Deputy Inder.

515 **Deputy Inder:** Just briefly. I am just looking up the OECD Public Governance Reviews and this is picking up on – I think Deputy Taylor says, touched on by Deputy Kazantseva-Miller – the general view when there is something so significant I think there is a reason to conduct some kind of review. I am just going to read something from the OECD Public Governance Reviews:–

Country-specific reviews assess a public administration's ability to achieve government objectives and preparedness to address current and future challenges. In analysing how a country's public administration works, reviews focus on cross-departmental co-operation, the relationships between levels of government and with citizens and businesses, innovation and quality of public services, and the impact of information technology on the work of government and its interaction with businesses and citizens.

520 Deputy Trott mentioned the unsung heroes and almost certainly it was the interaction with information technology. Almost certainly one of the unsung heroes over the past few years has been the IT industry. It has entirely strung the Island together and they almost certainly have and without ... even today looking at Microsoft Teams, look what we could not have done had we not had that kind of unsung ability and that is not necessarily wearing the angel badges.

525 Deputy Fairclough and Deputy Burford – Deputy Fairclough I have actually got some sympathy with. But the problem with this whole policy letter is every single amendment here has gone further than the actual Propositions. And I think the Bailiff himself has kind of handed everyone a card by, after each opening speech, suggesting that there might be some procedural motions and had there been a problem with this amendment – and it is worth mentioning that Deputy Fairclough only yesterday voted for another amendment that went beyond the Propositions so we cannot always  
530 ride two horses.

Had people not wanted to see if this wanted debating at all, they certainly had to remove a motion to see if this wanted to be debated. But that did not happen and we are where we are. But I do have sympathy with Deputy Fairclough because, like me, I know that Guernsey is extremely tight and it works extremely well, but I have always had this review that generally scrutiny should  
535 be slightly more distanced from the corpus of the Government itself. I do not think that it always passes the sniff test anyway. It is very hard for us, as Members of the same electoral polity to check our own work.

But that does not necessarily mean that I want to spend £100,000, £200,000, £300,000, or whatever it might be as alluded to by Deputy Burford, on a review unless we have just spent over  
540 £100 million trying to save the Island in some way. So I am a bit torn here. I think Deputy Burford, Deputy Fairclough and I think it is Deputy Dyke as well if he is here ... I think he is a Member of Scrutiny, isn't he? Am I right? Yes, he is a Member of Scrutiny. I know our Committee works extremely hard, I know they can too. But I think this is a fairly significant piece of work and I think, if I hold my nose, I think Scrutiny can do it themselves. And to be fair we have heard, Deputy Taylor  
545 said he has wanted part of the review, Deputy Roffey said we need to look at what happened before. But won't this all come up on the April 2022 policy letter?

Because almost certainly the terms will be set as directed here. They will turn up. If you do not like them you do not vote for them. If you do not like the cost attached to it, you do not vote for it. And if you want to amend it and add more in it, that is the point of having that debate. (**A Member:**  
550 Hear, hear.) So this is not the day to decide what the terms are. There is a clear direction for Scrutiny in a short piece of work to work with Policy & Resources to come back and set some terms which almost inevitably they will come with a set of Propositions and every Member in this Assembly will have a chance to vote for, agree, probably see a cost attached to it and then amend to add more.



555 Deputy Roffey, I am just using as an example, he might want to see it go before the pandemic.  
Deputy Trott might want to look at issues revolving around the size of – (**A Member:** Almost.) No,  
it is not the size of almost, Deputy ... (**A Member:** Oh, sorry.) It is not the size of almost ... the size  
of the self-employed market in Guernsey.

There you go. So in short, sir, I can support it because I do not think this is dangerous today. It  
is what comes out in April that will be the main debate.  
560 Thank you.

**The Bailiff:** Deputy Ferbrache and then Deputy Gollop.

**Deputy Ferbrache:** Sir, I am going to support this amendment. I said yesterday that I would  
565 support it. I do accept the points that have been raised by various Members, including Deputy  
Roffey, that perhaps we could look back a bit from March. I appreciate that that was the day the  
first announcement was made etc. but Deputy Roffey is right that there would have been a build  
up to it, whether it is one month, two months, I do not know. Whether that can be dealt with then,  
I think it could be probably covered, as Deputy Inder has just said, when the review comes back or  
570 the terms come back in April.

I am the President of Policy & Resources, I am the Chair of the Civil Contingencies Authority. The  
first time I personally saw any of these amendments was just a very few days ago. I am very surprised  
that when a group of, I have heard, 13 or 14 Deputies, I think met by Deputy St Pier, had meetings  
a few weeks ago an approach was not made to me. An approach was not made to me to discuss  
575 matters. We seem to be setting up factional politics. I am not party to that, I never have been. It  
would have been very helpful indeed if I could have been approached as President of the Policy &  
Resources, as Chair of the Civil Contingencies Authority, to be part of those discussions.

I think it is deplorable and offensive that I was not. (**A Member:** Hear, hear.) I actually heard –  
and I probably am wrong – that Deputies Trott and Fairclough were members of that little group. I  
580 am probably wrong, they can correct me and I am quite willing to have a point of correction if I am  
wrong in relation to that. That is what I heard. If that is the case and Deputy Fairclough was part of  
that little group of 13 or 14, then his words this morning of, 'Oh, this isn't very fair, I didn't know  
really what was going on', do not really hold much water. Because he had a time over –

585 **Deputy Fairclough:** Point of correction, please, sir.

**The Bailiff:** Point of correction, Deputy Fairclough.

**Deputy Fairclough:** The point of correction I would like to make is by inference Deputy  
590 Ferbrache is suggesting that I was party to discussions about this amendment and the nature and  
formulation of it, and I was not. So I would just like to make that clear as a point of correction.

**The Bailiff:** Yes, that is accepted. Deputy Ferbrache.

595 **Deputy Ferbrache:** Absolutely, I accept that. As I say, I only went on what I heard and Deputy  
Fairclough has corrected that and, of course, he is a man of integrity and I accept that –  
I give way to Deputy Trott. (*Interjections*)

**Deputy Trott:** Can I make a point of correction, sir, with your permission?  
600

**The Bailiff:** Point of correction, Deputy Trott.

**Deputy Trott:** I played no part whatsoever in the formulation of these amendments and the  
President of P&R would have noticed that I am not proposing or seconding any of them. Yes, I did

605 attend a meeting and I was present for about 15 or 20 minutes. I would have been present for longer but my schedule did not allow it.

**The Bailiff:** Deputy Ferbrache to continue.

610 **Deputy Ferbrache:** I think I can draw from that – but if I am wrong I can be corrected again and of course I accept the goodwill and integrity of both of the people that have just spoken – that they were party to a discussion a few weeks ago. It would have been helpful if I had been a party to that discussion rather than the factional politics. I think it was very poor judgment of whoever led that that the President of Policy & Resources and the Chair of the Civil Contingencies Authority was not consulted.

615 Deputy Burford is absolutely right. It is going to cost, I think she said, at least £100,000. I would be very surprised if it did not cost a fair bit more than that and I think that is a reasonable estimate, or guesstimate, because I do not think she could do any more at this point. There is also – and I would like advice, I see the Procureur has now left the States but I would like the Comptroller or the Procureur, before we actually vote on this, to deal with the point that I think is a very good point made by Deputy Burford about having full disclosure of the material that was before the CCA over this period of time. I think, how can anybody carry out an effective review without having all of that material?

620 We have got, though, the difficulty of section 22 of the Civil Contingencies Law, so I would like both today from the Procureur or the Comptroller, before we vote on this amendment, an opinion as to what will be able to be disclosed to the review. I would like, as Chair of the CCA – I give now notice to that, I will be away the next two weeks and somebody else will be chairing it – but I would like written advice – *written advice* – from the Law Officers that the CCA members can rely upon, and the civil servants can rely upon, about what we can disclose. Because I think we should disclose everything. I do not think there is anything to hide. Even if there was something to hide, it should be disclosed.

630 I bet when we look at this review, whenever it comes back, it will say, 'I'm sure this could have been done a bit better or that could have been done a bit better but, from January 2020, or whenever it may be, that under the leadership of Deputy St Pier and from October 2020 under the leadership of Deputy Ferbrache, that it was alright, really, and they did their best'. But section 22 of the Law cannot be ignored and we are not allowed to ignore provisions. What section 22 says, of the Civil Contingencies Law is 'unauthorised disclosures of information' – and I am going to read it all out:

22. (1) A person who is or has been a member of the Authority is guilty of an offence if without lawful authority –

640 And I will be asking the Procureur to say what that means in this context –

... he makes a disclosure of any information, document or other article which is or has been in his possession by virtue of his position as a member of the Authority.

(2) A person who is or has been a States of Guernsey employee or contractor ...

So that is a really wide definition –

... is guilty of an offence if without lawful authority he makes a disclosure of any information, document or other article available to him under this Law which is or has been in his possession by virtue of his position as such an employee or contractor.

This would not apply but I read it out:

(3) It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence he did not know, and had no reasonable cause to believe, either that the information, document or article in question related to the work of the Authority, or that the disclosure would be damaging within the meaning of subsection (4).

So the only way that I or any civil servant or any contractor, because that is the word that is used in this context, can disclose information under the Law would be if it is done with lawful authority. Therefore, the Procureur has returned, I am grateful to her and I would ask before this amendment concludes that she gives advice that we can rely upon – unequivocal advice because if it is, ‘On the one hand this, on the other hand that’, that is not going to do any of us any good. So it has got to be unequivocal to satisfy me that we will be able to disclose that information.

Otherwise this whole £100,000, £200,000, £500,000 review will be an absolute waste of time. Because, as I have said in a previous context, I was asked – we get interviewed all of the time – by a member of the media, ‘Was a decision that you made at the CCA by a majority or was it unanimous?’ I am not allowed to say that. And I said to them, ‘I am not allowed to say that’. So they said, ‘He was being coy and it must have been a majority decision’. What a load of tosh but then that is the quality often of the media that we have got in Guernsey. (**A Member:** Hear, hear.) (*Interjections*)

But in relation to that we are in a position whereby we cannot say it. We could go to jail. I would have to pay a fine. I would have to apply for time to pay in relation to that! (*Laughter and interjections*) But seriously, the serious point is that we should be able to disclose everything. I would like to disclose everything but I want comfort that I and the civil servants and the people involved could give that information. Because otherwise we are going to do it from bits and pieces, which are not going to be able to be satisfactory.

I would also like to go out on a point very well made by Deputy Trott. He talked about people who are working 16 hours a day from February/March 2020. Some of those people have worked, with very few days off, 16 to 20 hours a day throughout, from February/March 2020 all the way through and that is continuing. I would like to say – and I am not allowed to name them because I would get criticised, quite rightly, by the Bailiff because of whatever the convention is – thank you to them. Thank you very much and I hope that this review comes out that those who are reviewing it realise that the decisions that you have made and the work that you have done is invaluable and that, if you have made the odd mistake, that you should be thanked for that. Because we are human beings, they are human beings and there are very few – I am certainly not one of them – who make decisions that are always right. I am going to vote in favour of it but, as I say, it should have those caveats and I look forward to the advice from the Procureur in due course.

**The Bailiff:** Well, Madam Procureur, are you in a position at this stage to clarify the meaning of section 22 of the Civil Contingencies Law, or would you like a little bit longer?

**The Procureur:** Sir, I am sorry to just move space, I did not seem to have a microphone there. I missed the beginning of the question. Obviously I came in as Deputy Ferbrache was speaking. I do have a copy of the legislation in front of me and I am happy to confirm the meaning of section 22 is exactly as was read out by Deputy Ferbrache which, if it assists Members, does mean that, unless there is lawful authority for the disclosure of information in a CCA meeting, that section bites. Lawful authority in my view, and if it assists Members, would mean a decision of the Civil Contingencies Authority agreeing to that information being released. I am not sure, sir, whether that covers the entirety of the question asked but I hope that assists.

**The Bailiff:** So the Civil Contingencies Authority could resolve to permit disclosure of all of the material that has been before the Civil Contingencies Authority, possibly with qualifications to that, for the purpose of the review that is being contemplated?

**The Procureur:** Yes, sir. That is exactly my understanding.

**The Bailiff:** Thank you. There we go.

**Deputy Trott:** Sir, on a point of law, the Civil Contingencies Authority only exists because this Assembly has so decided. Is it not, therefore, a case that this Assembly can direct the Civil

695 Contingencies Authority to reveal information if it so desires? It is, after all, simply an organ of this Assembly and nothing more.

**The Bailiff:** Madam Procureur, do you wish to deal with the further question on this point?

700 **The Procureur:** Sir, a Resolution of the States cannot trump the statutory provisions which are set out. Therefore, the CCA would need of itself, of its own motion, to agree that the information can be disclosed, in my opinion.

705 **The Bailiff:** I wonder if Deputy Trott's point was if it was a Resolution of this Assembly rather than the Civil Contingencies Authority that that would constitute lawful authority. So that there are two routes to it, which I think was the point he was making.

710 **The Procureur:** Sir, thank you for that further explanation. No, in my view, it would need to be a matter for the Civil Contingencies Authority because only the Civil Contingencies Authority is aware of the information that is being disclosed. Therefore it would require that membership to determine whether it was proper and whether in light of the emergency information provided it was appropriate for that information to be released.

715 A Resolution of the States cannot possibly ... Members will not have any idea as to the information that is being disclosed, so in my view, it would require a Resolution from the Civil Contingencies Authority. A Resolution of the States may be persuasive in encouraging CCA Members to consider it, but in my view it cannot trump the position in the statutory provision of the CCA.

720 **The Bailiff:** Thank you very much. Is this a follow-up question, Deputy Brouard?

**Deputy Brouard:** It is, sir.

**The Bailiff:** On the Law? Yes, what is it then, please?

725 **Deputy Brouard:** Thank you. What would be the position of the people who gave information to the Civil Contingencies in good faith and on the belief that their information that they give will be kept confidential forever? How do they then untangle that?

730 **The Bailiff:** Madam Procureur.

735 **The Procureur:** Sir, this is one of those issues where I can only give very general advice in relation to general matters. This is exactly why, if there was consideration of what matters were to be disclosed, this is the kind of discussion that, in my opinion, CCA members would need to have. They would need to be able to consider the material which had been released *ab initio* and make a decision as to what was appropriate to release. During the course of those discussions I would be advising that, if there was information that they had been made aware of where express undertakings or provisions in respect of confidentiality had been made, they would need to take advice at that stage on whether it was appropriate to release it. So I am sorry that it is a slightly general answer without knowing the specifics of that information but that is my view.

740 Thank you.

**The Bailiff:** Deputy Trott, you want further clarification?

745 **Deputy Trott:** Yes, sir, because I take the Procureur's advice at face value. I am sure it is very good legal advice, but there have been a number of CCAs. For instance, if I may sir, I was once the Chair of the CCA in Deputy St Pier's absence because it fell into the Vice-President of the P&R

Committee to undertake that function. Would I need to be consulted, as a consequence of that role, to decide whether I considered it appropriate that information should be ... because clearly it cannot be left to the current CCA because the current CCA were not part of that decision-making process.

750 It seems to me we have – I almost used an unparliamentary word, sir – but we seem to have got into an expletive model here because I cannot imagine anyone ever expected the CCA to be in a position where its view took precedent over the view of this Assembly. It is quite extraordinary.

**Deputy Ferbrache:** Can I raise a point of –?

755 **The Bailiff:** Just a minute, Deputy Ferbrache. What we are doing at the moment is we are inviting Madam Procureur to respond to each of these issues as they arise, rather than roll them together. So, Madam Procureur, the question from Deputy Trott is, are those who have participated in the Civil Contingencies Authority previously required to be consulted or not?

760 **The Procureur:** Sir, as a matter of law, the legislation would not require that at face value. However, in my view, it would be potentially reckless if CCA members did not have regard if there was particular information that it put in confidence that they may wish to consult. But I do not consider that it would be obliged as a matter of law to do so because the Civil Contingencies

765 Authority is created by statute and the members are the members at that particular time making the decisions that they make.

Therefore if the CCA resolve not to for particular reasons, in my view that would be lawful. Sir, just to add in case it assists Members, there is not a definition of lawful authority within the provisions of the 2012 Law itself. So it would be a matter of common-sense interpretation. Of course

770 if the States did resolve to take measures, that may be challengeable in due course. It is a matter for CCA ultimately to decide as members if they are satisfied on the basis of the information and the decisions they take at the time.

**The Bailiff:** And the provision in question is a penal one because it is a case, as Deputy Ferbrache pointed it, it is an offence.

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**The Procureur:** Absolutely, sir.

**The Bailiff:** So the view would be taken by the prosecutors as to whether or not to prosecute

780 and then it would be an ability to raise lawful authority as the defence if there was a prosecution?

**The Procureur:** That is exactly the situation, sir. Yes.

**The Bailiff:** Deputy Ferbrache, you also wanted to seek some further clarification from the Procureur.

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**Deputy Ferbrache:** Yes, sir. I think the Procureur has dealt with it but I just ask her to confirm, or otherwise, in relation to this. The Civil Contingencies Authority is a corporate body. It is appointed by statute. Therefore it is constituted by its current members. Therefore the current members of the

790 CCA will have to make a decision in the terms that we have talked about. Is that not correct? For the purpose of records, I would certainly be voting that every information was disclosed.

**The Bailiff:** Madam Procureur, the CCA is a Committee of the States, isn't it? But it is established under the Civil Contingencies Law.

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**The Procureur:** Sir, that is exactly it. Sorry, I was just shuffling through to the Schedule which establishes the Constitution of the CCA, which is a statutory body. That is correct, sir.

800 **The Bailiff:** Yes, so in relation to what Deputy Ferbrache has asked, for clarification, effectively the papers historically of the Civil Contingencies Authority from the date that it was established are in the ownership, if one wants to use that word, of the current members of the Civil Contingencies Authority whenever they sit, just as it would be for any other Committee of the States?

805 **The Procureur:** I confirm, sir, that the ownership of those papers would rest in the membership in the CCA members as currently those members exist by virtue of the statute. The current members, yes, sir.

**The Bailiff:** Before I turn to Deputy de Sausmarez, Deputy Dudley-Owen also wishes to ask a question in this context. So, Deputy Dudley-Owen.

810 **Deputy Dudley-Owen:** Thank you, sir.

My question to Madam Procureur is following on from Deputy Trott's question and asking whether a remedy to Deputy Trott's issue around who has got the power to amend this – an amendment by statute, presumably. So it would not need a Resolution of the States so much as the relevant Committee bringing a policy letter to amend the actual Law. Would that be correct?

**The Bailiff:** Madam Procureur.

820 **The Procureur:** Sir, yes, the Civil Contingencies Law is a creature of statute which has been ... sorry, the authority is a creature of statute which in essence means that the statute has been passed in this Chamber pursuant to a policy decision of the States. If the States wishes to bring either a new policy letter, or even if Members wish to bring a requête, to seek an amendment to the CCA Law, that is always open to them as a usual part of the democratic process.

825 So in other words, if it was considered appropriate to bring an amendment to this 2012 Law such that all information could be disclosed for whatever particular purposes or anything of such like, an amendment could be made if agreed and voted on by this States and drafting instructions included in that Resolution. Of course that is correct.

830 **The Bailiff:** Bailiwick-wide Law? Is it Bailiwick-wide?

**The Procureur:** It is a Bailiwick-wide Law so it would also require – thank you, yes, sir – it would also require consent from Alderney and Sark.

835 **The Bailiff:** Deputy de Sausmarez, you are also seeking some clarification.

**Deputy de Sausmarez:** Yes, I am. Thank you.

840 I wonder if Her Majesty's Procureur might be able to confirm or correct my understanding that the CCA may be able to give the authority to disclose, so full disclosure of the CCA papers, to a third party but that does not necessarily mean that all of that information would be put into the public domain without further consideration. Would that kind of qualification be possible? Or is the authority simply for it to be made public full stop? I do not know if my question is clear enough but I am happy to try and clarify if that clarification is necessary.

845 **The Bailiff:** It comes back to the meaning of lawful authority, Madam Procureur.

**The Procureur:** Yes, if I have understood correctly, if the Authority wished to authorise the release of information for a particular purpose or to a particular person, then obviously there would have to be agreement from the CCA. I am not quite sure I have understood to what extent they might wish to authorise information subject to conditions or further secrecy but the first premise,

850 'Could the CCA resolve to release information?' comes back to the definition of lawful authority and whether or not the CCA were content to release such information.

**The Bailiff:** Building on what Deputy de Sausmarez was asking, there are a number of options available to the Civil Contingencies Authority, aren't there? It could be general release, make use of  
855 this information in whatever way you want to; or it could be release on a confidential basis to whoever is conducting the review with a request that they return to the Civil Contingencies Authority for what is to be put public. I think that is what Deputy de Sausmarez is asking and there may be shades between those two extremes.

860 **The Procureur:** Thank you, sir, for the additional clarification. If that is the driver of the question then I certainly do agree with that provided all CCA members by majority agree that.

**The Bailiff:** I am going to call Deputy Gollop to speak next. (*Interjections and laughter*) Let's get back to the debate.

865 **Deputy Gollop:** I have waited a bit of a while. It makes me nostalgic for the States of the past when we would often spend an hour or so on legal technicalities sometimes but ...

I agreed with a lot of what Deputy Inder said, funnily enough, because he made it clear that ... initially I misread this amendment, I think, yesterday. But we are not discussing a review that is  
870 coming back to the Chamber. We are discussing a policy letter in April setting out the terms of that review.

In some ways it has been hard work for Her Majesty's Procureur to answer so many complicated questions in the last 20 minutes because a lot of these issues might require a lot of careful analysis, for the reasons Deputy Ferbrache and others have made. Because, for example, one has seen over  
875 the years a Scrutiny Management Committee and its different iterations of it complain they have not had enough teeth. I thought at the end of the last term we actually gave them more tools to get information because of the relative debacle of the education review that never happened.

There is also the issue that nobody has mentioned so far – and I could be on the wrong track here – of potential judicial review. Because you could – maybe it is possible, maybe it is not – in  
880 April decide to give this to a political group of people or a non-political independent group of people and they might seek information that they cannot legally get for the good reasons that Deputy Ferbrache has alluded to and they get something and then they decide to go to a court, the Royal Court presumably, to see if they can obtain that as a sort of issue over conflicting, not resolutions, but tools for the job and whether it would be reconsidered reasonable or not for that  
885 particular piece of information to be withheld.

Of course the argument of who is constituting the CCA would be another one because if Deputy Ferbrache is absent for an extended period, presumably Deputy Soulsby would be a full voting member of that CCA. I put that just to add to the point. So I think there are a lot of issues there to consider. Like Deputy Kazantseva-Miller, I thought I could do with a wash-up and although perhaps  
890 I have not been in the best of health in different respects, I think a lot of Members feel that they have been a bit outside of some of these processes and indeed I have not been one of the supposed 14 members who have met about this. I was not really aware of such a grouping.

But I want to specifically look at the thinking behind this. Because I think there has been a problem with Scrutiny in Guernsey, that we have been reluctant sometimes to resource them  
895 adequately. Across the water in Jersey they have a scrutiny committee that have significantly more members on panels and definitely more money and more style. We have heard today a few Members say we should not be spending any money. Well, we have to balance our Government role – and Deputy Le Tocq is always really strong on leadership, for example – against our parliamentary role and I think there is a fear in this Assembly, perhaps Deputy St Pier made the  
900 point recently, that we are not necessarily as strong an Assembly as we could be in terms of scrutinising the executive and contributing on that level.

But there is a cost to that. What puzzles me about this amendment and its predecessor yesterday is under Rule 4(1) information you have got this strange, rather artificial phrase, 'The Proposition does not contribute to the States' objectives and policy plans.' But I suppose on another level of course it does. And then on (d) you have got, 'There are no financial implications to the States of carrying the proposal into effect.' Well, we have already heard this morning from Deputy Burford, who is qualified to give such a view, that it could cost £100,000. So there is something wrong with the wording of the amendment in my view, but there you go.

A review of this nature would examine closely both political decision-making and the legislative framework for operationalising a response. Again the amendment should have gone into the issues about the legal protection that the CCA have and how far they can answer those issues and that concerns myself as well. Because, if we are analysing a review of the strategic response and their effectiveness, it has to include not just clinical decisions and resource decisions, but how we manage the impact on different elements of the economy; how we balance, for example, physical health and mental health; how we balance different demographics in the age range; our benchmarking against comparable communities.

I think it is a big undertaking because Deputy Trott in a well-delivered speech nevertheless surprised me when he said he was intrigued by the size of the underbelly in Guernsey of small businesses that live from day to day. Well of course maybe in this Assembly, when we are working on taxation or economic matters, we should be more aware of how marginal some businesses are (A Member: Hear, hear.) because that is a huge factor to consider and I suppose my one worry about this ... I will support the amendment because I think we need to pump up scrutiny. The public expect us to not only look back at the past but to be ready for the future.

But my one concern is there is a temptation for such a thing to be too narrowly focused. It should not just be on the CCA and its decision making, nor should it be entirely on the medical and clinical issues. It should take into account: our transportation needs; the impact on, for example, tourism; the impact upon the economy; the impact upon wellness and health generally; on, for example, the news that apparently in Jersey – and it may well be true here too – there was a significant decline in the number of children referred to the specialised services. Possibly problems did not diminish, they were just less aware of them. So we need an overview of everything.

**The Bailiff:** Deputy Murray.

**Deputy Murray:** Thank you, sir.

I have listened with interest and I wondered how long it would take this Assembly to fall into the same trap that the last Assembly did in terms of amendments like confetti. Most of them are very ill-thought through. We have just had 10 to 15 minutes of the Law Officers actually explaining to us just some of the ramifications of what is actually suggested in this amendment. I have to say, I am tired of actually hearing people come up with amendments at five-minutes' notice (A Member: Hear, hear.) without thinking about the ramifications for this Assembly, for the cost to the taxpayer, not thinking them through on the basis of, 'Well I want to put a stake in the ground, I want my voice to be heard'.

Frankly, I do not know why we have got Rule 4s because the first line of Rule 4(1)(a) says quite clearly, 'The Proposition does not contribute to the States' objectives and policy plans.' Well why on earth are we bringing it? Why did we have all of that debate about the GWP? Why did we set ourselves objectives when we come up with nonsense like this? I just do not understand it. (Interjections) And then we go down to 4(1)(d), 'There are no financial implications to the States of carrying the proposal into effect.' Well clearly there are, we have talked about £100,000 and that is probably a minimum. What are we thinking about –?

**The Bailiff:** Deputy Murray, before you continue on that line, the financial implications are not about this amendment. They are about what happens if there is to be a review eventually. And that is quite clear because when you look at (b) in the terms of the amendment, that is what is going to



come out subsequently. So you cannot project too far down the line in relation to Rule 4. It is simply the Proposition. So it is this secondary Proposition and the financial implications of this secondary Proposition. Please, do continue.

**Deputy Murray:** Thank you for that clarification, sir. But I still state that you cannot suggest that, as any kind of scrutiny investigation is undertaken, and not assume there is not a financial cost. We do not know what the financial cost is. We will be told what the financial cost is, I understand that from the direction here. But it is nonsense to assume that this is not going to cost the States of Guernsey money. So we need to think very carefully about approving something like this. I very rarely align myself with Deputy Fairclough but on this occasion I have to say that he just gave us some indication of just some of the criteria that we would actually have to take into account to get to the bottom of what is being proposed in this amendment.

I also say that I would actually agree very much with Deputy Le Tocq. I see this as no more than navel-gazing, frankly at this stage. We are looking backwards. We are not actually putting our efforts into what the Island needs to go forward in terms of its future. (**Two Members:** Hear, hear.) We know what has happened to the economy as a consequence of this, we have survived it very well thanks to the huge effort on the parts of many people unnamed in this Assembly. Of course we congratulate them all and we thank them all, the Island thanks them. That is not the point. We have got through this.

We really do not want to be going back over again and again historical data. We have learnt lessons along the way. That is the pragmatic approach that we take as an Assembly to move our Island forward. We do not know when the next crisis that is going to hit us is going to be. It may very well be of the same nature, in which case lessons learnt may be of some use. It may be nothing to do with what we have been through. Why are we looking backwards again? It is pointless. I agree with Deputy Brouard in that regard. This will actually take the time of officers, many officers already involved in very important business, just to go back and look over this so we can either congratulate ourselves or we can actually aim slings and arrows at whoever at the end of the day.

I see this as completely pointless and worthless. This should not have come through at five-minutes' notice. With a bit of thought it might have actually given us some terms of reference that Scrutiny can go away with and look at, but it does not. It says, 'Scrutiny, go off and spend some taxpayers' money and time and come back to us with some proposals and we will go through this debate again'. Well, I think it is about time we stopped doing this. I really do. We have to get on. We have got huge challenges ahead of us as an Island. Can we please focus on the future and not the past? (**Several Members:** Hear, hear.)

Thank you, sir.

**The Bailiff:** Deputy Queripel.

**Deputy Queripel:** Thank you, sir.

I am a great supporter of reviews to establish whether or not there are better and more effective ways of doing things, as well as learning from the way we have done things in the past. It is the lessons learnt bit that is very often the contentious issue. Because the lessons learnt bit often makes some States' Members extremely uncomfortable because they do not like to hear what they are being told. As we saw, in fact, when the States rejected the review that was undertaken by the Welsh Audit Office some years ago. As I recall, the States were marked nought out of 10 by the Welsh Audit Office –

**The Bailiff:** It was out of six, but never mind.

**Deputy Queripel:** – and the States threw it in the bin. They did not want to hear it.

Sir, what I would like to know is how comprehensive this review is going to be and, if there are any bad bits in it, will they be left in or redacted, as they were in the Gedze Review of Mental Health,

for example? Some of my colleagues recently said they feel the States are reviewed-out. Deputy Brouard, in fact, said that in a recent debate. That amazes me, because why would you not support a review when there is every possibility that the result could be that we learn from it and we put procedures in place that are far more effective than they were prior to that review taking place?

As regards resources, it is getting a bit thin, a bit tiresome, in my view, to drag out that old cliché yet again. We hear that far too often during debates, 'We can't do this, we don't have the resources'. Now, someone correct me – one of my colleagues will correct me if I am wrong – but the majority of the States recently gave the go-ahead for us to borrow £200 million – or was it even over £200 million – to facilitate and fund our recovery from COVID. So there is money there. There are resources there. It brings to mind what former Vale Deputy, the late Graham Guille used to say when he used to often say in his speeches in this Chamber, 'It is very rarely about what it is supposed to be about'.

**The Bailiff:** Not in this debate.

**Deputy Queripel:** The question I ask of colleagues who do not support reviews is, why are you so afraid of them? What is it that makes you so fearful? When part of the role of Government is to ensure that absolutely everything possible is done to ensure the wellbeing of the community. Suffice to say, sir, that I will be supporting this amendment.

**The Bailiff:** Deputy Oliver.

**Deputy Oliver:** Thank you, sir.

I do apologise, my camera is not working. I am trying to get it fixed. I actually think that we should have a review. However, I think that what Deputy Roffey actually said was really important. It is the time before we actually had and went into the pandemic. I have seen so many reviews in my time being a Deputy and, as Deputy Queripel said, the really actually important stuff has always been redacted. So I am just worried that we are going to set up terms of reference and not all of the CCA members will actually agree to this review in the first place because of Rule 22 and in that time we are just going to be spending good money after bad money even trying to get the terms of engagement done.

As with everything, it all comes back to, 'Oh, well the States actually only mandated us to do a certain time period'. And it is that bit of a time period that is important beforehand. So I think I am actually going to vote *Contre* to this because I do not think the amendment actually sets out what it meant to do. What I would like to see come forward is actually from the CCA saying, 'This is what we are going to agree', so we know that it can actually happen.

Thank you, sir.

**The Bailiff:** Deputy de Lisle.

**Deputy de Lisle:** Yes, sir.

While supportive of a review, I think it is a review that has to go right back to the very beginning of the problem. At the beginning, for example, in the first wave in 2020 we did not have the PPE that we required. And I think that this is very important to stress. And the care homes complained about this, together with the fact that they were unable to send their patients to the Hospital at that time. I wrote an email to all Members on 20th March 2020 actually bringing this point out and nothing was done with respect to that until well past 30th March 2020. The care homes were complaining and that is something that we need to not hide but bring out. Because, as Deputy Roffey said, in 2019 we knew that the emergency was in train. It was already apparent in other jurisdictions. So we had time to prepare and we did not prepare sufficiently well, at that time, for the first wave.

With respect to the review, sir, the one thing that I do not approve of is the fact that it includes also the original Proposition. And the original Proposition is to confer powers on the MOH in order to conduct self-isolation and so on and so forth. So I think that that is something that we should be aware of, the fact that the Proposition here includes the original Proposition as well as the review.

Thank you.

**The Bailiff:** Deputy Meerveld.

**Deputy Meerveld:** Thank you, sir.

I did appreciate Deputy Murray's very passionate speech and it came from very much a business perspective about trying to get things done, looking forward and not doing too much navel-gazing and second-guessing our decisions. But, as I have learnt myself after being in the States for a term plus, Government does not operate like a business. As another Member has said, reviews and reports and studies and this type of analysis are a part of government. Governments have to justify their actions to the community with greater transparency and with greater disclosure than any company would ever have to do. That includes, to a certain extent, navel-gazing and looking at what has happened. So I will be supporting this amendment.

We have just come out of exceptional circumstances. Again if you go back to the original CCA legislation, I do not think anybody ever envisaged the CCA being convened for two years. So there is a necessity to look at that. The resource of community concern and there have been mutterings in this Assembly occasionally about the powers given to the CCA and decisions made behind closed doors and the fact is, I think the CCA, both under Deputy Gavin St Pier and under Deputy Ferbrache, have done an excellent job and have looked after us very well. But there have been concerns and there still are concerns in the community about how they have operated. I think for that reason a review is needed.

I also complement Deputy Ferbrache on his openness and his willingness to share information. I trust in the integrity of the CCA to make decisions about the information they disclose. If it was disclosed to them in the expectation of privacy from another party, I would expect them to consult that party and make sure that they were free to disclose it onwards, and also to qualify that disclosure. If it is disclosed to the Scrutiny Committee or whoever is performing this review, that some information may be shared but on the basis that it is not publicly shared beyond that, so that it can be included in the decision-making processes.

Then we come down to the scope. This amendment is looking to say, 'Come back to the Assembly and get approval for the scope for a review going forwards'. I would hope that scope would look at the mechanisms, not the decisions. So not trying to use 20/20 hindsight to second-guess decisions based on the information supplied to the CCA at the time, but rather whether or not the CCA and the way it operated was effective and efficient. Whether its powers in the future need to be changed. Or as the fifth amendment that we will be discussing today, whether or not the membership should be different.

Look at how we can improve the process. How we can take the experiences of the last two years and look at how we can improve the processes and the structure to handle what we have been through and anticipate what we may handle in the future. But that is the limit of it. What I would not want to see is a witch hunt on every decision made and every restriction imposed and whether or not, in 20/20 hindsight, we would have made the same decision with the same information. We delegated that authority to the CCA. That was done a long time ago in statute. I think it was correctly done and all I will be looking to do is to say, would the CCA recommend some changes to their structure to make it more effective in the future? That is what I would like to see come forward. But I will be supporting the amendment on that basis.

Having said which, one caveat, as Deputy – mind has gone blank – as one of our fellow Deputies mentioned it concerns over ... Deputy Le Tocq, I do not know why my mind went blank. (*Interjections*) He shares my haircut, I should have remembered his name! As Deputy Le Tocq mentioned, what I would not want to see is some mammoth monster created at great expense that would take years

1110 to report back to us. So I will vote for this amendment on the basis that it will come back to the States and we will decide the scope and finalise it and we will have a clear indication of cost. But if it is going to cost a fortune and take years then I am unlikely to support that. What I would like to see is something that is done quickly, efficiently, relatively cheaply and helps us look at the mechanisms, not second-guess decisions.

Thank you, sir.

1115 **The Bailiff:** Deputy Matthews.

**Deputy Matthews:** Thank you, sir.

1120 Deputy Meerveld actually expressed the opposite view to the one that I would express because I think the decisions are actually quite important to look at as well. In fact it is the decisions in some ways, I think, that is the most important lesson that you could learn going forward. I agree it should not be a witch hunt, it should just be a look at what were the decisions and what were the other options that could have happened.

1125 When the pandemic started, we had this real Guernsey-together community spirit. We had this Bailiwick bubble and our lockdowns were these very short and sharp lockdowns, unlike the very long lockdowns that other countries had. But many found it immensely challenging and many on our Island struggled with their mental health during those periods. Guernsey, I think, has got a lot to feel proud of. We have done incredibly well and for a large part of it we almost eliminated the virus in our borders and we currently have a very low rate of serious disease and mortality, so little old Guernsey has achieved an enormous amount.

1130 I cannot help wondering if there are other things that we could have done differently and something that I may have mentioned at the time we were making those decisions. Could we have kept more of that community spirit? Did we open our borders at the right time? Could we have kept testing on arrival even without quarantine and would that have done anything to prevent maybe some of the Delta wave or the Omicron wave from arriving? Or would it have just been pointless?

1135 Early on in the pandemic we were very similar to countries that had an elimination or a zero strategy, like New Zealand we were often compared to and we followed very similar policies. They have kept those policies up and they are almost ... very low rates of COVID and I think it is worth thinking, what would the value have been in that and what would the costs have been in that? Could tourism have operated through that or would it have been disastrous for tourism to operate that way? I noticed actually in the news recently they were talking about the islands of Tonga which very unfortunately has just had a volcanic eruption. But island nations have that possibility. Tonga has a population of 105,000 and their total COVID cases to date have been one. But of course they have had very strict border controls to achieve that. What would the cost to us have been if we had done that?

1145 Just really to answer Deputy Murray and his view, 'Is this not just navel-gazing and pointless and why would we want to do this? Why would we want to spend money doing this when we need to get on and do other things?'. I think really the answer to that is this may not be the last pandemic. There may well be another virus. It may well be a variant of this virus, it could be another virus and I think it is useful for us to know what our options could have been for if this happens again. So for that reason I would support the amendment.

Thank you.

1155 **The Bailiff:** Deputy Haskins.

**Deputy Haskins:** Thank you, sir.

I actually do tend to align with Deputy Murray more often than not but not in this case. (*Laughter*) I think reviews are important and, to name a few and Deputy Murray will know one of them which is the nasen SEND Review, I think are very important for strategic direction and what we are going

1160 to do going forward. I think that is exactly what this is about because there might well be a future pandemic.

I think it would be invaluable ... well maybe the cost could be analysed and I think that is one of the points: that this has cost, as Deputy Inder said, a huge amount of money. If there are some lessons learnt that we could have been better this way, it might not have cost us that much. A percentage saving could be huge in the future. So I am actually very much for this and I do not think it is about any wrongdoings, it is about how we could be better in the future. I support this review.

Thank you.

1170 **The Bailiff:** Deputy St Pier.

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

I would just like to begin by addressing Deputy Ferbrache's comments about factionalism. The 18 Members or so who came together to talk about this really found themselves in the sense of they were the ones who had some concerns around the original policy letter. Bearing in mind that there were 15 Members of this Assembly involved through the sponsoring Committees. And in terms of factionism, I think it could not be further from the case in the sense that those involved have a very broad spectrum of opinion across this Assembly.

I think Deputy Ferbrache certainly does raise a very fair question and challenges to perhaps, why wasn't he consulted or approached on this amendment and indeed the other amendments? Of course, on Thursday 13th January, the policy letter was presented through a Teams meeting to Members that wished to participate and of course that was led by Deputy Soulsby as, I guess, both Vice President of P&R, the stand-in President for the CCA in the absence of the President, the Chair of the CCA in the absence of the Chair and of course as a consultant and advisor to the CCA.

So I hope Deputy Ferbrache will accept that no discourtesy was intended and it merely felt like a very logical thing to do to approach Deputy Soulsby in the first instance as the person who appeared to be leading on this or leading on the policy letter. So I hope he will accept it in the spirit in which that comment is offered.

And similarly to Deputy Fairclough as well. As the member of the group who both volunteered and indeed I would say was volunteered, to take a lead on sort of co-ordinating these amendments, I took it upon myself to make contact with the sponsoring Committees on Monday of this week.

Why Monday? Because on the previous Friday there had been a meeting with Deputies Soulsby, Prow and Brouard and their respective teams of advisors and it was only on the Saturday that we actually received comments back, particularly on this amendment which had suggested some substantial revisions. It was not until the Monday that I made contact with the Committee Chairs and the omission of a formal approach to Scrutiny falls to me, so I apologise to Deputy Fairclough. Again, I hope that he will accept that no discourtesy was intended to either him or indeed his Committee.

Deputy Ferbrache asked for an unequivocal clarity from the Procureur in relation to the meaning of unauthorised disclosure and a lawful disclosure. I think the Procureur very helpfully provided that and I was also encouraged that Deputy Ferbrache said that he would certainly be voting for full disclosure and certainly I am sure he would agree with me – and I am sure he would given that he would vote for disclosure – that there is nothing or certainly very little that could not be disclosed in such a process. So I think we have disappeared a little bit down a rabbit hole in the debate about needing to amend the law and all sorts of other things but I think the reality is that if the terms of reference were approved by this Assembly in April to undertake a review, and given Deputy Ferbrache's leadership on this in support of the release of any appropriate information, I think it is most unlikely that any Resolutions of this Assembly would be needed, any changes in the Law would be needed. That is simply a red herring, but an interesting academic discussion and a bit of a test for the Procureur on her feet this morning to respond to all of those questions, but nonetheless one that I do not think is likely to be truly engaged.

I think Deputy Inder absolutely hit the nail on the head, which I think others and Deputy Meerveld endorsed as well, if we have spent nearly £100 million we have to put possibly an expenditure of £100,000 in that context, 0.1%. I am sure Deputy Ferbrache will also agree with me that the leadership throughout the pandemic has been absolutely flawless, is completely incapable of any improvement whatsoever! If the majority of the Assembly align with Deputy Murray and do not wish to engage in any kind of navel-gazing and review then both Deputy Ferbrache and I will be able to sleep very easily in the knowledge that we are perfect and incapable of having made any alternative decisions.

Deputy Kazantseva-Miller made a very good point about terminology. One of the interesting things about amendments is this Assembly pores over every single word of an amendment. It is absolutely incumbent on the proposer and the seconder of an amendment to make them flawless.

That same standard never applies to the original Propositions. And of course Propositions are just propositions and resolutions of this Assembly are just Resolutions. They are not either the word of God or the word law. They are simply a direction and a statement of intent or however it is expressed. This is no different. So I think for us to disappear again down yet another rabbit hole about worrying about terminology, I think is to misunderstand the whole purpose and nature of both an amendment, a Proposition and a Resolution.

I think Deputy Gollop first raised the question of whether the disclosure under Rule 4(1)(d) was correct. I think, sir, you have certainly dealt with that in that actually – and Deputy Murray was also concerned about that – it is clear that there are no financial implications of following through this if it becomes a Resolution, in other words directing the preparation of a policy letter. That will have no financial cost. The policy letter will need to identify what the financial costs are of a review and it will then be for the States to determine whether it wishes to go any further or not. The focus, I think again Deputy Kazantseva-Miller very much identified, is about lessons for the future.

I do understand Deputy Murray's point made passionately that it is navel-gazing and a waste of time but pandemics and the risk of a pandemic has been the number one risk on the Bailiwick's risk register for a number of years and it will remain the number one risk well into the future. This is not about COVID-19, this is about whatever might be the next pandemic. And, as Deputy Kazantseva-Miller said, it could arise next month, next year. I think it would be unwise for us to assume that it will be 100 years as it was between the Spanish flu and COVID-19 before this Island is impacted by another pandemic.

Our children and our children's children may be very lucky if it is 100 years before the next pandemic but I think it would be unwise of us and poor governance for us to assume that it is all over, we can move on, we can put it behind us, we can focus on the economy and all of the other challenges we have, not learn anything and then, if we find that we are hit by a future pandemic and we have taken no account of the lessons that could possibly have been learnt, as Deputy Haskins said, and the money that might have been saved had we done things differently. But if that is the will of the majority, then Deputy Ferbrache and I will be sleeping easy that we have acted perfectly from day one and indeed from before day one in March 2020. Nothing could have been done differently.

**The Bailiff:** Deputy Leadbeater, is it your wish to be relevé?

**Deputy Leadbeater:** Yes, please, sir.

**The Bailiff:** Thank you very much. Deputy Helyar.

**Deputy Helyar:** Sir, thank you.

If it were left to me to redraft the amendment I would probably go back and say, 'Let's wait and see what the target operating committee has to say about its own review before we decide the scope of what we do next. But we are where we are. I will vote in favour because there has to be a review. We have just spent tens of millions of pounds without any oversight or control. The decisions

1265 have been made very quickly by individuals. They may have made the wrong decisions, I do not think we should be questioning them personally but I am interested in one thing this amendment does not say, which is about conclusions and recommendations.

1270 We need to understand – I need to understand – because it may happen again next month, whether what we have done in the past is the right thing. And it is important to have other people scrutinise that and absolutely agree. But this is – and it is reflective of the debate which we had yesterday which is an age-old debate in this place because of the nature of our constitution – it is the conflict between the need to delegate and the desire to interfere. We had that yesterday in spades. Another way of describing it is, on the one hand the cry for leadership, and the unwillingness to be led. We see quite a lot of that in many of the things that we discuss.

1275 Deputy Trott is not here but I wanted to echo his words because it is widely misconceived by the public and it is reflected in many of the emails we have received that P&R or individual Deputies should be doing X. In fact we have just had one about face coverings. Now we do not make those decisions. The CCA makes them. It is an important part of it and it is coming up in another amendment about Economic Development's role in the CCA: it is not widely understood that Treasury has no role in the CCA.

1280 All of the business support which Deputy Trott supplies, has told about before ... I do not attend CCA meetings, the Treasurer does not attend them. I have only been called into one in terms of giving a presentation about economic circumstances. What I would like to know is whether this structure is fit for purpose for all types of disaster, because not all disasters are the same. Some of them happen suddenly without warning. We were talking about Tonga, they have just had a disaster  
1285 that happened suddenly and without very much warning. Plane crashes happen without warning. This one came along quite quietly at first, peaked very suddenly and is tailing off over a very long period. Is what we have fit for purpose for managing that kind of civil emergency? Personally I do not think it is. I think we need to have more flexibility and I think that would include probably what Deputy Inder has to say later in terms of those Members who could be drawn in to make the  
1290 decisions which are relevant to particular areas, because I do think to some extent some of the decisions have had impacts which perhaps there has not been enough consideration of what they might be, whether it be on people's freedom or indeed on how much we have spent.

1295 I think it would be useful for us to know and have on the shelf for next time an emergency happens who might be drawn in to help with it. These things are largely operational. I do not want to question the decision-making because decision-making about bin bags is very different to the decision-making about body bags. Those sorts of decisions are very difficult. Some of the implications and the facts which surround them are quite shocking, I am sure. I was not party to them. They are extremely difficult decisions to make. They need to be delegated to a small group and we need to trust them. I have used that word before. We need to trust each other to deliver on  
1300 the business that we have been delegated by the Assembly. I would like to see a review and I will support the motion because of that, but I think we should be very careful about questioning the decisions of individuals who have been put under an enormous amount of pressure and we should not, with the benefit of 100% hindsight.

1305 I know Deputy Meerveld, for example, enjoys his military history and I often think putting myself in the position of say this Assembly or the Cabinet in the UK at the beginning of the war, nobody knew we were going to win. Nobody knew. If you sit in the position and think about the decisions that have to be made when you do not know what the outcome is, the look very different than 2019 or 2020 looks today. I think when we do review it we should very much have that in mind.

1310 Thank you.

**The Bailiff:** I do not see anyone else rising in here or online. I will turn back to Deputy Taylor as the proposer of amendment 2 to reply to the debate.

**Deputy Taylor:** *[Technical interference]* ... *(Laughter)* Thank you, sir. *(Laughter)*

1315 Okay, there were quite a lot of responses there. First time here, I will have a go at responding. I  
suppose Deputy Soulsby was first up, commenting on the original amendment. I totally agree, the  
original wording that was sent out as a kind of draft to consult with officers did need work and I  
would have to say I commend the process it went through to actually come to this draft. There was  
a lot of input from a lot of different people, so I thank Deputy Soulsby and all of the officers that  
1320 were involved in getting to the draft that was actually laid.

Deputy de Sausmarez raised a very valid point very early on in debate. I do not think it was  
directed directly at me, 'What am I looking for?', but in terms of what might this review seek to  
establish. I think it was touched on by a few different people so I will try to cover those. I guess in  
terms of things that might be included, this is just what I am suggesting but of course the  
1325 amendment is to seek that Policy & Resources go away and consult as deemed necessary. But things  
I might be interested in seeing would be some of the different health indicators, hospital admissions,  
mental health admissions, to have a comparison before and after, poverty indicators.

I think it was after the first lockdown, quite early on in COVID we had a community survey which  
flagged up quite a lot of interesting information. I took part in it, it was very easy to respond, giving  
1330 an indication of what your financial changes might have been or comments on your mental health.  
So something like that, a community viewpoint, could be included. And a real big one, I think, would  
be a comparison between forecasts and reality. Because that is something I do feel there was very  
limited information that was put before us in terms of the forecast. What we were forecasting might  
happen and then actually drawing a comparison.

1335 I suppose I am jumping ahead here but I touch on something Deputy Murray has commented  
about, the need for a review. Very much in my own business, I look at what I did last week and I use  
that to have a gauge on what I think I will do next week. It does not mean it is going to be exactly  
the same, there are so many different variables. But it is easy to see Saturdays are generally the  
same, Fridays are generally the same and you have some seasonal changes. But that kind of looking  
1340 backwards, learning from history, it is not about blaming the staff whether the last Saturday was  
busy or quiet, it is about gathering that information so I can note, well, we were a bit understaffed  
last week. That would be, I think, to respond to Deputy de Sausmarez there.

So I suppose a key point is looking at deaths, where they were made up – a bit more information,  
because a death in any situation is always sad for everyone involved, everyone linked. It is sad but  
1345 there are always circumstances surrounding deaths, so to just say one death is not the full picture.  
For me personally, that would be something I would like to see but again the amendment is seeking  
to direct Policy & Resources to come up with some ideas in a sense and then we would agree on  
them.

Deputy Burford came up next – and I apologise, I think Deputy St Pier touched on this in terms  
1350 of the consultation – I suppose I owe an apology there as well and to Deputy Fairclough, as was  
touched on. Feel free to correct me, but Deputy Burford was involved in some of the drafting of  
these. I accept it was in her personal Deputy capacity as opposed to in her capacity as a Chair of, or  
President of, Scrutiny Management, but there was a kind of involvement so she was aware of that.

In terms of the figure, £100,000. £100,000? To me, it did not strike me as a hell of a lot of money.  
1355 I mean, it is more than I can afford, I will accept. (*Laughter*) But in the scheme of Government – I  
would not just throw £100,000 down the drain – if that is the initial guess, if we put it out to tender  
and squeezed a little bit and got it for £80,000. That does not seem like an off-putting figure but  
again the Proposition is to direct Policy & Resources to come back with the terms of reference to  
consult as deemed fit, but specifically with Scrutiny Management.

1360 So it is not directing Policy & Resources to direct Scrutiny Management to do anything. It is not  
committing them into any big workstream. But it is to consult with them, as they did seem ... I think  
the initial conversation I had about this amendment with Deputy St Pier was if we were directing  
P&R or if it would be worthwhile to direct it straight to Scrutiny Management and the discussion  
did lead to this route. Keep it fairly open. Deputy Prow, I suppose, thank you for his support and as  
1365 a Member of CCA – coming on to some of the points we raised – I am sure we can rely on Deputy  
Prow being willing to talk and being open about the whole process. So I thank him for his support.



Deputy Roffey then picked up a really good point on the date of the start of this review and I absolutely can see that that is a very valid point. I guess there would be part of any review would touch on that, the point of our readiness at the start but I do think that would be an interesting point to add. I would hope it could be done – I do not think anyone in this Assembly would object if P&R brought that within their proposals and if they did not I probably would be happy to propose an amendment there, with his support.

Deputy Trott, now I apologise to Deputy Trott because he said he had three points of concern but I only picked up two of them. But they did kind of blur.

Firstly, is thanks and the comment on the low reserves of businesses, I think that was a really important point to make that on the surface we are saying the economy has performed very strongly and I do not doubt that there are very strong areas of our economy. But when we look at the economy, as generally talking in general averages and it is not necessarily taking account of the lower sections – I say lower, that is probably not the right term – certain sectors of the economy have not performed quite so well which might bring the average down. But at the other down, some sectors – construction, finance – have performed exceedingly well.

It does carry, so I think it is a very valid point to raise that different sectors of the business community have been affected disproportionately. But I apologise, I did not get point three. I have got the number three but I missed it. So hopefully if it is anything that you –

**Deputy Trott:** There is also the... *(Laughter)*

**Deputy Taylor:** And he also said ... I am sorry I just read. On point three he said he agreed with everything that Deputy Taylor has said to date in this term. *(Laughter)*

Deputy Fairclough, I did draw some comparisons with Jersey. I was meaning that more as a point that, I feel that among the Assembly there have been comparisons drawn and conclusions reached. I was merely wanting to point out that conclusions can be reached quite early on but we are not looking at all of the information, it is not all published. Again, there was the comments on the timing which I think I have covered. On my side note, I do not think I am drawing conclusions on where we have got to and what not but I think the information should be coming forward.

And coming on, jumping ahead I think it was Deputy Helyar, in terms of conclusions and recommendations, I agree and I disagree. I do think a conclusion is good but I also have a concern that, by trying to reach a conclusion, we may also be trying to apportion blame or praise in some way and I think the review should really just be about looking at it and then we can reach our own conclusions or see what we do. But it is a very valid point.

There were also comments about we may need resources – absolutely, taken on board! If Scrutiny Management were eventually to be directed, they would require additional resources. But if we have not got the resources to do a review... I mean I have seen Scrutiny levying to P&R, having Scrutiny airing on Home Affairs and various different bits. So stuff is being scrutinised but this just feels like it is a very big thing. If we are going to scrutinise anything this feels like it would be a big, good thing to look at.

Skip on, I think, then Deputy Le Tocq, again very ... that sounded really ominous, Deputy Le Tocq. Thank you, 'I cannot support it' but I do understand he must have seen a lot of different reviews being proposed over the years and cost and understanding. I guess I am just very glad that he is on P&R and hopefully in drafting the terms of reference he will be giving good, valuable experience into that process.

Deputy Kazantseva-Miller raised a good point and I think it almost leads on to amendment 3, so I do not want to stray into debate on that. But we have had pandemics in the past and we will have them in the future. Amendment 3 is highlighting Resolutions that were brought about following a previous pandemic but they have not been enacted. Actually, it could be quite interesting to see. Several years ago we resolved to make changes. We have not made those changes, we have kind of largely got through – I think most people would agree – pretty well. So that is kind of an

interesting point. We did think we needed to make changes, we did not make them, so a bit of a comparison there.

1420 Deputy Brouard, I think I was well prepared for Deputy Brouard not being supportive of the review and I do agree I do not generally support reviews. I would say I am closer to Deputy Brouard and Deputy Murray on my view of reviews but I do have to pick up, I totally agree a lot of people are behind with their workloads. But surely we have to have a little bit of an understanding whether it is worthwhile that they are behind on their workloads. We have got this massive backlog. Everyone  
1425 in here must have heard multiple times over the last few years, 'Sorry, but because of COVID ...' Yes, 'because of COVID.' A bit of a comparison to see whether all of those other delays have actually been worthwhile. I have got a little note about earthquakes and tsunamis and ripples in the ocean because, yes, on the surface we have done very well. But that is just looking at a few key indicators. But like the earthquake that happened on Boxing Day 2004, 2006? I should know. (**Deputy Roffey:**  
1430 2004.) 2004, Deputy Roffey was there. I woke in the morning by a small, little shudder in my bed which was very little, it did not have much effect. (*Laughter*) But later on in the afternoon when I was on the beach, the effects of that tsunami and that earthquake were quite visible. Tiny little things, although it might not look it, can have bigger, wider ramifications, so I think we should bear that in mind.

1435 Deputy Inder, yes, I take the point it is potentially going further than the original Proposition, as they all are. But he is right, no one has sought to stop that. And directing P&R to consult – I am not really sure what I meant with that. Yes, it is to direct P&R to consult with Scrutiny, not directing them to do anything.

Next, Deputy Ferbrache, I will gloss over a bit of it because I think that one has been done to  
1440 death on the legal side of things. He agrees on the dates. It is a fair point about not consulting with him. I think Deputy St Pier did cover that slightly in dealing with Deputy Soulsby and the timings, you know, it is not great. That is a general comment that came out with the timings being a bit last-minute. But it was very much about hearing what was going to be said in the briefing that was explaining this. So it was holding back in case the amendments were not necessary. In terms of the  
1445 disclosure of the CCA minutes, that may not even be a problem if they were not disclosed. The CCA will have minutes and they were discussing the bits and pieces but if we are looking at the review in terms of the decisions made, that is already out in the open. Everyone knows what decisions were made. Those are not secret, they have all been put out and we have lived with those decisions, so it might not be a problem but I am comforted that he is willing to be involved.

1450 One point he did mention was the extended working hours. I think the figure was 16 hours a day. Not necessarily for two years but for a very long period. And that in itself could be good grounds for a review. Because if this were to continue for much longer, Deputy Ferbrache knows as well as I do, you cannot have your staff working for 16 hours a day for very long. People have a limit and they will leave, they will go elsewhere. And certainly if they are on overtime and good rates at  
1455 16 hours a day, you are doing double your week. So, half a year, six months' work, take the rest of the six months off! And where would that leave us? So it is just a point that I think could be worth looking at as well.

Deputy Gollop, I think I agree with Deputy Gollop, I think we are in agreement. Judicial review seems like it is a little bit OTT but I am not familiar with the process so I will not comment there. He  
1460 did pick up Rule 4(1)(d). I put the example of it being similar to the amendment for the SARC that Deputies Burford and Kazantseva-Miller brought in suggesting bringing the amendment does not bring any cost and I think that has been covered. Where are we? Page three. Page four, Deputy Murray, I have covered a little bit. I absolutely do get your point on reviews but on this occasion I just have to disagree on that point.

1465 I think Deputy Queripel disagreed. He did ask how comprehensive the review would be and again I come back to how it very much depends on the Propositions that are brought forward in April by P&R.

Deputy Oliver, again, she did question if information that came out was redacted from the CCA but again I point out, if we are looking at the decisions that have been made, the information may

1470 not be necessary, but that would very much depend on the level of the review that is put forward and a balance of the cost of the review against the information we see. Deputy de Lisle, yes he was absolutely right, this does leave in the original Proposition and I suppose I ask for them to be voted through separately when we get to the final vote. That should cover his concerns.

1475 Deputy Meerveld, yes, he quite rightly points out that it is the role of Government to look into these things. Most people do not like reviews and if I do not support one, I will not support it. But I am supportive of this one, I think it is an interesting one. He did say that the CCA was not designed for this and that is an absolutely brilliant point because it has been said many times – and I am not going to attribute it to anyone – but the CCA was not designed to deal with a prolonged incident like this. But it has dealt with it and, as most Members are saying, it has dealt with it very well. So that is worth a review as well just to see do we need to change things if actually it has been handled very well.

1485 I think Deputy Matthews, he has agreed with a few points I have just summarised with that the decisions are the most important. But a really important point he put is it is not a witch hunt. I do not think any review should be seeking to apportion blame to anyone for anything. I do not think that would get us anywhere. Deputy Haskins, thank you for the support and highlighting some examples of where reviews have been necessary in the past. Deputy St Pier, coming to a close, fractionalisation. I can take that point ... I do not know whether the exact word was fractionalisation, if that is a word. I get that but equally from where I sat I feel I have worked with a group of Deputies that I do not normally agree with.

1490 So actually, for me, it has been less fractionalising and more cohesive but on different topics. So thank you, Deputy St Pier, for his help on the amendment and support there. Deputy Helyar I think I have already covered off but I thank him for his support and I really do get his point about leadership and being led. And I am broadly supportive of that. So in closing I would just ask Members to support this and I would look forward to what P&R can bring forward in a few months' time.

1495 Thank you.

1500 **The Bailiff:** Members of the States, we come now to the vote on amendment 2, proposed by Deputy Taylor, seconded by Deputy Soulsby. There has been a request for a recorded vote, so over to you, please, Greffier.

*There was a recorded vote.*

*Carried – Pour 32, Contre 4, Ne vote pas 0, Absent 3.*

**POUR**

Deputy Meerveld  
Deputy Moakes  
Deputy Oliver  
Deputy Parkinson  
Deputy Prow  
Deputy Queripel  
Deputy Roffey  
Deputy Soulsby  
Deputy St Pier  
Deputy Taylor  
Deputy Trott  
Deputy Blin  
Deputy Burford  
Deputy Bury  
Deputy Cameron  
Deputy de Lisle  
Deputy de Sausmarez  
Deputy Dudley-Owen  
Deputy Fairclough

**CONTRE**

Deputy Murray  
Deputy Vermeulen  
Deputy Aldwell  
Deputy Brouard

**NE VOTE PAS**

None

**ABSENT**

Alderney Rep. Roberts  
Alderney Rep. Snowdon  
Deputy Dyke

Deputy Falla  
Deputy Ferbrache  
Deputy Gabriel  
Deputy Gollop  
Deputy Haskins  
Deputy Helyar  
Deputy Inder  
Deputy Kazantseva-Miller  
Deputy Le Tocq  
Deputy Leadbeater  
Deputy Mahoney  
Deputy Matthews  
Deputy McKenna

**The Bailiff:** Members of the States, the voting on amendment 2, proposed by Deputy Taylor, seconded by Deputy Soulsby, is that there voted *Pour* 32 Members, *Contre* 4 Members, 3 Members were absent and therefore I will declare amendment 2 also carried. We will work out what numbers they all have in due course. We move next, Members, to amendment 3 which is to be proposed by Deputy St Pier if he wants to move his amendment now.

[Amendment 3.](#)

*To insert an additional new Proposition:*

*"Having noted that in February 2014 the States of Deliberation inter alia resolved:*

*That a new Public Health (Enabling Provisions) Law be drafted.*

*That the [Health and Social Services] Department consults on and then proposes reforms to the current legislation under this new Law in order to legislate on provisions relating to hygiene, health, nuisance, disease control and other public health issues and the powers and duties of its statutory officers; the new Ordinances and subordinate legislation should include the necessary human rights protection and appeals mechanisms*

*and in December 2017:*

*To agree that the Committee for Health & Social Care should report back to the States on the legislative changes needed to disband the roles of Medical Officer of Health and Chief Medical Officer and, where relevant, transfer their functions to existing services or statutory officials whilst exploring the potential for creating reciprocal arrangements for the independent challenge and peer review of respective health and care policy on a regular or ad hoc basis by other small jurisdictions*

*and given that these Resolutions remain extant, to direct that the Policy & Resources Committee, having consulted with the Committee for Health & Social Care, shall give full consideration to the discharge of these Resolutions in the Government Work Plan Update to be debated in June 2022 to include resource requirements and the impact of any prioritisation of this work during this term of government on the phasing and achievability of other actions in the Government Work Plan."*

**Deputy St Pier:** I do, sir, and I do not wish to have it read.

I will just begin by thanking Deputy Burford for seconding this amendment but also it is an opportunity, once again, to thank Deputies Soulsby, Prow and Brouard particularly for their time at meeting at relatively short notice last Friday to discuss this and indeed all of the amendments, and engaging openly in recognition that there were some valid concerns with the policy letter and the Proposition as drafted. Also I would like to take the opportunity to thank, really, all of the Members who have been involved in this quite long process of discussion and iteration to produce this amendment and the other amendments. It has been a truly collaborative process and I am grateful for that.

Sir, what I am going to do is just briefly walk Members through the amendment and explain what it does and also explain what it does not do. Starting with the sections in italics which is quoting previous extant Resolutions which remain outstanding, first from 2014 and then from 2017. I am grateful to the States' Greffier for his advice in drafting these amendments that actually it

probably was not strictly necessary to stick this text in the body of the amendment, rather than referencing it in some other way. But actually we took the view that it would be helpful to set it out in full to give some context as to why the main body of the amendment and its direction was relevant.

The history of a policy letter dated November 2013, which led to a debate in February 2014, on a new Public Health Law goes all the way back, actually, to 2009. Another coronavirus, SARS, the first SARS. Of course we are dealing with SARS-COV-2 now. But there was the SARS coronavirus of 2009 had swept through Asia but had not of course touched us significantly in Europe. But the process again of perhaps a review and learning from that experience was that the Public Health Law of 1936, or the Public Health Ordinance of 1936 and the prior Law on which that was in turn built was perhaps no longer fit for purpose in 2013 and required a new Public Health Law.

There were also a whole raft of other things which the 2013 policy letter asked for. Those were approved, enacted later by ordinance in November 2014, leaving these two Propositions outstanding. The 2014 policy letter said that to produce a new Public Health Law would take six months or so of work, which was driven by the second part of that paragraph there, to consult with a whole range of people and come back with a new ordinance. Clearly, now nearly nine years later, we have not got around to that and when the pandemic approached in early 2020, it was clear that the Public Health Law as it stood did not entirely meet the requirements of the threat that was posed. Of course that was why, in good part, the CCA was engaged with its regulatory making powers that actually put in the framework on which we have largely relied for the last couple of years.

The background to the 2017 Resolution is slightly different. This arose out of, from memory, the Medical Officer of Health's Annual Report. The MOH is a statutory office which has existed for over a century and it was noted that the Medical Officer of Health wears a number of other hats, including of course the Chief Medical Officer. Of course we also have the Medical Director that runs the Hospital and so on. It was felt at that time that there was really quite a lot of overlap, confusion as to roles and that it really was necessary to try and sort this out.

That is the background to the 2017 Resolution that, putting all of their powers and purpose into a fresh ... needed to be refreshed I suppose. Because again, if you go back to the original purpose of the MOH at the end of the 19th century, at the turn of that century, it was all about improving public health through improvements in sanitation and so on. Things have clearly moved on somewhat and therefore the role of the MOH has changed and probably should change and be reflected, hence the background to that Resolution.

What does the amendment direct? I think we again make the point that the wording of amendments is crawled over word by word and that they perhaps take on a level of importance that is disproportionate to them. But nonetheless it is important that Members do understand what the amendment is seeking to do. That is to direct P&R, having consulted with HSC in the Government Work Plan update to come to us in June – to draw attention to this – to give full consideration to the discharge of these Resolutions.

Again that wording has come as a result of the engagement with Deputy Soulsby and others. This is not a direction to prioritise the preparation of a new enabling Law. It is to tell us in June that if we are to prioritise it in this term of Government then this is how long it would take, these are the resources it would require and indeed this is the potential impact on other workstreams. Then the States in June, a little bit like the last amendment, can then revisit this question in the light of further information, as they will be doing in April on the terms of reference for the review. In June we can review, as part of the Government Work Plan update, whether we still believe that this is a matter that does need to be prioritised in this term of Government or whether we remain content for it to be kicked further down the track, perhaps into the next term of Government or beyond.

Now I am not going to seek to pre-empt the outcome of what that consultation between P&R and HSC may result in. I am not going to try and pre-empt what the recommendations will be in the Government Work Plan update. That is a matter very much for P&R and I absolutely have confidence that they will engage in that process with an open mind and will bring recommendations

1575 to us. But I think it is entirely appropriate through this amendment that we should be asking them  
to be considering those questions. Because I think going back to the previous amendment, if it  
becomes a Resolution, for me one of the questions that perhaps the review should be considering  
is what was the impact of not having this enabling Law in place. As I indicated at the beginning of  
this speech, sir, the need for us to work around the absence of that modern, up-to-date Public  
1580 Health Law with all the human rights protections being fit for purpose in the 21st century, required  
engagement of the CCA.

As Deputy Helyar said in his speech on the previous debate, he has some questions about  
whether the legal architecture has indeed been the right one for an emergency of the length of  
which it has been. So I think it is relevant for us to be saying, well actually what was the impact of  
1585 not having the Public Health Law that we agreed in 2014 we should have? Was that a good or a  
bad thing? So that, I think, the previous amendment can deal with but this amendment is forward  
looking and says, do we wish to prioritise it or not? What would it take to do so? What would be  
the resources and what would be the impact on other work?

I think it is very much, and it is intended to be, working within the Government Work Plan  
process. Absolutely accepting that this Assembly has determined that the Government Work Plan  
is the way in which it wishes to prioritise its work for this term of Government. This is entirely  
consistent with that. The update is the opportunity in which to consider it. I hope that is clear. If  
Members have any uncertainty about what is intended, I am sure they will raise that in debate and  
I would be very pleased to respond when summing up, sir.

1595 Thank you.

**The Bailiff:** Deputy Burford, do you formally second this amendment?

**Deputy Burford:** I do, sir.

1600 **The Bailiff:** Thank you very much. Deputy Ferbrache.

**Deputy Ferbrache:** Sir, I am completely aligned with Deputy St Pier in relation to this matter.  
The way that the amendment said – and I think he has explained it very well in the last five or six  
1605 minutes – but it just shows how we bite off more than we can chew. I think that the explanatory  
note shows that because it says – Deputy St Pier has covered it but I make no apology for just  
reading it:

In 2014, the States agreed that a new Public Health law should be prepared. At that time, it was anticipated that it would  
be 6 months' work. In 2017, the States agreed to remove the roles of Chief Medical Officer and Medical Officer of Health.  
The Resolutions have not yet been discharged.

One of the drivers for the 2014 decision, was a response to the SARS epidemic in 2009, to ensure a fit-for-purpose  
legislative framework with appropriate 21st century safeguards to help manage future epidemics and pandemics. This  
rationale remains as valid 8 years later – all the more so after the COVID pandemic. Accordingly, the discharge of the  
Resolutions should be prioritised through the Government Work Plan process.

That is fine. I think we will have to make a decision when we come to the annual review, which  
1610 will be in June, of the Government Work Plan process about what falls in and what falls out. Because  
Deputy Helyar has made the point consistently that, if something goes in, something has got to  
come out. Okay, some things will be discharged hopefully. But things, as I have found, and Deputy  
Murray has expressed that very ably early today, really take too long and we spend too much time  
looking backwards instead of looking forwards.

1615 But I think it is a good idea. I think these Resolutions should be enhanced, if they can be, but  
that will be a decision we look at with resources in 2016. I think there is a point we have got to make  
in relation to perhaps – I hope I am not being too ... I cannot find it now. Yes, I have. I would just  
like to give this information which shows what our population was at the last census at the end of  
March 2021 and the problems we are facing. Because it shows that as at that date there was an  
1620 increase of 0.2% – 0.2%! – 74 people in the 16 to 64 age group. So that is the really economically

active, or most economically active group – 0.2%! But then we get to the oldies, 2.3%, there was an increase of 2.3%, 259 people in the 65 to 84 age group. That includes me and Deputy de Lisle and Alderney Representative Roberts and I think Deputy Prow and one or two others, anyway, (*Laughter*) but there are 259 more of us than there were previously. And 2.6% of the 45 people in the 85 or over age group. Concerningly the number of people in zero to 15 decreased by 0.1% to 13 people. So we are making all of these decisions we are putting on extra legislation, extra Resolutions and yet we have got a less economically active population. We have got more oldies and we have got fewer children. Just bear that in mind.

**The Bailiff:** Deputy Prow.

**Deputy Prow:** Thank you, sir.

I will be brief. I just really want to build on some of the comments of Deputy Ferbrache. The words of Deputy Murray are still ringing in my ears and what troubles me about this amendment, which I have to say I do not oppose and it is certainly better than the first version of this that I read, as Deputy St Pier said. Deputy St Pier has mentioned that, in this debate, we have pulled over the wording word by word but I am not really doing that.

What I want to perhaps suggest is the appropriateness and the necessity for it. I think it could have been subject to a 24(6) challenge. I think it goes further than the policy letter, but that is not a matter for me to say. I did not raise it because I did not want to waste the Assembly's time because I think a decision to debate it would have been successful. But the point I am making, the substance of this amendment says it is asking us to, '... shall give full consideration to the discharge of these Resolutions in the Government Work Plan Update to be debated in June ... 2022.

I think Deputy St Pier did pick me up because I did make a point about the timing of these amendments and that is really perhaps ... and I did not develop that argument but this to me is around, is it appropriate that we should really be debating this in this debate? Deputy Murray, the bottom line of his point is we have a Government Work Plan and there is a discipline there and if we are going to get, between now and June, opportunities for pre-discussion around the Government Work Plan, instead of taking all of the Government Work Plan issues and around ... and Deputy Ferbrache is right to remind us of what Deputy Helyar has told us about.

If a Resolution comes in, something else has to go out. And I am not really sure of the appropriateness of us having to debate this now. Having said that, I do not oppose it. I understand the need for the Resolutions to be resolved and I think Deputy St Pier has well explained that. That is all I wanted to say.

Thank you, sir.

**The Bailiff:** Deputy Gollop.

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

I did take Deputy Prow's point perhaps that it is a bit random and out of sync, but in a way it makes the point. One thing I admire, I must admit, as a kind of anorak watcher of UK executive cabinet government is, from time to time, you get reshaping of departments. For example, Baroness Thatcher got rid of the DHSS and created two separate departments, and so on. And you do see musical chairs of departments and statutory officials, whereas everything we do always seems to have to be a really cumbersome process of going for Government review and then committee changes and so on.

Sometimes that rapidity of being able to change the nature of positions can be useful because, if one listens to what Deputy St Pier has said, he is clearly making the point that yet again we have a lot of, as Deputy Ferbrache has reminded us, work that has not been done, that was too onerous and we need to catch up on that. But if we have not realised that Public Health and the possibility of pandemics and health control over our lives is not important then we never will after the last two years, because I think perhaps we were complacent in relation to SARS and other pandemics. We

thought, 'Oh, that happens in the far east of the world but doesn't happen here.' It was perhaps that way of thinking. But I do agree with earlier speakers who say that the nature of an emergency might not be predominantly health, it might be more to do with trade union activity, or economic issues, or whatever. So the CCA has to be separate – (*Interjection*) or environmental or, hopefully not nuclear contamination but you never know.

Where I see a difference between our system of government and the UK, and that would include Scotland and Wales as well and even Jersey, is they have a ministerial system. I remember talking to an individual who had a role that was pan-Bailiwick, both for Guernsey and Jersey. He told me informally, he said the main difference between working with Guernsey people and Jersey people, whereas in Jersey you had to work extensively with the ministerial system, there would be ministerial sign-off, in Guernsey it was more of the nature of being a statutory official working within the committee system. Here statutory officials are clearly identified.

I do remember quite well actually the 2017 debate when I think it was Deputy Soulsby in her era, she was a Deputy Minister of Health but she had become President of Health & Social Services, brought to the States the Resolution that was passed in 2017. I know that Committee were very interested in re-evaluating the roles and redefining them for a modern era. But it is probably not entirely untrue to say that one of the reasons why governments elsewhere change ministerial positions and jobs and roles is there can well be, I do not know, human resources issues, personality issues. You want to solve a problem of how something is functioning, so you immediately try to re-evaluate the job titles and redefine things.

I think we have seen in modern times that we have allowed our outstanding Chief Medical Officer of Public Health, who has been a credit to us ... and the arrangements have worked remarkably well. So maybe in one sense, some of the thinking that led up to the 2017 debate is not relevant now. In any case we have moved on. But I do think we need to look at that and I do share the concern of some lobbyists that we should be wary of giving too much power to any hypothetical individual (**A Member:** Hear, hear.) who is a statutory official. This applies not just in health but it could be taxation, it could be aviation, it could be environmental, whatever.

I think we have seen 25 years whereby the States have been reluctant to give power to politicians. Maybe they have felt there has been in some respect potentially a lower calibre of political board, who knows. And we have overdone the statutory official powers and we have seen that throughout our system. We have got to think again about the transparency of that. But we need this legislation and review. I think it is timely and, frankly, we should put resources into how we define these roles because they have an enormous impact on our health, on our society and our economy. So if we say this is not important, I wonder if we have got our priorities right.

**The Bailiff:** Deputy Brouard.

**Deputy Brouard:** Thank you, sir.

I think I would just like to pick up on the last words of Deputy Gollop there we he said that we need this Law and it is important. As always in the conversation, there then comes a 'but'. We have a Government Work Plan where we are trying to prioritise all of the different pieces of legislation we have got. I can go through them, the Adoption Law, the Capacity Law, the Organ Donation, Adoption Law, the Health and Care Regulations. This particular piece of work with regard to the MOH is quite a very large piece.

It is everything from reviewing the filthy or verminous premises, foul ditches, middens and cesspools, overcrowding, insufficient water supply, insufficient, defective sanitary installations, contaminations of water systems, and I could go on. This is all from the 1936 Ordinance. I think the people involved in reviewing this particular piece are also the people who are managing through the pandemic as we go through now. So it is the same people. It will also be the same people that we will want to have pick up on some of the improvements that we wanted and I mentioned it in the previous amendment. So it is the same people who are going to be looked at again.



1725 So we want them to manage the pandemic which is almost business ... then we want them to do business as usual and do all of the catch-up that the pandemic has caused. Then at the same time we want them to review the very job that they are doing anyway. I just think that is almost an impossible task for anyone, for the same people, to be looking at doing three different jobs on their day. So although I have every sympathy with what Deputy Gollop said, that we do need to have this and the States has recognised it, we recognise it in Health, but I do not think there is the capacity  
1730 to move this further up the pole at this particular time because it is the same people that we are asking to do multiple jobs and therefore I will not be able to support this.

If in the future ... I mean, we at Health have decided last summer not to put this particular piece forward for the very reasons that we are not putting it forward. So if we want to put it forward for this summer or the summer after or the summer after that, obviously we will and that will be the  
1735 discussion then. But I do not think we need this amendment from the States to force our hand, because we are looking at a very small team and we are asking them to do, I think, too many jobs at the same time.

Thank you.

1740 **The Bailiff:** Deputy Meerveld.

**Deputy Meerveld:** Thank you, sir.

With your permission, I will speak to both amendment 3 and amendment 4 because I will be doing a comparison between the two.

1745 **The Bailiff:** It is not really appropriate, Deputy Meerveld, in debate on one amendment, to refer to another amendment. I know a number of Members have already touched on that. If the amendment carries, both amendments were to carry, then the opportunity to compare and contrast the Propositions, as they will then be, arises in general debate. So try and keep away from what is  
1750 amendment 4 and save your powder for when that gets debated.

**Deputy Meerveld:** Okay, sir.

I will be voting against this amendment. Not because I necessarily disagree that it needs to be looked at but because to me it is covered by the previous amendment we just had, in that we have  
1755 voted to go through the process of looking at a review. And I believe that a review will happen and hopefully will focus, as I say, more on the mechanisms rather than second-guessing decisions. Well this is part of the mechanisms. The fact is our current structure ... we have a Medical Officer of Health and a Chief Medical Officer and they are part of the system that has been tested by the COVID crisis over the last two years. This decision to evaluate those roles was made in 2017, two years before  
1760 the emergence of COVID.

I would like to see that review process on how the mechanisms work, how those individuals and their roles and their powers, which is touched on in amendment 4 because amendment 4 is trying to give powers to somebody that amendment 3 is trying to remove from post. You have got those amendments, you have got this already incorporated – I want to see that incorporated into the  
1765 review, sorry – and have the review come up with a recommendation on whether there needs to be a change to the management structure or the legal structure of these statutory officers in our health system and also what powers they should have.

That should be a conclusion of that review and that report back to us saying how our existing structure has been tested by the COVID crisis, how it has responded, where there were strengths  
1770 and weaknesses, do these individuals hold too much power, do they hold too little power, how should we adjust this. That should all come as a later thing. I do not think it is a decision we should be making now and also I concur with Deputy Brouard, it is a piece of work that is sitting on the books but it has not been prioritised at this time. But I think to focus on that now in isolation without looking at it in the round and how it has impacted on our response to COVID would be wrong. I  
1775 think it is a distraction, so I will be voting against amendment 3 and amendment 4 on that basis.

Thank you, sir.

**The Bailiff:** Deputy Inder.

1780 **Deputy Inder:** Sir, this whole thing has been a bit of an odd debate and there is a bit of  
procedural anarchy going on here of which my amendment 5, which I will not be laying, is probably  
equally guilty of. What I do not really understand – and I am not going to use the word that Deputy  
Bury told me not to use once – surely there must be some sort of consistency, or maybe it is the  
1785 case that we have all got our certain biases and our consistency is not as consistent as it should be.  
When I spoke briefly along this side of the bench, sometimes we talk and I did wonder where this  
amendment 3 was going because I was, like Deputy Prow I considered trying to pull a 24(6) but  
then I figured it was going to lose.

So I was kind of told that there was no real ... that Policy & Resources neither oppose nor support.  
I assume on balance they will say, I do not really know what I am going to do but I will end up  
1790 supporting it, yet we have got the head of Health over the other side of the bench telling us not to.  
I mean, it is a bit ... this whole policy letter is completely over the place. I am not entirely sure why  
it is here full stop. I do wish ... I was probably going to vote ... I do not know what I was going to do  
originally. I was probably going to abstain from it even though I do not like abstentions.

But now Deputy Brouard has got to his feet and he has basically told you, 'You have no resources,  
1795 we cannot do it, we have no resources, we cannot do it.' It is not the first time he has said that. I  
think I am obliged to act corporately and vote against it, yet I do not know what half of his other  
team are going to do, because I have been here before. There is a lot of ... I just do not like this  
policy letter full stop. I think to be honest with you, Members, I think we have done this to ourselves  
and this is probably one of the worst policy letters I have ever seen along with the consequential  
1800 amendments, of which I was nearly guilty of, but I am about to withdraw. *(Laughter)*

Thank you.

**The Bailiff:** Deputy Murray.

1805 **Deputy Murray:** Thank you, sir.

I am not going to repeat myself except to say there is a saying, 'Not worth the paper it is written  
on'. That is very difficult because we have got a paper and there is some stuff written on here and  
we have to wonder actually what is the purpose of it. Ignoring, if you like, some of the regulatory  
1810 issues around how we are supposed to present information to this Assembly for its consumption  
and to make decisions, I would like to direct you to the last sentence on this piece of paper on the  
back, '... accordingly, the discharge of the Resolutions should be prioritised through the  
Government Work Plan process', under the explanatory note.

What is that doing in this debate? This is not about the GWP. This is about a Billet, for which we  
have the information, which is about a change – a potential change, if we agree to it – to some  
1815 powers. This is about the Government Work Plan and I would have to agree with Deputy Prow and  
Deputy Inder. I do not think it has got any place in this debate at this point in time but it is not my  
decision to make that. But I would urge you just to throw this out. This is not the time and place to  
have this discussion.

Thank you.

1820

**The Bailiff:** I will turn next to Deputy Soulsby as the Member leading on the original Proposition  
to speak in the debate and then I will turn to Deputy St Pier to finish.

**Deputy Soulsby:** Thank you, sir.

1825 I thought I would pick up what Deputy Inder just said and I think it is interesting to put to note  
that the reason why have got this policy letter is because the CCA asked P&R to go and have a look  
and see what we can do other than having emergency regulations. The Members of CCA are

probably thinking, be careful what we wish for, really, listening to Deputy Brouard. I can understand if I was in his place, not wanting to have to be told what to do or anything. But that is not what this amendment says. The original amendment did say, 'Right, make it the priority, make all of this work a priority and go away and do it'. But that did not work within the Government Work Plan, as we know.

What we need to do is make sure that we see all of the evidence in the round before we make that decision. It would not be fair on HSC to say you have got to make it a priority before they have gone through the process which we are now embarking on to look at priorities and incorporate them within this year's Government Work Plan. I am grateful to Deputy St Pier for appreciating that and accepting the changes that we suggested so it would not be imposing that on HSC. So I would be disappointed if Members of HSC did vote against it because it is not actually telling them what they have to do. It is actually saying, 'Well, don't you think if we are going to do it, have that debate when we debate the Government Work Plan?'

Deputy Gollop talked about 2017. I was President in 2017. The Resolutions were part of Partnership of Purpose, which is still going strong I believe. But that was a 10-year programme. It was never intended ... and Deputy Ferbrache saying we have bitten off more than we can chew, but actually it was a 10-year programme. So it did not necessarily mean that, although we approved it in 2017, everybody would start working in 2018 straight away and prioritise it. In fact we created the plan within the Partnership of Purpose, had what we were going to do in the first year and then the second year and then something like COVID came along which scuppered what we could do. So, yes, it is not that it is something there and it has not been done because we bit off more than we could chew, it is actually part of a plan that has been led off course a bit by a pandemic.

In terms of all the other things to do, I do totally understand where Deputy Brouard is coming from. There was a lot of stuff that we did in the last term which incorporated Public Health. A lot of policy changes do – abortion, organ donation, pandemic flu exercise even. The joint strategic needs assessments we did, the Capacity Law changes we did, the work on social proscribing and the work done on allowances that meant that now we can provide discounted primary care for children. So there was a lot going on there at the same time.

Also we get requêtes that come along, like the NICE drug requête which, although it was in the original Propositions, it has bumped it up into something that we have to do there and then, which was fine. So that is really the reason why we have now got it that the current Committee has that an outstanding Resolution to consider. I do not think Deputy Meerveld quite understands because the CMO, the Chief Medical Officer of Health, the Medical Officer of Health and the Director of Public Health are all one in the same person. It is not two people. We have now a Medical Director but that meant the Medical Director is not the Medical Officer of Health. But that is one thing we should be considering and looking at those different roles and how they could work.

I think now, particularly after what we have gone through, it is a good time to say, well is this something we should be looking at now. It is long overdue. Those Resolutions go back to 2014 and 2017 and say, 'Look, we have had a pandemic since then'. Given all that, perhaps it is something we need to raise up the to-do list, particularly as Deputy St Pier said, the likelihood of other pandemics coming are greater than they were in the past. A lot of that has to do with the growing world population and various issues around that. But we do know that the likelihood is high and that is why we have got it on, as Deputy St Pier says, at number one on the risk register.

So it is possibly something that we do need to consider now. I can say P&R are not opposing this amendment because it is doing things in the right way and is worthy of debate with the proper evidence. So that is the position we are in.

Thank you.

**The Bailiff:** Deputy St Pier to reply to the debate.

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

I am grateful to Deputy Soulsby for her comments there in responding on behalf of those who bring forward the policy letter. Deputy Soulsby and her input in this very much recognised the absence of the 2017 Resolution in the first iteration of this. I think given her history and experience not only with the pandemic but also with Health stretching back over the last term and indeed into the latter half of the previous term before that is probably second to none in this Assembly in recognising some of these issues and the interrelationship between some of these issues.

Deputy Prow raised the issue of 24(6), in essence whether this should have been debated at all. He is absolutely right. This amendment and indeed the previous two probably went beyond the Proposition and could have been challenged subject to the States agreeing on that point. But the point is, as Deputy Brouard has said, the Committee for Health & Social Care has decided last summer not to deal with the Public Health enabling Law this term.

So this amendment today is the only way by which that decision of that Committee can be validly questioned, scrutinised, challenged and really just sending them back through this Proposition, if it becomes a Resolution, to say well, actually, in light of the pandemic, is that the right decision? Should we not really be prioritising this? It has been outstanding for nine years. Can we do it in this term or not? Deputy Brouard has said it is an impossible task, there is far too much other work but again we have got to focus on what this Resolution or this Proposition, this amendment is seeking to do. It is really recognising that and saying well actually just through the GWP process tell us –

**The Bailiff:** Point of correction, Deputy Brouard.

**Deputy Brouard:** I did not say it was an impossible task. The point I was making here is that if you do this, other pieces of the wagon will not happen. Other pieces will fall off. So that is the point I am making is that you cannot have your cake and eat it. If the States give us direction to this, of course we will very much do it but something else will then be given away.

**The Bailiff:** Not really a point of correction, Deputy Brouard. That is just clarifying what you had said before, *not* saying that Deputy St Pier made an inaccurate or misleading statement. But, Deputy St Pier to continue, please.

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

All that we would be doing through the GWP process is asking the Health Committee to tell us ... the States have already resolved this work needs to be done. Just put a timeframe on it. Tell us when you are going to do it and what resources it would require to do that. Deputy Murray has made the same point, in essence: why are we debating this here today? The alternative would be we simply rock up with an amendment to the GWP debate in June and say, well, we want it added in now, at which point the States would say, 'Well we haven't got the information with which to make that decision, why are we having a debate about it now?'.

This amendment will at least give us the opportunity to have the information through the work that will be done in the next couple of months in the consultation between HSC and P&R to say, as Deputy Brouard has said, if we are going to do this then the consequences of it will be something else will have to move further down the line. Is this what you want or do not want. The States can then make a clear decision. So it is very much working within the GWP process. I accept Deputy Prow's point that it does go beyond the Proposition. But it is a more logical way to be revisiting the position that Health & Social Care took last summer than simply to challenge it in the June debate.

It will ensure that we do make a more informed decision in a way that we never considered it last summer because it was not there to consider. At least this will enable us to make a considered decision whether it should or should not be a priority during this term of Government. I ask Members to support the amendment, sir.

**The Bailiff:** Hon. Members of the States, we come to the vote on amendment 3, proposed by Deputy St Pier, seconded by Deputy Burford. Deputy Queripel, is it a recorded vote request?

**Deputy Queripel:** A recorded vote, sir, please. Yes, thank you.

**The Bailiff:** There you are. I could read your mind. So we will have a recorded vote before we rise for lunch. Greffier, please.

1935

*There was a recorded vote.*

*Carried – Pour 21, Contre 13, Ne vote pas 1, Absent 4.*

**POUR**

Deputy Parkinson  
Deputy Queripel  
Deputy Roffey  
Deputy Soulsby  
Deputy St Pier  
Deputy Trott  
Deputy Blin  
Deputy Burford  
Deputy Bury  
Deputy Cameron  
Deputy de Lisle  
Deputy de Sausmarez  
Deputy Fairclough  
Deputy Falla  
Deputy Ferbrache  
Deputy Gabriel  
Deputy Gollop  
Deputy Haskins  
Deputy Kazantseva-Miller  
Deputy Le Tocq  
Deputy Leadbeater

**CONTRE**

Deputy Meerveld  
Deputy Moakes  
Deputy Murray  
Deputy Oliver  
Deputy Vermeulen  
Deputy Aldwell  
Deputy Brouard  
Deputy Dudley-Owen  
Deputy Helyar  
Deputy Inder  
Deputy Mahoney  
Deputy Matthews  
Deputy McKenna

**NE VOTE PAS**

Deputy Prow

**ABSENT**

Alderney Rep. Roberts  
Alderney Rep. Snowdon  
Deputy Taylor  
Deputy Dyke

**The Bailiff:** Members of the States, the voting in respect of amendment 3, proposed by Deputy St Pier, seconded by Deputy Burford, is as follows. There voted *Pour* 21 Members, *Contre* 13 Members, 1 abstention, 4 Members were absent and therefore I will declare amendment 3 also carried. We will now adjourn until 2.30 p.m.

1940

*The Assembly adjourned at 12.37 p.m.  
and resumed its sitting at 2.30 p.m.*

**Living Responsibly with COVID-19 –  
Debate continued –  
Propositions 1-4 carried as amended**

**The Bailiff:** We are now going to turn, Members of the States, to amendment number 4, if Deputy St Pier wishes to move that amendment.

1945 Deputy St Pier.

*Amendment 4*

*To delete the proposition and replace with:*

*1. To direct the Committee for Health & Social Care to bring proposals as soon as is practicable to amend the Public Health Ordinance, 1936, to confer powers on*

*a. the Medical Officer of Health, in respect of any one person, and*

*b. the Committee for Health & Social Care, in respect of any class or group of persons, to order the self-isolation of, and impose other restrictions or requirements on, persons already within the Bailiwick who are infected, or suspected of being infected (e.g. contacts of cases), with Coronavirus; and also to confer on the Committee for Health & Social Care the power to make regulations to extend the powers to other notifiable diseases, further to its consideration of the clinical judgement of the Medical Officer of Health and the advice of Her Majesty's Procureur.*

*2. To direct the Committee for Health & Social Care when bringing proposals under Resolution 1 to include proposals designed to provide suitable checks and balances on the exercise of any powers conferred on the Medical Officer of Health and the Committee, as the case may be, including that:*

*a. powers shall be exercised by the Committee following consideration of the clinical judgement of the Medical Officer of Health and the advice of Her Majesty's Procureur and with regard to the advice of the Medical Director with regards the Bailiwick's medical resources and the wider positive and negative impacts and equity for the community and having consulted with the Policy & Resources Committees and, if practicable, with such other Committees of the States as may be appropriate,*

*b. powers shall be exercised only when necessary, urgent and proportionate,*

*c. any restriction or requirement imposed under a conferred power must be reviewed at regular periods, the precise frequency of which shall reflect the severity of the interference with the freedom of the person subject to the restriction or requirement,*

*d. there shall be a suitable mechanism for appealing against any decision of the Medical Officer of Health to exercise his or her powers, and*

*e. any order made by the Committee*

*(i) must be laid before the States as soon as possible and, having been so laid, shall be capable of being annulled by Resolution of the States, and*

*(ii) may not exceed 6 months in duration unless it has, within that period, been extended for such further period as the States may by Resolution approve.*

**Deputy St Pier:** Yes, please. I do, sir, thank you very much.

1950 If I can just begin, as with the previous amendment, by thanking my seconder, Deputy Haskins, for working with me on this. This is the first opportunity I have really had to work with Deputy Haskins during this term, and it has been interesting. As I think we know from Deputy Haskins' contributions in this Assembly, he does not speak on everything, and when he does speak, he speaks with well-researched and well-presented argument. And certainly, it became apparent working with him on this, his focus and attention to detail to address issues of concern to him are quite apparent. So it has been a pleasure to work with Deputy Haskins on this.

1955 Again, I was not proposing to read the amendment but wanted to explain its impact and why we believe it is important. It was Deputy Inder, I think, before lunch who spoke ill of the policy letter. I think it is my impression, reading it cold – having not been involved in its genesis and iteration towards the final product – is that it is a policy letter which is a classic output of working with three

Committees with three different views. It is not a particularly easy read, it does not flow particularly well, and it has led to this single Proposition that we have before us in the policy letter, which I think is a little unsatisfactory, and I need to explain why.

Having said that, the 'delete and replace' – the first replacement, what would become Proposition 1 if voted through, largely works with the same language – and that was a conscious decision to try to stick with the language which had been selected by the Committees for their original Proposition. But what it does do is insert in the middle of that Proposition, what would become Proposition 1, a split – (a) and (b) – between:

- a. the Medical Officer of Health, in respect of any one person, and
- b. the Committee for Health & Social Care, in respect of any class or group of persons

And this, really, was picked up from the policy letter itself – and in particular, paragraph 4.6 of the policy letter, which was feeding back on the summary of consultation responses, and in particular, for the Committee *for* Home Affairs. I will quote – it says in the middle of that paragraph, 4.6:

The Committee for Home Affairs also felt strongly that any such restrictions to be imposed widely (as opposed to the clinical judgement applied in individual cases) should ultimately be a political decision and not rest with a statutory official ...

I, I have to say, read that and thought that had real resonance with me that that was absent from the Proposition, that there was any distinction between acting at an individual level and acting at a group or population level. And having spoken informally with Deputy Prow to understand the Committee's concerns in relation to that – and I am sure he will correct me in debate if I am wrong, but I am, in essence, paraphrasing – the impression I had was the Committee became comfortable with the final Proposition on the basis that that distinction, they felt, would be dealt with further down the line.

And that really draws attention to the fact that, of course, the original Proposition is merely – and I quote in the first line:

To direct the Committee *for* Health & Social Care to bring proposals ...

In other words to bring not legislation, but to bring another policy letter to this States, in due course, with more detailed proposals around the rest of the Proposition to amend the Public Health Ordinance, 1936, and so on.

And I think this is where there has been a substantial disconnect between the policy letter and the public's understanding of what is being asked of the States today. As Members will know, they received many emails from many members of the public objecting to what they saw as a vote today to transfer permanently powers to a single statutory officer – namely, the Medical Officer of Health. And of course, that is *not* what is being asked of us in the original Proposition. But there has been a disconnect in terms of the communication: it has not been well understood that what is coming back in due course is not legislation – and we are not making that decision today – but *proposals*.

But that does then beg the question that, actually, there is quite a lot of detail left out of both the policy letter and the Proposition that really needs to be covered – and in particular, needs to be dealt with today, through this amendment – to give those members of the public who do have these concerns some reassurance that the proposals, when they do come back, will contain some of the checks and balances which they would reasonably expect. And again, if you read the policy letter, it does talk about checks and balances and the need for them. But of course, the Proposition is silent on that and the policy letter itself is silent on checks and balances; it provides no detail as to what kind of checks and balances there would or should be.

I suspect the authors – in particular, the Committees behind this – are perhaps in danger of not being able to see the wood for the trees, in understanding that concern, because the response may well be, 'The reason we do not have to spell out checks and balances is because we already have

them: we already have them in the CCA regulation. All we are going to do is import the CCA regulation into the Public Health Ordinance that allows the Medical Officer of Health to carry on doing what the Medical Officer of Health needs to do in relation to COVID, but doing it under the Public Health Ordinance so we do not have to keep passing regulations once a month under the CCA.' That is all very well and good and is understood by all of those involved in that process. But that is not well understood outside this Assembly, and I think it would be a huge mistake to pass over this amendment and seek to adopt the original Proposition without giving some kind of cognisance and recognition to the very legitimate concerns that the public do have.

As I have said as the Chair of the Civil Contingencies Authority in my day, as Deputy Ferbrache has said as the present Chair of the Civil Contingencies Authority, these powers – whether they are by regulation of the CCA or whether by a decision of the Medical Officer of Health under enhanced powers of the Public Health Ordinance – are a severe restriction on the liberty and freedoms and human rights of individuals and our population. And it is being done for good public health reasons, in the wider interests of the community, and all the rest of it; but nonetheless, we do need to take great care – and we need to demonstrate to our community that we are taking great care – in constraining in an appropriate way and checking the transfer of those powers.

And that is really what happens in what will become, hopefully, Proposition 2: to bring proposals – and we seek to set out in the sub-paragraphs (a) through to (e) what those proposals should include – with, of course, further detail to follow in that policy letter and appropriate Propositions which the Health Committee would present to us.

The first point is that the powers exercised by the Committee *for* Health & Social Care should, of course, be under the advice of the Medical Officer of Health, under the advice of Her Majesty's Procureur, and having regard to the advice of the Medical Director – in other words, the person who is running the hospital – when considering the Bailiwick's health resources. So considering the constraints on our resources; how full the hospital is; how much spare ICU capacity we have; what the Public Health advice is, through the Medical Officer of Health; and of course, Her Majesty's Procureur's advice on some of the legal aspects of the human rights issues, whether the matter is proportionate, and so on. So all the same issues that the CCA are dealing with need to be replicated within the public health provisions.

And also, turning the page, recognising:

... the wider positive and negative impacts and equity for the community ...

That is really reflecting the fact – and again, I know from my own experience and I cannot believe it has been any different for the present CCA – that these are the matters which are being taken into account: what is the wider impact on the economy, on business, on the community, on the self-employed, on the mental health of those who are not in self-isolation, of those who are in self-isolation, the difference between those who are being required to self-isolate in a flat versus those who are required to self-isolate with the benefit of a large garden? All of these things need to be considered in terms of the equity and practicality of this.

There is also the requirement to consider the advice of P&R on some of the financial implications, whether P&R and the Treasury Lead are going to provide financial support to businesses, and so on; and again, if practicable – an important caveat, of course – if time permits, with such other Committees of the States as may be appropriate. It could be Education, of course, as we have seen during the first few phases of the pandemic; it could be Home, in relation to the management of the borders and so on.

Sub-paragraph (b) is:

b. powers shall be exercised only when necessary, urgent and proportionate,

That is, of course, the language which, again, should be very familiar to not only members of the Authority, but also members of this Assembly; again, providing reassurance to the community that



2050 whoever is exercising these powers – whether it is the MOH or the Committee *for* Health & Social Care – is only doing so if it really is needed.

The restrictions need to be reviewed at regular periods – again, that is something that we know the Medical Officer of Health does do – considering, again, for example, the length of self-isolation periods, and so on. And:

d. there shall be a suitable mechanism for appealing ...

2055 Again, that currently exists within Regulation 13 of the Civil Contingencies Authority's regulations – the last version of which, of course, this Assembly approved yesterday, providing the right of appeal to the Royal Court. These are things that I am very conscious do exist within the current mechanism, but are absent from both the policy letter and the Proposition. And I do not think it is sufficient to say, 'We intended to do that' or 'We intend to do that, and you just need to trust us, sit back, and wait for the detail in the next policy letter from Health & Social Care'; I think the community that are anxious about the constraints on their freedoms have a reasonable expectation that there should be a bit more granular detail in today's resolutions, hence this amendment.

2060 Then similarly – of course, as presently – if the Committee takes action, then those regulations would then come before this Assembly to be annulled in the same way as other regulations of a Committee of the States, with provision also that they should only last a period of six months – of course, at the moment it is only 30 days. So it could last up to six months unless the States renew. So it provides a mechanism by which we will have the opportunity to periodically review whether this is still necessary for COVID every six months. I think there is anxiety that if we do not have some kind of periodic review, it will be very easy for the States to put this on the statute book, fire-and-forget; we will all move on and the legislation will sit there.

2070 Again, it is not sufficient to say, 'It will sit there, these powers will sit there, and the fact that they will never be used because we no longer need to worry about COVID is all well and good; that is irrelevant.' No, it is not, and I think our community, again, only expect the legislation to be available for use for as long and only as long as is absolutely necessary.

2075 I think there is a very important point to draw out – and this really speaks, again, to the split between conferring powers on the Medical Officer of Health and the Committee *for* Health & Social Care. In the original drafting of the Proposition, it is not crystal clear that if there is another variant of concern of COVID and if this legislation were in place at that time, that actually the Medical Officer of Health could make a decision to place into isolation, let's say, the whole of the Vale, to pick an example (*Interjections and laughter*) – or indeed, to lock down the entire Island.

2080 Now, I have no doubt whatsoever that, in particular, the present Medical Officer of Health, given all the experience of the present pandemic, would not do that without consulting with the Committee *for* Health & Social Care, almost certainly with the Civil Contingencies Authority, and with all of these other people that this amendment seeks to ensure are consulted with; however, we cannot assume that that would be the case and that, of course, the present Medical Officer of Health will always be the present Medical Officer of Health – that, of course, we know is not the case.

2085 So I think it is entirely appropriate that this is why we are seeking to draw a distinction between acting in respect of one person – Gavin St Pier has been identified as a positive COVID case, needs to be ordered into self-isolation; the Medical Officer of Health should do that. However, if the community is being placed under constraints, that should be under political control, and that is where the role of the Health & Social Care Committee does come into place under this amendment. So it is quite clear that there is political oversight for decisions of that kind of magnitude.

2090 So I hope, sir, that that explains both the background to the amendment, why we believe it is necessary, and what we intend to achieve by it – as with the previous amendments, recognising that there is further detail to come in a further iteration with another policy letter. But this gives greater clarity and steer to the Committee *for* Health & Social Care in terms of what they should be including in those provisions. I am grateful also to Her Majesty's Comptroller with assistance in drafting much

of and inputting into much of this – of course, with the benefit of the involvement of the Law Officers in the Civil Contingencies Authority Regulations.

So, sir, I will obviously be very happy to respond to debate, but really my key point to emphasise is I think it would be deeply unsatisfactory to our community to pass the present resolution unamended and not to leave them with a reassurance at the end of this debate that we do recognise there do need to be checks and balances, and this is the way in which we should do it. So I urge Members to support the amendment; I look forward to the debate and responding to it.

Thank you, sir.

**The Bailiff:** Deputy Haskins, do you formally second this amendment?

**Deputy Haskins:** Yes, sir, I do.

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

Deputy Inder.

**Deputy Inder:** I will get this out of the way fairly quickly.

Deputy St Pier, Deputy Haskins, I think you have actually made a better job of what is actually a very bad job, which was Proposition 1, in the first place. It is interesting and it is worth repeating again:

1. To direct the Committee for Health & Social Care to bring proposals as soon as is practicable ...

No one was going to give direct powers to the Medical Officer of Health today. And I genuinely do not know, given the hundreds – I say hundreds; maybe some of them have come from the same people; I will say a hundred just for the sake of it – I do not know why that message never got back to those with the greatest concern, because it was not clear to me. And it is not entirely clear – and everyone does have a right to protest – why we had those kinds of signs on the steps of the Royal Court over the past two days, because that was not what was going to happen today.

I do think – through you, sir – Deputy St Pier's and Deputy Haskins' amendment does improve Proposition 1, but that does not necessarily mean ... I could possibly see myself voting for it – but that does not necessarily mean I would vote for the substantive Propositions. Because how this goes, you can dislike the main Proposition, vote for an amendment that improves it, yet vote it all out at the end – because if you lose it, at least it is better than the rubbish that we have got in front of us in the first place, even though it is only a mild improvement.

This is where – and I do not think I am going to stray into general debate, but this is the main amendment to discuss – my difficulty with this is that – it is not just philosophical – we either think there is a problem or we do not. And a number of us here today have gone through and said – you have heard me say it before – 'The last CCA did what they could, they were writing the book as they went along, they were not too bad. This current CCA has gone and done what it could do given the circumstances.' But at least the CCA can pop up and pop down fairly quickly. So you either believe they are not much of a problem, or you hand the whole lot back to what is a single group of five people.

If I can explain to you why I do not think ... before every single member of Health starts shaking their head – you would not have gone on to Health if your primary concern had not meant that you were concerned by the health of the population of this Island, so you have automatically got a bias. Your officers have automatically got a bias. And I have seen it in the communication. I have watched it observationally on the three occasions I have been a member of the CCA. There is a danger that a future HSC could be, in effectively, a dark hole where they are trying to save the very last person on the whole of the planet, and they would have the political responsibility and I think they would be giving the Medical Health Officer a certain amount of power, but there is no real backstop.

2150 Only yesterday, an amendment got through the Assembly where we wanted to check absolutely everything. We wanted a strategy in this Assembly, we wanted the blueprint in this – well, we did not; *some of you*, by majority – wanted a blueprint for the Assembly, and you wanted to look at everything. But that is not what this does; all this does is puts an extra check and a balance at a mild political level of people who have already got a bias towards – and I do not mean it unkindly – a certain political style.

2155 I am sorry, Deputy Matthews is shaking his head in his corner; but I have had conversations with Deputy Matthews and, with the greatest respect – through you, sir – I have heard him effectively say that he would want it to go backwards, we are moving too fast. I am sorry, Deputy Matthews, the economy is part of this and has always been part of this. And to be perfectly frank with you, while he is shaking his head in his corner, as much as I like him as a person, what concerns me is, 2160 all that power is wrapped up in people who have a bent, for want of a better word, around that area. And I simply cannot allow one single Health Department to take utter control of the economy and people's lives and groups and 'classes', whatever that means; I just cannot allow that to happen. That is part of my response.

2165 So it does indeed improve. But in reality, sir, the truth is, I think Deputy St Pier said, 'We cannot live under regulations'; so what happens? We just pass it to another set of regulators? What is the difference? The regulators will exist. If the power exists in one group of people, you are effectively shifting that power to another group of people. The difference is, at least the CCA has an environment minister on it, at least the CCA has the President of Health on it, at least the CCA has the President of Policy & Resources and the President of Home. That is the real check and balance. 2170 To actually put all of this back into one single group, I think, is as dangerous as basically handing what was effectively the lie of Proposition 1 – and I am not giving way.

That is the end of my speech. So, directly to Deputy St Pier –  
I am not giving way unless it is a point of correction.

2175 **Deputy Matthews:** Point of correction.

**The Bailiff:** Point of correction, Deputy Matthews.

2180 **Deputy Matthews:** Sorry, I think it would be incorrect to say it would be handing all of the power to a single Committee. And of course, that Committee would have the ability to consult other Committees, such as the Committee for Economic Development, if there were ever that eventuality. And it does not have all of the power of that, because the States can direct that Committee. So it is not entirely the case that they will have untrammelled power to lock down the entire Island at the drop of a hat.

2185 **The Bailiff:** Deputy Matthews, that was Deputy Inder's *view* of what carrying either Proposition would do. It is a point that you can make in general debate if you wish to, but it is not a misleading or inaccurate statement, because he is simply saying what he interprets this Proposition and the replacement Propositions if this amendment were to be carried.

2190 So let us move on. Deputy Inder to continue, please.

**Deputy Inder:** Okay, sir, thank you for that. I do not mind the intervention. I am not perfect myself, sometimes. (*Interjections and laughter*) I know, it does come as a surprise! It must be the New Year's Resolution.

2195 **The Bailiff:** Nobody leapt up there to make a point of correction, Deputy Inder. (*Laughter*)

**Deputy Inder:** But anyway, sir, I have got concerns over this because I do not like where it came from. I think this policy letter has been nonsense from day one. It has been designed by a Committee of five. I know some of the Committees – you have got 15 people, some of whom wanted to pull it;

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that is the truth of it. It should never have been put together. We saw the first version at Committee stage was utter nonsense and I do not think this is even much of an improvement.

Policy & Resources, I am sorry, they have entirely done this to themselves. There is nothing wrong with, in my view – and I think I am allowed to have that view – the CCA, because it does put the check and balance. And I would simply not trust one set of people who have come around a group of anything to have fair judgement on anything led by officers who say, 'Guys, you voted for this'. It is just not right and it is important. 'Notifiable diseases' I looked up in legal resources – all I got was foot-and-mouth and some weird poultry disease, but anyway, I am sure there are some human diseases kicking around, like probably scarlet fever and Ebola and all that kind of stuff. Now, those are real serious diseases.

It is also worth mentioning that COVID is a distinctly different disease to something like the bubonic plague, where you have got people dropping dead in the streets. This is here with us forever and you think of the utter scare tactics that came out of when that word 'Omicron' existed. As soon as that damnable name, which sounded like some 1960s alien – you have heard me say it before – like the Mysterons, my heart absolutely melted, because I predicted exactly what was going to happen the next day. What Britain did: it closed the South African border, because it does not hurt the great, white Europe to close the odd African border – complete overreaction. The national press in the UK went utterly mental. Christmas was over, we were going to close the economy. Denmark was open, for some weird reason.

But actually, out of the side of it, have you actually listened to the South African doctors – which, of course, we are not allowed to listen to? The actual sensible view they were accepting was, 'Yes, Omicron is here but, guys, it is not looking as bad as it seems. We know it exists, we found someone in a hospital. It has clearly been rattling through Lesotho for the last couple of months but no one is really dying.' But the negative message – and this is what happens in this whole debate – 'Oh, it must still be bad because the average age in South Africa is' – I do not know – '35 or something and the average age in Britain would be 42.' So there was no positivity coming out of Public Health; there is always a danger. The truth is, if we actually looked at what was the wave, yes, there was, indeed, a wave, but it shut down Christmas.

We will have that review one day, but it is worth mentioning to everyone: the greatest patient over the last two years has been the divorce rate, it has been the education, it has been suicides. The actual, real patient has been the economy, and I simply do not trust, I cannot trust and I will never vote for a Proposition – with the exception of this one, which may improve Proposition 1 – when it comes to standard debate, I am not giving a group of five people of anyone that kind of power over officers to lock this Island down without having the check and the balance of the CCA, and Policy & Resources have done this to themselves.

**The Bailiff:** Deputy Soulsby.

**Deputy Soulsby:** Is it too late to have a point of correction? (*Laughter*) I tried to stand up.

**The Bailiff:** It is too late to have a point of correction, but you will have the opportunity to speak to correct anything subsequently.

It has had a remarkably good effect. (*Laughter*)

Deputy McKenna, then.

**Deputy McKenna:** Sir, if I could just mention the way some people are talking about the Medical Officer of Health and the Chief Medical Officer: to become that, Monsieur Le Bailli, as you know, you have to have Royal College of Surgeons accreditation, and that, in itself, is a phenomenal achievement. This worry about the powers of the Medical Officer – we have had a former Medical Officer who took early retirement overnight, and that shows we have checks and balances of how they act. Now, when you become accredited by the Royal College of Surgeons, you take a Hippocratic Oath, and part of that Oath is 'Do no harm', and that is what people like that live by. So

to be Royal College of Surgeons-accredited, you must comply with the Public Health Act, 2009; the Health and Social Care Act, 2012; the Equality Act, 2010; and also, the Social Value Act, 2012.

2255 Now, the reason this was all put in place is many years ago there was a case where a GP did not keep to that Hippocratic Oath – and amongst us today, we actually do have a Royal College of Surgeons-accredited healthcare professional who gave a lecture to the NHH managers back in 2016 on ethics and law – because this GP, this doctor, was making domiciliary visits to isolated people, and by the next day, they were dead. He would sign this certificate to say they had died, they were cremated, and there was no case to answer. This serial killer was Harold Shipman. And out of Harold Shipman’s case came the CQC, the Care Quality Commission, and that was formed in 2009 so as there would be checks and balances along for every medical practitioner, they would comply to these laws.

2265 The people we have in place are wonderfully qualified people whose sole objective is not looking at the economy and looking at that; they are there to do no harm and do the best for people for their healthcare. I know Deputy St Pier was worried that the Medical Officer of Health would find him positive – and I am sure we would all back up in this Assembly that he is always completely negative! (*Laughter*) We must realise that these Medical Officers of Health are so important to our society as they get along, and to worry to where we are may be a little bit unfounded. Maybe, we should let people do their jobs. (**A Member:** Hear, hear.)

2270 Now, the Medical Officer of Health cannot make a Law – they cannot become Kim Jong-un overnight – they have Her Majesty’s Comptroller, they have the Bailiff, they have the CCA, they have this Assembly. They have not got the power. Now, if you think you have the power, you can join the groups with the Facebook scientists and the Google doctors; there are plenty of them. But if you actually read what it takes to become a healthcare professional, you will realise that that is what these people live by: ‘Do no harm’. I will sit down with my fellow Facebook scientists and Google doctors and let you decide.

Thank you, sir.

2280 **The Bailiff:** Deputy Gollop.

**Deputy Gollop:** Yes, we had a heartening speech there from Deputy McKenna, who himself is very knowledgeable as a medical science professional. But I think his main point, that people who become professionals have gone through a very rigorous process of examination, peer supervision, and so on, is sound; but of course, he has also alluded to one or two bad cases, as well – Dr Shipman, for example. If you have the ‘Do no harm’, that is very much focused on human being’s wellbeing in a medical, physiological, maybe even mental context. And I think Deputy Inder was saying there are other perspectives as well – such as human rights, such as the economy, such as freedom of movement, such as access to relatives – this is the point. Deputy St Pier’s amendment, although not perfect, provides us with an extra degree of safeguards that we should have already done. The fact that we are reorganising a 1936 Law in itself should flag up some concerns, because that is from a different era on so many levels.

2290 I meant to say, in the past, the Medical Officer of Health, the current office-holder’s predecessors, have done a lot of work championing public health issues on the Island, such as stopping smoking. I think one predecessor even tried to stop drinking at *vin d’honneurs* and so on. And they questioned housing; they questioned, for example, the levels of poverty on the Island. So there are a whole range of issues that they take. But where medical opinion stops and sociological analysis or economic analysis comes in is not clear. I entirely take the point of the amendment that you would at least require, if you are not banning individuals but you are going for people across a societal level – groups of people – that, again, that is mentioned in the amendment as a sound practice, rather than categorising.

2300 I think it was Deputy Inder in an earlier debate or utterance who said that the worst aspects of lockdown or restraint when you are diagnosed with coronavirus or risk of a contact, it is like a form of house arrest. And clearly, if that becomes widespread in society – and potentially, it could be

2305 several thousand people – then however much we have incredible faith and support and enthusiasm for the current office-holder, people holding offices change; you do not necessarily always get the same style, the same ability. As Deputy McKenna says, you occasionally do get a person with issues, even if they have gone through medical or other training. Medicine is one profession; law is another. And so on and so forth.

2310 So I think Deputy St Pier and Deputy Haskins' amendment makes a problematic Proposition more acceptable.

**The Bailiff:** Deputy Queripel.

2315 **Deputy Queripel:** Thank you, sir.

I have no hesitation whatsoever in supporting this amendment. I applaud Deputy St Pier and Deputy Haskins for laying it.

2320 Deputy St Pier nailed the whole issue in his opening speech, and I am sure he will respond to debate admirably when he sums up, but I cannot see why any Member of the Assembly would vote against this amendment. And I say that because we hear time and time again in speeches in this chamber of the need for appropriate political oversight. We hear time and time again of the need for us all to be included at a political level. And as well as those two points, we must always be mindful of the fact that we all have a duty and responsibility, as elected representatives of the people, to be scrutineers.

2325 And all of those points are also nailed in the explanatory note – where we are told, if this amendment succeeds, it will mean that:

- appropriate political oversight of the exercise of the powers should take place;
- if the powers are to be exercised at a population or group level, that decision should be taken at a political level;

And also that:

- the powers should be subject to regular review and should be time limited with 'sunset' provisions that they expire after 6 months unless renewed by the States.

2330 I was somewhat confused and surprised when Deputy McKenna spoke; he made this sound like it is an issue of not trusting people. But that is not the way I see it, as I have already explained by highlighting the points I have highlighted. I do not think for a single second that this amendment is perfect, but to me, it is a lot more palatable than the current Proposition that is in place.

Sir, I am sure it will come as no surprise to anyone, in closing, I ask for a recorded vote, please, when we go to the vote. Thank you.

2335 **The Bailiff:** Deputy Brouard.

**Deputy Brouard:** Thank you, sir.

2340 I do not think I am going to have very much left for the main debate at this rate. I think the original Proposition, which was put forward by P&R, HSC, and Home, although I appreciate it is a joint project, is the one which I would be happy to support. This amendment we have in front of us now has been amended and it is better than the original amendment that was put forward, it has been made better, but it still does not cross the mark, from my point of view.

2345 The idea that, for this particular issue, we are going to have to come back every six months and be renewed, is that the same for rats in people's houses? Is that going to be the same for cisterns that need cleaning? We are starting to micromanage how we exercise our powers. And I think, as Deputy McKenna said, we have got professional people in place, we have got mechanisms in place. When we know that there is going to be an emergency or we are in an emergency, the CCA will pop up and take control. This is moving a few pieces across to the MOH, which we think is practical to do.

2350 So I am not able to support this Proposition, I would urge Members to support the original Proposition. And I do not think it is for us to start to micromanage how we do ... Are we going to have another one of these for Omicron, if we find it goes different, or for Epsilon, or for the next one, that we have a different procedure in place and different people have to pop up? We are a small Island. We work fairly successfully with the legislation and the powers in place with the checks and balances we have got. I think we are just starting to overcomplicate it and over-manage it. And the difficulty we have – and I can see where the problem comes from, because I would be exactly the same if I was not on the CCA. I could just see myself sitting in other people’s shoes, saying, ‘I want to be in control, I want to have my finger on the trigger, I want to know how it is happening and why.’

2360 The difficulty is, if you have got the CCA, the CCA works really well – I mean it is a funny animal, but it works really well. It bring all the threads together and we sit as the CCA with the CCA hat on, and I have almost my Health hat on my side; I am there as the CCA. That works. We then have a non-emergency situation, when the Island is not in an emergency, and *that* system works. When you try and make it so that we have got some halfway house in between, that is where the difficulty comes, because it is not quite the same as having Home sitting in the same room with Health, sitting in the same room with Environment & Infrastructure, trying to manage a semi-pandemic; that does not work, it does not have the right dynamics. When we are in a pandemic, the CCA is in power; when we are not in a pandemic, we do not have anything. The difficulty was trying to find this halfway house so that we could allow everybody to be involved, and that is difficult, because you have the same problem.

2370 And I think Deputy Inder highlighted it: he may not be happy with the CCA – I think he was, but he may not be happy with the five members of Health making the decision. But then again, I would not be happy with the five members of our DPA making the decision either. So you are always going to have that situation where not everybody can be involved in every single decision. And I do understand what P&R – and especially, through Deputy Soulsby – was trying to do was trying to allow the Assembly to have that debate and to express and be involved. But it is very difficult to make something between pandemic, when we know we have got a set formula and a set Committee, to try and do a halfway house. It just does not work; it ends up with almost a camel, ‘a horse designed by a Committee’ – although camels are very good at what they do. *(Laughter)*

2380 But that is the difficulty. And I do not think the Assembly – and I would not be happy with any of the situations in between, because unless you are sitting on that Committee, you feel slightly left out, and I can well understand. So I am very much on the ‘clean’ camp: if it is an emergency, we have the CCA; but if it is not an emergency, we just go back to business as usual.

2385 So I am a bit concerned that we are trying to design something that is forcing people to be in different places; I do not think that is going to work. I would ask Members to stick to the original Propositions. We just have to accept that, at times, we just cannot always be at every single table. And that is the reality of it, because I cannot find a way that works well for Home, me, Environment & Infrastructure, or even Economic Development, to be able to power up enough and have the support for the finance, have the support of all the staff; whereas the CCA can do that. And what it has shown over the last two years is it does and it can, and it can work with even different people on it. The CCA has almost changed completely in makeup, but it still – touch wood, I think – works reasonably well for us.

2390 So I am a bit concerned about tinkering. We have had some very last-minute amendments for very important issues, so if you are in doubt, use a bit of caution here. I would stick to the original Propositions as put forward.

Thank you, sir.

**The Bailiff:** Deputy Taylor.

2400 **Deputy Taylor:** Thank you, sir.

I did want to just say – he is not in the room now – I broadly agree with most of the points put across by Deputy Inder. There was one bit I did want to – it is not so much a point of correction but he did say something, paraphrasing, that everyone who put themselves forward on Health is interested in health and that is why they do it. I just thought it was quite relevant to raise that I believe in Deputy Brouard’s opening speech for the presidency of the Health & Social Care, one of the reasons was, ‘No one else wanted to do it, so I think I had better put myself forward!’ (*Laughter*) And I am not saying he does not care about people, but I just thought that should be picked up.

But I really rise to check on a point – I do not know if it would be for Madam Procureur to point this, and apologies if it is straying into general debate; it is not an issue anyone else has raised and I may just make a fool of myself by raising it – reading the 1936 Public Health Law – I think it is Section 3(5): ‘If any person who has been ordered to be isolated leaves,’ or in the case of a person blah, blah ... so very much what we are talking about. I will get to the end of it. Basically, if you do not do it, if you leave without permission you ... ‘shall be liable to a fine not exceeding £10’.

I do not know if I am missing something, but it does not seem to be suggested anywhere in either the original Proposition or the amended one here that that would change. Am I misunderstanding that massively?

**The Bailiff:** Madam Procureur, may you assist?

**The Procureur:** Thank you, sir.

It is not a misunderstanding; it is simply, perhaps, not being aware that there is separate legislation which covers amendments to the scale of fines under the scale of fines legislation, sir. So that £10 would have been amended by separate legislation which will not be reflected on the face of that 1936 Ordinance in itself, but that does not mean that the fine remains at £10; there is separate legislation to cover that.

**The Bailiff:** I do not think that was Deputy Taylor’s question, as such. It is now Level 2, as I recall, which is whatever that is these days. I think he was saying, will that particular offence still exist on the face of the legislation? Because it does already relate to self-isolation and those powers exist.

**The Procureur:** Well, sir, that will depend in part on the response to any proposals; if the Proposition is carried, how the proposals are fleshed out. So you are absolutely right and the Member is absolutely right: the power already exists under current legislation, it is not a new power. The Medical Officer of Health has very extensive powers under the 1936 Ordinance.

As to whether there would still be a penalty applied if these proposals are passed, there will certainly be the usual checks and balances. There may well be consideration of a penalty going forward, but at this stage it will very much depend upon the final drafting instructions that are given. But there may well be something to replicate that.

**The Bailiff:** And if there were an offence in the future for breaching self-isolation relating to coronavirus, the penalty might reflect what is available under the emergency regulations or even go further.

**The Procureur:** It might indeed, sir – which is considerably more, I believe, than the Level 2 fine that currently exists.

**The Bailiff:** Were you still speaking, Deputy Taylor?

**Deputy Taylor:** No, that answered my question perfectly, thank you.

**The Bailiff:** Thank you, that is fine.  
Deputy Roffey.



**Deputy Roffey:** Thank you, sir.

I have been slightly confused by some of the debate so far, because a lot of people have said, 'Well, look, the Civil Contingencies Authority are the best people to manage this because they have got the broad outlook.' But nobody is arguing that when you have got a declared emergency, when we have got an emergency that has been identified, that is our procedure for managing it.

I thought what we were debating today is how we handle some of these things when we are out of the emergency situation, and there always will be cases – there are infectious diseases around the world where, if somebody were to come into Guernsey with them or somebody in Guernsey was somehow to develop them, you would need, serious though it is – akin to house arrest, I think somebody said – to protect the community, you need to be able to say, 'Sorry, in these circumstances, you will have to isolate for a period of time.' And there may be new diseases coming along – which is the other aspect that is covered by this – where that will need to be added to the list. So I do not think – Deputy Inder says it should be the CCA, not Health, because they are obsessed with health – I am glad they are obsessed with health, by the way – but this is outside an emergency situation, and therefore, it cannot be the CCA.

I have also been a bit disappointed that we are still getting – we particularly got it from Deputy Inder – this sort of tension between the economy and dealing with the health aspects, because if anything told us last year, particularly when we were unvaccinated, we had this. We had been told, 'All of these restrictions you are bringing in: what about the economy?' Actually, it really benefited our economy, because those restrictions kept us COVID-free when other places were not, and the internal economy – yes, I know certain ex-hoteliers may be frowning at me; it did absolutely impact badly on travel and on the hospitality trade – but Guernsey did better than most places because of the restrictions they brought in on health.

But anyway, who is best to deal with those situations outside of an emergency going forward, where sometimes people have to isolate? I have absolutely no doubt that it has to sit with the Health Department. The question is: should it be all down to the Medical Officer of Health, or should there be some political accountability? And I think that, of course – as I think has been said before – if the order is to an individual that you are inside a category that has been determined – hopefully politically – needs to behave this way for the sake of the community – stay at home for five days or whatever – that order comes from the MOH.

Is it any longer appropriate for the MOH to be looking at new categories and extending them and doing things like that? I understand the MOH has had powers since the 1930s to do that, but we are not in the 1930s any more. I worked with any number of MOHs in my time at Health and I have a lot of respect for all of them. The one thing they are not is politically accountable. And if some people in this Assembly think that the Health Department may not take the economy into account enough, then at least if those big decisions are being taken by the political Committee of the Health Department, the rest of us can hold them to account, because that is how it works: we give areas of responsibility to various Committees and the rest of us hold them to account.

And I absolutely think that this is going in the right direction. No disrespect at all – I would say through you, sir – to Deputy McKenna or some of the superb MOHs we have over the years and, hopefully, we will have in the future, but these are such big issues relating to individual freedoms that I think the broad macro-decisions ought to be taken by a political board that can be held to account. It was fine in the 1930s; attitudes have changed. Attitudes towards human rights, towards everything are just so radically different nearly 90 years on from when this Law came into being.

So I intend to support this amendment. We are not deciding the be-all-and-end-all today; this is just direction of travel. Whether the amendment is passed or whether the original Proposition is passed, there will be a policy letter coming back and we will be making certifiable decisions then. But I think, pointing in the direction that is saying that these major decisions have to have some form of political accountability is absolutely the right message to be sending out, and that is why I will be voting for this amendment.

**The Bailiff:** Deputy Matthews.

2505 **Deputy Matthews:** Thank you, sir.

I have some quite mixed feelings about this amendment. I agree with Deputy Brouard that I think that the sunset clause does not really add much; I do not think it brings very much. If you think you have got the right Proposition there or you have got the right legislation in there then just leave it running; there is no real need for it to come back to the Assembly. And the Assembly can always  
2510 bring it back with some motion, like a requête or something, if they wanted to anyway. So I do not think the sunset clause really adds very much, I do not think it does anything very useful.

I do think that the checks on requiring population lockdowns to go through the Health & Social Care Committee, of which I am a member, are useful. That is something that almost certainly would happen anyway. There are a lot of people saying, 'We are giving all this power to one person'.  
2515 Almost certainly, exercising that would require a discussion with at least the Health & Social Care Committee, if not many other Committees before doing it. And actually, the Proposition is to kick off generating the Law; it is not the Law itself. It might well actually seek to add that into the Law.

Just responding to Deputy Inder: sir, there was a point of correction in there that I wanted to make and I did not really make it. But the point of correction that I should have made, which is a  
2520 genuine point of correction, is that Deputy Inder said that he thought that, in conversation with me in the past, I had said that I would lock down the entire Island, which is absolutely *the reverse* of what I had said. What I had said, actually, is that I would use border control in preference to internal controls. And that is partly because I think people would prefer that; I think that people would probably prefer to have testing on arrival and things like this than masks and stay-at-home orders  
2525 and all the rest that we have had. That would be my view.

But this part does not actually even include moving the border controls to Health & Social Care anyway – which is actually one of the weaknesses, I think, because that is one of the balances. And I can see Deputy Vermeulen thinking that, actually, border controls are bad for tourism; not  
2530 necessarily. It depends. The other thing that is bad for tourism is if you have lockdowns and masks and people do not want to go out to restaurants and all the rest of the visitor economy. So it is always six of one and half a dozen of the other, and any large move like that, I am sure, would involve an awful lot of consultation with other Committees.

But I do think that, although I think that most of what is in this amendment could be achieved or would be achieved anyway – and the sunset clause, I think, is unnecessary – I am minded to say  
2535 that I would support it simply because I think it would set a few minds at rest. We have got a few people concerned about giving all these powers to an individual person. I think to be able to support this – I do not think it does any harm, either; I do not think it really detracts in any way, apart from the bother of having to bring it back to the Assembly for the sunset clause, I do not think it really does any harm. If it sets a couple of minds at rest for the people who are holding placards up on  
2540 the steps this morning that there will be some additional checks and balances, then I think that that is probably a good thing, to be seen to be doing the right think as well as doing these things in Committee meetings – which are actually all closed. All the Committee meetings are not open, so doing something here to show that there are checks and balances is probably quite a good thing to do.

2545 Thank you, sir.

**The Bailiff:** As no other Member is wishing to speak on the amendment, I will turn next to Deputy Soulsby, if she wishes to reply on behalf of the sponsoring Committees at all.

2550 **Deputy Soulsby:** Thank you, sir.

I think Deputy Roffey said he was slightly confused – well, he was not the only one – about this debate. I think it really went off in a tangent and I am really concerned by people not actually understanding both the original Proposition and what the aim of the policy letter was. Deputy Inder is saying, 'You should not have done it! Why did you even bother bringing it to the States? We do  
2555 not need it! We should have not had it!' I totally, absolutely disagree. The CCA went to P&R because

we have been under emergency powers for so long and there is a limit to the time when you can constantly use emergency powers. (*Interjection*)

The whole point of this was to see how we can normalise what we are doing within the normal Machinery of Government; that is democracy. We have got a duty to ensure that we do things properly. We are also open to – we have the Ministry of Justice up there making sure that we are acting and thinking about people’s human rights and we are legislating appropriately. And just to say, ‘Oh, it doesn’t matter. I don’t know, you shouldn’t have really bothered about it. We don’t need this debate anyway, just let the CCA get on with it – that is absolutely wrong when we know there is an opportunity here to normalise some of the regulations that have been in place.

And on that, Deputy Inder was saying, ‘These people, they all thought that we were going to give more draconian powers to the MOH; I do not know they knew that, they haven’t learnt about it.’ Well, I know Deputy Brouard, I know myself, we have told people these are not draconian powers; they are powers which actually exist within the 1936 Ordinance already. But actually, at the moment, they are vague and they are not as transparent as the current regulations and do not actually have those safeguards, and it is really important that we deal with that.’ So what is in the regulations very much follows what is in the public health law in the UK. It is not Guernsey going out on its own and giving our MOH huge, great, draconian powers that are not seen anywhere else in the world.

I absolutely think, here is the place – right now, this policy letter to be debated now – is absolutely the right time as we get out of the emergency situation. And as much as I do not agree with a lot of people’s concerns about the vaccine and the issues that they have with the MOH, these are people with valid concerns and we should not just ignore them. Their voice needs to be listened and we should be discussing that and dealing with that within this Assembly. That is what this Assembly is about. So I can say now, within the Assembly, that they should not have those concerns about those powers at all, and that is then on the public record. So I absolutely think we should be having this debate, and I do not think that certain people – and it certainly was clear from Deputy Inder – did not quite understand what the purpose of the debate was at all.

I have been involved in this from day one. I absolutely think we should be open to scrutiny on this; it is really important. You can normalise it and then people think that they can do everything themselves and have those powers forever, and that is absolutely wrong; we should only have the powers to the extent that we absolutely need them. I very much think that it is crucial that we do.

Deputy Matthews’ statement, I think it makes clear how we should not as a body politic be deciding on things of a really technical nature and saying, ‘I think we should focus on borders, rather than on internal issues.’ The whole point is we flex borders and we flex on-Island NPIs on the basis of where the risks are, where the virus is coming on. Early on, yes, borders were closed because we did not want to get a whole influx of the virus, which did not already exist on the Island. As things have moved on – say, with Omicron – the borders are less important because we have got it on-Island, we have got a fully vaccinated population, so the only NPIs there were in terms of mask-wearing. It varies: you will have different measures that you take depending on what your risk is. Hopefully, that is helpful.

I thought Deputy McKenna made some excellent points. It is not just the Royal College of Surgeons, it is that all qualified doctors are required not to cause harm – I am sure he meant to say. I do not think he just meant surgeons. The Directors of Public Health, they are all part of a body as well, so they do not work in isolation and they listen to each other and they have standards that they have to follow.

In terms of the original Proposition and what we have in front of us here, the original Proposition was simply to say we have been using these emergency regulations for the MOH for a long time. Those regulations have not changed, they have not needed to change, because they have been useful throughout the whole of the pandemic emergency situation we have been in. The border controls and the use of other NPIs, they have flexed as we had those issues, as I have just said. So really, the Proposition was simply saying, ‘Let’s just normalise. These are regulations which conform with, very much, the public health law in England. Shall we just make sure that we put them in our current Ordinance, which is out-of-date and does not give safeguards?’ There was nothing hidden

in there about imposing fundamentally new powers on the Medical Officer of Health. That was the purpose of that Proposition; very simple, to see us through the way forward.

2610 Now, this one, absolutely – and I thought Deputy Roffey did reference this quite well – we are in a new age here. We have people we give powers to and you have to say, ‘Perhaps in the past, we might have just bowed to these people and let them do whatever they want because we do not know anything.’ I get that and I understand why that element is within this Proposition. I am concerned about politicians, to what extent that balance is there. For one side, you can say, ‘Well, 2615 we do not want an MOH to have all that power.’ Well, do, actually, we want a bunch of politicians to have that power? It is a difficult one to balance.

I look at this Proposition and I have absolutely – myself, personally – no problem with it, because I know that this is what HSC will be tasked to do. They will be consulting, they will be talking to the MOH, they will be talking to Her Majesty’s Procureur – they will *need* to talk to Her Majesty’s 2620 Procureur – because these are about powers vested in various individuals. And I know, when they come back to the Assembly with a policy letter, that we will have something where we can actually make a reasoned decision. Because they might say, ‘Yes, I know you have said that,’ but they might actually say, ‘This sunset clause just really will not work. I know you want it and you are saying you want it, but actually, having had that time to consider it over a long period of time’ – we say – ‘you 2625 can have this, but these are the implications, and we would not recommend it.’

I think that is the important thing about this. If this was coming back and saying, ‘Right, we are changing the legislation now,’ yes, I seriously would be concerned, because I am not quite sure if that is in the elements. But I really do not have those concerns now, because I think that is something that HSC can consider – and also, talking to the MOH about what the right thing would be to do.

2630 So I do not think that anybody should have any problem with this. And I think, actually, this has been really important, having these debates, getting them out in the open – as I said before. It is not something where you should say, ‘Everything is fine, let’s just keep going as we do.’ This is part of our democracy and we should enable people to have a voice – and if they cannot have a voice here, I do not know where else they can. (**A Member:** Hear, hear.)

2635 Thank you.

**The Bailiff:** Deputy St Pier, as the proposer of amendment 4, to reply to the debate, please.

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

2640 Deputy Inder said that this amendment made a better job of a bad job, and I think he is right. It is not a perfect amendment, quoting Deputy Queripel, as Deputy Queripel said. Deputy Inder said that he was going to vote for the amendment, and I thank him for that, and then probably go on to seek to vote against it as a substantive Proposition, and he may very well not be alone in that. It is not for me to argue against him voting against that substantive Proposition if this amendment 2645 succeeds. That really will be for Deputy Soulsby and others sponsoring this policy letter to make the case for why they do not think that is a good idea. But I will just offer an opinion on that in a moment in responding to this particular debate.

Deputy Brouard made some comparisons which I thought were invidious comparisons about rats in houses and cisterns in attics. The difference between rats in houses and cisterns in attics and COVID is that the MOH does not require people with rats in houses to self-isolate or to be swabbed and all of the infringements on human rights which are inherent within some of the powers which come with COVID.

He also said that everybody wanted their fingers on the trigger and that is what this amendment is really about. Well, I have had my finger on the trigger, as it were, as the Chair of the CCA. I am not involved with any of the Committees that would be involved with this on an ongoing basis. So 2655 I have had my finger on the trigger and my finger will be nowhere near the trigger if this amendment is successful. So it really is not anything to do with that.

He said that we just need to go back to business as usual, but that is the point, I think – and that is a point, I think, which Deputy Soulsby made very well: actually, business as usual with COVID is

2660 not the same as business as usual with rats in houses or cisterns in attics. It has to require the adoption of some pretty draconian powers, and how we sustain those on an ongoing basis is what this policy letter is all about, as Deputy Soulsby said.

2665 Deputy Brouard went on to say that he was really suggesting that the CCA was working very well; therefore, we do not need this amendment. And I think Deputy Roffey really nailed that point. But this amendment has got nothing whatsoever to do with the CCA; it does not stop the CCA acting. If there is an emergency, exactly as we said – was it today? Was it yesterday? I cannot remember now – if the emergency rules – Section 2, I think; Deputy Ferbrache will advise us – if the definition of an emergency under the CCA law is engaged, then the CCA's powers are engaged and it will be able to continue to act. This is all about what happens if we no longer meet the criteria of an emergency.

2670 That really turns me back to the reason why I suspect Deputy Soulsby and others will argue against voting against the substantive Proposition, following Deputy Inder's recommendation or view. The whole point about living with COVID responsibly is that if it becomes endemic and is part of our way of life, then an emergency will no longer exist; the CCA will no longer be in power to act; and therefore, if we do not do something, we will be relying solely on the 1936 Ordinance – I think it was Section 2 or Section 3 or 5 that was identified earlier with the £10 fine that has gone up a bit, possibly – and relying on those powers, which everybody involved in this process so far have identified as not ideal, they are not up to date, they do not contain all the protections. So we will be throwing ourselves into the arms of a very old piece of legislation to try to manage, on an ongoing basis as business as usual, a virus which appeared in 2020, because the terms of an emergency will no longer exist. But as I say, I suspect that is a case which others can articulate better than me in the final analysis.

2680 Deputy Matthews said he was not particularly keen on the idea of the so-called sunset clause and that, in essence, we could just let it keep on running and that if we did not like it we could bring a requête. That is very clunky and it is quite a sledgehammer to crack a nut. And the reason, really, for the suggestion of the sunset clause through this amendment is that our whole knowledge and the evolution of our knowledge of COVID has changed substantially in 24 months, and in another 24 months or 72 months, our perspective on the threat of COVID may appear very different, and it may simply be that we reach a point, as a community, under the advice of Public Health, under the advice of the Medical Director and others and the Medical Officer of Health, that it is no longer appropriate to sustain these powers on the statute book; we do not need to just let it run. And that is why the suggestion of building in a periodic review is appropriate.

2690 But I think, as Deputy Soulsby says, that is something that can be looked at by HSC over the coming months as they build this policy letter, and if they really want to make the case for why a sunset provision is no longer valid or should not be adopted in the final legislation, they can make that case in their policy letter, arguing that this Proposition – if it becomes a Resolution – is no longer the appropriate way to act and to recommend a different alternative.

2700 Deputy Matthews also said that these provisions in this amendment would 'almost certainly', he said, be in the proposals, and I have no doubt about that whatsoever. But he also made the case, very powerfully, that actually, because of the concerns of the community, exactly as Deputy Soulsby had said, that is precisely why we should be adopting this amendment: to provide reassurance that they do not have to simply rely on the 'almost certainly'. They will have some clarity about the direction which this Assembly has set for HSC that we really do want to see the checks and balances and have put some colour on what we expect when that policy letter comes back.

2705 And with that, sir, I do encourage Members to support the amendment. Thank you.

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

Members of the States, we come to the vote on amendment number 4, proposed by Deputy St Pier, seconded by Deputy Haskins.

2710 There was a request for a recorded vote, so once again, over to you, please, Greffier.

*There was a recorded vote.*

*Carried – Pour 24, Contre 13, Ne vote pas 1, Absent 1*

POUR	CONTRE	NE VOTE PAS	ABSENT
Deputy Parkinson	Deputy Meerveld	Deputy Prow	Deputy Dyke
Deputy Queripel	Deputy Moakes		
Deputy Roffey	Deputy Murray		
Deputy Soulsby	Deputy Oliver		
Deputy St Pier	Alderney Rep. Roberts *		
Deputy Taylor	Alderney Rep. Snowdon		
Deputy Trott	Deputy Vermeulen		
Deputy Blin	Deputy Aldwell		
Deputy Burford	Deputy Brouard		
Deputy Bury	Deputy Dudley-Owen		
Deputy Cameron	Deputy Helyar		
Deputy de Lisle	Deputy Mahoney		
Deputy de Sausmarez	Deputy McKenna		
Deputy Fairclough			
Deputy Falla			
Deputy Ferbrache			
Deputy Gabriel			
Deputy Gollop			
Deputy Haskins			
Deputy Inder			
Deputy Kazantseva-Miller			
Deputy Le Tocq			
Deputy Leadbeater			
Deputy Matthews			

\* Denotes Member who voted by proxy.

2715 **The Bailiff:** Members of the States, the voting on amendment number 4, proposed by Deputy St Pier, seconded by Deputy Haskins, was that there voted in favour, 24 Members; against, 13 Members; 1 abstention, 1 Member was absent, and therefore, I declare amendment 4 also duly carried.

Although you have announced that you have no intention of laying amendment 5, Deputy Inder, can I just check that that is the case?

2720 **Deputy Inder:** That is the case, sir.

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

2725 Members of the States, we now move into general debate. You can forget the original Proposition because we have four successful amendments. Just to tell you the order in which they are going to appear for voting purposes: amendment number 4 will create Propositions 1 and 2 because that is the most logical way of doing it because Proposition 1 is almost the original proposition; Proposition 2 develops out of it. I am minded to put amendment number 3 as Proposition 3, because it is Government Work Plan-related and it sort of flows from it. And I am minded to put amendment number 2 as Proposition 4 – that is the review – and finally, amendment

2730 number 1 as Proposition 5, on the basis that the ‘Review of the Past’ is looking at the past; ‘Looking at the Blueprint’ is looking to the future, so again, that seems to be a logical way of doing it. There may well be a printed version available for you shortly, but I just thought I would do that so that when you are talking about the Propositions, you have got Propositions 1 to 5 like that. *(Interjection)*

2735 Okay, the order of the Propositions will come from the amendments in reverse order: so 1 and 2 from 4; then 3 from 3; 4 from 2; and 5 from 1. Now if that is not clear clarity, I do not know what is! *(Laughter)*

General debate. Deputy Meerveld.

**Deputy Meerveld:** Thank you, sir.

2740 It is interesting looking at this and just doing a quick sanity check on where we started just 24 hours ago. Twenty-four hours ago, we were presented with a policy letter which, unusually, was sponsored by three Committees; that was constituted by 15 Members of the States of Assembly and three non-States' members. Unlike normal policy letters that are just presented by five members, this had a broad base of people who had considered this and brought it forward. Paragraph 7.6 said that 12 out of 15 of those Members of the Assembly that were on those three  
2745 Committees had approved the single Proposition; that is 30% of the Assembly in and of itself. And that single Proposition was one paragraph, fewer than seven lines long.

What have we done with that in 24 hours? We have now turned it into a set of Propositions, but my guess is, it is going to run to about three pages. Okay – and what was the mechanism by which we have done that? It was mentioned in Deputy Murray's speech this morning and Deputy Brouard  
2750 has just mentioned it now: last-minute amendments. Amendments laid the day before, which, as I have said wearing my SACC hat in the past, to me, is incredibly poor governance, because it does not give us Members time for proper consideration. It does not give us time to consult with people who have got more knowledge than us. It does not give us a chance or time to speak to members of the public who may have strong opinions on this. And whilst I agree with Deputy St Pier that  
2755 there is an expectation that amendments be word-perfect and that if they were not, they would be criticised for not being, good governance calls for us to go through this process and lay these things with a longer period in advance so we can go through that process.

So basically, when you look at this, we have taken one paragraph, seven lines, turned it into three pages; we have gone beyond the original – as Deputy Soulsby pointed out just now, on amendment  
2760 4 – we have gone beyond the original concept of transitioning some of the required powers from the CCA to the Director of Health to enable those powers to be extended once the CCA is dissolved, and we have turned it into forward-looking, backward-looking reviews, checks and balances, and all other kinds of things.

Basically, when we receive this new document, it will remind me of one of my analysts when I  
2765 was running investment research companies in Hong Kong. He had worked for me at a couple of companies – very erudite man, very intelligent – and I would offer him documents or prospectuses to analyse, and occasionally he would come back into the office and he would drop it on my desk and start off with the phrase *Porcus prandium* – which sounded particularly strange when you have somebody with a strong Chinese accent trying to pronounce Latin. *Porcus prandium* means 'pig's  
2770 breakfast'.

And that is basically what I think we are going to have returned to this Chamber: a document running three pages from one paragraph that takes us in all different types of directions and, as Deputy Brouard just pointed out as well, micromanaging from the floor of the Assembly – without proper consideration, without time to analyse it properly, without proper consultation –  
2775 micromanaging a process, and taking us off in all kinds of directions that were never considered in the policy letter, were never part of what was proposed – but basically, unfortunately, some Members have taken the opportunity to take issues that they are concerned about and inserted them into debate. But is that good governance? Are we making the right decisions? I fear not. So I am going to vote against all these Propositions, and I am going to recommend that everybody in  
2780 this Assembly does the same.

Now, there will be a cry, and I am sure I will be criticised: 'What a waste of time! We have lost a day talking about this, coming up with all these grand ideas, putting them into a set of Propositions; we now need to proceed with some of them.' Well, actually, do we? Is it a waste of time? I am sure that the three Committees involved – Policy & Resources, Health and Home – will have got the two  
2785 loud messages that have come out of this debate: a desire for openness and transparency, which both Deputies Ferbrache and Soulsby have both totally agreed with, and the fact there needs to be – and I think other Members as well have highlighted, Deputy Taylor, etc. – the amount of money that has been spent and the need for us to go back and review this and see whether or not the processes that have been tested by this crisis need changing to better cope with future crises. And

2790 also, there need to be changes to the structure, the rules, the powers, and the checks and balances – absolutely.

We started off with one paragraph that has expanded into way too many. I am happy to vote this down today and leave it to those Committees, who I trust, to take away the will of this States and come back as part of the Government Work Plan, where Home can decide the resources can be transferred, where the CCA and P&R could decide how a review should be shaped – because I am sure there is one already in process, I am sure they are already looking at these issues – and they can come back to this Assembly.

2800 And okay, we might still be accused of, ‘Well, okay, we have wasted a day.’ Yes, I think, in some ways, we have. But it will not be wasted if this Assembly realises that we have to behave differently, do different things differently in the future. We should be – thinking of any amendments, we should consult with the people involved. As Deputy Ferbrache said, he only got to know about these amendments the day before debate. Bring people in, talk to our colleagues, have these conversations earlier, and have a more constructive debate based on better-thought-through Propositions and more focused debates as well.

2805 At SACC, we often get approached by Members who say, ‘I want this Rule changed! I suggest we look at this!’ And our very wise officer often turns around to us and says, ‘Do we want to change the Rules, or do we need to change the behaviour?’ And you sit back and you go, ‘Yes, what the person who is complaining is actually concerned with is the behaviour.’ If the Rules are constantly trying to be changed to stop what is perceived to be bad behaviour – some people may not consider it bad behaviour – you are constantly chasing your tail. What you need to do is sit down as a group and decide how we should do things and how we should do them in a more business-like way, and that is part of the reason that SACC introduced the courses – and we will be expanding on those, hopefully, for the next induction of Deputies, to start having that conversation between ourselves about how we should handle questions and answers or other aspects of our Rules.

2815 So I encourage Members to vote down all these Propositions, to hand back the discretion to the 37.5% of our Assembly who sits on those three Committees, and let them make a decision about a review process that can address the issues that have been raised in debate and the changes that are needed to structures, Rules, powers, and checks and balances to be able to address change. And I think it needs to be done more broadly; as I said earlier, I supported a review but I wanted to look more at the mechanics, not at second-guessing decisions with hindsight. I think P&R and other colleagues – I trust them to go away and do that. And I hope other Members will join me in doing so and will vote down these Propositions, because what we have in front of us now is not what was intended in this policy letter and I think we need to push back against micromanaging this Assembly on the floor of this Assembly without proper good governance and due diligence on the decisions we are making.

2825 Thank you, sir.

**The Bailiff:** Deputy Aldwell.

2830 **Deputy Aldwell:** Thank you, sir.

I have heard today of different thoughts of how this all began, and it began differently for different people. And some things come into our lives and they change our whole world forever. We could never imagine, when we first hear them mentioned, that they will ever come to this little Island we live in and change how we see ourselves in the world.

2835 Back in the 1990s, I worked on the High Street at Lloyd’s Bank. It was a wonderful, friendly workplace. We knew all the customers and it was very much a personal service. Technology was basic: we had terminals to look up a customer’s account and a fax machine. I remember talking to my colleagues one lunchtime about something we had read in the newspaper called the ‘World Wide Web.’ We thought it would never catch on, ‘It will never come to Guernsey’, but it most certainly did, and it has changed our lives forever.



In 2020, I was a Constable in Torteval. I had just come back from a weekend trip and I was catching up with my colleague at the Douzaine, and a topic came up which was about a virus we had heard about, and we had heard about it on the World Wide Web coming out of China. There had been a case in Tenerife and we dismissed it: 'It will never come to Guernsey.' Ten days later, we were in lockdown.

As a Constable in the early days of COVID with the responsibilities of the parish administration, I remember receiving an email asking me, 'How many plots do you have available in Torteval, and would you have room for a mass grave?', so uncertain were we how things were going to turn out. Thankfully, this was a part of COVID which did not come to Guernsey, but it did happen elsewhere worldwide. I remember also having to find a central point in the parish where waste could be collected from if we did not have the staff to collect it on the doorstep collections. Having suggested a site, it also needed to be agreed with Environment and Health, as we could not risk water contamination.

Through those early days, I was grateful to the CCA and our Medical Officer of Health. Those uncertainties seem a lifetime ago, and yet, it was less than two years. Through those early days, we heard the calming tones of the Medical Officer of Health explaining what was happening, what we needed to do, what would be proportionate, and explained by Her Majesty's Procureur. Along with the members of the CCA, the Islanders felt safe and secure. When I joined the States seven months later and received a presentation from the CCA and the Medical Officer of Health, it became very clear, on being given a greater understanding of the dedication to this Island from all those involved in keeping us safe and secure through the previous months – and the same would be said for the present CCA, who have served us now for 16 months, in whom I have total faith which has never wavered.

In September 2021, I was grateful to attend a Commonwealth parliamentary event in Northern Ireland. I was privileged to meet with delegates from the Falkland Islands, Cyprus, Malta, Gibraltar, the Isle of Man, Jersey, Scotland, Wales, and England. It became very clear to me how lucky we were to have our CCA and how they have been able to act swiftly in response. Other jurisdictions explained that they could not get anything through their parliament, as it was like nine cats fighting in a sack. Their hospitals were full, nurses were on their knees and threatening to strike.

On the education presentation at the conference, it was also made apparent how fortunate we had been with our online offering, with Sure's helping us with the equipment and connectivity, while other jurisdictions did not fare so well. Some students living in rural areas across the jurisdictions still were not back in normal education, as they had no connectivity.

We are quick to forget how far we have come and how lucky we have been. We should never forget the Italian families singing on their balconies, or the pyres in India. I think the key word throughout this pandemic has been 'proportionate'. We have been very fortunate to have our CCA and especially lucky to have a virologist as our Medical Officer of Health to steer us through COVID-19. Many jurisdictions I know are envious of how we have dealt with this pandemic. My faith has never wavered in those we trust. The policy letter has been changed by so many amendments, it no longer looks like the document I put my name to originally.

Thank you, sir.

**The Bailiff:** Deputy Prow.

**Deputy Prow:** Thank you, sir.

I would like to perhaps make my opening remarks about something that Deputy Trott said way back when we were discussing the amendments. What he said was not critical and was very balanced, and I have reflected on it. I think one of the values of the policy letter and this debate is that – Deputy Trott said it very eloquently, I think – the bottom line of what he said is that people in this Chamber, depending on what duties they perform, have a different perspective around the role of the CCA and, indeed, where we are. And I think that is very true, and I think that is some value that I have got from this debate.

2895 The problem is, of course, that most Members seem to know what they do not want, but they do not really know what they do want. And I think where we have arrived now, with a set of Propositions which amend the one single Proposition – and it was Deputy St Pier who drew comment about the Home Affairs comment in the policy letter. And I do confer my remarks to him at the time, which said, ‘I understand what your concerns are, and yes, I confirm that was the view of the Committee for Home Affairs; but it was always intended that Health & Social Care would come back to the Assembly.’

2900 However, I think this debate has confused the situation, and the additional Propositions. But I would perhaps like to talk about one of the Propositions – which is now Proposition 5, I believe, sir. I am not confused about this, and I really want to ask Members of this Assembly who supported this amendment and have brought it to a Proposition stage to *really* reconsider that. That really is around the suggestion that this Chamber will, at some stage, approve any blueprint or strategy for the ongoing management of COVID-19.

2905 Now, Deputy St Pier and others have quite rightly pointed out that if there is an emergency situation, the CCA can act and still intervene, and I am quite clear on that. And Deputy St Pier said that the particular amendment he was referring to does not stop the CCA acting. But Proposition 5 does; it does change the way that the CCA will be able to act, because they will have to take notice of a blueprint or strategy – I am using the words in the Proposition.

2910 This is it; it was published on the website last night. It is not a strategic document. I have been a senior manager, I have done the training, trust me: this is a plan. It is not a strategic document. It is entitled a Blueprint. What does it deal with? The journey so far. Then it takes us to Moving Forward, and it gives a Timetable of Progression to Date. It talks about what has happened from July 2021 and talks about specific measures in response to the emergence of the Omicron variant and what was done. These are very operational. If you look at all these bullet points, these are actually things that happened.

2920 Then we go to The Bailiwick Blueprint: The Next Steps. We have got what those steps were on 17th January, 18th January, 19th January. Again, if you look at them, they are all very specific operational considerations. Then we go on to 24th January to 16th February, 1st February to 16th February, and then 17th February and beyond. Again, if you look at these, these are all operational issues:

- Removal of mandatory face coverings ...
- Continuation with the modified contact tracing programme;

2925 Then we move on through to ‘Management of cases and contacts,’ ‘Non-pharmaceutical interventions,’ ‘Monitor external developments’. This is not a strategic document. It is not a high-level Government document that we could agree upon.

Interestingly, one of the things it says in here is – and this is talking about what we might do in the future – it says:

As we move forward, we need to acknowledge the degree of uncertainty that we face. We do not have a crystal ball and cannot be sure what we will face during 2022 and beyond. What we do have are the assets that we have built up over the past two years and our experience in managing COVID-19 across the Bailiwick.

2930 I would suggest that experience is within the CCA – and indeed, within the vaccination programme, with HSC.

2935 We had some legal discussion on other points around this. The problem with this is, the CCA will not be able to move forward as it has done in the past because it will have a straitjacket put around it. The paragraph I have just read out, what that suggests is, as we start to learn to live with COVID, the situations will change and we will have to decide upon things that may not be in a blueprint, and so we cannot be constrained by that sort of straitjacket.

So as I said, sir, that is one thing I am certain about. I will not be voting for that Proposition, and I really urge this Assembly to join me with that view.

2940 Sir, just speaking to the other Propositions, Deputy St Pier acknowledged Section 4.6 of the policy letter, and I just want to talk very briefly about 4.6 and 4.7 and 4.8. Sir, he prefaces his remarks around 4.6, he described the policy letter as being written by three Committees. In his article in the paper, he described it as a camel – i.e., a horse designed by a Committee. We actually even had a picture of a camel – and as a member of the CCA, I was very pleased to note it had a face mask on. And I need to tell Deputy St Pier and let him know what part of the camel I am: *(Laughter)* sir, I have got the hump! *(Laughter)*

2945 In 4.6 – and he has already alluded:

The Committee for Home Affairs also felt strongly that any such restrictions to be imposed widely (as opposed to the clinical judgement applied in individual cases) should ultimately be a political decision and not rest with a statutory official, notwithstanding that this is a decision that is founded on evidence and informed by the experience of the relevant professionals.

2950 I endorse the comments made by Deputy McKenna about health professionals: they have their roles, but the political decision-making needs to be very carefully considered. Now, that is already contained in the policy letter. We also said as a Committee that:

It was also unanimous in the view that the creation of any new entity would not in any way alleviate the perception that the decision-making process is not open to appropriate scrutiny, which it deduces is in part the issue at the centre of this review.

2955 I think that that is, again, something that this debate has echoed.  
Finally, on this part of the policy letter, sir, at 4.8, what we said is:

It is suggested that a new Projet would do little to address any concerns centred on the decision-making process other than confer responsibility from one political body to another. Indeed, the Committee for Home Affairs felt that such an arrangement within Guernsey's committee government system might be cumbersome and detrimental to efficient government working.

2960 When I spoke to the amendment, sir, I did point out that what we need to bear in mind here is that we do not have executive government, we do not have cabinet system of government; we do have a very cumbersome Committee government system – I am not making any comment about that whatsoever. But when you are dealing with an emergency, you do need a vehicle like the CCA. And I think, from the remarks that have been made, that there is pretty much a consensus in this Assembly that the CCA has worked through this pandemic under the leadership of Deputy St Pier and under the leadership of Deputy Ferbrache.

2965 So, sir, that perhaps takes us to a point I need to make following on from Deputy Inder's speech. And it is not to detract from his speech, but one point I would like to make and emphasise is that, where we are talking about lives lost and where we are talking about the Hospital becoming overwhelmed, we need to look at what harms we prevented; the mitigations that were put in place not only by the CCA, but by Health & Social Care around the excellent vaccination rollout – and the fact that we managed to get our community double-vaxxed and booster-vaxxed has saved a considerable amount of lives and has prevented our Hospital from becoming overwhelmed. So we really must take that into consideration. And of course, in doing so, that has also protected the economy as well.

2975 So just, perhaps then, talking to the original Proposition: I think this debate has really teased out this concern about political accountability, and I do not think, for me, that we have come to a conclusion on that, and perhaps we need to go back to the drawing board. But I am going to listen to the rest of the speeches before I come to a view on that.

2980 However, I have to say Deputy Matthews' speech, where he seemed to say – if I understood him properly – that HSC should have powers on the border arrangements and those controls he seemed to suggest are more effective than isolation; and also, using a requête as a mechanism to alter operational matters – I think that comes to the crunch of it. Other Deputies have said this – I think

Deputy Helyar said this – we should not micromanage. It is difficult enough making decisions in a Committee environment, but you cannot have those sorts of operational decisions that need to be made quickly – whether they are emergency decisions or other provisions that HSC need to put in – made by 40 Members of the Assembly. And so that has filled me with some alarm.

So, sir, that is all I wish to say. I certainly will not be voting for Proposition 5, and I will listen to the rest of the debate.

Thank you, sir.

**The Bailiff:** Before I call Deputy Bury, I am just going to explain that while she is speaking, you will be provided with a composite set of the Propositions in the order that I have said so that you have got them physically in front of you.

Deputy Bury, please.

**Deputy Bury:** Thank you, sir.

I dissented from the original policy letter and Proposition – well, from the Proposition, because that is the only tool available to us. My dissent really related, actually, to the policy letter, which I think has been touched upon throughout the debate; I did not think it was a great policy letter. And I have picked up through debate, I think that has come down to perception of what Members thought this debate was going to be. I was under the impression, when this policy letter was first mentioned by members of the CCA and P&R, that it would be the debate that we have just had over the last few days, but that debate has only been facilitated by the amendments that have been brought; the original Proposition would have led to a much shorter debate and would not have been this grounded, holistic, entire-pandemic conversation that this Assembly needed to have – and has not had, really, so far. And as Deputy Soulsby made the point, now really, absolutely is the time for us to be having that conversation as we look to be moving into the de-escalation.

And I think the point has been made clearly, and I think that it is important to make again, that the amendments have been brought in that context: the context of looking like we are exiting – *exit strategy*. I think the word ‘exit’ was missing from one of those amendments possibly – but on our way out. But none of what has been brought and discussed precludes the CCA from performing their duties should we – God forbid; hopefully not – have to go back in the other direction. So I think the perception of what this debate was going to be has moulded Members’ opinions.

So that was why I dissented from the policy letter originally: it was not necessarily relating to the actual Proposition itself; it was more that I felt the entire letter was lacking what was needed and what was being called for from many members of the community and from many Members of the Assembly.

On a note about laying amendments, just in relation to Deputy Meerveld’s speech recently, this does come up quite a lot in terms of amendments at last-minute. And when you are on the receiving end as a Member of the Assembly, it is frustrating; but when you are constructing amendments actually I wonder if the behaviour is a result of the Rules or the time that is actually given from policy letters being published, taking some time – you might have other responsibilities, you might not be able to read it on the day it comes out – and then finding other people that agree or disagree and consulting and absorbing, and then constructing. We all know it is quite a long process. You do not just knock a decent amendment together in half a day. So perhaps, that is something that needs to be looked at within the system that we are working in.

I think that the amendments that were brought while ... for those that might not have been involved in the process, I think it has been a very cohesive process, I have been part of it, and it has actually brought together lots of Members of the Assembly that would not normally find themselves working together. And I think it is two sides of the same coin: is it factions or is it people working together? In order to work together, we have to be able to talk to one another.

So yes, I thought that the amendments that have been brought have facilitated the debate that was needed, and now, we have quite a holistic view, looking back and learning lessons – which I think is absolutely important. If you were looking at it from a business point-of-view and you had

spent millions of pounds on a campaign, you would not not bother just looking if it had worked, and we need that on the shelf for the future. We also have taken steps to fill in the democratic deficit that has been referred to a lot by having the Assembly look at the future and our exit strategy, and we have directed HSC to reconsider whether the Law relating to the last few years should be prioritised.

So I think that the Propositions that we have now in front of us look much more like the debate I was expecting us to have. But as I said, as I have picked up from debate – I am not sure – I think it is perception of the debate that we were going to be having. As Deputy Aldwell has just alluded to; she said that the policy letter no longer looks like the letter that she put her name to. And I find myself in a different position exactly; it no longer looks like the policy letter that I dissented from, so I can now offer my support to it. (*Interjection*)

I am forgetting the numbering – oh, it is here. Now, Propositions 1 and 2, I think it has been good that we have had that conversation in terms of really allaying the concerns of the public that the powers are not being decided today, that it is a direction, but I think it was very important that that was fleshed out with more direction. And just to go back to Deputy Meerveld's speech, I do not think that we should be reducing the work of Government to whether it should be less than one paragraph or not; these matters are quite complex, so sometimes it does need to be more than a few lines.

So I am very happy with that Proposition now. It does not necessarily mean that I will be supportive when they come back, but I find myself in the privileged position now, being a Member of HSC, that I will be able to go through that process of deciding how those powers should look. And that puts me in a position that I think that members of the CCA have found themselves in over the past few years – not always a comfortable one, obviously, and much respect to all those Members that have been part of that.

But I think what has become clear through debate – and it was a point that Deputy Trott made yesterday – often in debate, it has been the members of the CCA that have been talking against an amendment because they do not see the need for it. But that is because they are on the inside and they know what is going on. For the rest of us who signed up to do this job and scrutinise and challenge and question, we have not been able to do that. So I think that has become quite clear, but this debate has allowed us to do that.

So I will be able to support all of the Propositions as they stand now, thanks to the well-laid and well-thought-through amendments. And I thank everybody that did bring them; I think it has been a much more rounded debate, and the debate that was needed. We might have been able to have that debate, but we would not have had any decision-making around it, and now we do have that.

So I would urge Members to support all the Propositions as have been proposed and approved so far, noting that a lot of them will result in more detail being brought back to the Assembly in the future for detailed decision-making.

Thank you, sir.

**The Bailiff:** Deputy Ferbrache.

**Deputy Ferbrache:** Thank you very much, sir.

I appreciate that in general debate you only get the one chance to make a speech – or you only get the chance to make one speech, I should say – and I am going to be concentrating on what is now Proposition 5, which was amendment 1 – which was a successful amendment led by Deputy Parkinson.

In relation to that, it does not bother me, as a bruiser, that you win some debates, you lose some debates. There was a great heavyweight champion called the 'Brockton Blockbuster', also known as Rocky Marciano, and he was the only heavyweight champion of the world who never lost a fight: 49 fights, 49 wins. So most people do lose battles. But that is not the important point, that is not what concerns me; what concerns me is that now Proposition 5 is going to be totally unworkable for the CCA in my view.

I read it again – I read it yesterday when we were discussing the amendment – it says:

To direct the Civil Contingencies Authority to submit for consideration by the States a Policy Letter and suitable Propositions for the approval of any ...

– ‘Any’, I emphasise that word –

... blueprint or strategy for the ongoing management of COVID-19.

3090 So every time you change a strategy, every time you change a blueprint, you have got to come back before the States and seek their approval. That means you cannot change any strategy or blueprint, or you cannot *fashion* any strategy or blueprint, until you have had the approval of the States. Now, that takes long. One of the speakers yesterday said, ‘You could bring an emergency policy letter to the States. That does not take as long as normal,’ and I agree with that, but you  
3095 cannot keep doing that and even if you do it as promptly as you can, it will take longer sometimes than the action that you need to take.

Now, in relation to that, I am always grateful – and I mean that sincerely, without any side – I am always grateful for the advice given by the Law Officers, grateful for the advice given by the learned Comptroller yesterday, and I am grateful for the advice given by the learned Procureur today. During  
3100 the course of this afternoon, I emailed the learned Procureur some questions, and she has answered them, and I will read out the questions and answers in a moment or two in relation to that; I sought her advice.

My day job for many years was that of a very humble advocate, but in the course of that I often had discussions with the Law Officers about their legal opinions. Sometimes, I accepted they were  
3105 right; often, I did not think they were right and I had a different view; and more often than not, my view was right! (*Laughter*) But that is the point: you get legal advice, it is up to you to accept whether it is right or wrong. Now, with great respect to the learned Comptroller yesterday, I do not think his advice was right because what we are talking about is a strategy or a blueprint.

The question I asked Her Majesty’s Procureur this afternoon was, ‘What is the legal distinction  
3110 between a strategy and a blueprint?’ And she came back and answered – and I accept this answer – ‘There is no legal distinction between them.’ My second question to her, ‘Is it possible to proscribe legally what is included within a strategy?’ And she said, ‘Yes, if the States wishes to pass legislation to do so.’ So that is the first difficulty: to have a strategy, the States will have to pass legislation to do so.

But the one that concerned me the most and the one I could never get my head around  
3115 yesterday – and I thought about it last night and I thought about it today; and it does not matter that I am the Chair of the CCA; whoever is the Chair of the CCA, whoever that person might be in the future, whoever makes up the body of the CCA is going to be faced with this difficulty – I said, ‘If the CCA had a strategy to relax regulations and then it decided to close down the Island at short  
3120 notice, is this not a change of strategy? And if not, why not?’ Her Majesty’s Procureur answered, ‘Yes, it would be, and would be based, one would assume, on prevailing expert advice and on the functions of the CCA to identify and monitor risk.’

Let me give you an example – I have mentioned it before – on the evening of 22nd January 2021, I had a phone call from a senior civil servant to say, ‘Four outbreaks’ – those figures seem  
3125 inconsequential now – ‘of COVID, we cannot trace them at the moment. A real concern. We have got the Dance Festival going on, lots of people going to Beau Séjour’. Kids are going to go to Beau Séjour again on the Saturday. ‘We have got to take urgent action.’ We had the discussion. Probably with no authority at all at that time, I said, ‘Phone people up, tell them that it is going to be cancelled’ – and that was the advice I received as well.

3130 The next morning – I think 7 a.m., 7.30 a.m. – Deputies Soulsby, Ferbrache, and Brouard met and made certain decisions, but they were not quorate. We were not quorate at that stage, because Deputy Soulsby is a non-voting member – a very able advisor, but a non-voting member of the

CCA. So we organised a meeting for 10 o'clock – I think it was 10 o'clock – whereby the decision was made then to close down and the official closedown was about 12 p.m. – whatever time it was.

3135 That was a change of strategy. Whether you like it or not, that was a change of strategy, because our strategy up until that point was relaxing regulations. All of a sudden – and I will refer you to the advice given by the learned Procureur – we had to change strategy like that. Now, if we would have had to come to the States to make that decision, it would have taken at least a week. Even if we had been Usain Bolt on speed, it would have taken us time to get to the States with those Resolutions, 3140 with the necessary Resolutions to make that decision.

So great damage would have been done at that time because the vaccination process was still embryonic – let's put it that way. Instead of having ... what did we have in that phase? We had 400 or 500, I cannot remember the exact figures – we would have had thousands. And it is not like Omicron; that variation was different, that variation was much more serious. I am not saying 3145 Omicron is not serious; but thankfully, although we have had over 5,800 cases, it has not wreaked the havoc of some of the other variants, where there were fewer people infected by this horrible virus.

So that is a strategy. Now, I am not a shrinking violet when it comes to making decisions. I have made them all my life. I have made many good ones, I have made very many bad ones. But I would 3150 be very reluctant, knowing, if this Proposition is passed, upheld by the States ... we get something tomorrow – all of sudden, there is a new outbreak that comes from Outer Mongolia whereby everybody in the Island is going to get infected and people are going to die, we are going to have the mass grave that Deputy Aldwell talked about in Torteval in St Peter Port, etc., I would have to say that is a stage of strategy because our strategy at the moment is – we published it, the blueprint 3155 – our strategy is to relax regulations. We *hope* that when the current regulations expire at midnight on 16th February, we may not have to make any further regulations and that will be the end of restrictions; we hope but we cannot guarantee that.

But that is a strategy. That is the strategy, that is the blueprint. As I have said and the Procureur says, there is no distinction, and I agree with her, between a strategy and a blueprint. So we would 3160 have to say, 'We cannot really do that, I am afraid, because that is a strategy' – I am not giving way.

**Deputy Soulsby:** It cannot happen.

3165 **The Bailiff:** Point of order, Deputy Trott.

**Deputy Trott:** I was trying to be helpful, sir, and I believe I am being helpful. The point of order is, I would like to ask the Procureur the question I believe that Deputy Ferbrache should have asked her; and that is, 'What is the difference between a strategy and an *emergency* in the eyes of the 3170 law?', because that is the crucial differentiation here. That is the question he should have asked, that is the question I would like to ask as a point of order, please, sir. (*Interjection by Deputy Soulsby*)

**The Bailiff:** Deputy Trott, a point of order is where a Member is in breach of the Rules. Asking a different question does not mean that Deputy Ferbrache has been in breach of any Rules. When 3175 you come to speak, if you choose to speak, you can pose that question, and at least the Procureur has some forewarning of it. But it is not a valid point of order, because there has been no breach of the Rules by Deputy Ferbrache, who can now continue – no, you will get your chance later, Deputy Trott.

3180 **Deputy Trott:** Can I ask you a question, sir?

**The Bailiff:** No, you cannot ask me a question at this moment. Deputy Ferbrache is speaking. You can only interrupt a speaker for one of those two valid reasons: either a point of correction or a point of order.

3185 Deputy Ferbrache to continue.

**Deputy Ferbrache:** Thank you, sir.

So in relation to that situation, we would be in difficulty.

3190 At the moment, as I have just said, the strategy – the blueprint, the intent which has been published, is that when the regulations expire at midnight on 16th February, it may well be – we cannot guarantee that there will be no further restrictions. It depends what happens externally, because if you recall, one of the things I said yesterday was that we should be in line with the UK in relation to travel policy, because otherwise, we may be red-listed or something like that. I hope that would not happen. I do not expect it to happen but it is at least a possibility, and it is a possibility  
3195 that we cannot reasonably countenance.

But if we were suddenly to say, 'Actually, we are now going to impose more restrictions on travel.' You are going to have to take a PCR test two days before you travel, You are going to have to take a PCR test when you come back. You are going to have to take a PCR test five days after you have been back,' or whatever it may be, that is a change of strategy. That would need a debate in this  
3200 Assembly if this Proposition is –

**Deputy Parkinson:** Point of correction, sir.

**The Bailiff:** Point of correction, Deputy Parkinson.

3205 **Deputy Parkinson:** Yes, H.M. Procureur has confirmed to the Assembly that the CCA will retain all of the powers that it holds under the emergency powers legislation and will be able to deal with any emergency that arises as it arises; they will *not* have to wait for a States' debate on it.

3210 **The Bailiff:** Deputy Ferbrache to continue.

**Deputy Ferbrache:** I do not accept that, I just do not accept that. We would not be able to, because the wording of the Proposition, if it is upheld, is very clear: 'any strategy, any blueprint'. So if there is a change of strategy and in any event, of course, just imposing, certainly at the moment –  
3215 we, at the moment, have got no approval from the States *per se* – (*Interjection by Deputy Parkinson*) I am not going to debate it by shouting with Deputy Parkinson. He will have the opportunity, just as Deputy Trott will, to make speeches in the course of this debate when I have finished. Obviously, they are both concerned because they have interrupted me.

But in relation to that, let me continue with what I am saying. If there is that position, then we  
3220 are going to have to come back anyway, if this Proposition is voted on successfully by the Assembly – and if it is, that is what we will do, because that is what we will have to do, because there is a Resolution of the States which we must and will comply with. We will have to come back as soon as we can, saying, 'This is our current strategy, this is our current blueprint' – they are one and the same thing – 'This is what we are going to do. Can you please approve it?' We will have to do  
3225 that because that is what this says. Every variation to a strategy, every variation to a blueprint is a new strategy, a new blueprint, we will have to do that.

Deputy Parkinson has not had his finger on the trigger – to use a phrase used by Deputy St Pier in that context. I am not in a position, as a States' Member, just as I would be if I were in this room as a lawyer – if there is a duty imposed upon me, I will discharge it. I am not going to take a risk in  
3230 breaching any Rules or breaching any Resolution for the sake of it. If the situation occurred – Friday night, I am sitting at home, I get another phone call from a senior civil servant along the lines that we have and this Proposition is enforced ... I could be outvoted, of course, I am just one member. The other voting members of the CCA at the moment are Deputy Brouard, Deputy de Sausmarez, Deputy Prow, Mr Abel from Alderney, and Conseiller Guille from Sark. They can outvote me. I have  
3235 only got one vote. I have got a casting vote if it is 3-3. They can decide that I am wrong and they will make that decision.



I am telling you what I would do. I cannot speak for the other members. They will make their own judgements. They are intelligent people of integrity, all five of them – so they will do that. But this muddies the waters unnecessarily. It is over-governance and over-restriction. If the States decides – it passed it comfortably: 21–15, I think, was the vote yesterday, if I remember rightly – if we get a vote along those lines or if we get a majority of one, then of course, it becomes a Resolution of the States and the CCA will comply. I am telling you how I will react, not out of pique – because you should never act out of pique – but because I believe that I will be straitjacketed by this particular Resolution.

Thank you very much.

**The Bailiff:** Deputy Kazantseva-Miller.

**Deputy Kazantseva-Miller:** Thank you, sir.

Yesterday, very much based on that first amendment, Deputy Ferbrache seemed to have a very interesting reaction to my speech which plenty of other people did not seem to have. It was a very strange reaction and I was wondering why it was. And then I thought Deputy Ferbrache keeps calling me Deputy Casanova, (*Laughter*) and I thought maybe he is confusing me with someone. (*Laughter*) So I just had a look: someone who is a 'Casanova' is a man known for seducing women and having many lovers. And I would be flattered if I had that effect on Deputy Ferbrache, (*Laughter*) but I would maybe ask Deputy Ferbrache to just call me by my correct name, because having worked together for over a year and a half, I think calling someone by a different name is just simply disrespectful.

But actually, the core of what he said later – he said that, really, the problem with this amendment and actually taking the blueprint back to the States was: how could the Assembly possibly agree on it? We would have to debate for it for three or four days, we would disagree on everything! What an interesting thought: why take anything to this Assembly, because clearly we cannot ever make any decision? And I think, to me, this is really the crux of the debate, the policy paper, but also where we are trying to find ourselves. And to me, the key aspects of it are – and the policy paper refers to it – we have a democratic deficit in the way our current regulation around emergency power functions in relation to the pandemic, which has been in place for two years and is well-managed, but it is recognised that there is a democratic deficit in this process. And also, we are at a point where there is a real desire to normalise the ongoing management of the pandemic through our normal governance processes. So how do we move forward by addressing what are very legitimate concerns about the democratic deficit with the processes and how we normalise the situation?

I guess the issue in my head still slightly remains – and it is a little bit building on what Deputy Inder said in his very passionate speech on the previous amendment, I think – where I still have a disconnect, we either have an emergency, and then we have the CCA regulation, which actually provides a very good balance of powers. It has the Procureur there as well, the Bailiff there; it has some of the Principal Committees. It can rope in any other Deputies, whether it is Education, I know Deputy Inder has been present. So actually, this is a very robust process. It has worked. So we either have that and then we continue working through that; or we say, well, we do not really have a problem.

So why do we need to transfer powers to the Medical Officer? It has been stated that the Medical Officer has actually had a number of powers to detain and so on. I think the core of the question is that, even though by regulation from 1936, maybe they have had certain powers. But those type of restrictions, on a population scale, would really only be made in an emergency situation – at which point the CCA is enabled again and emergency regulation is effective again. In fact, if you look at the policy letter, paragraph 1.16, it basically says:

It appears to the Policy & Resources Committee that the constitution, powers, and safeguards within the 2012 Law, alongside the operationalisation of the emergency response by the public service, can neither be modified nor replaced to improve outcomes without compromise in efficiency and effectiveness.

The key part is:

Furthermore, it is unlikely that any action which restricts civil liberties would be taken outside a setting where the meaning of emergency in the 2012 Law would not be engaged.

3290 So what is it saying? Really, the only cases where restriction of civil liberties should be undertaken on the scale we have seen should be in emergency situations – at which point, the CCA is back into function.

3295 So in my head, this is where I am still unsure about what is effectively Propositions 1 and 2. I think it is definitely an improvement on what we had before, and obviously we are not giving those powers to MOH now; they will come back to us. But the question in my head is whether I am actually quite happy – we either declare an emergency or we say we are not in an emergency and then we just go back to normal. So I am at a point where, should I really vote for Propositions 1 and 2? And that is why I am keen to still continue listening to debate and Deputy Soulsby to explain a little bit about the situation. I do not want to give the powers of such restriction of liberties to – and actually  
3300 it is not about one person, it will be done through a Committee system so there is an improvement there, through Health.

But the core of it is that these types of restrictions should only be taken in an emergency setting. They have not been taken so far, since the enactment of that legislation. It has only happened in the extreme case of a global pandemic that has been going for two years, so why not keep the  
3305 emergency powers?

So I am basically very open to listening on those two points. I will be supporting the rest of the propositions, because I think – as Deputy Bury well explained – they are now more representative of the kind of policy letter and debate I think we wanted to have and the kind of issues I think we wanted to raise off the back of the concerns Deputies had, but also off the back of the concerns the  
3310 public has had. So I think the Propositions are an improvement on where we are.

I wanted to address something Deputy Meerveld was saying, because he wants to vote all the Propositions down now. I think what has happened is that there has been, really, a lot of work behind the scenes in bringing these Propositions forward. There has been well more than half of the Assembly involved in discussing, in sharing concerns, in drafting back and forth with Law  
3315 Officers, the parliamentary team, on a number of them. So there has been a huge amount, actually, of work put into it.

The Policy & Resources Committee could have decided to take the tax review approach, to say, 'Listen, we have listened to the debate and we think there is actually quite a lot of concerns coming. We are going to pull the policy letter.' To be honest, they could do something now. They could  
3320 come back to us and say, 'Listen, we have listened to the debate, we suggest postponing it to another day'. Maybe they can still do it. But Deputy Soulsby, as the representative of the Policy & Resources Committee on this policy paper, has been really engaged and really open to listening, has, I think, acknowledged that a lot of the concerns displayed have been legitimate, and has chosen to work very constructively to try to move the conversation forward.

3325 It is quite irresponsible for Deputy Meerveld to say, 'Let's just vote it down because Principal Committees of this policy letter have not been consulted and it has been micromanaging.' Actually, I think it is exactly the opposite that has taken place: there has been a lot of constructive discussion and I think we are actually in a very good position to try to move forward. But if Deputy Meerveld prefers a 'pause and review' or 'pause and kick the can down the road' approach, that is really his  
3330 choice.

He has also talked about bad behaviour and he keeps coming back to this question of bad governance and I think it is something, again, that has to be addressed. The policy letter was published around the Christmas holidays, so it is really – and I think people are allowed to have a break; this is all good for our mental health. Having said that, discussions about this policy paper  
3335 took place the day this was published. So I think Deputy Meerveld should look at the Rules of Procedure and some of the deadlines around policy publications and allowing enough time.

I really do share the concerns Deputy Bury has said. For significant policy papers which may have contentious issues, five weeks – especially over a Christmas break period – is actually not enough. There have been dozens and dozens of hours put in behind the scenes, talking, discussing, sharing, working together completely in a collaborative approach to try to improve this policy letter. So there is none of this political fracturing; this is really an attempt to improve a policy letter for the benefit of our community. So I really do not take the accusations of bad behaviour by Deputy Meerveld in regard to this process. I think this been an example of the opposite type of approach.

Just finishing on Deputy Ferbrache's speech just now, again, about Proposition 5, this is back into trying to normalise this process. This policy letter is called 'Living Responsibly with COVID-19'. Proposition 5 is about 'the ongoing management of COVID-19'; it is not about emergency situations if such arise, where the CCA has to take decisions. If we are looking to normalise how we approach the management of COVID, part of the normalisation needs to be bringing the blueprints, strategies, whatever it is, back to the Assembly; that is just part of the normalisation and living responsibly with COVID-19 is.

So I think – and others will probably address it again – Her Majesty's Procureur advised that CCA powers on emergency regulations are not affected by this Proposition. I am very happy with that advice and I think it would be a great step forward if a further medium-term blueprint is brought back to the Assembly, because it is exactly the issue we are trying to solve here. It is reducing the democratic deficit that we have had just through the way our emergency regulation is shaped; and in terms of how we normalise the decisions; and public engagement, engagement with Deputies in dealing with COVID going forward.

So as I said, I am open to listening further to debate – and especially, Deputy Soulsby, in terms of summing up with regard to the new Propositions 1 and 2, and I will be supporting the rest of them.

Thank you.

**The Bailiff:** Deputy Gabriel.

**Deputy Gabriel:** Thank you, sir.

Within hours of learning from the South African and United Kingdom scientists and the Scientific and Technical Advisory Cell (STAC) about the emergence of the new COVID variant, Omicron, at the end of last year, Guernsey acted to introduce balanced and proportionate restrictions at our borders to slow the seeding of Omicron in our Island. As more was learnt about this highly transmissible new variant and in case the situation deteriorated, measures encouraging people to change their behaviour in order to slow the spread of the virus and buying crucial time to get vaccine boosters rolled out were implemented. Thanks to the efforts of our vaccine plan, the implementation by our health workers and volunteers, a booster programme was delivered, reaching most of our population – and we have heard previously in debate about the high percentage of the population that are now vaccinated and fully boosted. I stand today on record to give my thanks to them.

Taking a balanced approach, we resisted calls from others to shut down our borders all over again. Many nations across Europe have endured further winter lockdowns and many have seen hospitality curfews and nightclubs closed, capacity limits at sports stadiums, the return of social distancing, and in some places, Christmas and New Year as good as cancelled. However, we kept Guernsey open and supported those businesses that faced reduced demand, primarily in the tourism and hospitality industries, because of the response to these measures.

Although we must continue to remain cautious, the data is showing that Government got the toughest decisions right. Our Hospital was not overwhelmed. Yes, we unfortunately had COVID deaths, and one death from COVID is one too many. The latest data shows clearly that infection levels are falling, and it looks as if the Omicron wave has now peaked, so I can see the reasoning for this policy letter: to learn to live with COVID.

Because of the extraordinary take-up of the vaccine booster campaign I mentioned earlier, together with the way the public have responded to the measures, we have already seen the

3390 relaxation of restrictions. We are now able to return to the workplace, if working from home, and we now have the removal of face coverings for those who want to where it is safe and responsible to do so. The Assembly will know that some measures remain, including those on self-isolation, and I am hoping that this debate on the policy letter will lead to a time when we can move to remove the legal requirement to self-isolate altogether – just as we do not place legal obligations on people to isolate if they have flu, for example.

3395 As COVID becomes endemic, we do need to replace legal requirements with advice and guidance urging people with the virus to be responsible, careful, and considerate of others. In advance of that, today, we see an amended policy letter which does not define the long-term strategy for living with COVID-19, but at least it gives direction. But in my mind, Proposition 5 has a fundamental phrase missing from the end of it: either the strategy should be defined if it were in  
3400 *pandemic* or an *endemic* situation. And I am quite comfortable with the CCA's powers and remit and put on record that I believe they have done an exceptional job, both under the previous administration and this administration – for want of a better description. But now, the strategy should be defined that we are living with COVID in an endemic situation.

But of course, we do not make that categorisation, it is the Director-General of the World Health  
3405 Organisation who declares it an endemic. And I have even heard anecdotal evidence that Omicron is not a mild disease for everyone, especially if you are not vaccinated. We still see hospital admissions because of COVID. Again, recently, the World Health Organisation said that, while the global situation remains challenging, the United Kingdom can start to see the light at the end of the tunnel; I hope we too can see that light.

3410 We must now learn to live with COVID-19 and not rely on emergency powers which get revisited every month. So I agree that it is entirely correct that we must consider whether the current legislation that protects public health is amended so a response is not purely based on emergency powers. We must act responsibly, but with proportionality. It is entirely correct that the 1936 Ordinance is amended, and that we come out of emergency powers, but not into a vacuum or a  
3415 void. So I am hoping this policy letter, as amended, will be the catalyst for that and create an update to the 1936 Law.

The amended policy letter now allays my fears that, if the Propositions are passed, there could be appropriate democratic oversight and scrutiny at a political level in the exercising of those powers by the Medical Officer of Health or the Committee *for* Health & Social Care. There also now  
3420 appears to be – again, if the Propositions are passed – an appeals process.

I am sure Members will agree with me that our current incumbent Medical Officer of Health has been nothing short of amazing, showing that the valid and relevant experience in dealing with virology has paid off – and indeed, having the foresight to run an exercise on how to deal with the effects of a wide-reaching virus or pandemic. But again, we may not be so fortunate in the future  
3425 to have such an expert if another pandemic befalls us or future generations, so we must rely on those checks and balances.

I am grateful to Members for taking part and raising the amendments. I think we have had a good, if somewhat protracted, debate and gone down a few rabbit holes. But I will be supporting the Propositions as amended and as laid, and I hope Members will too. I believe the policy letter is  
3430 now much stronger.

Our Island's response is no accident of history. Confronted with its biggest challenge since the Second World War and the occupation of the Bailiwick and the worst pandemic since 1918, any government would get some things wrong, but I believe this States and the CCA got the big things right. So let us continue to get things right, get Guernsey back on its feet, and live alongside this  
3435 virus, instead of in its shadow.

Thank you.

**The Bailiff:** Deputy Dyke, you have joined us remotely. Is it your wish to be relevé?

3440 **Deputy Dyke:** Yes, please, sir. Thank you.

**The Bailiff:** We will mark you as present then.

**Deputy Dyke:** Thank you, sir.

3445 **The Bailiff:** Deputy Inder.

**Deputy Inder:** Sir, just briefly, I think it was Deputy Parkinson saying I made a bit of a mountain out of a mole hill about his amendment 1, which is now Proposition 5. And it is true, I probably did, but only in as much as, when we are in this Assembly, the accuracy of the amendment is absolutely  
3450 clear. Clear direction from each amendment has to be embedded within the amendment itself. And actually, interestingly enough it says – this is one of the problems I have still got with it:

To direct the Civil Contingencies Authority to submit for consideration by the States a Policy Letter and suitable Propositions for the approval ...

– to the States at some point, but there is no date on it. Actually, I do not think the CCA will do it  
3455 but this is about the accuracy of writing prescriptive amendments, and amendments do need to be prescriptive somewhere. There is nothing here that sets a timeline for the CCA to ever come back to the States, so if they really did not want to, they would not necessarily be in trouble never coming back to the States.

I can give two examples. And this is for newer Members, because I was new once and I have  
3460 fallen into the same trap. I have supported or written amendments, gone outside the States, punched the air, and found I have been foiled, either by a change of name. I will give a very good example. I think some of us will remember, back in the old, I think it was, the IDP debate, I think it was Deputy Graham and Deputy Green brought in an amendment wrapped around what was the Cobo Alice field. It was not particularly prescriptive. I think it said something along the lines of ‘no  
3465 development along that area’, and those who will cast their mind back will remember that debate.

So we left thinking there would be no development, but the wording was not quite right. What it did not say was you could not extend your curtilage and you could not build a wall round it. So when we left that meeting supporting what we thought had saved Cobo Alice field, that had been defeated by the wording of the amendment, because it did not say ‘You cannot extend your  
3470 curtilage and build a wall round it.’ So effectively, the Cobo Alice field is what it is today; it looks like it has been extended in someone’s curtilage. So that is why that is quite important.

And there is another one and actually more substantial is that there was the old Policy & Resource Plan. And it was somewhere around the FDS process where I wrote an amendment; it was about asking Policy & Resources to report back at the next iteration of the Policy & Resource Plan and report back on the performance of Agilisys. So I automatically knew, as someone who has come out of IT contracting, those big things can sometimes go wrong and absolutely, there needs to be some kind of oversight by this Assembly.  
3475

That never came back to the Assembly, and the reason why is because we never had a Policy & Resources plan. What we did was we went and had an Election and we had a Government Work Plan. So technically, that amendment was connected to the Policy & Resource Plan, so Policy & Resources never had to adhere to that because the wording ... and that was not on purpose, that was more by accident because of the changes. So it is really quite important that the wording is correct.  
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And it is worth stating here there is nothing that directs, under 5, that the CCA ever come back. But I tell you what: I have got to chuckle when I hear a couple of advocates, a Crown officer, a financier talking about strategies. Coming out of advertising and IT, there are so many variations and I see this word thrown around time and time again. I am not entirely sure, if we took all 40 people out of the room and asked them exactly to define what a strategy was, we would come up with forty different answers. In IT terms, we are looking at systems planning and design, construction  
3485 and evaluation. Depending on what advertising you are looking at, you almost start with the  
3490

objectives. Out of that, you are likely to come out with a couple of vision statements; you then move on to the strategy. You will be at marketing and tactical, of which, there will be sub-strategies in there.

3495 So I am not entirely sure what a strategy is in this context. And that is the difficulty I have got with 5 – and the fact, philosophically, I have never particularly had a problem with the CCA. So I will not be voting for 5. I will be voting for 4, because I think that point was well-made and I think, while talking – I think as Deputy Kazantseva-Miller mentioned, and possibly Deputy Bury – to be perfectly honest with you, a few people getting in a room to decide to have concerns about something, someone sticks their hand up and says, ‘I am not too sure about this,’ a few people wrap around it.  
3500 I have been there before on a number of projects. When you are new to the States, it is quite lonely sometimes and you wonder where your friends are on certain subjects and you all wrap up in a corner; suddenly, something good comes out of it and amendments come.

3505 The difference is, of course – which newer Members will not realise – everything does feel different in the States because of the emergence of Island-wide voting and parties turning up, turning down, shifting across the floor. We have got another party that seems to turn up. Everything does feel different. There is a natural suspicion in there, plus the way there has been some activity out of the media. Somewhere in all of that, I do not blame 13 people who get in a room to try to improve something, but you have sometimes probably got to understand that the reason some people are slightly suspicious of it, perhaps, is because some of those same people in the same room were doing something different at the election. So I am not going to give anyone any stick for that.  
3510

3515 So number 4 I am going to support; number 5 I am going to reject; number 3 I am going to reject; and 1 and 2, I am in the same position I was before, I do not need to repeat myself. And what is interesting is that I think, to be perfectly honest with you, in part, it was Deputy Gabriel that possibly argued himself out of his own position. What he said was that over the last four or five weeks, he was entirely proud of, effectively, without saying it, the CCA, how they have delivered us out of Omicron. Yet he is now going to apparently vote for a completely different system which is entirely untested – which is kind of my point. It is up to you. I am not going to persuade any of you any more. I just cannot do it. You either accept that the CCA is on its way out, it is de-escalating itself, it will disappear – and me, no disrespect to members of the CCA, I hope I never see them in the same room again, because that can only be good for the economy – or you want to create another system, pile on other civil servants into another system which is completely untested, and hand that power to a smaller group of people.  
3520

3525 It is entirely up to you. I know what I am going to do, and it will not be Propositions 1 and 2. Please, let’s get over this together, let’s go with what we all accept has worked. We are going to get a review on it via Proposition 4. We will find out how bad or how good it was and then make a decision. But this is an overreaction, and for the life of me, I am still not sure. It does not matter what Deputy Soulsby tells me, we are not under Resolution to this and we have done this to ourselves – well, I have not. Propositions 1 and 2 I will reject, probably 3, yes to 4, and no to 5, and that is where I am.  
3530

Thank you very much.

**The Bailiff:** Deputy de Sausmarez and then Deputy Trott.

3535 **Deputy de Sausmarez:** Thank you, sir. I will try to be brief.

I think I would like to start with Deputy Ferbrache’s points around Proposition 5. I understand that his concerns are heartfelt. I think he, out of all of us, has been in the hottest seat, so I can understand his concerns around this. But I do disagree with his interpretation of Proposition 5, and I just cannot see how it fetters the CCA. Her Majesty’s Procureur has confirmed that it does not  
3540 fetter the emergency powers, and in the scenario that Deputy Ferbrache described on 22nd and 23rd January, those emergency powers would have enabled the CCA to make exactly the same

decisions and take exactly the same action. So I think, although I appreciate his concerns are heartfelt, I do not think they are anything for us to worry about.

3545 And also, just to build a little bit on that, not only can the emergency powers not be fettered by the existence of a States-approved strategy – indeed, many of the CCA’s actions, many of the measures that we have had to put in place, have necessarily run roughshod over States-approved strategies because that is the nature of them, they are emergency measures – but also any strategy or blueprint can, and arguably should, contain what we call adaptive triggers, which are exactly the mechanisms to say obviously, in certain situations, we would take a drastically different approach.  
3550 Now of course, not every scenario can be pre-empted or foreseen with any degree of accuracy, but that is why you have got the emergency powers, and those emergency powers remain constant. So I do not think there is any threat to those and I cannot personally see any threat in terms of hindering necessary emergency measures that need to be taken.

3555 On the subject of the CCA and how it works, I do agree with Deputy Bury’s analysis and others – maybe Deputy Kazantseva-Miller – it is actually quite robust and surprisingly flexible, perhaps. Deputy Helyar, when he spoke on one of the amendments, said that Treasury is not represented; but actually Treasury is represented because Treasury sits under P&R, and of course P&R is represented in the current circumstances, very ably by Deputy Ferbrache.

3560 But of course, it brings to the forefront another aspect, which I think is a really useful one, of the CCA: that any relevant Member can be drawn in, invited in to advise the CCA so their views and experience and perspective can be taken in to account and decisions made accordingly. So I think that is a really useful function; it is one that has been made extensive use of, especially recently, and of course that provision will also remain. And of course, there are many aspects to the current management of COVID. I know it is very difficult for members of the public to discern which policies  
3565 are being decided by which body of people, but of course policy around education is rightly made by the ESC Committee, obviously, working very closely with Public Health. Decisions on the vaccination programme are quite rightly made by the Health & Social Care Committee, etc. So we already do have lots of people informing our approach.

3570 But coming back to the central point of this policy letter and the purpose of moving on, we are sort of in this tricky halfway house – aren’t we? – where it is an emergency but it does not feel like an emergency and it is a very long emergency, and it is where you draw that distinction. Deputy Brouard did say he favours the very clear-cut approach of if it is an emergency, it is the CCA; and if is business as usual, then it is the Committees, and I think that works beautifully in theory. But I think the problem that we have got is that it is a very grey area, it is a very muddy area at the  
3575 moment, and it is not actually very easy to distinguish. There is lots of debate about ‘Is it an emergency?’

3580 And actually just touching on that briefly, I think one of the complicating factors is that it might not feel very much like an emergency to some people, but I think we have to acknowledge the role that successful and effective measures play in that. So it might not feel like an emergency because certain measures that have been put in place have been very effective and done their job. So it is really complicated.

3585 But certainly, this has been a very protracted situation. Most emergencies that I am sure the original CCA Law had in mind obviously needed dealing with in a very short space of time – some things still do in this circumstance – but most of them were envisaged to have been over much quicker. And I do think that is what this policy letter is attempting to resolve. It is that tension which this policy letter is attempting to resolve. People have been a little bit harsh on the policy letter, I think and I understand that, but actually I think P&R had a really difficult job in writing it. It is the classic case of it is very easy to not like something or oppose something or whatever, but when it comes to proposing a workable alternative, that is where the issue is.

3590 So actually, I think this debate might have been messy, amendments might have been a bit too short-notice for some people’s liking, etc. But actually I think although it has been a slightly messy process, we have got there and I think in that process we have had quite a useful debate and it has teased out some of these core tensions and themes. And I think what we have ended up with –

3595 what I like about the amended Propositions as they currently stand is, actually, there are not any knee-jerk reactions here in terms of the really big stuff. We are not passing legislation today, we are not being overly prescriptive about how things should be done. We do have further opportunities for that detail to be given due consideration and again debated and endorsed – or indeed amended – by the Assembly.

3600 Just finally, slightly out of sequence actually, Deputy Inder said that something that Deputy Gabriel had mentioned was logically inconsistent; I completely disagree. Deputy Gabriel was talking about the response to the most recent variant, *Oh-mi-cron* – or *Oh-MI-cron*, I won't give up! – and these are not mutually inconsistent. I think that brings us back to the core point, which is: when emergency measures are needed, emergency measures will still be there. It is exactly the point!

3605 But I think it is also increasingly important that we do have the right democratic input into the longer-term approach. And yes, things can veer off and unexpected things can happen, but I think it is only right that this Assembly is the ultimate arbiter of what the Island's longer-term strategy is with respect to COVID. And so I am glad that that opportunity will be afforded the Assembly, and unless I hear anything in debate that throws me off course, I am intending to support all the Propositions as amended.

3610 Thank you.

**The Bailiff:** Deputy Trott.

**Deputy Trott:** Thank you, sir – as am I.

3615 I would like to address two matters. The first is this issue about 'the Assembly micro-manages'. The Assembly does not micro-manage; the Assembly is the executive. Individual Members may try to micro-manage, but it is this Assembly functioning as an executive that decides on the direction of travel. That is how it must always be. (**A Member:** Hear, hear.) This Assembly makes Rules of Procedure, but if this Assembly decides to suspend Rules of Procedure it is entirely within its powers to do so.

3620 Now, I do think that not being able to ask for legal advice in the cut-and-thrust of debate is something that we should address, and I would ask my friends and colleagues on SACC to consider that. I completely accept your guidance, sir, but it does seem to me to be that there are occasions when some immediate legal advice would be welcome, particularly when it is immediate legal advice that would be repeated; because as Deputy Parkinson said, we had already received legal advice from Her Majesty's Procureur that made the position quite clear.

3625 Now, a strategy is a plan of action designed to achieve a long-term or original aim – and we have a number of those, ranging from a desire to build so many houses a year through to controlling inflation, having fiscal rules, and the like – whereas an emergency is a serious and often dangerous situation requiring immediate action. I doubt there is a person in this Assembly, with one possible exception, that cannot differentiate between the two. It is quite clear what an emergency is. And as we know, the CCA retains all of their powers under the existing legislation. A good way of maybe describing the difference for the one person in this Assembly that seems to struggle with the difference is to say: a strategy might be to spend seven hours a day in the office – admittedly, 3630 potentially charging for nine or 10, but spending seven hours a day in the office – but if the office is on fire, that is an emergency and you had best get out of there and ignore the strategy of working in there for seven hours a day! (*Laughter*)

3635 I am going to make a serious point here, and I mean it. If Deputy Ferbrache cannot work under the guidance of this Assembly – and particularly, around Proposition 5, if it passes – then step aside and let somebody else adhere to the wishes of this Assembly. But what I would ask you not to do is play games with the law, because he knew, sir, as well as everybody else in this Assembly, that he was asking the wrong question. So I wish to ask the right question now of Her Majesty's Procureur. She has had a little while to think it through. Her Majesty's Procureur – through you, sir – what is the difference between 'strategy' and 'an emergency' in terms of the law?

3645



**The Bailiff:** Madam Procureur, are you able to assist with the question that Deputy Trott has just posed?

3650 **The Procureur:** Sir, I will let Deputy Trott be the judge of that, and the Assembly. But if he is referring, as he is, specifically to the 2012 Law, as he knows, there is a definition contained in Section 2 of that Law as to what an emergency is, and as all Members will be aware, there is not a definition of 'strategy'.

3655 **The Bailiff:** For anyone who wants to see it, it is in paragraph 3.6 of the policy letter.

**Deputy Trott:** I had not finished, sir.

**The Bailiff:** Continue, then, please, Deputy Trott.

3660 **Deputy Trott:** Thank you.  
The 2012 Law, Section 2, is shown on page 7 of the policy letter. It says:

... "Emergency" means  
(a) an event or situation which threatens serious damage ...

– like a fire in the office, potentially –

(a) ... to human welfare or the environment in the Bailiwick, or any part thereof ...

3665 So quite clearly, the moment an emergency presents itself, if it is deemed to be an emergency, a proportionate response is necessary, and therefore, it trumps any strategy at that time – and that is the salient and relevant point, sir. There is a material difference between a strategy and an emergency. We all know, sir, what a horse looks like. We can all tell a horse from a dog, it is not that difficult.

Thank you, sir.

3670 **The Bailiff:** Deputy Matthews.

**Deputy Matthews:** Thank you, sir.  
I was very pleased to see –

3675 **The Bailiff:** Can I just remind you, Deputy Matthews, that you did stray quite a long way into general debate in speaking on amendment number 1, so please do not repeat that.

**Deputy Matthews:** I did, sir, but I did cut short some of that (*Laughter*) so that I might be able to make a couple of brief points during this general debate, if that is acceptable.

3680 I will briefly say that I had reservations about the policy letter as brought. I did not think it went far enough in order to get away from emergency powers. I think this goes a lot further than it had done without the amendments, so I will be supporting all of the Propositions here. I think there has been quite a good process in terms of adding to the single Proposition that was there. I do not think it goes quite as far as I might have liked it to go; I still do not think we are quite moving  
3685 towards being able to look at things like border controls other than through the CCA. But that, sir, I think I will just have to accept is not going to happen.

I did briefly want to respond to Deputy Ferbrache on a couple of points. I think this thing about Proposition 5 and the concerns about Proposition 5 – and Deputy Ferbrache had said that he was trying to work it out on his way home yesterday – I can understand exactly where the conceptual  
3690 difficulty comes from. Normally, with a Committee, if you have an approved strategy or you have some bind where you have to seek approval in order to do something, you cannot do anything until

you have sought approval from the States to do it; you are just prevented from doing it – which is, of course, the complete opposite of the CCA, which can do things and seek approval in retrospect. I think I am entirely happy that it does not prevent the CCA from doing anything in an emergency; but even in the case that it were to prevent the CCA from acting in an emergency, the way around that and to deal with the situation that Deputy Ferbrache described would be to put some sort of disclaimer into the strategy itself. And actually reading through it, it looked like that is exactly what there is.

Deputy de Sausmarez mentioned about the adaptive triggers, and I am looking at them now. On page 10, it starts off with:

Furthermore, there are key factors which may signal the need for to emergency regulations to be reinstated through the Civil Contingencies Authority. These adaptive trigger factors are:

- A threat to maintaining critical, operational and emergency services due to staff absences for any reason;
- Any combination of circumstances which the Acute Hospital Cell determines threaten to overwhelm local healthcare infrastructure;
- A booster vaccination, and any other vaccination programme recommended by The Joint Committee for Vaccination and Immunisation (JCVI), which could not be delivered in the Bailiwick;
- Any other matters identified by Public Health that were causing serious concerns;
- A new variant emerges which evades the current vaccines thereby removing the protection against the most severe consequences of the virus.

I think the penultimate point:

- Any other matters identified by Public Health that were causing serious concerns;

– is a catch-all that pretty much catches everything, because anything that Public Health felt was a serious concern has already been stated would reinstate the Civil Contingencies Authority's need for emergency regulations.

So it is already in the strategy – I do not think it actually needed to be there, but it is already there – so I think that covers everything. And I think it achieves the thing that I had been suggesting would be a good thing to be able to do, which is to have the CCA doing what it does – which is to put regulations in place very quickly in an emergency – but to be able to have some say on how those measures would be de-escalated because there is no ticking clock about taking the items away, it is more possible to have a broader debate. And this is something, sir, that Deputy Ferbrache may remember I had discussed some time ago and had done in the Committee for Health & Social Care as well.

So I am very happy that the policy letter and the Propositions now represent an improvement over the original paper and I will be happy to support all of them.

Thank you, sir.

**The Bailiff:** Members of the States, at this time normally we adjourn until 9.30 tomorrow, but let me just ask those who intend to speak who have not yet spoken in general debate – recognising that Deputy Soulsby would reply at the end of it – to stand in their places just to give us an assessment of how many people want to speak.

Members of the States, in those circumstances – and obviously, there might be some requests from those who are attending remotely – I am going to put to you the proposition that we continue to sit to conclude the meeting today, rather than adjourning tomorrow. Those in favour; those against.

*Members voted Pour.*

**The Bailiff:** I will declare that carried, so we will continue.

Who now wishes to speak?

Deputy Mahoney.

**Deputy Mahoney:** Apologies to Deputy Taylor.

3735 I will start off by agreeing with the previous comments – I think it was Deputy Meerveld that made them – that this truly is now a dog’s dinner. My name is at the bottom of the original policy letter, along with many others, but I was always on the edges of support for this. But all things considered, I was convinced that it was right. But what has been cobbled together here and now is nothing like that. This is frankly now a Frankenstein policy letter – (**A Member:** Hear, hear.) a bit from here and a bit from there – and boy, is it ugly.

3740 In any event, I was convinced to support then; but things have changed and they have changed quickly and, in my opinion, favourably. In fact, we have seen in this meeting how quickly things can change. Whilst we were debating amendment 1, now Proposition 5, which asks for a blueprint, an email literally pinged into our inboxes with the CCA blueprint that was being requested; but there we are, still in the papers now in front of us. I am not going to revisit the hundred arguments that have been put forward, as they have been flogged to death by this Assembly, and on many of these matters, people have already made up their minds anyway, so it is a pointless exercise.

3750 However, we are where we are now and this is a wheel that does not need reinventing. The CCA has sorted this issue well under the previous and current Chair, and it definitely ain’t broke and definitely does not need fixing. This is us driving a perfectly functioning bus, pootling along, avoiding potholes, and just before we hopefully get to our destination, the shouts from behind the driver are to, ‘pull over, pop the bonnet and let’s have a little tinker, let’s loosen some stuff, tighten this and that; let’s just see if that works.’ And everything has been working fine anyway.

3755 No-one knows the future, but with a following wind we could be out of this very soon. So because of where we are now, because of the recent changes from the CCA, I will be voting against all of the Propositions and urge Members to do the same.

Thank you, sir.

**The Bailiff:** Deputy Taylor.

3760 **Deputy Gollop:** Oh, this will be good!

**Deputy Taylor:** You caught me by surprise there, sir. Thank you.

I do not intend to say a huge amount; (*Interjections and laughter*) I tend to say an awful lot! (*Laughter*)

3765 No, I just want to say that I will not be supporting all the Propositions here, even though I did support some of them when they were being debated, and I just want to highlight the reasons really. I am not picking on Deputy Matthews in particular but I will use him as an example. We sit at quite opposite ends of the spectrum in terms of what we would be doing. If I had my way – Deputy Ferbrache did ask what my recommendations would be – I would have removed many regulations many months ago and been done with it – ‘Let’s just get on with it’. On the very opposite end of the spectrum, I think Deputy Matthews would still have border restrictions in place and whatnot. So for me, I would accept that actually the CCA sitting somewhere in the middle of that probably is fairly sensible at the moment. I do not really think we need to be chopping around, changing things.

So I will not be supporting Proposition 1/2 and that is basically my reason.

3775 Thank you.

**The Bailiff:** Deputy Gollop.

3780 **Deputy Gollop:** I have already spoken quite a lot, but there were some general points that I wanted to make. I hope they are not too controversial, but some of them are, in a way.

I enjoyed Deputy Mahoney’s speech – punchy, as always! – and he had a good analogy with the bus. Of course, some buses in London – Routemasters, ‘Borismasters’ – used to have conductors as well. If we had a prime-ministerial, more executive system, Deputy Ferbrache would be our driver

and maybe Deputy Soulsby would be our conductor, in this sense. But we have an executive of 38 not just angry passengers, but 38 or 39 drivers! That is the issue because we are all part of an executive. Maybe there are too many of us, (**A Member:** Hear, hear.) maybe we do not have designated roles. But that is the issue. And we all have an Island-wide mandate – with the exception of the people from Alderney, who have an Island-wide mandate from Alderney – and we all have equality in that sense. So we have a difficulty – but that goes well beyond the scope of this.

We have to somehow both act correctly as a Government, and also take the public with us. And for that reason, I am wary of Proposition 1, even though Deputy St Pier's and other amendments have won. I know it is not giving the Medical Officer of Health new powers, but of course, coronavirus is a new context and I think people would welcome a degree of possibilities of appeal or maybe more consideration of what options are there. But if that goes through I can understand it and I think I will support all of them.

I think we made heavy weather a bit of the nightmare vision – Deputy Ferbrache and others – of having to make a decision based on good evidence and having to call up 39 or whatever States' Members to meet. Although we could meet more quickly! Perhaps the courthouse and its timetable is occasionally a constraint, but we met virtually on Boxing Day one year, on Christmas Eve another year. We could meet online, there is nothing to stop that, but I am not saying that is advisable.

I think what we should bear in mind with this is we are, as Deputy St Pier pointed out, restricting and have restricted – and he, of course, was a significant part of this in 2020, because he was doing his job very well – we restricted people's freedoms on many levels. The difficulty the United Kingdom Government appear to have is that they too restricted, and maybe they took political parties in the wrong spirit – I do not know. But where we are is we restricted for health reasons.

The policy letter that we had was out of date by the time it was published because it goes into the reasons why new thinking was necessary in November/December. But as it has turned out – although it has been a tragedy that some people have been very ill and have passed away – most people who got Omicron got over it relatively quickly and it did not prove perhaps as dangerous as earlier variants, and we were able to live with a high level of cases in the community. That was not the case a year or 18 months ago and it would have been irresponsible to do so.

So in that context, we know with hindsight that possibly we were a bit over-cautious; but what was curious in the two months leading up to Christmas – and Deputy Inder used to say, 'I wanted to live at Christmas, but not with parties and all other gatherings not happening' ... but some did and some did not, it was quite random. The rules were variable. There was more emphasis on personal safety, rightly, and some people were making their own decisions. And maybe it is now, as one news media said, that common sense has to take over, rather than controls. And that is why I prefer, really, a safe but libertarian approach.

But I have to say, we were lobbied in coming in yesterday and today. And you cannot just take this things out of context, but if these statistics are accurate it would indicate that, for some reason, 2012, 2016 and 2017 had a higher death rate in Guernsey than recently. That appears to be statistically the case in Jersey as well. The point that makes is, not only were we extremely effective on the Island, thanks to our Health, in preventing too many fatalities and any of the horrors that Deputy Aldwell and others referred to, but that people unhappily, especially when they are very elderly or have underlying health conditions, do pass away.

And that reminds me of another debate – because I have been around a bit, we heard – about five years ago, when many Members – Deputy Roffey was a passionate supporter, and actually Deputy Ferbrache was as well – were questioning why if you went to hospital in Southampton and you were from Guernsey, you had potentially access to a smaller number of life-saving or important drugs. And the answer we got back at the time was that Guernsey had budgetary constraints and many other issues; and that of course became a big debate. In that era, therefore, we had to balance the strength of our society, in terms of taxation, the economy, our way of life, against the needs of individuals who had health issues that required more input.

And the paradox is that the relatively low death rate – which thankfully, we managed through sound prevention – has meant that our economy possibly took a hit of £50 million or £100 million

for a relatively small number of cases. That is why I want strategic thinking on how we cope with this and other measures, how we can both protect and shield the most vulnerable but not necessarily change everyone else's life.

And that is also why I am wary of society becoming too ... Even in my own life, I would say too many people try to micro-manage me, sometimes in the health and social care field, as to what I should have. And you have to think that at one time authoritarianism was all about soldiers and – I will not say police officers – people in uniforms; perhaps we are getting more of a sense of what is good for you from the 'health police', people who say, 'You should do this, you should not do that. We are doing it for the benefit of yourself, for the good of society, for protecting ...' and I stand a sceptic of that.

So I will support most, but not all, of these Propositions.

**The Bailiff:** Deputy Queripel.

**Deputy Queripel:** Sir, thank you.

In relation to this whole COVID issue, when Deputy Ferbrache and I were having lunch with some of our colleagues in the autumn of last year, knowing I have a great interest in the history of pop music, he asked me who sang a song in the 1960s entitled Make Your Own Kind of Music? I informed him that was Mama Cass, and I added to that that I often feel as though I make my own kind of music when I make speeches in this Chamber, because there is a line in that song that reads:

Make your own kind of music,  
Even if nobody else sings along.

As we all know, sir, I was very much a lone voice in this Assembly on COVID-related issues for several months. Thankfully, that is no longer the case and I take great comfort from some of my colleagues now being so concerned they put so much work into collating and compiling the amendments that were laid before us in an attempt to amend the original Proposition, of course, and make it what I refer to as 'a lot more palatable'. But, sir, in saying that, I want to emphasise I am in no way criticising colleagues who laid that original Proposition in front of us; they did that with the best of intentions. They genuinely believed they were championing what is best for our community, and I applaud them for that. Some of them even supported the amendments, and I applaud them for doing that as well.

I very much hope that now we got this far, those who supported the amendments – and there were 24 of us in total in what I refer to as the 'main' amendment, do not now throw the whole thing out because although these Propositions before us are not perfect, surely they are a lot more palatable than the original Proposition.

Sir, I have a lot of respect for Deputy Prow – who is not in the Chamber at the moment, unfortunately – but he confused me completely when he spoke. He said he cannot vote in favour of Proposition 5 because Proposition 5 puts a straitjacket around the CCA. Then he quoted from paragraph 4.6 of the policy letter, where it says:

The Committee *for* Home Affairs ... felt strongly that any such restrictions to be imposed widely ... should ultimately be a political decision and not rest with a statutory official ...

Then he said he agreed with Deputy McKenna when he said in his speech that statutory officials should always be trusted and left alone to get on with their job. And seeing as 'clear clarity' is a phrase that has been used a couple of times in this debate, I feel in great need of that at this moment in relation to what Deputy Prow said when he spoke.

Sir, in closing, I ask for a recorded vote when we go to the vote, please.

Thank you.

**The Bailiff:** Is that a recorded vote on every Proposition, Deputy Queripel?

**Deputy Queripel:** Yes, sir, please.

**The Bailiff:** Right, so there will be four recorded votes.  
Deputy Parkinson.

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

I am going to speak mainly to Proposition 5, which was introduced as a result of the amendment placed earlier in this meeting by myself and my colleague. This, to me, presents the States with a hierarchy of decision-making. And I think Deputy Kazantseva-Miller, who unfortunately is not in the Assembly at the moment, did a very good job of explaining this, but since some people are evidently confused about it still, I would like to spend just a few minutes elaborating on what I mean by that hierarchy.

At the top of the hierarchy, in my view, are the emergency powers which are granted to the CCA under the emergency powers legislation. These are statutory powers which cannot be overturned by a Proposition in a policy letter in a debate. And H.M. Procureur has confirmed that the CCA will continue to have these powers whatever we decide in the votes which are coming up.

Moreover, the term 'emergency' is defined in the Law, as Deputy Trott has pointed out, so there is no ambiguity about what an emergency means; it is set out in statute for us to read. And furthermore, I would add that it is for the CCA itself to determine when a state of emergency exists, so we are not going to be having debates in this Assembly about 'Is this an emergency or is it not?' The CCA makes a decision about when there is an emergency and their decision, effectively, is final. And once they have decided there is an emergency their powers, under the Law, are engaged.

So that is the top level in the hierarchy. However, the legislation clearly probably did not contemplate that we could have an emergency that has continued for nearly two years and may continue for yet longer. Certainly, we have a problem that there is a lack of democratic authority for the actions which the CCA have been taking over the last two years – or almost the last two years – and it is that lack of democratic authority which this amendment seeks to address. Proposition 5, therefore, simply asks the CCA to bring its strategy or blueprint for future management of the pandemic, fully accepting that it may now be almost at an end, to the States for approval.

Now, the words 'strategy' or 'blueprint' are not defined in this amendment, and some Members have made great play of 'What do these words mean?'; I think they carry their natural dictionary meaning. To most people, if not to Deputy Ferbrache, they refer to high-level policy. Specifically, they do not encompass, I think, in the natural meaning of the words, the operational detail of the way the States handle any emergency. And since it is the job of the States Assembly to make policy, this is exactly what the States should be doing: we should be seeing the overall policies for managing, hopefully, the end of this pandemic and moving into a state where COVID-19 simply becomes endemic, and we should, at a high level, approve the strategy or blueprint that the CCA proposes for handling that situation.

We are not here to micro-manage operational detail, and attempts to say that the CCA would not be able to deal with any problems that arise along the way without coming to the States for a debate to amend the blueprint or strategy, I think are nonsense, and Deputy Trott has very ably illustrated the difference between strategies and operational detail.

So in my view, Proposition 5 reflects that hierarchy of criteria, and I think with good will, we would be able, all of us, to reconcile the requirement that the democratic deficit be rectified with operational efficiency in the case of exigencies created by the emergency. Yes, the pandemic may be coming to an end. And I said at the very beginning of my speech introducing this amendment that we had debated, Deputy Matthews and I, whether this amendment had been overtaken by events.

I said then that we thought the debate should go ahead and the amendment should be brought – and fortunately for us, the Assembly supported it – because it establishes an important principle. Where, necessarily in an emergency, the normal processes for democratic accountability

3935 have to be suspended and power to deal with the emergency is delegated to a small group of  
Deputies on our behalf to manage the crisis, the suspension should be for the shortest possible  
period; it should be proportionate to the emergency that we face; the actions of the CCA should be  
proportionate; and normal democratic accountability should be restored at the earliest possible  
opportunity. That is really all this amendment says.

3940 We are now entering the endgame of the pandemic and we are not now dealing, generally, with  
day-to-day crises. The numbers of infections are falling, the numbers of deaths have remained  
mercifully very low, we have three people in hospital – and we feel very sorry for them, of course,  
and wish them a speedy recovery – but this is no longer a national crisis in the way that it was in  
the past. In the new circumstances, it is right and proper that normal democratic accountability  
3945 starts to be restored.

So quite simply, that is why I ask you all to vote for all of the Propositions, including Proposition  
5, because I think it represents a reasonable response to the situation we are now in. I think, as I  
said, with good will, we can make these measures and these Propositions work. There will be some,  
it seems, who are determined to try and make them unworkable, but I hope the Assembly will reject  
3950 those kinds of messages and exaltations, and I urge you all to support all of the Propositions.

Thank you, sir.

**The Bailiff:** I am going to turn back to Deputy Soulsby, as the Vice-President of the Policy &  
Resources Committee, to reply to the debate, then, please.

3955 **Deputy Soulsby:** Thank you, sir. I am glad to stand up after that, actually.

Deputy Meerveld – I will probably touch more on what he has to say at the end. He had another  
comment about being a dog's breakfast, dog's dinner, or dog's evening tea – I do not know.  
(*Laughter*) From my point of view, I actually do think what we have ended up with is better than  
3960 what we started with. (**A Member:** Hear, hear.) But then, we started off – and this is why I think  
please, do not shoot the messenger – having to answer a specific question: what do we do when  
we cannot rely ... how do we get out of relying on emergency regulations? It was not about doing  
a review; it was not about what we might do in terms of the wider powers of an MOH, Chief Medical  
Officer, and all that. It was purely to answer one question. But that does not mean what we have  
3965 ended up with is any worse than what we started with, and I do have real problems if people think  
that the answer to this is to vote it all down because it is different. I really do worry, and I will go  
back onto that in a moment.

I am not going to spend hours, you will be pleased to hear, on my closing speech.

Deputy Bury said this is not what she thought it was going to be about. And I say it again: please  
3970 do not shoot the messenger. We were answering a specific question from the CCA. Honestly, if it  
was up to me and it was my policy letter – but we do not have that system – I very much would like  
to have made it clear that a review would be undertaken, made it very clear that we need to try and  
get the Public Health Laws looked at in more detail. But we are not, and I very much believe that  
those additional Propositions do add something. And of course, it is really difficult – as she well  
3975 knows, being one of the Members who is on the bottom of the whole long list of people we have  
got – it is incredibly difficult, under our system of government, for this to work.

Deputy Gollop talked about decision-making and how we have got so many different people  
wanting to be decision-makers; we have got a lot of people who can make those decisions. I would  
point out the point he made: the need for the CCA is to make quick decisions and be able to think  
3980 on its feet, whereas we have spent – I cannot even remember now when it was – was it yesterday  
or was it today? I think it was yesterday – two hours just to ask ourselves whether we wanted two  
Committees to look at terms of reference on a potential review. It was not even about a review, and  
it took two hours! As Deputy Ferbrache said, it took us far less than that to determine whether we  
needed to go into lockdown in January. I will mention that in a minute.

3985 Deputy Taylor and Deputy Matthews were talking about what they would do, and I think this is  
part of the issue about why we cannot make those urgent decisions within an Assembly, because it

is very much less about 'My opinion is this,' and 'My opinion is that'. The CCA very much has been, from the start, making evidence-based decisions. These are the decisions we make based on the information made available to us – or the fact that we have not got the information makes us make decisions, and that is really crucial as well. If we have not got information, do we need to act because we do not know something? And that, again, I will lead on to.

I hear that Deputy Matthews might have wanted to keep the borders closed for a long time and Deputy Taylor would like to just open it all up; but we had those discussions. I do not think I am giving anything away about discussions in the CCA. He was like, 'Well, I think we ought to open this, I do not like this'; but it all about getting the information, talking through with the Medical Officer of Health – and not just the Medical Officer of Health; STAC and all the people behind it. I think a lot of emphasis has been on 'We only listen to the Medical Officer of Health' – absolutely not. It is the experts underneath that on which we have made our decisions.

Sometimes there are nuances, of course. And very much, during lockdown – and certainly the first lockdown – how far could we lift the restrictions we had? Where were the real risks? We did not know. It was a blank piece of paper so in many ways, we were making it up, but we had to do it based on the information and the risks around it. We could not just do it as ... 'Well, I am fed up with this and I just think there is no risk at all. Let's just do it.' There are so many different bits to it. This is why the CCA has never done that, nor has it shut the borders immediately when we saw Delta and Omicron come through.

So it is difficult under our system of government to be able to do these things. And I am sorry to Deputy Bury, actually, because her concerns I do not think fed through to what we heard when we were trying to – I know she had concerns, but I do not think they were fed through on the specific issues that we could have addressed, perhaps, within the policy letter. But as I say, we were just trying to answer a straightforward question.

The point is whether or not the CCA has done a good job, we have got to look at what we do in the future, and that future is rapidly approaching us as we see the risks with the mitigations diminish. And one thing I agree on with Deputy Bury: I do not think this debate has been about factions, it is about working together. It took me back to my first term, to be honest, where we worked together in producing amendments we thought would work and made sense. And we did that, and I was used to doing that in the first term, and it disappeared a bit last term, and I have not seen it at all before now in this term, and I think it has been a good thing, and we can come up with Propositions which we should be able to support.

There is no basis on which not to support the decisions, because as Deputy de Sausmarez said, we are not saying 'Do a review,' we are not saying 'That Law is completely different,' we are not forcing anything on anyone that could make fundamentally big decisions now. And we are also taking account of the fact we have the Government Work Programme, and that is where these big decisions should be made so they can be factored into the work of Government.

Coming to Proposition 5, I think people are getting worked up about this. I was struggling with it and the Procureur sent her comments on the back of Deputy Ferbrache's questions to her, and I thought, okay, it made me think. But actually that, to be honest, is a red herring. I hate to disagree with the President of my Committee, but we already had a blueprint back in January – the blueprint that had been written in July last year on the back of opening the borders which made very clear what we would do to those adaptive triggers to go either forward and advance out of the border controls and into nirvana, or go backwards when we saw the risks. And what we did in January absolutely followed the blueprint that was in place. We said if we saw evidence of community seeding where we could not trace it back to a specific place and we did not know where it was going and we could not link all those cases together, then we needed to really think about whether we should go into lockdown. We said, basically, we would go into lockdown if we were in that situation.

On the back of not having a vaccinated population, we followed the blueprint. That is why I have no qualms, I have no issues with Proposition 5 – because we have a blueprint, and as you say, the new one has been published; that can be debated in the States. If something happens in between



now and then, we can adopt the adaptive triggers within it. So I think that is all a bit of a red herring, and I have got no issue with it. So I really would ask Members not to get so concerned about that at all, and Deputy Parkinson made that clear.

We had lots of questions leading up to this as to whether it is a pandemic or not, and questions about what is a pandemic. The actions that have been taken on-Island have not been based on whether it is a defined pandemic or not; indeed, when we started closing borders and made the changes that we did from February into March in 2020, it had not been declared a pandemic then. We knew it should be, and WHO were very slow on the uptake of that. But definitely, whether it is a pandemic or not is not necessarily an issue.

We do need to be cognisant of the fact that it is all over the world and it is still replicating and the issues that might create can impact our decision-making – but being a pandemic does not necessarily impact. Whether it is a pandemic is not the issue here. But very much so, when it becomes endemic in the Island is how we consider how we deal with things differently, and that is what we are getting to, and the endgame, as we like to talk about.

Deputy de Sausmarez – I think she is right, it is very difficult to come up with anything else. And that was a difficulty we had and nobody could lay their finger on, ‘Well, what is the answer to what we have got now?’, and that is why we ended up with what we had and we said, ‘When we are ending an emergency the CCA does not need to be involved, but we need to enhance the Public Health Ordinance to make sure that we take into account those extra safeguards that are needed, that we have found that we need in the new law.

*Oh-MI-cron, OH-mi-cron* – I have heard there is a French version, actually, now: it is called ‘O-Macron’! (*Laughter*) I thank Members for the debate, I do very much so. I think it really has been needed. We cannot go through the last two years and believe that we can just forget about it and move on and say we do not need a review, forget about it. I mean if we had, I just remember ... it is like, ‘Oh, we do not need to learn, let’s move on.’ But it is always good to be prepared and I remember back in 2019 when I had a letter from somebody who was in that previous States, saying, ‘Now is not a good time to have a pandemic flu exercise, because we have got Brexit coming up and we need to make sure all our people are focused on Brexit.’ And I said, in my response – and it will be somewhere, written down in a file somewhere, if ever it is brought out – that no time is a good time for a pandemic. It is not going to say, ‘Right, it is okay, when you have sorted that out, I am going to come along and start infecting everybody, because I know you have dealt with that and now you can deal with me.’ It will not happen.

We did that because we knew it was our number one risk and we knew we had to be prepared – and oh my goodness, am I pleased that we did. So when Deputy Roffey was saying whether we should be starting off looking at what we did before an emergency was declared, yes, I think that would be a very good idea; in fact, I think it could start from the pandemic flu exercise, actually. So yes, a pandemic is not going to come at a convenient time.

We do need to review how we have done and consider the powers of the Medical Officer of Health in light of our experience. And I must say now, at the end of this debate – and I am sure everybody will agree with me – this absolutely does not have anything to do with how the Medical Officer of Health, the Director of Public Health, has conducted herself through the last two years. I know we have been very lucky. I knew that before the pandemic came along and all the things that have been achieved. So I think, with all these questions about the powers of the MOH, we really must make that clear.

I should say, anyone voting against these Propositions who does not want to do any of these things, I would question what meaning that will send to Islanders. What message will that send out if and when the same thing happens as happened in March 2020? Do we say, ‘Oh, well, this has come along again. It did not matter. We did not need to know about anything else. We will just do what we did before?’ Is that really right? Personally, the weight of having to make some really major decisions affecting the rights of our Islanders has hung really heavy; I can honestly say that. This has not been a power trip for me, I can assure you! When you have to make decisions when people you know cannot see their loved ones when they are dying and stuff, it takes hold. It also affects your

own flesh and blood, your own family and friends, so these things are not something you wish to do. It is not that I regret decisions made – certainly not – but it is not a power I have relished at any time.

But I am a democratically elected politician and accountable to the people, as we all are, and I believe that none of us should forget that, which is why I believe that all the Propositions really add to what we started off with – and I thank you for that collective input into what we have got and would ask Members to please support all the Propositions.

**A Member:** Hear, hear.

**The Bailiff:** Members of the States, we have got five Propositions. They have helpfully been gathered together for you. There has been a request for a recorded vote on all of them, but I am going to take Propositions 1 and 2 together because they stand or fall together, rather than distinctly; then we will move on to Proposition 3, Proposition 4, and Proposition 5 separately.

So the first vote is on Propositions 1 and 2 only.  
Greffier, please.

*There was a recorded vote.*

*Propositions 1 and 2:*

*Carried – Pour 20, Contre 19, Ne vote pas 0, Absent 0*

POUR	CONTRE	NE VOTE PAS	ABSENT
Deputy Parkinson	Deputy Meerveld	None	None
Deputy Queripel	Deputy Moakes		
Deputy Roffey	Deputy Murray		
Alderney Rep. Snowdon	Deputy Oliver*		
Deputy Soulsby	Deputy Prow		
Deputy St Pier	Alderney Rep. Roberts*		
Deputy Trott	Deputy Taylor		
Deputy Blin	Deputy Vermeulen		
Deputy Burford	Deputy Aldwell		
Deputy Bury	Deputy Brouard		
Deputy Cameron	Deputy de Lisle		
Deputy de Sausmarez	Deputy Dudley-Owen		
Deputy Fairclough	Deputy Dyke		
Deputy Falla	Deputy Ferbrache		
Deputy Gabriel	Deputy Gollop		
Deputy Haskins	Deputy Helyar		
Deputy Kazantseva-Miller	Deputy Inder		
Deputy Le Tocq	Deputy Mahoney		
Deputy Leadbeater	Deputy McKenna		
Deputy Matthews			

\* Denotes Member who voted by proxy

**The Bailiff:** Members of the States, the vote on Propositions 1 and 2 was that there voted *Pour*, 20 Members, *Contre*, 19 Members; and therefore, I declare Propositions 1 and 2 duly carried.

And we will turn next to a recorded vote on Proposition 3 only.  
Greffier.

*There was a recorded vote.*

*Proposition 3:*

*Carried – Pour 21, Contre 18, Ne vote pas 0, Absent 0*

<b>POUR</b>	<b>CONTRE</b>	<b>NE VOTE PAS</b>	<b>ABSENT</b>
Deputy Parkinson	Deputy Meerveld	None	None
Deputy Queripel	Deputy Moakes		
Deputy Roffey	Deputy Murray		
Deputy Soulsby	Deputy Oliver*		
Deputy St Pier	Deputy Prow		
Deputy Taylor	Alderney Rep. Roberts*		
Deputy Trott	Alderney Rep. Snowdon		
Deputy Blin	Deputy Vermeulen		
Deputy Burford	Deputy Aldwell		
Deputy Bury	Deputy Brouard		
Deputy Cameron	Deputy de Lisle		
Deputy de Sausmarez	Deputy Dudley-Owen		
Deputy Fairclough	Deputy Dyke		
Deputy Falla	Deputy Ferbrache		
Deputy Gabriel	Deputy Helyar		
Deputy Gollop	Deputy Inder		
Deputy Haskins	Deputy Mahoney		
Deputy Kazantseva-Miller	Deputy McKenna		
Deputy Le Tocq			
Deputy Leadbeater			
Deputy Matthews			

\* Denotes Member who voted by proxy

4115 **The Bailiff:** Members of the States, the voting on Proposition 3 was *Pour*, 21 Members, *Contre*, 18 Members; and therefore, I declare Proposition 3 also duly carried.

And we turn next to Proposition 4, taken in isolation for another recorded vote, please, Greffier.

*There was a recorded vote.*

*Proposition 4:*

*Carried – Pour 25, Contre 14, Ne vote pas 0, Absent 0*

<b>POUR</b>	<b>CONTRE</b>	<b>NE VOTE PAS</b>	<b>ABSENT</b>
Deputy Moakes	Deputy Meerveld	None	None
Deputy Parkinson	Deputy Murray		
Deputy Queripel	Deputy Oliver*		
Deputy Roffey	Deputy Prow		
Deputy Soulsby	Alderney Rep. Roberts*		
Deputy St Pier	Alderney Rep. Snowdon		
Deputy Taylor	Deputy Vermeulen		
Deputy Trott	Deputy Aldwell		
Deputy Blin	Deputy Brouard		
Deputy Burford	Deputy Dudley-Owen		
Deputy Bury	Deputy Dyke		
Deputy Cameron	Deputy Helyar		
Deputy de Lisle	Deputy Mahoney		
Deputy de Sausmarez	Deputy McKenna		
Deputy Fairclough			
Deputy Falla			
Deputy Ferbrache			
Deputy Gabriel			
Deputy Gollop			
Deputy Haskins			

Deputy Inder  
Deputy Kazantseva-Miller  
Deputy Le Tocq  
Deputy Leadbeater  
Deputy Matthews

\* Denotes Member who voted by proxy

4120 **The Bailiff:** Members of the States, in respect of Proposition 4, the voting was 25 in favour, 14 against; and therefore, I will declare Proposition 4 also duly carried.

And the final Proposition is Proposition 5.

Final recorded vote, please, Greffier.

*There was a recorded vote.*

*Proposition 5:*

*Lost – Pour 18, Contre 20, Ne vote pas 0, Absent 1*

POUR	CONTRE	NE VOTE PAS	ABSENT
Deputy Parkinson	Deputy Meerveld	None	Deputy Leadbeater
Deputy Queripel	Deputy Moakes		
Deputy Roffey	Deputy Murray		
Deputy Soulsby	Deputy Oliver*		
Deputy St Pier	Deputy Prow		
Deputy Taylor	Alderney Rep. Roberts*		
Deputy Trott	Alderney Rep. Snowdon		
Deputy Burford	Deputy Vermeulen		
Deputy Bury	Deputy Aldwell		
Deputy Cameron	Deputy Blin		
Deputy de Sausmarez	Deputy Brouard		
Deputy Fairclough	Deputy de Lisle		
Deputy Falla	Deputy Dudley-Owen		
Deputy Gabriel	Deputy Dyke		
Deputy Gollop	Deputy Ferbrache		
Deputy Haskins	Deputy Helyar		
Deputy Kazantseva-Miller	Deputy Inder		
Deputy Matthews	Deputy Le Tocq		
	Deputy Mahoney		
	Deputy McKenna		

\* Denotes Member who voted by proxy

4125 **The Bailiff:** Members of the States, the voting in respect of Proposition 5 was that 18 Members voted *Pour*, 20 voted *Contre*, 1 Member was absent when the vote was called; and therefore, I declare Proposition 5 lost, which means that it is the only one of the five Propositions that has failed – the other four have been carried.

We have got one final item of business which should not take very long.

4130

# Billet d'État I

## POLICY & RESOURCES COMMITTEE

### VII. Schedule for Future States' Business – Proposition carried

*The States are asked to decide:-*

*Whether, after consideration of the attached Schedule for Future States' Business, which sets out items for consideration at the Ordinary States Meeting on 16th February, 2022, they are of the opinion to approve the Schedule.*

**The States' Greffier:** Article VII, the Policy & Resources Committee – Schedule for Future States' Business.

4135 **The Bailiff:** There have been no amendments moved to that, and therefore, I am simply going to put the Schedule to you.

Those Members in favour; and those against.

*Members voted Pour.*

**The Bailiff:** I will declare that duly carried.

4140 Thank you all very much, Members of the States. We have concluded this meeting's business and we will now close the meeting.

*The States adjourned at 6.30 p.m.*