

STATES OF JERSEY

Education and Home Affairs Scrutiny Panel

MONDAY, 28th SEPTEMBER 2009

Panel:

Deputy R.G. Le Hérissier of St. Saviour (Chairman)

Deputy T.M. Pitman of St. Helier (Vice-Chairman)

Connétable G.F. Butcher of St. John

Deputy M. Tadier of St. Brelade

Witnesses:

Senator B.I. Le Marquand (The Minister for Home Affairs)

Mr. S. Austin-Vautier (Chief Officer, Home Affairs)

Present:

Ms. S. Power (Scrutiny Officer)

Ms. E. Liddiard (Scrutiny Officer)

Deputy R.G. Le Hérissier of St. Saviour (Chairman):

Before we start, as you know, we have got this system where the ... about the media. We have had a call from Channel today and did say yes, but the Citizen's Media have asked if they can, Mr. Minister, video you at this meeting? Do you have any objection?

Senator B.I. Le Marquand (The Minister for Home Affairs):

My only objection is when it sets a precedent. It puts pressure on other people. I mean I do not, I have just agreed that they can video me at the presentation on Tuesday evening, but it is this question of whether it puts pressure on other people, if the general precedent is broken.

Deputy R.G. Le Hérissier:

No, the person ... the witness still retains the right under the current slightly imperfect system, as it would no doubt be described. The witness still retains the right to say yay or no. Like there was a meeting the other day where 2 said no and one said yes, for example.

Senator B.I. Le Marquand:

I do not really mind. They probably have not got their equipment with them.

Deputy R.G. Le Hérissier:

The only thing I would say is if it is done, the focus, as indeed would in any case be the case, the focus is on the Minister.

Member of the public:

We will give you some good press for it, Senator. We will give you some good press for that.

Deputy R.G. Le Hérissier:

The focus is on the Minister because he is obviously the star, in the nicest sense, of the proceedings, or whether he will feel that at the end or not, I do not know. It is done witness to witness, Mr. Minister, so there is no precedent set. If a witness refuses they refuse and we uphold their rights to do so.

Senator B.I. Le Marquand:

I am happy.

Member of the public:

We appreciate it. Thank you very much.

Deputy R.G. Le Hérissier:

Mr. Minister and Mr. Chief Officer, I would like to welcome you to the meeting. Before we get into the business of the meeting perhaps we will do introductions. This meeting is obviously to do a fairly quick review of the proposed sex offenders legislation, which the Minister for Home Affairs is bringing up in early October to the States. My name is Roy Le Hérissier, the chairman of the panel, Deputy of St. Saviour.

Connétable G.F. Butcher of St. John:

Graeme Butcher, Constable of St. John.

Deputy M. Tadier of St. Brelade:

Deputy Montfort Tadier of St. Brelade No. 2.

Deputy T.M. Pitman of St. Helier:

Deputy Trevor Pitman of St. Helier No. 1, vice-chair.

Ms. S. Power (Scrutiny Officer):

Sam Power, Scrutiny Officer.

Ms. E. Liddiard (Scrutiny Officer):

Elizabeth Liddiard, Scrutiny Officer.

Deputy R.G. Le Hérissier:

Okay, thank you very much. As I said, Mr. Minister, this is very short notice and a short review. It is an experiment basically. We have not done one of these short reviews and we are obviously aware that by trying to cover such a vast area we might be doing a disservice to some people. But the feeling of the panel was, taking note of the fact you have been under enormous pressure to bring this forward and it has sort of come up quite suddenly after a long, long period of gestation, the feeling of the panel was that this was an immensely important piece of legislation and we really need to make a comment on it. Our comment will be probably obviously fairly brief, it could be one or 2 A4 sides. It certainly will not be a conventional report. So I want to make that clear also to the audience, that this is not going to be the definitive report on sex offenders legislation, because there is no way we can do that. But, obviously it is a law that has enormous implications for data protection, human rights, the integration of management between the police, Social Services and Probation. It breaks a lot of new ground and at its heart there are some major, major issues and tensions. So I wonder, Mr. Minister, if I can ask you very briefly; why has the law come up at this time and, secondly, when you were reviewing and formulating the law what were - briefly, because we are going to cover a lot of them - what were the key issues that you faced? I am sorry, we have gone a bit off script.

Senator B.I. Le Marquand:

That is all right. The law has been in progress for a very long time. I mean this version of it is the 33rd

draft and I cannot remember when the drafting started on it, but it is a long time ago. I inherited, I think, about the 29th draft and knew nothing about it, sat down for a day and started to understand it and then realised there were a number of questions it was posing. There were one or 2 things which were clearly wrong and so I decided it was best if I looked at the whole of it again so that I would understand it and make sure it was okay. The structure of the law basically is that people who have committed certain offences, either in Jersey or elsewhere, either before or after the starting of the legislation, basically have got to notify the police of where they are living, and that is under the notification requirements. The courts are then able, if they wish ... there are different categories of case. I mean, there are cases which are coming in for the first time. Shall we say, someone is convicted of a particular type of offence for the first time. Then the courts will look as to whether they are going to make protective orders, restraining orders, at the same time because, you understand, the whole purpose of this law is to seek, to ensure, that paedophiles and other sex offenders do not offend again and to protect vulnerable people and children, in particular, from their activities. So you have got some situations where like new offences, where the courts will have to be actively considering whether to make a restraining order, and you have got other cases in which applications will be made to the court to make restraining orders, and those orders will then be tailor-made according to the situation of the particular individual, et cetera, et cetera. All of that, I think, is fairly straightforward. I mean these are quite tough powers but such powers are reckoned, and I would agree with this to be necessary in order to protect the groups that we are trying to protect. The basic problem, as I understand it, is that there is no treatment in relation to paedophiles which will cure them so that you can then observe them, say they are cured, they will not do it again. There are various therapies which can help them to understand the damage they are doing to their victims. They can be taught to avoid going to a situation of temptation and that kind of thing, but there is ultimately no cure, and so you are seeking here to balance, if you like, their human rights and their rights as individual citizens on the one hand, with the need to protect, and that is what this legislation seeks to do. There are then other spin-offs from that because there are things like if they seek to travel out of the country that they have to ... and if they are in one of the categories then they have to make application for travelling outside of the country, and they can be stopped. The thinking behind that, of course, is that we are not just trying to protect people in Jersey but we are trying to protect children and other vulnerable people in other parts of the world. So there is a sort of mutual aid aspect of this which also works. Then, in addition to that, and perhaps this is ... I highlighted, I think in an earlier occasion, that there was one area that made me think very carefully and that is Article 11, and I do not know if you want to turn to my notes on Article 11. Article 11 is the one situation- and this is called Child Protection Orders - this is the one situation in which we can lead into the court having the power to make orders without a person having a previous criminal record. The thinking behind this of course is we get situations where this is quite strong evidence to suggest that this person is not ... save that they represent a danger to one of the particular vulnerable groups, but not enough to get a conviction and nevertheless, in these circumstances, it is desirable that the courts should have a power to make an order specifically to sign to reduce the risk of that person. One of the problems I discovered in relation to this is that the key thing in relation to this paragraph 3, which sets out various different acts which a person has to do, which could potentially trigger this, and one of the things that worried me in relation to this was some of those acts, and you will see my comments, if you look under section (c) and (d), could have a perfectly innocent explanation. So the fact of the doing of the act is not enough in itself. In some cases it would be in such circumstances as to be enough in itself really, but in many others it is not and that is why you have to understand that this is subject to paragraph 4, which sets out the safeguard, and the safeguard is in 4(b) in particular; look at paragraph 4 of Article 11: "The court must be satisfied on a balance of probabilities that (a) the defendant has, whether before or after commencement of this Article done an act mentioned in paragraph 3; and (b) it is necessary to make the order to protect children generally or any child from the defendant." That is defined in paragraph 16 of the Article as meaning: "To protect children generally or any child from physical or psychological harm caused by the defendant doing an act mentioned in paragraph 3." So it has got to be an act, and it has also got to be this necessity of protecting children generally or any child from harm before the court's

power is triggered. This, I think, is probably the most controversial part.

Deputy R.G. Le Hérissier:

What evidence will you rely on? Will it, for example, be a social worker who might be dealing with a family?

Senator B.I. Le Marquand:

That would be entirely up to the court and I would expect the normal ... if it is contested I would expect the normal rules of evidence would apply in relation to this. I mean, you understand that there is going to have to be a great deal of work done in relation to rules of court to set out procedures, but on a general principle if someone is saying: “No, I did not do the act in question” or: “Yes, I did but it has an innocent explanation” then they will be entitled ultimately to go to trial. I would expect evidence to be heard and the court would have to be satisfied that it was more likely than not that these different factors had been met. I do not see it any different to any other ...

Deputy T.M. Pitman:

In such cases their identity would obviously be protected while that challenge goes on?

Senator B.I. Le Marquand:

There are powers in here, and I am struggling to remember where because there is so much in here, there are definitely powers in here to allow the courts to sit in camera in appropriate cases, but I cannot straightaway tell you where that it is. I would have to trawl through and it would take 3 or 4 minutes. I will do that if you like.

Deputy T.M. Pitman:

It is just interesting because the suspicion of someone, whether you can ultimately prove that that person did not do ... if he has been named or she has been named, well, in a small community you would be as good as guilty anyway. That would be the concern, I believe.

Senator B.I. Le Marquand:

I accept that. That must be so. I am just wondering ... Rules of Court. If we go to Article 29 you will see that. There is the powers to make rules of court. Paragraph 3 of Article 29 deals with various different categories. [Aside] Thank you very much, Greffier. Sorry, I called him the Greffier. He was of course my ... he was my Greffier when I was first Magistrate. In this context of rules of court I am going back to old language. Under paragraph 4: “The rules of court under 1 and 2 may provide that the court may sit in private in pursuit of any powers under the law and may be exercised by the court in respect to any child.” So normally, you see, you would be making an order in relation to children. So a general power ...

Deputy R.G. Le Hérissier:

What would happen, Mr. Minister, if a social worker and, in a way, because of what is happening, I would imagine social workers are going to be much more cautious when they enter families these days and perhaps go in favour of removing people if they feel there is any question. If a social worker says: “Look, I am very concerned about what is happening within this family unit, I suspect there is some sexual activity going on” but cannot obviously provide you with direct evidence, how do you think the system would deal with such a report?

Senator B.I. Le Marquand:

I do not think the first thing they would think about would be a protection order. I would have thought the first thing they would have been thinking about would be a care order, or something like that, under the Children’s Law. That is not to say protection orders cannot be made, but I would have thought that

would not be the normal route. It is not really going to happily sit internally within a family unless it was by way of prohibiting someone. I mean, we have had situations in the past where we have had a lady with children who is living with a man who has got a record for paedophilia, and she can be warned sometimes about it and of course, at the moment, in certain circumstances if she refused to keep him away then the Children's Service might have to take the children into care or into a children's home. Now, that could be used in that sort of circumstance. But if he were the father of the children that would be quite complex, would it not?

Deputy R.G. Le Hérissier:

Just one follow up on what you have said and then I will move to my colleague. You said that paedophiles often ... there was no cure basically. What happens if you get a situation - we have had, it has to be said, a representation to this effect - what happened if you get a representation from somebody who does feel they have strong paedophile impulses and they do, in fact, wish to get help but they cannot, in their view, get help from an uncriminal justice system? I mean, is there any way that such a person can be dealt with at the moment?

Senator B.I. Le Marquand:

The categorisation of the Article 11 application is civil not criminal. It is one of the things I had to decide, in fact, was how to categorise these things because the previous draft was completely silent, and that would have caused a very odd situation, which the courts would have to decide what they were doing. I decided that Article 11 was clearly civil and should be treated as a civil proceeding and not criminal proceedings. Yes, if a person were to say that, then potentially the courts could make an order. But they would have ... one of the acts would have had to have occurred first. They would have to have done something which brought them within that Article.

Deputy R.G. Le Hérissier:

So, in other words, if they had not done something but they did have a degree of insight about their behaviour and its consequences is there anything we can do about that?

Senator B.I. Le Marquand:

Yes, if they were to tell one of the public agencies then an application could be made under Article 11.

Deputy R.G. Le Hérissier:

In confidence?

Senator B.I. Le Marquand:

Yes, I thought there was something in here, but it may be there is not a specific power in here, but that would have to be in Rules of Court for the court to decide when it sits in camera and when it does not. I mean as a general principle, courts always have the power to decide when they sit in camera or in chambers and when they sit publicly, but I have not come across anything specifically other ... it does mention when a child is involved, so in a case where it was a specific child, a specific family, should we say, then clearly that would be covered. But I do not think there is any reason why the court could not make their own decisions in individual cases as to ... the Royal Court is a court of inherent jurisdiction, which means it can make up procedure rules as it likes, as and when necessary. It does not need Rules of Court. I was always being reminded as Magistrate that I was not a court with such inherent jurisdiction.

Deputy R.G. Le Hérissier:

We may have to follow that up later but if we ...

Senator B.I. Le Marquand:

Yes, that is an interesting question. We will think about that.

Deputy R.G. Le Hérisssier:

If we could move to the issue of data protection now and I will ask Deputy Pitman.

Deputy T.M. Pitman:

Thank you, obviously a lot of these issues are going to overlap but could the Minister clarify for us what safeguards are in place to ensure that disclosed information to those who need it will not be misused?

Senator B.I. Le Marquand:

This is an interesting area, because I inherited a law which had a draconian power which basically said anybody who discloses anything to anybody without the approval of the Chief Officer of Police commits an offence. Now there was no such parallel power in the U.K. (United Kingdom) legislation and that was self-evidently unworkable. It also gave the police a position of control over information, which frankly no one agency should have been given. Obviously I was in discussions with the Acting Police Chief and also with the Data Protection Registrar, and the advice I have received is that the existing data protection legislation should be sufficient. Now, I am sure about this because at the moment the existing data protection legislation only has maximum penalties for a fine and not penalties of imprisonment. It may become necessary in the light of this to subsequently review that and to increase the maximum penalties under data protection legislation. The concern is that if there is a particular information in relation to a person who is a paedophile or has sex offences against them and is trying to rebuild their life after a period of imprisonment and so on, and then suddenly that is put out into the general media or whatever, that could absolutely destroy what they are trying to do. That actually could cause them to become depressed, it could cause them to become more likely to go back into old habits or it can cause them to go underground. But one then gets into this very interesting area of the - is it Megan's Law in the U.S. (United States)?

Deputy R.G. Le Hérisssier:

Yes.

Senator B.I. Le Marquand:

About whether or not people in a particular area should be told that someone is living in their area who has a record and so on, and it is quite an interesting debate. The difficulty is ... I mean it is superficially attractive because parents feel they want to know and so on and so forth, but it could lead to a situation where it is impossible for people to be reintegrated back into the community. Someone who has perhaps convicted as a paedophile at the age of 25 or something like that, I mean they could be ... they might have a lifespan of 50 years to come in the community. One has got to try to help them to re-establish their lives and a stable foundation and that should help to make it less likely that they are going to reoffend. So I do not know if I have answered that. I have gone on rather long, sorry.

Deputy T.M. Pitman:

How do you see that panning out though in reality when trying to balance the fact that we are obviously a very small community? Certainly for my own working background, I am aware in the last 2 or 3 years of an instance where parents of a teenage daughter ended up with having paedophiles either side of her. How are we going to balance what you are saying against their need to know?

Senator B.I. Le Marquand:

Well, at the moment the balance keeps things sacred, but if people breach that then the only penalties are fines, which, as I say, may not be a sufficient penalty. This is a difficult area. My own view is I go with the structure of the law at the moment, but it may be necessary to tighten the penalties later on in data protection. I go with the need for paedophiles to be able to rebuild their lives without being harassed

and by people who happen to find out what they are doing.

Deputy T.M. Pitman:

Perhaps we are straying off into communication, which I know Constable Butcher is going to bring in. But to what degree would you expect instances like I have just raised where some paedophile trying to rebuild their life is going to be placed next to people with teenage children. Would you expect those sorts of circumstances to be avoided in the future?

Senator B.I. Le Marquand:

Yes. I think that is part of the structure, is it not, is making your orders that you want to be making orders to ensure that as far as possible that they were not living in the vicinity of people who might be vulnerable. There are degrees of risk involved here and obviously there is risk assessments that have to be made in relation to people. I mean our understanding I think is that ... I remember the figure of 25 the last time I came here of those who are viewed to be of the highest risk who are in the Island. I think there is a figure of ...

Mr. S. Austin-Vautier (Chief Officer, Home Affairs):

It is 35.

Senator B.I. Le Marquand:

Thirty five, is it? I think there is a figure of 50 somewhere in the paperwork about those cases which will be anticipated as being dealt with as part of the backlog in the first 2 years. There are a lot more people who might fall within the categorisation or potentially could, but it might not be thought that they currently represented a risk. But I would have thought that is exactly the sort of order that you would anticipate. That people would be told: "No, you cannot live in a place near to schools or near to children" or whatever. Although in Jersey, of course, it is a small place.

Deputy T.M. Pitman:

That is my point. The downside of that, with the strains on data protection, the need to inform other departments are going to increase and increase and increase that area of people who need to know, which to my mind, while necessary, it also increases the risk of leakage.

Senator B.I. Le Marquand:

You are right. I mean, Article 27 is the Article which deals with protocols on sharing information and so on. That in itself is quite complicated. It basically starts by giving the role of the chief officer and which information it applies to and then you have this situation where you have a number of interested parties. What happens is within 6 months after the law coming into force there have got to be agreed protocols - I mean we obviously want to do it much earlier than that - agreed sharing protocols between the various different agencies, and there is quite a lot if you include the interested parties and so on. So there are very clear rules governing when things can be shared and for what purposes, and so on and so forth. Now a lot of work is going to have to be done on that also. But I think that there are some circumstances which there can be ... again, there is so much detail in here. I was reading this, this morning, again to brief myself. There is some stuff in here about being able to consult with individuals. Of course that is quite a sensitive area in which to talk to individuals. Let me see if I can find that.

Deputy M. Tadier:

Minister, can I just interject and get some clarification? Up until now we have really been just talking about the issue of committed offences against children but ...

Senator B.I. Le Marquand:

No, it is not just against children.

Deputy M. Tadier:

But the focus has been so ... this law does cover any sex offender?

Senator B.I. Le Marquand:

Yes.

Deputy M. Tadier:

So it does not necessarily need to be related to children?

Senator B.I. Le Marquand:

That is correct.

Deputy M. Tadier:

Can I just bring it on to the question of the need to know, because obviously that could be a fairly narrow section of society but because we live in a small island anyway that proportion is going to be larger than, say, somewhere like the U.K. What kind of numbers would you envisage would need to know about somebody under this law?

Senator B.I. Le Marquand:

They are listed under 28 in terms of the interested parties and the office holders, and so on.

The Connétable of St. John:

Minister, can I just interject there as well because the question I was going to ask was related to communications, which obviously borders on this question of Deputy Tadier's as well. I mean, how do you anticipate ensuring continuous information coming out of the various agencies: States of Police, Honorary Police, heads of Probation, Customs, Prison, Ministers of various departments? I mean what sort of training do you envisage, bringing this information forward to the various sectors?

Senator B.I. Le Marquand:

The police are the centre for information to go through, although there are other major players like Probation and the Children's Service. But they are the main collector of information in relation to this. The structure is that there are some people who have to be consulted in relation to things and there are others who may be consulted in relation to things, the interested parties.

The Connétable of St. John:

Who will make that final decision as to what information goes where?

Senator B.I. Le Marquand:

That, I think, is going to be the States of Jersey Police under the ... there are specialists who are dealing with it. We have a specialist public protection unit at the moment which, of course, is already doing some of this informally. You must understand that we have no law in place but we have information on people and assessments of risk. We have some people who have voluntarily sought help from the police or Probation because they know of their weakness in this area and who voluntarily are being monitored and so on. So there are things already happening. This is not the start of it. We already have people working in this area. This just formalises and provides the full statutory framework for it to occur. I am afraid I do not actually know the details of this because that is going to be embodied in the protocol that has to be agreed.

The Connétable of St. John:

I am thinking well ahead on these things, but the wider this sphere of information that goes out we do

run a risk of vigilantism in a small community such as ours.

Senator B.I. Le Marquand:

Yes, exactly. We do, and this is always going to be the difficult balance in relation to that. How many people need to know? I had an email about 6 months ago from a person who said that they were a paedophile, that they had returned to Jersey after serving a sentence I think somewhere, and had gone to the police and had sought help and everything had gone fairly well. They had been able to engage in certain sporting activities until it had got out as to their background to a particular sporting facility which then banned them from being involved. They were involved in adult sports, not doing anything with young people, and that had had a very damaging affect. What I am hoping ... in a sense there are 2 sides to the coin here because on the one hand we are seeking to protect the vulnerable groups but on the other hand you are creating a framework where other people should have confidence in the system that these people are being properly monitored, and if the system has said it is okay for them to play whatever, 5-a-side football, or whatever, on a particular night at a particular time then they will not find themselves being banned by the people running it because it has been properly looked at and a proper decision made. So, as I say, it goes both ways.

The Connétable of St. John:

A difficult balance.

Senator B.I. Le Marquand:

It is always a very difficult balance, yes.

Deputy R.G. Le Hérissier:

But in the case, for example ... sorry, building on Graeme's question, Mr. Minister, in the case you quoted, in order to, say, referee or coach 5-a-side football, presumably the police would have contacted the 5-a-side organisers and said: "Mr. X wishes to do this work. We want to have a discussion with you about it and make sure you are aware." Once you have done that, the possibility of leakage is quite high, is it not?

Senator B.I. Le Marquand:

Well, I think in this particular case the person was just playing and there was some sort of leakage but, of course, sometimes this does not stand on its own. We have also got the vetting and barring stuff. We already have existing systems in relation to that which are voluntarily being followed through by most clubs and groups, and so they would be picked up on that. The person would be picked up. Sorry if I highlighted paedophiles particularly, but it was because we started in the context of Article 11 which to me is the most sensitive part of it. That is child protection orders and, therefore, entirely focused in that one direction.

Deputy M. Tadier:

Presumably, just to expand on that, then, there might be other vulnerable groups such as the elderly who would also ...?

Senator B.I. Le Marquand:

Yes. Yes, if you had someone who had committed a sexual offence or a sexually aggravated offence in the past, then, yes, they might well be banned from ...

Deputy M. Tadier:

Any kind of vulnerable group?

Senator B.I. Le Marquand:

Yes. But then again, all these things tie back in. If they have committed an offence they all tie back in with the vetting and barring. That is seeking to achieve similar aims by a different method.

Deputy M. Tadier:

Can I just ask one question? It is relating to the need to know. Is it possible for somebody like a partner to apply for need to know information? So, if they have just entered, perhaps, a new relationship and they have heard a rumour that their partner is a sex offender or has committed previous offences ...

Senator B.I. Le Marquand:

I would not have thought so. It is not that sort of ... it is not that sort of situation.

Deputy M. Tadier:

Would they be judged on a case by case ...?

Senator B.I. Le Marquand:

If they had suspicions ... if they have children, you mean?

Deputy M. Tadier:

Yes.

Senator B.I. Le Marquand:

Well, they should not be entering the relationship, should they, if they have doubts, but there we are. If they had suspicions and they shared those suspicions, shall we say, with Children's Services or something like that, then obviously someone could go away and do checks into the local system. It is not meant to be applying a vetting and barring system for potential partners.

Deputy R.G. Le Hérissier:

Mr. Minister, you have raised Megan's Law but, as you know, there is a British or an English variation, I suppose for want of a better term, called Sarah's Law, a lady whose daughter was murdered.

Deputy T.M. Pitman:

Sarah Payne.

Deputy R.G. Le Hérissier:

Yes, Sarah Payne. As I understand it, the principle is that people in the area who need to know will be informed under confidential cover. Do you see this law ... sorry, do you see that as necessary in the Jersey context?

Senator B.I. Le Marquand:

I think that is a matter that is going to have to be discussed under the Article 28 provisions because certainly I have not got as far as that. There are going to be issues that are going to be flagged up in relation to that. That is a difficult area. It is a very difficult area.

Deputy T.M. Pitman:

Again, amplified by the small community?

Senator B.I. Le Marquand:

Absolutely. Absolutely.

Deputy T.M. Pitman:

Are you confident it can be overcome?

Senator B.I. Le Marquand:

Well, it is going to have to be, is it not? Inevitably, there will be cases where things will go wrong in terms of information getting out that should not get out, in terms of the risk assessments not adequately assessing how great a risk a person is. This is not a panacea to all ills. A lot of people who are convicted for the first time of sexual offences have no previous convictions and no particular reason to suspect they are going to. So, it is not a panacea that is going to solve every problem.

Deputy T.M. Pitman:

Yet if we are serious about the law, the point Deputy Tadier raises is a really good one because if you have entered into a relationship and you have a teenage daughter or son, 6 months down the road information comes to your ears that your partner could be a sex offender; from what you tend to be saying the state cannot intervene. I can understand that in a way but ...

Senator B.I. Le Marquand:

Well, can I just back off a bit because I think I have got myself into a trap here. Can I just back off a bit?

Deputy T.M. Pitman:

Deliberate. [Laughter]

Senator B.I. Le Marquand:

There are notification requirements. The person has got to say where they are going to be living. Now, that is part of the notification. So the moment they say where they are going to be living, there is nothing whatsoever to stop discreet inquiries being made as to who else lives there and as to whether that is suitable. So there are safeguards through the system itself. They have to say where they are living.

Deputy T.M. Pitman:

Well, that new partner could move in with them. That would completely pull the rug out from under the safeguards, would it not?

Deputy M. Tadier:

Presumably it is only a one-way system - if I can interject - because if a boss or a head teacher wanted to employ someone, that would be flagged up a long time before so that both parties would know that the difference in the situation is that the police may know but the partner would not know.

Senator B.I. Le Marquand:

If a person was living at a particular address and then a partner who had children moved in with them, that would be much more difficult.

Deputy T.M. Pitman:

That is the point I am ...

Senator B.I. Le Marquand:

Yes. If it is the other way round, if the person wants to move, then obviously under the notification requirements they have to notify that they are moving and they can be asked: "Why are you moving?" and: "Who else is in the family?" and so on.

Deputy R.G. Le Hérissier:

But presumably under the management agreements which Graeme brought up, which is the way the

police are going to manage this through all the different agencies, if the police were to hear from the Honorary Police, say, that so and so in this village has a new partner, that would be seen as legitimate information that could be followed up, would it?

Senator B.I. Le Marquand:

Yes. It is never going to be perfect but obviously we have mirrored what they have done in the U.K. It seems to be working reasonably well in the U.K. I know there were difficulties with vetting and barring. They are very much in their teething stages and we can learn from that, but it does seem to be working quite well there. I have no reason to believe it will not work here, although, as I say, it is not going to solve all the problems.

Deputy M. Tadier:

Something the panel discussed briefly before the meeting started was that this is simply limited to sex offences, but, for example, somebody who has a history or has been convicted of assaults on children, let us say, that would not be included in this area?

Senator B.I. Le Marquand:

There are ...

Deputy M. Tadier:

I am talking about purely physical assaults.

Senator B.I. Le Marquand:

Yes. Not if there was no sexual element. There is a category of offence in here which is not a sex offence but where there is a violent offence and it can be brought in, but that is more so designed for situations such as kidnapping of people or people trafficking with a view to sexual purposes. I mentioned that in my notes. No, this is not ... that, of course, is a separate area and I think one they are starting to explore in the U.K. That is really an area as to whether you have a violent offenders law with parallel protective mechanisms, particularly for people who are violent in a series of relationships. There could be serial abusers in that without there being a sexual element, just a violence element. This does not touch that, no.

Deputy M. Tadier:

That, of course, raises the philosophical question why are we simply concentrating on sexual offences when it may well be valid that people on a need to know basis should be informed of other offences that have been committed in the past, such as theft or other violent acts.

Senator B.I. Le Marquand:

Well, because this is a Sex Offenders Law, not a Violent Persons Law. Of course, they have not done that yet in the U.K. It is something that they are contemplating. It would be difficult to be running ahead, I think, in something which is as controversial as this area. You have to understand you are balancing the rights of the individual and their human rights and so on against the desirability of protection. So it has to be a pretty strong case. The evidence for damage which is done particularly to children but also to adults through sex offences is now such ... and the lasting nature of that, there is a traumatic nature of that, that in my view it clearly justifies a law of this nature which otherwise would be viewed as being draconian.

The Connétable of St. John:

Can I just come in on something? We have briefly touched on Megan's Law and things like that and the fact we are a small community and the potential vigilantism and this sort of thing. Have you given any thought at all to somebody who admits they are a paedophile, and you admitted earlier that it is not

curable, with chemical castration, something like that, which I know is done in some countries?

Senator B.I. Le Marquand:

No, I have not. I see they have just done that in Poland and I thought it very interesting ...

The Connétable of St. John:

But as an alternative to effectively having the neighbourhood told?

Senator B.I. Le Marquand:

I thought someone was going to ask me the very clever question as to whether among the orders the court could make would include that, and the answer would have to be theoretically yes. But I was under the impression that that had been deemed to be non-human rights compliant.

The Connétable of St. John:

No, I was talking more of voluntary. If somebody turned round and said: "I am a paedophile. I do not want you to tell everybody where I live, but I am a paedophile. I will volunteer ..."

Senator B.I. Le Marquand:

Well, I expect they could go to their doctor, could they not?

The Connétable of St. John:

Well, I do not know.

Senator B.I. Le Marquand:

Could they not?

The Connétable of St. John:

I have no idea. I have never been to my doctor asking. **[Laughter]**

Senator B.I. Le Marquand:

And have some tablets that help out their hormone production. I assume that is what chemical castration ...

The Connétable of St. John:

I have no idea.

Deputy R.G. Le Hérissier:

It is used in France, so ...

Senator B.I. Le Marquand:

Is it? Yes.

Deputy R.G. Le Hérissier:

On a voluntary basis so ...

The Connétable of St. John:

That was more the case, to avoid the vigilantism as we live in such a small community and bad news travels fast in our Island, as we well know. But I just wondered whether if somebody new came to the Island, shall we say, was a paedophile, and it was either the choice of: "You are going to tell the neighbourhood where I live or I will volunteer to have this done", I just wondered whether that option might have circumvented you telling the neighbourhood if somebody was going to volunteer to be

chemically castrated.

Senator B.I. Le Marquand:

Well, how would you be certain they were doing it?

The Connétable of St. John:

Well, yes, that is right. Again, there would have to be monitoring.

Senator B.I. Le Marquand:

How would we be certain? I think it would always be open to someone voluntarily. Whether or not it is open to a court to do it would depend upon human rights. There is nothing in here that would prevent it because it does not specify what the limits are on orders that can be made, but they would have to be human rights compliant and subject to scrutiny by appeal.

Deputy R.G. Le Hérissier:

That brings me to the human rights area. Sorry, do you want ...?

Deputy T.M. Pitman:

No, I can link it in here.

Deputy M. Tadier:

Yes, I think all of these areas are interlinked. How will the Minister protect an individual's right to determine their own behaviour? What are the safeguards that are in place?

Senator B.I. Le Marquand:

Well, this is a matter for courts to decide. Obviously, first of all, either they have come within the system by committing an offence which is in one of the categories or, alternatively, that an order has been made elsewhere in the U.K. and they have come to the Island, or a decision has been made that they represent sufficient risk, although it is historical, to warrant this. Then it is up to the courts, first of all, to decide ... in some of the cases the court has to decide whether to bring them into the notification requirements or not and it has a discretion on that and there are tests set out and safeguards. But even if they do, the court then has to decide what form of order to make. There are in each case safeguards that the order is an appropriate one for the purposes of protecting potential victims from them. Now, we have appeal procedures. In the case of cases that start at the Magistrates Court there is a double appeal procedure built in here by way of review, first of all, to the Royal Court and then on to the Court of Appeal. In the case of cases starting at the Royal Court level, there is a single appeal procedure to the Court of Appeal. There are parallel precedents, if I can put it that way, in other areas like injunctions in which the Royal Court can, in order to protect people, make an order that the person shall stay away from an area or whatever. This very often does happen in family matters, in domestic matters, that there will be domestic injunctions, even making the person leave the matrimonial home in extreme cases. So the courts are quite used to making these sort of orders and considering as to what is necessary and what is not necessary in this context. It is human rights compliant because a court is making the decision rather than politicians, who most certainly could not be trusted **[Laughter]** with such decisions. Certainly the human rights could not be; it was not an entirely flippant comment.

Deputy M. Tadier:

Just the second part is what evidence can you give for your statement on 17th August, and I guess this is the statement here. I can read it out perhaps for members. I believe you said: "It is always a difficult balance to strike between the government's responsibility to build a safe society, protecting especially the weak and vulnerable while at the same time safeguarding an individual's right to determine their own behaviour in free society."

Senator B.I. Le Marquand:

Yes. Well, that is right. Obviously I have reviewed this law. I inherited it in a certain form. I have reviewed it. I have taken out the draconian criminal power in relation to the revealing anything without the approval of the Police Chief, which was just a bureaucratic nightmare. I have improved the appeals procedures. We had one or 2 areas ... I do not want to get into too much technical stuff, but we had quite a difficult problem to solve in relation to certain offences which should not be ... cause reporting. Some of them were homosexual issues but ... not necessarily homosexual issues, but we took a view that these should not ... the doing of these in certain circumstances should not bring them within the law.

Deputy M. Tadier:

Just to interject, I was reading about that and there was a reference to sodomy. Presumably the law has been changed anyway, has it not?

Senator B.I. Le Marquand:

No, the law of sodomy still exists.

Deputy M. Tadier:

Still exists?

Senator B.I. Le Marquand:

Yes, of course. Of course, but it is obviously not between consenting adults. There are odd things there about public places and public toilets being included, and that is one of the reasons why we had to put in some provisions so that ... what we have here is as long as it is consenting adults and they are both over 16 and there is no one else there, such offences do not bring them within the notification. So, a lot of thought had to go into this. We have problems with certain offences like gross indecency that there are all sorts of different categories of case that can lead to the charge of an act of gross indecency. I really do not want to have to go through them all in detail [Laughter] but you understand there are different type categories of act, some of which might be heterosexual, some of which might be homosexual, and different sort of circumstances. I think we have this right because we had to do quite a lot of extra work on that because there were some problems in that. The structure is that in some cases we have removed them from the notification requirements and other cases we have kept the power in but we have given the courts the power to make a decision as to whether that particular offence should be treated as in or not depending upon its nature. Sorry, I think I have gone off track here.

Deputy M. Tadier:

No, that is okay.

Senator B.I. Le Marquand:

What was the original question?

Deputy M. Tadier:

It was just really to ask what safeguards you had taken to make sure that it was European Convention compliant.

Senator B.I. Le Marquand:

Yes. I had advice it was in its initial form and there has been no tightening up of it. Everything which was here was essentially there. If anything, there has been a slight loosening in areas, as I just explained. It does parallel, as I understand it, the U.K. legislation which has been found to be human rights compliant.

Deputy R.G. Le Hérissier:

It has not been challenged, the U.K. legislation?

Senator B.I. Le Marquand:

It has not been challenged, no. No, it is ... I have not come armed with the text of the Convention. Is it Article 4?

Deputy T.M. Pitman:

I thought you would have that with you always.

Senator B.I. Le Marquand:

No, I carry the Standing Orders of the States of Jersey with me quite often [Laughter] but ...

Deputy M. Tadier:

But, of course, there are provisions in the Human Rights Law to ... as long as it is reasonable and proportionate that governments can ...

Senator B.I. Le Marquand:

Yes. Some rights are absolute and others are qualified and this is in the qualified rights with proportionality and so on being highly relevant. I am going to make sure I get the advice letter. It must be somewhere; it may be in here or not. There was a long advice letter in relation to the original law.

Deputy T.M. Pitman:

I would really like to pitch a difficult question to you, but I know you are not a politician to dodge difficult questions so I am going to ask it. In the past, we had a situation where our former Bailiff and Attorney General - and I am not going to ask specifically about that case - in effect did very little when we had a convicted paedophile allowed to be sworn in to the Honorary Police.

Senator B.I. Le Marquand:

Yes, I know the case.

Deputy T.M. Pitman:

So, my question would be: how confident can we now be and how would the Government control this, where the people ... it is fine having a great law, but if people who are meant to implement these laws appear to completely dodge the responsibilities - I have to put it that way - how are we going to overcome this?

Senator B.I. Le Marquand:

That could not happen today because of vetting and barring type stuff anyway. Anybody who is going to apply to be a policeman or an Honorary policeman, there are checks in place and have been for some time. In relation to that ... no, obviously if they were on a sex offenders register as well, it would be ... I am sorry, I have just said what I should not have said. There is no such thing as a sex offenders register, but if they were subject to the notification requirements then it would be even more bizarrer(?). But that really does more properly lie in the vetting and barring area. Certainly, it is one of the exempt categories, police officers, which means that convictions are never spent. I know that from having studied the exemption categories.

Deputy T.M. Pitman:

So, accepting that, you are 100 per cent sure that that could never happen again?

Senator B.I. Le Marquand:

I cannot be 100 per cent sure because if a person had changed their name or gave some false information that was not picked up or something went wrong with the criminal record search in some way that it came back not showing what it should show ... errors do happen.

Deputy T.M. Pitman:

Clearly, I know it is a few years ago now, but I have to say I thought that the Attorney General should have been removed from office, but I just want to be sure that can never happen again.

Senator B.I. Le Marquand:

Yes, I think, if I remember the details of the case, that a person was sworn in and then subsequently the previous matter was discovered and the matter was not referred back to the court. I think that to be the facts; I am not certain of that. It may correspond. My own theory is that was a terrible mistake. It should have been referred back, but there we are.

Deputy R.G. Le Hérissier:

Can we move to questions about occupations?

The Connétable of St. John:

Yes, just a quick question. Would it be possible for employers to contact the police and ask if anybody is on the sex offenders register?

Senator B.I. Le Marquand:

No, I would not have thought so. The vetting and barring and the records check system would be the system for employers. Were you thinking particularly of employers in vulnerable areas or just generally?

The Connétable of St. John:

Well, I would think so. That is going to be the most likely rather than a bank or somebody like that. It would be education or health.

Senator B.I. Le Marquand:

Yes. No, we are into the vetting and barring area there, really. It is a different system.

Deputy R.G. Le Hérissier:

There was an article last week in one of the nationals about the declining number of males in primary school teaching, and there is no doubt that certain stereotypes develop in society.

Senator B.I. Le Marquand:

Sorry, I did not pick up ...

Deputy R.G. Le Hérissier:

The declining number of male teachers in the primary sector.

Senator B.I. Le Marquand:

Declining numbers, sorry, I lost the ...

Deputy R.G. Le Hérissier:

Do you think that one of the inadvertent or perhaps perverse consequences of this law will be that it will strengthen those stereotypes and it will become very difficult, for example, for males to work in nursery education, primary education, and it will also mean that people are going to be very leery of volunteering for organisations like the scouts if they feel there is any possibility of what might be an

innocent part of their background is going to be misconstrued?

Senator B.I. Le Marquand:

I do not think it is this law that could create that problem.

Deputy R.G. Le Hérissier:

Vetting and barring?

Senator B.I. Le Marquand:

That again is in the vetting and barring area. As I say, we are going to have to be very careful about what we do in relation to that. I picked up on teletext, I think, some case in the U.K. where 2 female police officers had sharing arrangements for looking after each other's children and now are being told that that contravenes some law. I really think that is nonsensical. I do not think that was under vetting and barring. I think that was under registration for childminding. It seems to have gone completely mad. One has to be realistic about these things. We are seeking to do the best that we reasonably can, but at the end of the day, as I said before, it is no panacea. There can never be an ultimate total protection because of the fact that, as I say, quite often people who commit offences may have not previously committed offences. That is the difficulty.

Deputy R.G. Le Hérissier:

It has been stated, Mr. Minister, I think in your paper that there are 250 people already convicted ...

Senator B.I. Le Marquand:

Potentially, I think.

Deputy R.G. Le Hérissier:

Is that potentially?

Senator B.I. Le Marquand:

I think potentially.

Deputy R.G. Le Hérissier:

What do you mean by "potentially"?

Senator B.I. Le Marquand:

Well, if you are counting all the people who would be in Jersey who have ever committed an offence which falls into one of the categories of ... what is the wording? Okay. Perhaps if I look at the law ... numbers who would be potentially subject to notification requirements because they have committed sexual offences either here or elsewhere which could fall within it, then you are looking at quite a large number. But some of them could be quite a long time ago. I am thinking of a particular case where I defended a person about 30 years ago who, for reasons best known to him, followed a child into toilets and pulled their pants down and had a look but did not do anything more. Now, that person has committed an offence that would fall within one of the offences here and yet has not done anything since, as far as we know, and their life has moved on. So it is most unlikely that anyone would want to bring an application to make them subject to notification requirements. One has to be realistic.

Deputy R.G. Le Hérissier:

There seems to be some ambiguity, Mr. Minister, about the number who have addresses in Jersey but it appears have an address elsewhere, largely in the U.K. Are there a number of this 250 who move between the 2 places as far as you are aware?

Senator B.I. Le Marquand:

I do not know. We do not have that information. One of the problems in the U.K., of course, which led to the vetting and barring was people who moved around between police forces and they did things in one area and perhaps were not charged but there were suspicions about them, and they then moved to another area. And then they did similar things and then they moved on. But as I say, apart from Article 11, in every other case the lead-in is going to be a previous criminal offence in a particular category.

Deputy M. Tadier:

Can I just ask ... I thought Deputy Pitman had a point which I found interesting earlier. I do not think it got answered fully and I think it relates to Article 11 where somebody has not committed ... has not been convicted of an offence but, for example, they may still be subject to an order. If they want to appeal that, it seems to me that natural justice would dictate that that should be done in camera and it should not be made public on the basis that they have not been convicted and it is not beyond all reasonable doubt. So, can you confirm whether that is the case or whether you think that is desirable?

Senator B.I. Le Marquand:

You are talking about a child protection order.

Deputy M. Tadier:

That is right, so if someone thinks they had an order ...

Senator B.I. Le Marquand:

If the child protection order involved an individual child it would automatically or pretty well automatically fall within that category. This does not say it has to. This will leave it to the courts to make their own rules and to make their own decisions as to when it is appropriate and when it is not appropriate. It is not very different to the situation in other cases, if you think about it. The court decides when it is going to go into camera and when it is not going to go into camera. The press are always furious when the court goes into camera and assumes there is this ... well, perhaps not always, that would not be fair to the press, but they are sometimes furious when the court goes into camera and assume that there must be some dark reason why something is being kept secret, but there are a variety of different reasons.

Deputy M. Tadier:

But presumably in other appeal cases it is not subject to public disclosure, is it? So, for example, if you have been dismissed from a job and you think that is unfair, that would not necessarily be held in public.

Senator B.I. Le Marquand:

No, but if an order of justice was served upon a person that contained all sorts of allegations against them of being violent within a marriage or in a relationship and that went to pleadings, then that would become a public document.

Deputy M. Tadier:

Is there anything between ... are there appeal processes before it gets to court? That is the issue. So if it just goes straight to the court then it will be public?

Senator B.I. Le Marquand:

No, it is up to the court to determine its own rules and its own processes. I have looked at that area. I know that some work has started in relation to that.

Deputy M. Tadier:

I cannot speak for the whole panel, but I know that certainly it sounds like Deputy Pitman and myself have some concerns about that and I think the whole panel may have concerns.

Senator B.I. Le Marquand:

Yes, I understand that, particularly where there has not been a previous criminal conviction.

Deputy M. Tadier:

But basically, on the principle of natural justice, innocent until proven guilty, and if you have not had anything proven against you and then you are having to defend your name publicly, it does seem slightly counterintuitive. That may be one of the recommendations.

Deputy R.G. Le Hérissier:

Yes. It is certainly an important issue.

Senator B.I. Le Marquand:

Yes.

Deputy T.M. Pitman:

Can I move us across to another area? There is obviously, particularly in work with the elderly, there is a great many workers from the Polish community. How would that work to ensure ... obviously it is easy getting information from the U.K. How is it going to work if a Polish person finds himself in that situation where there are things ... you are saying: "We have heard you have done this" but they are saying: "No, we have not." How will they contest that? How will we prove it? Will we have to get ...?

Senator B.I. Le Marquand:

Sorry, what ...?

Deputy T.M. Pitman:

How would a person from, say, the Polish community who has allegations against them which are obviously going to impact on their career, how do they defend themselves if they are contesting that they have not done what they are being accused of?

Senator B.I. Le Marquand:

Are you talking about where they have a conviction or not a conviction?

Deputy T.M. Pitman:

Well, say they are already in post and it has come to light there are allegations that there may be an order against them - obviously I assume the Polish system is greatly different, for example, to Jersey's - how would that person fight that case? How would they argue their innocence?

Senator B.I. Le Marquand:

Well, firstly, if the conviction is outside of Jersey then the Royal Court has to make an order in the first place to bring them within the system. That is somewhere in the area of Articles 13 to 16. As to which category they are in there ... 15, convictions for sexual offences outside Jersey: "This Article applies to a person who outside Jersey has been convicted of an offence which if committed in Jersey would have constituted a sexual offence to which this law applies. The Royal Court may, on the application of the Attorney General, order that the person shall become subject to notification requirements ..." So, the court has a discretion but they do not come into the system straight away. A court order has to be made first based upon a conviction elsewhere, so there would have to be proof that they had a conviction elsewhere.

Deputy R.G. Le Hérisssier:

Mr. Minister, you have not got the facility to check on whether they have a conviction elsewhere, is that correct?

Senator B.I. Le Marquand:

That is the problem, of course, but it is more so a problem with vetting and barring again because in the context of this the Attorney General will have to have reason to believe they did have a conviction elsewhere before he would make an application. But it is more of a vetting and barring issue and it is one that has been raised by a number of people in the States from right across the political spectrum as to whether it is fair that there be information available ... more information available for people who come from the U.K. or Jersey or Guernsey or whatever than there is available from other countries. But that is not part of this. It is vetting and barring again.

The Connétable of St. John:

I might be able to throw a little bit of light but I am not sure I am here to answer questions. [Laughter] I have recently had an applicant, a Polish applicant, join the Honorary Police and the States police force naturally can only get information from the U.K. I have had to get the information ... the person concerned got the information from the Polish police and I had a certain translating company not too far from me here where I am sitting that translated it, but they have to provide it if you are applying for a job. They provide the information; you just have to verify that it is okay.

Senator B.I. Le Marquand:

Yes, but that is because you have taken the right steps. A good employer or a careful organisation wanting to check their people could say to the person: "Let us go back to your own home country where you lived and get a check done there."

The Connétable of St. John:

But I would presume within the medical and the education side, if a Polish person, for instance, came along looking for a job, they would normally have a criminal records check done anyway. I would have assumed the employer would ask similar questions.

Senator B.I. Le Marquand:

We are in vetting and barring again here. The point I have made in that context, which is not this context, is that the fact that somebody is not shown on the vetting and barring lists as being banned in the U.K. does not mean they are suitable for employment. A good employer should be initiating appropriate checks in the appropriate place. But this is not this. The 2 do get mixed together.

The Connétable of St. John:

No, but it might throw up things like this, presumably, if there is a record.

Senator B.I. Le Marquand:

If a record was thrown up that was in a particular area and if that was reported to the Attorney General, then the Attorney General would have to consider whether to make an application to make the person subject to notification requirements.

Deputy M. Tadier:

I guess the extreme implication is what steps are being taken to stop people from other nations coming to Jersey because they might think it is a soft touch and we do not have the same exchange agreements that, say, the U.K. may have with France or Poland. I think that is the worry.

Senator B.I. Le Marquand:

But if they are E.U. (European Union) nationals, of course, they have a right to come here. We do not have immigration controls on E.U. nationals. We only have immigration controls on non-E.U. nationals.

Deputy M. Tadier:

But if we can take the vetting and barring, for example, we know that there will be an exchange agreement between the U.K. and Jersey because we are buying, effectively, into the U.K. system. Is that the same thing with the Sex Offenders Law?

Senator B.I. Le Marquand:

Yes, insofar that if an order has been made elsewhere in the British Isles, then that automatically makes them subject to certain considerations here. One of the things that the Minister has to do by order is specify which parts of the British Isles and what types of orders, and once that has happened ... shall we say, someone who would be subject to a protection order in ... sorry, restraining order - I keep on calling them protection orders - in the U.K. who came to Jersey would automatically become subject to notification requirements, would have to declare that they had come, and the same breach of the U.K. order would be an offence in Jersey.

Deputy M. Tadier:

How would you reassure individuals who might say ... they might think that paedophile sex offenders from anywhere - it could be in Europe - might think that Jersey is a light touch, that their friends would say to them, you know: "Come to Jersey because they do not do any background checks on you and you can get away and you do not have to live with the same stigma you do back home"?

Senator B.I. Le Marquand:

Well, it is not a lighter touch. We are applying ... we are moving towards applying exactly the same tests and procedures as they apply in the U.K. except that we may be a bit more sensible in relation to exactly what we do with vetting and barring.

Deputy M. Tadier:

But what I am saying is it is only as good as the information that we can get, and if we do not have the information ...

Senator B.I. Le Marquand:

Yes, of course. Absolutely right. That is my point again, that no system is foolproof. It is only ever as good as the information.

Deputy T.M. Pitman:

An offshoot of what I meant to ask earlier, while we may be confident that the sharing of information and leakages can be kept to a minimum, is the downside of a small community the possibility that we could end up with a sort of sex offenders ghetto? If information is going to be shared and so the instance I referred to earlier where a lady with teenage children has got a person either side who has offended, could it be that eventually we are going ... these people are going to be focused into one area which would surely be ...

Senator B.I. Le Marquand:

Well, I certainly hope not. That would be most unfortunate. I have heard some apocryphal stories - I do not know if it is true or not - of some city in America where the only place that such groups can go is under the arches and under a particular railway thing. That probably is an apocryphal story but ... that would be horrendous. That would defeat the attempt to balance the rights of the individual. That is certainly not intended.

Deputy T.M. Pitman:

But are you confident we can avoid that given, as I say, we are a small community?

Senator B.I. Le Marquand:

Yes, I think I am. I probably have more confidence in the Royal Court and the jurats than perhaps some of the members of this panel may have. **[Laughter]**

Deputy R.G. Le Hérissier:

What are you going to do, though, Mr. Minister, if there is a case where somebody gets outed, so to speak; they get stigmatised and really it becomes impossible for them to stay on the Island? Basically, they are going to be harassed. What are we going to do about that?

Senator B.I. Le Marquand:

You say that but, of course, people do get convicted of offences and serve sentences. Without naming names, there are sometimes people who get convicted of offences which fall within this and serve sentences of one year or 2 years ... no longer than that. They come out after 8 months for one year and 16 months for 2 years and, of course, it can be shorter if they have spent some time on remand prior to ... remanded in custody. They very often return to their homes and pick up their former life without facing the sort of issues you are talking about.

Deputy R.G. Le Hérissier:

But I think it would be fair to say that the current mood at the moment is that paedophilia is in a different category, is it not, in terms of the fear and the apprehension it raises within the public?

Senator B.I. Le Marquand:

Yes. It is very difficult. Again, I am not in the least excusing paedophilia, I am certainly not doing that in any shape or form, but because some of the offences which are committed are historic offences and people are called to account many years later, they are sometimes quite elderly and quite frail by the time that they have served their sentences and come out. Without naming names, there is one particular person who has recently been set to quite alarming sentences and will be really very elderly. The other oddity of this is that sometimes, because times have moved on, people have formed lasting relationships. Sometimes people are convicted of paedophilia who apparently have been married for 20 or 30 years and, therefore, have formed other relationships. I can remember one case in Jersey where I released someone on bail and there was quite some upset as a result. If I remember rightly, the prosecution did not oppose bail; which made it slightly difficult for the judge to then decide to remand in custody when the prosecution was not asking that. But I believe that some people then went home and damaged and trashed the home of the person before they got back. But that was an unusual ... I believe that is what happened, anecdotally. I do not know for sure. But that is a pretty rare event. I think, on the whole, provided they have confidence in the sentencing level of the courts, people are prepared to leave people to sentencing.

Deputy M. Tadier:

Can I ask, Minister, to put this whole thing in context, what are the statistics relating to re-offending for sex offenders who then go on to commit a second or further ...

Senator B.I. Le Marquand:

I do not know. I have no absolutely no figures on that. I have never seen any figures on that.

Deputy M. Tadier:

Presumably it is sufficient enough to warrant ...

Senator B.I. Le Marquand:

Probation would be the people to ask.

Deputy M. Tadier:

But one would presume it is sufficient enough to warrant a complete law just for sex offenders. I mean if it were just in the order of one or 2 per cent of people who go on to re-offend or ... but if it is more likely, then you would presume there would be justification for a Sex Offenders' Law. That is what critics will say. That is not necessarily the panel's opinion.

Senator B.I. Le Marquand:

But the more successful a law is the lower percentage will be because it is achieving its objective. We can find out. Could we ask Probation if they have any figures? They are the sort of people who would keep figures on that.

Deputy M. Tadier:

Because I think the point we perhaps are trying to make is that obviously part of the reason for this law will be political because there is a great deal of hysteria, rightly or wrongly, when it comes to sexual offences; in particular those against children. It would be good if we could back that up with hard statistics to show that there is a need for the law.

Senator B.I. Le Marquand:

Yes. I do not think there is hysteria. I think it is a gradual process of people becoming aware of the extent of emotional and traumatic damage that is done. I mean it has been a gradual process. I was an advocate for 30-odd years. I suppose I still am technically, although I must re-take my oath. But I think that we always that such offences were repulsive and very unpleasant but I think it was a gradual process of understanding the psychological and emotional damage being done to young people through this. It has been a gradual process. I think I, probably myself, have only understood through contact with a particular doctor who has shown a particular interest in this area and meeting some victims of such conduct just how massive the traumatic damage can be.

Deputy M. Tadier:

I was just going to say the point I am making is that that damage is equally as bad if someone has not committed an offence before. So this law only serves to pick up those who are re-offending, which is ... and quite rightly.

Senator B.I. Le Marquand:

With the exception of Article 11 which does provide the ability to put in place some protection at an earlier level. In a sense you have come around, I think, to the reasons why I decided Article 11 should stay in; because it does widen the grouping.

Deputy R.G. Le Hérissier:

In a sense, Minister, you mentioned in your report one of the issues, of course, with this whole area has been the low conviction rate.

Senator B.I. Le Marquand:

Yes.

Deputy R.G. Le Hérissier:

As in areas like rape, where obviously there is an immensely low conviction rate.

Senator B.I. Le Marquand:

Yes.

Deputy R.G. Le Hérissier:

To that extent, the public obviously, I suppose, do not necessarily have complete faith in the system.

Senator B.I. Le Marquand:

There is a low conviction rate and that is partly caused by the fact that the criminal test is a very high one. People do not generally understand how high it is. You may remember an occasion in which the Attorney General was trying to answer a question on this and I stood up and said: "Would you agree that the test is such and such", and then outlined it - in my opinion, in a much clearer way than he had - by explaining that 10 out of 12 members of a jury had to be sure. Ten out of 12 people had to be sure that the person had done ... Now, that is a high test and that is sometimes forgotten, as to how high it is. The other problem, of course, is that, particularly with historical cases, if the complaint is made many years later there is no forensic evidence. There is no corroboration. There will be no one to remember, sadly, that a particular thing happened at a particular time. That is very unfortunate but a resulting by-product of the passing of the years and, of course, the emotional damage which is often done to people leads to them not wanting to talk about it because it is too painful or the memories are even suppressed and so on. But when a jury has to come and make decisions, it is very difficult. It is very difficult for a jury to be sure.

Deputy R.G. Le Hérissier:

Okay.

Senator B.I. Le Marquand:

You are right. You are supporting the arguments in favour of the Article 11.

Deputy R.G. Le Hérissier:

Well, I am not sure about that. I think we will certainly accept your ... Just the last area we have not covered is resources.

Senator B.I. Le Marquand:

Yes.

Deputy R.G. Le Hérissier:

We noticed that in your current submission you have reduced the resources to launch it but we have noticed that there are 2 social workers plus support staff, 2 probation officers plus support staff and then a police team. Why have you got separate social work and probation staff involved? Because it could be argued that, although they do not do the same work obviously and one obviously works in the criminal justice system and one does not for the most part, there is obviously an overlap. Why have you got representation at that level from both agencies?

Senator B.I. Le Marquand:

Probation, of course, work with offenders and people who are placed on orders without being in custody and, therefore, they have done a great deal of work in this area and a great deal of experience in this area. Until recent times, when we finally managed to get some proper resources inside the prison in terms of training and psychologists and drug workers and so on, virtually all the positive work with offenders was being done outside and so they are naturally going to be involved. Children's Services, of course, link in, in relation to the protection of families or individuals. The sort of questions you were asking me before in relation to hypothetical cases of a paedophile in a family; there has got to be linkage in. Now, unfortunately, the other agencies, other than the police, were very slow in telling us what this

was going to cost and for that reason my colleague Mr. Austin-Vautier made an estimation when we went to the general Council of Ministers' budgetary process of an additional sum which proved to be far, far too low. This is the information that we have received. I cannot tell you categorically this is correct, that the departments are not lying or deceiving. But this is what we believe to be correct.

Mr. S. Austin-Vautier:

If I may, Minister?

Senator B.I. Le Marquand:

Yes.

Mr. S. Austin-Vautier:

You mentioned 2 in each department. One of those, of course, in Probation is the matter co-ordinator.

Senator B.I. Le Marquand:

Yes.

Mr. S. Austin-Vautier:

So that person is not strictly operating as a probation officer. We were mentioning, very early on, topics around risk. One of the key things about managing sex offenders is the degree of inter-agency co-operation and the map of the multi-agency public protection arrangements. That is co-ordinated by one person to make sure that information is shared properly and there is not duplication of effort and that all the information that all the agencies need is understood by everybody.

Deputy R.G. Le Hérisier:

So there will be one in social work and one in probation work?

Mr. S. Austin-Vautier:

Well, there is one matter co-ordinator and they have identified that the person with the best skill set for that job is a probation officer. So there will be 2 case workers in Children's Services and one probation officer, mainly working on the actual supervision of sex offenders because they can be in supervision for up to 5 years. This work is very labour-intensive, clearly. So, I mean, the Minister is right. We have to go, to a certain extent, on professional assessment of the workload because I think the experience in the U.K. is that if this is done in a half-hearted way, that is when you potentially get mistakes. So this is a fair assessment of the numbers required for the number of sex offenders that are assessed in the Island.

Deputy R.G. Le Hérisier:

So, just to take an example, Chief Officer, apropos what Deputy Pitman said earlier, every address will be checked out, for example? It will not be random; every address will be checked out?

Mr. S. Austin-Vautier:

Yes, but they will do that on a risk basis, starting with clearly the ones who are assessed to be the most risk to the public. That is the only way I think you can do it because you cannot do everything to the same degree all at once.

Deputy R.G. Le Hérisier:

No, but it will be phased in?

Mr. S. Austin-Vautier:

Yes.

Deputy R.G. Le Hérissier:

Once the system is fully functioning it will be every address, for example, will be checked out?

Senator B.I. Le Marquand:

Only of those who are subject to identification requirements.

Deputy R.G. Le Hérissier:

Quite.

Senator B.I. Le Marquand:

Some of the early work that will have to be done is saying who are we going to try to add to the identification requirements first and, as I say, there are ... I have bombarded you with rather a lot of paper but if you look at the notes that I produce towards the end. These were produced for my own guidance and I thought they might help you as well. But if you look at Article 3, Identification, in the final section which starts with: "Concepts," and so on. This is 3 pages before the end. Can you see that? It is not numbered. It is 3 pages before the end. It says: "Article 3: Identification. Combined effect." Then you will see I say things like: "Relevant offence. An offence committed in Jersey after the law, automatic on conviction." In other words they are automatically subject to identification: "Previous conviction elsewhere in the British Isles leading to identification requirements, automatic." Then look at the others. All the others say: "Order required: need for risk. Restraining order: automatic, need for risk." When it says: "Order required," that means that you have got to the Royal Court and get the Royal Court to make an order to add the people to the list. They are not there.

Deputy R.G. Le Hérissier:

Okay.

Senator B.I. Le Marquand:

In some cases it says: "No need for risk." In other words, you just go and get the order without having to say that they represent a risk to the child. In other cases you have to demonstrate that they do constitute a risk to a child. That was just my brief note to try to help myself to understand that. So you are not going to start with the 250 people, where you have got 250 addresses to go to. You are going to start off with a list of people who you know fall within the thing. Where it is previous offences, you are going to have to decide whether you are going to get an order to add them to the list or not. So it starts off almost from zero except that anybody who commits any further offence, it then comes in automatically.

Deputy R.G. Le Hérissier:

But you are estimating about 130, are you not, will be added from the 250; or you are going to apply for retrospective orders in regard to 130, according to you paper?

Mr. S. Austin-Vautier:

That is right. The higher number was just what was on the Police National Computer at the moment but a lot of those will be out of date in terms of Jersey address. They may not be here any more. They just show on the computer.

Deputy R.G. Le Hérissier:

Okay. I think I will ask the panel whether they have got any final points.

Deputy T.M. Pitman:

Could it be that some of those people in the list area even dead or is that an other possibility?

Mr. S. Austin-Vautier:

I suppose it is a possibility, yes. It depends how well-weeded the P.N.C. (Police National Computer) is.

Senator B.I. Le Marquand:

I do not think the P.N.C. is weeded for people to be dead. It is an interesting question. I never thought about that before.

Deputy R.G. Le Hérissier:

Okay. I think members of the audience may wish to ask questions, so we will finish our part now and I would like to thank you very much. It has been very short notice and I thank the Minister for his *aide-memoire*.

Senator B.I. Le Marquand:

I hope that will help you.

Deputy R.G. Le Hérissier:

Yes, it will. Obviously we have not had a lot of time to read it but we will go away and read it. So I would like to thank you very much for coming at such short notice. Thank you, and members of the public and the media and hereby endeth the recording.

Member of the public:

Could I just ask; it is a genuine question. How do either Home Affairs or yourself categorise a paedophile? You know, do you see them as convicts; you know, a bad person? Do you see them as somebody with an illness? You know, how do you categorise a paedophile? Obviously as horrible people, they should be convicted; but do you think there is a strong argument that these people do have an illness? An emotional imbalance, you know, or ...

Senator B.I. Le Marquand:

That is an interesting question. I mean for the purposes of the law the primary thing is risk; the risk that they pose to children and other vulnerable groups. I am not sure I have got a clearly formed view on that because people are so complex.

Deputy M. Tadier:

Is it not more simple than that? They have to have a displayed behaviour in the past, either committed an offence or just behaviour that would ...

Senator B.I. Le Marquand:

No. If they have got an offence they are people who have done something wrong.

Member of the public:

That is right but how do you categorise their behaviour? What I am saying is if these people have an illness then they probably need more help than they do need locking up and convicting. Do you know what I mean? I just thought what sort of category ... what sort of pigeonhole, if you like, would you put them in?

Senator B.I. Le Marquand:

It is a totally difficult situation because I have a background as a judge and the law seeks to categorise offences in terms of the seriousness of the offences. You then can get into this very difficult situation in which you are having to balance a number of different factors from a sentencing point of view and one of those may be the needs of the individual. But on the other hand you have got the situation of the public perception and the public requirement, if you like, that victims and other people see that wrong

acts have a serious consequence. This is one of the biggest tensions always in the whole area of sentencing and, of course, particularly the lower the offences become - and in fact the area that I operated in with sentencing powers up to 12 months - in many cases you could look more at the individual needs of the person, as long as they were not repeat offenders. But as it gets more serious, as what they have done becomes worse ...

Member of the public:

Bearing in mind you are talking about somebody who has not offended yet. Like you said earlier on in your video, some people have come up to the police, for instance, and said: "Look, I have got paedophilia tendencies. I am this way."

Senator B.I. Le Marquand:

"I have propensities in this way."

Member of the public:

Do you think: "Hang on a minute, you are a potential criminal," or: "Hang on a minute, you are somebody with an illness that could do with some guidance and some help"?

Senator B.I. Le Marquand:

I think primarily the second. If the person has recognised their difficulty and is seeking help, I think primarily the second. But you have still got homophobic protection, you see. Interesting question.

Member of the public:

Yes, thank you for your time. Just one other quick one with regard to human rights and all the rest of it. This might sound a little bit ... you know, because this is sort of ... it is just a question that has been rolling around in my head and rolling around in my head because you said about sodomy, there is a law against it for homosexuals to start committing sodomy in public toilets and that anyway.

Senator B.I. Le Marquand:

Yes.

Member of the public:

It might sound a little bit strange and a little bit queer ... it might sound a little bit strange but is there any law against lesbians? I mean can they do whatever they get up to? I have no idea what they get up to.

Senator B.I. Le Marquand:

Yes.

Member of the public:

Can they do that in public places and toilets and the like?

Senator B.I. Le Marquand:

Yes. I mentioned about the difficulty of acts of gross indecency and it covering a whole lot of different things. That would be so. That would be so in a heterosexual setting. You know, I do not want to go into too much gory detail but if 2 heterosexuals were doing that which they should not do in a public place that also would be an act of gross indecency.

Deputy R.G. Le Hérissier:

I think it was the famous Bolton case, was it not, under human rights that did allow consenting adults? But that was not in a public place.

Senator B.I. Le Marquand:

No, exactly.

Deputy R.G. Le Hérissier:

It was the Bolton case, was it not, that sort of broke the bounds, so to speak?

Deputy M. Tadier:

How come sodomy is still ... what is the legal definition? Because homosexuality is not outlawed anymore, is it?

Senator B.I. Le Marquand:

Okay, I will put on my professional judge's face and not get embarrassed.

Deputy M. Tadier:

You are not being recorded.

Senator B.I. Le Marquand:

I am not professionally embarrassed by these things but I just prefer not to mention them. It is anal penetration. My understanding of sodomy it is not just between males but also females as well. It is anal penetration.

Deputy T.M. Pitman:

Thank you for helping us get to the bottom of that. **[Laughter]** I sat next to him too long.

Member of the public:

On thing that worries me immensely and I have sort of briefly tried to say to you about it and I will ask some questions at tomorrow's public meeting.

Senator B.I. Le Marquand:

Yes, that is fine.

Member of the public:

You keep saying: "That will arise under the vetting and barring."

Senator B.I. Le Marquand:

Yes.

Member of the public:

You keep saying, but it worries me immensely that this legislation is going to go through and there is going to be a whole area of activity which, when vetting and barring comes along, they are going to be changing the rules which have applied under the Sexual Offences Law. The aspects of vetting and barring again are linking it to the computer system which is going to be plugged into enhanced information. Suspicion that an offence might have been committed. Merely suspicion, people giving information.

Senator B.I. Le Marquand:

Yes.

Member of the public:

I link it to the fact that you are going to be linked into a computer system which caters for 60 million people in the U.K. but there is an opportunity to have all this information controlled in a community of

100,000 people maximum; controllable, computers can deal with it, no leakage of information, more likely to get the name spelled correctly, all this sort of thing.

Senator B.I. Le Marquand:

Yes.

Member of the public:

Also coupled with the fact that there is a Migration Law coming here which will be producing a sort of identity card which will have details of where people live, where they work. It is halfway to giving the sort of access to the sort of information that is needed to operate this very system about supervision. The whole thing needs to be looked at from the outset, that everything is compatible with everything else.

Senator B.I. Le Marquand:

This is quite different, Mr. Dunn, because here you have a system which requires applications to be made to courts and obviously it requires, in the main, offences to have been committed by people; although Article 11 is the exception to that. But it requires applications to be made to courts which have got to be satisfied, in the main that ... well, they have to in all cases before they make an order that it is necessary in order to protect the public generally or specifically. So there are lots of safeguards built in to this. I can understand your concern potentially in relation to a system in vetting and barring where decisions to bar people are going to be made somewhere in the U.K. based upon all sorts of information. But this is a much more transparent system in terms of court ... although subject, of course, to the issues we have discussed before about when it is appropriate for the court to sit in chambers. I mean I have a great deal of confidence in the court system; not that I believe the court system always gets decisions right. I certainly did not get all my decisions right all the time. But you have people who are seeking conscientiously to make the right decisions and they will do their best to do so. So you should have more confidence in this type of system than in some of the other ...

Member of the public:

But a lot of the decisions are not going to be decisions of the Jersey courts. They are going to be decisions that have been made elsewhere. Like yesterday a famous film producer was arrested in Switzerland or somewhere. He has been having a successful career and the whole world knows that he is wanted in America for a serious sexual offence. The whole world has apparently been totally unable to arrest the man for an offence which was committed over 30 years ago. The whole world has watched on. This sort of thing happens. This is the real world outside of this Island and it seems to me that you are trying to say that the Jersey courts will be dealing with all these eventualities.

Senator B.I. Le Marquand:

Only if they have a conviction somewhere else.

Member of the public:

This is why there needs to be the vetting and barring because in that area we are talking about mere suspicion. We are not talking about convictions. We are talking about information coming in from here, there and anywhere about people who may or may not. It is the sort of implications where you have got people, whether they are in employment or in voluntary work ... the organisations are going to have to form an opinion over this. They are going to get information from somewhere that there might possibly be a suspect person who they are going to be taking on and they are going to have public liability not to take on those people; all sorts of insurance implications and all sorts of safeguard issues that people left, right and centre will be stopped from doing things.

Senator B.I. Le Marquand:

It is difficult. It has to balance. At the end of the day what we are seeking to do in all these areas is to protect the vulnerable and in order to do that there are risks the other way. I think the risks are minimal in relation to this particular law. But that is the nature of balance, is it not? We are all individually going to set the balance; it is the way we put the risk in a slightly different place. I can tell you another context in relation to vetting and barring. If I get it perfectly right there should be an equal number of people complaining that it is too draconian on the one hand and too lax on the other.

Deputy R.G. Le Hérisier:

I think vetting and barring is going to be even more contentious, I would have thought, because of the judgement involved in a lot of the decisions.

Member of the public:

The Rehabilitation of Offenders Law was not mentioned today. Obviously this will cut into some offences which ... like, for example, people who wee in the street traditionally get done for indecent exposure. Well, that is potentially a sexual offence.

Senator B.I. Le Marquand:

Yes, but you will see that is one of the categories where the court has a discretion as to whether they are treated that way or not because that can be anything or nothing. It can be serious or not serious.

Member of the public:

Another area which worries me, if you read what goes on in the real world, is very, very young people are convicted of sexual offences. Very young children.

Senator B.I. Le Marquand:

Yes, I know. But, again, if you look at the detail of this you will see that there are safeguards depending upon their age.

Deputy R.G. Le Hérisier:

Thank you very much.

Member of the public:

I would like to say, but this will probably go right over the accredited media's head, but the fact that you could sit down there and hold your own here, no disrespect ... you know, that you can actually do that as a Minister and not rely on your civil servants, I think the hat should go off to you. You are very commendable. You can sit and hold your own and not have ...

Senator B.I. Le Marquand:

I worked very hard on this. I spent 2 and a half days writing these notes.

Member of the public:

I would like somebody to go through the archives and see when that has ever happened, that a Minister has been here in a Scrutiny meeting that has taken an hour and 25 minutes before a civil servant said a single word. I think that is absolutely brilliant. I think it is great. I think he should be our next Chief Minister. [Laughter]

Deputy R.G. Le Hérisier:

Thank you.