



PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

MORNING SESSION: 9.30 a.m. – 12.25 p.m.

Gibraltar, Thursday, 25th July 2013

The Gibraltar Parliament

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The Parliament met at 9.30 a.m.

[MR SPEAKER: Hon. A J Canepa GMH, OBE, *in the Chair*]

[CLERK TO THE PARLIAMENT: M L Farrell Esq RD *in attendance*]

Questions for Oral Answer

Clerk: Sitting of Parliament, Thursday, 25th July 2013, answers to Oral Questions continue.

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SPORTS, CULTURE, HERITAGE AND YOUTH

Gibraltar Rugby Football Union Provision of renewed facilities

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Clerk: Question 519/2013, the Hon. E J Reyes.

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Hon. E J Reyes: Mr Speaker, can the Minister for Sports and Leisure state if he has, since the answer to Question 229/2013, held discussions with the Gibraltar Rugby Football Union in respect of providing renewed facilities for the playing, teaching and development of the sport; and, if so, provide details of any agreements reached?

Clerk: Answer, the Hon. the Minister for Sports, Culture, Heritage and Youth.

25 **Minister for Sports, Culture, Heritage and Youth (Hon. S E Linares):** Mr Speaker, no further meetings have taken place since the answer to Question 229/2013.

30 **Hon. E J Reyes:** Mr Speaker, does the Minister have any intention to meet up with the rugby fraternity soon, given that we received the bad news that they seem to have suffered some set back in their recent application? It may be of interest to the sporting community in Gibraltar as a whole, because we rightly believe, and I am sure his side of the House also believes that we are entitled to be members of the international governing body, and I think that this House would wholeheartedly and unanimously like to support their application.

35 **Hon. S E Linares:** Yes, Mr Speaker, of course we support their application and we are saddened at the fact that they did not obtain their goal as in becoming members of the European Federation.

40 As to meeting them, I meet them regularly. Question 229 was only a month ago and therefore these occurrences have happened during that month. During the month of August at the earliest will be when I start meeting all the associations, including the rugby.

Chief Minister (Hon. F R Picardo): Mr Speaker, if I may be of assistance to the House?

45 The hon. Gentleman may be interested to know that, in the Hon. Minister's absence at the Island Games, in the aftermath of the decision – the unfortunate decision, to put it no higher than that – of the international body in respect of rugby, I met the representatives of rugby and have understood from them what the issues are.

He should rest assured that rugby has been given exactly the same support that football has and that all other local associations have, although he and I know that it is better for us to discuss the extent of that behind the Speaker's Chair.

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Gibraltar Cricket Association Provision of renewed facilities

55 **Clerk:** Question 520, the Hon. E J Reyes.

60 **Hon. E J Reyes:** Can the Minister for Sports and Leisure state if he has, since the answer to Question 231/2013, held discussions with the Gibraltar Cricket Association in respect of providing renewed facilities for the playing, teaching and development of the sport; and, if so, provide details of any agreements reached?

Clerk: Answer, the Hon. the Minister for Sports, Culture, Heritage and Youth.

65 **Minister for Sports, Culture, Heritage and Youth (Hon. S E Linares):** Mr Speaker, consultation with the Gibraltar Cricket Association is ongoing and a further meeting – and this, obviously, has been prepared a while back – was scheduled on 24th July, which was yesterday.

70 I am happy to say that, from yesterday's meeting, we did discuss... and it was actually on site at the Garrison Gym, where we are exploring ways in which the Cricket Association can use those facilities for children and can use it for indoor cricket.

Gibraltar Sports and Leisure Authority Advertisement of vacancy

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Clerk: Question 521, the Hon. E J Reyes.

80 **Hon. E J Reyes:** Further to the answer to Question 443/2013, can the Minister for Sports and Leisure say when the vacancy within the Gibraltar Sports and Leisure Authority will be advertised to the general public?

Clerk: Answer, the Hon. the Minister for Sports, Culture, Heritage and Youth.

85 **Minister for Sports, Culture, Heritage and Youth (Hon. S E Linares):** Mr Speaker, the position remains the same as in my answer to Question 443/2013.

90 **Hon. E J Reyes:** Mr Speaker, can the Minister then confirm from there that, at some stage... I think last time he said that the post was ongoing and that the Chief Executive had to prepare things for him and so on. Can he confirm that relatively soon – and I do not know if he can tie himself down to saying how soon ‘soon’ would be – that the vacancy will be advertised to the general public, like I say in my Question?

95 **Hon. S E Linares:** Mr Speaker, if by ‘to the general public’ he means advertised for everybody, that might not happen; but advertised it will, in the forums or internally, or wherever the Government feels fit that it should be advertised.

100 **Hon. E J Reyes:** Is there a particular reason, Mr Speaker, why a vacancy within a Government-owned Authority is not open to the general public so that the best applicants may be considered by the selection board and therefore we get the best candidate for the position?

Hon. S E Linares: If the hon. Member is insinuating that there are not good candidates within the Government, he should clearly say so.

105 The Government policy is that we advertise vacancies internally to Agencies and Authorities first, before going out to the public.

110 **Hon. E J Reyes:** For clarification, Mr Speaker, no, I have not insinuated that there are not worthwhile candidates within the Agency. What I was stressing was that the best suitable candidate from what is available in the labour market in Gibraltar, I think, should have a fair and equal chance of applying for the post, and the beneficiary would be the community at large, because therefore the best candidate is the one who gets the job.

Hon. D A Feetham: Hear, hear.

115 **Hon. S E Linares:** Mr Speaker, the position remains the same.

**John Mackintosh Hall
Advertisement of caretaker position**

120 **Clerk:** Question 522, the Hon. E J Reyes.

125 **Hon. E J Reyes:** Mr Speaker, first of all, I take the opportunity to thank you and the staff at Parliament for guiding me last week when I noticed that there was a human typing error on my part. Therefore, with your assistance – and I think the Minister was given due notice – the Question now has the correct word and therefore it makes sense.

130 The Question stands now saying further to the answer to Question No. W61/2013 – because it was a Written Question, the first one – can the Minister for Culture and Heritage say when his Ministry intends to advertise the position of caretaker at John Mackintosh Hall, which became vacant due to the retirement of the previous holder?

Clerk: Answer, the Hon. the Minister for Sports, Culture, Heritage and Youth.

135 **Minister for Sports, Culture, Heritage and Youth (Hon. S E Linares):** Yes, Mr Speaker.

Just to add on, I was a bit perplexed when the Question came with the word ‘why’ rather than ‘when’, and I was trying to grapple as to how I would answer that Question. But yes, obviously it now makes sense as to ‘when’.

140 The answer, Mr Speaker, is that the Ministry for Culture and Heritage has no intention of advertising this post.

Hon. E J Reyes: Mr Speaker, can I have some clarification why he does not intend to advertise the post, given that in the Estimates that we approved very recently, here in the establishment section it does cater for that particular post?

145 **Hon. S E Linares:** Mr Speaker, if he looks at the establishment of this post that we are talking about, it is not under the Ministry; it is under the Agency. Therefore, it is the Agency which intends to put out the post.

150 So if the question is is the Ministry going to bring out the post, the Ministry has no intention of bringing out the post. I would say that the post is coming out, but it is not coming out through the Ministry.

Hon. E J Reyes: Thank you for that clarification, Mr Speaker.

155 Sorry, I used my words 'his Ministry' because I thought his Ministry was also responsible for the Agency. I shall bear that in mind in the future and perhaps word it to put down either 'the Ministry' or 'the Agency'.

But therefore, it remains that the post is going to be advertised. Any indication of when he expects this to be done?

160 **Hon. S E Linares:** Mr Speaker, I understand that the officers within the Culture Agency are preparing themselves to advertise the post, but I am not quite sure as to when. I hope that with the word 'soon' whether... and I am trying for it to be soon, as in sooner rather than later.

165 **Parson's Lodge and Moorish Castle
Details of works undertaken**

Clerk: Question 523, the Hon. E J Reyes.

170 **Hon. E J Reyes:** Can the Minister for Heritage provide full details of all the works undertaken so far in the financial year 2013-14 at both Parson's Lodge and Moorish Castle, inclusive of information pertaining to costs and the constructors who carried out any of the works?

175 **Clerk:** Answer, the Hon. the Minister for Sports, Culture, Heritage and Youth.

Minister for Sports, Culture, Heritage and Youth (Hon. S E Linares): Mr Speaker, works carried out so far during this financial year of 2013-14 at Parson's Lodge are as follows.

Contractor, SFA; total amount, £13,575.52.

180 Works... There is a whole list here, Mr Speaker, and I could either read it for *Hansard* or just pass it on to the hon. Member. It is up to... Shall I read it? Yes, okay. To scrape loose flaking paint from interior kitchen walls; repaint kitchen with high-quality paint to eliminate dampness with water ingress; to remove and dispose of existing kitchen; to clad all kitchen walls with panels; build new kitchen cupboards; tiling of all kitchen walls and floor; plumbing, painting and electrics; minor repairs to wood windows. That is the extent of what SFA did.

185 In relation to the Moorish Castle, no further works have been carried out at Moorish Castle.

190 **ENTERPRISE, TRAINING, EMPLOYMENT AND HEALTH & SAFETY**

**Employment Survey Report 2012
Future Job Strategy trainees**

195 **Clerk:** Question 534, the Hon. D J Bossino.

Hon. D J Bossino: Can the Minister for Employment explain how the FJS trainees are accounted for in the various subheadings contained in the Employment Survey Report 2012?

200 **Clerk:** Answer, the Hon. the Minister for Enterprise, Training, Employment and Health & Safety.

Minister for Enterprise, Training, Employment and Health & Safety (Hon J J Bossano): No, Mr Speaker.

205 **Hon. D J Bossino:** Mr Speaker, he will recall, when we finished the sitting last Thursday, that I asked him why it was that he was unable to answer this Question – which is my only Question to him at this sitting – and he said that it was dependent on what the computer could produce. My retort to that was, 'But your answer is going to be no in any event,' – and true to form, Mr Speaker, the Hon. Minister has indeed replied in the terms that I predicted he would.

210 It reminds me of that famous sketch in 'Little Britain' when the lady always says the computer says no. Presumably in this case the computer must have said no, Mr Speaker; but can I ask him why that is the case?

Hon. J J Bossano: I will tell him what the computer says when I answer that supplementary, Mr Speaker.

215 The survey results are compiled from returns made by employers to the Statistics Office, which are confidential and to which my Department does not have access. I understand, however, that the allocation system has not changed from the way in which VTS trainees were allocated by placement in the October 2011 survey and in the previous years.

220 **Hon. D J Bossino:** Mr Speaker, of course the first distinction that comes to mind between the system which was in place during our time in Government, which was the VTS – the Vocational Training Scheme – and the hon. Member's in this Government's system – which is the Future Job Strategy – is of course that FJS trainees are now employed by Government-owned companies, and I wonder whether the hon. Member sees that distinction; and in the light of that, whether there ought to now be a special entry for FJS employees in the Report?

225 Presumably the employer companies of these individuals, these FJS trainees, would have been required to submit forms in order to compile this Report, and I assume that takes account of the large number of employees that we have seen in the public sector to a large extent, for example – and I mentioned this, and the hon. Member will recall, during the course of my Budget intervention, where
230 under table 6.6, which is entitled 'Full-time employee jobs in wholly-owned Government companies by industry and nationality' – there was a considerable increase of 110 from the position as it was in 2010 under the category of 'Public administration', and there are other increases, for example in Health and social work from, again, zero to 80.

235 Mr Speaker, I assume from that that the increase is on account of the fact that the FJS trainees are now employed by Government-owned companies, and perhaps the Hon. Minister could assist me in interpreting this and whether he acknowledges – going back to the beginning of my question – that there is a distinction between the way that VTS trainees were treated under the GSD and the way that they are treated now under his administration – or, rather, the Hon. the Chief Minister's administration?

240 **Hon. J J Bossano:** Mr Speaker, I acknowledge that logically there should have been. In fact, there is not, because the VTS, even though they were not employees, and they were not paying social insurance, and they were not paying tax, and they were not covered by the Employment Law, were in fact included in the Employment Surveys as if they had been employees. Therefore, it is not the case that there are now
245 the employees of the training companies and that that is an increase from zero. If there are more now, it is because there may be 500 now and there were 400 before, right, and they were distributed in the allocation by industry according to the industry in which they were placed in October, which in our case might not have been the same as in the previous case so there may be differences there. So in fact it means that, for example, if you had VTS people who were placed in a hotel, as there were, they would have appeared as employees in the hotel industry, even though they were not being... Well, that is what I
250 am assured by the Statistics Office was happening and I have no reason to doubt it, because obviously I wanted to know how the VTS were being treated when I came in. The October 2011 Survey which I tabled, but which dealt with the GSD period in Government, included the VTS in that Survey.

255 So the answer to his question is that I would agree with him that the logical thing is that the VTS should not have been included by the GSD, but they were. So the fact that they are now included has meant no change in methodology as far as the Statistics Office is concerned, because they have just carried on treating them as they were treating them before – not by the nature of who was paying them, but by the nature of the work which they were employed to be doing or learning to do.

260 In terms of the numbers in the public sector, there may be some element of the people in the companies which were predominantly the people who were moved initially in February from the private to the public, or the people we introduced, for example, in the Care Agency, where previously there had been no trainee carers. Those figures would have been reflected as the numbers in the public sector.

265 **Hon. D J Bossino:** Mr Speaker, I actually find that explanation, as you will have judged by my body language, rather surprising. I am surprised, in fact, that the VTS trainees would have been included as employees, and indeed the hon. Member says so is he. But I will investigate that and perhaps I can have a conversation with him outside of this House. In fact, it then does not provide me with an explanation as to why there has been that large number of increases in the various sectors that I referred to him earlier.

There is one more particular area of activity which I have also found surprising which has been the subject of an increase, and that is... and perhaps the hon. Member... I appreciate that it may not directly

270 lead from the substantive Question which I have posed to him today, but maybe he can assist me and enlighten me in relation to it.

275 In table 6.4, which is entitled, ‘Full-time employee jobs in statutory authorities and agencies by industry and nationality’, now the position in relation to real estate and business activities – we see a number appearing there of 83, whilst the position during our time in government – in other words, as reflected in the previous Employment Survey Report – is zero. Can he explain, because I just find it odd that statutory authorities and agencies should be conducting activities in this field. Maybe he can provide some information in relation to that.

280 **Hon. J J Bossano:** I cannot provide him information without being given notice of a question which requires my going back to the statistician and asking them how the figure...

The Employment Service does not produce the Employment Survey, although it is my responsibility to table it in this House; it is compiled by returns made by employers.

285 As far as I am concerned, the classification is the same classification that has been used in previous years; therefore, there has to be a reason why people appear in there if they did not appear in there before.

But I will look at it and give him an answer.

290 **Hon. D J Bossino:** Mr Speaker, now that we are at it in relation to FJS employees... and I appreciate, judging from the Hon. Chief Minister’s interview that he gave to the GBC a few days ago in relation to his view on what Government transparency is all about... I will ask the question whether the hon. Member’s Department would be minded to produce online statistical information in relation to the FJS employees – at least information as to how many there are and where they are employed by. When I Mean ‘where they are employed by’, obviously I would like as much information as possible. I know the hon. Member will not give it to me, but at least if he could set out those who are in the private sector and those who are in the public sector, I think that would be very useful information which could be made available online, which as I understand it is not currently available.

If not, of course, I will continue to pose Questions in this House in relation to that subject.

300 **Hon. J J Bossano:** Mr Speaker, the information has been provided whenever it has been requested. Whenever he wants it, all he has got to do is ask and I will get it calculated. It is not something we are doing constantly.

The hon. Member must understand that there is quite a high level of movement now. That is to say in the first 11 months the people who came in really did not start moving out until January 2013, because they all started in February and a lot of them had 11-months contracts.

305 In the second year, as I have already explained to him, in order to be able to put more people through the system we introduced a standard three months, and we depart from it only when a case is made which we consider to be justified. The Department looks at the argument as to the training that is required by the employer, how complex the job is and the level of skills that exist in the people we can provide.

310 So otherwise, what we are talking about is that since January there has been a movement in and out. So effectively in every month the composition of the distribution of the trainees will change, even though the number may not change. So you can have, in February and in March and in April, more or less the same number in the system, but they are not the same people and they are not in the same places.

I can give him, whenever we have a meeting of the House, which is quite frequent... If he puts a Question on that information, I will update all the figures that he has got.

315 **Hon. D J Bossino:** Mr Speaker, I am sure he appreciates the point. It is precisely *because* there is so much movement. Rather than me having to ask the question on a monthly basis, which of course I am happy to do... but he needs to appreciate that really what I am asking for is for him to simply set up the information on the website so that one can have almost a snapshot, at least on a monthly or on a quarterly basis, as to what the figures are looking like.

320 If the hon. Member is telling me that he would rather not go down that route and simply provide the information and carry out the administrative work, which would have to be carried out in any event to answer the Question which I pose, then I am happy, of course – in fact it would be my duty, I think – to seek that statistical information across the floor of this House or by way of a Written Question.

325 **Hon. J J Bossano:** That is, in fact, what I am telling him.

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**New gaming companies
Details of jobs created**

335 **Clerk:** Question 535, the Hon. D A Feetham.

Hon D A Feetham: Mr Speaker, with regard to the four new gaming companies licensed to operate in Gibraltar and the 400 jobs which the Chief Minister has claimed have been created as a consequence, can the Chief Minister please provide a breakdown of those jobs in each of the gaming companies by reference to (a) nationality and (b) the nature of the job?

Clerk: Answer, the Hon. the Chief Minister.
Answer, the Hon. the Minister for Enterprise, Training, Employment and Health & Safety.

345 **Minister for Enterprise, Training, Employment and Health & Safety (Hon. J J Bossano):** Mr Speaker, I will answer the Question together with Question 536.

350 **Financial services industry
Details of jobs created**

Hon. D A Feetham: Mr Speaker, with regard to the creation of 200 jobs in the financial services which the Chief Minister says have been created since he took office, can the Chief Minister please provide a breakdown of these jobs by nationality and sector?

Clerk: Answer, the Hon. the Minister for Enterprise, Training, Employment and Health & Safety.

360 **Minister for Enterprise, Training, Employment and Health & Safety (Hon. J J Bossano):** Mr Speaker, the number of jobs created between 1st January 2012 and June 2013 in the gaming industry was 1,647 of which 143 were created by the four new licence-holders.

The nationality breakdown in the four is as follows: Gibraltarians, 25; other British, 85; Spanish, 2; Swedish, 4; American, 2; Portuguese, 3; German, 5; Polish, 4; Estonian, 1; Irish, 1; Romanian, 5; Israeli, 1; Indian, 1; Slovakian, 1; Dutch, 1; Canadian, 1; French, 1; and Danish, 1.

365 The job distribution is as follows: management, 37; administrative, 24; IT, 11; and gaming skills, 71.

As regards the financial services, the information available in the Department is in respect of the industry code banking, insurance and finance. There is no information for the separate elements of the industry readily available. In the industry sector as a whole, the jobs created between January 2012 and June 2013 was 1,624.

370 **Hon. D A Feetham:** Mr Speaker, yes... but, with respect to the hon. Gentleman, it does not answer my Question, because what I have asked in both of these Questions – but just to concentrate on the first one first – what I have asked is in relation to the four new gaming companies licensed to operate in Gibraltar and the 400 jobs which the Chief Minister has claimed have been created as a consequence.

375 What the hon. Gentleman has given me is a figure of 1,647 jobs that have been created in the gaming industry since January 2012. That does not relate to these four new gaming companies, which is effectively how my Question is predicated, and of course it does not provide a net figure. Because I realise that 1,647 may be the jobs that have been occupied during that period, but it does not provide me with a net figure of *new* jobs that have been created within the sector, which is the whole purpose of my Question.

380 Does the Hon. the Minister for Employment have those figures available, as in fact has been requested in my Question?

385 **Hon. J J Bossano:** Mr Speaker, as I explained to him in answer to Question 373, the number of jobs created and the number of increase in jobs are not the same thing. I gave him a detailed explanation in Question 373.

390 What I am telling him now is, since he has asked again, the number of jobs created, which is not the statement that was made by the Chief Minister. The Chief Minister said in 18 months we have seen four new online gaming companies licensed and three more in the pipeline – this has meant over 400 new jobs.

In the financial services, employment has grown by over 200 – that is a net change – and therefore what I am telling him is that the net change is slightly up on the figure that I gave him in Question 373, which was close to the figures that were being quoted. The figures that were being quoted he has to relate

395 to the answer that I already gave him in Question 373/2013, when I told him in the banking sector it had gone up, up to March, and it has gone up since further. It has gone up from 3,732 to 3,877.

In the gaming industry I was able to give him an estimate by pointing out the number of vacancies filled and the number of jobs terminated.

400 I explained to him that if he wants the information of the jobs created, it is a laborious hand-done exercise, which is this, where the computer produces the name of every individual and the start date of every individual and somebody sits down and counts it so that I can give him the figure. Therefore, the figures that we have got are that those are all the people who started work after 1st January 2012 and up to the end of June.

405 The answer of the net figure is that the net figure is in line with the answers that we stated publicly and they are slightly up on the March level. So that is the answer. The answer is what we have made public already. The breakdown of nationality in the new companies and of the skills is the one that I have given him – the 143. So in fact, of the 400 jobs that have gone up, 143 are in the companies that have just started. One particular company, for example, to date has only got three people in it because it started very recently and the three people are the people who have come to Gibraltar to start the business.

410 So we would expect that that 143 in those particular four companies will be going up. But the figure that was given of the increase in the 18 months was not exclusively about these three, because these three... these four have not been there 18 months. They are more recent than that. They obtained their licence in the last 18 months, but not at the *beginning* of the 18 months. The 400 is over the whole of the 18 months and out of that you have got the 143 that I have given the hon. Member. I hope that explains the difference.

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Hon. D A Feetham: Yes, Mr Speaker, I have to say that I found it very odd when I heard the statement about the 400 jobs in relation to four new gaming companies, because as somebody who obviously operates... I am not a gaming lawyer, but I certainly keep tabs in relation to the gaming sector, I thought that was an exaggeration, to put it mildly.

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But the Question relates to the four new gaming companies and it says:

‘With regard to the four new gaming companies licensed to operate in Gibraltar... please provide a breakdown of these jobs in each of the gaming companies...’

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Does he have, in relation to each of those four gaming companies, a breakdown of how many jobs have been created by each of those four new gaming companies and split down by nationality and the nature of the job?

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I realise that he has provided me with information in relation to the industry as a whole, although he subsumed as well within that a breakdown in relation to the 143, but he is not giving me a breakdown, which is what I ask in my Question, in relation to these four new gaming companies. Does he have that? If he does not, I am quite prepared, provided that he does write to me, I am quite prepared to accept it by letter from the hon. Gentleman if he undertakes to write me to provide me with that information.

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Hon. J J Bossano: Well, Mr Speaker, the figure that I have given him is what the four amount to, given that the reference that was made public was to four companies. I am not saying one company has provided so many jobs, but if he wants me to get the Department to say, ‘Company 1, 20; company 2, 10’, then I will get somebody to write to him today.

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Clerk: With that, we come to the end of answers to Oral Questions.

Questions for Written Answer

445

Clerk: Answers to Written Questions, the Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to table the Answers to Written Questions numbered W70/2013 to W98/2013 inclusive.

450

GOVERNMENT MOTION

Mayor of Gibraltar
Mr Anthony D Lima MBE RD reappointed

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Clerk: Government motion, the Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move the motion standing in my name, which reads as follows:

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'This House –

1. Notes that the tenure of office as Mayor of Mr Anthony D Lima MBE RD ends on the 31st day of July 2013; and

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2. Reappoints the said Mr Anthony D Lima MBE RD to serve as Mayor for a further period from the 1st day of August 2013 to the 31st day of March 2014.'

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Mr Speaker, there is no question of Mr Lima having done anything other than an absolutely excellent job in the time that he has already been Mayor – something which I think is true of all of those who have held the post of mayor, and I note that at one stage you did too – but in this instance what we are dealing with is the introduction of a new process for the appointment of mayor introduced by the previous administration, which created *annually* a new incumbent for the post, and this was done at this time in Parliament with the incumbent taking over, traditionally, on the first day of August.

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It has been found that this has created an imbalance in the way that the finances of the mayoralty have worked, because the individual who has been leaving the mayoralty at the end of July has, of course, wanted to ensure that in the period of their appointment they have fulfilled their obligations as they have seen fit, including organising certain functions which have, in effect, eaten into the pro rata monthly budget of the mayor between each of the months of the financial year, but in particular between the end of July and 31st March.

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Therefore, we announced some time ago, and this motion now in effect delivers, that we would be ensuring that the mayoral year runs with the financial year, and therefore the extension now of Mr Lima will take him up to the end of the financial year, so that a new mayor can be appointed by this House with effect from 1st April, which is the beginning of the new financial year.

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This is what this motion is intended to do. It is an administrative act in that sense, but it is also an opportunity to reflect on how well Mr Lima has already discharged the functions of his office in the 12 months he has been there.

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Mr Speaker: I now propose the question in the terms of the motion moved by the Hon. the Chief Minister.

Hon. E J Reyes: Yes, Mr Speaker.

This side of the House concurs completely with the Chief Minister's words that all past mayors seem to have done a wonderful job and the adjective 'excellent' equally applies to Mr Lima: Mr Lima has proved himself to be a great ambassador amongst Gibraltarians.

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We understand the Chief Minister's motives. It should be a bit easier for mayors to organise their expenditure if their tenure coincides with that of the financial year. There is a lot of sense in that, and certainly the Treasury Department and the Financial Secretary's Office would be in a far better position to even guide the mayor and help him plan along and so on. So yes, Mr Speaker we will be wholeheartedly supporting this motion.

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Unfortunately for... well, *fortunately* for Mr Lima, he gets a few extra months. I was going to add *unfortunately* for his wife: it means she now has to put up with his absence from home. Mr Lima was very much looking forward to a quieter life and so on, but like he says, he is more than happy to serve his Gibraltar, something he does with great passion. He has proved himself to be a man of great talents. He has past service in the Royal Naval Reserve; hence his Reserve decoration and so on, as does our Clerk here in Parliament.

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So we thank Mr Lima for his service and certainly continue to wish him well for the oncoming months, and from this side of the House we give him our total and unreserved support and wish both Mr Lima and his lovely wife, Carmen, all the best in the remaining months in office.

Mr Speaker: If no other Member wishes to speak, I will call on the mover to reply.

510 **Hon. Chief Minister:** Mr Speaker, only to say this: at the time that Mr Lima was appointed – I believe we were on the other side – I said that although I understood how much he was looking forward to his retirement, and Carmen was too, it was great of them to lend Gibraltar one more year of their time. It has now turned out it is going to be a year and a half, and I think the whole House will want to join me in thanking them for giving us of that time and for fulfilling their functions as well as they do.

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Mr Speaker: I now put the question in the terms of the motion proposed by the Hon. the Chief Minister. Those in favour? (**Members:** Aye.) Those against? Carried.

520

BILLS

FIRST AND SECOND READING

525

Pensions (Miscellaneous Amendments) Bill 2013 **First Reading approved**

Clerk: Bills, First and Second Reading.

A Bill for an Act to amend the Pensions Act and related legislation.

530

The Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move that a Bill for an Act to amend the Pensions Act and related legislation be read a first time.

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Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Pensions Act and related legislation be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried

Clerk: The Pensions (Miscellaneous Amendments) Act 2013.

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Pensions (Miscellaneous Amendments) Bill 2013 **Second Reading approved**

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Chief Minister (Hon. F R Picardo): Mr Speaker, I beg to move that the Bill for a Pensions (Miscellaneous Amendments) Act 2013 be read a second time.

Mr Speaker, this Bill, bar certain amendments, was published originally in identical terms to a Bill published by the previous administration as Bill 25/2011.

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The amendments, which mirror those that appeared in Bill 25/2011, arise from issues which arose during the previous administration and which officials have asserted require legislative change. Most of these involve amendments to the Pensions Act itself. It will be noted, for example, that clause 1 of the Bill contains an extensive commencement provision and that the commencement dates of the provisions vary from as far back as March 2007 to the date of publication, and the Hon. Learned Gentleman Mr Bossino and I have had a discussion about one of those particular retrospective provisions, which I will come to.

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However, Mr Speaker, on further consideration, and as a result of discussions which have taken place since the date of publication, the Government will, at the Committee Stage, propose certain amendments to the Bill which it is felt best reflect the current administration's policy in these areas. I will speak, at this stage, on the basis of the Bill as we propose it stand *after* amendment at the Committee Stage, and I know that hon. Members have had notice of my letter to you setting out the proposed amendments and will therefore be able to follow what it is that I am speaking to.

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Mr Speaker, I will take the amendments in the order that they appear in the Bill except where, due to these amendments I am talking about, being linked, it is more useful to deal with them out of that order.

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I will be proposing at committee stage that the amendments included in clause 2(2) of the Bill – which would extend definitions of 'fire', 'police' and 'prison officer' within the Pensions Act to include the most senior ranks – are deleted.

The policy behind the initial inclusion of this provision was to make these posts more attractive to potential applicants. The current situation in the Fire, Police and Prison Service is that once an individual reaches a certain rank, he is liable, in certain circumstances on retirement, to the payment of Income Tax on his pension, which, had he remained at a lower rank, he would not otherwise have been liable to pay. It

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was thought that without this amendment senior officers could be put off applying for promotion and that therefore we would not always get the best person for a particular post being interested in applying; but we no longer believe that this is a valid argument, and that even if it were, we are no longer of the opinion on this side of the House, Mr Speaker, that bringing those posts within the said definitions would be the appropriate way to resolve the issue.

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Police, fire and prison officers are exempt from paying tax on their pension income at a lower age due to the difference in their compulsory retirement age. Bringing the most senior officers into the same regime would mean that they could expect to retire at the same age as other officers, therefore potentially causing a loss of experience at those grades.

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The Government is of the view that the current position should *not* change and that it is right that the persons chosen for the most senior positions in those services continue in those posts for as long as possible and therefore continue to provide their expertise to the community.

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I will also be proposing at Committee Stage the deletion of clause 2(3)(a) of the Bill, which amends section 6(1) of the Pensions Act so as to include a new proviso to paragraph (a) of that subsection. That proviso to section 6(1)(a) allows for the deferment of pensions etc in cases where persons have been retired before the age of 55. I am informed by officials that this is merely intended to put on a statutory footing the *current* practice, where such deferment is entered into by means of an *ad hoc* agreement with the person who wishes to retire and the Government, giving effect to the previous Government's policy in this respect. I am further informed that this *ad hoc* system works perfectly well. As such, I will be proposing that it is not changed.

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The amendments to section 6(1)(c) and 6(1)(d) are unchanged and clarify that pensions granted under the principal Act to persons transferred from Government service to a particular statutory authority may only be granted if the transferred person would have been entitled to a pension at the time of his or her transfer. This is to ensure that only the transferring employees from Government service to statutory authorities who are entitled to pension benefits under the principal Act continue to be so entitled. This Government has made an amendment to the 2011 Bill as it stood, in that it is intended that this will now also extend to certain agencies as well as statutory authorities.

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The new section 6(1)(e) is included to ensure that Government employees who were seconded to certain companies and are now employed by wholly Government-owned companies, e.g. the Government employees seconded to AquaGib who have now been employed by M&E Services, maintain their pension rights under the principal Act whilst in the employment of that company to such extent as is contained in their contracts of employment.

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This Government has also made an amendment to the 2011 Bill in that it is intended that this will now also extend to certain corporations as well as wholly-owned Government companies.

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The new section 6(1)(f) is intended to consolidate under the principal Act the pensions entitlement of LPS ex-Government employees, who presently enjoy pensions benefits equal to those under the Pensions Act. This is subject to transfer of their accrued benefits into the LPS closed Pension Scheme and Provident Trust Fund to Government, and subject to a payment contribution equivalent to 25% of basic pay until retirement. The amendments are drafted so as to be able to accommodate future agreements, if any, by means of notices published in the Government *Gazette*.

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Clause 2(4) inserts new subsections (1A) to (1E) into section 6 of the principal Act. These new subsections are intended to ensure that persons who retire on medical grounds, i.e. those who are unfit to work and who are granted a pension on that basis, who subsequently take up similar employment, may have their pension payments suspended until they either reach the age of 55, the normal retirement age under the principal Act, or cease that employment.

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Early payment of a pension under the principal Act is based on an assumption that the recipient will no longer be fit for employment. If the person's circumstances have changed sufficiently so as to allow him to re-enter the workplace before the person reaches retirement age, then it should be possible to reassess whether the payment should continue. It has been Government policy to require an agreement from persons retiring on medical grounds to follow this procedure. This amendment places that policy on a statutory footing. The power is discretionary and it is intended that deferment will only take place in cases of clear abuse.

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The amendment to section 12 contained in clause 2(6) is consequential to this amendment.

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Mr Speaker, I am going to move a further amendment today as a result of a very helpful exchange that I have had with the Hon. and Learned Mr Bossino about the notice... the commencement aspect of this particular part of the Bill not to make application of these sections retrospective in any effect. It is an issue that he has raised with me and I have looked further into.

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I am told, Mr Speaker, that the date for commencement which is given in the Bill is the date when the Chief Secretary then gave an instruction to the Human Resources Department to seek these agreements that I have just referred to with those who were retiring on these grounds, and that therefore, even if we provided for a retrospective commencement date, everyone who has left the service has entered into an agreement to the same effect as the statute.

635 But we have taken the view, having considered the hon. Member's point, that there is absolutely no need to create a retrospective provision in this way, in particular because it is a provision that creates an offence and it would be retrospectively brought into our statute. We take the view that, even though everybody has already entered into an agreement with the Income Tax office, in effect, in respect of this particular provision because of the direction from the previous Chief Secretary, there is no need to legislate to create retrospectivity.

640 Therefore, Mr Speaker, I am going to be moving an amendment, which I will give notice of in writing whilst somebody else deals with another Bill. It is a very short one: to simply change section 1(6) and take out '1st June 2009' and replace it with 'the date of publication'. That will deal with the retrospectivity and that clause will, in effect, create a section that comes into effect on the date of publication of the Act, if it is approved by the House today.

645 Clause 2(5), Mr Speaker, is another clause in relation to which I will be proposing an amendment at Committee Stage – one of which I have already given notice. As published, clause 2(5) amends section 8 of the principal Act as a result of errors that occurred in connection with the processing of Act 20/1999 going back quite a few years. That Act, passed by the previous administration, and in fact by the predecessor of this Parliament, by the House of Assembly, on 7th July 1999, made amendments regarding the pensionable terms and conditions of prison officers but was never commenced. Given that the passing of this amendment goes against current Government policy, I will be proposing an alternative version of this clause at committee stage which removes the changes included as a result of the error with regard to Act 20/1999, and simply includes a proviso allowing for the retention of certain fire, police and prison officers, who will usually be in specialist roles, after their normal retirement age in exceptional circumstances.

655 This amendment, Mr Speaker, also deviates from the Bill as published by the previous administration in that it relates to prison officers as well as police and fire officers. The amendment and those consequential to it are intended to ensure that where an officer who reaches the compulsory retirement age has specific knowledge and skills and is willing and able to continue in his post, he can do so without adversely affecting his or her pension rights.

660 Clause 2(7) inserts a new section 16A, which is intended to ensure that officers who are promoted or transferred to pensionable positions within the service which would result in a reduction of pensionable emoluments may, with the approval of the Government, retain the pension rights which relate to the office from which they were transferred or promoted. This is to ensure that officers are not dissuaded from applying for certain promotions or transfers solely on the grounds that such transfer or promotion may cause them to, on retirement, receive a lesser pension. A consequential change to the regulation appears in clause 3, Mr Speaker.

665 The new section 17(7), inserted by clause 2(8), is intended to allow for payments to be made to relatives of persons who die whilst in the service of certain statutory authorities, having been transferred there from Government service, as if that person had died in Government service. This Government has made an amendment to the 2011 Bill in that it is intended that this will also extend to certain agencies and corporations.

670 Mr Speaker, at Committee Stage I will be proposing an amendment to clause 3 which will replace the current clause 3(2). Clause 3(2), as published, replaces the entirety of regulation 4 of the Pensions Regulations with a new regulation. The changes in that version to sub-regulations (1) to (3) are consequential to the amendments which were included in the published Bill to section 8 of the Act as a result of Act 20/1999, which I referred to earlier.

675 As I mentioned before, Mr Speaker, it is not proposed to proceed with those changes. However, there is still a new regulation 4(4), which makes provision for employees who leave pensionable service under the early exit scheme in order to allow for enhanced pensions in such cases. This version also includes a difference to the 2011 Bill in that new regulation 4(4) has been amended so as to require approval of such schemes by the Financial Secretary and for such approval to be by notice in the *Gazette*.

680 Finally, Mr Speaker, clause 4 makes amendments to the Income Tax (Allowances, Deductions and Exemptions) Rules 1992. The amendments allow for the tax-free status of pensions enjoyed by persons compulsorily retired over the age of 55 to be also enjoyed by those compulsorily retired after that age – for example, a police officer whose age of retirement has been increased under section 8 – and this change to the amendments to section 8 means that the cross-reference to section 8(3) is no longer necessary. An amendment dealing with that will be proposed at committee stage.

685 Mr Speaker, I commend the Bill to the House.

690 **Mr Speaker:** Before I put the question, does any hon. Member wish to speak on the general principles and merits of the Bill?

Hon. D J Bossino: Mr Speaker, yes, I have in fact spent a considerable amount of time reviewing the Bill as originally published, and I must say that the Hon. the Chief Minister has stolen my thunder

695 somewhat by the amendments that he gave notice of – I think it was yesterday or the day before yesterday
 – and indeed also by stating that in fact this was a draft prepared by the previous administration, of which,
 of course, I was not a Member. (*Laughter*) So that will be my excuse, because I had certainly reservations
 in respect of many of the provisions which were therein contained, Mr Speaker, but I am glad that as a
 700 result of the amendments which the Hon. Chief Minister has given notice of, I am happy to say that this
 side of the House will be in a position to support the Bill which has been introduced as amended.

Mr Speaker, the only... and I do not mean this as a criticism of the Hon. the Chief Minister... But the
 only point I would make and I think he conceded the points in relation to the debate that we had in this
 House before you were with us, Mr Speaker, in relation to the Broadcasting Bill, when I think he also
 705 introduced... gave notice of numerous amendments of the Act to the Bill, I think literally on the day or the
 day before the matter was debated. The only point I make and I appreciate that he runs a busy office in
 discharging his duties as Chief Minister of this community... The only point I make is that it would be
 very useful indeed if I had had notice of these amendments – one, because I would have had more time to
 discuss them with him; and secondly, it would have meant that I would not have spent so much time
 710 reviewing some of those provisions set out in the original Bill, which vexed me so much and I found
 objectionable.

The good aspect of these amendments, Mr Speaker, is that it also simplifies, I think, many of the
 provisions which were there before, which I think were inordinately complex and perhaps may have
 reflected practice, but I think going forward it really assists in simplifying matters and I am assuming and
 I understand that there has been sufficient consultation between the Gibraltar Government and the
 715 interested parties to reach what is an agreed position and a position which all relevant stakeholders and
 interested parties are happy with. I can certainly say that that is information which I have been receiving
 as a Member of the Opposition.

Mr Speaker, moving on to the nitty-gritty of the Bill, the Bill introduces amendments to section 6 of
 the Pensions Act, and of course section 6 of the Pensions Act is crucially important to the whole
 720 framework of the Bill because, in effect, it is the provision which gives statutory backing to the
 entitlement to receipt of a pension. In fact, it is interestingly set out, almost as the general rule is that you
 will not receive a pension unless of course one you are retired and then secondly you fulfil all the lengthy
 requirements set out in section 6(1) and its various subsections. So any amendments to that section have
 725 to be looked at carefully and scrutinised to ensure that it is not disrupted unfairly and it would unfairly
 affect potential or current recipients, and that is why I have taken a bit of time in reviewing this particular
 amendment.

Mr Speaker, section 2(3), which I am happy is one of the ones which have been deleted and no longer
 form part of the amendment to the Bill, because that is one that certainly would not have found support
 from this side of the House... it was, in my view, ground breaking in the sense that it was... I appreciate
 730 the Hon. Minister for Justice is laughing, presumably because it is something that the GSD was intending
 to be doing, (*Interjection*) but that certainly I found it remarkable that the Government should have the
 ability to depart from what I assume was a practice, which is that anybody who retires from the age of 50
 could have had his pension deferred almost at the Government's whim until the age of 55. So I am glad
 that that has been removed, and I understand, Mr Speaker, that that was a subject of certain
 735 representations which this Government has received.

In relation to the other provisions which are being suggested, are being proposed, we also support
 them.

Section 2(3)(c), for example, are tidy-up provisions, as far as I can see, and we are happy to support.

I welcome also the introduction of new (e) and (f). The Hon. the Chief Minister has given me
 740 background explanation as to why those are there. I was not aware of that and I think it makes every
 sense that they should be.

Mr Speaker, in relation to section 2, and I think it is 2(3)(4), which the Hon. the Chief Minister has
 referred to in the course of his intervention. Yes, it is correct that that has been the subject of discussions
 with him, which I welcomed, because I just found it unconscionable that it was possible; and in fact, I
 745 think it could have been challenged constitutionally to make this particular provision retrospective, in
 effect. So I am very glad and welcome the fact that the Hon. Chief Minister has taken that on board and
 is, in effect, suggesting that the effect of this provision will be prospective in effect.

Mr Speaker, I will be suggesting amendments at Committee Stage in relation to the wording of the
 provision – for example, it appears that under section, well it appears, no it clearly states under section
 750 (1A) that there is now a requirement, if you are pensioned off as a result of infirmity and you obtain
 alternative employment, then you need to notify the Government of that fact. Perhaps I would suggest
 that a period of time be allowed from obtention of employment to notification – for example, within two
 days, seven days, 14 days, so that at least there is a certain period of time, rather than it, sort of, being
 immediate.

Also, Mr Speaker, if this amendment is going to take effect today, which it will because it will be
 755 passed by, I think, unanimously... (*Interjection*) Sorry? (*Interjection*) Oh, yes. We will approve the Act

and then it will come into force at certain dates in the future, but the point is whenever it comes into effect, Mr Speaker, there may be people who are at this moment in time in this category, who are in employment, and perhaps they should be given a bit of time.

760 The Hon. the Chief Minister... Yes, I will give way.

Hon. Chief Minister: Mr Speaker, for the reasons that I indicated to him already, we do not believe that there is anybody in that situation at all, because everybody who has retired on the grounds of infirmity has entered into the agreement.

765 If I may just deal with this point before I sit down, I certainly agree with him that people in the future who are not going to do the agreement, because there is now going to be a piece of legislation, should be made aware of that. When will that happen? Of course, as we just pointed out, the Bill becomes law, not just when we pass it, but after Royal Assent and on publication. There is publication and therefore notice to the world, but he needs to remember that in this context people are going to go through the Human Resources Department because they are retiring from Government.

770 So, in the context of going through the Human Resources Department, I understand that the position is that whenever you retire on the grounds of infirmity you are told, certainly since the date of the agreement and certainly prospectively, 'If you get better and you get a job, remember that you have to give notice and you need to get approval from us,' etc. So it is not something that people are likely not to know because they do not research the law. They may not even think that they have to go to a lawyer if they are going to get another job. It is something that, at the point when they sign up for their pension on medical grounds, they will be advised of in case they get better. I do not know whether that is helpful.

780 **Minister for Education, Telecommunications and Justice (Hon. G H Licudi):** Mr Speaker...

Hon. Chief Minister: I will give way to him.

785 **Hon. D J Bossino:** Mr Speaker, just to pursue the formality of the House, I am happy, I think the Hon. the Minister for Justice wishes to develop and elaborate on the point, and I am willing to give way to him as well.

790 **Hon. G H Licudi:** Yes, Mr Speaker, just to confirm the position as stated by the Chief Minister, this is the point in relation to the retrospection back to June 2009 which the Chief Minister already explained that our understanding... We are told by officials that is the date on which instructions were given to Human Resources Department to insert a clause in the letters going to people who were going to retire on medical grounds about the obligation to notify Government in case they were getting employment.

795 So it is not just a question that the Bill is going to be published and therefore it is going to be known because it is publicly available. As the Chief Minister said, not only will people be told, people *have* been told, as from June 2009, that this is their obligation.

We do not see the need to go back retrospectively with this particular provision, but certainly that practice will continue going forward and people will actually be told in their letters that they have this obligation. This will be brought to their attention.

800 **Hon. D J Bossino:** Yes, Mr Speaker, I am very very grateful for both interventions and it does clarify the point, but can I just say I think that the Hon. Chief Minister... and I am willing to give way on this point, unless he wants to deal with the issue in his right to reply. I think he said, during the course of his intervention, that... he mentioned that there was a requirement to enter into an agreement with the Gibraltar Government and that this was reflected in the statutory provision. I am not sure whether that is the case.

805 What this does is set out in statutory language that the requirement will now become a legal obligation to notify the Gibraltar Government outwith an agreement. It is a statutory requirement which the individual has to undertake. I think the Hon. the Minister for Justice is going to be replying on that point, so I am grateful.

810 **Hon. G H Licudi:** Yes, Mr Speaker, just to explain what the nature of the agreement is, because since June 2009 whenever people have retired on medical grounds they have received this letter, which says that they have the obligation to notify. They have been notifying the Government systematically and asking for permission and therefore the Government has in each case agreed, agreed as a matter of practice, that the re-employment should take place and that there should be no suspension of pensions in the meantime.

815 That is the extent of the agreement. It is not an agreement at the beginning, but an agreement once somebody notifies the Government that they intend to take up re-employment and the Government agrees that that should take place without affecting their payment of pension. (*Interjection*)

820 **Hon. D J Bossino:** Mr Speaker, I think I am being asked by the Hon. Chief Minister to give way to him, and I am, of course, happy to do so.

825 **Hon. Chief Minister:** Yes, Mr Speaker, I think that that clarifies, what the Hon. Minister for Justice has said clarifies what the agreement is at the moment. But what I said in my speech – and I do not know whether he misunderstood it, and I think this is the point he was taking – is that the agreement now is going to be enshrined in law. It is not that the law will require an agreement, and I think that is the point that he was suggesting I made. I am not saying that the law is going to require an agreement. The law now reflects, as an obligation, what has previously been done by way of agreement, and that is the point I was making in that form of words.

830 **Hon. D J Bossino:** Yes, I am very grateful to both interventions, and again, it clarifies matters for me. This is why – going back to the first point I made during the course of my intervention – it would assist if we could have more time for these amendments. It is partly my fault, in the sense that this Bill was actually published in, I think it was in May – yes, May – and I could have looked at this earlier.

835 Mr Speaker, I am also gratified that the ability of the Government, which is now set out in statute, to suspend the pension received by an individual who is incapacitated for whatever reason, is set out in discretionary terms. It is set out in section (1A) as ‘may be suspended’, and I note what the Hon. the Chief Minister said during the course of his intervention, that it will only be in cases of clear abuse that the Government will suspend a pension in those circumstances; and in fact that, I assume, has been the practice as over the last, well now four years.

840 Continuing with that theme, I notice, Mr Speaker, that in section (1B) it is in the following terms, and it says:

845 ‘If it comes to the notice of the Government that an officer to whom subsection (1A) applies has taken up further employment, the officer shall be informed that the payment of his pension will be suspended...’

850 So no discretionary element, as far as I can see, in relation to that particular provision. I understand why that is there. In other words, when somebody has worked... has obtained alternative employment and has not notified, as he is now statutorily obliged to do, and previously was contractually bound to do, fails to do so, then the Government, it seems, in my view, has a mandatory obligation almost to suspend... or the mandatory right to suspend their pension unless the officer can show cause.

855 I know that is a point that no doubt will be made. But the interesting point is that I wonder whether wording could be included – and I can suggest wording during the course of the Committee Stage – whereby the notification which comes to the Government is notification which has come to the Government when an individual has not notified, if the hon. Members understand me. So it may be implicit in the section, but I have certain wording, which hopefully the hon. Members will accept as being helpful, to clarify that particular provision.

Mr Speaker, I think that probably deals with section 2(3) and (4).

860 If I could have the indulgence just to review my notes, because most of my notes, of course, related to the issue in relation to retrospection, and I am glad that that has now been dealt with and removed.

865 Mr Speaker, yes, the removal and replacement of section 2(5), which introduced new section 8(1), is also welcomed by the Opposition, and that is one of the complicated provisions which I came across, and it seemed to... you know, was almost like a verbal gymnastics situation in order to accommodate.

870 I did not understand the rationale behind it or the negotiations behind it in order to accommodate prison officers who were in employment on a certain date in July 1998. I understand from conversations, and now the Hon. the Minister for Justice is confirming this, that that is related to one particular officer. From a drafting perspective and from an understanding perspective, it is an amendment which, Mr Speaker, I certainly can... and from my new GSD perspective (*Laughter*) it is an amendment which of course I am willing to welcome and support, and this side of the House is too.

875 Mr Speaker, in relation to section 2(3)(6), the amendment which the Hon. the Chief Minister has concentrated on and spoken on in relation to the retrospection of subsection (4) also deals with this section, and I also welcome that. So that the new section 12(1), which deals with suspension of pension on re-employment, I think this is, those offices, having looked at the Act and looked at the amendment, it is those officers who are already entitled, who are already of pensionable age, but are *required* by the Government to continue to work for the Government. There is an addition there which again deals with those who are incapacitated due to illness, and I had certain issues, similar to the ones I raised in relation to the section I have just been speaking on, in relation to retrospection. So I also welcome the fact that, as a result of the Chief Minister’s proposed amendments across the floor of the House to section 1(6), that that will also take effect on the date of publication and I have no difficulty therefore in supporting that.

Mr Speaker, subsection (7) will also be supported. I think that is eminently a sensible provision.

880 Subsection (8) will also be supported. I have one minor suggestion, and that is simply that – and I know it impacts on the principal Act as currently drafted – the Electricity Authority is not referred to in its proper statutory name, which is actually the ‘Gibraltar Electricity Authority’. I am known for my pedantry, Mr Speaker, and I think it ought to be set out in the Act properly.

885 Again, Mr Speaker, the amendment suggested to regulation 4 of the Pensions Regulations is also welcome.

Simply to point out, Mr Speaker, that there is a reference – again, this is a criticism that can be made of the principal Act as currently drafted, but it perpetuates itself in the amendments which have been introduced this morning – a reference to special cases, and under special cases the Government can do certain things. There is no statutory definition of special cases, and I just raise that as a point that can be raised with the LSU for future reference and whether we can include something there, or whether the Government thinks that that would tie its hands too much.

890 Interestingly, Mr Speaker... In fact, if I can go back to section 8(1), there is a reference there also to special cases in the context of the Government requiring an officer who attains the age of 50... in special cases can be required to continue in employment; but, funnily enough, the proviso which is now being included by the Hon. the Chief Minister reads:

‘Provided that the Governor shall, in exceptional circumstances...’

900 – not special cases, ‘in exceptional circumstances’ –

‘and on the recommendation of the Government, increase the compulsory retirement age in this subsection with respect to a particular police, fire or prison officer or officers.’

905 So there is that interplay between special cases and exceptional circumstances, and I do not really understand why there is a difference. Perhaps the Hon. the Chief Minister, in his reply to me, can elucidate and enlighten me in relation to that.

Mr Speaker, I am just reviewing my notes.

Subsection (4), again, is supported by us. There is no difficulty.

910 I am just trying to remind myself... I think there is an inclusion there. It is in the Bill, set out as section (3)(d) and it reads:

‘(5) Provided that in the case of a person who retires in accordance with this regulation before attaining the age of sixty years—
(a) any pension, gratuity or other allowance under this Act... in respect of that person shall be deferred until such time as the person attains the age of sixty;’

915 I just wondered whether the Hon. the Chief Minister could explain why that does not give the Government a –

920 **A Member:** The reading of the Bill, or the Act?

Hon. D J Bossino: Of the Bill, which introduces a new regulation, sub-regulation (5), to regulation 4 – why that does not allow for a discretionary element. I really do not know why, so I am really speaking here in uncharted territory, as far as I am concerned.

925 Of course, Mr Speaker, the notice of amendments which the Hon. the Chief Minister has given today in relation to the consequential amendments to the Income Tax Rules is, of course, obvious that had to be made and of course we support.

Mr Speaker, I think that ends my contribution in relation to this Bill.

930 **Mr Speaker:** Does the Hon. Chief Minister wish to reply?

Hon. D A Feetham: Mr Speaker, Mr Speaker...

935 **Hon. G H Licudi:** Mr Speaker, there is one particular point raised by the hon. Member which I wish to deal with, and that is in relation to clause 2(3), which had a provision whereby the pension could be deferred if there was a retirement before the age of 55.

The hon. Member has referred to representations which had been made and has suggested that, as a result of those representations, the Government has agreed not to proceed with this provision for deferment and therefore no provision for deferment will arise.

940 I just wanted to clarify – it is not very clear to us which representations he is referring to – if they are the same representations that were made to us, which were representations on behalf of police, fire officers and prison officers. Although they have got a compulsory retirement age of 55, there is a possibility of retiring as from 50 and they were concerned that the effect of this would be that if they

retired between 50 and 55, then they might not receive a pension at all until they reached 55. Those were the representations that were made to us and I understand those were the representations which were made to the hon. Member, which he has referred to.

Let me just make the position absolutely clear as we stated to those particular officers who came to see us. Those representations were simply based on a misconception as to what this actually does. This provision is in relation to section 6. The provisions which relate to the retirement of prison officers, police officers and fire officers is contained in section 8. It is section 8, and hon. Members will see in the Bill, in clause 2(5), where it says:

‘For section 8 substitute –’

and then the heading is ‘Compulsory retirement’. Then you have ‘Compulsory retirement’ and it refers to fire officers, police officers and prison officers.

So, what we did in response to those representations was simply to say that that provision did not apply to those officers in any event. Those officers would retire under section 8. The compulsory retirement in section 8 is 55 and there was never any possibility or never any intention for any deferment of payment of pensions in respect of those officers if they retired before the age of 55. That is what was explained to them, which they accepted.

The reason why we have not proceeded with this particular provision, as explained by the Hon. the Chief Minister, is that there is an *ad hoc* arrangement in place whereby agreements are put in place for the possibility of deferment, and because that *ad hoc* arrangement is working well in practice, then there is no need to change it. So it is not that it has been removed as a response to those representations, because those representations in fact did not apply to those categories of officers who had those concerns, and we simply clarified to them that that provision did not apply to them at all and they were perfectly happy about that.

Mr Speaker: The Hon. the Leader of the Opposition.

Hon. D A Feetham: Mr Speaker, thank you very much.

Mr Speaker, I just want to say a few brief words in relation to certain aspects of what has been said because it impacts on the Opposition’s policy moving forward in relation to the legislative process.

It has been said in this House during the course of the debates that this particular Bill is a Bill that has been drafted by the previous Administration, and that may be so, but of course that does not mean – and this is not the point that I am going to be making – that it has received ministerial approval.

Members opposite will by now know that when legislation is to be effectively moved in this House, the process starts with instructions from the relevant Minister to the drafter to draft legislation. It then comes back and then it receives ministerial approval. It depends on the nature or the subject matter as to the level at which that is approved. For example, anything that has no financial implication would probably only be approved by the relevant Minister who has carriage of that legislation. If it impacts on the finances of Gibraltar, then it would have, effectively, a dual-lock approval, it would also go to the Chief Minister. Indeed, if there is a wide public-interest issue – for example, in relation to the age-of-consent parts of the Crimes Bill, that was, during my time, discussed by the entirety of Cabinet.

I do not know, because it came as a surprise to me as well, that this particular Bill had actually been drafted during our time in office. I do not know whether it received ministerial approval. It makes no difference. It makes absolutely no difference, and this is the point that I wish to make.

Even if this had received ministerial approval by either the former Chief Minister or any other Member of the Government at the time, moving forwards, if we believed that there were clauses in a Bill drafted and approved by us that were objectionable or that we could not support having reviewed the matter at this stage, that is the position that we will take – because at the end of the day it is in the interests of the legislative process, it is in the interests of introducing and approving the best laws possible... that obviously Her Majesty’s loyal Opposition is prepared to look at a Bill, even those that have been drafted by *our* Administration, and if we take the view that we ought not to support certain provisions from that Bill, that is precisely what we intend to do.

Hon. G H Licudi: Mr Speaker, will the hon. Member give way before he sits down?

I note what he has said and no doubt the Chief Minister, in his response, will deal with that; but the hon. Member seems to be saying that he does not know if this particular Bill, in its previous incarnation under the GSD Administration, received ministerial approval.

As the Hon. the Chief Minister has said, the Bill was actually published by the previous Administration. It was published on 6th October 2011 in the third supplement to the *Gibraltar Gazette* as Bill No. 25/2011, before the last General Election. We then had a General Election in December 2011. Therefore, the Bill lapsed and that is why it was republished.

1005 But not only was the Bill published, and this has already been alluded to, in any event; there are some provisions in the Bill – which was published, but we have decided not to proceed, for the reasons already explained – which were actually passed by this Parliament in 1999. So there was already legislation in place – in particular legislation dealing with the raising of the retirement age for prison officers from 55 to 60. That was passed by legislation brought to this Parliament by the previous Administration and passed by this Parliament with the votes of the previous Administration.

1010 It was never commenced – that is the error that the Hon. the Chief Minister has referred to, because nobody understands why it was never commenced; it was simply left there – and it seems that, at some point, the previous Administration realised that there was an error. It was still their policy, and therefore ministerial approval had been given. It was still their policy that that should be passed, and therefore they published the Bill again in 2011.

1015 So it is difficult to understand how the hon. Member can maintain that these provisions would never have received ministerial approval, and I am happy to give way.

1020 **Hon. D A Feetham:** No, we were not aware, and of course if it has been published it has been published. Not necessarily because something is published... that Members on this side of the House will recall every single Bill that has been published and, in this particular case, not proceeded with.

What I am trying to do is to give a flavour of what is the legislative process in terms of the drafting and then approval by Ministers – in some cases dual-lock approval and in some cases approval by the Cabinet as a whole.

1025 I could not remember that this had been actually published in October. I am very grateful to the hon. Gentleman for reminding me that that is the position, but in any event the central point and what I want to make absolutely clear is that what we are not going to be, as a matter of practice, in the future is ‘die in the ditch’ in relation to anything that has been done in terms of legislation by the previous Administration if we felt, in all honesty, looking at it now, that certain provisions were not provisions that we ought to be introducing in this House. Hence why the Hon. my Learned Friend, Mr Bossino, has quite rightly gone through a number of provisions, and even when he has been told actually this Bill is a Bill that has been drafted by the GSD, he has been critical of those provisions.

1030 What I want to make absolutely clear is that we are not going to be bound in any way, shape or form by anything that has been done legislatively in the past if we felt that it was not right and proper for us to support it in the future.

1035 **Mr Speaker:** The Hon. the Chief Minister.

1040 **Hon. Chief Minister:** Mr Speaker, I want to start by thanking the Hon. the Minister for Justice for his interventions in respect of this matter.

I told the Hon. Mr Bossino that Mr Licudi had been leading on certain aspects of this Bill because, as he will have seen, a lot of the issues relate to law enforcement officials with whom he has the closest contact, so he has seen how he has been able to deal with many of the issues that relate to those parts of the Bill and I want to thank the Minister for Justice for his assistance to me in the preparation of this Bill.

1045 Let me start with the more political parts of the debate.

The new GSD that the Hon. Mr Bossino referred to... Would that he *were* the new GSD, Mr Speaker – it may be that we might then be able to have as constructive a debate, not just on this issue but on many others – not, Mr Speaker, this other GSD that I tend to have to deal with in the press.

1050 But anyway, Mr Speaker, I also note what the Hon. the current the Leader of the Opposition has said about the fact that this Bill does not necessarily... the fact that it was published under what I assume one should now refer to as the old GSD – that old successful GSD that won so many elections – does not necessarily bind the new GSD. Mr Speaker, I understand that and it is a matter entirely for him how much distance he puts between his party today and the party as it was on 8th December 2011.

1055 There are certain things where we would very much welcome that he put distance between where his party was and where it should be, but I must tell him I find it extremely difficult to understand that he was Minister for Justice – he was not just a Minister, but Minister for Justice – in the old GSD’s Government and he was not aware of a piece of legislation that had been published as a Bill.

1060 The way that we work on this side of the House is that all of us are aware of all Bills that are being published and all of us are giving input in respect of that legislation. Even then, sometimes after publication there is a need to bring amendment because issues are brought to the attention of Ministers or officials which the draftsman, the Minister responsible, and those of us who are working on Bills together have not highlighted on.

1065 As the Hon. Mr Bossino rightly put it, sometimes in ministerial office there is a lot going on and issues are raised afterwards, and thence the need to raise amendments, but it is actually jaw-droppingly surprising that the previous Minister for Justice was presiding over a regime where Bills were being

published and he was not aware of them, to such an extent that he is today happy to put distance between a Bill as published under his regime and the Bill as debated today.

1070 There may be a perfectly reasonable explanation. And it is that, Mr Speaker, we published this Bill but we are making amendments to it, so we are not sticking to the Bill as published in May – we are amending the Bill – but the way that he has presented it is really quite jaw-dropping.

Mr Speaker, let me move on to some of the much more constructive points made by the Hon. Mr Bossino.

1075 In terms of officials, when I talked about that in the context of my speech, I think it is important for the House to note that this is an issue not just of importance to the Commissioner of Income Tax and the Financial Secretary, but also to the Principal Auditor, because obviously payments have been made or not made under arrangements which did not have legislative cover, and that is why I think it is important the House understands the need to make this legislation to section 6 in particular of the Pensions Act. I am just reflecting for a minute that he is absolutely right, Mr Speaker, that section 6 is almost the spine of the Pensions Act and how the criteria from which emoluments will flow in that respect.

1080 I think that neither he nor I ever thought that we would be doing such an in-depth analysis of that piece of legislation when we both decided in our teens that we wanted to be politicians. Perhaps then we did not expect to face each other across the floor of the House – we expected to sit next to each other – but he and I have always ended up facing each other in the best possible spirit.

1085 But he is right, section 6(1) in particular and its tributaries is extremely important to the whole structure of the Pensions Act and in particular to pensions as they have been in Gibraltar until the recent amendments that mean that new entrants into the Civil Service are not necessarily covered by the Act, and therefore this is an Act that requires careful consideration to get right.

1090 He said, Mr Speaker, something with which I tend to sympathise, which is that we gave him notice of the amendments... I think late yesterday evening he would have got them. Mr Speaker, I sympathise hugely with that issue because he will know that under the old GSD we were often – we were *always*, in fact – visited with proposed amendments to a piece of legislation only once the Chief Minister – the old GSD Chief Minister, the now backbencher – had risen and had started to make his speech. So he would have had his analysis, as I had my analysis of legislation, done on the basis of the published Bill, to get up and hear what I have given notice of yesterday and he saw yesterday.

1095 It is sometimes difficult to do that sooner. I have had no difficulty... and he will know because I think it has happened on a number of occasions already when the amendments have been substantial and I have circulated those before. In fact, I think I also circulated a tracked version of a previous piece of legislation. The tracked version I did not have available yesterday, but I do have it today and I am quite happy to send it to him so that he has it for his file and he can see the shape of the Bill even before it is published as a passed Act, which is the only next opportunity for him to see it in the form in which it will be otherwise.

1100 So although I have huge sympathy with that, there are two issues. First of all, the old GSD used to do it, and that is why we will not do it in that way, because we think it should be done by giving you as much notice as we can. This is legislation. We should be trying to work together on these issues, where possible. There may be times when the amendments are minor and they are almost circulated at the last minute because they are minor, they are typographical. Draftspeople sometimes notice things and send notices to Government at the very last minute, so I cannot be bound by an obligation to give them notice earlier, but certainly I will always try to give them notice of amendments earlier than that.

1110 But I do note, Mr Speaker, that he has said that he will be moving amendments, during the course of the Committee Stage, of which I do not have notice. I will tell him, Mr Speaker, that my practice, on a number of occasions when I was on the other side, was that I would circulate a letter saying, 'These are the amendments I am going to be moving.' That is helpful also from the point of view of the other side, because if he is going to make amendments that we agree, Mr Speaker, we can take them as read and we can include them in any proposed amendments that the House sees.

1115 Yes, of course I will give way.

Hon. D J Bossino: Mr Speaker, I am grateful to the Hon. Chief Minister for giving way.

1120 In fact, my limited experience of doing this in this House over the last year and a half has been in relation to legislative initiatives which have been taken by the Hon. the Minister for Tourism, and that is in fact the way that we have done it, where I have suggested amendments by e-mail and then we have discussed it. It was not possible in this case, precisely because, in fairness to the Government, I was advised about 10 days ago by the Hon. the Chief Minister that amendments would be coming my way and therefore, because I did not know what the nature of those amendments would be, I waited until I had sight of them, which was only yesterday afternoon, it was not yesterday evening, it was yesterday afternoon... that I was able then to have a fresh look at the Act and it was, I think, literally at the 11th hour that I would have had the opportunity to suggest the amendments. Just to clarify that point.

1130 But I am more than willing... In fact, I have done so before, and I am sure the Hon. Minister for Tourism will confirm that that is normally the way I like to deal with these things. I have said so in this House, across the floor of this House, and the hon. Members know personally, I think, this is the type of thing I certainly ought to be doing in as consensual a manner as possible, because I think ultimately it will serve the community better to achieve and obtain secure good law. It is as simple as that.

I am grateful to the Hon. Chief Minister.

1135 **Hon. Chief Minister:** And I am grateful for his remarks, Mr Speaker. He speaks of the spirit that I believe in, in particular in respect of legislation. Oh, I see the Hon. the Leader of the Opposition is laughing, it is clearly not the spirit he believes in.

1140 It is actually, Mr Speaker, the great unspoken truth of Gibraltar politics, to a very great extent, that this House works quite closely and quite well in terms of the way that we deal with legislation. Despite going at each other hammer and tongs on other matters, when it comes to legislation there has always been a very constructive spirit in the way that we have dealt with these issues, even where there are sometimes political differences across the floor of the House or policy differences as to what a piece of legislation should be doing.

1145 It is still possible to do an analysis of the way that the legislation is going to be passed to give effect to a particular policy and to say, 'Well, even though I do not share the policy, I do not think that this section does what you want it to do.' I do not take the view that you simply have to ignore a section if you are against the policy that it seeks to implement. We are also legislators and therefore law makers, and the quality of the law that emerges reflects on all of us, and I am grateful for his indication as to his attitude.

1150 Mr Speaker, the hon. Gentleman referred to pieces of the legislation that he did not like and that he was happy to see we were not progressing with. He referred to some parts of them as remarkable, and in fact we agree and therefore that is why we are withdrawing many of those parts of the legislation.

1155 I think he referred in particular to section 2(3), or clause 2(3). It is, in fact, even more remarkable that the previous backbencher – or rather the backbencher, the previous Chief Minister – actually pursued agreements without legislative cover to that effect. So, Mr Speaker, I will take it that they are putting clear blue and yellow water between themselves – especially given the Hon. the Leader of the Opposition's remarks – and the Hon. Sir Peter Caruana, although I am conscious of the fact that he is not here to defend his record, his legacy, and I think his *golden* legacy, which is even by them appearing somewhat tarnished.

1160 Mr Speaker, he says it is unconscionable to create retrospective offences. I think most lawyers probably do take the view that it is unconscionable to create offences retrospectively but that there are certain instances where it is possible, in strict statutory interpretation, to make retrospective offences. There were many instances in the past years when I was in Opposition that I made that point, and in some instances I was not successful in persuading the previous Administration not to make retrospective offences, and some of them were made not with the intention of retrospectively dealing with something that someone had done and creating an offence, but with the intention of putting the law on the statute book from a particular date and *prospectively* dealing with the matter.

1165 I still take the view, even from this chair, that that is highly unusual and that is why the rules on when you do that are very circumspect and we have to be very careful when we do that.

1170 I do not know that it is unconscionable, as long as it is done properly and it does not purport to criminalise today something that was done last week and to make that person or bring that person to a criminal account for that purpose.

We need to have a more open mind than we usually would, as defence counsel looking at civil liberties, when we look at these issues for legislative purposes. The instances when that may be relevant are not going to come very often, and I certainly hope that we will not have to bring such legislation again.

1175 I am grateful for him having spotted this one. As he knows, when he raised the point we have gone back, tried to understand why it was that officials wanted it done in this particular way, and been able to satisfy ourselves and him, I trust, from what he has said, that the way that we are going to deal with it actually now is much more in keeping with the view that he and I would take of what is an appropriate way of dealing with the creation of offences – which is always, where possible, prospective and not retrospective.

1180 If I can just look at one of the other references he made, which I think I marked... Yes, Mr Speaker, he made two points – one of them about special cases and the other one about the use of the word 'exceptional', and then whether or not section 3(5) should refer to 'shall' or grant more discretion. My point on this really comes back to the point that I was making to him at the very beginning, when we were talking about whether he and I ever thought that we would be looking at section 6(1) of the Pensions Act. In my view, this section is so crucial that it needs to have as much certainty in it as possible whilst giving an element of flexibility and discretion, but not a great element of flexibility and discretion.

1190 The draftsman who conceived this Act many many years ago – I think the original Act is 1961; I do not know whether there is an earlier incarnation, but I think 1961 is the real commencement of it – included the language of ‘special cases’ and now the language is proposed of ‘exceptional circumstances’. ‘Special’ and ‘exceptional’ do mean slightly different things, but the Government is satisfied that it is clear that they refer to very few cases indeed, in very particular circumstances.

1195 I think he and I will agree that there has to be such certainty in respect of the vesting of rights in respect of pensions – particularly this type of pension, which is the Civil Service pension – that we cannot have too much flexibility. That is why I think ‘shall’ is the right word to use in 3(5), and ‘exceptional’ is, in my view, a better word than ‘special’ because I think it tends to make clear that this is a discretion to be used sparingly, rather than just when something might be considered to be special.

1200 Mr Speaker, he referred to the Gibraltar Electricity Authority – a topical subject, if ever there was one, Mr Speaker – and his suggestion that it should be referred to as the Gibraltar Electricity Authority rather than just the Electricity Authority.

1205 I have had a quick look back at the rest of the Act. There are two other references. He said this himself, that there are two other references and that they refer to ‘Electricity Authority’. Therefore, if we were to accept his amendment, I think we would be perhaps undoing the language of the Act a little bit. But I think it may be possible to do so perhaps by including, in his amendment to include the word ‘Gibraltar’ in front of ‘Electricity Authority’... if we were also to add, at the end of that, ‘(“hereinafter Electricity Authority”)’. So in that way, by making the one amendment, we will, for the purposes of the whole Act, cure the other two references, and I wonder if he might want to consider that before we get to the Committee Stage.

1210 Mr Speaker, he made the point about the new section 6(1B) that it is proposed should be inserted – and that, I think, is 2(4) which creates the new sections 6(1A) and 6(1B) – that in the new section 6(1B) this idea of ‘it came to the notice of the Government’ should be in some way amortised so that if it came to the notice of the Government other than by somebody who has already brought it to the Government’s notice himself. I think because there is a cross reference there to (1A) – and there are two cross references there to (1A) – we think the section does that. In other words, section 6(1B) only applies to people who
1215 have not given notice under section 6(1A) and there is a double cross reference there. He may want to consider that before moving his proposed amendment.

Mr Speaker, I think I have dealt with all the points that he raised of substance, and I think I have dealt with all the political points raised too, so unless he wants me to give way, I am quite happy to give way.

1220 **Hon. D J Bossino:** Yes, I am grateful to the Chief Minister.

In relation to the point that he has developed in connection with special cases and exceptional circumstances, can I ask the Hon. Chief Minister to clarify what the Government’s position is? Is there a proposal to make a legislative change in that regard? I do not quite follow or was able to capture from this side of the House whether he had reached a conclusion in relation to that.
1225

Hon. Chief Minister: Mr Speaker, I think what I said was that I am happy with the way that the structure of special cases and exceptional circumstances works – exceptional circumstances, in particular, because it evidences that this is a power, a discretion, only to be used exceptionally. Therefore, I think that the language proposed works and the other language has worked since 1961, and that is why I think that we should not tamper with it.
1230

Mr Speaker, having given way to the hon. Gentleman and now finished my address on the Second Reading, I commend the Bill to the House.

1235 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Pensions Act and related legislation be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Pensions (Miscellaneous Amendments) Act 2013.

1240

**Pensions (Miscellaneous Amendments) Bill 2013
Committee Stage and Third Reading to be taken at this sitting**

1245 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I beg to give notice that the Committee Stage and the Third Reading of the Bill be taken today, if all Members agree.

Mr Speaker: Do all hon. Members agree that the Committee Stage and Third Reading of the Bill be taken today? (**Members:** Aye.)

1250

Housing (Amendment) Bill 2013
First Reading approved

Clerk: A Bill for an Act to amend the Housing Act 2007 and for related matters.
The Hon. the Chief Minister.

1255

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move that a Bill for an Act to amend the Housing Act 2007 and for related matters be read a first time.

1260

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Housing Act 2007 and for related matters be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Housing (Amendment) Act 2013.

1265

Housing (Amendment) Bill 2013
Second Reading approved

1270

Chief Minister (Hon. F R Picardo): Mr Speaker, I beg to move that the Bill for a Housing (Amendment) Act 2013 be read a second time.

Mr Speaker, this is a short Bill that is before the House and I move it because, quite coincidentally, the Minister for Housing lives in an affected hereditament and therefore he will be abstaining from voting on this Bill.

1275

Mr Speaker, section 10(1)(a) of the Landlord and Tenant Act, as originally enacted in 1983, applied part III of the Act to dwelling houses erected, and I quote:

‘on or before the first day of January 1945.’

1280

In 1992, section 10(1) (a) of the Landlord and Tenant Act was amended to bring in the rolling 45-year rule, so that the critical date was not 1st January 1945, but a date, and I quote again:

‘on or before 1st January of the year preceding by 45 years the 1st day of January of the current year.’

1285

This, in effect, meant that each year new buildings were within the protection afforded by the Landlord and Tenant Act and had their rents controlled.

Consequently, section 11A of the Landlord and Tenant Act was enacted, so that with respect to a dwelling house not being one to which part III applied, but which became one by virtue of section 10(1)(a) to which part III of the Landlord and Tenant Act applied, a new statutory rent was provided for.

1290

It thereby created a dual system of rent control – namely one where, firstly, dwelling houses erected before 1st January 1945 were subject to section 11 and the rent was calculated in accordance with schedule 1 of the Landlord and Tenant Act; or secondly, dwelling houses caught by the rolling 45-year rule, which had rents determined in accordance with the provisions of the Statutory Rent (Forty-Five year Rule) Regulations by the Rent Assessor.

1295

In 2004, section 10(1)(a) of the Landlord and Tenant Act was amended to bring an end to the rolling 45-year rule. It fixed the application of part III to dwelling houses erected on or before 1st March 1959. However, Mr Speaker, section 11A of the regulations should have been repealed concurrently with the amendment of section 10(1)(a) and the cessation of the rolling 45-year rule, since both became superfluous from that date.

1300

For some reason, Mr Speaker, section 11A and the regulations were not repealed. Consequently, there remained in existence two methods of calculating rents: the pre-1945 dwellings method and the dwellings built between 1945 and 1st March 1959 method.

Part III of the Landlord and Tenant Act was repealed by the Housing Act.

Section 40 of the Housing Act provides the following, and I quote again, Mr Speaker:

1305

40.(1) Subject to the provisions of this Act, this Part shall apply to dwellings but only to the following extent, namely—
(a) it shall apply to every dwelling that has been erected on or before the 1st January 1945, provided that the rights exercised and thus accrued by a tenant before the 1st January 2007 under the former Act in respect of a dwelling that has been erected on or before the 1st March 1959 shall not be prejudiced and shall persist as if it were a tenancy to which this Part applied.’

1310

Section 40(1) of the Housing Act created one operative date only, which was 1st January 1945, section 40(8), for falling within the ambit of the Housing Act, but was stipulating that tenants who had

accrued rights, because of living in buildings erected between 1945 and 1st January 1959, would not be prejudiced and were to persist as tenancies to which part II of the Housing Act applied.

1315 The Housing Act, Mr Speaker, as commenced by Legal Notice 2008, No. 12, specifically provides the following, and I quote again, Mr Speaker:

1320 'In exercise of the powers conferred upon it by section 1 of the Housing Act 2007, the Government has appointed the 1st June 2008 as the day the Act comes into operation, except that sections 40 and 113(3) shall not be commenced for the following purposes, namely dwelling houses erected after the 1st day of January 1945 and before the 1st day of March 1959, for which purposes the provisions of section 10 and 11A of the former Act shall continue to apply.'

1325 By virtue of Legal Notice 2008, No. 12, Mr Speaker, sections 40 and 113(3) of the Housing Act were not to commence for dwelling houses erected after 1st January 1945 but before 1st March 1959, for which purposes the provisions of sections 10 and 11A of the Landlord and Tenant Act were to continue to apply.

1330 The purpose of the amendments contained in this Bill is to do away with this distinction, so as to place all buildings erected before 1st March 1959 in the same regime with regard to the calculation of rents. This is achieved by the changes in commencement contained in subclauses (2) and (3), which replace the commencement provisions in Legal Notice 2008, No. 12, and the changes to section 40 of the Housing Act 2007 contained in clause 2.

Mr Speaker, I commend the Bill to the House.

Mr Speaker: Before I put the question, does any hon. Member wish to speak on the general principles and merits of the Bill?

1335 I now put the question, which is that a Bill for an Act to amend the Housing Act 2007 and for related matters be read a second time. Those in favour –

Hon. Chief Minister: Mr Speaker, for the reasons I indicated earlier, may I call for a division on this vote?

1340 **Clerk:** The Hon. P J Balban.

Minister for Traffic, Housing and Technical Services (Hon. P J Balban): Mr Speaker, I abstain from the vote.

1345 *The House divided and voting resulted as follows:*

FOR	AGAINST	ABSTAINED	NOT PRESENT
The Hon. J J Bossano	None	The Hon. P J Balban	The Hon. Sir Peter Caruana
The Hon. D J Bossino			The Hon. S M Figueras
The Hon. J E Cortes			The Hon. A J Isola
The Hon. N F Costa			The Hon. J J Netto
The Hon. Mrs I M Ellul-Hammond			
The Hon. D A Feetham			
The Hon. Dr J J Garcia			
The Hon. G H Licudi			
The Hon. S E Linares			
The Hon. F R Picardo			
The Hon. E J Reyes			
The Hon. Miss S J Sacramento			

1350 **Mr Speaker:** Does the Hon. Mr Costa wish to vote on the Bill? We regard him as yes. Very well. There are 4 Members absent, 12 Members have voted in favour, 1 has abstained. Carried.

Clerk: The Housing (Amendment) Act 2013.

1355

**Housing (Amendment) Bill 2013
Committee Stage and Third Reading to be taken at this sitting**

1360 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

Mr Speaker: Do all hon. Members agree that the Committee Stage and Third Reading of the Bill be taken today? (**Members:** Aye.)

1365

Nature Protection (Amendment) Act 2013
First Reading approved

Clerk: A Bill for an Act to amend the Nature Protection Act 1991.
The Hon. the Minister for Health and the Environment.

1370

Minister for Health and the Environment (Hon. Dr J E Cortes): Mr Speaker, I have the honour to move that a Bill for an Act to amend the Nature Protection Act 1991 be read a first time.

1375

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Nature Protection Act 1991 be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Nature Protection (Amendment) Act 2013.

1380

Nature Protection (Amendment) Bill 2013
Second Reading approved

1385

Minister for Health and the Environment (Hon. Dr J E Cortes): Mr Speaker, I have the honour to move that the Bill now be read a second time.

Mr Speaker, this Bill is intended to amend the Nature Protection Act so as to ensure that within that Act's powers to make secondary legislation there is power to regulate by means of licensing fishing and diving in marine nature areas, as well as allowing for the regulation of dive operators, sports fishing operators, dolphin tour operators and fishing competitions.

1390

Mr Speaker, we are conscious of unregulated diving that has been going on around Gibraltar for years and also the need to ensure that there is proper control and regulation of all activities to do with the sea, including proper protocols to be followed when visiting dolphins in Gibraltar waters.

Clause 1 of the Bill contains the short title and the commencement provisions. The amendments are intended to come into operation on such day as is appointed by notice in the *Gazette* by the Government.

1395

Clause 2 contains the substantive amendments. The amendments to section 13 of the Act extend the power contained within the Act for the granting of licences by the Government, after consultation with the Nature Conservancy Council, to circumstances covered by secondary legislation. For example, Mr Speaker, at the moment there is no provision for licensing of fishing of any form, including recreational fishing, and this will allow this to be permitted.

1400

The amendment to section 18 in clause 2(3) transfers the power to make regulations for the protection of any area designated as a marine nature area in subsection (5) from the Governor to the Minister. Such regulations continue to be only possible to be made after consultation with the Nature Conservancy Council and it is the *only* section in the Act that had remained under the Governor, as opposed to the Government.

1405

The amendment in clause 2(4) inserts a new paragraph into section 18(5)(a), which makes provision for regulations prohibiting or restricting, either absolutely or subject to any exceptions, fishing – and in fact defines fishing, which is not currently defined in the Act – as well as defining the undertaking of a business as a dive operator, a sports fishing operator or a dolphin tour operator or undertaking a fishing competition within the specified areas.

1410

The amendment in clause 2(5) extends the reference to permits being issued to include the terms 'approval' and 'licence' so as to best describe what each particular document does.

Finally, the amendment in clause 2(6) takes this opportunity to correct an erroneous cross reference in the Act.

I commend the Bill to the House.

1415

Mr Speaker: Before I put the question, does any hon. Member wish to speak on the general principles and merits of the Bill?

The Hon. the Leader of the Opposition.

1420

Hon. D A Feetham: Mr Speaker, the Opposition, at this stage – unless, having heard what I have to say in reply, either the Chief Minister or Minister Cortes persuades us otherwise and persuades us that what I am going to be saying is not correct – intends to vote against this particular Bill.

1425

It intends to vote against this particular Bill as a matter of principle, and the principle is this: that it is bad law, Mr Speaker, to effectively introduce a law that disapplies, by way of secondary legislation, obligations and prohibitions contained in primary legislation, therefore bypassing the requirement, obviously, that if you are going to disapply, which effectively is another way of saying that you are going

to amend the requirements in primary legislation... if you are going to do that, you ought to come to this House with *primary* legislation in order to ensure that that is properly debated in this House and that it is properly aired in Parliament.

1430 Mr Speaker, that point I am going to illustrate by looking at the principal Act. Now section 10, and by looking at the obligation or the prohibition in the principal Act that fishing with nets is disallowed or is not allowed in British Gibraltar Territorial Waters. If one looks at section 10 of the principal Act, 10(1) provides:

1435 'Subject to the provisions of this Act, if any person'

– paragraph (b) –

1440 'uses for the purpose of killing or taking any wild animal in self-locking snare, whether or not of such a nature or so placed as aforesaid, uses any seine net or gill net...'

– he then, effectively, is guilty of an offence. So, within Gibraltar Territorial Waters, fishing with seine or gill nets is prohibited.

1445 If we then look at section 13, which is a section that the Bill is seeking to amend... Section 13(2) provides that sections 8 and 10(1) and 10(2)... Section 10(2) in particular is the section that I have just referred to containing the prohibition in relation to the fishing with seine or gill nets, which are the type of nets that Spanish fishermen are fond of using in our waters. It says:

'Section 10(1) and 10(2) do not apply to anything done...'

1450 Then it lists a number of uses – for example, I will just read the first one:

'For scientific or educational purposes;'

1455 – so it allows the use of those nets for scientific or educational purposes if it is done –

'under and in accordance with the terms of a licence granted by the Government after consultation with the Nature Conservancy Council.'

1460 In subsection (2) there are various paragraphs from (a) to (e) and they all relate, effectively, to the use of nets for some scientific... or, for example:

1465 (b) for the purpose of ringing or marking, or examining any ring or mark on, wild animals;
(c) for the purpose of conserving wild animals or wild plants or introducing them to particular areas;
(d) for the purpose of preserving public health or public safety;
(e) for the purpose of preventing the spread of disease'

1470 What the Government is trying now to do, via this amendment, is to introduce a further, effectively, exemption to section 10 and to other sections – I am just using section 10 to illustrate the point that I am making; an exemption for such other purposes as may be prescribed by regulation. That entitles the Minister to effectively, by regulation, introduce a regulation which disapplies the prohibition on the use of gill nets and seine nets in British Gibraltar Territorial Waters, provided that it is done in accordance with a licence granted by the Government after consultation with the Nature Conservancy Council.

1475 We think that is wrong. We think it is wrong as a matter of principle. We think it is also wrong given the fact that this is an important issue for Gibraltar.

1480 If the Government intends and I will come back to the questions of intention in a moment, but if the Government... Actually, I will use a different word to 'intention'. If the Government seeks to give itself the power, as it is clearly giving itself the power, to disapply or to allow the use of nets in British Gibraltar Territorial Waters, provided that there is a licence granted by the Government, well, that ought to be introduced in this House by primary legislation so that we can all debate it and we can see where the Government is going with this.

1485 I know that the Hon. the Chief Minister has said, in previous exchanges that we have had across the floor of this House, that that is not the intention; but of course there are two points that I make about that. The first point is that a Government's present intention may not be a Government's *future* intention; and the fact that the Government does not intend to use this power in order to do what I have just described, does it mean that a future Government, or in future *this* Government, is not able to do so? In any event, as a matter of principle, it ought not to be able to do so unless it comes to this House and seeks to amend the principal Act by way of primary legislation.

Mr Speaker, the second point... and I know that the Hon. the Chief Minister is feeling in a particular acerbic mood this morning, and we have seen that in exchanges or in comments that he has made in

1490 relation to the previous Bill. Then again, he has the propensity, with respect to him, to cause an argument
 in an empty room, but given the fact that the way that the Government and the Chief Minister has
 comported itself over the last few weeks in relation to the answering of Questions that we have had in this
 Parliament, in the light of the way that the Chief Minister himself has defined the term ‘transparency’ in a
 1495 recent interview, in which he defined it well... ‘Transparency does not mean that we have to give *all* the
 information’, or words to that effect.

We are, quite frankly, as an Opposition, not prepared to give *this* Government the benefit of the doubt
 and vote, even if we were inclined to do so – and we are voting against it on principle, but even if we
 were inclined to do we are not prepared to give this Government the benefit of the doubt that it is not
 1500 going to try and use these amendments introduced by this Bill in order to, in the future, introduce a
 regime that allows Spanish fishermen to fish in British Gibraltar Territorial Waters under some form of
 licensing regime (*Interjections*) without coming to this House, debating it in this House and providing the
 reasons in this House so that there is a full and proper debate of the issue in this House.

For all those reasons, Mr Speaker, the Opposition will be voting against the Bill.

1505 **Mr Speaker:** Before I call on the mover to reply, does any hon. Member wish to speak?

Chief Minister (Hon. F R Picardo): Yes, Mr Speaker, not in any acerbic tone, but in a constructive
 tone, because we are dealing with legislation – although I must say that I do not think Mr Bossino has got
 any cause for suggesting that I have been acerbic in any of the matters that I have dealt with with him this
 1510 morning, although it appears that one of somebody’s parts is made of hay – but never mind – as the
 saying goes in Spanish.

Mr Speaker, those who accuse me of being acerbic might want to ask themselves why it is that, since
 they arrived in Gibraltar at the early part of the last decade, they have managed to have an argument and
 fall out with most of the people they have stood with in politics – and he is no doubt on a fast track to
 1515 have another argument with some of the people he is standing with politically.

Actually, Mr Speaker, just before I launch into my legal analysis, I will tell him this for nothing: when
 I met him, Mr Speaker, in the early part of that last decade, he was a man in a hurry with no patience.
 (Hon. D A Feetham: Will the hon. Member give way?) Now, Mr Speaker, he is an also run: in a hurry
 and still with no patience. But anyway...

1520 Mr Speaker, it is very strange that the hon. Gentleman has said repeatedly in the press and in this
 House that if we were to bring legislation to deal with the issue of fishing to, in effect, allow fishing with
 nets, which is what their agreement did, they would support it. He said this repeatedly. It is in *Hansard*
 and I know that he hates the fact that the proceedings of this Parliament are recorded and what he says
 one day is there to be looked at on the next day, but he has said that repeatedly.

1525 Mr Speaker, those who watch the news programmes will know that he has said the same thing in
 interview. He has said repeatedly, ‘If the Government brings legislation to this House to allow fishing
 with nets to, in effect, give a statutory regime that does what the 1999 Fishing Agreement, that I am now
 so enamoured of, in our law, I will support it.’ He has said that repeatedly.

I am not going to give way at all, Mr Speaker, so he had better just let me get through what it is that I
 1530 have to say.

Well, Mr Speaker, we do not believe that this Bill does that and he has reflected the fact that I have
 said in other interventions that the Bill that is before the House today does not do that. It does not create a
 regime to allow Spanish fishermen to fish with nets. His analysis is, ‘Well, the Minister *might* have the
 power in these regulations to create such a regime.’ Mr Speaker, we are telling him that this is not the
 1535 intention of the legislature today. This is not what we are doing.

He is saying, ‘It may not be your intention today, but you could do it tomorrow.’ Well, look, Mr
 Speaker, *they* could do it tomorrow. If there were an election – and perish the thought they might win it –
 then with their analysis of the powers, *they* might be able to create fishing with nets. But, Mr Speaker, let
 me just be clear with our community: that is *not* what the Government is legislating for today. We do not
 1540 see this Bill as granting us the power to do that, although on his analysis he takes the view that it does.

Mr Speaker, let us be clear what it is that he is going to vote against. The GSD – the new GSD – is
 going to vote *against* regulating diving in our waters, which causes *huge* problems for people who use our
 beaches – in particular, Rosia Bay and Camp Bay. They are voting against regulating that because that is
 what this Bill is about. They are voting against the licensing of those who go out to see dolphins and use
 1545 our environment for the purposes of a business, something which is going to have to be regulated because
 the environment needs to be protected. The new GSD is voting against that; and, Mr Speaker, they are
 voting against that on the most remarkable premise.

The idea that the Hon. the Leader of the Opposition has just set out that it is bad in principle to
 1550 disapply primary legislation by secondary legislation – in other words, where a law says, ‘You cannot do
 this unless you are allowed to do so by regulation’, that is bad law. Mr Speaker, in that case, I now fully

understand why he got up before and said, 'We are not bound by the legislation made by the previous GSD. We are not going to insist that it be seen as good legislation.'

1555 Why, Mr Speaker? Because under the GSD Administration for 16 years there have been *thousands* of instances put into our *Corpus Juris* of exactly that type of legislation – and under the GSLP before then, and under the AACR before then, and under the Conservatives in Westminster now, and under Labour in Westminster before then – because this is the most common way in which the legislature creates a prohibition and sets out the possibility of a regulated regime by which people can bring themselves within compliance of the legislation, enabling them to do that, which is primarily preventive.

1560 Mr Speaker, this is such a common legislative device that for a man who has been Minister for Justice to say that it is bad in principle really makes me wonder what it is that he got up to for the four years that he held that post. I have some ideas, Mr Speaker, and perhaps others will know soon too what it is that he was up to whilst he was holding the prestigious office of Minister for Justice.

1565 But Mr Speaker, if it were wrong, if it were wrong, as a legal analysis, it is certainly ridiculous for him as a political analysis.

1570 Let me explain, Mr Speaker, to those in our community who are listening – or watching, Mr Speaker – why. You see, Mr Speaker, the regime that *he* has defended and which took effect in 1999 was that we had a primary piece of legislation – the one he has just looked at, section 10 of the Nature Protection Act – which was *disapplied* and *undermined*, not by a legislative Act, a secondary legislative Act regulations, but by an agreement. (*Interjection*) *An agreement*. In other words, the grubby Agreement of 1999, with the grubby signature of the then Chief Minister, that said to a *few*: 'Section 10 doesn't apply to you, mate. It applies to all of my citizens, but it does not apply to you by dint of your place of residence and the colour of your passport.'

1575 Well, Mr Speaker, if he had got up and said, 'I am not just putting distance between myself and the GSD when it was in government as a legislative body...' – in other words, 'I don't just *not* support any more all of the laws done in the past 16 years,' which is what he said this morning. If he had said, 'I, myself, Chief Minister, have got it wrong in my criticism of your Government in the past 18 to 19 months in everything I have said, calling on you to go back to the 1999 Agreement and insisting that you should have continued the 1999 Agreement before you put in place a new regime'... If he had got up and said that, I would say the road to Damascus is longer than I thought.

1580 But, Mr Speaker, he has not said that. He has still insisted on his pernicious attack on the Government because the Government wants the rule of law to be respected and the laws of Gibraltar to be respected to the full territorial extent of Gibraltar, including section 10 of the Nature Protection Act, and he has got up and said as a matter of principle it is bad law for a piece of secondary legislation to derogate from a prohibition in a primary piece of legislation. Well, he is wrong about that as a matter of law, Mr Speaker, and there are thousands of laws that speak to that.

1585 But he is so *wrong*, Mr Speaker, as a matter of fact and as a matter of politics, that it is remarkable that there is in this community today a Leader of the Opposition, who is able to say in one moment, 'You should restore the 1999 Agreement,' – which by agreement disapplies section 10 of a law made by this Parliament to a select group of people – 'but it is absolutely unacceptable for you to do, by legislation in the established way, by secondary legislation of regulations, a regime that creates an exception to a primary piece of legislation's offence.'

1590 Mr Speaker – and this is what really worries me; it worries me considerably – if that is the tenor of the political debate, then we have got a serious problem in our community, because it is harder to argue with somebody who does not know what they are talking about than it is to have a disagreement with somebody who also knows what they are talking about but takes a different interpretation.

1595 On the Savings Bank, on whether we issue press releases and what press releases we issue, on all of those issues, Mr Speaker – and now, remarkably, on this issue – we have the serious problem in our community that the man who steers the Opposition's ship does not appear to be able to base his arguments on established legal principles, or even to reflect his previous statements, because – and I remind everybody who may be listening to this debate – this is the same Leader of the Opposition who said, 'If you bring amendments to the legislation to allow fishing with nets, we will support it.' Now he says that this amendment may potentially allow fishing with nets and therefore he does not support it, because it does not say on the letter of it that this allows fishing with nets. Well, Mr Speaker, he should have said, 'If this is intended to allow fishing with nets and you confirm that to me, I will support it, because I have said that I will.'

Hon. D A Feetham: Will you give way?

1610 **Hon. Chief Minister:** No, I certainly will not, because I still have not finished teaching you the lesson that you need taught! (*Laughter*)

But, Mr Speaker, it is worse even than that because he appears not to have understood the impact of his own remarks previously. He has confirmed that *his* policy, the policy of *his* party, is that it is possible

1615 to derogate from primary legislation by way of agreement. Now that, Mr Speaker, drives such a coach and horses through the principle of the rule of law that it becomes difficult to see how he could discharge the functions of Minister for Justice – let alone one day, as he wishes, the functions of Chief Minister – because in effect he is saying, ‘I do not accept that the Minister can create a caveat to a primary obligation, but I do believe that it is proper and appropriate and not against legal principle for a Minister to create an agreement that creates a caveat to legal principle and published in the *Gazette* with none of the requirements of legislation.’

1620 Mr Speaker, this is just, in my view, absolutely the most *dangerous* approach that we have ever seen to the potential administration of our affairs by any potential or proposed alternative Government, and the community needs to understand it.

1625 Mr Feetham, the Leader of the Opposition, is saying that the oversight of the regulation-making process – which is that the power is given by the House that the regulation is created by the Minister; it is published in the *Gazette* – it is visible for everyone to see; it is challengeable in this House by a motion by them, Mr Speaker, and it is challengeable in the Supreme Court – is in principle wrong, despite hundreds of years of practice, but he supports the principle that our legislation should be subject to caveat by agreement. In other words, I create a law tomorrow, a particular regime covering import duties. I have a friend in Main Street who says to me, ‘I would not like that to apply to me’, and I, as a new GSD Chief Minister, as he would be, say: ‘Don’t worry, mate. Here is an agreement that that particular import duty does not apply to you.’ That is the regime that the hon. Gentleman is defending: the law does not apply to people with red hats because I signed an agreement with people with red hats.

1630 Mr Speaker, he needs to go back and review the introduction to law that he might have been given when he started to study that subject, because what he has said is so dramatically contrary to the rule of law and to the established principles of democracy that I think he has highlighted for all of us the potential danger of him ever being once again in a position of authority in our community.

1640 **Mr Speaker:** Does any other Member of the Opposition wish to take part in the debate? No? I will call on the mover to reply.

Hon. D A Feetham: I cannot respond?

1645 **Mr Speaker:** No, you cannot. Surely, the Hon. the Leader of the Opposition is aware that the general principles and merits of the Bill only allow for one intervention, unless a Member gives way.

Hon. D A Feetham: I fully accept that. I have asked him to give way twice and he has not given way to me so I accept that.

1650 **Hon. Chief Minister:** If I might, just on a point of procedure?

One gives way during the course of a debate on a Bill on a point to deal with something to do with the legislation, not to have a debate which is untrammelled by the Rules of Parliament. The Rules give us all one opportunity to speak and we can come in on one point, but this is not a question of just ‘please give way so we can continue the argument.’

1655 **Hon. D A Feetham:** Mr Speaker, the hon. Gentleman is now clairvoyant, as well as being Chief Minister. He does not know the point that I was going to make, so I do not know how he can say that without knowing what I was going to say.

1660 But I have asked him twice for him to give way and twice he has refused. It is probably one of the few occasions that I have heard a Chief Minister not giving way (*Laughter*) when he has been asked to give way, but it is up to him. (*Interjection*) At the end of the day, (*Interjection*) when he has asked me to give way –

Hon Chief Minister: A Point of Order, Mr Speaker.

1665 **Hon. D A Feetham:** Well, may I?

1670 **Mr Speaker:** No. As far as I am concerned, as the person who is supposed to apply the Standing Rules and Orders which the hon. Members provide me with, giving way is not to be used in order to perpetuate a debate. That is not the purpose of the exercise. (*Interjection*) Okay? In any case, in committee the situation is different: in committee you can come and go. Right?

But those are the rules and really we need to apply them. This is what I am here for. If a Member who holds the floor does not want to give way, he does not have to. So unless any other Member of the Opposition wishes to contribute to the debate, I think I will have to ask the hon. mover to reply.

1675

Hon. Dr J E Cortes: Thank you, Mr Speaker.

I do not have a great deal to add to the contribution already made by the Chief Minister.

What I think I must make clear is that the main purpose of this amendment is to allow the Government to make regulations to control activities which have an impact on the marine environment.

1680

These regulations have been long called for by the community that uses the sea. They were the main thrust of the famous Red Line campaign by the Gibraltar Federation of Sea Anglers in 2010-11. They are the subject of representations from users of the sea regarding unregulated diving, unregulated rod fishing and other unregulated activities that large sectors of the community have been calling for.

1685

The main thrust of this amendment, I repeat, Mr Speaker, is to allow the Government to regulate in that way. I can give an assurance now to this House, and indeed to all those listening and watching, that the regulations, which are now imminent because this amendment will allow me to introduce shortly, do not in any way allow commercial fishing by nets. I would like to reassure you that the regulations that are currently, as I say, imminent, do not provide for that but provide for the matters that I have already listed. In my original contribution, I mentioned what this was for: to regulate fishing, local fishing; to regulate diving, dive operations; and, for example, the regulation of dolphin vessels which are a potential problem and are not regulated.

1690

I can add also that all the relevant stakeholders – including the Federation of Sea Anglers, including divers, including operators of dolphin and of recreational fishing boats – have been consulted and their representations, as well as the Nature Conservancy Council as the statutory adviser, have been consulted in these regulations, which I repeat do not include the net fishing that the Hon. Leader of the Opposition (*Interjection*) –no, Mr Speaker – has been referring to.

1695

I must add also, Mr Speaker, that one of the things, for example, that section 10 does not allow is any licence for fishing for recreational and competition purposes, and this is the sort of thing that I certainly do not think has to come back to the House if a licence has to be given.

1700

Therefore, Mr Speaker, having said all that, I feel that this is a Bill that will provide us with the instrument to be able to properly manage our marine environment in the way that we are committed to. In the way that we committed ourselves to when we published the Fishing Report. It is part of our marine strategy. It has been a long time coming and I have no hesitation to commend this to the House. (*Banging on desks*)

1705

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Nature Protection Act be read a second time. Those in favour? (**Government Members:** Aye.) Those against? (**Opposition Members:** No.) Carried.

1710

Clerk: The Nature Protection (Amendment) Act 2013.

1715

**Nature Protection (Amendment) Bill 2013
Committee Stage and Third Reading to be taken at this sitting**

Minister for Health and the Environment (Hon. Dr J E Cortes): Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

1720

Mr Speaker: Do all hon. Members agree that the Committee Stage and Third Reading of the Bill be taken today? (**Members:** Aye.)

1725

COMMITTEE STAGE

**Pensions (Miscellaneous Amendments) Bill 2013
Housing (Amendment) Bill 2013
Nature Protection (Amendment) Bill 2013**

1730

Clerk: Committee Stage and Third Reading.
The Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move that the House should resolve itself into Committee to consider the following Bills clause by clause: the Pensions

1735 (Miscellaneous Amendments) Bill 2013; the Housing (Amendment) Bill 2013; and the Nature Protection (Amendment) Bill 2013.

In Committee of the whole Parliament

1740

Pensions (Miscellaneous Amendments) Bill 2013
Clauses considered and approved

1745 **Clerk:** A Bill for an Act to amend the Pensions Act and related legislation.
Clause 1.

Chief Minister (Hon. F R Picardo): Mr Chairman, there is a letter that hon. Members have received, which I think they have a copy of, which deals with the proposed amendments.

1750 There is a proposal to delete clause 1(3). During the course of my intervention earlier, and based on the very convivial discussion that I had with Mr Bossino, there is also a proposal to take out the final phrase of clause 1(6), which is the reference '1 June 2009', and include the words 'the date of publication' in place thereof.

1755 **Hon. D J Bossino:** 'On the date of publication', presumably?

Hon. Chief Minister: The word 'on' is already there, and that is why I would only delete '1 June 2009' and include the words 'the date of publication'.

1760 **Hon. D J Bossino:** I removed it myself, incorrectly.

Mr Chairman: Are all hon. Members agreed with these minor amendments? (**Members:** Aye.)
Then clause 1, as amended, stands part of the Bill.

1765 **Clerk:** Clause 2.

Hon. Chief Minister: Mr Chairman, in the letter that I have caused to be sent to you there are three amendments to clause 2: the second point in the letter is to delete clause 2(2); the third is to delete clause 2(3)(a); and the fourth is, for clause 2(5), substitute the new wording which is set out in the letter.

1770 I have spoken to all of these amendments in the course of my speech.

Mr Chairman: May I suggest that we move the first two, which are very very straight forward, because then the Chief Minister will have to read through the third one, which is longer.

1775 **Hon. Chief Minister:** Mr Chairman, I am happy to move the deletion of clause 2(2) and the deletion of clause 2(3)(a), which I understand enjoy the support of the Opposition.

Mr Chairman: Do all hon. Members agree that these minor amendments should be approved? (**Members:** Aye.) Carried.

1780 **Hon. Chief Minister:** Then, Mr Chairman, there is this new clause 2(5), which substitutes section 8 of the Act. It is set out in the letter that I sent yesterday. Can I take that paragraph as read?

1785 **Hon. D J Bossino:** Mr Speaker, we may have gone beyond this provision, and I do beg your forgiveness if I did not raise it at the time. The provision which has been deleted is clause 2(3)(a)?

Hon. Chief Minister: No, that is the one further – You are going back?

1790 **Hon. D J Bossino:** Yes.

Hon. Chief Minister: Ah, right. Yes.

1795 **Hon. D J Bossino:** To 3 but I do have some amendments which I can offer to the other side in relation to 2(2)(4). Are we there yet, Mr Chairman, or have I jumped the gun?

Hon. Chief Minister: Can I just invite him to look at 2(5) so we get that one in, and then come back with his proposed review of 2(3)(a) and (4)?

1800 **Hon. D J Bossino:** Okay.

Mr Chairman: Are hon. Members agreed? Do they agree to the amendment to 2(2)(5) as moved and as by the Chief Minister in the terms that the Chief Minister has given notice in writing? (**Members:** Aye.)

1805 Now we come back to 2(2)(4)?

A Member: Just 2(4).

Mr Chairman: If there is an amendment, I have not had sight of it.

1810 **Minister for Education, Telecommunications and Justice (Hon. G H Licudi):** I understand it is 2(4), not 2(2)(4). It is 2(4).

Hon. D J Bossino: Yes, Mr Chairman, it is 2(4).

1815 I go back to what I suggested during the course of my intervention, which is that perhaps we should have certain days within which people are given the opportunity to notify the Government following the obtention of employment.

1820 My suggested wording, Mr Chairman, is that... If I can read from the fifth line down, which starts 'shall notify', it would read 'shall notify the Government in writing that he has taken up further employment', and I would add 'within [...] days of taking up such employment', and then 'or within [...] days from the date of entering into the operation of this Act, as amended by this Act, in the event that the officer is in employment on such a date.'

1825 So that would deal with persons who are, on the dates of publication, on the dates of coming into operation of this Act, already in employment and gives them some time to notify the Government – or is that...?

Hon. Chief Minister: Mr Chairman, can I say to him that, for the reasons he and I have been debating, we have looked at this in a *lot* of detail, and every word in respect, in particular, of these clauses, has effects. We think this has the required effect and deals with those points.

1830 It is a very technical piece of legislation. I note what he is suggesting is intended to try and clarify it, but I do not think we would be very successful if we tried to put the whole of the Pensions Act or even just section 6 in plain English, and so can I persuade him that this language, because it has been tested by officials and given a lot of consideration, should be the one that we stick with for now?

1835 If he thinks it is an important point and he wants to write to me and suggest that we bring another amendment on that point, I am happy to pass that on to the officials for them to consider; but – and the Hon. Minister for Justice can tell him – it has been like sweating blood to make sure that the language works in accordance with the technical requirements.

1840 **Mr Chairman:** I suggest that these are highly technical matters and the Hon. Mr Bossino has not formally given notice of a written amendment to incorporate it, and I do not think that that can be done therefore at this stage.

Surely, if he writes to the Government expressing in detail his views, it can be looked at technically by the officers and it should not be that difficult for the Government at a subsequent date, if it so wishes, to incorporate any of those amendments in a new Bill. Is that agreed?

1845 **Hon. D J Bossino:** Mr Chairman, I derive comfort from the words of the Hon. the Chief Minister in relation to this. I am very much used to dealing with the LSU in relation to this and they do tend to receive e-mails from me, in my professional capacity, in relation to stuff that I come across in legislative measures like this, and so I will be writing.

1850 **Mr Chairman:** Clause 2 then, as amended, stands part of the Bill.

Clerk: I thought there was another amendment: clause 2(8).

1855 **Hon. D J Bossino:** Exactly that Mr Chairman, the Clerk is absolutely right. It is a point that was made by the Hon. the Chief Minister in relation to the word 'Gibraltar' before 'Electricity Authority', and he had a solution to add the words, after 'Electricity Authority', '(hereinafter referred to as "Electricity Authority")' so that it impacts on the rest of the principal Act as well.

1860 I am not sure whether that would in fact work, because in order to do that it would require the first reference to the Gibraltar Electricity Authority and I am not sure that that is the case here; but again it is a point that I can raise in correspondence with the officials and they can deal with it then, and then the Government can present an amendment in the future.

Hon. Chief Minister: Mr Chairman, I am grateful if he would do it that way.

1865 I tried to accommodate his point by suggesting this inclusion of the 'hereinafter...' The Hon. Minister for Justice says we should not even put 'hereinafter', just '(“Electricity Authority”)', as we would in a letter to each other; but although we could do it that way, it may be that we are upsetting the apple cart because this is the not the first reference.

1870 So I am quite happy for him to write in, and he knows that if there are typographical errors in legislation they can be resolved by the LSU. Even after a Bill has passed through here there is that convention. This is not strictly typographical, but we do upset the structure of the Act as it is; but if he wants to move it, I was going to support it as I suggested. If he writes, I am also happy for them to look at it in detail.

1875 **Mr Chairman:** So we are still on clause 2?

Hon. Chief Minister: Mr Speaker, I think what has happened in effect is that Mr Bossino has agreed not to move the amendment to clause 2(8) but to include it in his letter, and therefore I think you can take it that your earlier call for section 2 to stand as amended stands and we can move to clause 3.

1880 **Mr Chairman:** Clause 3, then.

Hon. Chief Minister: Mr Chairman, in the letter that I circulated there is an amendment by the substitution of clause 3(2), which from his speech I understand the hon. Member was also supportive of.

1885 **Mr Chairman:** Does any hon. Member wish to speak to this amendment in Committee? No.
In that case –

1890 **Hon. G H Licudi:** Mr Chairman, in relation to clause 3, which is where we are, just a couple of points on that separate from the proposed amendments.

1895 One is just for information or clarification purposes, because clause 3 starts... or the heading is 'Amendment to Pensions Regulations', and I should say that there is not a subsidiary legislation called the 'Pensions Regulations' themselves. They are actually incorporated in the Act. They are a schedule to the Act, which includes the pensions regulations. So any reference in this Bill to the pensions regulations means the pensions regulations as contained in the schedule to the Act. That is just for clarification and for the record.

The second point, which may be a more substantive point, is in relation to clause 3(3)(d), which starts:

'After paragraph (3) insert –'

1900 – and then the next paragraph starts '(5)', which on the face of it looks a little bit odd that after paragraph (3) insert (5). Having looked at the regulations, there is a paragraph (4), but beside paragraph (4) it says 'revoked'.

1905 **Mr Chairman:** Revoked, yes. You are moving that (5) should become (4)?

1910 **Hon. G H Licudi:** No. Paragraph (4) remains as revoked, because that simply says that originally there was a (4), which was revoked; but it would not make sense to have (3) then (5), then a reference to (4) revoked, and therefore it should be after paragraph (4), even though there is no substantive paragraph (4) but just a reference to paragraph (4) having historically been revoked.

So perhaps for drafting sake it should simply refer to paragraph (4), but on the basis that it is paragraph (4), which is a revoked paragraph.

1915 **Hon. D J Bossino:** Mr Chairman, I think in effect what the Hon. the Minister for Justice is saying is that clause (3)(d) should read 'after paragraph (4) insert' – is that correct?

Hon. G H Licudi: Yes, that is the position.

1920 **Mr Chairman:** Is that agreed to?
Now the amendment which has been circulated in the name of the Chief Minister to clause 3(2), are all Members agreed? (**Members:** Aye.) Carried.
Clause 3 as amended stands part of the Bill.

1925 **Clerk:** Clause 4.

Hon. Chief Minister: Mr Chairman, in the letter I have circulated there is a minor amendment to clause 4 to delete the words 'or (3)', which I think the hon. Gentlemen have seen from the circulated note.

1930 **Mr Chairman:** Are all Members agreed to the minor amendment, which was the sixth amendment in the letter circulated by the Chief Minister? Right, agreed.
Clause 4 as amended stands part of the Bill.

1935 **Clerk:** The long title.

Mr Chairman: Stands part of the Bill.

1940 **Housing (Amendment) Bill 2013**
Clauses considered and approved

Clerk: A Bill for an Act to amend the Housing Act 2007 and for related matters.
Clause 1.

1945 **Mr Chairman:** Stands part of the Bill.

Clerk: Clause 2.

1950 **Mr Chairman:** Stands part of the Bill.

Clerk: The long title.

1955 **Mr Chairman:** Stands part of the Bill.

Nature Protection (Amendment) Bill 2013
Clauses considered and approved

1960 **Clerk:** A Bill for an Act to amend the Nature Protection Act 1991.
Clause 1.

1965 **Mr Chairman:** Stands part of the Bill.

Clerk: Clause 2.

1970 **Mr Chairman:** Those in favour? (**Government Members:** Aye.) Those against? (**Opposition Members:** No.) Stands part of the Bill.

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

1975

BILLS FOR THIRD READING

Pensions (Miscellaneous Amendments) Bill 2013
Housing (Amendment) Bill 2013

1980

Nature Protection (Amendment) Bill 2013
Third Reading approved: Bills passed

Clerk: The Hon. the Chief Minister.

1985

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to report that the Pensions (Miscellaneous Amendments) Bill 2013, the Housing (Amendment) Bill 2013 and the Nature Protection (Amendment) Bill 2013 have been considered in Committee and agreed to with some amendments, and I now move that they be read a third time and passed.

1990

Mr Speaker: I now put the question, which is that (1) the Pensions (Miscellaneous Amendments) Bill 2013, (2) the Housing (Amendment) Bill 2013, and (3) the Nature Protection (Amendment) Bill 2013 be read a third time and passed.

Those in favour of the Pensions (Miscellaneous Amendments) Bill 2013? (**Members:** Aye.) Those against? Carried.

1995

Those in favour of the Housing (Amendment) Bill 2013?

Hon. Chief Minister: Mr Speaker, for the reasons I indicated earlier, I call a division – with the Housing. (*Interjections*)

2000

Mr Speaker: Those in favour of the Housing (Amendment) Bill 2013? (**Members:** Aye.)

Mr Paul Balban is abstaining, very well. Carried.

Those in favour of the Nature Protection (Amendment) Bill 2013. (**Government Members:** Aye.) Those against? (**Opposition Members:** No.) Carried.

2005

ADJOURNMENT

Clerk: The Hon. the Chief Minister.

2010

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move that the House do now adjourn *sine die* with best wishes to all its Members for a short but pleasant summer break.

2015

Mr Speaker: I now propose the question, which is that the House do now adjourn *sine die*.

I now put the question, which is that this House do now adjourn *sine die*.

Those in favour? (**Members:** Aye.) Those against? Carried.

The House will now adjourn *sine die*.

The House adjourned sine die at 12:25 p.m.