



PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

MORNING SESSION: 10.35 a.m. – 1.10 p.m.

Gibraltar, Friday, 21st February 2014

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The Gibraltar Parliament

The Parliament met at 10.35 a.m.

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

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

BILLS FIRST AND SECOND READING

Stamp Duties (Amendment) Bill 2013 – First Reading approved

Clerk: Sitting of Parliament, Friday, 21st February, 2014.

Bills – First and Second Reading.

A Bill for an Act to amend the Stamp Duties Act 2005. The Hon. the Chief Minister.

5 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to move that a Bill for an Act to amend the Stamp Duties Act 2005 be read a first time.

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Stamp Duties Act 2005 be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

10

Clerk: The Stamp Duties (Amendment) Act 2013.

Stamp Duties (Amendment) Bill 2013 – Second Reading approved

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move that the Bill be now read a second time. This Bill, Mr Speaker, amends the Stamp Duties Act 2005 for two principal purposes.

15 First of all, it introduces an exemption from stamp duty of any instrument whereby property is transferred between spouses, or between the dissolution, or following the dissolution of marriage between former spouses.

Secondly, it introduces a zero rate of stamp duty, where either the value of the property does not exceed £250,000, the purchaser, or if more than one, each of the purchasers, is a first-time or second-time buyer and the property being bought is residential property.

20 LPS have looked at this Bill, Mr Speaker, which implements budget measures and have confirmed to the Government that it enables them to give business efficacy to those measures.

25 Under the new section 19A, the definition of a ‘first-time buyer’ is given as a person being an individual who has not previously been a purchaser of property subject to duty, where the real property in Gibraltar consisted of residential property. The definition of person, Mr Speaker, as an individual is designed to ensure that this zero rate can only apply when it is an individual real person who is a purchaser and not a company. The definition refers to residential property, so that if the individual has a business, and so has previously bought property for commercial purposes, he is still a first-time buyer for the purposes of the Act if he then goes on to buy residential property for the first time.

30 Furthermore, the definition of ‘first-time buyer’ and ‘second-time buyer’ refers to a purchaser of property subject to duty, because the definition in the Stamp Duties Act 2005 of property subject to duty relates to buying real property or to any interest in the company that owns real property. This means that if you have previously bought property through a company for residential purposes more than once, then you are no longer a first or second-time buyer.

35 Admittedly though, according to the Government’s Land Property Agents, LPS, most properties that are owned by companies are over the £250,000 threshold and checking if the existence of a previous property interest held by a company may be difficult, or impossible, if shares have been held by a Trust.

For this purpose, and at the suggestion, the useful suggestion of LPS, we have included a certificate requirement in the new section 19A so that the purchaser has to sign a certificate confirming that they are a first or second-time buyer for the purposes of the Act. A person who issues a false or misleading statement, or is reckless as to whether the statement is false or misleading, commits an offence.

The level of the fine is the same as that in section 6, for setting out incorrect facts or information in the instrument affecting how much duty is chargeable. This goes some way, we are advised, Mr Speaker, in dealing with those issues.

Mr Speaker, generally the amendments made in this Bill are deemed to have come into operation on Budget day, 24th June last year, as this Bill gives effect to the provision set out in my speech on the Appropriation Bill.

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?

I now put the question, which is that a Bill for an Act to amend the Stamp Duties Act 2005 be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Stamp Duties (Amendment) Act 2013.

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

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.)

**Employment (Bullying at Work) Bill 2013 –
First Reading approved**

Clerk: A Bill for an Act to prohibit bullying and victimisation in employment and for connected purposes.

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 prohibit bullying and victimisation in employment and for connected purposes be read a first time.

Mr Speaker: I now put the question, which is that a Bill for an Act to prohibit bullying and victimisation in employment and for connected purposes be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Employment (Bullying at Work) Act 2013.

**Employment (Bullying at Work) Bill 2013 –
Second Reading approved**

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move that the Bill be now read a second time.

Mr Speaker, this Bill implements one of our key manifesto commitments. The purpose of the Bill is to prohibit bullying and victimisation in employment.

Members of this House will be aware that a Command Paper was presented and published in January 2012 on this matter and that the Command Paper contained a draft Bill, entitled 'Rights to Dignity at Work Act 2012.'

80 Responses to the Command Paper were received and considered and a working group, which comprised of Members of DAWN, the Dignity At Work Union, Unite and the GGCA were set up in January 2013 to further develop the draft Bill. The Bill before this House is therefore different to the Bill that appeared in the Command Paper following consultations with the working group.

85 Mr Speaker, the Bill itself is intended to provide a legislative structure to tackle bullying in a way that goes further than the current provisions on harassment in the Equal Opportunities Act 2006, the Employment Act and the Crimes Act 2011. The Act, by virtue of clause 3(2) is binding on the Crown.

90 Clause 4 defines what amounts to bullying under the Act. It provides that bullying takes place where a person engages in conduct which has the purpose or effect of causing another person to be alarmed, distressed, humiliated or intimidated. This conduct includes: persistent behaviour, which is offensive, intimidating, abusive, malicious or insulting; persistent unjustified criticism; punishment imposed without justification; and changes in the duties or responsibilities of a person to that person's detriment without reasonable justification.

Bullying does not include reasonable action taken by an employer relating to the management and direction of the employee or the employee's employment as set out in clause 4(3) of the Act.

95 Clause 5 defines what conduct amounts to victimisation under the Act. It provides that victimisation takes place where one person treats another less favourably because he or she in good faith has, for example, taken or supported any action taken for the purpose of the Act, including in relation to any alleged breach of its provisions. It also provides that victimisation takes place where one person treats another less favourably because he or she is suspected of having done this or of intending to do this.

100 A person is not protected from victimisation where he or she maliciously makes or supports an untrue complaint. The section replicates the effect of the provision in the Equal Opportunities Act 2006 as regards victimisation, and that is section 13 of the Equal Opportunities Act that I am referring to.

105 Clause 6, Mr Speaker, makes it unlawful for an employer to subject employees and people applying for employment to bullying. It also makes the employer liable for bullying of its employees by third parties, such as customers or clients over whom the employer does not have direct control. Liability in relation to third party bullying will, however, only arise when bullying has occurred on at least two previous occasions, the employer is aware that it has taken place and has not taken reasonable steps to prevent it happening again.

110 However, clause 6(5) provides that an employer will not be in contravention of clause 6(1) in relation to a complaint of bullying where he or she can show that at the time of the Act or Acts complained of, he or she had in force a Bullying at Work Policy in accordance with the schedule and that he or she has taken all reasonable steps to implement and enforce the said Policy. Further, he or she will not be in contravention if, as soon as it is reasonably practicable, the employer takes all steps as are reasonably necessary to remedy any loss, damage or other detriment suffered by the complainant as a result of the Act or Acts complained of.

115 The schedule provides for the Bullying at Work Policy, Mr Speaker. It sets out that the Policy must be in writing, must be distributed to every employee and must include the following: an explanation of the statutory right of employees not to be subjected to bullying and victimisation and a statement that bullying and victimisation will not be tolerated; examples of bullying behaviour and of the conduct that may lead to disciplinary action; a statement of the procedure for bringing complaints and the manner in which they will be dealt with; a designation of a competent person to whom complaints should be made; a statement of the disciplinary procedure to be followed against employees who infringe the Policy; details of designated persons available to counsel, assist and advise individuals who bring complaints, or who are the subject of complaints; arrangements to train all those occupying any position and managerial authority and to inform all employees of the Policy; annual monitoring of the operation of the Policy; and arrangements for the consultation with trade unions, safety representatives and other stakeholders on the operation of the Policy, its implementation and any revision.

120 Clause 7 makes it unlawful for an employer to victimise employees. It applies in respect of anything done in the course of a person's employment.

130 Clause 8 provides that the Industrial Tribunal has jurisdiction to hear the claims under the Act. This clause replicates the effect of provisions in the Equal Opportunities Act and the Employment Act. The clause also deals with time limits. A person must bring a claim within three months of the alleged conduct taking place. If a person wants to make a claim after that period, it is at the Industrial Tribunal's discretion whether they grant permission to allow them to do so. The test applied by the Industrial Tribunal is what is just and equitable in the circumstances. Where conduct in respect of which a claim under the Act might arise continuous over a period of time, the time starts to run at the end of that period.

135 Clause 9 sets out the remedies available to the Industrial Tribunal hearing cases under the Act. This clause again is designed generally to replicate the effect of the provision of the Equal Opportunities Act 2006 and the Employment Act. The Industrial Tribunal can make a declaration regarding the rights of the complainant and/or the respondent, order compensation to be paid, including damages for injury to feelings

140 and make an appropriate recommendation. The measure of compensation is that which applies in tort claims, for example claims of negligence where the compensation puts the claimant in the same position, as far as possible, as he or she would have been in if the unlawful act had not taken place.

145 Clause 10 provides that in any claim where a person alleges bullying or victimisation under the Act, the burden of proving his or her case starts with the claimant. Once the claimant has established sufficient facts, which in the absence of any other explanation points to a breach having occurred, the burden shifts to the respondent to show that he or she did not breach the relevant provisions of the Act.

Clause 11 sets out how interest to any awarded compensation made to a claimant as a result of a case brought under this Act shall be calculated. This clause again replicates the provisions of the Equal Opportunities Act 2006.

150 Finally, the schedule provides for the Bullying at Work Policy, which I referred to earlier.

Mr Speaker, this Bill will not come into operation until a notice is published in the *Gazette* to commence it. The Government welcomes that employer organisations, like the Federation of Small Businesses and the Chamber of Commerce, are supportive of the work being done to rid the workplace of bullying.

155 In order to ensure that commencement of the Bill does not however give rise to spurious claims and to enable employers and employees to prepare for this landmark legislation, I have established a Commencement Committee which will include the Unions, DAWN and the GFSB and the Chamber, to enable us all to work together in ensuring this legislation comes into operation as effectively as possible.

160 I have this morning, Mr Speaker, or I will in fact this morning in a moment circulate a letter with minor typographical amendments to the language of the Bill, which we will raise at the Committee stage.

Mr Speaker, the very first leaflet we issued during the course of the 2011 General Election campaign carried a simple and effective message that demonstrated our commitment to banning bullying in the workplace. The message was 'Ban the Bully.' This Bill does just that. For that purpose Mr Speaker, I commend the Bill to the House. (*Banging on desks*)

165

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. Damon Bossino.

170 **Hon. D J Bossino:** Mr Speaker, I have spent considerable time and effort in reviewing this particular Bill, because I think it is a very important legislative move on behalf of the Government and in fact, with your permission, I will be reading from some notes I have here with me. But it is precisely, Mr Speaker, because it is such a ground breaking and I would describe it also revolutionary in nature, that I think and certainly on this side of the House we think that much more should have been done to educate, inform and advise employees and importantly employers about this particular piece of legislation.

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There should have been, in my consideration, much more consultation. I have spoken recently in my preparation for this Bill to various employers and other interested parties and stakeholders and many of them, Mr Speaker, are unaware of the existence of this Bill or in some cases, its far reaching terms.

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One has to acknowledge the sterling work which has been done by a particular local pressure group by the name of Dignity At Work Now – DAWN, for short – and one of its main proponents, Mr Francis Buttigieg, whom I recently had the pleasure to meet to discuss this Bill. Mr Speaker, his very good work over the years in both bringing this delicate issue to the fore and also in counselling and advising people affected by this scar on society, that is bullying generally, but particularly in the workplace, has to be recognised by everybody in this House.

185

There have of course, Mr Speaker, been many pressure groups outside of Gibraltar and particularly in the UK, which have also done a lot of work in this area. But, as I said earlier, in our view a lot more could and should have been done by the Government in the lead up to this legislation by way of analogy.

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I recall when Lord Woolf spearheaded the radical changes to the Supreme Court Rules, which heralded the introduction of the... I was just about to describe them as the new civil procedure rules, but of course they have been in place now for a considerable period of time in 1999.

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Members of the legal profession will recall that we had conferences, seminars and symposiums, which were held in Gibraltar in anticipation of the rules application here. That was indeed very informative for local practitioners, who were able to digest the meat and the substance of the rules before their implementation.

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As a collective, the members of the Bar, the Judiciary and other court service users and staff were able to prepare for the radical changes which the reforms brought in their wake. As far as the Opposition can see, there has been none or at least little of that here. Very few shop owners, small business owners or indeed even practitioners in Employment Law, Mr Speaker, have been made aware of the proposed radical nature of these changes and this, Mr Speaker, is an important point, because certainly from the perspective of, for example, the small business owner, who is already facing the very considerable reduction in sales as

a result of the frontier queues, is now having imposed on him more stringent burdens in the form of legislation. This is not just in the context of the implementation of the Bullying at Work Policy, as set out in the schedule to the Act, which indeed I will go into that later, has been cited in the House of Commons as being unenforceable in nature, but a Policy which has been applied... in fact that particular Policy which the Hon. the Chief Minister alluded to, is a Policy which would have to be applied by all employers irrespective of their size. But also because they could be subjected to unmeritorious claims without being able to recover the costs from such claims given that the jurisdiction where these complaints are going to be heard is in the Industrial Tribunal where cost recovery, as hon. Members who are petitioners or were petitioners in this area will know, is very, very difficult indeed.

Europe-wide there are different stages of developments in relation to this area of law. Sweden, for example, was the first country to legislate in this area in 1993. There have been European-wide legislative moves in the areas of equal opportunities, which the Hon. the Chief Minister referred us to, which enshrined what in broad terms can be referred to as anti-discrimination provisions, where there is a prohibition of bullying and victimisation in respect of protected characteristics, such as sex, religion, age etc, that is already part of Gibraltar's statute in the form of the Equal Opportunities Act.

In the UK there have been various attempts at introducing what they call, and we used to call the Dignity at Work legislation, which although approved in the House of Lords in 2001 has not been implemented in the House of Commons to date. In England, as here, Mr Speaker, we have the ability not only to bring claims under the Equal Opportunities legislation, the common law, but also in relation to Health and Safety legislative architecture.

One particular campaigner, Miss Valerie Davey the MP for Bristol West in the 2001 to 2005 UK Parliament, carried out a personal campaign by persisting over many years to ensure that there was a debate on this issue in the House of Commons, having first applied for a Motion in 2001, but which was not in fact debated until 2003. She, however, found cross-party support for her campaign when the matter was finally aired. In her 2003 speech, she spoke of the harrowing experiences that employees across the country undergo at the hands of bullies in the workplace. The statistics she used then were quite shocking to read. A study carried out by the University of Manchester in 2001 showed that 10% of people had experienced bullying during the previous six months, whilst 25% had experienced it in the previous five years.

Gibraltar, unfortunately, is not apparently free of such bullies. The information available in the DAWN website, the local pressure group, refers us to a preliminary study which shows that 31.1% of employees consider themselves victims of bullying at work and we also had the sad case of one suicide. However, what many people have asked is what other empirical evidence is there of bullying in Gibraltar? What information, if any, is available to the Employment Service? What statistics does the Government have? None, I suspect, and this is one further area of concern as to how this delicate issue is being handled. The now governing party already had draft legislation in place and were already committed to legislation before, in my view, studying the matter more carefully. They had the pill ready before they even knew how big the ailment in fact is or was in Gibraltar.

For all these reasons, this issue should have been properly debated and the community properly educated. I am conscious that this is a manifesto commitment of the Government, but there is no reason why the debate could not have taken place before the legislation was brought to this House.

I also Mr Speaker have concerns, with the details of the Bill as it currently stands and whether therefore we are introducing a good law for what is such an important and delicate subject. I really do get the impression that the Government is pursuing this initiative without much thought in its obsession with ticking that particular box of its manifesto. **(A Member: Hear, hear.)**

Firstly, and as stated earlier, I am not sure that there has been wide consultation or indeed enough time given for such consultation, given that the Bill represents a substantial departure from the Command Paper which was published in January 2012 within a month after the current party was elected into Government. The Command Paper is expressed, for example, in terms of Dignity at Work as opposed to bullying or victimisation which follows the UK Bill.

Secondly, we seem to have gone on a frolic of our own by mixing the wording set out in the UK Dignity at Work Bill, Equal Opportunities legislation and Prevention of Harassment the UK Prevention of Harassment Act wording, all in one melting pot, and I am not sure how that will work in terms of enforcement and interpretation.

One of the... I am not sure whether this is what informed his decision, but when the Leader of the Opposition was the Minister of Justice and he introduced a considerable number of legislative changes, as a petitioner what I always noticed was that they were very similar in terms to the English legislation, which for a petitioner makes a lot of sense, because you can at least apply the common law architecture which is available in the UK to Gibraltar.

Where you have a wholesale adoption of the Equal Opportunities legislation, is in relation to the remedies section in clause 9 of the Bill and the interest on compensation set out at clause 11 section, which provide, for example, for Supreme Court compensation and injury to feelings. The statutory cap here, Mr

Speaker, is removed in circumstances where the legislation is of much wider scope, because the bullying or victimisation is not required to be based, as I said earlier, on a protected characteristic as it is in the current Equal Opportunities legislation.

265 Could at least, as an initial move, the Government not have adopted a non-punitive approach, as in the case, for example, in Sweden, where in fact there was an MP in the UK by the name of Mr John Robertson who, during the course of a debate, on 25th March 2003, encouraged the UK Government at the time to follow that particular route?

270 Importantly, Mr Speaker, the cost regime applicable in relation to unfair dismissal claims – i.e. they are for all intents and purposes non-payable – apply to complaints of this nature. So that, for example, a small business employer could be subjected to an unmeritorious claim, which would require defending at cost to it, which would then not be recovered, with medical reports and all other sorts of expenses. An unmeritorious claim, Mr Speaker, to a small business employer employing, let us say, one or two employees, could ruin the business.

275 The other point is, is the Industrial Tribunal the appropriate body to deal with claims of this nature? A chairman will now be required to deal with Supreme Court level compensation. Can the Tribunal deal with these matters administratively? A question that I do have is whether this in fact makes matters worse for claimants. Will they not also be precluded as a result from claiming such compensation from the Supreme Court in an ordinary claim? It should be borne in mind that claims under the Protection of Harassment Act 280 of 1997 in England and Wales, can only be brought in the High Courts in England.

Section 4(1) refers to... sorry clause 4(1), I beg your pardon, Mr Speaker, refers to conduct and there is another point I wish to raise with hon. Gentlemen and Ladies, and it is this: there is no further explanation as to whether the conduct is expected to be repetitive or not. Should there not be, for example, a reference to a course of conduct, which I think is the legislative language in the Protection of Harassment Act? I understand, Mr Speaker, that in Sweden, for example, they outlawed recurrent reprehensible or distinctively 285 negative actions, using the words in fact used in the particular section there.

Much of the literature that I have read on the subject refers to repeated and persistent behaviour, which is what is in fact envisaged in most of the examples set out in clause 4(2), but not all of them. The Protection of Harassment Act requires there to be a course of conduct, as I said earlier. Whilst on this 290 subject of the Protection of Harassment Act, I would ask the Hon. the Chief Minister during the course of his reply, given that it is a manifesto commitment of the Government to also include a Protection of... it says, yes, I am reading direct from the manifesto and it says this will also include a Protection of Harassment Act, and whether it is the intention of the Government, as part of its legislative programme during the course of this Parliament, to introduce a separate Act in relation to Protection of Harassment or 295 whether he considers that the relevant provisions there are already set out in this particular Bill. I would be grateful for some guidance in relation to that point.

The suggested amendment I have just made in relation to the course of conduct will also go some way to address concerns, which employers will no doubt have, of being at the end of spurious claims, as I mentioned earlier, as a result of one-off actions. I daresay, Mr Speaker, that even the local pressure group 300 will also agree with the definition of bullying acts as being repetitive or using the words of the draft legislation, ‘persistent behaviour’.

Should the word, Mr Speaker – and it may be one of the suggested amendments that the Hon. the Chief Minister referred to earlier – the word ‘reasonable’ not also be included before ‘justification’ in clause 4(2)(c)? I would ask him to consider that.

305 In relation to ‘third party’, I take hon. Members to clause 6(4), which deals with basically the employer having to protect employees from third party bullying, is the Government contemplating legislation for those acts of bullying perpetrated by non-employees on employees, is a question I have? I think on the face of the wording of the legislation, I think the answer must be yes.

310 And, of course, this can lead to a situation, Mr Speaker, where, for example, a contractor has employees working on a construction site and that particular employee is bullied by a tenant. That contractor or employer will be held liable under the Act. I do not know... a lawyer in a legal firm situation where, for example, a partner may be or a legal firm may be the subject of a claim by an associate if the associate is bullied by a client. Things like that which I think ought to have been given sufficient thought to.

315 How is it proposed, Mr Speaker, that A – i.e. the employer – will know of B’s bullying? I note that there is no specific provision which allows for the giving of notice by, say, B to A, for example.

The other point is, has thought been given to the difference in the use of language and therefore potentially legal tests in the use of the word ‘detriment’ in clause 7(d) and the ‘less favourable’ treatment in clause 5, because I think those two clauses sort of work with each other. I will ask the Hon. the Chief Minister maybe in his reply whether he could address concerns I have in relation to that.

320 In relation to – and this may be one of the typographical errors which the Hon. the Chief Minister was referring to – in clause 9 there is a reference... clause 9(1) we have three subsections, which are (a), (b) and

then there is a big 'I'. I think that ought to be a small (c), with a consequential change to clause 9(3) which makes a reference to that particular subsection.

325 Moving on to the schedule to the Bill, which sets out the Bullying at Work Policy, as I said earlier, this requires a mandatory implementation by *all* employers, irrespective of the size of the undertaking. What cost burden will this imply for these employers? Will they not have to seek legal advice in terms of the drafting of these documents, for example? This is in fact a crucially important part of the legislation, given that it affords a defence to employers under clause 6(5).

330 Provision 2(d) in the Bullying at Work policy, talks of the designation of a 'competent person' to whom complaints should be made. There is no definition of what a 'competent person' is. What guidance is being offered to employers, especially those, as I said and I have repeated during the course of my speech, who run small businesses, which are the vast majority of employers in Gibraltar, as to who this competent person should be? Will they need to employ somebody else? Does a person have to be qualified? If so, in what?

335 Reference is also made, Mr Speaker, in 2(f) to providing details of 'designated persons' and approval, who are available to counsel etc. Again, what guidance is there as to whom those persons should be?

340 Mr Speaker, the legislation which the MP I referred to earlier, Miss Davey, sought to introduce by an amendment, I think it was the Employment Relations Bill, on 29th March 2004, in clause 1 is in fact in very similar terms to clause 4 of the current Bill, although it talks about the protection of the right to dignity at work. But it is almost word for word what is provided for... the amendment which she sought to introduce was almost word for word, if not word for word, what is set out in the schedule to this particular Bill. She in fact withdrew that particular clause on the basis that the Government at the time was to launch, together with Amicus, and I quote:

'The world's largest project to stamp out the bullying and discrimination at work'

She then said:

'I offer my sincere congratulations to my right hon. Friend the Secretary of State on her announcement last week that, together with Amicus, the Government will launch the world's largest project to stamp out bullying and discrimination at work. The project has been launched to provide supportive advice and training to organisations that are trying to tackle bullying, train employees as counsellors, devise and promote a voluntary charter on dignity at work, promote examples of excellent employers in the United Kingdom and produce a benchmark that enables organisations to measure their success in achieving dignity at work and a "ban bullying" pack. The Government are working initially with Amicus and 10 leading employers, including British Aerospace, Royal Mail...'

345 And then she refers to a few other employers.
Miss Eleanor Laing, from the Conservative Opposition at the time, then said:

'Although I entirely agree with her sentiments and intentions, I disagree with the idea that passing further legislation will achieve them. The clause is too prescriptive...'

– the same clause as the Bullying at Work Policy –

'Clearly, I do not have to make that argument because she acknowledges its validity...'

– and that is because in fact Miss Davey withdrew the amendment –

'New clause 1 would place an enormous burden on employers and employees to understand what constitutes a dignity at work policy and the way in which it would be enforced. That applies especially to a small workplace in a small or medium-sized firm that does not employ many human resources people. It cannot be good for industry to employ more people to deal with further regulations than it does to manufacture goods and services. Business and industry should be about the latter, not keeping to the letter of complicated laws [...] If the solution to the enormous problem that she described was passing such a law, we would all be pleased. Employers and employees alike would be pleased if we could eradicate the dreadful problem of bullying by merely writing something in statute [...] It would be bad jurisprudence to pass new clause 1 into law, as it would be difficult to enforce. It is bad in principle to make laws that cannot be enforced and would be unclear.'

350 Mr Speaker, in another debate later on, I think it was in 2004, Dr Vincent Cable, Vince Cable said that he was struck by the comments made by the Andrea Adams Trust, which the hon. Member for Bristol was cited as Miss Davey referred to earlier, and it asks

'Does the courtroom really have to be the appropriate battleground? Surely in reality the ideal place to resolve the problem must be in the workplace itself. Recognition and awareness of workplace bullying is essential if we are to move forward.'

Whether or not there may be a case for workplace legislation, the report said that a concerted effort should be made by management and the unions to raise the profile of workplace bullying to ensure that it is

355 properly monitored. Then he referred to the fact that there are legal remedies which exist which are very similar to the legal remedies which are available in Gibraltar.

And then he says

360 'If there were a role for legislation, perhaps it is not laying down prescriptive procedures to deal with work-place bullying, but placing an obligation on employers to have an anti-bullying policy and to allow for flexibility in that policy to deal with particular problems.'

I do not think that this particular Bill achieves that, Mr Speaker. These are precisely the criticisms that we on the Opposition side have in relation to this legislation in general, but specifically to the schedule to the Bill, which is entitled, 'The Bullying at Work Policy'.

365 Mr Speaker, rather than proceed by way of legislation, for example, should the Government not have proceeded in a similar way to the UK and engage with the industry? Or perhaps, also, if legislation is the way to proceed, to have adopted the Swedish example of non-punitive measures, as I mentioned earlier. It is interesting, I would point out, given the socialist credentials of Members opposite, that it is not Labour Party Policy and it certainly did not feature in the 2010 Election manifesto.

370 It is for all of these reasons, Mr Speaker, that unless I am persuaded by the Hon. the Chief Minister in his reply as to what he is about to say, that I think we have little alternative but to abstain on this particular legislative initiative and it is a pity, because had things been done in a different way and properly, it would no doubt have resulted in support from this side of the House. (**A Member:** Hear, hear.) (*Banging on desks*)

375 **Mr Speaker:** Does any other hon. Member wish to contribute to the second reading of the Bill? Otherwise, I will call upon the mover to reply.

The Hon. the Chief Minister.

380 **Hon. Chief Minister:** Mr Speaker, it really is quite astonishing to have heard the extraordinary remarks that the hon. Member has made as he has tried to wriggle through, pretending to support something that is designed to protect those who are being bullied in the workplace, whilst trying to find *every* possible reason to object to raising their hands at the end in support of this. I really do not know what it is that they think that they are doing. Is it that they are trying desperately to be in the good books of the employers organisations, but not annoy the employee organisations? If that is the sort of tight rope that they are trying to walk with these games, well I think it is so transparent and see through that it is not going to get them anywhere.

385 Mr Speaker, let us be very clear about what has happened and how the hon. Gentleman has tried to pretend the opposite. We have published, within 100 days of being elected, a Command Paper on a subject that even by the hon. Member's intervention, he accepts deals with something that is sensitive and that affects some people's daily lives. He has accepted that there are statistics available, internationally and in Gibraltar, carried out by a group that he has said he respects, although he does not appear to have put much store by their statistics that show that there is bullying in the workplace in Gibraltar.

390 So we publish a Command Paper in 2012. We publish an amended Bill, as a result of having published that Command Paper *and* having consulted a very different Bill to the Command Paper as a result of the consultation, in 2013. And in 2014, the hon. Member gets up and says, 'You have not consulted enough.' Mr Speaker, if we change a Command Paper because we do consult, and we produce a Bill that is different because we do consult, does that not demonstrate that the fruit of that work is what is before the Parliament today? It is therefore the Bill that results from the consultation. How can he say we have not consulted enough?

400 Mr Speaker, I dare say that the fact is that they have not engaged in the consultation. It appears to me that Mr Bossino spent much of last night trying to read up on debates anywhere else in the European Union that he might be able to lay his hands on to have something to say, because we have not had him address what he has been doing for the past two years with the Command Paper published and who he has spoken to in the past two years. By his own mouth he tells us that in the past couple of days he has phoned a few people who are employers and then he has given us his own summary of the debates that he has read in another place. Mr Speaker, I do not think that is consultation leading to proper decision making, to make a stand on something as important as this which leads them to abstain. Well, I think members of the general public will make up their own minds about how serious their protestations of support for the principles and general merits of the Bill are, given their response in this Second Reading.

410 Then, Mr Speaker, the hon. Gentleman tells us we should have done more by way of guidance and information, and he puts us in mind of the work done in relation to the Woolf reforms (*Laughter*) as they were known. (*Laughter*) He is a bit of a wolf in sheep's clothing, Mr Speaker, in this debate, I put it to him, whilst he pretends to want to protect those who are bullied, but does not want to support the legislation that does it.

415 So the Woolf reforms, which were the civil procedure reforms, he says, those were properly dealt with. There were seminars and there were guidance notes and there were conferences. Yes, Mr Speaker, there were *after* the Bill to make those changes to the rules had passed the Westminster Parliament or had been adopted as what practitioners know as the new white book. So the rules were in place. It was not a question of the rules not being made whilst there were conferences and guidance notes and discussions. All of it was done and then there was guidance, conferences and discussion.

420 But I can see what happened to the hon. Gentleman in his speech, he wrote it before he heard my speech and he either felt that his pen had been so florid in writing his speech that he wanted to read it anyway or he just did not listen to what I had to say. I said there will be a Commencement Committee and the Bill will not commence until the Commencement Committee advises me to commence it, and what the Commencement Committee will do is provide guidance and provide training and help employers and help employees. All the things that he said that we should be doing, which I had just said we were going to do. So I will take, Mr Speaker, with a proverbial pinch of salt, everything that came after, because if he is advising me to do that which I have said I am doing, he is not giving me the sort of advice that I could be persuaded to pay for if I was instructing him professionally.

430 Mr Speaker, small business owners in Gibraltar have never had a more listening Government, and despite the fact that this Bill has been published as a Command Paper for two years and in its current form for some time and that it was published actually as a Bill in December of last year – no this is not a Bill which has only been published for six weeks; it has now been published for almost 12 weeks or even longer – we are still talking to the employer organisations, not to one or two employers, like he referred to his conversations, but to the employer organisations and to the employee organisations and we are putting the employer organisations and the employee organisations and the Government in the same Committee to work on guidance and the best way to implement this Bill.

435 Therefore his pretence that he is somehow representing the interest of the small business owner, of the business with two or three employees, really wears very thin when one looks at what is actually happening on the Government side. They do not need protection from this Government, Mr Speaker. This Government is the ally of small businesses and the ally of those doing business in Gibraltar, regardless of the size of the undertaking, because they are the ones who provide jobs. And in doing the work of presenting this Bill to the Parliament, of course we are not just protecting the bullied, we are also protecting the employer, because what productivity in a workplace where bullying is rife, or where an employee who is there to produce is subject to such bullying that he cannot give the best of himself... so this is in effect also in the interest of the employer.

440 But, Mr Speaker, there should be perhaps no surprise whatsoever that they have taken the attitude that they have taken and in their abstention on this side of the House, we will hear them voting against this Bill because in effect they had 16 years in Government to consult, to think, to talk to DAWN, that they never talked to when they were in Government, and only last week he had the pleasure of welcoming to his office. Whilst those of us who are on this side of the House had been working with them for almost half a decade, concerned about the issues that they raise, because all of the florid words to justify the unjustifiable abstention today are about the new GSD and what the new GSD has done in the past 72 hours or in the past week to try and deal with this difficult issue; but not about what the old GSD was up to for 16 years and their failure to address this issue, at least since DAWN put it on the agenda.

445 Perhaps I should not be surprised, Mr Speaker, given that in almost every public intervention that hon. Members make they try and decry the things that their party did whilst in Government and tell us how new and how different they are, and how new and how different even their internal procedures are, Mr Speaker, although they are uncannily similar to those internal procedures that those of us on this side of the House in the GSLP have been pursuing for many, many years since we were established.

460 But, anyway, Mr Speaker, the history lesson that the hon. Gentleman gives us as to the progress of anti-bullying legislation through other parliaments, he should know is one that we have done already ourselves before the Command Paper and even before being in Government. It does not take a Seneca – and that name is the same in English as it is Spanish, Mr Speaker, because it is Greek – to be able to work out what to type into Google to get now the debates that one has access to in all of the parliaments around Europe that deal with these issues.

470 But everything he told us was just that, it was historical, it was anecdotal, it was this attempt to justify what they are going to do. They are going to keep their hands down. They are going to keep their mouths shut when this Parliament gives them for the first time in history the opportunity to support a measure that will ban bullying. That is what they are going to do and the hon. Gentleman just could not find enough words to try and decorate that disreputable silence that is going to characterise their approach to this legislation when they have the opportunity to vote.

475 Mr Speaker, we have looked at that history. We have looked at those debates. We have engaged with DAWN. We have engaged with the employers. We have engaged with the employees. This Bill is the product of that consultation, and the Commencement Committee will take us even further in providing

guidance and deciding how best to assist with the implementation of the principles that are set out in this Bill. Because, Mr Speaker, of course there is evidence of bullying in the workplace in Gibraltar, that our first leaflet in the General Election campaign, that our first advertisement in the General Election campaign in 2011 highlighted the issue of bullying, should at least have highlighted to them during the campaign at least that our first Command Paper dealt with this issue, should have highlighted to them in Opposition the breadth of the representations made to us about how widespread this problem has become.

The hon. Gentleman seemed to quote with approval; the statistics provided to him by DAWN; but then said, 'Why haven't you done your own survey?' Well, Mr Speaker, one suicide is one suicide too many. That is a statistic that should stick in all of our minds today when we decide how we vote on this Bill. To a great extent whether a leader of a Parliament says this is an issue of conscience or not, whether a leader of a Party says this is an issue of conscience or not, every Bill that we make a legislative measure that we make an Act that we make a law, is a matter on our conscience.

Whether it deals with taxation, which affects people's pockets, or whether it deals with issues that can affect daily lives in a different way, every time we vote to make an Act, this must be something on our conscience because we are making laws for the people who are not in this Parliament and who look to us to regulate the relationships between us in this community. And if there has been one suicide attributable to bullying at work, what more statistics do the hon. Members want before they decide to support this and to act?

Mr Speaker, needing guidance and needing to do all the work that we have agreed, and I have said we have agreed should happen during the course of the work of this Commencement Committee, is not a reason to delay the legislation. I do not discount, Mr Speaker, that we could come back in the future and amend the legislation as a result of the work of the Commencement Committee or otherwise, like every piece of legislation, because we have had bumper pieces of legislation, sources of huge pride for those who they have presented. A new Crimes Act, Mr Speaker, that the Hon. the Minister for Justice, when before he was Leader of the Opposition on that side of the House made, and we have had to amend that, Mr Speaker. We have had to amend a lot of pieces of legislation because things change, because of the operation of the legislation, because legislation needs to be updated. We should be amending more.

There are statutes in our Statute Book that require attention because of levels of fines or levels of payments etc, and it maybe that this, which as the hon. Gentleman says is a home-grown piece of legislation, will require amendment in the future. So be it. I do not discount that. It maybe that we need to tighten in some areas that he has suggested that we should loosen. It maybe that we need to loosen in some of the areas he has not suggested that we should loosen. So, Mr Speaker, I think that... and he has even suggested in one particular remark that we should tighten a particular area by the introduction of the concept of reasonableness before a justification.

So, Mr Speaker, it may be that all of those things are relevant in the future, but not a reason not to progress with this legislation today. Mr Speaker, if he were genuine in what he was saying... if he were genuine in what he was saying, because he likes to present himself as the genuine face of the GSD, *el tío bueno*, Mr Speaker, the nice guy, right? Why has he not written to me, and said, 'Fabian, I really want to support this legislation. This is an important thing that deals with the bullied at work. These are the issues which I think would make the Bill better'? If he were *genuine*, Mr Speaker, he would have done that and he has not.

He has wanted to use all of these little hooks in this legislative intervention, which is almost an attempt at what we might call now that we know more about fishing, a *palangre* speech with many hooks in it (*Laughter*) to try and get himself off the hook of why he is not going to support this landmark piece of legislation. I do not think there is much merit in the interpretation that he wanted us to consider of what happens in relation to associates in a law firm, Mr Speaker. Many of them are actually not employees, they are self-employed individuals. But, of course, there are issues with fixing employers with liability for what third parties do, but this is not the only legislation that does it.

Of course in the same way as an employer has vicarious liability for the acts of his employees, he has sometimes to carry liability if his employee is subject to injury and this is just dealing with exactly that principle. So let no employer think that Mr Bossino is their representative in this place, protecting them from a new concept of liability, because if even he believes that, he has got it completely wrong and he should know better.

It is not a question, Mr Speaker, of employers needing to employ somebody to be the competent person in schedule 1. If he had read the Bill in detail he will see that the competent person in schedule 1 just needs to know what the procedures are, and understand what it is that the anti-bullying protocols that a particular employer may have in place are there for. It is, Mr Speaker, as he has noted at least in one part of his intervention, a defence to a claim in respect of bullying to have had such a procedure in place and the simplest model for him to understand, Mr Speaker, that we base this on, is the model, for example, of anti-money laundering.

Small companies, Mr Speaker, even those he seems to pretend to represent, those with two or three employees, they all have to be ready to deal with money-laundering issues. When one deals with issues like this which are all pervasive, you do not say this will not apply to a three-member firm or a three-man company or somebody trading with a small group of employees, of course it applies. You have a policy that deals with this issue that you know about. It sounds so difficult, maybe when it is being considered in the context of the Parliament, an anti-money laundering policy. ‘My goodness, how am I going to deal with that? I have got a paint shop. How am I going to deal with an anti-money laundering policy? I have got three employees, who is going to be the anti-money laundering officer?’ Well, Mr Speaker, at the end of the day we all have to be on guard in relation to these issues, regardless of the industry in which one is. It is much more important in the financial services sector, than it is in the paint shop, but nobody can launder money today and nobody’s employee can launder money today. So this is not new ground that we are making here, Mr Speaker.

Mr Speaker, before I say a little bit more about these issues, the hon. Gentleman talked about the protection of harassment issues that are in our manifesto and that were dealt with originally or were going to be dealt with originally with this legislation and are not. In fact, Mr Speaker, those have already been dealt with. I am surprised he asks us how we intend to deal with that. I know that he has only been here two years, but I would have thought the two years that he has been here he has been paying attention. The hate crimes legislation has already dealt with those issues. I know the Minister for Justice is able to give us more guidance on that and I am happy to give way to him, so that he can explain the detail of how that has been dealt with.

Minister for Education, Telecommunications and Justice (Hon. G H Licudi): Yes, Mr Speaker, the hon. Member has referred to a provision in our manifesto which deals with this, that we are dealing with today, and says, there will also be a Protection of Harassment Act. The hon. Member will know, or should know, that there have been several measures taken already in respect of harassment.

The Crimes Act, which was a piece of legislation enacted in this Parliament at the time when the Leader of the Opposition was Minister for Justice, contains Part 6, which precisely is headed, ‘Protection from Harassment’. So there are protection from harassment provisions which were enacted during the GSD’s time, but which we commenced, I seem to recall, in November 2012.

But we have not just done that, we have not just commenced legislation at a part dealing with commencement from harassment which was there already. What we did was we reviewed how this legislation was actually working in practice in the UK – the Protection from Harassment Act in the UK – and what we have done is introduced new provisions into that Part 6 of the Crimes Act, additional provisions to those which were already there and these provisions, one of them which we dealt with quite recently here in Parliament was the stalking provisions which was an entirely new provision. It is a part of harassment –

Mr Speaker: May I give some guidance on this matter?

Here we have a Bill that deals with bullying and associated matters. There was a comment by the Hon. Mr Bossino about a question of harassment, which is a separate issue and is not being provided for in this Bill. The Chief Minister has invited the Hon. Minister for Justice to explain what the Government has done, but we really have to be brief about it. We cannot have a debate about harassment on a Bill which is for another purpose.

So I would invite the hon. Member to continue with what he was doing, but to be brief and we are not going to have a debate about harassment.

Hon. G H Licudi: Yes, Mr Speaker, it is not certainly our intention to have a debate, but simply to answer the point as to what the Government is doing about this, which was connected to the provisions of bullying.

As I have explained, we have introduced in the Crimes Act, in Part 6, new provisions which include the question of stalking and also the new offence of harassment of a person in his own home – that is a new offence which we introduced to Part 6 and which was not there already.

I would remind the hon. Member that in those provisions, in that part of the Crimes Act, which are essentially criminal offences, there is also provision for civil remedies – section 93, in particular, also introduces that.

As the Hon. the Chief Minister has mentioned, we have gone even much further than that because we have introduced in one of the parts in the Crimes Act further provisions in relation to hate crimes, and those provisions include specific provisions which deal with religiously aggravated harassment, disability aggravated harassment, aggravated harassment by reason of sexual orientation and age aggravated harassment; again, all new provisions which we have introduced as part of our anti-harassment policy. So although it is true that what we have not done is taken all of those and put them in a separate Act, we

considered that it was appropriate, given that there was statutory provision already, simply to add these provisions and there were civil remedies already provided. So we have kept it in the Crimes Act, added to that statutory framework, and that is the extent to which we have gone in introducing the protection of harassment which we committed ourselves in our manifesto to do, and which we have now fully done.

Hon. Chief Minister: Therefore, Mr Speaker, for all of those reasons, a very good opportunity for the Deputy Chief Minister to ensure that he ticks that box in respect of our manifesto commitments completed (*Banging on desks*) because, Mr Speaker, they do not like the fact that we are completing all of the provisions of our manifesto. They do not like it. They even say that we say that we have done things and that we tick off boxes that are nonsensical, because we said that we have ticked the box of continuing to provide grants to students. Well, Mr Speaker, apparently it is nonsensical when we tick that box and we have done it, but it is not nonsensical for them to put it in their book of 16 years of achievement when it was not their achievement, it was the achievement of the Government before, and to put in their manifesto for 2011 that they were going to continue to give those grants – so, so much for their criticisms of our box ticking.

But, anyway, Mr Speaker, I will deal with the issues that the hon. Gentleman raised, as to the detail of the sections of the draft legislation, during the course of the Committee stage and Third Reading if he wants to raise those issues.

Mr Speaker, this legislation protects small businesses and large businesses. It protects employers and it protects employees. It protects every potential individual, company, firm that this Parliament should *want* to be protected; but it denudes of protection, the bullies who have not had to deal with legislative controls until now. It is a Bill that is carefully crafted to achieve those purposes and to deal with an issue that, as we have heard, has already become far too pervasive. It puts bullies in their place and it protects small and large employers and all employees.

But, let us be clear, Mr Speaker, we are moving proactively from this side of the House to provide that protection and Members opposite are looking for a way of obstructing this. So be it. Fair enough. Let the public know. Let the public know what it is that Members opposite are not going to support... prohibiting. Let the public know what it is that Members opposite apparently do not stand against. Let the public know, Mr Speaker, that the Opposition are not going to support legislation designed to prohibit persistent behaviour which is offensive, intimidating, abusive, malicious or insulting. Let the public know that they do not want to stop persistent and justified criticism. Let the public know that they do not want to stop punishment being imposed without justification. Let the public realise, Mr Speaker, that they do not want to stop people having changes in their duties or responsibilities to their detriment without reasonable justification.

Mr Speaker, we stand for stopping all of that. They have just told us they are going to cop out again. (*Banging on desks*)

Mr Speaker: I now put the question, which is that a Bill for an Act to prohibit bullying and victimisation in employment and for connected purposes be read a second time. Those in favour? (**Members:** Aye.)

Mr Speaker: Those against?

Hon. D A Feetham: We are abstaining.

Mr Speaker: The Opposition abstain.
Carried.

Clerk: The Employment (Bullying at Work) Act 2013.

**Employment (Bullying at Work) Bill 2013 –
Committee Stage and Third Reading to be taken at this sitting**

Hon. Chief Minister: 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.)

**Tobacco (Amendment) Bill 2014 –
First Reading approved**

Clerk: A Bill for an Act to amend the Tobacco Act 1997.
The Hon. the Chief Minister.

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Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move that a Bill for an Act to amend the Tobacco Act 1997 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 Tobacco Act 1997 be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Tobacco (Amendment) Act 2014.

**Tobacco (Amendment) Bill 2014 –
Second Reading approved**

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Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move that the Bill for an Act to amend the Tobacco Act 1997 be now read a second time.

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Mr Speaker, this Bill amends the Tobacco Act 1997 so as to create new summary offences of concealing cigarettes, or being knowingly concerned with the concealment of cigarettes, within a motor vehicle and being in charge of a motor vehicle in which cigarettes are concealed. The offence does not require there to be a commercial quantity involved, although this does affect the penalty, or for the offence to take place in a public place or within a designated zone.

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The term ‘conceal’ is defined in the amendment as meaning ‘placing cigarettes within a compartment or place adapted, altered or fitted in any manner, for the purpose of concealing goods. Placing cigarettes within the engine compartment of a vehicle or placing cigarettes within the body work, wheels or tyres of a vehicle. As such, simply placing cigarettes in the boot or glove box of a car, or under a seat is not caught by this offence. The penalties for these offences are in line with those for other offences under the Tobacco Act; imprisonment is not available as a sentencing option where the quantity of cigarettes involved is not a commercial quantity.

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The amendments included in clause 2(3) place the forfeiture of tobacco in motor vehicles to which the offence relates, on the same basis as the forfeiture of tobacco in motor vehicles, to which the offence of transportation of a commercial quantity of tobacco relates. The court must order forfeiture when an application is made in that respect by the Attorney General or the Prosecuting Officer, as is the case at the moment under the existing provisions of the Act.

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Mr Speaker, hon. Members will have seen a letter circulated yesterday by me, certifying the Bill as too urgent to await the six-week publication period before it can be proceeded with. The issue of the trade in tobacco is, as hon. Members know, the subject of a letter from the European Commission arising from their inspection of the frontier controls illegally imposed by Spain. The Government has taken, and will be taking measures to implement the recommendations of the European Commission and to go further even than those recommendations in the curtailing of the illicit tobacco activity. This is one such measure and the Government has wanted to ensure it is in place as soon as possible.

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The Bill, Mr Speaker, was published on 30th January and the abridgement is therefore of three weeks and it is very much in Gibraltar’s public interest, in our view, that it should be taken today. I commend the Bill to the House.

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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 A Feetham: Mr Speaker, very briefly.

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Mr Speaker, the Opposition will be supporting the Bill. Indeed, the Opposition will be supporting any legislative measure introduced by the Government that keeps a handle or helps in dealing with what is a problem for this jurisdiction – a reputational problem for this jurisdiction in the unseemly sights that we see, that everybody sees at different points in Gibraltar with this particular illicit activity.

I said as much in September 2012 when I urged the Government to deal with the issue of the selling of tobacco in estates. I am glad that the Government has also dealt with that.

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As I say, any measure introduced by the Government that deals with what is a problem and a reputational problem for Gibraltar, the Opposition will support, not only now but also in future.

Hon. Chief Minister: Mr Speaker, I am grateful to the Hon. the Leader of the Opposition for having set the position out as he has.

710 The Government is taking steps, not just which require action in this House – some of which do not require action in this House – and the exercise of powers already granted to the Government under the Tobacco Act and other legislative enactments in order to deal with these issues. These issues have been a problem in Gibraltar for a long time but this Government will grab the nettle, we will deal with the issues.

715 We have done so in Laguna Estate and in Glacis Estate through the Commissioner's, the Collector of Customs' exercise of his discretion to control the retailing of tobacco in those estates in a particular fashion. I have certified and created new red zones under the Tobacco Act in the area of the beaches in Gibraltar and in the area of the frontier in order to curtail that activity, and my hand will not shake if I have to sign into law other measures to enable our law enforcement officers to have the powers necessary to take the action required to curtail activity which is anti-social.

720 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Tobacco Act 1997 be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Tobacco (Amendment) Act 2014.

**Tobacco (Amendment) Bill 2014 –
Committee Stage and Third Reading to be taken at this sitting**

725 **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.)

**Taxation (Mutual Administrative Assistance) Bill 2014 –
First Reading approved**

730 **Clerk:** A Bill for an Act to implement the Convention on Mutual Administrative Assistance in Tax Matters of 21st January 1988, as amended by the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters of 27th May 2010; and for connected purposes.

The Hon. the Chief Minister.

735 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to move that the Bill for an Act to implement the Convention on Mutual Administrative Assistance in Tax Matters of 21st January 1988, as amended by the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters of 27th May 2010, and for connected purposes, be read a first time.

740 **Mr Speaker:** I now put the question, which is that a Bill for an Act to implement the Convention on Mutual Administrative Assistance in Tax Matters of 21st January 1988, as amended by the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters of 27th May 2010, and for connected purposes, be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

745 **Clerk:** The Taxation (Mutual Administrative Assistance) Act 2014.

**Taxation (Mutual Administrative Assistance) Bill 2014 –
Second Reading approved**

750 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to move that the Bill be now read a second time.

Mr Speaker, the Taxation (Mutual Administrative Assistance) Act 2014 implements the OECD and the Council of Europe Convention on Mutual Administrative Assistance in Tax Matters of 21st January 1988, as amended by the Protocol.

755 A measure of similar co-operation as that created by this Act already exists with some States, Mr Speaker, by virtue of the TIEAs that Gibraltar has already entered into. TIEAs, Mr Speaker, are Tax Information Exchange Agreements and the usefulness of these is well recognised.

760 The extension of this Convention to Gibraltar extends that network of TIEA equivalent relationships enormously, through the effective international co-operation which this multilateral convention creates between a large number of States and through the uniform application and interpretation of its provisions.

Therefore, Mr Speaker, the Bill is framed so as to provide administrative co-operation between States by way of exchange of information and with respect to taxes on increment profits and in particular, with a view to combatting tax avoidance and evasion. Mr Speaker, I am going to take the House through what I hope will be a quick review of some of the relevant sections of this Act.

765 The declaration that the Convention shall apply only to taxes on income or profits is set out in clause 3 Mr Speaker, and the competent authorities there set out to be the Commissioner of Income Tax in clause 4. Clauses 5 and 6 set out duties and functions and provide latitude for them to be extended by the Government in writing by any other enactment.

770 Clauses 7 to 14 set out the basis upon which information may be exchanged and under clause 7, the condition that needs to be satisfied is whether the information is foreseeably relevant to the administration and enforcement of any laws whether in Gibraltar or in the requesting State relating to taxes on income or profits.

Clause 9 allows the Government to automatically exchange information where the Government agrees with one or more States to such automatic exchange.

775 Clause 10 deals with the spontaneous exchange of information on the basis set out in Article 7(1)(a) to (e) which are replicated in our Act virtually verbatim. (a) deals with the Competent Authority having grounds for supposing that there may be a loss of tax in another jurisdiction; a person being liable to tax under (b) obtains a reduction in or an exemption from tax in Gibraltar, which would give rise to an increase in tax or to liability to tax in the other State. Under (c), business dealings between a person liable to tax in Gibraltar or in another State and a person liable to tax in Gibraltar or another State as the case may be, are conducted through one or more countries in such a way, that a saving in tax may result in Gibraltar and the other State or in both Gibraltar and in that other State.

785 Indeed, Mr Speaker, the Competent Authority has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises or at (e) that information forwarded to the Competent Authority by another State has enabled information to be obtained which may be relevant in assessing liability tax in the other State. On the advice of the Income Tax Office, clauses 11 to 14 incorporate the powers that exist in the International Co-operation (Tax Information) Act 2009 and which are deemed appropriate for the Competent Authority to be able to respond to the request which will be made to it.

790 Clause 16 deals with the simultaneous tax examinations which two competent authorities agree to. Clause 17 covers tax examinations abroad, and allows the competent authorities to make arrangements to allow representatives of another Competent Authority of the applicant States, to be present at the appropriate part of a tax examination in Gibraltar, but always subject to a Minister's approval. As provided for in the Convention, the Competent Authority needs to have exclusive competence over the conduct of a tax examination held in Gibraltar.

795 Clause 20 deals with the protection of person's rights and sets out limitations permitted by the convention. The Competent Authority in particular is *not* obliged to provide assistance when the request is (a) for the Competent Authority to carry out measures which are at variance with the laws of, or administrative practice in Gibraltar; (b) seeks that measure to be carried out which are contrary to public policy; (c) requires information to be supplied which is not obtainable under the laws of, or administrative practice in Gibraltar; (d) requires information to be supplied that would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy; (e) is for administrative assistance and the Competent Authority considers that the taxation in the applicant State is contrary to generally accepted taxation principles or to the provisions of a convention for the avoidance of double taxation, or of any other convention which the Government has concluded with the applicant state; (f) is for the provision of administrative assistance for the purposes of administering or enforcing a provision of the tax law of the applicant state or any requirement connected therewith which discriminates against the Gibraltar national as compared with a national of the applicant State in the same circumstances; or (g) is for administrative assistance if the applicant State has not pursued all reasonable measures available under its laws or administrative practice except where recourse to such measures would give rise to disproportionate difficulty.

800 The limitation period provided for in the convention is 15 years and that is set out under clause 21. Clause 23 deals with confidentiality and how the Competent Authority may use the information. The confidentiality provisions in section 3 of the Income Tax Act are relied upon in respect of information
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Clause 25 on costs provides that unless the Competent Authority has, with the Minister for Finance's prior consent, agreed otherwise, ordinary costs involved or incurred in providing assistance shall be borne by the Competent Authority; and (b) all extraordinary costs incurred in providing assistance shall be borne by the applicant State.

820 Clause 26 covers jurisdiction over proceedings relating to measures taken under the Convention. Subclause (1) provides that proceedings related to measures taken under the Convention shall be subject to the jurisdiction of the requested State. Subclause (2) concerns proceedings relating to measures taken by the requesting State and found jurisdiction in that State, whilst providing for the requested State to state any action it has taken pursuant to the request, pending the final outcome of the requesting State.

825 Clause 26 does not apply to proceedings under clauses 13 and 14 which deal with proceedings for a search and seizure and to obtain a production order.

Clause 27 provides an element of forward proofing by empowering the Government to make regulations for the administration or implementation of this Bill and complies with any OECD Council of European Union or other international obligations. Clause 28 provides that the Government and the Competent Authority shall not be liable in damages for anything done or admitted in the discharge of their functions under this Bill, unless it is shown that the act or admission was in bad faith.

830 By way of general note, in clauses 16, the simultaneous tax examinations clause, clause 17, the tax examinations abroad clause, and clause 25, the costs clause, the exercise of the power and discretion by the Competent Authority, is subject to the Minister's prior approval or consent. Reservations and declarations have been entered into, Mr Speaker, on behalf of Gibraltar by the United Kingdom at our request. Pursuant to Article 30, paragraph 1.a of the Convention, the Government of Gibraltar will not provide any form of assistance in relation to the taxes of other parties described in Article 2, paragraph 1.b of the Convention. Pursuant to Article 30, paragraph 1.b of the Convention, the Government of Gibraltar will not provide assistance in the recovery of any tax claim or in the recovery of an administrative fine for all taxes.

840 Pursuant to Article 30 paragraph 1.c of the Convention the Government of Gibraltar will not provide assistance in respect of any tax claim where a reservation has previously been made under Article 30, paragraph 1.a or b of the Convention is in existence that the data withdrawal as such a reservation in relation to the taxes in the category in question. Pursuant to Article 30, paragraph 1.d of the Convention the Government of Gibraltar will not provide assistance in the service of documents for all taxes listed in Article 2, paragraph 1 of the Convention. And pursuant to Article 30, paragraph 1.e of the Convention, the Government of Gibraltar will not permit the services document through the post.

845 The following Mr Speaker, are the declarations that the United Kingdom has entered for Gibraltar. In accordance with Article 2, paragraph 2 and in the respect of Annex A, the Government of the United Kingdom declares that for Gibraltar the Convention shall apply for those taxes in Article 2, paragraph 1 which fall under paragraph a.i.

850 In accordance with Article 3, paragraph 1.d and in respect of Annex B the Government of the United Kingdom declares that the Competent Authority for Gibraltar shall be the Commissioner of Income Tax of the Government of Gibraltar. That is a specific declaration required.

855 And in accordance with Article 3, paragraph 1.e and in respect of Annex C, the Government of the United Kingdom has declared that in relation to Gibraltar, the term 'national' means a Gibraltarian within the meaning of the Gibraltarian Status Act 1962 and any legal person, partnership or association deriving its status as such from the laws enforced in Gibraltar.

Mr Speaker, in relation to this Bill which was published last week, I have also circulated a letter certifying it to be too urgent to await the six-week period of publication before it can be proceeded with by this House. As hon. Members will recall, I discussed the extension to Gibraltar of the OECD Multilateral Convention with the Rt Hon. the Prime Minister, David Cameron, during the course of my visit to Downing Street in June, and had written to him before then to seek the said extension to Gibraltar.

860 The extension of the Convention occurred in Jakarta on 21st November last year, at a meeting of the OECD which was attended by the Government's Minister for Financial Services, Albert Isola. Since then, the process of drafting our national legislation, not an easy piece of legislation to draft at that, has proceeded at a very fast pace. We were able to publish it last week. But the deadline for implementation internationally, Mr Speaker, is 1st March this year, and we want to meet that deadline and not have to explain why we are having to catch up thereafter.

870 For that reason, Mr Speaker, we have considered it to be in the public interest of Gibraltar to proceed with this Bill now, as a matter of urgency, and 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?

875 **Hon. D A Feetham:** Mr Speaker, yes.

Mr Speaker, the Hon. the Chief Minister provided me with a copy of the letter certifying that the Bill was urgent. Having discussed the matter with him, I am satisfied that it is urgent, because this is a measure that needs to be introduced here in Gibraltar before 1st March and that is the urgency, so the Opposition has accepted that this is an urgent measure and therefore we have agreed that the matter be brought to the House without the proper notice.

Mr Speaker, these types of measures are never easy for the Finance Centre and there is always going to be a level of scepticism from some operators within the Finance Centre in relation to measures of this nature which by their nature are intrusive. The Opposition will be voting in favour of this and we will be voting in favour of this really on two grounds: (1) that it builds upon existing measures, as I will explain in a moment; but (2), the reality of the situation is that if it does not already, if these measures do not already apply to, or will apply to our competitors, sooner or later our competitors will be subsumed within what is a clear international trend that finance centres like Gibraltar and others, our competitors, will not be able to avoid.

Mr Speaker, I said that it builds on existing structures. At the moment, what we have is 27 TIEA agreements, some of which – most of which, I think it is true to say – were negotiated by the GSD Government, when we were in Government, some of them by the hon. Gentlemen opposite during their term in Government, and as I say, when I talk in the United Kingdom and also in Spain about this, it is 27 TIEA agreements on the exchange of information not only with the smaller countries, important as smaller countries are, but with the larger front-line countries like the United States and Germany.

On top of that, we also have existing as part of our law, a directive which has been implemented that has the effect of creating TIEAs with Members of the European Union, so effectively the 27 TIEAs are then converted into TIEAs with all the European Union Member States by virtue of the Directive. The Directive also provides within the European Union for automatic exchange of information and also for spontaneous exchange of information.

Now, this latter measure, this Convention which is an OECD initiative, what it seeks to do is to extend effectively the scope of the directive in terms of TIEA, spontaneous exchange and automatic exchange to countries that may not be members of the European Union, but are also signed up to this particular Convention and I am told in a conversation that I had with Mr Tipping yesterday from the Finance Centre that the effect of it would be to create effectively 70 TIEA agreements – in other words, that it would have the effect of Gibraltar having agreements with 70 countries, members of the OECD, including it has to be said, although that was covered by the Directive, the Kingdom of Spain.

So the effect of all these measures that I have described is to create a TIEA agreement for exchange of information between Gibraltar and the Kingdom of Spain, which has hitherto resisted the idea of having a bi-lateral agreement with Gibraltar.

Now, Mr Speaker, therefore for all those reasons, the Opposition will be supporting the Bill and we will be voting in favour of it.

Hon. Chief Minister: Mr Speaker, I am pleased to see that the Opposition will be supporting this Bill, and I have heard the hon. Gentleman say in the course of the reasoning why they will be supporting this Bill, much of what I said myself in the introduction of the Bill.

But I just want to take issue with a few minor points that he has mentioned. The hon. Gentleman mentioned to not having given the *proper* notice. Well, can I just caveat that by saying that by sending a letter certifying the Bill as urgent, it does not mean that there is *improper* notice in any way. There is full compliance with the provisions of the Constitution and of the requirement for a Bill to pass this House. I do not for one moment think that he was suggesting that there was improper notice, but the use of the word *proper*, I think could have led others to think that. So this is an entirely *proper* procedure that is being pursued.

The hon. Gentleman says that some members of the Finance Centre may find these issues are not easy to deal with. Well, Mr Speaker, the financial services business has changed and is changing. I remember the prophets of doom long before I was a Member of this House, suggesting that in 1995, when the GSLP was legislating to deal with the issues of anti-money laundering on an all crimes basis, there were some who feared that, not because we were involved in money-laundering, but because our clients as a jurisdiction might not want to jump through hoops, that might be the end of the Finance Centre, and we have grown from strength to strength since then.

Mr Speaker, this Government has a very clear approach to everything that relates to Gibraltar's international relationships, whether it is our relationship with the European Union or our compliance with international conventions and that is a culture of compliance. That is why one of the first things that I ensured we did and we invested in when I was elected was that we became completely up to date with all outstanding directive measures that we were required to transpose under European law. There were many, Mr Speaker, that were outstanding.

Mr Speaker, one of those was the Multilateral Directive that had the equivalent effect to this Convention at a European level between the Member States. The hon. Member has tangentially referred to that by saying that now we have the equivalent of a TIEA with Spain, even though they will not enter into a bi-lateral TIEA with us. Well, Mr Speaker, we have that, not as a result of this Convention – and I think it is important to set out explicitly that that is the case – not as a result of this Convention, but as a result of the Directive that we ensured was transposed into law.

Mr Speaker, the Prime Minister David Cameron, when he was the President of the G8, grasped the nettle and decided that it was important to ensure that the unfair criticism that had been levied against many of the Overseas Territories and the Crown Dependencies of the United Kingdom should be dealt with. He addressed an issue that others had failed to address before him and Gibraltar was pleased to be with him Mr Speaker, in leading in the compliance by Overseas Territories and Crown Dependencies on all matters relating to international conventions to ensure that money laundering and tax evasion became a thing of the past.

The Prime Minister himself, after all the Overseas Territories and Crown Dependencies together at the same time agreed to the extension of this Convention, has said in Parliament that it would be wrong and unfair for anybody to describe any of the Overseas Territories and Crown Dependencies and that of course includes Gibraltar, as tax havens after this Multilateral Convention of the OECD has been extended to us and in particular, in the case of Gibraltar, that already had equivalent to this OECD Convention with all of the Member States of the European Union, the largest economies in the world, and the United States of America.

Mr Speaker, I have absolutely no doubt that the financial services world is very different today to what it might have been 20 years ago and will be very different in 20 years' time. It is a brave new world, but not for that reason, a world to fear.

Mr Speaker: I now put the question, which is that a Bill for an Act to implement the Convention on Mutual Administrative Assistance in Tax Matters of 21st January 1988 as amended by the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters of 27th May 2010, and for connected purposes be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Taxation (Mutual Administrative Assistance) Act 2014.

**Taxation (Mutual Administrative Assistance) Bill 2014 –
Committee Stage and Third Reading to be taken at this sitting**

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.)

**Protection of Trees Bill 2013 –
First Reading approved**

Clerk: A Bill for an Act to provide for the preservation and protection of trees and for connected purposes.
The Hon. the Minister for Health and the Environment.

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 provide for the Preservation and Protection of Trees and for connected purposes be read a first time.

Mr Speaker: I now put the question, which is that a Bill for an Act to provide for the Preservation and Protection of Trees and for connected purposes, be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Protection of Trees Act 2013.

**Protection of Trees Bill 2013 –
Second Reading approved**

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.

990 Mr Speaker, before I commence, I have given notice by letter which we can take obviously at Committee Stage, of a change in the title of the Bill to the Environmental Protection (Trees) Act 2014.

This Bill was initially published as a Command Paper towards the end of last year and makes provision for the protection and preservation of trees in Gibraltar. Trees Mr Speaker, are important in the urban landscape as they provide shelter for wildlife, they provide oxygen, remove harmful particulate matter and are aesthetically pleasing. Indeed there is evidence to suggest that health of communities in areas with trees is significantly better than in urban areas without.

995 The loss of trees in Gibraltar has been a cause for concern in the past. There are a number of reasons why people request that trees are removed and these may be for danger, structural reasons, desirability for construction with a tree being in the way, health and inconvenience. There is currently an existing regime under section 38 of the Town Planning Act 1999, which allows the Development and Planning Commission to make a tree preservation order. If the tree is subject to such an order, the cutting down, topping, lopping or wilful destruction of the tree, is prohibited without the consent of the Commission. There are currently 1000 47 tree preservation orders in Gibraltar.

This Bill repeals section 38 of the Town Planning Act as it replaces that regime but also expands it in order to improve upon the powers of the Commission. Furthermore, this Bill goes beyond the existing regime in that it will apply to all trees, as it introduces a new regime for those trees not subject to a tree preservation order.

I now turn to the different parts of the Bill. Part I of the Bill applies the Act of the Crown, because the most important trees in Gibraltar are often found on Government property. In the interest of security, clause 3(3) allows the Government to issue a certificate so that the right of entry found in clause 19 shall not be excusable in relation to the premises specified in the certificate.

1010 Part II of the Bill deals with Tree Preservation Orders. While all trees provide some benefit to the community, tree preservation orders are used to protect selected trees, which are particularly valuable because of their intrinsic beauty, their contribution to the landscape, their scarcity or their importance as a wild life habitat among other reasons. The main purpose of a tree preservation order is to prohibit the pruning, cutting down, uprooting, topping, lopping, wilful damage or wilful destruction of a tree, as set out in clause 8 of the Bill, without the consent of the Development and Planning Commission.

1015 Once the Commission makes a TPO, it must serve a copy of it on the owner and occupier of the land affected by the order. This is defined in Clause 2 as the land on which the tree is situated. A copy of the order shall be available for public inspection and may also be made available electronically. By virtue of Clause (6), the Commission has the power to vary or revoke a TPO as it considers necessary. It must then notify the owner and occupier of the said land.

1020 Clause 7 is intended to prevent an owner from intentionally allowing a tree that is subject to a tree preservation order, to die or become infested. It allows the Commission to issue a notice on the owner of the land, to take such steps as may be specified in the notice, to prevent pure or controlled infestation or disease or remedy the condition of the tree.

1025 Clause 9 sets out how an application to carry out works to a tree that is subject to a TPO is made to the Commission. The Commission may, upon receipt of an application either grant consent unconditionally or subject to conditions or refuse consent. The condition, subject to which consent may be granted, includes specifying the standard to which works may be carried out and requiring the applicant to plant one or more trees. Consent granted under clause 10 is valid for a period of two years, unless the Commission decide to grant consent for a lesser period as a condition for grant of consent.

1030 Part III applies to other trees not subject to the regime under Part II. A tree that is not subject to a Tree Preservation Order is still caught by the provisions of the Bill, but is subject to a much less stringent regime. The main aim of this part is to prohibit the cutting down or uprooting of a tree, without the consent of the Commission as provided in clause 13 of the Bill. However, in order to prevent any delay caused by the Commission in dealing with an application, where an applicant has not received notice of the Commission's decisions, or a reply to the effect that this application is being considered within 28 days, the prohibition shall not apply.

1035 Again, the Commission may either grant consent unconditionally, or subject to conditions or refuse consent. The conditions subject to which consent may be granted include the planting of one or more trees and limiting duration of the consent. Generally, consent shall be valid for one year.

1040 Part IV deals with the exceptions to the general prohibitions appeals etc. Clause 16 sets out the circumstances in which the prohibitions contained in clauses 8 and 13 do not apply. In particular, the prohibition does not apply where the diameter of the tree does not exceed 75mm, where the tree is dead,

1045 where work is urgently necessary to remove an immediate risk of serious harm, the removal of dead
branches from a tree or if the tree is removed in compliance with the provisions of the various acts listed in
that section.

1050 Furthermore, by virtue of clause 16(1)(g) the prohibitions do not apply to works carried out at the
Alameda Gardens or the Nature Reserve, where those works are carried out in accordance with the written
authorisation of the Government in order to allow legitimate management operations. In order to strengthen
the powers of the Commission under the Act, in relation to its ability to prevent the cutting down of trees in
contravention of the Act, clause 17 allows the Commission to serve a notice on the owner of the land to
plant one or more trees of an appropriate size and species. This could be in the same place as the tree that
was cut down or uprooted or in such other area or land as may be agreed between the Commission and the
owner of the land.

1055 Clause 18 deals with appeals which may be made to the Development Appeals Tribunal appointed
under the Town Planning Act. In particular, an applicant for consent made under clauses 9 or 14 may
appeal against the Commission's decision and the tribunal has the power to confirm or vary the decision of
the Commission, including amending the condition subject to which consent has been granted. An appeal
1060 may also be made by an applicant for consent where he or she has not received notice of the Commission's
decision by the end of a period of eight weeks, beginning with the day the application was received by the
Commission.

1065 In line with the Government's commitment to e-Government, clause 20 allows the applicant to apply to
the Commission for consent by way of electronic communication and includes an appeal made to the
tribunal as long as it is in a form approved by the Commission. Certain conditions apply.

Clause 21 gives the Minister the power to make regulations for carrying out the purpose of the Act.

I now commend this Bill to the House. (*Banging on desks*)

1070 **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. Mr Netto.

1075 **Hon. J J Netto:** Mr Speaker, the Opposition will be voting in favour of this Bill, as we see this as a
natural progression from the policy introduced by the GSD Government in the Development and Planning
Commission in order to preserve our trees and woodlands during our period in Government. I think there is
a bit of murmur coming from the Government side.

As the explanatory memorandum states, the Bill replaces section 38 of the Town Planning Act 1999.
Therefore, any further changes that enhances the preservation of trees and the management thereof in its
application is something the Opposition welcomes.

1080 Having said this, the Opposition does not see why it is necessary for the inclusion of section 23 which
refers to the Governor's constitutional responsibilities. We would therefore ask the Minister in his right of
reply to our contribution if he could clarify why this clause was found necessary to be included in the Bill.

Thank you.

1085 **Mr Speaker:** The Hon. the Leader of the Opposition.

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

Just in relation to this last point that the Hon. Mr Netto has made, this is a clause that was not
uncommon in legislation that potentially impacted on the Constitutional responsibilities of the Governor.

1090 So for example, it was included I recall, in the Criminal Procedure Act, because it might have had an
impact in terms of the Governor's responsibilities for internal security. But we are dealing with the
preservation of trees – clause 23, I beg your pardon. The Minister for Justice is asking which clause: it is
clause 23. We just do not understand why clause 23 has been included when we are talking about tree
preservation. What possible explanation could it be?

1095 What possible impact could this legislation have on the Governor's constitutional responsibilities in
relation to the affairs of internal security or other matters, unless of course – ? I mean nobody is going to
chop down trees at the Convent without the consent of the Governor, but even that would not justify the
inclusion of this particular clause. We feel that if there is no justification for it, really I think it is
constitutionally bad form to introduce a clause of this nature in legislation that cannot possibly impact on
1100 the Governor's constitutional responsibilities.

Mr Speaker: The Hon. Mr Cortes.

1105 **Hon. Dr J E Cortes:** Mr Speaker, on the last point I think it is a matter that we can consider at
Committee stage and we can discuss there.

I welcome the Opposition's support of this Bill and clearly I have to make one comment in relation to the hon. Member opposite stating that it is a progression of the policy of the former administration.

It will not be generally known because the Planning Commission met in secret, that the author of the policy that we are now progressing was, in fact, the person who is now Minister for the Environment.

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Several Members: Hear, hear.

Mr Speaker: I now put the question, which is that a Bill for an Act to provide for the Preservation and Protection of Trees and for connected purposes be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

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Clerk: The Protection of Trees Act 2013.

**Protection of Trees 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.

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

**Animals and Birds (Barbary Macaques) (Amendment) Bill 2013 –
First Reading approved**

Clerk: A Bill for an Act to amend the Animals and Birds Act.
The Hon. the Minister for Health and the Environment.

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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 Animals and Birds Act 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 Animals and Birds Act purposes be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Animals and Birds (Barbary Macaques) (Amendment) Act 2013.

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**Animals and Birds (Barbary Macaques) (Amendment) Bill 2013 –
Second Reading approved**

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

Mr Speaker, before I turn to the substance of the Bill, I do want to point out, as you and hon. Members will be aware, I will be moving several amendments of the Bill at Committee Stage.

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Mr Speaker, on the substance of the Bill, the Government is very conscious of the need to ensure that the unauthorised feeding of Barbary Macaques is properly deterred, and that it is adequately punished when it is not deterred. Deterrence in turn depends on the law being, and being seen to be, enforced. That is why, Mr Speaker, the Government is introducing a number of reforms through the present Bill.

The first of these reforms is to rehouse section 547 of the Crimes Act 2011, which deals with the offences of enticing and feeding Barbary Macaques in what will become section 6A of the Animals and Birds Act. This places the offences in the more appropriate context of animal protection legislation.

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We have, at the same time, and this leads me to the second reform, created a distinction in section 6A between an offence committed inside the Nature Reserve and one committed outside it. The practical effect of this is to assign different fixed penalties to these offences and I will explain these further in a moment.

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The third reform is the very creation of the fixed Penalty Notice regime just mentioned. This is contained in section 6B and will enable authorised officers to issue Fixed Penalties to offenders on the spot.

We see this as a key component in enforcing the law. Indeed, Mr Speaker, I will immediately be publishing subordinate legislation in the form of rules in order to administer the fixed penalty regime if Parliament approves this Bill.

1160 You will see that the penalty for offences relating to enticing Macaques away from, or feeding them outside the Nature Reserve contained in sections 6(1)(a) and 6(1)(c) respectively, following the changes that I will bring up at Committee Stage, is £500 while the penalty for feeding a Macaque or encouraging another person to do so, inside the reserve is £250. This distinction reflects the particular seriousness which the Government gives to the presence of Macaques outside the Reserve.

1165 I should emphasise that the summary conviction offence, with a fine at Level 4 on the standard scale, currently £4,000 is carried over from Section 547 of the Crimes Act and is thereby retained. The fourth reform is the new definition of Authorised Officer in the Animals and Birds Act to include Wild Life Wardens. The inclusion of Wild Life Wardens will help ensure that these individuals, who are among those most likely to see an offence being committed, are able to act on it immediately by issuing a Fixed Penalty Notice.

1170 Mr Speaker, this Bill addresses one aspect of controlling the Barbary Macaque population, the enforcement of laws prohibiting feeding. It is part however, of the Government's commitment to tackling the challenges and opportunities presented by the Barbary Macaque population in a holistic and integrated way and I commend this Bill to the House.

1175 **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. Mr James Netto.

1180 **Hon. J J Netto:** Thank you, Mr Speaker.

We in the Opposition will be voting in favour of the Bill, given the general principle contained therein.

We believe that there should be fixed penalty offences to ensure compliance with the underlying view that illegal feeding of the Barbary Macaques is something that this society takes a serious view of and the deterrence of such an act will cause such individuals dearly in their pockets.

1185 The Opposition does, however, have some misgivings. The fact is that there has never been any prosecution and this legislation on its own will not deal with the problem. We still continue to ask the Minister as to where are the Nature Reserve Wardens that he used to say when in GONHS that would solve this particular problem.

1190 As I have said, we in the Opposition will be voting in favour of the Bill but we will be monitoring the implementation of the new legislation very closely. No doubt the Minister will continue to blame the GSD Government for everything which is wrong, despite the fact that the Minister has been dealing with the treatment of Macaques for the last 30 years (**Several Members:** Hear, hear.) but upon enacting this Bill, if the outcome becomes as sterile as the two years in which the hon. Member has been the Minister for the Environment, then he will find himself at the end of a long branch with nowhere to go but crashing down to a hard surface of public opinion with nobody willing to pick him up. (**Several Members:** Hear, hear.)

1195 Our advice to the Minister is that we have had enough of theory and excuses what the public wants at large is real tangible practice on the ground.

1200 **Hon. D A Feetham:** Yes, Mr Speaker, just a small point. There are no new substantive offences created by this Bill. Effectively what this Bill does is takes out of the Crimes Bill the substantive offences created in the Crimes Act and puts it in this new piece of legislation for the policy reasons the Government has outlined, which is that it believes that these types of offences ought to be dealt with in animal protection legislation.

1205 I have to say that I do not agree with that and I hope that in the future the Government perhaps thinks carefully about taking things out of the Crimes Act, which was intended to be a codified piece of legislation dealing with all our criminal offences, save for very few, so that criminal practitioners had effectively a bible so to speak to which to consult when faced with cases which they deal with on behalf of clients.

1210 We are voting in favour of it because we believe that even though it creates no substantive offences, some of the other amendments are worthwhile, they could have been introduced into the Crimes Act but I urge the Government to rethink any policy in the future, taking out of the Crimes Act and then dealing with it piecemeal in other pieces of legislation which just complicates things for practitioners.

1215 **Minister for Education, Telecommunications and Justice (Hon. G H Licudi):** Mr Speaker, I wish to deal with a point that the hon. Member has just made. We certainly do not agree that where you have got legislation other than the Crimes Act, where an offence is created or exists, that is dealing with criminal legislation on a piecemeal basis, we have had this morning the Tobacco Act amendment which creates an offence, not in the Crimes Act in a Tobacco Act of concealment in a vehicle, which the hon. Member has

supported for the reasons that he has stated. It has not taken out an offence, but it is not true to say that the Crimes Act is simply a codifying piece of legislation of all offences in Gibraltar –

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Hon. D A Feetham: Will he give way?

Hon. G H Licudi: Yes, I will.

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Hon. D A Feetham: And I have not said that.

Hon. G H Licudi: Well, that is what you...

1230

Hon. D A Feetham: No, no, I have not said that. I said... I did not say that. I actually said there are other criminal offences in other pieces of legislation.

1235

The point I am making is, that I am urging upon the Government a policy not to take out of the Crimes Act, to deal with in separate pieces of legislation, because we have a wonderful piece of legislation which we drafted, they implemented (**A Member:** Hear, hear.) dealing with most of our... dealing with 90% of our criminal offences and I do not think it is the right policy – that is all I am urging, it is up to them – to be taking out of the Crimes Act to introduce it into separate legislation which I have described as piecemeal. Perhaps that is not the best way to describe it, but the hon. Gentleman gets the gist of what I am saying.

1240

Hon. G H Licudi: Mr Speaker, this is not so much an issue of policy but what is appropriate and what is convenient in any particular case. We have the Crimes Act, which is not a codifying piece of legislation of all criminal offences in Gibraltar, but is a repetition of what was included in the Criminal Offences Act originally, plus an extension, with new offences being created, particularly offences involving children, sexual offences and all that.

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Where we have felt it is appropriate to add legislation to the Crimes Act, we have done that and I gave that example this morning in relation to protection of harassment, and I will not repeat what I said earlier, but the position before is that we had a commitment to introduce a Protection of Harassment Act and instead of creating that separate piece of legislation, we simply incorporated the provisions that we wanted to include, in the existing provisions, or further to the existing provisions in the Crimes Act and that shows that there is flexibility of the approach. Where we feel it is appropriate to add offences to the Crimes Act we do so. Where we feel that it is appropriate to add offences to other pieces of legislation, like we did this morning with the Tobacco Act, because we do not have all the tobacco offences in the Crimes Act, we have a separate piece of legislation dealing with that and we now have, or we have in fact a separate piece of legislation, dealing with protection of animals and birds and this is part of that piece of legislation.

1255

Therefore, it is a matter that we gave some thought to, whether we should make these amendments to the existing provisions in the Crimes Act, or we should repeal those provisions and have them in the Animals and Birds Act. We took the latter view. The hon. Member may have taken a different view, but I do not think that this is a substantial issue of policy. It is almost as if the hon. Member wants to protect his baby and anything we do to interfere with that baby, to take anything out is wrong. Well, I do not think that is the right approach to legislation.

1260

Mr Speaker: Does the hon. mover wish to reply?

Hon. Dr J E Cortes: Mr Speaker, I would like to thank my learned colleague, and hon. learned colleague –

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Hon. D A Feetham: Thank you very much!

Hon. Dr J E Cortes: – the Minister for Justice (*Laughter*) – not the *former* Minister for Justice, stressing the word *former*, of course – for assisting in this discussion.

1270

I do have to correct the former and no less honourable Minister for Justice in suggesting that there is nothing new in this piece of legislation. The aspect of enticing is a new concept. Also the difference in that there will be higher fines outside the nature reserve than inside the nature reserve, to stress the fact that it is possibly something that has to be taken more seriously, and the issuing of tickets rather than the other more drawn out process of the Magistrates' Court, which is still an option for enforcement.

1275

The other significant difference is the number of officers who will now be able to enforce, it is now no longer just the police but also Mr Speaker, all the technical and enforcement members of the Department of the Environment, including the new Environmental Protection Officers, and the officers of the Environmental Agency, so it is increasing the number of people who will be able to enforce this new law.

Over and beyond the wildlife wardens which the Member opposite has continuously tried to provoke me, by saying that I said all these wonderful things were happening or were going to be happening when we had wildlife wardens, in fact there will be more people now on the ground than any wildlife wardens I ever dreamt about at the time, enforcing this piece of legislation.

Mr Speaker, there are some people who even today tell me that I am too nice and too good to be a politician. (**A Member:** Hear, hear.) I think that the hon. Member opposite has almost convinced me that I am, because as he started welcoming this piece of legislation, and saying how he would support it and so on, I thought, 'Well, isn't this great! Let's just stick to the business', and I am not going to then stand up and tell him all the things he did not do, when he was the Minister for the Environment. (**Hon. N F Costa:** Tell him.) And there he goes (**Hon. N F Costa:** Tell him!) and begins a personal attack on me, even wishing me to fall from the branch of a tree – (*Interjection*) no doubt a tree of one of the hundreds that I have already planted in these two years when I have been sterile (**Several Members:** Hear, hear!) (*Banging on desks*) and it begs me to ask of the hon. Member opposite, how can you, Jaime?

Have you forgotten the conversations that we had when you were my Minister and I your loyal contractor? Have you forgotten the correspondence that I and other professionals wrote to you, when we warned you that if you did not listen to what we were wanting to tell you, that the problem that we are having now with the Barbary Macaques was going to happen in a few years?

All I can say is, thank God that I am now the Minister and I am tackling it and I am going to solve it, Mr Speaker. (**Several Members:** Hear, hear!) (*Banging on desks and interjections*)

But let me climb up on the tree again, from which I have no intention of falling.

Mr Speaker, the allusion to the lack of prosecution, almost trying to put the blame on me for such lack of prosecution, when his party was in Government for 16 years when they did not prosecute anybody, is almost unbelievable, or when nobody was prosecuted, it is not for the Government to prosecute, it is almost unbelievable. It is precisely because perhaps the law was too cumbersome, that we have introduced this new regime, which may be able to tackle offenders in a more practical and realistic manner.

Mr Speaker, I am not going to refer again to the correspondence and I have published some of the letters in the past to show exactly what the former Government was not doing, and how it was not listening. We are doing a lot of other things. We have increased the human resources now tackling the Macaques considerably, we have introduced this Bill, we have carried out habitat improvement and a lot of other measures that we will be hearing of very soon but needless to say, I will once again, at the next opportunity, be accused of not –

Hon. D A Feetham: Will he give way?

Hon. Dr J E Cortes: No, I do not think I will give way. I will once again be accused of not doing anything, when in two sterile years, despite the fact that there were 16 sterile years on all range of things that we all recall, because we do not have that short a memory.

Mr Speaker, I will leave it at that. I am glad that the Opposition will support this, but I am disappointed because I did think that at last, we were going to see the Opposition standing shoulder to shoulder with the Government tackling and supporting a problem which we have to resolve and that we have both got a role in getting all of our supporters to support the work that we are trying to do in order to properly manage the Barbary Macaque population. (**A Member:** Hear, hear.) (*Banging on desks*)

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

Clerk: The Animals and Birds (Barbary Macaques) (Amendment) Act 2013.

**Animals and Birds (Barbary Macaques) (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.

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

**Trade and Industry (Miscellaneous Amendments) Bill 2013 –
First Reading approved**

Clerk: A Bill for an Act to amend miscellaneous Acts which include a reference or reference to the Minister with responsibility for Trade and Industry.

The Hon. the Minister for Education, Telecommunications and Justice.

1335

Minister for Education, Telecommunications and Justice (Hon. G H Licudi): Mr Speaker, I have the honour to move that a Bill for an Act to amend miscellaneous Acts which include a reference or references to the Minister with responsibility for Trade and Industry, be read a first time.

1340

Mr Speaker: I now put the question, which is that a Bill for an Act to amend miscellaneous Acts which include a reference or references to the Minister with responsibility for Trade and Industry be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Trade and Industry (Miscellaneous Amendments) Act 2013.

**Trade and Industry (Miscellaneous Amendments) Bill 2013 –
Second Reading approved**

1345

Minister for Education, Telecommunications and Justice (Hon. G H Licudi): Mr Speaker, I beg to move that the Bill be now read a second time.

The Bill reflects changes in ministerial portfolios and responsibilities which took place back in December 2011 when that marvellous New Dawn occurred, (**A Member:** Hear, hear.) as a result of which there is no longer a post which can be easily identified as being either the Minister for Trade and Industry or the Minister with responsibility for both Trade and Industry. Therefore there has been a need to identify the pieces of legislation that referred to the Minister in those terms and to correct that.

This Bill does not create any new powers at all. It simply amends the title of the Minister and a search of the current legislation Mr Speaker, has identified eight Acts which would benefit from amendment so as to clarify which particular Minister will undertake the duties and responsibilities under those particular Acts. The amendments have been drafted so that the description of the Minister is no longer tied to multiple responsibility. There is a description of a Minister now, or there will be, for one responsibility so whoever may have that responsibility in the future will be the Minister responsible under these particular Acts without the need for further amendments if there is any kind of changes as there was in December 2011.

Mr Speaker, the Acts amended by the Bill and the relevant Minister for each Act are firstly the Intellectual Property (Copyright and Related Rights) Act 2005 and that is changed to the Minister with responsibility for Commercial Affairs; the Motor Fuel (Composition and Content) Act 2011 to the Minister with responsibility for the Environment; the European Public Limited-Liability Company Act 2005 to the Minister with responsibility for Financial Services ; the Petroleum Act to the Minister with responsibility for the Environment; the Business Trades and Professions (Registration) Act to the Minister with responsibility for Employment; the Export Control Act 2005 to the Minister with responsibility for Finance; the Deep Sea Mining (Licensing) Act to the Minister with responsibility for the Environment and the Disclosure of Interest in Shares Act to the Minister with responsibility for Financial Services.

Mr Speaker, I commend the Bill to the House.

1370

Mr Speaker: Does any hon. Member wish to speak on the general principles and merits of the Bill?

I now put the question, which is that a Bill for an Act to amend miscellaneous Acts which include a reference or references to the Minister with responsibility for Trade and Industry be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

1375

Clerk: The Trade and Industry (Miscellaneous Amendments) Act 2013.

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

1380 **Minister for Education, Telecommunications and Justice (Hon. G H Licudi):** 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.)

COMMITTEE STAGE AND THIRD READING

1385 **Clerk:** Committee Stage and Third Reading.
The Hon. the Chief Minister.

1390 **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 Stamp Duties (Amendment) Bill 2013; the Employment (Bullying at Work) Bill 2013; the Tobacco (Amendment) Bill 2014; the Taxation (Mutual Administrative Assistance) Bill 2014; the Protection of Trees Bill 2013; the Animals and Birds (Barbary Macaques) (Amendment) Bill 2013 and the Trade and Industry (Miscellaneous Amendments) Bill 2013.

In Committee of the whole Parliament

**Stamp Duties (Amendment) Bill 2013 –
Clauses considered and approved**

1395 **Clerk:** A Bill for an Act to amend the Stamp Duties Act 2005.
Clauses 1 and 2.

Mr Chairman: Stand part of the Bill.

1400 **Clerk:** The long title.

Mr Chairman: Stands part of the Bill.

**Employment (Bullying at Work) Bill 2013 –
Clauses considered and approved as amended**

1405 **Clerk:** A Bill for an Act to prohibit bullying and victimisation in employment and for connected purposes.

1410 **Chief Minister (Hon. F R Picardo):** Mr Speaker, in respect of this Bill, a letter has been circulated to hon. Members with what I describe as very minor typographical amendments which hon. Members will be able to see. I think it is being circulated now. They are literally minor typographical amendments. One of them is the typographical amendment that the hon. Gentleman spotted, which was the absence of a little 'c' which we will come to, but they are not in any instance a substantive change. They are all typographical.

1415 **Hon. D A Feetham:** May I suggest that rather than go through... I mean, in the past –

Mr Chairman: Yes, because they are purely typographical amendments and the Chief Minister has given clear notice of them, the Committee will agree that they all be incorporated into the Bill.

1420 **Minister for Education, Telecommunications and Justice (Hon. G H Licudi):** Mr Chairman, there is one further typographical amendment, which is not included in the letter and that is in clause 2, where it

defines Minister. It says 'Minister with responsibility for Employment'. The 'e' in Employment should be a small 'e' rather than a capital 'E'. That is just to make it consistent with the way we are drafting legislation and defining ministerial responsibilities.

1425 **Mr Chairman:** I hope that that can also be incorporated and that when the Act is published, that it will appear there. I mean it has to be monitored.

Clerk: Clauses 1 to 11 and the schedule.

1430 **Mr Chairman:** Clauses 1 to 11 and the schedule stand part of the Bill.

Clerk: The long title.

Mr Chairman: The long title stands part of the Bill.

**Tobacco (Amendment) Bill 2014 –
Clauses considered and approved as amended**

1435 **Clerk:** A Bill for an Act to amend the Tobacco Act 1997.
Clauses 1 and 2 and the long title.

Mr Chairman: Clauses 1 and 2 and the long title stand part of the Bill.

**Taxation (Mutual Administrative Assistance) Bill 2014 –
Clauses considered and approved**

1440 **Clerk:** A Bill for an Act to implement the Convention on Mutual Administrative Assistance in Tax Matters of 21 January 1988 as amended by the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters of 27th May 2010; and for connected purposes.
Clauses 1 to 29, the schedule and the long title.

1445 **Mr Chairman:** Clauses 1 to 29, the schedule and the long title stand part of the Bill.

**Protection of Trees Bill 2013 –
Clauses considered and approved**

1450 **Clerk:** A Bill for an Act to provide for the preservation and protection of trees; and for connected purposes.
Clause 1

Mr Chairman: Clause 1 –

1455

Minister for Health and the Environment (Hon. Dr J E Cortes): Mr Chairman, I –

Mr Chairman: The Hon. Mr Cortes.

1460 **Hon. Dr J E Cortes:** Mr Chairman, as I have circulated, the intention Mr Chairman is that for the words 'Protection of Trees Act 2013', we should substitute the words 'Environmental Protection (Trees) Act 2014'.

1465 **Mr Chairman:** Do all hon. Members agree that the amendment moved by the Hon. Mr Cortes should be included in the Bill? (**Members:** Aye.)

Clerk: Clauses 2 to 22.

1470 **Chief Minister (Hon. F R Picardo):** Mr Chairman, if I may deal with the point that Mr Netto made and which the Leader of the Opposition followed up in respect of the reference at paragraph 23, which is outside the scope of the clauses called by the Clerk at the moment, of the Governor's constitutional responsibilities, the reason I want to deal with it now, is because the reason for it is actually in section 3.

1475 Section 3 of this Bill applies the Act to the Government and section 3(3) sets out that the Government may certify that, in the interests of the security of Gibraltar, the right of entry under section 19 shall not be exercisable in relation to the premises specified in the certificate.

1480 That is taking to the Government of Gibraltar, rather than putting in the Governor, the right to certify something in the interests of Gibraltar and when we do things like that, we specifically provide that that is not a derogation from the Constitutional power in respect of the security of Gibraltar that the Governor has specifically set out in the Constitution. That is therefore the reason why section 23 is there, I entirely agree with the reasoning that it should not be there unless it needs to be there, that is the reason why it needs to be there.

Clerk: Clauses 2 to 25, the schedule and the long title.

1485 **Mr Chairman:** Clauses 2 to 25, the schedule and the long title stand part of the Bill.

**Animals and Birds (Barbary Macaques) (Amendment) Bill 2013 –
Clauses considered and approved as amended**

Clerk: A Bill for an Act to amend the Animals and Birds Act.
Clause 1

1490 **Mr Chairman:** Stand part of the Bill.

Clerk: Clause 2.

1495 **Minister for Health and the Environment (Hon. Dr J E Cortes):** Mr Chairman, as I alluded to in my speech earlier, a number of amendments have been distributed by copies of a letter to you. The first one is a typographical error in 6B(3) the definition should be of 'conviction' not of 'convicted'.

Hon. D A Feetham: Mr Speaker, we are quite content –

1500 **Mr Chairman:** Again, we have a similar situation: they are merely typographical errors. They are not substantive amendments. The hon. Member has given notice, it has been circulated and therefore the Committee agrees that these should all be incorporated into the Act.

1505 **Hon. Dr J E Cortes:** I am grateful to you and to the Committee, Mr Chairman.

Clerk: Clauses 1 and 2 and the long title.

Mr Chairman: Please call that again?

1510 **Clerk:** Clauses 1 and 2 and the long title.

Mr Chairman: Clauses 1 and 2 and the long title stand part of the Bill.

**Trade and Industry (Miscellaneous Amendments) Bill 2013 –
Clauses considered and approved**

1515 **Clerk:** A Bill for an Act to amend miscellaneous Acts which include a reference or references to the Minister with responsibility for Trade and Industry.
Clauses 1 to 9 and the long title.

Mr Chairman: Clauses 1 to 9 and the long title stand part of the Bill.

BILLS FOR THIRD READING

**Stamp Duties (Amendment) Bill 2013; Employment (Bullying at Work) Bill 2013;
Tobacco (Amendment) Bill 2014;
Taxation (Mutual Administrative Assistance) Bill 2014;
Protection of Trees Bill 2013, now renamed; Animals and Birds (Barbary Macaques) (Amendment)
Bill 2013;
Trade and Industry (Miscellaneous Amendments) Bill 2013 –
Third Readings approved, some with amendments: Bills passed**

Clerk: The Hon. the Chief Minister.

1520

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to report that the Stamp Duties (Amendment) Bill 2013; the Employment (Bullying at Work) Bill 2013; the Tobacco (Amendment) Bill 2014; the Taxation (Mutual Administrative Assistance) Bill 2014; the Protection of Trees Bill 2013 now renamed; the Animals and Birds (Barbary Macaques) (Amendment) Bill 2013 and the Trade and Industry (Miscellaneous Amendments) Bill 2013 have been considered in Committee and agreed to with amendments, and I now move that they be read a third time and passed.

1525

Mr Speaker: I now put the question which is that (1) the Stamp Duties (Amendment) Bill 2013; (2) the Employment (Bullying at Work) Bill 2013; (3) the Tobacco (Amendment) Bill 2014; (4) the Taxation (Mutual Administrative Assistance) Bill 2014; (5) the Protection of Trees Bill 2013 with the amended title; (6) the Animals and Birds (Barbary Macaques) (Amendment) Bill 2013; and (7) the Trade and Industry (Miscellaneous Amendments) Bill 2013 be read a third time and passed.

1530

Those in favour of the Stamp Duties (Amendment) Bill? (**Members:** Aye.) Those against? Carried.
Those in favour of the Employment (Bullying at Work) Bill 2013?

1535

Hon. Chief Minister: Mr Speaker, can I call for a division on this Bill, please?

A division was called for and voting resulted as follows:

FOR	AGAINST	ABSENT	ABSTAINED
The Hon. P J Balban	None	The Hon. J J Bossano	The Hon. D J Bossino
The Hon. Dr J E Cortes		The Hon. P R Caruana	The Hon. Mrs I M Ellul-Hammond
The Hon. N F Costa		The Hon. S M Figueras	The Hon. D A Feetham
The Hon. Dr J J Garcia			The Hon. J J Netto
The Hon. A J Isola			The Hon. E J Reyes
The Hon. G H Licudi			
The Hon. S E Linares			
The Hon. F R Picardo			
The Hon. Miss S J Sacramento			

1540

Mr Speaker: There are three Members absent, five Members have abstained, there are nine Members in favour. The ayes have it – carried. (*Banging on desks*)

Those in favour of the Tobacco (Amendment) Bill 2014? (**Members:** Aye.) Those against? Carried.

Those in favour of the Taxation Mutual Administrative Bill 2014? (**Members:** Aye.) Those against?

1545

Carried.

Those in favour of the Protection of Trees Bill 2013? (**Members:** Aye.) Those against? Carried.

Those in favour of the Animals and Birds (Barbary Macaques) (Amendment) Bill 2013? (**Members:** Aye.) Those against? Carried.

Those in favour of the Trade and Industry (Miscellaneous Amendments) Bill 2013. (**Members:** Aye.)

1550

Those against? Carried.

RETIREMENT OF CLERK TO THE PARLIAMENT

**Tribute to Mr Melvyn Farrell
for distinguished service to Parliament and Gibraltar**

Clerk: The Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Mr Speaker, I rise to move that the House do now adjourn *sine die*.

1555 But before I do, it is not lost on us on this side of the House, that this may be the last moment that we have Mr Melvyn Farrell, the Clerk of the House with us, discharging his functions which he has loyally done now for some years as Clerk of the House, before he retires.

1560 Mr Speaker, Mr Farrell has loyally served this House and he has loyally served Gibraltar as a civil servant before he arrived in this House as Clerk. From the time that I have been conscious of his work, he has served Chief Ministers at No. 6 Convent Place, he has served in the Registry and he has of course served with distinction in this House.

I have always found, as I know my colleagues on this side of the House and no doubt on the other side of the House, that Mr Farrell is impeccably polite, impartial and unflappable in any situation and he has found himself no doubt, in all the years that he has been a civil servant, in many situations.

1565 Mr Speaker, those of us who have the benefit of having a crib have always found our cribs impeccable as a result of his diligent work. He has always been a friend to everyone in this House and an enemy of none of us.

1570 He is also a distinguished member of *HMS Calpe*, a retired distinguished member of *HMS Calpe* and of course he has been discharging his function not just as Clerk of this House in this House, but he has been the organiser of European Elections and the organiser of national elections.

And I will always remember him, Mr Speaker, reading out the names of those who were duly elected to this Parliament after the last General Election. I have him standing on the stage at Mackintosh Hall ingrained in my mind as he read those names.

1575 Mr Speaker, I am sure that this is not the end of Melvyn Farrell's distinguished service to Gibraltar and I am sure that it must be recognised beyond the words I am uttering today. We were reminded by the previous Chief Minister, who is not here today, no doubt not out of any desire not to be here to share with us celebrating Melvyn's work, that he is of course the last civil servant to hold WOPS and therefore his retirement today will enable his diligent approach in the savings to start accruing for the benefit of not just him, but also his family, although we sincerely hope and he goes with the wish I have no doubt of everyone in this House, that the WOPS criteria should not kick in for many years to come.

Members: Hear, hear. (*Applause and banging on desks*)

1585 **Hon. D A Feetham:** Mr Speaker, certainly on this side of the House, we associate ourselves entirely with everything that the Hon. the Chief Minister and the Leader of the House has said about Melvyn.

But yesterday, when I was talking to my Opposition colleagues, 'Well, what can I say about Melvyn?' and almost to the man and almost to the woman, the one word, the one word that resonated in description of Melvyn was the word 'loyalty'.

1590 Melvyn has not only been a Senior Officer of *Her Majesty's Calpe* with a Reserve Decoration, loyal to *Her Majesty's Calpe*, loyal to the Civil Service in his 47½ years of public service here in Gibraltar, loyal to this Parliament with which he has served since 2006, and loyal of course, above all, to Gibraltar and to this community. (**Hon. D J Bossino:** Hear, Hear)

1595 Melvyn is diligent, he is meticulous and he has an eye for detail. I have to say that when I first became a Member of the Opposition – it is less likely when we are Ministers – and I submitted my questions, I would have Melvyn on the phone to me saying, 'Well, don't you think that perhaps you can phrase this question in this particular way?' And I thought, and I said, 'Well, Melvyn, do you suggest a change of questions to everybody?' and he said, 'There is not one person since I have served as a Clerk that I have not suggested a change of questions!' (*Laughter*) And I have to say...

1600 **A Member:** Always to improve –

Hon. D A Feetham: Always, always to improve the question – *always* to improve the question.

1605 And therefore I have absolutely no hesitation in associating myself with the Hon. the Chief Minister and to wish Melvyn and his family all the best for the future. And that if, in future, Melvyn's service to this community during his long years of service is to be recognised in any way, I can assure this House that the Opposition will be entirely supportive of it, because I can think of no-one else that is as worthy of recognition as Melvyn Farrell. (*Applause and banging on desks*)

1610 **Mr Speaker:** May I associate myself with those very kind remarks about the Clerk, about Melvyn Farrell.

Let me put his service into perspective. He has served a total of 47 years and that means that he could have retired with full service at least 10 years ago and he has carried on for about another 10 years, well beyond the age of 60. In fact I am not going to reveal his age, (*Laughter*) but it is well beyond the age of 60.

1615 When I took over the task of chairing the proceedings of Parliament in October 2012, I knew Melvyn beforehand and I knew and was confident of the extent to which I was going to rely on his guidance, on his advice, and his help would be matched, would exceed all my expectations and this I can vouch for. He has been a tower of strength to me. He has the accumulated wisdom of many years here in Parliament which I have been able to draw upon in order to help me in what is not an easy task.

1620 He has been loyal, he has been a great counsellor and above all, a great friend. And even though he will no longer sit in that chair, our friendship will endure forever. So I associate myself with the Members, I wish him many years of retirement and which he will be able to enjoy with his gracious lady, Sonia. Behind every great man, there is a great woman and this is a job which entails on occasions, great sacrifice. Sometimes the Members here, the staff at Parliament are working here until the early hours of the morning, and people, the public may not realise that, and there is a lady at home waiting for the Clerk and the others to return.

1625 A sad day because it will be the end of seeing Melvyn here, but a very fulfilling day and a day which I think points and indicates that in Gibraltar we are blessed with a very great Civil Service. They are great upholders of the task and they serve the needs of our nation, of our country, very, very to the highest standards in any other Parliament.

1630 May God bless him. (**A Member:** Hear, hear, Mr Speaker.) (*Applause and banging on desks*)

Clerk: I am sorry I am being rather emotional, but that is the way I am. And I am grateful to all of you for your fine words and thank you. (*Applause and banging on desks*)

ADJOURNMENT

1635 **Chief Minister (Hon F R Picardo):** So I move, Mr Speaker, that we now adjourn *sine die* and let him go. (*Laughter*)

1640 **Mr Speaker:** I now propose the question, which is that this 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 at 1.10 p.m.