



PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

AFTERNOON SESSION: 3.07 p.m. – 5.36 p.m.

Gibraltar, Friday, 22nd January 2016

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The Gibraltar Parliament

The Parliament met at 3.07 p.m.

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

[CLERK TO THE PARLIAMENT: P E Martinez Esq *in attendance*]

Order of the Day

BILLS

FIRST AND SECOND READING

European Union (Referendum) Bill 2016 – First Reading approved

Clerk: Order of the Day – Bills – First and Second Reading

A Bill for an Act to enable the full participation of Gibraltar in the United Kingdom's Referendum on whether it should remain a Member of the European Union and to provide for the making of subsidiary legislation in connection therewith and for matters connected thereto including amending primary legislation by subsidiary legislation as the circumstances require.

Mr Speaker: Before we proceed with this Bill I want to make it clear that I have received, as is a requirement, notification from the Chief Minister that this is a Bill with a certain urgency and that is why we are proceeding with it without the normal six-week period.

Clerk: The Hon. the Deputy Chief Minister.

Deputy Chief Minister (Hon. Dr J J Garcia): I have the honour to move that a Bill for an Act to enable the full participation of Gibraltar in the United Kingdom's Referendum on whether it should remain a Member of the European Union and to provide for the making of subsidiary legislation in connection therewith and for matters connected thereto, including amending primary legislation by subsidiary legislation as the circumstances require, be read a first time.

Mr Speaker: I now put the question which is that a Bill for an Act to enable the full participation of Gibraltar in the United Kingdom's Referendum on whether it should remain a Member of the European Union and to provide for the making of subsidiary legislation in connection therewith and for matters concerned thereto including amending primary legislation by subsidiary legislation as the circumstances require, be read a first time.

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

Clerk: The European Union (Referendum) Act 2016.

**European Union (Referendum) Bill 2016 –
Second Reading approved**

30 **Deputy Chief Minister (Hon. Dr J J Garcia):** I have the honour to move that the Bill be now read a second time.

Mr Speaker, a Bill of the same name was introduced into the House of Commons on 28th May 2015 in order to provide the basis for the Referendum on whether the United Kingdom would remain in the European Union.

35 That Bill was presented by the Conservative Government in fulfilment of its manifesto commitment at the last General Election in the United Kingdom. The Bill was passed by the UK Parliament and received Royal Assent on 17th December 2015. There are three general points in that Act that are worth addressing individually.

40 The first is concerned with the timing of the Referendum. Section 1(3)(a) of the Act provides the dates by which the Referendum must be held. That date is no later than 31st December 2017.

Hon. Members will no doubt be aware that the Prime Minister has not disclosed possible dates for holding the referendum. What he has said is that he will not set the dates until after the conclusion of negotiations on the changes that are being sought from the European Union.

45 The UK's position on the changes were set out in a letter to Council President Donald Tusk dated 10th November 2015, which is publicly available and which I will paraphrase. In that letter, the Prime Minister sets out four areas for reform: one, economic governance; second, competitiveness; third, sovereignty; and fourth, immigration. I will look at each of them in turn.

Economic governance:

What we seek ...

– said the Prime Minister –

50 ... are legally binding principles that safeguard the operation of the Union for all 28 Member States – and a safeguard mechanism to ensure that these principles are respected and enforced. Those principles should include recognition that: the EU has more than one currency; there should be no discrimination and no disadvantage for any business on the basis of the currency of their country; the integrity of the Single Market must be protected; any changes that the Eurozone decides to make, such as the creation of a banking union, must be voluntary for non-Euro countries, never compulsory; taxpayers in non-Euro countries should never be financially liable for operations to support the Eurozone as a currency; just as financial stability and supervision has become a key area of competence for Eurozone institutions like the ECB, so financial stability under supervision is a key area of competence for national institutions like the Bank of England for non-Euro members; and any issues that affect all Member States must be discussed and decided by all Member States.

Point Two was a question of competitiveness. On this question he said that:

... the United Kingdom would like to see a target to cut the total burden on business. that EU should also do more to fulfil its commitment to the free flow of capital, goods and services. The United Kingdom ...

– said the Prime Minister –

... believes it should bring together all the different proposals, promises and agreements on the Single Market, on trade, and on cutting regulation into a clear long-term commitment to boost the competitiveness and productivity of the European Union and to drive growth and jobs for all.

The third point was that of sovereignty. On sovereignty the Prime Minister said that he wants to work to:

... end Britain's obligation to work together towards an 'ever closer union' as set out in the Treaty ... in a formal, legally-binding and irreversible way.

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He wanted:

... a new agreement where groups of national parliaments, acting together, could stop unwanted legislative proposals ... [from Brussels].

He wanted:

... to see the EU's commitments to subsidiarity fully implemented, with a clear proposal to achieve that.

The aim was to get at what:

... the Dutch have said, the ambition should be which is, 'Europe where necessary, national where possible.'

Mr Cameron said that:

... the UK will need confirmation that the EU institutions will fully respect the purpose behind the JHA Protocols in any future proposals dealing with Justice and Home Affairs ... in particular to preserve the UK's ability to choose to participate. National security ...

60 – he explained –

... was – and must remain – the sole responsibility of Member States, while recognising the benefits of working together on issues that affect the security of all of them.

The fourth point, Mr Speaker, was immigration. The Prime Minister said that:

The UK believes in an open economy. But has got to be able to cope with all the pressures that free movement can bring – on ... schools, ... hospitals and ... public services. Right now...

– he claimed in the letter –

... the pressures are too great.

He wanted to:

... find arrangements to allow a Member State like the UK to restore a sense of fairness to the immigration system and to reduce the current very high level of population flows from within the EU into the UK.

The Prime Minister argued that it was possible to:

... reduce that flow of people coming from within the EU by reducing the draw that the welfare system exerts across Europe.

65 He proposed that people entering to, 'from the EU must live in the UK and contribute for four years before they qualified for in-work benefits or social housing.' There was also a need to, 'end the practice of sending child benefit overseas'.

70 Mr Speaker, these were the four areas for reform on which the Prime Minister sought agreement. At the start of a 10-week period which ends with the Referendum itself, the Foreign Secretary must publish a report on the outcome of those negotiations between the UK and the EU. The report must also include the opinion of the Government of the UK on what has been agreed.

75 In the same timeframe, a second report must be published which contains information about the rights and obligations that arise under European Union law as a result of the UK's membership of the EU. This report should also contain examples of countries that do not have membership of the European Union but which have other arrangements. A description of such arrangements for each country must also be given.

Both reports must be laid before the UK Parliament. They will be available electronically as factual information to voters in the United Kingdom and in Gibraltar. The Referendum would then follow at the end of that final 10-week period.

Mr Speaker, having covered the background in the first general points, I move on to the second one, which is the actual question to be put at the Referendum. The UK Bill, when first printed, provided that the question should be, 'Should the United Kingdom remain a Member of the European Union?'

However, the Electoral Commission was concerned with the balance of the question which is considered as being potentially biased towards producing a stay in Europe results. The wording of the question was subsequently changed to, 'Should the United Kingdom remain a Member of the European Union or leave the European Union?' The alternative answers to that question, as they will appear in the ballot paper, are (1) remain a Member of the European Union, or (2) leave the European Union.

The third general point, Mr Speaker – and it is the point that most directly concerns this House – is that the Act makes provision for the enfranchisement of Gibraltar.

The United Kingdom went to the polls on 7th May 2015 and the outcome was a majority Conservative Government. This meant that the EU Referendum passed from being the policy of the Conservative Party to the policy of the UK Government and, as such, officials could commence to engage on the subject. It therefore became clear that the UK Referendum on EU Membership was going to be taken forward.

Mr Speaker, no effort was spared on our part to lobby for the inclusion of Gibraltar in the franchise. My hon. Friend, the Chief Minister, raised this matter with London a number of times. The argument that the outcome of the in-out Referendum would have a considerable impact on Gibraltar proved to be a compelling argument. The United Kingdom agreed to the inclusion of Gibraltar in their Referendum.

The Chief Minister asked me to Chair a working group of officials and the first such substantive meeting between the UK and Gibraltar Governments took place by secure video link on 2nd June of last year – under a month after the UK Election.

There have been several meetings in London which included officials from both Governments. I am sure that we will have a further debate on the merits, but at this stage I wish to limit myself to stating that the Government is very pleased that Gibraltar has been enfranchised in such a clear and unequivocal basis for which we must thank the Prime Minister, David Cameron, and the Minister for Europe, David Lidington.

Mr Speaker, I now move on to the mechanics of the enfranchisement itself. The House will know by now that, as is the case with European Parliamentary Elections, voters in the Referendum will be allocated two regions and, in the case of Gibraltar, a vote will be taken into consideration alongside the votes in the south-west region of England.

As an aside, during the passage of the Bill in the House of Lords, in particular the age of voting at the Referendum became an issue. Without wishing to enter into that debate here as well, it should be noted that the age for voting at the Referendum is now set at 18. In the European Parliamentary Elections legislative package, Gibraltar's legislation is effectively limited to the provision of the Gibraltar Register. On this occasion, HMGOG has not only been consulted but they have actively participated in the drafting process both at a political and at a technical level.

To that end, our drafting team has, over the last few months provided advice and feedback on the provisions in the UK Bill relating to Gibraltar. Similarly, the Bill before this House today has been produced in close consultation and co-operation with the UK team. The Government is grateful for the access that has been given to our officials. Given the positive feedback we have had from the UK, we hope that should similar circumstances arise in the future, HMG will engage with Gibraltar and with our officials in the same positive manner.

It was a pleasure to detect a genuine and positive desire to assist the enfranchisement of Gibraltar on behalf of officials of Her Majesty's Government in the United Kingdom once a

130 political direction had been given. Mr Speaker, it is not always the case that proposed legislation emanating from the Westminster Parliament that has a bearing on life in Gibraltar is the subject of such close consultation.

The UK side included the Foreign and Commonwealth Office, which was and is the lead Department, and the Cabinet Office. Mr Speaker, I also want to place on record the
135 Government's thanks to the Gibraltar team, in particular to the Attorney General, Michael Llamas, whose expertise on such matters is well known to all of us in this House and to Paul Peralta and Nadia Sisarello-Parody who coped tirelessly with drafting work, with interminable meetings and voluminous email correspondence, all of which against a background of considerable pressure from tight deadlines.

140 In our discussions with HMG one of the matters that we agreed was to mirror the UK's legislative framework and timetable. As far as the timetable is concerned, with amendments being moved in Westminster up until the very final moments, our drafters have had a very tight window in which to operate. It is for that reason that the earliest opportunity that the Government had in which to publish this Bill was December 24th. The decision by my hon.
145 Friend, the Chief Minister, to abridge the amount of time in which the Bill could be taken by this House, is a direct result of the requirement to meet the deadlines and the timetable set in the United Kingdom.

Mr Speaker, from an early stage, I am aware that those timings are always going to be tight. One of the earliest policy decisions that had to be taken was whether to create a new register
150 for the EU Referendum or to use an existing one. Whilst the prospect of a General Election in late 2015 provided for an up-to-date register, the terms of the franchise of our own elections and the terms of the franchise for the EU Referendum are both different.

Our European Parliamentary Elections Register, however, contained the majority of the eligible persons, including the Irish nationals to whom the UK Government extended voting
155 rights. We therefore took the policy decision to use the European Parliamentary Elections Register as a basis for registration for this Referendum.

Turning now, Mr Speaker, to the specifics of the Bill, clauses 1 and 2 provide for the usual introductory matters. Clause 3 is a purpose clause which, as the heading suggests, sets out the context in which the Bill is to be construed. Clause 3 (1) formally sets out some of the detail
160 which I have already alluded to, namely that Her Majesty's Government of Gibraltar agree to participation in the UK's Referendum and to the mechanism to make such participation possible. Sub-clause 2 explains the legal framework which is being applied – and perhaps I can explain it better again in less technical legal terms.

Mr Speaker, the basis upon which persons in Gibraltar will be able to vote in the Referendum
165 is set out in the UK's Act. That Act requires that a person be registered in the Gibraltar Register for European Parliamentary Elections. There is a test that needs to be met in order to be eligible. That test is that the person registered in the register is either a Commonwealth citizen or a citizen of the Republic of Ireland.

By relying on the European Parliamentary Elections Register, Gibraltar's European
170 Parliamentary Elections Act of 2004 is engaged. In the circumstances, the Bill provides for the adaptation of the framework to accommodate the EU Referendum.

Clause 5 provides a power for the making of subsidiary legislation. This power is required in order to give the Government the tools with which to respond in legislative terms to any circumstances which may arise.

175 If the Act is passed by our Parliament, it is our intention to invoke these powers to make subsidiary legislation to provide for some procedural matters. These have adopted the working title 'the Conduct Rules' and, like for the European Parliamentary Elections, the Gibraltar and UK Governments agreed that Gibraltar would also be passing this legislation.

The kind of issues that fall under the Conduct Rules relate to matters such as: notices that will
180 be published in connection with the poll; the official mark to be used; the issue of poll cards; the provision of polling stations; absent and postal voting; and accounts.

185 Clause 6, Mr Speaker, as I have already explained, the UK Referendum Act 2015 requires that a person be registered in the Gibraltar European Parliamentary Elections Register. Given that reliance on the European Parliamentary Elections Register on that framework, Clause 6 borrows the European Parliamentary Elections Act 2004 for the purposes of the Referendum.

This borrowing, therefore, requires that certain aspects of the 2004 Act be modified. This is necessarily a complicated process, although we have attempted to bring as much clarity as is possible by inserting the amendments in the first schedule and then actually setting out the legislation as amended in the second schedule.

190 Mr Speaker, I have given notice that at Committee Stage I will be moving a number of amendments and this includes the removal of Clause 7. Clause 7 had been inserted at the specific request of the UK Government's legal team but they have since asked for it to be removed.

195 Clause 8 is required because the European Parliamentary Elections Act 2004 is being borrowed and therefore an offence committed under that Act as amended is to be treated as an offence under the Bill and not under the European Parliamentary Elections Act of 2004.

Clause 9 confirms jurisdiction in Gibraltar where an offence is committed as a result of a breach of a UK enactment which has been specifically applied to Gibraltar for the purposes of the Referendum.

200 Clause 10 provides for the application of Section 3 of the Criminal Procedure and Evidence Act 2011 in cases where there is a breach of both Gibraltar and UK legislation. Section 3 sets out the procedure to be followed where there is a contravention of two or more Acts and this clause ensures that the UK Act falls within this procedure.

205 Mr Speaker, Clauses 11 to 37 are a series of offences and procedural matters that are set out in the UK's Representation of the Peoples Act 1983. That Act does not apply to Gibraltar in the context of the European Parliamentary Elections. Since it is relied upon by the UK and modified by them for Referendum purposes, we have reproduced the relevant provisions as a matter of Gibraltar law, and in compliance with our commitment to mirror UK procedures and UK law.

210 The nature of the offences are those which are commonly found in elections. Indeed, most are included within the corpus of our own domestic election laws. Offences under the clauses include voting more than once, tampering with the ballot paper, issuing imitation poll cards, publication of exit polls before the poll closes and breaches of secrecy.

215 Mr Speaker, I have given notice of a further amendment that I will be moving at Committee Stage that entails the insertion of a new clause, 27(a). Discussions with London have continued after publication of the Bill and in this instance, we have been asked to insert this clause which is aimed and broadcast from outside Gibraltar and the UK which seek to influence the vote in Gibraltar.

Clause 38 is what is referred to as a 'sunset clause'.

220 **Clerk:** Mr Speaker.

Mr Speaker: Let us hope that after this short unavoidable recess we are able to conclude our business this afternoon as expeditiously as possible.

The Hon. Dr Joseph Garcia had the floor.

225 **Hon. Dr J J Garcia:** Thank you, Mr Speaker.

Okay, so I mentioned clauses 11 and 37 and the offences and procedural matters which were laid out there, so I move on to ... I will go over that again because I am not sure what has been recorded for the purposes of *Hansard* and what has not. So I will start again.

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245 Clause 38 is what is referred to as a 'sunset clause'. As far as Gibraltar is concerned, the Act will be spent once the Referendum is over and this clause causes the Act to be repealed 12 months after the Referendum. In other words, the Act will repeal itself. In the unlikely event that there are any proceedings or any rights that are enforceable at the time of repeal, those proceedings or right shall subsist.

250 Mr Speaker, I have already referred to the first schedule and simply would restate that the purpose of it is to amend the application of the European Parliamentary Elections Act 2004 for the purposes of the referendum. The second schedule reproduces the entire European Parliamentary Elections Act 2004 as per the amendments affected by the first schedule and should be of practical value to any reader.

255 Mr Speaker, before I commend the Bill to the Parliament, I would like to say that this Bill is important because of the implications for Gibraltar that attend to the outcome of the Referendum. It is extremely positive and a reflection of the level of regard that Her Majesty's Government in the UK has for the rights of the people of Gibraltar that they have been included in what is the United Kingdom's Referendum, even though we are not a part of the United Kingdom. The Bill also reflects the level of detailed and close co-operation that can and should exist between officials from both Governments.

260 Mr Speaker, I commend the Bill to the House. (*Banging on desks*)

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

265 The Hon. Mr Roy Clinton.

Hon. R M Clinton: Thank you, Mr Speaker.

I have the honour to speak for this side of the House having consulted closely with my hon. colleague, Mr Daniel Feetham, and also with Mr Elliott Phillips, both professional lawyers, as to the principle of the Bill.

270 I think, speaking generally, from this side of the House we obviously welcome Gibraltar's inclusion in the UK Referendum Act on what is – as reported in today's *Chronicle*, the UK Prime Minister, in Davos, said – is going to be a massively important generational question for Britain and for Europe and obviously no less for Gibraltar.

275 The hon. Member opposite has gone through the reasoning for the Referendum of the UK's seeking and the questions that the UK Prime Minister is seeking, I suppose concessions is not the right word, but amendments or changes to the UK's relationship with Europe on those four areas.

280 Obviously, in Gibraltar it is important that we participate in this Referendum and that we get our view across as well. I am conscious that a lot of work has gone into this, both by the Members opposite and obviously the legal drafting team and various individuals assisting. We, however, on this side of the House obviously have had limited notice, but we appreciate the importance of it and will do everything we can on our side to expedite the process.

285 If I may, just talking about the Bill itself, what perhaps is unusual for me, having spent many years examining legislation – certainly local legislation – is obviously the interaction between the UK legislation and local legislation; and the Clerk to Parliament kindly printed out for me earlier this week the actual UK European Referendum Act 2015 and also the explanatory notes that go with it.

290 Now, I am also conscious that the amendment that has been brought to this House – or rather the Bill that has been brought to this House – is really to facilitate the mechanics of the Referendum or the actual account of how the Referendum will be held. Obviously, I am happy to be corrected if I am wrong in that assertion.

295 What I would like to raise, or perhaps put up for discussion, is that there are matters in the UK Act which, as it were, precede our Act or may still be there but we may not be aware or conscious of them in Gibraltar because they form part of UK legislation and not our domestic legislation.

300 If I can give, just by way of example, the idea of the Electoral Commission and their role in determining who are permitted participants in the Referendum, I notice in the explanatory notes, schedule 1 just on campaigning and financial, paragraph 2 says that Gibraltar established political parties which are not recognised in the UK and therefore do not fall in the section 54.2(a)(c), including Gibraltar Social Democrats, Gibraltar Socialist Labour Party, Liberal Party of Gibraltar are eligible to become permitted participants by virtue of section 54.2(a)(g) of the 2000 Act.

305 Now, these are obviously technical clauses but, whereas we are looking at in the Bill the mechanics of the Referendum as applied in Gibraltar, my concern is that we should not lose sight that there is obviously the UK Referendum Act and how that will interact with us in Gibraltar and how it will affect us.

310 This may be beyond the remit of this discussion – and again I am happy to be corrected – but, for example, the elements where the report of the Secretary of State is required to be tabled in the UK Parliament, obviously this Bill will not cover that, nor necessarily – and perhaps this will come as the Conduct Rules; which will be done by subsidiary legislation – how people in Gibraltar would go about either setting up their own ‘yes or no’ campaign or how they would go about becoming permitted participants for the purposes of the Electoral Commission; how are the rules of funding to be applied in Gibraltar – again maybe that will be covered by the Conduct Rules – and various other matters.

315 So, as I said at the beginning here, we are happy to work with the Government on this Bill to make it a good piece of legislation. I am grateful to the hon. Member for having had a discussion on one or two clauses we had concerns with, but perhaps he could add some colour to how he would envisage not just the actual undertaking of the Referendum but the period leading up to the Referendum and the putting of the question and how we in Gibraltar will be kept abreast of what is said in the UK Parliament, tabling of papers and other matters, so that people in Gibraltar are properly prepared when it comes to considering the question.

Mr Speaker: Does any other hon. Member wish to contribute at this stage?

The Hon. the Chief Minister.

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Chief Minister (Hon. F R Picardo): Mr Speaker, this Bill deals with what is of course, as we all recognise in this House, a seminal issue for our community. A seminal issue that calls for a decision once the British Prime Minister calls a Referendum in which we are to also vote with the rest of the British people.

330 The hon. Member opposite is right, the Prime Minister said yesterday that this is a generational decision. In fact, it is exactly how I described it on Tuesday when we received His Excellency the Governor in this House.

Mr Speaker, it is such a generational decision, it is such a seminal decision for this community that it is almost a *sine qua non* that most Gibraltarians feel intrinsically that Gibraltar and the

335 United Kingdom should remain a part of the European Union because of the importance that the European Union plays in our lives.

Hon. Members may or may not know that one of the most compelling arguments put in the case of Matthews in the Court of Human Rights when Gibraltarians won – because we were not given it by Britain – won the vote in European Parliamentary Elections, was that the amount of
340 legislation which Gibraltar had to pass into law and which originated in Brussels and in particular then, already making its way through the European Parliament that was to become, as a result of the Matthews case, in legal terms, a legislature, was growing by the day.

Indeed, today this House very often deals with European directives that are becoming law or the amendment of existing Gibraltar legislation which requires change because of European laws
345 requiring those changes, sometimes even updating earlier European laws.

The Prime Minister said something else yesterday in Davos at the World Economic Forum. Asked by a French journalist whether he felt European, Mr Cameron said that he felt ‘deeply European’ and that in his view ‘Britain has a European destiny’. Well, Mr Speaker, I think everyone in this House too would associate with those words in terms of feeling deeply
350 European and believing that Gibraltar, with Britain, has a European destiny.

Mr Speaker, but when the time comes for a decision in that respect, Gibraltar must form part of that decision-making process and from the moment that it was mooted that there might be, as part of the Conservative Party’s policy at the last British General Election, the possibility of a Referendum on the United Kingdom remaining or exiting the European Union, the political
355 machinery of the Government moved into high gear to ensure that Gibraltar would form part of that moment of decision.

Mr Speaker, what many might have thought was going to be a battle for enfranchisement was absolutely nothing of the sort. It was no battle at all, because instinctively the Prime Minister knew and felt that Gibraltarians should also vote in that Referendum; and his
360 commitment and the commitment of David Lidington, even before they had won the General Election in the United Kingdom in May last year, was that Gibraltar should form part of the franchise when the time came.

And, true to their words, no sooner had the United Kingdom seen a majority Conservative Government take over the reins in Westminster, that we were following this issue up and the Prime Minister and David Lidington were being true to their commitment to the Government
365 and people of Gibraltar that we would vote in any such Referendum.

Mr Speaker, in my view, that is evidence of the very strong relationship of partnership that today Gibraltar enjoys with the United Kingdom at a Government level as a result of the very hard work we have done to ensure that there are strong personal relationships with politicians
370 and with officials in the United Kingdom who work with the Government of Gibraltar; and, Mr Speaker, very often working together in the best interests of Gibraltar and to give effect to the wishes of the people of Gibraltar in consonance with wider British foreign policy interests.

Mr Speaker, this Bill is a complex piece of work. It is a complex piece of work that interfaces with a very complex British Act. The House in its previous session saw that we produced a Referendum Act which was part of the manifesto commitment of the parties then and now
375 sitting on this side of the House, to ensure that any future national referendum organised in Gibraltar could not be attacked as our last one had been, as a referendum which did not have legal cover.

Intellectual enemies of Gibraltar have sought to challenge both our previous referenda on that basis; they will not be able to challenge future referenda on any such basis. This Referendum is different though. This is not just a Referendum in Gibraltar; this will be a Referendum in Gibraltar at the same time as a Referendum in the United Kingdom. The Referendum here will be part of the Referendum organised by the United Kingdom. The votes of Gibraltar will be counted with the votes of the United Kingdom.
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Mr Speaker, if the United Kingdom is on a knife edge, who is to say that 22,000 or more votes might not tip it in one direction or another? Sometimes in European Parliamentary Elections,
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because of proportional representation, the number of people voting in Gibraltar can mean that extra seat for one party or another.

390 We may not hold the balance of decision in respect of the result of this Referendum but, Mr Speaker, we will participate in it and the method and manner of our participation is that which is now set out in this Bill which the Deputy Chief Minister has been working on with the team that he and I put together. All credit to the Deputy Chief Minister for what has been an intense piece of work over an electoral period, Mr Speaker.

395 Very often members of the public do not see that whilst politicians are out campaigning, those that campaign from the Government benches continue to work on Government business. And I know that this was a Bill that was occupying the Deputy Chief Minister even whilst he was also out energetically campaigning and also, before and after the General Election campaign, energetically dealing with all the other matters that are on his desk. He has steered the detail and policy with me in a manner that I think Gibraltar can be proud of and can realise how lucky
400 we are to have available that sort of talent that Dr Garcia brings to this Parliament.

I want to add Dr Garcia's remarks of thanks to the Head of the Government's Legal Office drafting team, Paul Peralta who is in Parliament today to assist Members in any queries they may have during the Committee Stage, and the hard and excellent work that I have seen first-hand of Nadia Sisarello-Parody – all of it, Mr Speaker, under the close scrutiny of the Attorney
405 General who, before taking that post, was the Government's chief legal advisor and is principally the man who understands European law best in Gibraltar. Gibraltar could not have been better served than with the team that I was happy to be able to put together to deal with this matter.

Mr Speaker, my commitment to the Prime Minister and to the Minister for Europe has repeatedly been that Gibraltar would not stand in the way of David Cameron being free to call a
410 Referendum at the time of his choosing when he felt it was most appropriate, because Gibraltar might not have complied with the requirements of having in place the legislation necessary to do the very complex exercise we are going to do which is to be holding a vote in two different places at the same time and with different laws governing those two different places.

So we need to put our laws entirely on the same page for that moment when the people of
415 Gibraltar and the people of the United Kingdom together are going to be free to express their will in respect of the continued membership of the United Kingdom of the European Union.

So, Mr Speaker, we have had to be fleet of foot, the United Kingdom Act became law in December and we had to be ready then, having seen the United Kingdom crystalize its views. Hon. Members who have been following the debate on this matter will have seen that there has
420 been a lot of politics in the United Kingdom about this Bill; there have been issues in the Lords and then there have been issues back in the Commons, and there is now a British Act of Parliament, a UK Act of Parliament, which we can now dovetail from.

We will now therefore, Mr Speaker, be ready, as a result of having certified this Bill as urgent, in January with an Act, if this House passes this Bill, that will enable us to say to the United
425 Kingdom, subject to what other administrative arrangements may have to be put in place, and such other regulations and subsidiary legislation as may be necessary; and perhaps even, Mr Speaker, potentially reserving the fact that we might have to come back and even amend the legislation, although there is a power to do so already by subsidiary legislation.

We will be ready, should the Prime Minister decide to call that Referendum. The Prime
430 Minister, in Davos yesterday, also said that he was not in a hurry to do a deal in February 2017 but if he does, Mr Speaker, and if he believes that this is the right time to call the Referendum then Gibraltar will not be found wanting for not having done the work we needed to do in the time that we had to do it, to bring the Bill to this Parliament.

Mr Speaker, I welcome the fact that Mr Clinton has said from the Opposition benches that he
435 will work with the Government to produce a good piece of legislation. If I may say so, Mr Speaker, I think this is already a very good piece of legislation that does what it needs to do to ensure that the people of Gibraltar can have the vote they need to have to express their will in respect of this seminal generational issue.

440 How are the people of Gibraltar going to be kept informed of what is happening in the United Kingdom? What is going to happen on the ground here, these are all the issues, Mr Speaker, on which we need to ensure that the politics that is now ongoing in the UK are reflected somehow in Gibraltar so that people understand the choices that they have to make.

445 I believe from what I have seen so far, Mr Speaker, that all political parties in Gibraltar will be campaigning for Gibraltar to remain within the European Union. But the people of Gibraltar, Mr Speaker, today have access to many news sources; they are very well informed indeed and I believe, Mr Speaker, they know what is at stake and exactly what it is that they have to choose between.

450 Therefore, Mr Speaker, I have no doubt that with the instrument in place for them to express their will in the Referendum with the United Kingdom, they will, when the time comes, express the view that the United Kingdom, and with it Gibraltar, should remain within the European Union.

Mr Speaker, I think the Hon. Deputy Chief Minister is absolutely right to commend the Bill to the House. (*Banging on Desks*)

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

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

460 Mr Speaker, the Prime Minister, as has been noted in this House, has described the Referendum on Europe as a generational decision. I think for Gibraltar it is a generational decision, but it is much more than just a generational decision.

For many areas of business, being in Europe is existential, it is an existential issue. For parts of the Finance Centre, being outside Europe would have a devastating effect and therefore a knock-on effect for revenue that comes into the Government.

465 And although it was inevitable that a debate in the United Kingdom would occur about whether the United Kingdom stays in or out of Europe and that this Referendum could be seen as being something that was inevitable for some time because of that debate that was ongoing for many years as to whether the United Kingdom wanted to remain in or out and in many parties, in the Labour Party, in the Conservative Party, there were large parts of those parties that were Eurosceptic in nature, to a lesser or a greater extent.

470 There has never been a debate in Gibraltar about whether Gibraltar wants to remain in Europe, as to whether Gibraltar wants to redefine its relationship in Europe, Gibraltar has always wanted to be at the heart of Europe and therefore, whilst, yes it is a generational decision, it is a decision nonetheless that Gibraltarians would have preferred to have done without, because we would have preferred to have done without this debate and this Referendum because Europe is of paramount importance to this community.

475 Although there may be some who may say that it would have been both unjustified and unjust for the United Kingdom and for David Cameron to have left Gibraltar out of the Referendum that is going to be taking place in the United Kingdom, I think it is appropriate that everybody should thank the commitment that the Prime Minister in the United Kingdom and also the Minister for Europe has shown to Gibraltar, not only in the decision that he has made to include Gibraltar in the Referendum but also in the commitments that his Government, both now and also as part of the coalition with the Liberals, have shown Gibraltar over the last five years.

480 And it has to be said, it contrasts sharply with the inherently colonial views that were expressed by the Leader of the Labour Party recently, Jeremy Corbyn, in relation to Gibraltar. And although, as somebody that was a member of the Labour Party in the United Kingdom – who never voted Conservative, always voted Labour, when I was in the United Kingdom as a student and also as a barrister – I feel absolutely justified that since I returned to Gibraltar in 2000, I have always supported the Conservative Party because the Conservative Party, over the
490 last 16 years, has always supported Gibraltar.

At the end of the day, for Gibraltarians, it is not about ideology when it comes to Europe and our relationship with political parties in the United Kingdom. Certainly the way I see it, it is about how those political parties react in relation to Gibraltar, defend Gibraltar and stand up for the rights of the people of Gibraltar.

495 That is why it is also right that in our own way – and all the political parties in Gibraltar have tried to do so – establish strong personal relationships with individuals within political parties in the United Kingdom; and we have, over a number of years, done that with the Conservative Party in the United Kingdom that has so supported Gibraltar; and both myself and also my friend, Elliott Phillips, have attended the Conservative Party Conference on a number of

500 occasions.

I end by also recognising the hard work that has gone into this Bill, not because it is particularly complex or it is one of the largest Bills that we have seen presented before this Parliament, but because of the complexity of the subject and also the timeframe as well that this piece of legislation has had to be produced. The United Kingdom has had far, far more time to produce legislation, to then debate it; it has taken six months from the time that the Bill was presented in the House of Commons to the time that it received Assent. The hon. Gentleman said, I think, 17th December of last year, and this has been produced in a far, far shorter timeframe. Therefore, I too, on behalf of Her Majesty's Opposition, wish to congratulate the Gibraltar team and in particular, Paul Peralta who I know very well from the time that I was

505 Minister for Justice and the very good quality work that he produced when I was heading that Department as the Minister, and also Nadia Sisarello-Parody whom the hon. the Minister also mentioned.

So I have absolutely no hesitation, as indeed has already been said by my hon. colleague, Mr Roy Clinton, in supporting this Bill. (*Banging on desks*)

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Mr Speaker: Does anybody else wish to participate in the Second Reading of the Bill?

I will call upon the mover to reply, the Hon. Dr Joseph Garcia.

Hon. Dr J J Garcia: Yes, Mr Speaker, first of all I would like to, on behalf of the Government, as it were welcome the support of the Opposition for the Bill.

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It was very useful also to have met up with the Hon. Mr Clinton and to have discussed some of the issues which he will see reflected in some of the amendments when those are presented and discussed during Committee Stage.

The hon. Member referred to the fact that a number of these issues are contained in UK legislation and he is correct, indeed they are. The reason for that is that it is a UK Referendum; it is not a joint Referendum, it is a UK Referendum and it is one in which we are very grateful to be able to take part and to have our votes counted.

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The guidance will be provided by the Electoral Commission. They will publish detailed guidance in relation to almost every aspect of the Referendum, but the Public Liaison and Information role will fall on the Clerk in his capacity as, I think it is, Presiding Officer or Counting Officer in the Referendum for Gibraltar. So the public information notices and adverts will be issued through the Clerk.

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Also, as my hon. Friend, the Chief Minister, mentioned, this is a top media issue in the United Kingdom, so anybody switching on *Sky News* or *BBC* or whatever will be well informed of the details of things as they develop. And, indeed, the local media as well obviously will pick that up.

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In relation to the comments made by the hon. Member, the Leader of the Opposition, certainly he is correct. I mean there are no debates, I think, in Gibraltar as to whether we should be in the European Union or not. I think the results obtained by UKIP in Gibraltar locally during European Parliamentary Elections have shown that and people here tend to want to belong to Europe. Obviously, I think our argument is more about ensuring that Europe allows us to belong with the same rules and on the same level playing field as everybody else and I think that is

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probably where we have the debate. Can I – ? I will just give way to my hon. Friend, the Chief Minister.

545 **Hon. Chief Minister:** Mr Speaker, I am grateful for that, at that moment where the hon. Gentleman is dealing with the words of the Member opposite. If I can just deal with one or two issues that the hon. Gentleman alluded to. He said this was more than just a generational decision. He said it was existential for some businesses.

550 Look I understand that. I think it can be a very difficult economic model for some businesses if Gibraltar is not within the European Union, because of the way that business models are determined today because we have access to the single market and therefore of course that is an opportunity that people are pursuing.

555 But as we start the process of having this debate and expressing views in this respect, can I counsel that we do not pretend that the United Kingdom exiting the European Union would be existential for Gibraltar.

560 Now, I wrote an article for a publication, the editors of which decided that they should title it almost in those terms and I took great exception at that, because we should not for one moment give our enemies the succour that if the United Kingdom were to make a decision which is contrary to that which we all seem to be expressing we would like to see the United Kingdom take, that Gibraltar might somehow be in a position where we were having to consider our very existence.

565 There would be a recasting of the economic model; there would have to be very serious thought given to what relationship we could have with the European Union, even if the United Kingdom had a different one; our relationship with the United Kingdom might have to be different, hence why it is important to start considering now constitutionally what those relationships might be and not wait for any such decision to give effect.

570 But let us not allow anyone to think – and I am not suggesting the hon. Member opposite has said this, he said this about some businesses ... but let nobody go away from this place thinking that our survival, economic, cultural or social is dependent on membership of the European Union. Our current economic model is ... and we would have to work very hard to find a different economic model and it would be very challenging, but if there is one thing that the people of Gibraltar are good at doing it is dealing with the worst adversity and turning it into a triumph. Evacuation, closed frontier, point of consumption tax – you name it, Mr Speaker, this community works together and ensures that we not just survive, we thrive; and nobody should think that any different is going to happen in respect of membership of the European Union through the United Kingdom or otherwise.

580 Mr Speaker, the hon. Gentleman said there had been no debate in Gibraltar about Europe. Well, Mr Speaker, we kicked off a debate in Gibraltar on this subject. I know that he felt it was just a gimmick but we kicked it off and we are working very hard on a review of the economic model and whether or not membership of the Common Customs Union and the Excise Union – something which was rejected in 1972 for entry on 1st January 1973 – whether that decision is still the right one today.

585 I think those who made the decision in 1972 made absolutely the right decision and the success of Gibraltar and our thriving economy is of course, in great measure, down to the benefits that the past – I can never forget how long it was – 43 almost 44 years since then, because they made the right decision. But going forward –

590 **Mr Speaker:** Would it help the Chief Minister if I were to tell him that that decision was revealed subsequently on at least two other occasions over the years when the AACR were in Government.

Hon. Chief Minister: Thank you, Mr Speaker, I am very grateful. I have seen the papers and they are very informative and have led some of my thinking of the work that we have been

595 doing to ensure that we review trying to use, where applicable, the same criteria so that we are measuring economic apples with economic apples.

But, Mr Speaker, today we need to ensure – and Brexit may have been a catalyst to this but it is not the only issue – that the Europe we choose is the Europe that is the right Europe for the next 30 to 40 years. And, Mr Speaker, the material available in respect of accession discloses that when those derogations were agreed, it was envisaged that Gibraltar would eventually form part of even those areas from which Gibraltar had derogated. On the basis that Gibraltar then, just to give people a flavour of some of the logic, Gibraltar then would have been a European economic community as it then was – island at the bottom of the Iberian Peninsula – with the European Union commencing again at the Pyrenees, but that eventually people thought Spain would become democratic, would join, etc. and when we were part of a Europe which was all in the EEC, Gibraltar would join.

605 Well, in fact Gibraltar has not chosen to join and has been right not to choose to join, and that is part of the prosperity that we enjoy today; but we still have to continue to review those issues.

The hon. Gentleman made some remarks about the Leader of the Labour Party, Mr Jeremy Corbyn –

Hon. D A Feetham: Will he give way please?

Hon. Chief Minister: In relation to those points?

615 **Hon. D A Feetham:** In relation to those points, yes ... Mr Speaker, just to say to the Hon. the Chief Minister, I am very glad, listening to him, that he is outlining the issues that he has been considering in relation to in the last three years. I would have expected him to have done so and I am very glad, certainly on behalf of the Opposition that he is doing so.

620 Could I also invite him that perhaps, at some stage when his itinerary allows, that perhaps he could have a meeting with me in order to brief myself and perhaps one Member of my team in relation to those issues in a little bit more detail than perhaps he could in this Parliament because it may involve issues that perhaps he may not want to canvass openly.

625 I would invite him to do so. There is a motion in this House that calls upon us to basically work together in relation to this and I would be even grateful if the Hon. the Chief Minister could brief us at some stage.

Hon. Chief Minister: Mr Speaker, I will have no difficulty in doing so but this is a work in progress and there is very little to brief on at this stage. And I must tell him, Mr Speaker, I do look forward to working with him when the time comes on these issues, but he must not think that things which are existential, generational and seminal suddenly are fixed: if I meet with him, I take his views and then I get the answers; I do not think it quite works that way but I shall take that invitation to treat as a genuine one and I will look forward to our meeting.

635 Mr Speaker, the hon. Gentleman referred to remarks imputed to Jeremy Corbyn on Gibraltar which he said were very colonialist views. Mr Speaker, he and I will have different opinions of UK politics and of different UK Politicians, this one in particular. But can I put it to him, Mr Speaker, in fact, that Mr Corbyn has not made any remarks about Gibraltar. Mr Corbyn's remarks, unfortunate as they were – and I associate myself with everything he has said about Mr Corbyn's remarks – were about the Falklands, and I associate myself with him in respect of the Falklands.

640 But this is a very, very important issue: Mr Corbyn has not said *anything* about Gibraltar.

What happened, Mr Speaker, was that Miss Emily Thornbury asked a few minutes later about the remarks that Mr Corbyn had made reflected her own views, not Mr Corbyn's, in a way that was a little more acceptable than what Mr Corbyn had said about the Falklands, but certainly not the standard that one would expect in respect of a modern politician in a democracy like the

645 United Kingdom, reflecting on the rights of people like the people of Gibraltar and the people of the Falklands.

Mr Speaker, the relationship I am speaking of – because it is a relationship that I have nurtured in Government – with the Prime Minister and with David Lidington is of course, therefore, a relationship with Conservative politicians and the strength of the relationship that Gibraltar enjoys today, it enjoys with Conservative politicians and we have nurtured those relationships, regardless of political label or ideology, in the best way that we could leverage for Gibraltar; and not just as might have been done before but probably in a way that has not been done – *has not been done* – for 30 years, Mr Speaker, and I think those are therefore very useful indeed.

655 But I would say this, Mr Speaker – because he has brought into the debate, the issue of Labour or Conservative; I do not know that it was necessary to do so, but he has brought it into the debate – I believe the Labour Party has acted shamefully in relation to Gibraltar, in particular in relation to the joint sovereignty issues in the early part of the new millennium and in other instances; but has acted absolutely properly and better than any other previous Government, when it has given us the double lock which Sir Peter Caruana was able to negotiate with Labour Ministers.

I believe the Conservative Party has acted honourably and as it should in relation to this matter and in relation to other matters but that it acted shamefully with Gibraltar in relation to the Brussels Agreement and in relation to the Airport Agreement. Mr Speaker, swings and roundabouts! I think labels matter little, people matter more and I praise the commitment of Prime Minister David Cameron to the people of Gibraltar in relation to this matter, in relation to the issues we had with the *Partido Popular Administration* in the Year 2012, 2013 and 2014 and the way that, when it has come time to stand up for Gibraltar, he has stood up for Gibraltar, in the same way as Geoffrey Hoon stood up and was counted when the time came and the double lock was agreed. So, Mr Speaker, I wanted to make those points because I think they were important.

670 Can I just end by saying I found it slightly churlish of him to simply congratulate two out of a team of four, but I will assume that he wishes to extend his congratulations also to the Deputy Chief Minister for the fine work he has done and to the Attorney General.

675 **Mr Speaker:** Does the hon. mover wish to continue with exercising his right to reply?

Hon. Dr J J Garcia: Mr Speaker, only to say finally that I think the issues that will drive the Referendum debates in the – (*Interjection*) Is he flashing, sorry? (*Laughter and interjections*)

680 **Hon. D A Feetham:** Yes I am flashing I am afraid! (*Laughter and Interjection*) Yes, I am flashing. Yes, lest anybody think that I am being churlish in any way, shape or form, and bearing in mind the convivial way in which these proceedings have been conducted over the last few days and no doubt over the next few years, I have absolutely no hesitation, as I said, that I congratulate the entire Gibraltar team – and that of course includes the hon. Gentleman. (*Banging on desks*)

Hon. Dr J J Garcia: Mr Speaker, thank you for that and in the absence of anymore flashing lights, (*Laughter*) let me now conclude –

690 **A Member:** Or flashers!

Hon. Dr J J Garcia: – by saying that I think the issues that will drive the debate in the Referendum in the UK, which is the Prime Minister's renegotiating criteria and the four points I mentioned earlier, and those that will drive the debate and discussions in Gibraltar may well be very different. Whereas here we have issues with Spain and the border, in the UK the debate is

likely to be centred around the Prime Minister's own renegotiation and perhaps that will not be the case here.

So, Mr Speaker, that concludes my contribution. (*Banging on desks*)

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Mr Speaker: If the new hon. Members care to read the rules, I am sure they will discover how liberal I have been in interpreting the rules where the question of giving way is concerned, but I thought it was very appropriate that I should do so today.

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I now put the question, which is that a Bill for an Act to enable the full participation of Gibraltar in the United Kingdom's Referendum on whether it should remain a Member of the European Union and to provide for the making of subsidiary legislation in connection therewith and for matters connected thereto, including amending primary legislation by subsidiary legislation as the circumstances require, be read a second time.

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

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Clerk: The European Union (Referendum) Act 2016.

**European Union (Referendum) Act 2016 –
Committee Stage and Third Reading to be taken at this sitting**

Deputy Chief Minister (Hon. Dr J J Garcia): 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 (Amendment) Act 2016 –
First Reading approved**

Clerk: A Bill for an Act to amend the Animal and Birds Act.

The Hon. the Minister for Health, the Environment, Energy and Climate Change.

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Minister for Health, the Environment, Energy and Climate Change (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 to be read a first time.

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

Clerk: The Animals and Birds (Amendment) Act 2016.

**Animals and Birds (Amendment) Act 2016 –
Second Reading approved**

730

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

Mr Speaker, from determining the political future of millions to microchipping the dogs of a few, Parliament is so diverse. Mr Speaker, I have the honour to move this Bill to which I have added after some discussions that I had yesterday and the day before with the Hon. Mr Llamas, an amendment which I will refer to later by way of letter.

735 The main purpose of the Bill is to require all dogs in Gibraltar to be microchipped. This is something that happens in other countries. In fact, in the UK it will become law in April. We were going to beat them to it but because we ran out of parliamentary time when the Election was called, we had to publish again so now we will not be ahead of them.

740 The permanent identification of dogs through microchipping has a number of benefits. First of all, it is the most effective means of reuniting strays or stolen dogs with owners as quickly as possible. Secondly, it will be much easier to identify the owner of a dog that has been abandoned by that owner and thereby to ensure that the owner takes responsibility for his or her dog. And, of course, microchipping also facilitates the cross border and international travel of dogs.

745 The advantage of a microchip over a collar in these scenarios is, of course, that a collar and tag are often left off or slip off and collars can also easily be removed from stolen dogs. Permanent identification through microchipping is effective at all times and is virtually impossible to alter or remove.

750 It is important to note that a dog will no longer be able to be registered or licensed unless it has been implanted with a microchip. This restriction is already in place for vaccinations. In the case of microchipping, however, we have provided for a grace period until 1st September, in order to give time to owners whose dogs are not already microchipped to ensure that they are. We have also provided for a permanent exemption from the requirement of microchipping where a veterinary surgeon certifies that the implanting of a microchip in a dog will harm it.

755 Mr Speaker, I also want to point out that this Bill provides for the implantation of microchips to be undertaken only by competent individuals and here is where, in discussions with the hon. Gentleman opposite, we have both extended the individuals from a veterinary surgeon exclusively to also a veterinary nurse acting under the direction of a surgeon, but also tightened it to ensure that anybody who has received instruction on implanting microchips will have done so from a veterinary surgeon and is acting under the direction of a veterinary surgeon and we felt that that was a tighter resolution to the matter.

760 Lastly, Mr Speaker, we have taken the opportunity in this Bill to tidy up and update some of the existing language in this part of the Act regarding Licensing Officers – for example, by pluralising where appropriate and *vice versa* – and we had some discussion about the implications of that and I think we resolved that and by strengthening the powers to compel the vaccination of a dog by an owner.

765 Mr Speaker, I commend this Bill to the House and I want to express my gratitude to Mr Llamas, the Hon. Mr Llamas for his collaboration in this and certainly in other plans we have to improve a legislation appertaining to dogs.

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Several Members: Hear, hear. (*Banging on desks*)

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

775 The Hon. Mr Lawrence Llamas.

Hon. L F Llamas: Mr Speaker, I am grateful for the opportunity to say a few words in respect of the amendments to this Bill later today.

780 Compulsory microchipping of dogs is already a common practice in most countries. Therefore, the principle of this Bill is in line with domestic legislation being introduced by other EU countries. It is also already an EU regulation to have dogs microchipped and vaccinated

against rabies in order to travel with pets – that means dogs, cats and ferrets – between Member States under the EU Passport Scheme.

785 So the effect of this amendment will be to ensure that all dogs, regardless of whether they intend to travel within Member States or not, are microchipped and vaccinated against rabies by virtue of their residency in Gibraltar.

I am pleased to say that this side of the House shall be happy to support the amendments of this Bill as currently amended and I hereby thank the hon. Member, Dr Cortes, for the opportunity of working together for the good of this Bill and the purpose it serves.

790 Thank you. (*Banging on desks*)

Mr Speaker: Perhaps it is appropriate at this stage that we should congratulate not just the Hon. Mr Llamas, but the Hon. Mr Roy Clinton, for their first interventions during a debate in Parliament and what could be regarded as their maiden speeches. (*Banging on desks*)

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Mr Speaker: Does any other hon. Member wish to speak on this Bill?
I will call upon the mover to reply.

Hon. Dr J E Cortes: Mr Speaker, just to reiterate that it is a pleasure to have other animal lovers having joined this Parliament after the last election and I now put it to you that I commend the Bill to the House.

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Mr Speaker: I will now put the question which is that a Bill for an Act to amend the Animals and Birds Act be read a second time.

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

Clerk: The Animals and Birds (Amendment) Act 2016.

**Animals and Birds (Amendment) Act 2016 –
Committee Stage and Third Reading to be taken at this sitting**

Minister for Health, the Environment, Energy and Climate Change (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.)

**Judicial Service (Amendment) Act 2015 –
First Reading approved**

Clerk: A Bill for an Act to amend the Judicial Service Act 2007.

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The Hon. the Minister for Education, Justice & International Exchange of Information.

Minister for Education, Justice & International Exchange of Information (Hon. G H Licudi): Mr Speaker, I have the honour to move that a Bill for an Act to amend the Judicial Service Act 2007 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 Judicial Service Act 2007 be read a first time.

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

825 **Clerk:** The Judicial Service (Amendment) Act 2015.

**Judicial Service (Amendment) Act 2015 –
Second Reading approved**

Minister for Education, Justice & International Exchange of Information (Hon. G H Licudi):
Mr Speaker, I beg to move that a Bill for an Act to amend the Judicial Service Act 2007 be read a second time.

830 A version of this Bill was first published as Bill 31 of 2015 on 27th August 2015. Due to the timings of Parliament and the General Election, it was not possible to bring this Bill before Parliament and, as such, it lapsed before the Parliament's dissolution. The Bill was then republished as the current Bill 35 of 2015 on 10th December 2015 in identical terms.

835 This Bill has two separate purposes. The first is to make provision for the Chief Justice to be the Head of the Judiciary in Gibraltar. These amendments will fulfil the commitment contained in the 2011 GSLP/ Liberal manifesto where we stated:

“Our view is that the head of the judiciary in Gibraltar should be the Chief Justice, as has always been the case, irrespective of who the post-holder may be.”

These amendments have been the subject of consultation with the Chief Justice and the previous President of the Court of Appeal, Sir Paul Kennedy, who had no objection to these changes being made. Sir Paul, of course, was a President until October 2015 and was, therefore, the President of the Court of Appeal when the Bill was drafted and first published.

840 The main amendment is the substitution of the current section 6 of the Judicial Service Act 2007 with a new section 6. The changes made therein are consequential to the change in the title from President of the Courts of Gibraltar to Head of the Judiciary, and reflect that the post will be held by the Chief Justice.

845 There are consequential changes to the Judicial Service Act where reference is made to the President of the Court of Gibraltar. The changes to sections 24 and 32 contained therein still contain a consultative role for the President of the Court of Appeal in certain circumstances. The change to section 37 simply changes the reference to the President of the Courts of Gibraltar regarding disciplinary powers to a reference to the President of the Court of Appeal. This reflects the constitutional role of the President of the Court of Appeal in such matters.

850 A second set of amendments contained in the Bill deal with the disciplinary provisions of the Judicial Service Act 2007 and in particular regarding the suspension of judicial officers. These amendments have been recommended by the Judicial Service Commission following a detailed analysis by them of the issues they had encountered and may encounter in undertaking disciplinary proceedings against judicial officers. Her Majesty's Government has accepted these recommendations.

855 The amendment contained in sub-clause 2(a) brings the language of sub-section 33(2) of the Act in line with that of the Constitution and ensures that it is not only the behaviour of holders of Judicial Office – that is Stipendiary Magistrate, Justice of the Peace and Registrar of the Supreme Court – that may be examined, but also their inability to discharge the functions of office. The amendment in sub-clause 2(b) sets out the power to make a recommendation to suspend such an officer pending the outcome of the proceedings and the amendment in sub-clause 3 allows for the Governor to make such interim suspension.

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Finally, the amendment contained in sub-clause 4 ensures that the power of the Judicial Service Commission to make regulations under the Act include a power to make regulations regarding suspensions from office.

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Mr Speaker, I commend the Bill to the House. (*Banging on desks*)

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

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The Hon. Mr Elliott Phillips.

Hon. E J Phillips: Mr Speaker, the Bill to amend the Judicial Services Act 2007 appears to me to have been brought by the Government in short to amend section 6 of the Act to create the office of the Head of the Judiciary and to make further necessary consequential amendments, as the Minister for Justice has described.

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It is proposed by the hon. Gentleman, the Minister for Justice, that the Chief Justice shall be the Head of the Judiciary. Furthermore, the hon. Gentleman proposes amendments to Section 33 and 37 of the Act which deal, as he stated, with the discipline of junior judicial office holders.

Before I set out the position of the Opposition, I think it is helpful to pause and reflect on what the Opposition's position was whilst in Government as promoters of the Judicial Services Bill in then 2007. The Judicial Services Act in its current form was debated in this House and it is fair to say that it arrived on the table during a controversial time in our judicial history. I do not intend to make further comment on that, save to flag the context.

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There was a lengthy debate in this House between the Opposition spokesman for Justice, the Hon. Mr Picardo, and the Chief Minister, Mr Caruana, as they both then were. The nub of the issue at the time was the creation of the office of the President of the Courts of Gibraltar. The rationale of the Chief Minister, Sir Peter Caruana, at the time was that the President of the Court of Appeal was the most senior judge in the most senior court of Gibraltar's own judiciary and therefore it was, in his view at the time, therefore entirely appropriate that a President should hold the office of presidency of the courts generally.

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The Bill before the House at the time underwent considerable consultation with all stakeholders, particularly the Bar Council, Judges of the Supreme Court, the Chief Justice and the Judges of the Court of Appeal. After the consultation process, the GSD Government accepted the advice of the consultees, which suggested that the day-to-day management and administration of the justice the administration in Gibraltar would be retained by the Chief Justice – eminently sensible in my view.

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The Chief Minister at the time helpfully reminded the House that although section 3(a) gave the President of the Courts of Gibraltar, namely the President of the Court of Appeal, an overall responsibility for representing the views of the judiciary to Parliament. Section 5 also made provision for the right of both the Chief Justice and the President of the Court of Appeal to make representations to the Minister for Justice and the Government on matters that appear to them to be matters of importance to the judiciary or otherwise to the Administration of Justice in Gibraltar.

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Mr Speaker, it is fair to say that the Bill enjoyed overwhelming support from stakeholders, save for the Members opposite who declined to support the Bill, ultimately because they felt that the GSD Government at the time were – to use the words of Mr Picardo's Opposition spokesman for Justice – 'exporting the headship of our judiciary to a non-resident'. It was accepted in the debate by the Hon. Mr Picardo at the time that neither the 1969 Constitution nor the 2006 Constitution designated the Chief Justice as Head of the Judiciary.

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Be that as it may, Mr Speaker, and without wanting to reopen a nine-year-old debate, this side of the House will not oppose the Bill to amend section 6 of the Judicial Services Act and, in fact, on behalf of the Opposition, we will support the Bill for one simple reason, and it is this: that the Bill reflects reality and what is going on on the ground. The Chief Justice deals with the day to day Administration of Justice and there are excellent working relationships between the

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915 Hon. Mr Justice Dudley and the judges of the Court of Appeal, and there is a strong open channel of communication between all of our judges which has served our community well and our judiciary is a credit to our community.

One point that I would like to give way to the Minister for Justice on, is in relation to the point that he makes on section 37(3). In fact I would like to seek clarification once I ... I will just mention that. My understanding from the amendments that is out on page 865 of the paper ... states that the Judicial Services Act which provides a mechanism for suspension of a junior judicial office holder in the context of maintaining confidence in judiciary; if the Minister for Justice can just explain the rationale for that deletion in relation to maintaining confidence in the judiciary.

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Hon. D A Feetham: Just give way.

Hon. E J Phillips: Can I give way on that point?

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Hon. D A Feetham: Mr Speaker, he can give way because he has got other points that he –

Hon. E J Phillips: I only have two –

Hon. G H Licudi: I have not asked him to give way.

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Hon. D A Feetham: No, no. He is giving way to you so that he can then continue with his speech, because otherwise he obviously ... I beg your pardon.

If there is an issue that he needs clarifying so that he can comment further, because he may not know what it actually means, there is a procedure long...going back many, many years where you give way, he explains and then he continues. Otherwise if he finishes his speech he cannot continue.

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Mr Speaker: This is something that I am aware happened during the time when I was not a Member of the House. It has become an increasing practice. I have no serious objection to it.

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What it does mean of course is that when we go into Committee and for each clause, there is an opportunity to debate/discuss the matter *ad nauseum*, that does not happen; it can happen then repeatedly without any problem.

Now, the other thing is, of course, that the hon. mover is going to exercise his right to reply and it is the practice at that stage for the mover to try to answer any points that have been raised by other Members on the general principles and merits of the Bill.

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Hon. E J Phillips: I am grateful for the intervention by you, Mr Speaker, and clearly Mr Licudi, the Minister for Justice, does not want to accommodate that, but we will continue.

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Finally, given that we are debating the Chief Justice as Head of the Judiciary, I am sure this whole House will join me in expressing the great sense of pride that one of our own jurists holds the office of Chief Justice and that he will now be the *de jure* Head of the Judiciary and not just the *de facto* Head of Judiciary.

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On a personal note, and as someone who has appeared regularly before Mr Justice Dudley, I am sure the whole House will share the confidence, the respect and admiration that this side of the House has for Mr Justice Dudley as the first Gibraltarian Chief Justice. (**A Member:** Hear, hear.) (*Banging on desks*)

Mr Speaker: Again, before I call on any other person to contribute to the debate, may I congratulate the Hon. Elliott Phillips on his maiden speech.

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Does any other hon. Member wish to contribute to the Second Reading of the Bill before I call upon the mover to reply?

The Hon. the Leader of the Opposition.

Hon. D A Feetham: Mr Speaker, I just want to very briefly say this. There are occasions, Mr
970 Speaker, when in politics one takes a position, and one listens to the arguments on one side and
the arguments on the other side, and the arguments are very finely balanced. We took a
decision in 2006-07 on the grounds that the Hon. Member, Mr Elliott, has outlined, to have the
President of the Courts, the most senior judge of the most senior court in Gibraltar as effectively
975 the Head of the Judiciary here in Gibraltar and they took the view that it should be the Chief
Justice who was the most senior resident judge here in Gibraltar.

And, quite frankly, I see the arguments on both sides. I think that what has certainly
persuaded me that we should be voting in favour of these amendments, is that it would not be
right, Mr Speaker, for the Opposition, knowing that the Government is actually, because of its
majority, going to get these amendments through this House, of having a situation where we do
980 not support the Chief Justice of the day in becoming Head of the Judiciary going forward. I think
it sends the wrong kind of signal; and bearing in mind that you are talking about very finely
based decisions here, we think certainly that we should support this particular Bill, despite the
fact that we took a different position in 2006, so that there is absolutely no mixed signals going
forwards about our support for the Chief Justice and the work that he is doing which is
985 absolutely first rate in relation to the judiciary here in Gibraltar.

Mr Speaker: The Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo) Mr Speaker, can I associate myself with those remarks
990 about the Hon. the Chief Justice?

The Rules of Procedure of this House say that we should not call into question the conduct of
any one of Her Majesty's Judges, but I assume that when we do in order to praise them, then
the rules do not affect us in such a way because it is absolutely right and proper that we should
reflect on the fact that Anthony Dudley has reached judicial heights that no Gibraltarian has ever
995 reached before and that must be a source of huge pride for the whole of this community; not
just that he has reached those heights but how he discharges his office in the context of those
lofty achievements in the judiciary.

But, Mr Speaker, what we cannot do is re-write history and what we cannot say is that today
we support a measure in this House unanimously because not to support a Chief Justice of the
1000 day sends the wrong signal, when in fact that is exactly what happened in 2006. And the
reasoning behind what was happening in 2006 was absolutely and utterly transparent. Mr
Speaker, whether one agrees or disagrees with an individual, in the constitutional architecture
of Gibraltar, it is not a good reason to move responsibilities from one or another.

1005 It may be a good reason to seek to remove an individual; it may be a good reason to ensure
that less responsibility appertains to that individual in respect of the things which he is doing on
day to day, but not necessarily, Mr Speaker, to change the structure of the Administration of
Justice simply because of issues between one individual or another in the hierarchy of
Government.

Mr Speaker, that was wrong. That is why I spoke out against it at the time and that is why
1010 now, in the context of this Bill, we will be changing that. We did not do it at the first available
opportunity, although we were ready to but, Mr Speaker, we had a President of the Court of
Appeal who himself did not deserve to be removed from the job that he was doing because he
was doing a very fine job, because this move is not to criticise Sir Murray or Sir Paul Kennedy for
the work that they have done which has served Gibraltar well indeed.

1015 But, Mr Speaker, it is about putting the legal order back where it was, back where it should
be and because no Chief Minister should ever say again of a Chief Justice, 'This town was not big
enough for both of us,' as my predecessor said of the then Chief Justice. *(Banging on desks)*

1020 **Mr Speaker:** The Hon. the Minister for Education, Justice & International Exchange of Information.

1025 **Hon. G H Licudi:** Mr Speaker, just on the question of timing, the Hon. the Chief Minister has alluded to this, this was of course, as I have explained, a manifesto commitment from 2011 and we clearly became aware that Sir Paul Kennedy was going to retire as President of the Court of Appeal, and consequently as President of the Courts of Gibraltar, in October of last year.

1030 That is why the Bill was published in August to bring it in, as it were, to make the change over to Head of Judiciary being the Chief Justice of Gibraltar when that actually happened. As it happened, we did not have Parliament at the time and therefore it was not possible to bring in that Bill. That is why we are bringing it now, even though there has been a new President appointed since then. But the intention at all times was to make it effective as from October, following the retirement of Sir Paul Kennedy from office.

1035 And as I indicated, although it is true the hon. Member has given us a little bit of history of the Act and having said why they changed it in the way they changed it – the GSD Government changed it at the time – he then goes on to say, well, they will now be supporting this particular change for the reasons that they have set out.

1040 But in doing so, the hon. Member talked of consultation with relevant stakeholders. I already mentioned it seems to us that it is particularly relevant that at the time of the drafting and at the time of the publication of the Bill, there was consultation, not just with the Chief Justice who clearly has an interest, but also with Sir Paul Kennedy who was the President not just of the Court of Appeal but the President of the Courts of Gibraltar at the time, and who had no objection to that Bill.

1045 But it was, in any event and it is in any event, the fulfilment of a manifesto commitment. It was a manifesto commitment we gave in 2011 which had the support of the people of Gibraltar and therefore we felt that it was right.

1050 Not only that, as has been mentioned, the Chief Justice of Gibraltar we certainly consider to be not just an able Chief Justice, but certainly a very able candidate to lead the Judiciary as Head of the Judiciary, as in fact had been the case prior to the Judicial Service Act which was introduced by the previous Administration.

1055 The only other thing, Mr Speaker, I would say on the Bill is in relation to the point raised by the hon. Member about section 37, which is the second limb of this Bill. The second purpose of this Bill is not, as I explained, just to make the Chief Justice Head of the Judiciary, but to bring in additional provisions following recommendations of the Judicial Service Commission in relation to disciplinary powers and proceedings concerning junior judicial officers in particular.

1060 As I mentioned during the course of my first intervention, Mr Speaker, these amendments actually follow the advice that has been given to us by the Judicial Service Commission and it is advice in relation to which we have clearly consulted the Chief Justice who is happy with these provisions and it involves also, the deletion of that last paragraph in section 37(1)(2) which talks about: that the suspension is necessary for the maintaining of the judiciary.

1065 It is important to note that what the section provides is that the Governor *may* in certain circumstances suspend a person from a junior judicial office. So it is a discretion and it is also acting on the advice of the Commission.

1070 There are certain things that have to be shown because one of the three items in (a), (b) or (c) have to apply – criminal proceedings, serving a sentence and convicted of a criminal offence, any of those – and as it is currently drafted it says, and in any of those circumstances, in addition there has to be, it is considered necessary for maintaining the confidence of the judiciary.

That is felt to be simply a constraint on the exercise of the discretion, because we have the various steps that have to be taken. Firstly, the Commission has to consider the matter and they should be free to consider all the circumstances and all the relevant matters, which may include question of confidence, but they should not be necessarily limited or constrained by that particular wording. So they will certainly consider everything in the round and when they do that

they have to tender advice to the Governor who in turn may suspend the person from judicial office and again, in doing that, will consider the advice and will consider no doubt everything in the round.

1075 So we have taken the recommendation of the Judicial Service Commission, we have agreed with their recommendation and, therefore, we have set out the amendments that we propose for that particular purpose.

I commend the Bill to the House, Mr Speaker.

1080 **Mr Speaker:** I now put the question which is that a Bill for an Act to amend the Judicial Service Act 2007 be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Judicial Service (Amendment) Act 2015.

**Judicial Service (Amendment) Act 2015 –
Committee Stage and Third Reading to be taken at this sitting**

1085 **Minister for Education, Justice & International Exchange of Information (Hon. G H Licudi):** Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken later 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

**European Union (Referendum) Bill 2016;
Animals and Birds (Amendment) Bill 2016;
Judicial Service (Amendment) Bill 2015**

1090 **Clerk:** Committee Stage and Third Reading.
The Hon. the Chief Minister.

1095 **Chief Minister (Hon. F R Picardo):** Mr Speaker, can I join you in congratulating all of those on the Opposite side who have made their maiden speeches in debate today and have the honour to move that the House should resolve itself into Committee to consider the following Bills clause by clause, namely the European Union (Referendum) Bill 2016; the Animals and Birds (Amendment) Bill 2016 and the Judicial Service (Amendment) Bill 2015.

1100 **Mr Speaker:** There are two matters which I think I want to explain. First of all, to reiterate that hon. Members may speak more than once on each individual clause if they so wish.

Secondly, that we have been adopting the practice of late that where a number of amendments are going to be made, some of which are lengthy, and provided sufficient notice has been given of these amendments, we do not read them out fully in Committee for each relevant clause, but we take them as having been read.

1105 That does not mean, however, that hon. Members are not free to intervene at that stage and express a view or ask the question for clarification if they so wish.

In Committee of the whole Parliament

**European Union (Referendum) Bill 2016 –
Clauses considered and approved**

1110 **Clerk:** A Bill for an Act to enable the full participation of Gibraltar in the United Kingdom's Referendum on whether it should remain a Member of the European Union and to provide for the making of subsidiary legislation in connection therewith and for matters connected thereto, including amending primary legislation by subsidiary legislation as the circumstances require.
Clause 1.

Mr Chairman: Stands part of the Bill.

1115 **Clerk:** Clause 2 as amended.

Mr Chairman: There is a small amendment to Clause 2. Do all hon. Members agree that it should be incorporated into the Clause?

1120 **Members:** Aye.

Mr Chairman: Clause 2 as amended stands part of the Bill.

1125 **Clerk:** Clause 3.

Mr Chairman: Stands part of the Bill.

Clerk: Clause 4 as amended.

1130 **Mr Chairman:** There is a more substantial amendment to this clause. Do all Members support the amendment?

Members: Aye.

1135 **Mr Chairman:** Clause 4 as amended stands part of the Bill.

Clerk: Clause 5.

1140 **Mr Chairman:** Stands part of the Bill.

Clerk: Clause 6 as amended.

Mr Chairman: Clause 6, if hon. Members agree, as amended stands part of the Bill.

1145 **Clerk:** Clause 7 as amended.

Mr Chairman: Clause 7 – there is a very minor amendment – stands part of the Bill. Clause 7 as amended stands part of the Bill.

1150 **Clerk:** Clause 8 as amended.

Mr Chairman: Likewise a very minor amendment. Clause 8 as amended stands part of the Bill.

1155 **Clerk:** Clauses 9 to 11.

Mr Chairman: Clauses 9 to 11 stand part of the Bill.

Clerk: Clause 12 as amended.

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Mr Chairman: Clause 12 as amended stands part of the Bill.

Clerk: Clause 13.

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Mr Chairman: Clause 13 stands part of the Bill.

Clerk: Clause 14 as amended.

Mr Chairman: Clause 14 as amended stands part of the Bill.

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Clerk: Clause 15 as amended.

Mr Chairman: Clause 15 as amended stands part of the Bill.

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Clerk: Clause 16 as amended.

Mr Chairman: Clause 16 as amended stands part of the Bill.

Clerk: Clauses 17 to 19.

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Mr Chairman: Clauses 17 to 19 stand part of the Bill.

Clerk: Clause 20 as amended.

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Mr Chairman: Clause 20 as amended stands part of the Bill.

Clerk: Clauses 21 to 29.

Mr Chairman: I have an indication that at Clause 27 a new clause is inserted.
Insert the following clause after Clause 27: Broadcasting from outside Gibraltar.

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Clerk: I beg your pardon, yes.

Mr Chairman: Correct?

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Clerk: Yes. Clauses 21 to 26.

Mr Chairman: Call the clauses up to 26.
Clauses 21 to 26 stand part of the Bill. Now Clause 27 –

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Clerk: Clause 27 as amended.

Mr Chairman: There is a substantial amendment. All Members agreed?

Members: Aye.

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Mr Chairman: Clause 27 as amended stands part of the Bill.

Clerk: Clauses 28 to 29.

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Mr Chairman: Clauses 28 and 29 stand part of the Bill.

Clerk: Clause 30 as amended.

Mr Chairman: Clause 30 as amended stands part of the Bill.

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Clerk: Clauses 31 to 33

Mr Chairman: Clauses 31 to 33 stand part of the Bill.

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Clerk: Clause 34 as amended.

Mr Chairman: Clause 34, which is just clearing up 2016, as amended stands part of the Bill.

Clerk: Clauses 35 and 36.

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Mr Chairman: Clauses 35 and 36 stand part of the Bill.

Clerk: Clause 37 as amended.

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Mr Chairman: Clause 37, which is inserting 2016 after the word 'regulations', stands part of the Bill as amended.

Clerk: Clause 38.

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Mr Chairman: Clause 38 stands part of the Bill.

Clerk: The first schedule as amended.

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Mr Chairman: There is a whole page of amendments to the first schedule. The first schedule as amended stands part of the Bill.

Clerk: Second schedule as amended.

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The Chairman: The second schedule as amended stands part of the Bill.

Clerk: The long title.

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

**Animals and Birds (Amendment) Bill 2016 –
Clauses considered and approved**

1250 **Clerk:** A Bill for an Act to amend the Animals and Birds Act.
Clause 1.

Mr Chairman: Stands part of the Bill.

1255 **Clerk:** Clause 2 as amended.

Mr Chairman: Clause 2 as amended stands part of the Bill.

Clerk: The long title.

1260 **Mr Chairman:** The long title stands part of the Bill.

**Judicial Service (Amendment) Bill 2016 –
Clauses considered and approved**

Clerk: A Bill for an Act to amend the Judicial Service Act 2007.
Clause 1.

1265 **Mr Chairman:** Stands part of the Bill. (*Interjection*)

Minister for Education, Justice & International Exchange of Information (Hon. G H Licudi):
Mr Chairman, may I amend Clause 1 by replacing 2015 with 2016 so that the Act may be cited as
the Judicial Service Amendment Act 2016.

1270 **Mr Chairman:** Clause 1 as amended stands part of the Bill.

Clerk: Clauses 2 and 3.

1275 **Mr Chairman:** Clauses 2 and 3 stand part of the Bill.

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

BILLS FOR THIRD READING

1280 **European Union (Referendum) Bill 2016;
Animals and Birds (Amendment) Bill 2016;
Judicial Service (Amendment) Bill 2016 –
Third Reading approved: Bills passed**

Clerk: The Hon. the Chief Minister.

1285 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to report that the European Union (Referendum) Bill 2016; the Animals and Birds (Amendment) Bill 2016 and the Judicial Service (Amendment) Bill 2016 have been considered in Committee and agreed to with amendments and I now move that they be read a third time and passed.

1290 **Mr Speaker:** I now put the question which is that the European Union (Referendum) Bill 2016; The Animals and Birds (Amendment) Bill 2016 and the Judicial Service (Amendment) Bill 2016 be read a third time and passed.

I am going to put the three of them to the vote. Those in favour? (**Members: Aye.**) Those against? Carried.

PRIVATE MEMBER'S MOTION

Publication of Parliamentary and Ministerial Allowances – Debate commenced

Clerk: Private Member's Motion. The Hon. R M Clinton.

1295 **Hon. R M Clinton:** Mr Speaker, I have the honour to move the motion standing in my name which reads as follows: this House believes that it is in the public interest that the details of Members', Ministers' and office holders' allowances be published immediately on the parliamentary website and listed by way of annexe in the annual estimates and income and expenditure when presented in all future Budget sessions.

1300 Mr Speaker, in bringing this motion to the House, I am conscious of the sacrifice that our predecessors have made both in personal and financial terms for us to have the privilege to sit in this House today. (**Hon D A Feetham:** Hear, hear.) It was in 1911 that Lloyd George, as Liberal Chancellor, introduced Member's Allowances in the mother of all parliaments in the United Kingdom.

1305 At that time he stated that the money, a measly £400, was and I quote:

"... not a remuneration, it is not a recompense, it is not even a salary. It is just an allowance to enable us to open the door to great and honourable public service ..."

However, 100 years later after the UK MPs' expenses scandal, Dominic Sandbrook, writing in the *Mail Online* in 2011 wrote, and I quote:

"... MPs need to remember that they are servants of the people, never the masters."

1310 Mr Speaker, I was reminded of this shortly after the election when a member of the public stopped me down Main Street and urged me never to forget that my parliamentary salary was now partly paid by taxes deducted from the lowest paid employees in Gibraltar amongst others who could ill afford it.

1315 Mr Speaker, I may be new to this House but I am not new to the world of finance and the need for financial disclosure and transparency. I found it incredible that details of the allowance we each receive, funded by the taxpayer, are not readily available on the parliamentary website, as is the case in the United Kingdom.

Erskine May, in the book of Parliamentary Practice, discloses this information as regards the UK Parliament as a matter of course. You can see this on page 23 onwards of the 23rd edition.

1320 Mr Speaker, my motion is in no way a criticism of this or any previous Government. My motion is not in any way meant to be malicious or have any hidden intent. Mr Speaker, my motion is simply that this Parliament should resolve that details of MPs' and office holders'

allowances be published regularly on its website, available for all to see, without the need for journalistic or parliamentary questions.

1325 Mr Speaker, my motion is also meant to ensure the full detailed disclosure is made in the annual Estimates Book every year and not just the totals of parliamentary allowances for Members. I ask: how can it be right that anyone can look up the salary of the Chief Secretary – £123,000, the Chief Justice – £132,000, the Financial Secretary – £123,000, in this the annual Estimates Book and yet the salary of the Chief Minister or MPs is not made public in the same way.

1330 Mr Speaker, those, put simply, are the reasons for my motion in requesting immediate full and transparent disclosure; not by this or any future Government as its whim, but by conscious resolution of this House requiring mandatory publication on this Parliament's website and disclosure in full feature annual estimates.

1335 Mr Speaker, this is not a matter for the Select Committee on Parliamentary Reform but a matter of good governance and common sense as parliamentarians in fulfilling our duty to taxpayers and the electorate.

I trust the Members opposite will have no problem in supporting my motion which, I say again, is directed solely at Parliament as a body and not at the Government or its Ministers.

Mr Speaker, with your leave, I hereby commend my motion to the House. (*Banging on desks*)

1340 **Hon D A Feetham:** Hear, hear. (*Banging on desks*)

Mr Speaker: I now propose the question in the terms of the motion moved by the Hon. R M Clinton. Does any hon. Member wish to speak on the motion?

The Chief Minister.

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Chief Minister (Hon. F R Picardo): Yes, and can I thank the hon. Member for the way in which he has put his speech. I am grateful that he has indicated that this is not in any attempt, as it could not be, an attempt to attack this Government.

1350 But, Mr Speaker, can I just make clear for those who may be listening and for the purposes of the record, that the salaries today are salaries fixed by a formula which was approved by the Government majority then made up of Members opposite in a motion of 17th December 1998.

1355 The hon. Gentleman knows that when he gave notice of his motion, the Government immediately acceded to the spirit of it and has now published on the website of the Government – not of the Parliament, of the Government – the details of the parliamentary salaries. I have no objection, once the IT Department are able to find time to do so, to also link from the Parliament website to that part of the Government website which sets out the details of those salaries.

1360 But can I just suggest to the hon. Gentleman that he might wish in future, if he wants to move a motion like this – it is a matter entirely for him – to get in touch with the Government, because the Government would have been very receptive to a proposal from him, which would have resulted in exactly the same resolution just as quickly in the posting of the relevant information on an easily accessible Government website.

1365 What we have done, Mr Speaker, is we have provided the salaries as they are today, we have provided the salaries since 1996, showing how they have risen, we have provided the formula. I think we have set out the details of the *Hansard* where the motion is, which is 17th December 1998, and the motion itself, so that everybody can see in what way the calculations are carried out and I think it is easy for people to also read the motion which was passed at the time which sets out that it was, in fact, the Government at the time, not the House, that carried the day on that subject.

1370 Mr Speaker, the 'servants of the people' is a phrase oft used in politics, not just from 2011. Andrew Rawnsley's excellent analysis of the New Labour Government was called *Servants of the People* and the phrase comes from even earlier than that. It would be a fool who forgot that they are here servants of the people. It would in fact be a fool in any part of our public sector

1375 who forgot that their salaries are paid by the taxpayer and that they must act always in
contenance with their obligations to deliver not just value for money but also to do so in a way
which is commensurate with the remuneration they receive and their obligations to ensure that
that service is provided properly.

1380 In this House, in particular, we have a golden trust with the people who put us here to ensure
that the work we do is in the best interests of this whole community, Mr Speaker. Speaking for
Members on this side of the House we never see ourselves as the masters, we see ourselves
always as the servants.

In fact, Mr Speaker, I always remind people who refer to the number plate of the Chief
Minister's car as G1 that that is not the number plate of the first Gibraltarian, it is the number
plate of the Gibraltarian elected to serve all 30,000; the person who works for the benefit of
those 30,000 and a more fitting number plate might actually be 30,001!

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Mr Speaker: Does any other hon. Member wish to speak on the motion?

1390 **Hon. Chief Minister:** Mr Speaker, before I sit down, as a result of all that, (*Laughter*) see how
useful it is to have somebody of the ability to have attention to detail as the Deputy Chief
Minister. I would move the following amendment to the motion, namely Mr Speaker – I will read
the whole motion as we propose it to be, instead of just reading the amendments – that the
motion should read as follows:

*The House welcomes that the Government has listed the details of Members, Ministers and
Office Holders allowances immediately on the Government ...*

– in fact just take out the word 'immediately' as well –

*... on the Government website and listed by way of annexe in the annual estimates of income
and expenditure when presented in all future Budget sessions which will accurately reflect the
position today.*

1395 Mr Speaker, Members can have a photocopy of the written notice, I now give, of that
amendment. Mr Speaker, the amendment is proposed in order to reflect the position as it is
today.

The hon. Member's motion is on the Order Paper because he filed it and the House today
need not pass that motion because it has already been given effect to, the House today can pass
the motion that reflects the reality, which is that this information is now on the website.

1400

1405 **Hon. R M Clinton:** Mr Speaker, I thank the Hon. the Chief Minister for his remarks. As regards
the amendment to the motion, my original motion was directed to this House and not at the
Government. Therefore, to welcome the fact that the Government has put it on their website is
not really addressing my motion. My motion is directed at this House, so this House should
resolve that as a body we consider that this information should be in the parliamentary website
and not at the discretion of the Government.

So I am not quite sure that his amendment really reflects the spirit of what it was that I
intended.

1410 **Mr Speaker:** Having now received what the motion would look like if approved, I have to
formulate what the actual amendment is. I am going to do that and the Chief Minister's
amendment consists of the deletion ... it would delete the Chief Minister's amendment – and
this is the amendment that he has proposed and which I will now put to the House.

1415 The amendment deletes after the word 'House', the words, 'believes that it is in the public
interest'. It also deletes in the second line the words, 'be published immediately' and the word

'Parliamentary' and after deleting the word 'Parliamentary' that the word 'Government' should be substituted therefore.

1420 So the amendment is that the words 'believes that in the public interest' be deleted and substituted by the words 'welcomes that the Government has listed the details', the words 'be published immediately' be deleted, the word 'Parliament' be deleted and substituted by the word 'Government'.

1425 Therefore the motion would then read, 'This House welcomes that the Government has listed the details of Members', Ministers' and office holders' allowances on the Government website and listed by way of annexe in the annual estimates of income and expenditure when presented in all future Budget sessions.'

Does any other hon. Member wish to speak on the amendment first?

The Hon. Mr Roy Clinton.

Hon. R M Clinton: Thank you, Mr Speaker.

1430 As I said before, the purpose of my motion is directed to Parliament, not at the Government, for this House to welcome the fact that the Government has actually published details on its website does not really address my original motion.

1435 Perhaps we could find a form of wording that this House welcomes that the Government has published on its website but, however, believes that it is in the public interest that these allowances be also published immediately on the parliamentary website and listed by way of annexe and that then becomes an amendment to the amendment.

Mr Speaker: Does any other hon. Member wish to speak on the Chief Minister's amendment?

1440 I will then call upon the Chief Minister to exercise his right to reply on his amendment.

1445 **Hon. Chief Minister:** Mr Speaker, I think this is actually a better way of ensuring that the House records the position as it is today and, therefore, that is why I have made this proposal. The House is always the party resolving, it is the party that is making the determination, but the House, in effect, is making a decision today to say something which is not necessary because the information has already been listed and that is why I propose the amendment and I wish to now proceed with it, Mr Speaker, if you would put it to the vote.

1450 **Mr Speaker:** I will now put the amendment moved by the Chief Minister to the vote. Those in favour? (**Members:** Aye.) Those against? Carried.

So the motion as amended now reads as I have read it previously; I am not going to read it again. All hon. Members may speak now to the motion as amended, other than the Chief Minister; and of course the Hon. Mr Roy Clinton still has his right to reply at the end of it all.

1455 **Hon. R M Clinton:** Mr Speaker, I beg your indulgence here, as I now face an amended motion, I do not know if I can now propose an amendment to this amendment.

A Member: Yes, he could.

1460 **Mr Speaker:** I am sorry I missed that.

Hon. R M Clinton: I said I beg your indulgence, but as I am now faced with an amendment to my original motion, I do not know if I can propose an amendment to the amended motion.

1465 **Hon. D A Feetham:** Yes, he can.

Hon. D A Feetham: The answer, Mr Speaker, is that he can propose an amendment to the amendment. Yes, he can.

1470 **Mr Speaker:** No, because he has already spoken on the amendment. Did he speak on the amendment? No. *(Interjections)*

Hon. Chief Minister: Mr Speaker, he spoke on the amendment, he can make another amendment if he wishes. Any individual can get up and make another amendment.

1475 **Mr Speaker:** The Chief Minister's motion can be further amended and then we will have the amendment to the amendment. If I am to do my job properly, really I should have the amendments in writing, unless it is a very simple case of amending just one word or two.

1480 **Hon. D A Feetham:** Yes, Mr Speaker, that is absolutely right. But of course in a situation where the Government amends without notice our motion, we do not know what the Government –

Mr Speaker: I am not asking for notice I am just asking to see it.

1485 **Hon. D A Feetham:** Absolutely, but what I am saying is that, because we do not know what the Government is going to be saying or amending the motion until we actually see it during the course of the debate, it has not been possible to produce something on the spot.

1490 But I am just discussing it with my hon. Colleague, Mr Clinton, because I do genuinely want this to go through by unanimous decision of the Parliament and I do hear what Mr Clinton has to say, which is a very valid point which is –

Hon. Chief Minister: No, no, no. Mr Speaker, if he is going to start speaking on the substance of issues then we are going to get ourselves into all sorts of knots about who can speak and who cannot speak. *(Interjection)*

1495 Is he now speaking to the amended motion? He will not be able to speak again.

Hon. D A Feetham: Well, Mr Speaker, I am not going to be speaking on the motion and I do not want to entertain any controversy at this stage. All I want, Mr Speaker, is just a moment to confer with my colleague, Mr Clinton, in order to find a form of words that might be acceptable to the Government; because, as I say, I think it is in the interest of everybody for this to be going through on the basis of consent.

It is just the question that concerns us, it is just a question of parliamentary ... it is a matter of Parliament rather than a matter for the Government. That is our substantive position.

1505 **Mr Speaker:** Would hon. Members like a short recess of a few minutes? Yes, we will recess for a few minutes whilst the amendment is being formulated.

The House recessed at 5.24 p.m. and resumed its sitting at 5.34 p.m.

**Publication of Parliamentary and Ministerial Allowances –
Debate continued –
Amended motion carried**

Clerk: Mr Speaker.

1510 **Mr Speaker:** Am I correct in saying that the amendment to the amendment proposed by the Hon. Mr Roy Clinton adds a few words?

Hon. R M Clinton: Yes, that would be correct.

1515 **Mr Speaker:** And after the word 'website' the motion be amended by introducing after the word 'website' the following words: 'and resolves that it should also be listed in the parliamentary website.'

Hon. R M Clinton: On the Parliamentary website.

1520

Mr Speaker: On. That it should also be listed *on* the parliamentary website.
I will now put the amendment –

1525 **Hon. Chief Minister:** Before you do, Mr Speaker, and in order to avoid having to move an amendment to the amendment, would the hon. Gentleman agree to move that the amendment should say 'and resolves that they' because it is not an '*it*'.

Hon. R M Clinton: Absolutely, yes, agreed.

1530 **Mr Speaker:** ... instead of '*it*'. The amendment proposed is that after the word 'website' the following words should be inserted: 'and resolves that they should also be listed on the parliamentary website.'

I will now put the amendment to the amendment to the House.

All in favour? (**Members:** Aye.) The amendment is agreed.

1535 Does any hon. Member now wish to speak on the motion before the House as amended? If not I will call the hon. mover to reply.

The Hon. Mr Clinton to reply.

1540 **Hon. R M Clinton:** Mr Speaker, thank you very much for what has been a very productive motion debate. I am grateful to the Members opposite for having accepted my motion in the spirit it was intended. Being new to this House, this is something which I will no doubt learn more about, but I would now, without any further ado – I will read my briefing notes! – put the motion to the House.

1545 **Mr Speaker:** I will now put the motion to the House in the terms of the original motion moved by the Hon. Mr Clinton as amended by the Chief Minister and as further amended by Mr Clinton.

All in favour? (**Members:** Aye.) All agreed. Carried

ADJOURNMENT

1550 **Chief Minister (Hon. F R Picardo):** Well, Mr Speaker, after a very convivial first 72 hours of parliamentary business, and having now found out – because I think it is true that most people did not know what the parliamentary salaries were – who has got the best part-time jobs in Gibraltar, I move that the House do now adjourn *sine die*. (*Laughter*)

1555 **Mr Speaker:** I now propose the question, which is that the House do now adjourn *sine die*. I now put the question that this House should 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.

This House will adjourn *sine die*.

The House adjourned at 5.36 p.m.