



PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

AFTERNOON SESSION: 3.15 p.m. – 8.53 p.m.

Gibraltar, Friday, 7th October 2016

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The Gibraltar Parliament

The Parliament met at 3.21 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

GOVERNMENT MOTIONS

Old age pensions and survivor's benefits – Uprating from 1st August 2015 approved

Clerk: We continue with Government motions. The Hon. the Minister for Business and Employment.

5

Minister for Business and Employment (Hon. N F Costa): Mr Speaker, I have the honour to move the motion standing in my name, which reads as follows:

That this House approve by resolution, pursuant to section 46 of the Social Security (Open Long-Term Benefits Scheme) Act 1997, the making of the Social Security (Open Long-Term Benefits Scheme) (Amendment of Benefits) (No. 2) Order 2016.

Mr Speaker, this Order seeks to amend the Social Security (Open Long-Term Benefits Scheme) Act 1997 by increasing the rate of old age pensions and survivor's benefit by 1.6% with effect from 1st August 2015, which represents the annual increase for that year.

10 In previous years, old age pensions and survivor's benefits have been uprated in line with the annual increase in the general index of retail prices. The year prior, the rise in the index of retail prices was 0.1% over the year and would therefore have represented a very low increase. Her Majesty's Government of Gibraltar therefore decided to apply the same pensions increase of 1.6% as was implemented in August 2014.

15 Accordingly, the full monthly pension for a single person will rise from £431.87 to £438.78, and for a married couple from £647.85 to £658.22.

Mr Speaker: I now propose the question in terms of the motion moved by the Hon. the Minister for Business and Employment. Does anybody want to speak on the motion?

20 I now put the question in the terms of the motion proposed by the Hon. the Minister for Business and Employment. Those in favour? (**Members:** Aye.) Those against? Carried.

**Old age pensions and survivor's benefits –
Uprating from 1st August 2016 approved**

Clerk: The Hon. the Minister for Business and Employment.

Minister for Business and Employment (Hon. N F Costa): Mr Speaker, I have the honour to move the motion standing in my name, which reads as follows:

That this House approve by resolution, pursuant to section 46 of the Social Security (Open Long-Term Benefits Scheme) Act 1997, the making of the Social Security (Open Long-Term Benefits Scheme) (Amendment of Benefits) (No. 2) Order 2016.

25 Mr Speaker, this Order seeks to amend the Social Security (Open Long-Term Benefits Scheme) Act 1997 by increasing the rate of old age pensions and survivor's benefit by 0.4% with effect from 1st August 2016, which represents the annual increase for this year.

Accordingly, the full monthly pension for a single person will rise from £438.78 to £440.54, and for a couple from £658.22 to £660.85.

30

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

I will put the motion in the terms moved by the Hon. the Minister for Business and Employment. Those in favour? (**Members:** Aye.) Those against? Carried.

BILLS

FIRST AND SECOND READING

**Magistrates' Poor Fund (Repeal) Bill 2016 –
First Reading approved**

Clerk: Bills – First and Second Reading.

35 A Bill for an Act to repeal the Magistrates' Poor Fund Act and make provisions for the dissolution of the charitable trust constituted by such Act.

The Hon. the Chief Minister.

40 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to move that a Bill for an Act to repeal the Magistrates' Poor Fund Act and make provision for the dissolution of the charitable trust constituted by such Act be now read a first time.

Mr Speaker: I now propose that an Act to repeal the Magistrates' Poor Fund Act and make provision for the dissolution of the charitable trust constituted by such Act, be read a first time.

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

Clerk: The Magistrates Poor Fund (Repeal) Act 2016.

**Magistrates' Poor Fund (Repeal) Bill 2016 –
Second Reading approved**

50 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to move that the Bill for the Magistrates' Poor Fund Repeal Act now be read a second time.

This Bill repeals the Magistrates' Poor Fund Act and transfers the funding held by that fund to the John Mackintosh Trust, which is the sole contributor to the fund in any event.

55 This Bill is presented to Parliament by the Government, as the members of the board of trustees of the Magistrates' Poor Fund are of the opinion that the fund has outlived its original purpose and that the current costs of its administration outweigh the benefits that the fund is able to provide as a separate legal entity.

As the fund is a statutory body, this change may only be effected by means of an Act of Parliament. I therefore commend the Bill to the House.

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

I now put the question, which is that a Bill for an Act to repeal the Magistrates' Poor Fund Act and make provision for the dissolution of the charitable trust constituted by such Act be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

65

Clerk: The Magistrates' Poor Fund (Repeal) Act 2016.

**Magistrates' Poor Fund (Repeal) Bill 2016 –
Committee Stage and Third Reading to be taken at this sitting**

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

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

**Mental Health Bill 2016 –
First Reading approved**

Clerk: A Bill for an Act to make provision with respect to the reception, care and treatment of mentally disordered persons; the management of the personal welfare, property and affairs of persons who lack capacity; and for connected purposes.

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

Minister for Health, the Environment, Energy and Climate Change (Dr J E Cortes): Mr Speaker, I have the honour to move that a Bill for an Act to make provision with respect to the reception, care and treatment of mentally disordered persons, the management of the personal welfare, property and affairs of persons who lack capacity, and for connected purposes, be read a first time.

80

Mr Speaker, I sent a letter to you dated 12th September and I will be moving an amendment to a clause at Committee Stage.

85 **Mr Speaker:** I now propose the question, which is that a Bill for an Act to make provision with respect to the reception, care and treatment of mentally disordered persons, the management of the personal welfare, property and affairs of persons who lack capacity, and for connected purposes, be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Mental Health Act 2016.

**Mental Health Bill 2016 –
Second Reading approved**

90 **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 be now read a second time.

In apologising for the length of my contribution, I justify it by saying that this is a landmark Bill which will change the direction of the way we treat fellow citizens with mental health problems in several fundamental ways.

95 The Bill is primarily concerned with the circumstances in which a person with a mental disorder can be detained for treatment for that disorder. It sets out the processes which must be followed and the safeguards for patients to ensure that they are not inappropriately detained or treated. The Bill ensures that people with serious mental disorders which threaten their health or safety, or the safety of the public, can be treated where it is necessary to prevent them from harming themselves or others.

100 The Bill is divided into 10 parts, which I will deal with in turn.

Part 1 of the Bill contains two important new definitions, which are ‘mental disorder’ and ‘approved clinicians’. Mental disorder is defined in the Bill as any disorder or disability of the mind. This single definition applies throughout the Act and it abolishes the four categories of mental disorder currently found in the old Mental Health Act, which are, namely, mental illness, 105 arrested or incomplete development of mind, psychopathic disorder, and any other disorder or disability of the mind. The single definition of mental disorder will also mean that a patient’s risk and needs should determine when and what action is taken and not the label that happens to be applied to a person’s mental disorder. Furthermore, clause 1(7) now has a single exclusion, stating that dependence on alcohol or drugs is not considered to be a disorder or disability of the mind for the purposes of the definition of mental disorder. Furthermore, you will also find a 110 new definition of the responsible medical officer, which is that of the approved or responsible clinician. This change potentially opens up the role of the responsible medical officer to a wider range of professionals, which has until now been restricted to psychiatrists. The approved or responsible clinician need not be restricted to medical practitioners and may be extended to practitioners from other professions, such as nursing, psychology, occupational therapy and social work. 115

Moving on to Part 2 of the Bill, one of the fundamental powers of the Act is the admission for treatment of a person suffering from mental disorder. While being a fundamental power, it is also a significant incursion into private life and liberty. The criteria for admission contained in 120 clause 3 of the Bill have been revised and tightened so that, in addition to what are the current criteria, the application for detention now has to prove that the treatment can only be provided if the patient is detained, so that if it can be given by an informal admission that option should be exercised instead. Furthermore, there is the additional test of appropriate medical treatment, which emphasises the fundamental principle that detention must always be for a clinical 125 purpose. It is designed to ensure that no one will be brought or kept under compulsion unless suitable treatment is available. Admission for treatment is for up to six months in the first place and can be renewed periodically thereafter. An application for treatment under this clause can be made by the patient’s nearest relative or an approved mental health professional. Clause 5

130 deals with applications for compulsory detention under clauses 2 or 3 to be made in respect of
patients who are already receiving treatment in hospital as informal patients. It contains a
necessary holding power to the nurse in charge of the ward to detain an informal patient for up
to six hours if it is considered that the patient might leave before there is time to complete an
application under clause 2 or 3. This part also deals with a new power of guardianship. Clauses 7
135 to 10 of the Bill deal with guardianship. The Bill introduces a new alternative to applying for
admission to hospital for treatment, and that is the power to make a guardianship application.
The application can be made by the patient's nearest relative or an approved mental health
professional, and the person named as guardian may be the Care Agency or another person
approved by the Care Agency. Guardianship is appropriate for a small number of mentally
140 disordered people who do not require treatment in hospital either formally or informally but
who nevertheless need close supervision and some control in the community as a consequence
of their mental disorder. In the UK, where guardianship has existed for some time, it is invoked
predominantly for mentally ill people who are over 65 years of age.

Mr Speaker, please note that, as commented in my letter to you of 12th September, I will be
moving an amendment to clause 14 of the Bill at Committee Stage following discussion with the
145 Care Agency. Clause 14 specifically places a duty on the approved mental health professional to
make an application for admission to hospital or guardianship. Since guardianship falls within
the ambit of the Care Agency, the amendment provides that, where necessary, the Care Agency
shall prompt the approved mental health professional to make arrangements to consider the
patient's case on their behalf.

150 The Bill also introduces for the first time the power to make community treatment orders. At
present, most patients detained under the Mental Health Act are detained in hospital, but there
has been, for some time, a desire to bring more community-based mental health services. There
is scope for some patients to be treated under compulsory powers but to live in the community,
not in hospital. For suitable patients, the community treatment order meets the need for a
155 framework to their treatment and safe management in the community. To be eligible for a
community treatment order, patients must have had an initial period of detention and
treatment in hospital. This means their medical condition and treatment would be well
established before they go into the community. It would be for the clinicians, working closely
with the approved mental health professionals, to determine if a patient meets the necessary
160 criteria to be put into a community treatment order. Under community treatment orders,
patients can be recalled to hospital for treatment if they need to be. Clause 18 sets out the
conditions to which a community treatment patient will be subject and clause 21 sets out when
the power to recall can be exercised. A patient will be admitted to hospital in pursuance of an
application for admission for treatment and will only now be detained for an initial period of six
165 months. The period can be renewed for another six months and thereafter for a period of one
year at a time. Currently, the initial period of detention is for one year with renewal for another
year and two years thereafter. The new periods of detention allow patients to be examined
more often before detention is renewed. The test for renewing detention is also more stringent
now, in line with the renewed criteria for admission to treatment.

170 Another significant change introduced by this Bill is Part 3, regarding consent to treatment.
There are currently no provisions in the Mental Health Act on whether a detained patient can be
treated without his consent. The purpose of this part is to clarify the extent to which treatment
for mental disorder can be imposed on detained patients in hospitals. It sets out three main
categories of treatment, where, due to the seriousness of the treatment, consent and/or a
175 second independent opinion must be obtained before treatment can be provided. Clause 45
deals with the surgical operation for destroying brain tissue or for destroying the functioning of
brain tissue, and any other treatment specified by regulations. This form of treatment is
extremely rare and the most serious form of treatment. Clause 46 deals with the administration
of medicine to an in-patient in hospital where three months or more have elapsed since he was
180 first administered medicine during the current period of detention. Clause 47 deals with

185 electroconvulsive therapy and medicine administered as part of that therapy. All these ensure
strict criteria under clinical direction. Where a patient needs to be treated urgently in order to
save his life or prevent a serious deterioration of his condition, clause 51 allows the safeguards
provided by clauses 45, 46 and 47 to be overridden, but only in the very limited circumstances
prescribed. In respect of any other form of treatment not being a form of treatment to which
185 clauses 45, 46 or 47 apply, clause 53 sets out how and when such treatment can be
administered and the consent required.

Part 4 of the Bill regulates the treatment of a community patient. It is the equivalent of Part 3
on consent to treatment, but for community patients. Such patients can only be given treatment
190 if they consent, or, if they lack the capacity to consent, do not actively object. Treatment can
only be given in emergencies to a mentally incapacitated patient who resists it. This part
therefore provides authority to treat a community patient, sets out the conditions that need to
be satisfied before relevant treatment can be provided to a community patient who lacks
capacity to consent, and the criteria that must be satisfied before relevant treatment can be
195 given in an emergency.

Part 5 of the Bill deals mainly with the management of property and affairs of patients and
the personal welfare of the patient. The core jurisdiction of the Court of Protection has been
expanded to include the power to make substitute decisions or to appoint a deputy, if this is in
their best interest, for persons lacking the required mental capacity to make decisions for
200 themselves about their personal welfare. Formerly, it was limited to just their property and
affairs. This part applies in relation to a person who lacks capacity as defined in clauses 86 to 89.
Clause 65 contains the core jurisdiction of the Court of Protection. It gives the court power to
make decisions for persons lacking the required mental capacity to make decisions for
themselves about either their personal welfare or their property and affairs, or to appoint a
205 deputy to do so if this is in their best interest. There are, however, restrictions as to what a
deputy can and cannot do under clause 70. Clause 66 gives the court the power to make
declarations as to whether a person has mental capacity and whether an Act or proposed Act
was or would be lawful. Clauses 67 and 68 set out a non-exhaustive but indicative list of matters,
relating to the personal welfare and property of a person who lacks capacity, that come within
210 the jurisdiction of the court. The powers of the court to make an order in relation to the
personal welfare of a person who lacks capacity includes, but is not limited to, matters such as
deciding where a person who lacks the capacity is to live, making an order prohibiting a person
from having contact with that person, giving or refusing consent for treatment, and directing
that a different person take over the responsibility for that person's healthcare. Finally clause 78
215 sets out a list of matters that are excluded for the purposes of this part – that is decisions that
cannot be made on behalf of a person, such as consenting to a marriage or civil partnership.

Part 6 of the Bill identifies the occasions on which a patient or his nearest relative may make
an application to the Mental Health Review Tribunal. It also represents a fundamental change in
the mental health regime, in particular as regards safeguarding the rights of patients, as the
220 circumstances in which a patient can apply to the tribunal are increased. There is also now a
duty on the authority to refer patients to the tribunal where they have not exercised their right
to apply to the tribunal and the period of six months since their first admission to hospital has
expired. With regard to patients whose authority for detention has been renewed, there is a
duty to refer patients if three years have passed and the tribunal has not reviewed the case in
225 that time. This part also makes provision for the first time for applications to the tribunal
concerning restricted patients and the powers of the tribunals with regard to these types of
patients in the light with the European Convention on Human Rights requirements. The tribunal
has the power to discharge patients from hospital, guardianship or community treatment
orders. Under clause 96, the tribunal must direct the discharge of a patient if there are not
230 satisfied as to any one or more of the criteria as set out in the various sub-clauses. This is a
significant change from the current test, whereby the tribunal *may* direct that the patient be
discharged if they are satisfied that he is not suffering from mental illness, etc. The burden is

235 currently placed on the patient to prove that the criteria justifying his detention in hospital for
treatment no longer exists. UK case law held that this was incompatible with Articles 5(1) and
5(4) of the European Convention on Human Rights, since these Articles require the tribunal to be
positively satisfied that all the criteria justifying the patient's detention continue to exist before
refusing to order a patient's discharge. As a result, the law in England and Wales was amended
and the test there is the same as in this Bill, which is that the tribunal shall direct the discharge if
not satisfied that the criteria for detention in hospital continue to exist.

240 Part 7 of the Bill deals with the various functions and powers of the approved mental health
professional, the Care Agency and the Minister. Clause 106 allows the Minister to issue a code of
practice for the guidance of practitioners, managers and the staff of the hospital. We are
currently finalising the code of practice and will be issuing it when the Act is brought into force.
Clause 107 deals with the approval of persons to act, for the purpose of the Bill, as approved
245 mental health professionals and approved clinicians.

Part 8 of the Bill sets out the offences under the Act, which are those of forging a document
or making a false statement, ill treatment of a patient, assisting patients to absent themselves
without leave and obstructing a person from performing his or her functions under the Act.

250 Part 9 replaces the current system of visitors as contained in sections 69 to 72 of the Mental
Health Act. It creates a Mental Health Board, which is an independent body whose role is to
satisfy itself as to the treatment of patients and to report any ill treatment or improper
detention, similar to the Prison Board and separate from the Mental Health Appeal Tribunal. The
board must meet at least once a month and each member must take it in turn to visit the
hospital and hear requests and complaints made by patients. It also has to provide an annual
255 report to the Minister of its activities and findings. It shall consist of at least five members and
must include a lawyer and a doctor. The functions, as outlined in clause 115, include satisfying
themselves as to the state of the hospital and treatment of patients; making enquiries into the
care, treatment and detention in hospital of a patient; and bringing matters to the attention of
the Minister. The board also has the power, under clause 115, to refer a patient to the tribunal
260 and require the production of any documents relating to the detention or treatment of a
patient.

Part 10 is the final part of the Bill, which deals with various matters, including imposing a duty
on the authority under the Act to give information to detained patients, community patients and
the nearest relatives of patients. This information includes the rights of the applicant to apply to
265 the tribunal, the effect of certain provisions of the Act, and of providing the nearest relative with
a copy of such information.

Mr Speaker, this Bill has been the result of many hours of hard work by a committee of
professionals, mainly from the GHA, with Care Agency involvement and discussion also with the
Ministry for Justice. I have had the pleasure to chair that committee. I also have to acknowledge
270 the work of the Gibraltar Law Officers, whose work too has shown extraordinary dedication and
incredible insight to the issues relating to mental health. I thank them all for this work, and all in
Gibraltar who are affected by mental health, which is probably all of us, are indebted to them.

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

275 **Mr Speaker:** Before I put the question, does any other hon. Member wish to speak on the
general principles and merits of this Bill? The Hon. Roy Clinton.

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

280 This Bill which comes before us today was the subject of a Command Paper issued on
19th February 2015, and I for one congratulate the Minister for bringing it onto the agenda
today. It is an important piece of legislation, without doubt, which will affect the most
vulnerable in our society.

Yesterday, I had the opportunity to meet, with my colleague the Hon. Mr Llamas, members of
Clubhouse, and of course they deal, at the front line, with many individuals who are affected one

285 way or another by mental health issues. This legislation will go a long way to helping, and is
obviously a modernising piece of legislation. One thing I noticed the Minister mention is that
there is a code of practice in development for, I imagine, the health professionals and people in
agencies, etc. I would make perhaps a suggestion, from our conversation with Clubhouse, not to
forget the NGOs and the voluntary organisation. Also, I note that the code of practice is going to
290 come in or be finalised more or less at the same time when the Bill comes into force. Again,
purely a suggestion, but I think it might be helpful if there was some thought given to perhaps a
training session, not just internally but obviously for NGOs, in terms of the practical effect of
what is a very complex piece of legislation, as we can all see, running to 206 pages, and I think
they will probably be well received.

295 Also, a final thought on this is that perhaps, given that we are dealing with the most
vulnerable in our society – and I know, for example, for things like the Data Protection Act we
have produced little leaflets for people to read and understand what their rights are under Data
Protection – whether the Government will give some consideration to some kind of information
booklet – I am sure they would in due course – in advance of the legislation coming into force, so
300 that people will have access in a very simple way, without perhaps having to seek the aid of a
lawyer, to understand what their rights are in a simple booklet.

Again, I thank the Minister. I think on this side of the House we will not have a problem with
this Bill. Obviously, we have not had sight of the feedback you had on the Command Paper; but,
as I have discussed with the Minister, we obviously take it in good faith that he has taken on
305 board any concerns that any body that made representations had in the drafting of this Bill.

I hope the Minister will take that as just some constructive suggestions that he may or may
not take on board. Overall, I think this is an important piece of legislation which will protect the
most vulnerable in our society.

Thank you, Mr Speaker.

310

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

315 **Hon. Ms M D Hassan Nahon:** Mr Speaker, can I ask the hon. Gentleman what he said at the
beginning, regarding drugs and the connection with the Mental Health Act with drugs, please?

Mr Speaker: I call on the mover to reply.

320 **Hon. Dr J E Cortes:** Mr Speaker, I would like to thank the Hon. Mr Clinton for supporting the
Bill, which has been a long time coming. I am very pleased to have been able to have brought it
here, because I know that some of the mental health professionals, before this Government
came into office, were struggling with convincing the Government at the time regarding certain
provisions. So I am very pleased that the ‘official Opposition’, to coin the phrase that the Chief
Minister used this morning, supports it.

325 In answer, first of all, to the hon. Lady, what this is saying is that being under the influence of
drugs and alcohol is not considered a mental disorder. That is the distinction. There may be
similarities in symptoms and behaviour, but is not de facto a mental illness. That is the
difference that is being made.

330 If I may just answer some of the points that the hon. Member made, which I take as
constructive, some of them are, in fact, things that we are already envisaging and I will explain.
The Command Paper had considerable interest and we had responses from some of the NGOs
that the hon. Member has mentioned, and these were taken on board. There was also a
delegation from the Council of Europe, who coincidentally came to Gibraltar just as we were
preparing the Bill, and some of their recommendations have also been taken on board; and
335 some retired psychiatrists, including Dr Cecil Montegriffo, who was for many years *the*
psychiatrist for Gibraltar, also made his contribution, as did members of the Mental Health

Appeals Tribunal. So the feedback was good, it was all positive, and most of the matters were incorporated in the drafts.

340 Regarding the code of practice, this is now being circulated in near final draft form. There are a number of meetings being held with the mental health team that prepared the Act, and I find it a very useful way of interpreting all these hundreds of pages so that practitioners can use it. I explained that once that is approved there will be a period of induction, which has already been prepared, of mental health professionals and there will be sharing with those charities – he mentioned Clubhouse, there is also Mental Health Society and Psychological Support Group who
345 work in this – so that they are also aware of the benefits that will be forthcoming from it. So, very much so.

The code of practice itself is probably too complex a document to give out as a leaflet – although it will not be hidden, it will be publicly available – but the point of having a leaflet which will explain some of the basic tenets of the code of practice I think is a worthwhile
350 suggestion, which I will certainly take up.

I think, Mr Speaker, that that answers all the points that have been made and I genuinely welcome what I feel is widespread support from both sides of the House for something which will no doubt benefit all those of us who at some time in our lives will have ourselves, family or
355 friends affected by mental health issues.

A Member: Hear, hear. (*Banging on desks*)

Mr Speaker: I now put the question, which is that a Bill for an Act to make provision with respect of the reception, care and treatment of mentally disordered persons, the management
360 of the personal welfare, property and affairs of persons who lack capacity, and for connected purposes, be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Mental Health Act 2016.

**Mental Health Bill 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):
365 Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

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

**Animals and Birds (Amendment) (No.2) Bill 2016 –
First Reading approved**

370 **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.

Minister for Health, the Environment, Energy and Climate Change (Hon. Dr J E Cortes):
375 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.

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

380 **Clerk:** The Animals and Birds (Amendment) (No. 2) Act 2016.

**Animals and Birds (Amendment) (No.2) Bill 2016 –
Second Reading approved**

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.

In March of this year the Government announced that we would be bringing in legislation making dog DNA profiling compulsory in order to combat dog fouling. This Bill, together with the amendments that will subsequently be made to the Animals and Birds Rules 2004, will allow us to carry this out.

The Environmental Agency has been working in schools together with other parts of the public service, including the Royal Gibraltar Police, on increasing awareness of the dangers of dog fouling and has been conducting joint patrols with the RGP in dog fouling hot spots. CCTV cameras have also been deployed to deal with this problem. These measures have sometimes resulted in less dog fouling in the areas where such patrols or cameras have been introduced, but irresponsible pet owners then just move elsewhere. DNA profiling will allow us to follow them and allow us to overcome this problem by letting us identify the registered owner of the dog responsible for the dog fouling.

395 Clause 2(2) of the Bill updates an out-of-date reference to the Order designating the Gibraltar Nature Reserve which was recently published.

Clause 2(3) increases the penalty to level 3 if there is a contravention of subsection (1) – that is the dog is not registered or does not hold a valid and subsisting licence, or has not been vaccinated within the last 12 months.

400 Clause 2(4) makes it compulsory, prior to registration or licensing, for a dog to have a blood sample taken by a competent person. This will enable us to build up a database of all dogs registered and licensed, and such a database is fundamental to the operation of the scheme. Since all licences must be renewed yearly by 1st January, we should have a DNA record of all dogs registered and licensed soon after that date next year. It is against this database that a sample of dog faeces collected by the authorised officers will be matched against the registered owner of a dog. The offence of failing to pick up after your dog is contained in rule 12 of the Animals and Birds Rules 2004. Amendments are to be made to that rule so that a first offence will attract a penalty at level 3 and any subsequent offence will make the offender liable to a fine up to level 4. However, if a match is made against a registered owner, he or she will be issued with a fixed penalty notice of £250 in the first instance. Failure to pay may result in proceedings being instituted.

405 Clause 2(5) sets out who is qualified to take a blood sample and, once obtained, the sample shall be entered in the dog register, which is the database that holds the information relating to a dog, which contains the name and address of the owner or keeper of the dog.

415 Clause 2(6) contains some housekeeping provisions.

Clause 2(7) amends the schedule which contains the list of persons who are authorised officers for the purposes of the Act to include officers of the Department of the Environment. This will allow environmental protection officers to enforce the provisions of the Act.

Finally, Mr Speaker, I commend this Bill to the House.

420

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

425 **Hon. L F Llamas:** Mr Speaker, first I must thank the Hon. Minister Cortes for sending me a copy of the draft Bill before actually gazetting it, in order to ensure that any recommendations that I wanted to include or recommend to him were dealt with before we published the actual draft.

430 Earlier this year, the Government also gazetted the increase of dog registration and licence fees by 300% and 400% respectively, coming into effect as from 1st November 2016. We understand that this has been done in anticipation of the DNA profiling policy being brought to the House today. In the amendment today it is welcoming to see the summary conviction level fine for dog owners who keep unlicensed dogs being increased from level 2 to level 3 of the standard scale. Nevertheless, it would be equally justifiable to increase in tandem the levels of fines imposed to those successfully convicted of dog fouling on our streets, which currently stands at level 1 on first conviction and level 2 or three months in imprisonment for second and subsequent convictions. This side of the House supports initiatives and policies to curtail antisocial behaviour. Other jurisdictions which have implemented this policy have reported that this behaviour has decreased by the mere fact that the policy exists. But, above all, we would expect to see an offenders-led policy and moneys received in relation to fines being brought into the initial cost of DNA profiling, thus allowing moneys paid by the responsible dog owners to be invested back into the dog-owning community once the DNA profiling has been satisfied.

440 Thank you.

Mr Speaker: Does any other hon. Member wish to speak on this Bill?

I call the mover to reply.

445

Hon. Dr J E Cortes: Mr Speaker, I thank the Hon. Mr Llamas for supporting this Bill. I note his desire to see fines increase further. We have discussed this before at Question Time. I am not rejecting the suggestion, and what I said at the time is that I think we are going to see how this works to see if there is a need to do so; but that is still there and has not been discarded.

450

I would like to say that certainly the increase in licence fees has been carried out just to give us a few months lead in for newly registered dogs before we implement the profiling on 1st January; and, as I think I have also said before, the new licence fees will, in fact, cover all the costs that we expect to have in relation to the DNA testing. So it will not be a burden on the general taxpayer but on dog owners, and we must consider that.

455

As a former dog owner – and not ‘former’ because I do not like dogs any more, but former because my time does not allow me to look after them properly and it would be irresponsible to just have them locked away – I feel that it is important that we should assume responsibility for our actions. Therefore, I think that this will not only be welcomed by both sides of this House but also by the community at large. Even the irresponsible dog owners who are currently not perhaps behaving as they should will ultimately welcome it, because, after all, they too walk our streets and they too will benefit from it becoming free from dog fouling.

460

I think, Mr Speaker, I have covered all the points, and I have nothing further to add. (*Banging on desks*)

465

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

Clerk: The Animals and Birds (Amendment) (No. 2) Act 2016.

**Animals and Birds (Amendment) (No.2) Bill 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):
470 Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

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

**Employment (Amendment) Bill 2016 –
First Reading approved**

475 **Clerk:** We move now to Bill number 8 on the Order Paper. This is a Bill for an Act to amend the Employment Act.
The Hon. the Minister for Business and Employment.

Minister for Business and Employment (Hon. N F Costa): Mr Speaker, I have the honour to
480 move that a Bill for an Act to amend the Employment Act be read a first time.

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

485 **Clerk:** The Employment Amendment Act 2016.

**Employment (Amendment) Bill 2016 –
Second Reading approved**

Minister for Business and Employment (Hon. N F Costa): Mr Speaker, I have the honour to move that the Bill be now read a second time.

The Bill amends the Employment Act by introducing a new statutory framework for the industrial tribunal that will now be known as the Employment Tribunal.

490 The full extent of the reform can only be appreciated by review of the supporting Rules, Regulations and Order that supplement these enabling amendments to the Employment Act.

As the House may be aware, copies of the final drafts of the supporting legislation were circulated to the various stakeholders that were extensively consulted throughout all drafting stages of the reform process. I would like to take this opportunity, therefore, to thank the Bar Council, in particular Mr Kenneth Navas and Mr Andrew Cardona, who have made a tremendous
495 contribution in assisting us to reach a legislative architecture that is fair and that works for employers and employees. I want to place on the record as well my thanks to Gabrielle O'Hagan of Triay Stagnetto Neish, the Gibraltar Chamber of Commerce, the Gibraltar Federation of Small Businesses, Unite the Union, the Gibraltar General and Clerical Association and the Gibraltar
500 Teachers Union, for their valuable contributions. I also wish to thank the Hon. the Chief Justice for his views and advice and for unstintingly giving of his time to discuss the various aspects of our wide-ranging and substantive reforms.

Mr Speaker, in debating the general principles and merits of the Bill, I highlight the main clauses that will usher this very important review of the administration of justice in relation to
505 employment matters. The amendment to section 12 of the Employment Act in essence widens

the enabling provisions of the Act to create the supporting Rules, Regulations and Order. There are consequential amendments that have been made to sections 13 and 14 of the Act so that references to 'Industrial Tribunal' are replaced with 'Employment Tribunal'.

510 Clauses 14A and 14B introduce new terminology for originating applications, now known as claim forms, and for complaints, which will be known as claims.

515 Clause 14C introduces a new mechanism for the appointment of chairpersons. This has been substantively revised. Chairpersons will still be appointed with the Minister with responsibility for employment acting on the advice of the Judicial Services Commission (JSC). The JSC will take into account a prospective chairperson's relevant experience, qualifications and background to serve as a chairperson to the Employment Tribunal. Once elected, the Minister with responsibility for Employment will formalise their appointments by notice in the *Gazette*, and thereafter it is the secretary to the Employment Tribunal that will allocate a chairperson for each case from the panel of appointed chairpersons available to preside over cases. This now means that the Minister will no longer select chairpersons to preside over a specific case and codifies the practice instituted to ensure allocation of cases by the Industrial Tribunal secretary by strict rota.

520 Clause 14F is the enabling provision that allows the Employment Tribunal (Remuneration Regulations) 2016 to be created.

525 Clause 14G affirms that litigants in person may appear before an Employment Tribunal themselves, or that they may choose to have a lawyer, a family member or even a friend to make representations to the Employment Tribunal on their behalf.

Clause 71 has been amended so that the basic and compensatory awards are prescribed by regulation, namely the Employment Tribunal (Calculation of Compensation Regulations) 2016.

Clause 91 repeals the Industrial Tribunal (Calculation of Compensation Regulations) 1992.

530 Clause 92 prescribes the savings and transitional provisions that apply to ongoing disputes, which will continue to be governed under the jurisdiction of the previous rules and regulations.

Mr Speaker, having set out the main principles of the Bill, I turn to the subsidiary legislation that forms an integral part of the Government's reforms.

535 The Employment Tribunal (Constitution and Procedure) Rules 2016 set out how an Employment Tribunal operates and how a claim is managed through the process. The rules implement changes to procedures in relation to costs; prescribed forms; determinations without a hearing; preliminary hearings; final hearings; claims; conciliation by mediators; dismissal and rejection of a claim or response; case management orders, including striking out claims and unless orders; withdrawing claims; decisions and reasons. Further, new rules have been introduced for the evidence to be given by witnesses in person, as well as timetabling, non-attendance and privacy and restrictions on disclosure. The rules empower chairpersons to issue cost orders, preparation time orders and waste of cost orders. I am confident that the rules will make the operation and decision making of the tribunal much more efficient and effective by ensuring consistency and fairness in the decisions of the Employment Tribunal. Furthermore, the rules have been drafted in plain English to assist litigants in person.

545 The Employment Tribunal (Forms) Regulations prescribe the claim form and response form that a party in dispute needs to file with the Employment Tribunal prior to the dispute being processed. The forms will be accompanied by an extensive set of guidelines for employees and employers and will be made available at the Employment Tribunal offices and online as soon as the rules come into effect. The guidance will also be placed on the website.

555 The Employment Tribunal (Calculation of Compensation) Regulations prescribe the method of calculation and calculating the awards that may be made by the Employment Tribunal. The regulations retain the basic and compensatory awards but there is greater guidance available to chairpersons on how to calculate these awards. The feature allows the parties in dispute to accurately assess the financial exposure or potential awards.

The Employment Tribunal (Remuneration) Regulations prescribe the amounts to be paid to chairpersons of an Employment Tribunal for sessions and judgments and the amount to be paid to mediators for hosting a mediation session between the parties in dispute.

560 Finally, the Employment Tribunal (Extension of Jurisdiction) Order enables an employee to bring a claim for damages for breach of the contract of employment or for a sum due under the contract before an Employment Tribunal if the claim arises or is outstanding on the termination of their employment.

565 Mr Speaker, the House will be pleased that the Government will not introduce fees to commence or defend proceedings. Such fees are, in the Government's view, an unreasonable and unnecessary tax on justice.

570 Further, the Ministry of Employment, in partnership with the University of Gibraltar, will offer a tailor-made course for lawyers who may be eligible for selection as chairpersons of the tribunal. This is the first time that training for Employment Tribunal chairpersons will be offered in Gibraltar. This will provide chairpersons who preside over employment tribunals with an opportunity to develop the knowledge and understanding of the new laws, procedures and rules. The training will include topics on managing and solving the problems commonly encountered in assessing evidence, structuring decisions, formulating reasons, and, of course, importantly, addressing litigants who appear in person.

575 This root and branch legislative review was commenced immediately upon my appointment as Employment Minister. I consider myself to have been fortunate in that appointment, given that in my previous inclination as an employment lawyer I had the benefit of appearing before industrial tribunals as counsel. In my view, this first-hand experience served me in good stead to lead and oversee the reform – a reform that, like with everything else in the administration of the affairs of our great nation, I could not, of course, have achieved alone.

580 Although I have already thanked our stakeholders for their views and assistance, I wish to highlight that their respective contributions have produced what I consider to be a working balance between the rights of employees and employers; a balance that enables the Employment Tribunal to deal with cases fairly and justly, which is the overriding objective that underpins the Employment Tribunal Rules.

585 All in all, and in view of the Government, these much needed reforms will provide a clear adjudication process to the benefit of the parties before the tribunal. The wholesale review also modernises the legal process and provides chairpersons with robust and efficient case management powers. In accordance with our electoral pledge, compulsory mediation is introduced at no cost to the parties in dispute, with the hope that some parties will settle their disputes without the need for a full hearing.

590 I also wish to thank my Ministry's legal counsel, here present, John Paul Fa, for his excellent work in preparing the different pieces of legislation. I am proud to have led in this extensive reform which will make access to justice easier, expeditious and fairer.

595 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? The Hon. Elliott Phillips.

600 **Hon. E J Phillips:** Mr Speaker, this Bill will be met with the support of this side of the House and I too would like to congratulate the team who have been working with the Minister in relation to this matter, and Mr Fa, personally. It is clearly something that needed to be done and is being done.

605 In relation to the wider point that we would like to make in respect of access to justice that was made by the Minister, obviously our views are that there should be a combined courts and tribunal service under one head, but I just simply make that point in relation to a combined courts and tribunal service. But this Bill will receive and the regulations thereto will receive support from this side of the House.

Mr Speaker: Does the hon mover wish to reply?

610 **Hon. D A Feetham:** Mr Speaker, may I?

Mr Speaker: Sorry, yes, fine.

615 **Hon. D A Feetham:** Mr Speaker, just to make the point that, yes, as my hon. Friend Mr Phillips has said, it will be supported from this side of the House, and I congratulate as well the Hon. the Minister for what is a very good piece of legislation. But in terms of our policy, something that I would hope the hon. Gentleman does consider perhaps in due course is the establishment of a permanent chairman of the Industrial Tribunal. That is something that would improve the flow and the efficiency of the system and it is something that I commend, certainly
620 we commend on this side of the House, to the hon. Gentleman.

Of course, another policy that we advocate, and again we commend in the context of these reforms, is that there ought to be one area, we say – in fact, ideally it would be the central police station, for example – one building where you could house not only the Employment Tribunal but also all the other tribunals that we have in Gibraltar, so that they can all come within one
625 umbrella and effectively one backroom administration. We think that would certainly improve the functioning of all those tribunals.

But apart from that, commending what are our longstanding policies in relation to this and asking the hon. Gentleman to consider those, we certainly support this Bill and will be voting in favour.

630 **Mr Speaker:** The Hon. Gilbert Licudi.

Minister for Education and Justice & International Exchange of Information (Hon. G H Licudi): Mr Speaker, I just rise to deal not with the general principles of the Bill itself but with a
635 more general point on courts and tribunal service and bringing all under one umbrella. This was, in fact, the subject of a recent question that was asked in this House by Mr Phillips and in which I gave the Government's view on that. And for the reasons given by me at the time, which are clearly reflected already in *Hansard*, I would just repeat that the Government is not currently minded to go down the route of a general courts and tribunal service or having all the tribunals
640 under the same administrative roof. But I did give my reasons at the time and it will be recorded in *Hansard*. Given that the point has been raised again, I thought it was important to restate the Government's position.

Minister for Economic Development, Telecommunications & the GSB (Hon. J J Bossano): Mr
645 Speaker, I am astonished at the interpretation of the performance of the GSD Government by the hon. Member who now leads them, because in their 15 years the only thing they did about the law was to change it against the interest of the workers by putting a cap on the amount that could be given in the basic compensation, which we were committed to removing, and the only thing they did next, when we removed it, was to express fears which were not justified and have
650 not had the effect that they thought it would have in ruining all the businesses in Gibraltar. So, if they had great interest in modernising the system it was a very tightly held secret by the GSD Government; and therefore, if they had a curtain of secrecy it was almost an iron curtain.
(Laughter)

655 **Hon. N F Costa:** Mr Speaker, in the first place, to thank the Hon. the Leader of the Opposition and the Hon. Mr Phillips for pointing out that they will be supporting the Bill. I am grateful to them.

In respect of the point that the Hon. the Leader of the Opposition raises as to having a full-time chairperson, when we first started looking at this with a blank canvas – and of course the

660 Minister for Employment previously, Mr Bossano, and I had held discussions on it – we did
approach the project with a completely open mind. After several discussions, and even after
having discussed the matter with the Hon. the Chief Justice, the conclusion was arrived at that
the current number of cases presently before the tribunal do not warrant a full-time
665 chairperson. The powers that are provided for in the Constitution Rules do specifically cater for
deadlines in delivering judgments, by when parties need to submit statements and skeleton
arguments and so on, and therefore we do not envisage that there would be any delay of
backlog – as used to happen, or as does currently happen, because of the antiquated rules we
have had since, I believe, 1972, where there were no deadlines by which a Chairperson had to
submit the judgment or by which written decisions had to be given. These are now firmly
670 stipulated, so a case would have to be finished by a certain point, definitely. So there is no
chance of a case being prolonged indefinitely. In addition, because we wanted to make sure that
a person who truly did not have the means to appear before a tribunal with a lawyer, or did not
feel the need to do so because in his or her mind the issue was quite clear cut ... we bend
backwards to enable that to happen, so the rules specifically empower a chairperson to be able
675 to deal with a case by way of oral evidence, if it is that simple. The parties can be called in, they
can give evidence and then they can be cross-examined thereafter, which, as I understand it
from speaking with the Hon. Minister Bossano and indeed the Hon. Minister for Justice, used to
be the case, where employment tribunals were prior seen as, if not entirely complicated, easier
to deal with, and therefore you could call people in, have evidence in chief being given, then
680 lawyers being able to cross examine. That is specifically catered for, so that in simple cases you
can do that without the need for skeleton arguments, disclosures, witness statements and all
the panoply of documents that we are used to dealing with in the Supreme Court but may not
necessarily be appropriate in an industrial tribunal.

But, sorry, to answer the issue raised by the hon. Gentleman, on wide consultation with the
685 Hon. Minister Bossano, with the Hon. the Chief Justice and with the Bar Council, all the
stakeholders who have a real stake in the proper functioning of this process were all of the view
that a permanent chairperson, certainly at this point in time and given the provisions of the
current regulations that should make delays a thing of the past ... did not feel that a permanent
Chairperson was necessary.

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Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Employment
Act be read a second time.

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

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Clerk: The Employment Amendment Act 2016.

**Employment (Amendment) Bill 2016 –
Committee Stage and Third Reading to be taken at this sitting**

Minister for Business and Employment (Hon. N F Costa): 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.

700

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

**Traffic (Amendment) Bill 2016 –
First Reading approved**

Clerk: We now move to Bill 10 on the Order Paper. This is a Bill for an Act to amend the Traffic Act 2005 to make further provision in respect of certain driving offences: to further provide for the use of certain devices in the prosecution of offences; amend the provisions relating to fixed penalty notices; confer powers for the issue of penalty points; make further provision in relation to driving under the influence of drink or drugs, including preliminary testing; and for connected purposes.

The Hon. the Minister for Transport, Traffic and Technical Services.

Minister for Transport, Traffic and Technical Services (Hon. P J Balban): Mr Speaker, I have the honour to move that a Bill for an Act to amend the Traffic Act 2005 to make further provision in respect of certain driving offences, to further provide for the use of certain devices in the prosecution of offences, amend the provisions relating to fixed penalty notices, confer powers for the issue of penalty points, make further provision in relation to driving under the influence of drink or drugs, including preliminary testing, and for connected purposes be read a first time.

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Traffic Act 2005 to make further provision in respect of certain driving offences, to further provide for the use of certain devices in the prosecution of offences, amend the provisions relating to fixed penalty notices, confer powers for the issue of penalty points, make further provision in relation to driving under the influence of drink or drugs, including preliminary testing, and for connected purposes be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Traffic Amendment Act 2016.

**Traffic (Amendment) Bill 2016 –
Second Reading approved**

Minister for Transport, Traffic and Technical Services (Hon. P J Balban): Mr Speaker, I have the honour to move that the Bill be now read a second time.

This Bill amends the Traffic Act 2005 in order to achieve a number of purposes, which I will now set out.

In the first instance, the Bill will enable the prosecution of speeding through the use of fixed cameras, which have been installed at various locations throughout Gibraltar and which would be capable of being processed through the issue of fixed penalty notices. The speed cameras have been placed in consultation with the RGP, who are the experts on the ground when it comes to recognising speeding hotspots.

Another objective of the Bill is to amend the provisions for drinking under the influence, and this Bill introduces the power to conduct roadside testing of drivers who are suspected of being under the influence of alcohol or drugs.

The Bill also makes provision for new offences that have led to a fatality due to the driver's carelessness, including where the driver has been under the influence of alcohol or drugs.

Lastly, the Bill confirms the powers for the introduction of a penalty points regime through regulations.

With respect to the offence of speeding, section 44 has been recast in order to accommodate the possibility of being prosecuted on the basis of a prescribed device, namely a speed camera. Currently, handheld devices have been deployed by the RGP, but in principle any device may be

745 used as long as it has been prescribed. Additionally, sections 44A and 44B insert new provisions relating to the identity of the driver, and in particular the duty to provide information as to the identity of the driver, when requested to do so. Failure to provide such information is an offence in its own right.

750 In the case of fixed cameras, there is no certainty that the identity of the driver will be apparent. It is therefore necessary to have a mechanism whereby there is an element of compulsion in order to establish the facts. Section 44A makes provision for businesses that may have a fleet of vehicles and a number of drivers capable of driving these vehicles. Essentially, businesses and companies need to keep records of drivers who have been assigned specific vehicles, but if they cannot identify the driver and can prove to the court that it was reasonable
755 not to maintain records, they may avoid liability themselves as an entity.

Clause 7 effects an amendment to section 45 and clause 8 adds sections 45A and 45B and relate to instances where the use of a motor vehicle has resulted in death. The penalty for death caused by reckless or dangerous driving is increased from a maximum of five to 14 years imprisonment. Section 45A provides a separate offence where a person causes death through
760 careless or inconsiderate driving, and Section 45B where there has been careless driving and the driver was under the influence of alcohol or drugs.

Clause 10 inserts a new Part 3A and provides the Minister with powers to make regulations for the introduction and administration of a penalty points regime. The powers therein include the ability to designate what offences will attract penalty points and will allow for
765 disqualification of drivers who accumulate a certain number of points.

Clause 11 inserts sections 63A to 63F and are provisions that confer added powers to deal with breath and drugs tests for drivers. Additionally, section 63A creates an offence of driving when the amount of specified drugs exceeds a prescribed limit. The drugs and limits will be prescribed in subsidiary legislation. The amendments also confer new powers to require a
770 preliminary drugs and breath test other than in a police station, and in certain circumstances, including where there is a reasonable suspicion that a person has been driving under the influence.

There are also attendant powers of arrest and entry. In essence, these will enable the Police to require that a person undergoes a breath test or a drugs test by sweat or saliva and thereafter
775 to arrest a person who either refuses to undergo the test or fails the test itself.

Finally, Mr Speaker, at the Committee Stage I will be moving an amendment to clause 2 to provide for separate provisions of the Act to be commenced at separate times.

I commend this Bill to Parliament. *(Banging on desks)*

780 **Mr Speaker:** Before I put the question, does any other hon. Member wish to speak on the general principles and merits of this Bill? The Hon. Trevor Hammond.

Hon. T N Hammond: Mr Speaker, I stand simply to say that Members of Her Majesty's Opposition will be voting to support this Bill, particularly the measures which will allow the
785 introduction of the fixed cameras; they are very welcome. I think particularly in Gibraltar we will see an improvement in road safety. The hot spots have been identified by the Royal Gibraltar Police, people will know where the cameras are and they will know there is no escaping a penalty if they speed in those areas. So that has to be an improvement to road safety, which is something that everyone in this House will clearly wish to support. I think the introduction of a
790 points regime is also welcome. It will hopefully curb repeat offences.

And so, overall, I congratulate the Minister on a good piece of legislation. I know I have been critical in the past about the speed with which the legislation, in particular with respect to the speed cameras, has come about, but it is very welcome at this point in time.

795 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Traffic Act 2005 to make further provision in respect of certain driving offences, to further provide for the

800 use of certain devices in the prosecution of offences, amend the provisions relating to fixed penalty notices, confer powers for the issue of penalty points, make further provision in relation to driving under the influence of drink or drugs, including preliminary testing, and for connected purposes be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Traffic Amendment Act 2016.

**Traffic (Amendment) Bill 2016 –
Committee Stage and Third Reading to be taken at this sitting**

805 **Minister for Transport, Traffic and Technical Services (Hon. P J Balban):** Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

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

COMMITTEE STAGE AND THIRD READING

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

815 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to move that the House should resolve itself into Committee to consider the following Bills clause by clause: the Magistrates' Poor Fund (Repeal) Bill 2016, the Mental Health Bill 2016, the Animals and Birds (Amendment) (No.2) Bill 2016, the Employment (Amendment) Bill 2016 and the Traffic (Amendment) Bill 2016.

In Committee of the whole Parliament

**Magistrates' Poor Fund (Repeal) Bill 2016 –
Clauses considered and approved**

820 **Clerk:** A Bill for an Act to repeal the Magistrates' Poor Fund Act and make provision for the dissolution of the charitable trust constituted by such Act.
Clauses 1 and 2.

Mr Chairman: Stand part of the Bill.

Clerk: The long title.

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

**Mental Health Bill 2016 –
Clauses considered and approved**

Clerk: A Bill for an Act to make provision with respect of the reception, care and treatment of mentally disordered persons, the management of the personal welfare, property and affairs of persons who lack capacity and for connected purposes.

Part 1, clause A.

830

Mr Chairman: Stands part of the Bill.

Clerk: Part 2, clauses 2 to 13.

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Mr Chairman: Stand part of the Bill.

Clerk: Clause 14 as amended.

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Mr Chairman: An amendment was circulated on 12th September. Unless any hon. Members have any objection, I take it that it is approved and be incorporated into the Bill. So, clause 14, as amended, stands part of the Bill.

Clerk: Clauses 15 to 43.

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Mr Chairman: Stand part of the Bill.

Clerk: Part 3, clauses 44 to 54.

850

Mr Chairman: Stand part of the Bill.

Clerk: Part 4, clauses 55 to 63.

Mr Chairman: Stand part of the Bill.

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Clerk: Part 5, clauses 64 to 89.

Mr Chairman: Stand part of the Bill.
The Hon. Elliott Phillips.

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Hon. E J Phillips: Just in relation to section 89, in relation to ‘best interests’ and ‘life-sustaining treatment’, is it envisaged that there would be provision for an application to the court in relation to the withdrawal of life-sustaining treatment? I am talking about those circumstances where a patient lacks capacity and therefore the GHA would have to make, for example, an application to the court in relation to the withdrawal of life-sustaining treatment. That will follow on from the ‘best interest’ section, section 89. Is that what is envisaged by that section?

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Minister for Health, the Environment, Energy and Climate Change (Hon. Dr J E Cortes): Mr Chairman, I do believe so. I would not disagree with what the Member has said; I think that is the right interpretation.

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Hon. E J Phillips: The only concern I had in relation to applications that are made for the withdrawal of life-sustaining treatment, was that quite clearly that would result in death. So, insofar as that section is concerned, it would be motivated by the desire to bring about a

875 patient's death. Quite clearly, if nourishing tubes are removed from a patient, where the best interests of the patient are to remove them in relation to the life-sustaining treatment, that will bring about and cause the death of the patient. That is the only question I had in relation to this legislation. I really could not find it anywhere else within the section. That is why I have asked it at the Committee Stage, rather than at the Second Reading.

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Dr J E Cortes: Was there a question in that?

Hon. E J Phillips: Just to clarify what I was asking.

885

Clerk: Part 6, clauses 90 to 103.

Mr Chairman: Stand part of the Bill.

Clerk: Part 7, clauses 104 to 108.

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Mr Chairman: Stand part of the Bill.

Clerk: Part 8, clauses 109 to 112.

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Mr Chairman: Stand part of the Bill.

Clerk: Part 9, clauses 113 to 116.

Mr Chairman: Stand part of the Bill.

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Clerk: Part 10, clauses 117 to 135.

Mr Chairman: Stand part of the Bill.

905

Clerk: Schedules 1 to 3.

Mr Chairman: Stand part of the Bill.

Clerk: The long title.

910

Mr Chairman: Stands part of the Bill.

**Animal and Birds (Amendment) (No. 2) Bill 2016 –
Clauses considered and approved**

Clerk: A Bill for an Act to amend the Animals and Birds Act.
Clauses 1 to 3.

915

Mr Chairman: Stand part of the Bill.

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

**Employment (Amendment) Bill 2016 –
Clauses considered and approved**

920 **Clerk:** A Bill for an Act to amend the Employment Act.
Clause 1.

Mr Chairman: Stands part of the Bill.

925 **Clerk:** Clause 2, as amended.

Mr Chairman: A number of amendments were circulated from hon. Members of the Opposition on 5th July. They amend clause 2, paragraph 4, and clause 2, paragraph 5 – a number of them, in the case of the latter. I take it that unless hon. Members have any comments, they are agreed to and therefore incorporated into the Bill, and they will stand part of the Bill.
930 So, clause 2, as amended, stand part of the Bill.

Minister for Education and Justice & International Exchange of Information (Hon. G H Licuidi): Mr Chairman, just for clarification, I understand that you referred to amendments which were being proposed by Members of the Opposition.
935

Mr Chairman: Did I?

Minister for Health, the Environment, Energy and Climate Change (Dr J E Cortes): I understood that. Just for the record and for the sake of clarity.
940

Mr Chairman: I amend what I said by deleting the word ‘Opposition’ and inserting, therefore, ‘Government’.

945 **Clerk:** Clause 2, as amended.

Mr Chairman: Stands part of the Bill.

Clerk: The long title.

950

Mr Chairman: Stands part of the Bill.

**Traffic (Amendment) Bill 2016 –
Clauses considered and approved**

Clerk: A Bill for an Act to amend the Traffic Act 2005 to make further provision in respect of certain driving offences, to further provide for the use of certain devices in the prosecution of offences, amend the provisions relating to fixed penalty notices, confer powers for the issue of penalty points, make further provision in relation to driving under the influence of drink or drugs, including preliminary testing, and for connected purposes be read a first time.
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Clerk: Clause 1.

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

Clerk: Clause 2, as amended.

965 **Mr Chairman:** The amendment here is with respect to the day of operation into the Act by notice in the *Gazette* and that different dates may be appointed for different provisions. That was circulated a couple of days ago. Are all hon. Members happy with that?

970 **Hon T N Hammond:** If I may, Mr Chairman, simply in terms of the amendment, clearly the effect of the amendment, I presume, could be to cause further delay to the implementation of certain aspects of the legislation. Having congratulated the Minister earlier on bringing the legislation to this stage, I wonder if he has any idea in terms of..., particularly for the fixed cameras, whether or not he envisages any significant delay from this point going forward as to the introduction of those cameras.

975 **Minister for Education and Justice & International Exchange of Information (Hon. G H Licudi):** Mr Chairman, the purpose is precisely to avoid particular delays in relation specifically to the fixed speed cameras. There have to be administrative arrangements made, there have to be infrastructural arrangements made, particularly from an IT side in relation to the penalty points system, which are not ready yet. Therefore, as of today we are not ready to press the button and implement the penalty points system; but we may be ready, as soon as all administrative
980 arrangements are made, to issue and process the fixed penalty notices in respect of the speed cameras, to implement that part of the legislation as well as the other parts in relation to offences of causing death, certain driving offences causing death and also the introduction of devices and prescribing devices for drugs testing in particular.

985 At the moment we have a general offence of driving under the influence of drink or drugs. We have a prescribed limit for drink but not for drugs, and therefore we are creating the legislation to be able to prescribe limits for drugs and the type of drugs that would be prescribed. What we do not want is to have to have everything that this Bill caters for absolutely ready before we can press any button at all. Therefore, to the extent that we can start implementing the pieces of legislation that we can immediately, or as soon as possible, then that
990 is the purpose of the amendment, so as not to delay the parts that can be implemented straight away, and in particular the part that the hon. Member is speaking about.

Hon. T N Hammond: Thank you. I am reassured.

995 **Clerk:** Clause 2, as amended.

Mr Chairman: Stands part of the Bill.

Clerk: Clauses 3 to 24.

1000

Mr Chairman: Stand part of the Bill.

Clerk: The long title.

1005

Mr Chairman: A fairly long title, stands part of the Bill.

**Magistrates' Poor Fund (Repeal) Bill 2016,
Mental Health Bill 2016,
Animals and Birds (Amendment) No. 2) Bill 2016,
Employment (Amendment) Bill 2016,
Traffic (Amendment) Bill 2016 –
Third Reading approved: Bills passed**

1010 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to report that the Magistrates' Poor Fund (Repeal) Bill 2016, the Mental Health Bill 2016, the Animals and Birds (Amendment) (No. 2) Bill 2016, the Employment (Amendment) Bill 2016 and the Traffic (Amendment) Bill 2016 have been considered in Committee and agreed to, some with and some without amendments, and I now move that they be read a third time and passed.

1015 **Mr Speaker:** Since the Opposition have indicated that they support these five Bills, I am going to take them all together. So I now put the question, which is that the Magistrates' Poor Fund (Repeal) Bill 2016, the Mental Health Bill 2016, the Animals and Birds (Amendment) (No. 2) Bill 2016, the Employment (Amendment) Bill 2016 and the Traffic (Amendment) Bill 2016 be read a third time and passed. Those in favour? (**Members:** Aye.) Those against? Carried.

1020 **Hon. Chief Minister:** Mr Speaker, can I suggest to the House this may be a convenient moment to recess for 10 to 15 minutes for light refreshment before we carry on?

Mr Speaker: The House will now recess for 15 minutes. We will be back at five.

The House recessed at 4.45 p.m. and resumed its sitting at 5.09 p.m.

PRIVATE MEMBERS' MOTIONS

**Public Accounts Committee –
Amended motion carried**

Clerk: We now proceed with Private Member's motions. The Hon. R M Clinton.

1025 **Hon. R M Clinton:** Mr Speaker, I have the honour to move the motion standing in my name, which reads as follows:

This House notes the contents of the Principal Auditor's Report on the Audit to the Public Accounts of Gibraltar for the year 31st March 2014 and calls on the Government to address his findings. This House furthermore resolves that a Standing Committee be created designated as the Public Accounts Committee for the examination of the accounts showing the appropriation of sums granted by Parliament to meet the public expenditure, to consist of four Members, two Government Ministers and two Opposition Members, who shall be nominated at the commencement of every session and of whom two shall be a quorum, with the Chair to be held by the Opposition.

1030 Mr Speaker, every year the Principal Auditor is required to submit a report on his audit of the Public Accounts of Gibraltar and attach his certificate. This annual report is then submitted to the Speaker to be laid before Parliament, pursuant to section 74(2) of the Constitution of Gibraltar. This year, the report for 31st March 2014 was presented to you on 26th August 2015 and laid before Parliament on 20th January this year.

1035 The Principal Auditor's Report and Associated Accounts for 31st March 2014 amounts to what is a very hefty report, running to 363 pages, and I can tell you it weighs in at over 1.5 kilos. Whereas I am sure that all of us in this House have actually read the report from cover to cover, I would ask them when was the last time the Principal Auditor's Report was actually debated in this Parliament – perhaps the Father of the House might know.

1040 The report of the Principal Auditor, although laid before Parliament, serves, unfortunately, merely as a doorstop if no one in this House actively considers and debates its contents. I trust Members have brought their copies with them today, because I want to refer to one particular matter which the Principal Auditor makes reference to on page 107 in respect of the revision of audit legislation as follows, and I quote:

As I commented in last year's report, I am hopeful that the audit draft legislation, which provides an improved legal basis to secure a more modern and efficient public audit service and adequately addresses key issues of audit independence, will be taken to the Gibraltar Parliament during the coming year.

I examined the report for 31st March 2013, and under the same heading, on page 95, the Principal Auditor had the following to say:

In my report on the Public Accounts for the financial year 2008-09 I explained proposals made to Government over a number of years to revise the audit legislation contained in Parts 8 and 9 of the Public Finance Control and Audit Act, as no significant modifications have been made since its enactment in 1977. The prime aim of these proposals was to provide an improved legal basis to secure a more modern and efficient public audit service that is fully independent of the Government of Gibraltar.

1045 I went back to the report for 2008-09 and found that this has been a recurrent theme, going back to 17th March 1998 when the proposals were first submitted by the Principal Auditor's predecessor. The Principal Auditor's frustration with Parliament is palpable. I trust this Government will consider the Principal Auditor's request so that if necessary legislation can be brought into place in the lifetime of this Parliament, that it be done.

1050 There are, of course, many other detailed elements of the Principal Auditor's report that could be usefully debated if we had unlimited parliamentary time. For example, why is it that the Gibraltar Development Corporation has not submitted any accounts for audit for the last 18 years? Presumably if this Parliament passed a law requiring them to be audited by the Principal Auditor, then why on earth have they not been?

1055 This is not a partisan issue, but goes to the heart of the management and scrutiny of our public finances, and it is scrutiny that is the key theme to my motion and the purpose of bringing this motion to the House. There are numerous reports and documents laid in Parliament, and yet these perhaps do not receive the attention and scrutiny that they should.

1060 Mr Speaker, let me give you an example of why these documents need scrutiny. Only last month, on 9th September, the audited accounts for the Gibraltar Electricity Authority for the years ended 31st March 2012, 2013, 2014 and 2015 were laid before Parliament. For the year 2015, on page 9, of which I have a copy here, was the following comment in respect of the fuel hedge contract – and I know Mr Bossano will find this interesting – and I quote:

At the latest available fuel price it is expected that the fuel hedge contract cost will be approximately ...

– and again I am quoting –

£312.7 million in the financial year 2015-16.

1065 Needless to say, I almost fell off my chair when I read this. It would mean that Gibraltar would be almost bankrupt, if it was true. Thankfully, I was able to deal with this matter bilaterally, on a non-partisan basis, with the Hon. Minister Dr John Cortes, who kindly investigated and wrote to me on 20th September to confirm that, and I quote:

The figure should have read £12.7 million and not £312.7 million. It appears that the pound sign became a three somewhere in the process. Thank you for pointing this out. I am sure we are both relieved.

Which indeed we are.

1070 Mr Speaker, with this illustration it goes to show how important it is to read the documents that are laid before this Parliament; and yet, giving our limited parliamentary time, how are we going to scrutinise financial reports and public finance audit reports as a Parliament in an effective and efficient manner?

1075 Thankfully, we do not have to reinvent the wheel, as the mother of all Parliaments faced the same problem in 1857 and addressed the problem by the creation of a standing select committee tasked solely with the scrutiny of public finances. In 2007, the committee celebrated its 150th anniversary and produced a booklet outlining its work and history. I have placed a copy of that booklet in the antechamber for Members' information, and it makes interesting reading. Let me read from its introduction. I quote:

Expectations about the proper stewardship and accountability for public money go back many centuries. Generations of politicians and public officials have recognised the significance of the proper handling of public funds, the need to combat fraud and corruption and the importance of getting the most from tax revenue. Such themes have been at the heart of relations between the Crown and Parliament, and then subsequently have featured in numerous Parliamentary debates.

The Committee of Public Accounts is a key part of our accountability arrangements to safeguard public money ... in 1857 – a select committee of the House of Commons recommended the creation of a committee to oversee government accounts. This was a crucial step in the already long running efforts to secure proper stewardship. In 1861, the Committee came into being and continues to this day to examine the use Government makes of public money. Over time, the role of the Committee has changed in line with the needs of the day – for example, widening the type of subjects considered from purely financial matters to broader concerns about the effectiveness of public programmes; increasing the number of hearings held and reports produced; and taking evidence from a wider range of witnesses, including from outside the public sector.

At times, there has been resistance to the expansion of the focus of the Committee's enquiries: in the late nineteenth century, for example, to the consideration of more than just the regularity of expenditure; in the 1940s to the desire for access to public corporations; and in the 1990s to its desire to examine public sector companies. Nevertheless, the mutual interest in the effective use of public money between Government and Parliament is clear ... 'The Committee has thus helped the Government to secure financial savings, raise the standards of public services and improve the quality of delivery.'

1080 And so, Mr Speaker, need I say more to convince Members of this House that we need a Scrutiny Committee, we need a Public Accounts Committee?

There may be some who think that in a Parliament of our size such a committee may not be practical, as was the view of the Commission on Democratic and Parliamentary Reform in January 2013. My views on this report have already been ventilated this morning.

1085 Mr Speaker, let me point out to this House that times have changed and continue to change, and we really risk falling behind with best parliamentary practice. In his report for 31st March 2013, again page 95, the Principal Auditor made the following remarks, and I quote:

The Assistant Principal Auditor and I were invited to participate in an Overseas Territories Auditor Generals conference and workshop organised by the United Kingdom's National Audit Office (NAO) and held at the NAO's offices in London at the end of January 2014. The theme of the conference or workshop was 'Strengthening Audits and Parliamentary Oversight in the Overseas Territories' and was sponsored by the Foreign and Commonwealth Office. The objectives of the conference workshop were to (1) provide an opportunity for Overseas Territories representatives to be updated on recent developments in public audit and parliamentary oversight; (2) develop a shared understanding of what makes a Public Accounts Committee effective; (3) examine current approaches to auditing major risk areas; and, finally, (4) develop ways to enhance the effectiveness of oversight systems in the Overseas Territories.

It is perhaps no coincidence that this conference was organised after the November 2013 communiqué of the Commonwealth Heads of Government meeting, which in paragraphs 45 and 46 stated, and I quote:

Heads of government recognise the contribution that strong, properly resourced and independent supreme audit institutions play in improving transparency, accountability and value for money to ensure that public funds are appropriately spent.

1090 And paragraph 46:

Heads of government further reaffirmed that strong and independent parliamentary oversight plays an important role in preserving the trust of citizens in the integrity of government through public account committees that are effective, independent and transparent.

1095 The topic of public accounts committees or scrutiny committees was the subject of a workshop in the 46th Commonwealth Parliamentary Association, British Islands and Mediterranean Region Annual Conference, which I attended in May earlier this year. I was taken aback to discover that Gibraltar was the only participant at that conference not to have a public accounts committee; and not only that but in fact the CPA had, following the Commonwealth Heads of Government meeting in November, actually created a parallel group just for public accounts committees. Let me quote from their dedicated website as follows:

In June 2014, Chairs and Members of Public Accounts and equivalent Committees of Commonwealth parliaments attending the 4th Westminster Workshop on Parliamentary Financial Scrutiny of Public Expenditure at Westminster constituted the Commonwealth Association of Public Accounts Committees (CAPAC) ... CAPAC is designed to support the work of Commonwealth Public Accounts Committees in promoting good governance, implementing the declaration on these committees contained in the communiqué of the November 2013 Commonwealth Heads of Government Meeting ...

The aims of CAPAC are as follows:

- making the case for the independence of Commonwealth PACs, and for implementation of all appropriate PAC recommendations, as key components of good governance
- defining, publishing and promoting standards of good practice, in line with Commonwealth principles, to assist CAPAC Member Committees in being effective, transparent and independent
- providing training ...
- acting as a clearing house of ... information ...
- carrying out peer reviews ...
- engaging ... stakeholders ...
- strengthening the capacity of small states' PACs.

1100 In November 2015 the CAPAC initiative was endorsed by the Commonwealth Heads of Government meeting, where their communiqué noted the establishment of the Commonwealth Association of Public Accounts Committees as a network for strengthening public financial management and accountability, these being vital in maintaining the trust of citizens and the integrity of governments and legislatures.

1105 The current members of CAPAC are Bangladesh, Barbados, Cameroon, Fiji, Ghana, Jamaica, Kenya, Malawi, Malaysia, Maldives, Malta, Mauritius, Namibia, Pakistan, Papua New Guinea, Rwanda, Sierra Leone, Sri Lanka, Swaziland, Tanzania, Uganda and the United Kingdom. Associate members are Anguilla, Jersey and Northern Island.

1110 Mr Speaker, as you can see, the concept of having a public accounts committee is now seen as best practice in the Commonwealth, and we now have an opportunity to leverage on this new institution, being CAPAC, which would not be too late to join perhaps as an associate.

1115 And, Mr Speaker, finally, despite what has been said this morning, I would like to emphasise that I presented this motion with Gibraltar's best interests at heart and on a non-partisan basis, and I hope that Members will consider my motion in that light, which I now commend to the House. **(A Member: Hear, hear.)**

Thank you, Mr Speaker. *(Banging on desks)*

Mr Speaker: I now propose the question, in terms of the motion moved by the Hon. Roy Clinton. Does anybody wish to contribute to the debate? The Hon. the Chief Minister.

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Chief Minister (Hon. F R Picardo): Well, Mr Speaker, I have a feeling of déjà vu. I thought we had debated a very similar motion this morning; in fact, of course, we have.

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It is very clear to me that the hon. Gentleman comes to this issue relatively green – green in the context of how there has been debate on the Auditor’s Report. In the time that I have been here since 2003, there has been a lot of debate on the Auditor’s Report on specific issues. The Auditor’s Report gives rise to questions that are asked and then it gives rise to motions that are brought; it gives rise to questions that are asked at the Committee Stage and at the Second Reading of the Bill on the Appropriation when looking back at how things have been done in other years – a lot of debate, in fact, based around the Principal Auditor’s Report.

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He seems to think that he is the only person who has had regard to it; I did not realise he had such a high regard for himself. As I told him today, there has been an economist in this House for quite some time and he taught those of us who have had the benefit of political tutelage, something which I know hon. political partisan virgins opposite are not having the benefit of in respect of someone who has had the longevity of Joe Bossano or even Peter Caruana in Parliament, but he taught us the importance of this document and the importance of being able to ask questions as a result of this document.

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Of course, the difficulty that hon. Members have is that a lot of the issues that this document raises it raises about the time when the party that most of them still represent were in office, as I will demonstrate in a few moments.

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The hon. Gentleman gets up and says, ‘Of course, I am not doing this on a partisan basis.’ He cannot do it on a partisan basis, because when he wants to ask about why the GDC has not filed accounts for 18 years in respect of 2014 he knows that he is asking questions of himself in political terms. He is asking questions of the GSD. I will give him the answer. Perhaps Mr Bossano later might agree to become involved in this debate and give us the benefit of his experience of these matters.

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The GDC used to file accounts. The last accounts filed were (**Hon. J J Bossano:** 1996.) 1996. The practice of stopping the filing of the accounts of the GDC was initiated by the greatest Gibraltarian of all time, as the current Leader of what is left of the Opposition used to describe him. So it is quite something to hear a representative of the GSD get up and make those sorts of statements about the GDC.

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He knows, Mr Speaker, that our position is that they will be filed. We agree with the Principal Auditor. The hon. Gentleman might have known that if he had been following the proceedings of this House for the 16 years between 1996 and 2011 when we were making those points. He might have recalled reading that in that magnificent weekly publication the *New People*, because those were issues that we constantly might read in that publication.

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So the answer to how are we going to have a debate when this is such a fulsome report ... He has even taken the liberty of weighing it and telling us the weight in grams. Well, I will tell him how we are going to have the debate: in the way that we always do, because he can ask questions about what is in the report, those questions can lead to motions, those motions and questions can even lead to press releases, and we can have exchanges outside of this place if necessary, as we have often had in the past. But what is not going to be possible is to have a system like Westminster where you have 650 parliamentarians, when you have 17 here; because the Chancellor of the Exchequer, who is the Minister for Finance, is not a Member of the Public Accounts Committee of the United Kingdom. For many years it was chaired by Margaret Hodge, until recently. So, of course, if you have got 650 MPs and some of them are not Ministers – and this goes for the argument about whether you have backbenchers or not – then you can have 10 of them beavering away on that subject and asking civil servants questions, but if you only have Ministers and you do not have backbenchers, then what you are saying, if you are suggesting that you do not have time to debate the Principal Auditor’s Report in this

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1170 Chamber, is that you are going to have a reduced meeting of this Chamber and have that lengthy debate.

For a retired banker with all the time in the world and nothing to do, that might be lovely; it might actually float his boat. But for actively engaged, not lazy, very hardworking Members of Parliament who are Ministers, this is to have a Budget debate every day that the hon. Member
1175 wants to have a Public Accounts Committee. So, for all the reasons, therefore, that I gave this morning, it cannot happen and he cannot make a comparison with the Westminster Parliament for the reasons that I have illustrated to him.

When he says there should be two Members of the Government involved in the committee, he is calling for two Ministers to stop work on whatever it is they are doing to come here to look
1180 with him at the price of Brooke Bond tea. It does not make any sense. If he does have the best interests of Gibraltar at heart, doesn't he realise that it is in Gibraltar's best interest that Ministers should be working on the subjects which deliver for Gibraltar?

And so, therefore, the history lesson is really quite irrelevant. The hon. Gentleman says we have to look after public money. Well, he has an opportunity a month – we will get back into the
1185 rhythm of it from now – to ask us whatever question he likes about public money, and we will give him those answers that we think are appropriate, the same answers we would give him in the Public Accounts Committee. So changing the mechanism is not going to avail him of any assistance, and to suggest a committee that is two and two is to go against the practice of committees in this House as they have been in the past – and chaired by him.

When we look at history, Mr Speaker, I prefer the history of Joshua Hassan in 1972, of Joshua
1190 Hassan in 1976, of Joshua Hassan in 1984, of Joe Bossano in 1988, of Joe Bossano in 1992, of Peter Caruana in 1996, 2000, 2003 – does he get my rhythm? – and 2007, and of Fabian Picardo in 2011, which is a robust parliamentary system where there is absolute freedom to ask any question an hon. Member wants, to get the information that the Government is prepared to
1195 give and to debate on it or to say that it has not been given, and to have that argument which we are having in the most robust manner.

We have not really argued about anything else in the past four and a half years, almost five. The debate has been about public finance at every Question Time, at every meeting, in every
1200 husting. All they want to talk about is public finance. How can they suggest that they do not have a forum to debate the public finances of Gibraltar? What they do not like is the conclusion that the public finances of Gibraltar are stronger than they ever have been.

But they cannot say that they have not got a forum for debate of the public finances; that we do not have a strong and properly resourced audit institution, which he says is one of the indicia
1205 of good governance – of course we do, we have a Principal Auditor's office that has regularly and independently produced reports which have been debated in this House, even though he might not have been a retired banker then and not have had the time to note that we were debating issues which arise from the report in Question Time and in motions etc; that we should have a strong parliamentary oversight – well, strong parliamentary oversight does not have to happen
1210 in a committee, it can happen in a place like this, where we have the toughest and strictest parliamentary oversight, and quite unlike other Chief Ministers I come here every month for that parliamentary oversight.

And to hear a Member of the Gibraltar Social Democrats say that we should be copying
1215 Westminster, when I spent 12 years in this House hearing, even when he was in opposition to me, the former Chief Minister, the Leader of the GSD – the most successful Leader of the GSD – tell us that Westminster do not do everything right and that we should be doing things our way, to now be told 'this is the history of Westminster, this is what we should be doing' is really quite incredible.

The good governance I prefer is the good governance of Gibraltar as we have been doing it, as it was done in this respect by the Gibraltar Social Democrats and as it was done in this respect
1220 by the first GSLP administration and by the AACR, except for one term when they had the Public Accounts Committee and they themselves decided not to have one.

1225 And so, Mr Speaker, when he tells us that he has moved this motion in a non-partisan manner, proposing himself in effect as the Chairman of a Public Accounts Committee with two Members of the Opposition and two Members of the Government, forgetting the Independent Member, it really is quite incredible to hear, especially when he gets up and he makes speeches which are clearly partisan.

I am going to give notice that I intend to move an amendment to the motion, and I will give written notice in a moment, Mr Speaker, of the amendment that I intend to move, where I also intend to highlight other parts of this report. For example, the content of paragraph 2.12.2 – I hope the hon. Member has brought his with him. Paragraph 2.12.2 of the Principal Auditor's Report of 2014 says this:

I must once again report that no decision has yet been taken on how the outstanding amount owed by the defaulter of a loan ...

– these are the Public Accounts of Gibraltar –

issued on 16th January 2003, amounting to £48,000 plus interest, is to be treated. The total debt as at 31st May 2015 was £78,000, made up of £48,000 in respect of capital, £12,907 relating to the loan agreement interest and £17,133 in connection with default interest.

1235 So, Mr Speaker, when I am asked by a motion to comment on and debate the Principal Auditor's accounts, surely if I am acting in a non-partisan manner with Gibraltar's best interests at heart, that is the issue that I want to highlight. *That* is the issue that I want to highlight, especially given everything that has been said in the context of the past four years in the past Parliament about Credit Finance Company Ltd granting loans. These are the Principal Auditor's accounts for 2014. These accounts are talking about a loan. This is a loan given with public money, with taxpayers' money, of £48,000. I have taken an interest in that, because the hon. Gentleman is not the only one who reads these accounts, and I found out a little bit more about it. It is a loan and a grant to a company, and I understand that a Minister in the former administration had an interest in that company, and I am continuing to research that.

1240 And so the amendment that I intend to move is as follows, and I have written notice of it here ready to go. I will read it to the House and then circulate it. What I propose to do, Mr Speaker, is delete every word after the words 'This House' when they appear in the motion and replace them with the following:

This House notes the contents of paragraph 2.12.2 of the Principal Auditor's Report on the Audit of the Public Accounts of Gibraltar for 31st March 2014; notes the information already provided to the House by the Chief Minister ...

– what I have just said –

in respect of the loan in question, which was granted by the former GSD administration and which appears to have been lost; commends the Chief Minister for bringing to the attention of this House the information on this loan granted by the former GSD and which appears to have been lost; seeks that the Government should ascertain greater information in respect of said loan and to make public such details as may be possible of the said impaired loan granted by the former GSD administration; and further notes and agrees with the findings of the Commission on Democratic and Parliamentary Reform which reported to Parliament in January 2013, which, as provided for in the motion standing in the name of the Chief Minister and approved this morning by the Parliament, unanimously expressed the view of the Commission that there is no need to establish a General Purpose Standing Committee nor a Public Accounts Committee given that the Opposition Members have every opportunity to

examine Government expenditure in detail as well as debating the report from the Principal Auditor on the Government's accounts for every financial year.

I pass it now, Mr Speaker, so it can be copied and provided and written notice can be provided to you and to every Member. I will pause there whilst it is circulated.

1250 **Mr Speaker:** Is the Chief Minister proposing to say something further in support of the amendment?

Hon. Chief Minister: Yes, Mr Speaker.

1255 **Mr Speaker:** Very well.

Hon. Chief Minister: Mr Speaker, I think hon. Members have now received the written notice of amendment.

1260 The hon. Gentleman cannot get away with suggesting, as he does, that we do not have the opportunities for strong and properly resourced auditors to review the Government accounts, that we do not have strong parliamentary oversight and that we should copy Westminster, because I am reminded in the amendment that I have put of the actual words of the Commission which we debated this morning. The words of the Commission were that there is no need to establish a General Purpose Standing Committee nor a Public Accounts Committee, given that
1265 Opposition Members have every opportunity to examine Government expenditure in detail as well as debating the report from the Principal Auditor on the Government's accounts for every financial year. It is clear that is the position of the Commission; we were referring to it this morning.

1270 What one is left with the view of is that a motion is moved clearly in an attempt to show a desire to lead on issues like this, but one is left with the impression that the mover is not just highly partisan in trying to do so, but, to adopt his nomenclature – not one which I would otherwise have thrown across the floor of the House as liberally as it was this morning – the mover must also be quite lazy, because if he wants to have a debate about this 1.5 kilo report and he wants to scrutinise public expenditure, but he does not want to bring to the attention
1275 paragraph 2.12.2, then he is either highly partisan and wants to hide away this very concerning note about an impaired loan granted by the party that he represents, or he is very lazy and had not picked it up. What we need to be careful of is that when we are told that he is the one reading material, he is not either reading it through partisan spectacles or not reading it at all and just pretending to do so.

1280 So, Mr Speaker, on that basis I move the amendment as set out in writing, as required by the rules, and I commend the Bill as amended to the House. (*Banging on desks*)

A Member: Hear, hear.

1285 **Mr Speaker:** What is now before the House is the Chief Minister's amendment, and the mover of the original motion, apart from any other Member of the Opposition, including Mr Roy Clinton, are able to speak on the amendment.

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

1290 I must say I am quite impressed with the Chief Minister's performance this afternoon in completely overturning my motion.

I note that he has not addressed the concern of the Principal Auditor in respect of modernising legislation – which he has obviously conveniently forgotten to take notes on – which, of course, the Principal Auditor himself has been chasing for years, regardless of the administration.

1295 I just find it incredible that the Chief Minister picks on one section of this 300-odd page
report to support his own partisan issues. Perhaps I may ask the Chief Minister, while he is
looking at that paragraph, could he also do me the favour of investigating, in section 2.14.5, on
arrears of import duties, a significant decrease of £391,236 compared against previous years'
arrears position decrease related to a company having paid all amounts due. Perhaps he could
1300 investigate that for me as well.

Mr Speaker, the Chief Minister's approach to my motion is what it is. It lacks any form of
consideration for what is best parliamentary practice. The Public Accounts Committee may have
originated in Westminster, but the fact of the matter is Members of the Commonwealth have
also adopted it, and I know for a fact the Falkland Islands have a Public Accounts Committee and
1305 they manage quite well to survive with one. I cannot understand the Chief Minister's reluctance
to add this additional level of transparency and checks and balances to this Parliament. It really
will not cause him any offence.

And what he fails to tell this House is that the select committee is not just about questions
and answers – and I note his rather guarded response when he said 'appropriate answers to
1310 questions', which means he will be the arbiter of what he answers.

Mr Speaker, a select committee on public accounts will cover everything that concerns this
Parliament in terms of public funds. It is not necessarily going to be a rod for the Government's
back. It may be a mechanism to investigate areas in which Parliament wants some clarity. It may
be independent contractors to Government. Who knows? But it is not something that the
1315 Government should feel is going to be used to attack them. In fact, in Westminster it is used to
great effect on a cross-party basis to get the best results for the taxpayer – and that is where I
am coming from, Mr Speaker: the best result for the taxpayer.

The Chief Minister's amendment shows quite clearly he does not care about the taxpayer. All
he cares about is a soundbite. There is no substance to this motion amending my motion. It is
1320 utter nonsense. (**Hon. D A Feetham:** Hear, hear.)

Mr Speaker, I have made a perfectly cogent argument as to what is good parliamentary
practice in the 21st century. If other countries round the world have Public Accounts
Committees, if other territories in the Overseas Territories have Public Accounts Committees,
why do we not? That is what I would like to know from the Chief Minister. If the Falkland Islands
1325 can have one, if Jersey can have one, if Guernsey can have one, and they are much smaller than
we are, why can't we have one? What is it that the Chief Minister finds so offensive about public
accounts committees?

And no, I am not doing it because I am bored; I am doing it because I am here, and I am here
because ... okay, we did not win the election, but I was still elected to sit here and hold the
1330 Government to account, (*Banging on desks*) and for as long as I am on this side of this House I
will do that – and of course he will have to accept that, whether he likes it or not. I am not here
to create work for myself; I am here to work for the taxpayer and I will continue to do so. I have
not heard a single comment from the Chief Minister as to why public accounts committees are
of no value to Parliament.

And so, Mr Speaker, I will once again ask for a division of the House on this vote, because I
would not want the Hon. Mr Costa to lose out on his buckets of transparency, to add to them
with the Chief Minister kicking it over immediately. No more buckets of transparency, because
the Chief Minister, frankly, is not interested in transparency. This Chief Minister wants to go and
do whatever the hell he pleases.

Mr Speaker, I have actually researched the subject. I have put the evidence before this
House. If I cannot convince the Members of this House as to the utility of a public accounts
committee, then alas I have failed, but I will continue to put the case.

And so, Mr Speaker, as I sit down I will ask for a division of the House. Thank you. (*Banging on
1345 desks*)

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

I call upon the Chief Minister to reply.

1350 **Hon. Chief Minister:** Mr Speaker, the hon. Gentleman has not dealt with the subject of the amendment; he has replied as if he were replying on the main motion. But I have never seen in the time I have been in this Parliament, even when I was in Opposition and I had some Members opposite me who had such little ability that one of them was once seen to be reading *The ABC of Thinking* – you would have thought that somebody who would be a Minister would have worked out the ABC of thinking – I have never, even then, seen somebody squirm on a hook that they
1355 have created for themselves like I have seen the hon. Gentleman squirm today. To have come here proud to have read the Auditor’s report, ready to deal with it and present it to us as something that only he reads, and not to have realised what a hook he was creating for himself and his party because of this impaired loan that they granted – which I have already given details of, and more to come – and not to address it in the context of his reply, demonstrates that the
1360 the only person in this room who is now squirming and seeking to avoid transparency and clarity is the hon. Gentleman.

How can he not have said, ‘Oh my goodness, that’s true, it’s a loan granted and money lost,’ in the same breath as he says ‘I only care about the taxpayer’? Well, where is your caring for the taxpayer and his loss, her loss, our loss of £78,000? Where is the care for the taxpayer? It is
1365 utterly ridiculous to get up and say that in the context of this debate without addressing the substance of the amendment, which talks about the loss that his party has put the taxpayer to of £78,000.

I am not surprised that when he sat down they all banged the table and he banged himself – he is the only artist I have ever seen clap his own performance. Because that is that it must be, a
1370 performance, to call a division on an amendment like this – which is absolutely his right – and not address, in the context of replying to it, the very serious matter that I have brought before the public today, the very serious issue of a loan granted by them and impaired and apparently involving a Minister in the Government that granted that very loan, and to say that they are somehow the champions of the taxpayer.

1375 Mr Speaker, they are the losers for the taxpayer. Not only have they lost money on the estates that they developed, not only have we been left with that rotten legacy, we will be left with the rotten legacy of a GSD loan, lost, of £78,000. And he gets up and he pretends that he can talk about best parliamentary practice and that he cares about the interest of the taxpayer. Well, he cares so much about the interest of the taxpayer that the paragraph he wants me to
1380 read and comment on is 2.14.5, which is the one that says that arrears are down. That is the bit that he should have been banging the table on. Arrears are down. He should at least have said, ‘Congratulations, arrears are down.’ No, the bit he does not want to talk about is the loss of £78,000.

How can I take seriously a man who, in 10 months of being in this Parliament, thinks that he
1385 can tell us what is best parliamentary practice? Is there no element of humility about the man at all? Zero element of humility that he comes here and he goes against the Commission with a cumulative 44 years of experience. He comes here to speak against the Government, all of whom have more parliamentary experience than him, and says, ‘I am speaking from the chair of best parliamentary practice.’ Doesn’t he realise that if between them they had one ounce of
1390 shame, he would be putting his leader to shame because his leader was a Member of Government for four years which did not have a public accounts committee? Well, maybe he does not think of him as his leader either; I do not know how bad things are on that side. For 16 years they were in Government and they did not do it, and now they are the arbiters of best parliamentary practice.

1395 He says I have not dealt with the issue of why it cannot operate here. Of course I have. I told him. The other Parliaments he is talking about all have backbenchers. It is likely the backbenchers are the ones who make up the parliamentary public accounts committee.

1400 Mr Speaker, there is no way that he is going to persuade us that we should spend our time ...
apart from coming to Parliament once a month to answer all their questions, also to be here, in
addition, in the public accounts committee, because what we are going to do is run Gibraltar and
1405 deliver our manifesto. That is what we have been elected Ministers to do, and to provide the
accountability and transparency which is the pride of this Government, which is greater than any
accountability and transparency provided by any Government, in particular the stitched up
Government of the GSD between 1996 and 2011 that almost gave zero information and met in
1410 Parliament twice a year in an election year and three times a year when there was not an
election. Does he understand that? Does he know that he is representing the political insignia of
a party that came to Parliament to answer questions three times a year at most, two times a
year when there was an election? And he pretends to be the champion of transparency! Mr
Speaker, he should be banging the table when I sit down to thank this Government for having
1415 implemented the monthly meetings of the Parliament, despite the fact that in this particular
session we agreed we would not meet every month because of the Referendum until now.

That is transparency and accountability, not deciding that he is going to go off on a
bookwormish exploration of the history of public accounts committees and pretend in that way
to be able to give people a lecture on what parliamentary best practice is, having been here for
1420 10 months. That is utterly ridiculous. It is evidence of somebody with nothing to do during the
day; and frankly, given that we spend our time delivering for Gibraltar, he should stop wasting
our time.

He should ask his party to make a public statement about the loan they granted in 2003 and
he should have realised that he should have addressed that in the context of the amendment to
1425 the motion that I have moved.

As for the legislation, I will have him know I have had a number of meetings with the Principal
Auditor to fair that legislation in order to be able to bring it to the House, Mr Speaker, and I
trust it will be possible to bring it soon and I trust that I will be the Chief Minister to bring it,
1430 despite the fact that the former Chief Minister, the one that they all used to adulate when he
was around to hear them, did not do so.

To have heard a Member of Parliament – forget a GSD Member of Parliament, a Member of
Parliament – be confronted with an amendment to a motion that raises this issue and not to
have heard a word from him in response, betrays the reality of what he is trying to do in this
House, betrays what his motivation was in respect of bringing this motion and betrays the huge
1435 embarrassment to which he has subjected himself by asking the Parliament to debate the
Principal Auditor's Report that highlights the loss of money by the GSD, the utterly shameful loss
of taxpayer's money by the GSD to such an extent that they should never be able to call
themselves champion of the taxpayer at all. They are the losers for the Taxpayer, and the motion
will stand with Government votes after a division to demonstrate that on *Hansard* for ever.
(*Banging on desks*)

Mr Speaker: I will now put the Chief Minister's amendment to the vote. Is there a division
required? Yes.

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A division was called for and voting resulted as follows:

FOR

The Hon. P J Balban
 The Hon. J J Bossano
 The Hon. Dr J E Cortes
 The Hon. N F Costa
 The Hon. Dr J J Garcia
 The Hon. G H Licudi
 The Hon. F R Picardo
 The Hon. Miss S J Sacramento

AGAINST

The Hon. R M Clinton
 The Hon. D A Feetham
 The Hon. T N Hammond
 The Hon. Ms M D Hassan Nahon
 The Hon. L F Llamas
 The Hon. E J Phillips
 The Hon. E J Reyes

ABSENT

The Hon. A J Isola
 The Hon. S E Linares

1450 The amendment is now carried – my apologies – by 8 votes to 7, with two Members on the Government side absent.

Now before the House is the Chief Minister’s amended motion. All Members may speak to it except Mr Clinton, who has already done so, and the Chief Minister himself. All the other Members may speak to the motion. *(Interjection)* The original motion, as amended, is what is now before the House. The Hon. Mr Clinton will be able to exercise his right to reply, but he cannot contribute now in the body of the debate.

Hon. D A Feetham: He has the last word.

1460 **Mr Speaker:** Absolutely, but not in the body of the debate.

Hon. D A Feetham: Mr Speaker, just to say this in relation to the amended motion: I invite the Hon. the Chief Minister to make a full public statement about the loan that he alleges has been made to a company, and I think he used the words, which was apparently had a connection with a Government Minister’. I think that it is a matter that the Chief Minister has got to make a full public statement, and I would also invite him to keep the House informed about the recovery of the loan, because certainly on this side of the House we have absolutely no information in relation to any loan that has been provided to a Minister or a company with which a GSD Minister had a connection, and quite frankly we are absolutely baffled as to why a loan, which at the end of the day is a debt, cannot be recovered. Certainly from our point of view we would invite the Government to take every single measure possible and leave no stone unturned in the recovery of a loan, if a loan exists, because that is what a situation such as that calls for. If there is a debt it ought to be recovered, and it is as simple as that. *(Interjection)* But I think that the Hon. the Chief Minister should not approach this, with almost pussyfooting around as to the identity of the GSD Minister, as to whether there is something that is possibly underhand. If there is a loan, he should say there is a loan. He should say why it is impaired, he should say who is the – *(Interjection)* No, he should say who is the Minister he says apparently was connected with the company and he should put all the facts in the public whom domain so that the public, who have an absolute right to know – because certainly we are not, on this side of the House, going to do a Chief Minister with Credit Finance and say, ‘It is commercially sensitive, we are not providing you with the information.’ That is the view that the hon. Gentleman takes. We ask the questions on Credit Finance and the hon. Gentleman says, ‘It is commercially sensitive, we are not going to be providing you with any information.’

I am telling him, on behalf of the GSD Opposition: tell us what the loan is about, provide the public with as much information as possible and absolutely bring all the machinery of Government to bear on the recovery of that particular loan, because certainly on this side of the House we have absolutely nothing to hide – contrary, it has to be said, to the attitude that the hon. Gentleman takes in relation to Credit Finance. So that is my invitation to him, the Hon. the Chief Minister.

1490

Hon. Chief Minister: Mr Speaker, is he giving way?

Hon. D A Feetham: No, I am not giving way.

1495 **Hon. Chief Minister:** Well, he has invited me to do something – can I just respond to the invitation?

Hon. D A Feetham: No.

1500 **Hon. Chief Minister:** Oh, he wants to make an invitation and not give way – okay.

Mr Speaker: The Hon. Gilbert Licudi.

1505 **Hon. Chief Minister:** Mr Speaker, will the hon. Gentleman give way?

Minister for Education and Justice & International Exchange of Information (Hon. G H Licudi): I will indeed. *(Laughter)*

1510 **Hon. Chief Minister:** That is the sort of ridiculous activity to which one is put by the Hon. the Leader of the Opposition – the *current* Leader of the *current* Opposition.

Mr Speaker, I accept the invitation, but it is not an invitation that I have had to accept; it is what I have been telling the House for the past 15 minutes I am going to do. It is what the motion from Mr Clinton as amended requires me to do. So I hope he will vote in favour of it, because he has voted against the amendment but now that it is before the House and it requires me to do all of that, I will do so.

1515 Mr Speaker, what he does not seem to understand is that this book is the Auditor's Report in respect of the accounts of the *Government*, taxpayers' money. Credit Finance Company Ltd, when he puts his brain back in between his ears, he will remember is the company that has savers' money from the Gibraltar Savings Bank; it is not taxpayers' money. His own argument, is that it is saver's money –

1520 **Hon. D A Feetham:** He is wrong.

1525 **Hon. Chief Minister:** Mr Speaker, I am not going to engage in a shouting match across the floor with him. I am telling him the position, and when he thinks about it he will realise that it is right.

This is different: this is taxpayers' money lent by *his* party when they were in office, and I am telling him I have an indication to a company involving a GSD Minister. I will make a public statement when I have the full information, and I will remind him that it is a loan granted in 2003 and that the limitation period – which I think we may have now been able to do away with, as a result of the exchanges that we dealt with – expired when he was a Minister, six years later in 2009. But if this money is recoverable, I will very much make sure it is recovered and that everybody knows how it was lent by the GSD, to whom it was lent by the GSD out of taxpayers' money, how the GSD were able to lend to companies involving themselves when they were here, and why we think that is not right and why we think that a debate about the Principal Auditor's Report of 2014 and the comment on it is not a comment on a debate on it unless you zero in on that matter and you identify that issue and you deal with it.

1535 And so, being the completely and utterly transparent lot that we are, we will do everything that I said we would do, which is exactly what he then foolishly got up and invited me to do as well. But now that he has done that inviting he may want to go back and read the amendment and support the motion as now amended; because, if he does not, he will be voting against the

principle of the invitation that he has just put. So perhaps, Mr Speaker, he should engage brain before tongue on all matters, not just Credit Finance.

1545 **Hon. G H Licudi:** Mr Speaker, having given way to the Chief Minister and the Chief Minister
having made the point that I was going to make (*Laughter*) – and he has done so very eloquently
indeed – I will limit myself just to reiterate one of the points. (**A Member:** Sit down.) I was going
to sit down, but having got up originally I will make the point that the Hon. the Chief Minister
1550 has already, to an extent, dealt with. And that is that the hon. Member opposite, the Leader of
the Opposition, has said – and he used these words – ‘the debt ought to be recovered’ and he
has used very strong words urging the Government to do so. As the Chief Minister has pointed
out, this is a 2003 debt, a debt which arose when the GSD was in Government. So, rather than
urging us to take steps to recover this debt, he ought to be asking himself, ‘Why is it that my
1555 party never did anything to recover this particular debt?’ and ‘Why is it that my party allowed
the limitation period to elapse in 2009 without having done anything to recover that debt?’ and
‘Why is it that I’ – I am speaking for the Hon. the Leader of the Opposition – ‘in 2009, being
Minister for Justice and realising that limitation periods come to an end after six years for the
recovery of debt, did absolutely nothing, knowing that Government debt was being
1560 accumulated?’ And not just this, but other types of Government debt were being accumulated.
As Minister for Justice he did absolutely nothing to change the limitation period to allow
Government debt to be recovered going back as much time as was necessary. It fell to us to do
that. Not only was he Minister for Justice in 2009 at the time that this limitation period expired
for this particular debt; he continued to be so until December 2011, for a further two years, and
1565 still he did absolutely nothing to do this. (*Interjection by Hon. D A Feetham*) Well, if it was a 2003
debt – (*Interjection by Hon. D A Feetham*)

Hon. Chief Minister: We are not 100% clear, but we almost are clear –

1570 **Hon. G H Licudi:** Well, we almost are clear –

Hon. Chief Minister: – that there was no payment from the date the loan was granted, and
that therefore the limitation period would have run from the date of the signature of the
document.

1575 **Hon. G H Licudi:** Well, all things being equal – (*Interjections by Hon. D A Feetham and Hon.
Chief Minister*)

Mr Speaker, subject to the investigation that the Hon. the Chief Minister is going to make,
and subject to the public statement which the Hon. Minister said he was going to do before
being challenged and asked to do so and the Chief Minister again confirming that that was the
1580 original intention of what he was going to do, it is our belief at the moment that the limitation
period would have expired in 2009. But even if it did not, if it had expired in 2010 or 2011, still
the hon. Member was Minister for Justice and did absolutely nothing, and it did fall to us.

The reason that it can be recovered now, to the extent that it is recoverable – we do not
know; we have to check the precise circumstances. The company, for all we know, might not
1585 exist, might have become insolvent. We just do not know. That is something that needs to be
looked at in terms of practical recoverability, quite apart from the issue of the legal right to
recover. The reason we can do it now is because, as the Chief Minister has said, this is
Government debt, this is pure taxpayers’ money, and the amendment that we have made to the
limitation period allows the Government now to recover Government debt such as this is.

1590 Therefore, for all those reasons, the hon. Member should do what the Chief Minister has
invited him to do and to vote in favour of the original motion as amended, because if he believes
that this paragraph in the Principal Auditor’s Report raises a serious issue of recoverability and

everything possible should be done to recover that debt, then he should be supporting this motion together with the rest of his colleagues. *(Banging on desks)*

1595

Mr Speaker: Does any other hon. Member wish to speak before I call upon the mover to reply? The Hon. Joe Bossano.

Hon. Chief Minister: Hear, hear.

1600

Minister for Economic Development, Telecommunications & the GSB (Hon. J J Bossano): Mr Speaker, fond as I am of the hon. Member, I find it incredible that he comes here and tells us all the research that he has done because we are not keeping up with the times of what happened in 1857 – that is to say we are now in 1856 in Gibraltar and the rest of the Commonwealth is in 2016. Does he really think that, until he told us today, we did not know what is happening in the rest of the Commonwealth, or we do not know what is happening in Westminster, and that until he arrived here nobody knew? Everybody in this Parliament has known what the rest were doing from the day I arrived in 1972. Indeed, my particular involvement in the CPA has been such that I spoke first at a CPA conference before I spoke in this Chamber in 1972. So the research that he has brought to the House is hardly likely to impress me or make me change my mind, because everything that he has told us I have known since 1972. And certainly in 1972 when I was here it was not the view of the Government of the day or the view of the Opposition of the day that we necessarily had to do what was being done elsewhere simply because it was being done elsewhere.

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To suggest that it is essential to have a public accounts committee, otherwise the transparency and the control of the public finances is in danger, and then tell us all the people from Malawi to Swaziland that have a public accounts committee, when everybody knows they are in total chaos in their public finances and the public accounts committees in those countries have not moved one iota in improving the situation ... He must live in the real world, and in the real world there is a logical reason for this.

1620

I have been against the Public Accounts Committee in Government and in Opposition. I think that perhaps is something that he may feel is strange because he happens to be in a party that has got an Opposition view when they are in Opposition and a Government view when they are in Government. But in our case in the GSLP we said we would not support a public accounts committee in opposition and we said it in Government.

1625

No, I am not giving way, because bad habits catch on. *(Laughter)*

Hon. D A Feetham: You give way and I always give way. He never gives way to me.

1630

Hon Chief Minister: *Como que no!* I gave way to you before!

Hon. J J Bossano: I think my hon. colleague Mr Picardo gives too much way to you. *(Laughter)*

So the answer is that it is a conscious policy decision, as far as I am concerned. I can tell him to the extent that if we had had a free vote on the public accounts committee, the most that would have been voting for a public accounts committee would have been 16, because in that free vote I would have voted no. So I want him to be clear.

1635

And I can tell him that the logic of the Public Accounts Committee in the United Kingdom may be that it is not possible for a document ... If this weighs one kilo, theirs must weigh one tonne, because their budget is billions. Their deficit is billions, never mind anything else. So of course it may require a year to go through that.

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But of course the hon. Member can do what I did when I was there. When I arrived in this House, Mr Speaker, as you know, the finances of Gibraltar were de facto run by the Financial Secretary. The Financial Secretary, before the Constitution was changed and certainly in 1972, was the man who presented and defended the estimates, and because he was an official

1645 appointed by London there was no shadow – nobody ever questioned the figure. So the
politicians argued about the policies but they did not argue about the numbers. The numbers
were what the emissary of the colonial power told the colonials they were allowed to spend, and
the Financial Secretary's role was not to allow the politicians elected by the people to spend
1650 money that the United Kingdom might think might be something that would create a continued
liability for them. That was their role, and the first time somebody actually stood up and
questioned the finances of Gibraltar and challenged the approach of the Financial Secretary was
when I arrived in 1972 – and I kept on doing it for 32 years from the Opposition and defending it
for eight years from Government.

When I used to get the book, I used to use the book as my source of information to seek
1655 further clarification. But let us be clear: if we have a public accounts committee to go through
the book, that is not going to do what he wants, which is to get answers to the things that are
not in the book. So, in fact, if he thinks that he can come to the Public Accounts Committee and
say, 'Ah, well, yes, there is a situation here where the Government has, from the Consolidated
Fund, the money in two banks – I want to know why you chose those two banks and I want to
1660 know what day you put it in and I want to know what day you took it out,' which is the kind of
information that he thinks is legitimate to question ... Well, look, the Principal Auditor is entitled
to do that, because if the Principal Auditor does that he does not do it simply because he feels
he wants more information but he might say, 'Why have you put the money ...?' For example, I
can imagine that it would have been possible for a Principal Auditor to question – but it was not
1665 questioned; it was a policy decision – what was the logic of borrowing from Barclays Bank, for
example, at 5% and then depositing the money back with them at 1% and losing 4% to the
benefit of ... It was not questioned for a very simple reason, because the Government said, 'It is
a policy decision because we want to be able to give more interest to pensioners, and therefore
we want to give more interest to pensioners but we want to have the money readily accessible.'
1670 Well, that is the explanation that was given. It was an explanation that certainly politically I was
not happy with, but it was an explanation which, as far as the Principal Auditor was concerned,
was sufficient for him not to question it further, because it is not for the Principal Auditor to
question the policies of Governments that have been elected by the people.

If the hon. Member cares to analyse the way this book is written, he will realise that he does
1675 what he can do and what he should do, which is to ask the controlling officers, who are the
people accountable for the expenditure. So, if we say in this Parliament we want to provide
money to a particular institution, it might not be the most sensible thing to do from a fiscal point
of view, it might not be the most sensible thing to do from the point of economic growth, but if
it is the decision of the Parliament to put a sum of money for a particular institution, then that
1680 cannot be questioned. And if the policy of the Government of the day which was brought here
and which was voted here and was included in the estimate ... So what the Principal Auditor
does is he gets the report of the Accountant General and goes through every head of
expenditure, and if he finds that, for example, there is a policy to collect the arrears of rent, then
every year he says, 'What are you doing about the policy of collecting arrears of rent, which is
1685 not happening?' If there was a policy not to collect arrears of rent, then the answer to the
Principal Auditor would be that the Government has taken a policy decision that people can live
rent free. But as long as the policy is, in theory at least, to collect the arrears, then every year
that policy is picked up by the Principal Auditor.

In 1972, when I came in, I took the opportunity that this book gave me to do what I told him
1690 the last time he was doing already, a one man public accounts committee, which ... they all
thought I was bestowing an honour by recognising that that was what he was doing. Well, look, I
used to do the same when I was sitting there, and this book is in fact an opportunity that the
hon. Member has and he will be doing a public service by doing that, because maybe we have
not had the time to look at all the things that the Principal Auditor is telling the controlling
1695 officers to do, not the Ministers, but if the controlling officer has his attention drawn to
something, then the Minister, if he has got any common sense, will look at it, because it is better

1700 for him to look at it than have to be reminded from the Opposition benches. But if the hon.
Member picks things up and then puts questions on it, which I used to do ... I felt, when I was
doing it, that I was helping to improve the quality of the Government on the basis that it was
1705 very probable that the Ministers had not gone through the whole book because they had many
other things to do. And therefore, from the Opposition I raised a lot of questions, and this is one
way in which, in effect, we are adding in Parliament to the usefulness of the things that the
Principal Auditor draws attention to. But I can tell him that he has drawn attention to things
years after years after years, and certainly one of the fundamental flaws in what the hon.
1710 Member puts to us ... I know that he, having entered recently into politics and having recently
been elected, may feel 'I cannot be held accountable for what has been done by the party that I
have joined before I joined it and when that party was in Government' – except that the party
that he has joined used to do it to us. The party that he has joined spent 15 years telling people
who had not been there 15 years ago that they were responsible for everything that was being
1715 done by the GSLP. So, as far as they were concerned, the present Leader of the GSD was
responsible for everything that the GSLP had done when he was in the GSLP. And then, in 2003
when they made this loan, he stopped being responsible for the GSLP because he was only
responsible then for the so-called Gibraltar Labour Party, which had a very short life. And then,
of course, he joined the other side, and when he joined the other side, by definition, applying
the criteria that they introduced of political responsibility, he acquired responsibility in 2007 for
all the things that he had criticised before 2007, which he defended subsequently.

So the situation, Mr Speaker, is that we know the history of the Public Accounts Committee,
but he has to know the history of the Parliament of Gibraltar and of the decisions that have been
taken. And for 15 years that the GSD was in Government, bringing the audited accounts to the
1720 House, I think there was only one occasion when there was actually a motion note in the audited
accounts – not even a motion saying let's have a vote on approving, because the accounts do
not need approval, the accounts are submitted to Parliament for their information and to
provide an insight into what the Auditor thinks requires being looked at. Also, in the case, for
example, of the clause that he mentioned, if the Auditor is saying £391,000 of arrears have been
1725 paid, you can argue, 'I want to know why the arrears existed in the first place; I am more
interested in knowing why only £391,000 has been paid and there is still £130,000 that has not
been paid.'

But the point, of course, is that the motion that was brought on the one occasion that it was
brought motion, noting – with no vote, because by noting it all that we were seeking was that in
1730 fact we should have a debate about the book as a whole. But in practice it was something that
only happened once because it was far more useful, given the level of detail that there is, to
focus on something and then bring either as a particular motion or a series of questions on a
particular area that was thought worth highlighting.

I can tell the hon. Members that another reason why I have always been against is because I
1735 believe, frankly, that people elect us either on that side or on this one to accept political
responsibility for what happens because the Parliament is suffering, and therefore I do not think
it is right that the onus of satisfying the Members of the Opposition or the public should fall on
the civil servants. Certainly it may happen in the United Kingdom, but there is a level of
anonymity in the United Kingdom because of its size, but I think that if a civil servant is doing his
1740 job and the Department is not working well, then the answer is not to grill the civil servant – you
grill me, because it is my job to make sure that the public service is delivering the results. And if,
therefore, there is evidence that the service can be improved and it is not being improved, that
is the political responsibility that I have acquired when I stood for election and I promised the
people that we would deliver a service and that I would deliver it with a prudential control of
1745 public finances. We have been elected to do that. If we do not do that, we have to answer to the
Members opposite. If we do not do that because the machinery of the Government is not
delivering it, then it is our responsibility to make that machinery deliver. If we tell the people in

the machinery to do it and they do not do it because they do not want to do it, then it is a different issue and there are disciplinary measures to be taken.

1750 So, really, I do not think it is in anybody's benefit – either the taxpayer, or the Parliament or
the Civil Service – to go down a route which would simply create more aggravation and, in my
view, no savings for anybody. But I certainly welcome anything that is in this book that the hon.
Member wants to bring to the attention of the Government either in the Parliament or directly,
1755 and if we have not looked at it ourselves and we have not produced answers and it is brought to
the Parliament then we have got the obligation to do it. But I would be opposed, because I was
in Government and in a position to say the civil servant who is in the office is the one who has
got to come here. We are the ones who have got to sit down and defend it, and we are the ones
who have decided to take a job where we can be sacked every four years. And look, they have
not sacked me in the last 44 – I do not expect I am at risk.

1760

Hon. Chief Minister: Will the hon. Gentleman give way?

Hon. J J Bossano: I will give way.

1765

Hon. Chief Minister: I am grateful, Mr Speaker, just as the hon. Gentleman sits down, to
advise the House that I have now had an opportunity of reviewing, with the assistance of the
Clerk of the House and the hon. Gentleman, Mr Costa, the annual accounts of the Principal
Auditor with the report of the Principal Auditor for the years 2007-08. I am going to limit myself
to those years which are the years when the Hon. the current Leader of the current Opposition
1770 was elected into the Parliament: 2007-08, 2008-09, 2009-10, 2010-11. All of them refer to the
impaired loan, so I am afraid he is fixed with knowledge of the impaired loan for the period that
he was a Minister – the loan given by the Government of which he became a Member.

1770

Hon. J J Bossano: And so, Mr Speaker, having dealt with that side of it, I just want to put the
1775 hon. Member in the picture on what happened to the GDC and the accounts of the GDC and the
auditor of the GDC.

Hon. D A Feetham: Can I ask him a question before he moves, and then he can answer?

1780

Hon. J J Bossano: I will give way.

Hon. D A Feetham: Thank you very much, Mr Speaker, I am very grateful to the Hon.
Mr Bossano.

1785

He has said during the course of his intervention – which I found extremely interesting, I have
to say – that he has always been against the Public Accounts Committee. I have not looked at
Hansard, but I have a recollection that Peter Caruana, as he then was, had on occasion stood up
in this House when he was talking about ... and the recollection goes back to 2011, the debate
that we had on parliamentary reform, where he I think said that he had offered or suggested a
Public Accounts Committee to the hon. Gentleman but the hon. Gentleman had, in fact, never
1790 been in favour, which is something that he has confirmed during the course of today. Is my
recollection correct that between 1996 and 2000 – I was not here in Gibraltar at the time – there
was a suggestion for the setup of a Public Accounts Committee by the then Government and the
hon. Gentleman was not in favour of it?

1795

Hon. J J Bossano: Mr Speaker, I do not think there was a formal suggestion; I think there was
a sounding out of whether the position of the GSLP had changed, and the answer was it had not
changed post 1996, and it has not changed in 2016. He knows that in the GSLP we tend not to
change, having been there himself.

1800 I can tell him something that was suggested to us, given that my colleague the Chief Minister
mentioned the frequency of questions that we have today. One of the things that was suggested
at one stage by the Chief Minister which we rejected was that we should have a Prime Minister's
Question Time equivalent with the caveat that there would be a limit to the time that we could
1805 spend on each question, and to the time that the whole session would last and to the number of
questions. That is to say he was prepared to come and answer questions from the Opposition on
condition that he said, 'Well, you can spend between ...' I do not know how familiar he was with
what used to be before, or whether he ever took the trouble to listen, but the tendency was that
the answers were frequently very, very long in respect to the questions. So he actually suggested
that there should be a 15-minute limit to each question, which meant, in effect, that you would
1810 spend one minute asking the question and he would spend 14 minutes giving you the answer –
and then it would be the next question. And there would be something like a three or four-hour
session and there would be a limit to the number of questions. So, in fact, the price for being
able to ask questions more frequently was a constraint on time. **(A Member: A guillotine.)** We
said we would rather stay with the system we had, and that system meant that, okay, we were
only able to ask questions once a year, or twice a year, or three times a year, and we just put
1815 3,000 questions in at one time.

So that is an indication of the concept of transparency and of the rights of the Opposition to
ask questions and of the obligations to him. I am not suggesting that he would behave like that if
he was here, but he needs to understand, that when in Government, the party that he has
joined felt that it was perfectly proper to have those views and to hold them. And why should
1820 we or the public or the electorate believe that what they say in Opposition is what they would
do in Government, when the practice of the past 15 years shows the opposite – shows that they
were saying certain things before they came in?

For example, in 1996 they came in and they said they were going to publish audited accounts
of all the companies, and they did – of all the companies of the time of the GSLP. They came in
1825 and the companies of the GSLP were audited. The position of the GSLP was if a company is
trading, why should we put a company, because it is state owned, in a position that a private
company is not, and when we legislate so that everybody has to do it, then all the Government
companies would have to do it and we had a commitment to do it for everybody and there
would have been a level playing field. He came in and he then informed the House that he would
1830 bring in audited accounts, and he did – up to 1996, and then after 1996 nothing happened. So
when he was saying 'I will make sure that the companies are audited' he should have said 'for
the period before I was there, but I will stop doing it when I am there.' And when he came to the
GDC he was critical of the fact that we tabled in this House audited accounts of the GDC, audited
by an auditing firm from the private sector – the area where the hon. Member has come from –
1835 because we felt it was perfectly okay for the audit to be done by private auditors and we did not
want to invest in making the Government Audit Department bigger and spend more money in
order to get the accounts of the GDC Gibraltar Development Corporation, which was set up ... If
he reads its constitution, it was set up not for what it was subsequently used for, which was to
employ people and put them in Government Departments, but in order to effectively bring
1840 about the regeneration of the economy of Gibraltar, which needed regenerating because of the
problem that we had with the MOD run down. In fact, when I was in Malta recently I was talking
to a colleague of ours who is the chairman of what they now call Malta Enterprise, which was
previously the Malta Development Corporation, which, like ours, was copied by them from the
Welsh Development Corporation. So we took the Welsh Development Corporation as a model in
1845 1988 and they had done the same thing 20 years before us. One of the things is that we are now
going to be working very closely with them because we have got similar interests and the
synergy between the two of us I think will be of benefit to their economy and to ours. And that
corporation that had that function, which was really acting as the agency to promote inward
investment, was audited by private auditors and brought to the House.

1850 This was a big crime, we were told by the GSD, this is a big crime. The greatest living
Gibraltar said, 'Oh, something has got to be done about this!' and he brought an amendment
to the legislation, to the Act, and removed the clause about the auditing and put in there that it
should be audited by the Principal Auditor 'when the Government so decides'. I voted against it
– we voted against it from that side of the House. We opposed it. We said, 'Look, there is
1855 nothing to stop you using the Principal Auditor if you want to use it.' We chose not to use the
Principal Auditor; we chose to have a private auditor. We said they had to be audited every year.
You say you are going to be more transparent – presumably because he thinks you cannot trust
the auditors in the private sector. But we said, 'Well, look, if you want to do that, then that is
fine, but you should not make it mandatory – it should be left to the Government of the day
1860 whether they want to use a private auditor or whether you want to use a Government auditor.'

The reality of it is that the last accounts brought to the House audited were the 1996
accounts. They were brought here in 1997, audited by the private sector, and the change that
removed the private sector audit was not replaced by a public sector audit, it was replaced by
zero audit – *no* audit. Clearly, I can only suppose, knowing the greatest living Gibraltar like I
1865 did, that he probably realised that it was not such a good idea, but rather than come back and
recognise that maybe I was right and maybe he was wrong and that perhaps it was not such a
good idea, rather than do that he just spent 15 years without doing an audit. I do not see how it
could be an improvement on what we had that there has been no audit since, and every year
the Principal Auditor has been saying, since it changed, 'When is it going to happen?' Well, the
1870 answer is we told him from the beginning it is not going to happen because we do not want you
to do it. We want any of the main principal audit firms that audit banks and audit gaming
companies. If they are good enough to audit those, they are good enough to audit the accounts
of the GDC.

That is the background. That is the research that the hon. Member should be doing, and then
1875 he would realise that he must not fall into the trap of thinking that everything that everybody
does on one side of the House must by definition be bad because you are on the other side of
the House. There may be things that are mistaken policies, but there is usually a logic and a
reason for doing those things, and frankly I think that with the best of intentions that he might
be doing it, as he claims, the reality of it is that it is not productive, and I agree with the Chief
1880 Minister that it is not a productive way to bring it about. But certainly if he wants to achieve a
contribution to the efficiency of the public sector, using this book to bring questions would be a
way of helping us.

Thank you, Mr Speaker. (*Banging on desks*)

1885 **Mr Speaker:** The Hon. Roy Clinton, exercising his right to reply.

Hon. R M Clinton: Mr Speaker, thank you. Marlene, do you want to?

Hon. Mr Speaker: Did you want to speak first?

1890

Hon. R M Clinton: No, I have got to be last.

Mr Speaker: Yes, certainly, the Hon. Marlene Hassan Nahon.

1895 **Hon. Ms M D Hassan Nahon:** Mr Speaker, I am very concerned by the information that I have
just heard this afternoon and I would like to take some time to better understand the
information that has been disclosed. Until then I will abstain, but I do wish that Members on
both sides would be more constructive to their approach.

1900 **Hon. R M Clinton:** Mr Speaker, thank you.

I am always indebted to the Hon. Mr Joe Bossano for his contribution, which I always find instructive, (**A Member:** Hear, hear.) (*Banging on desks*) especially when it comes to the history lessons on this House, on which I am sure nobody can compete with him – other than you, Mr Speaker.

1905

Mr Speaker: I found it instructive many years ago. (*Laughter*)

Hon. R M Clinton: Mr Speaker, if my motion today has achieved anything at all, it is perhaps in two or three areas.

1910

Firstly, at last perhaps one of the Principal Auditor's wishes to have the audit legislation amended will now become part of the parliamentary agenda, and that I think at least I may have succeeded in convincing the Members opposite is something they may wish to consider doing.

The second thing is, it is remarkable we spent ... I was not keeping track of the time, but it certainly must have been at least an hour debating –

1915

Mr Speaker: And a half.

Hon. R M Clinton: An hour and a half debating one particular clause of a 300-page report. I am sure if we all went through the report clause by clause we would have lots of things to say about what the Principal Auditor has or has not found. (*Interjection*) But, Mr Speaker, it goes to prove my point that if we spent an hour and a half on one clause, can you imagine how long we would be here if we had to go through the entire document clause by clause? This is why I have suggested constructively that a public accounts committee would be the best forum to do that. But the Hon. Mr Bossano has at least had the decency to lay out his thoughts and rational thinking behind why he is opposed to a public accounts committee, as opposed to just completely deleting my motion and asserting his own motion, as the Chief Minister has done. And for that I thank the Hon. Mr Bossano, because he has at least had the honesty and clarity of thought to set out what his position is.

1920

1925

Finally, Mr Speaker, I still stand by what I said when I stood up and presented my original motion, and that is I do not see there is any harm to Gibraltar – in fact, I see it as a benefit – to have a public accounts committee. It does not have to be exactly the same model as Westminster; we can come up with our own version. I am sure if other countries have managed to do so, we can do so as well.

1930

With that, Mr Speaker, I cannot really commend the Chief Minister's motion but I will stand down. (*Laughter*)

1935

Hon. Chief Minister: Mr Speaker, I call for a division in the vote.

Mr Speaker: I now propose the motion and a division will be called.

1940

A division was called and voting resulted as follows:

FOR

The Hon. P J Balban
The Hon. J J Bossano
The Hon. Dr J E Cortes
The Hon. N F Costa
The Hon. Dr J J Garcia
The Hon. G H Licudi
The Hon. F R Picardo
The Hon. Miss S J Sacramento

AGAINST

The Hon. R M Clinton
The Hon. D A Feetham
The Hon. T N Hammond
The Hon. L F Llamas
The Hon. E J Phillips
The Hon. E J Reyes

ABSTAINED

The Hon. Ms M D Hassan Nahon

ABSENT

The Hon. A J Isola
The Hon. S E Linares

The motion as amended is carried by 8 votes to 6, with one abstention and two Members absent.

**Definition of public debt –
Amended motion carried**

Mr Speaker: The Hon. Roy Clinton.

1945 **Hon. R M Clinton:** Mr Speaker, I have the honour to move the motion standing in my name, which reads as follows:

This House notes that section 73(1) of the Gibraltar Constitution Order 2006 defines public debt as all debt charges for which Gibraltar is liable. This House further notes that under the Public Finance (Borrowing Powers) Act, public debt is further defined as any borrowings of money by the Government. This House thus considers and resolves that borrowings by Government owned and controlled companies for Government purposes, whether secured on public assets or unsecured, should thus be considered and included in the measure of public debt and audited by the Principal Auditor, as ultimately Gibraltar is liable in the event of any default.

And so, Mr Speaker, another déjà vu moment for the Chief Minister.

1950 I brought this motion to the House because I truly believe that the people of Gibraltar deserve to know once and for all what the true debt position of this nation is. The GSLP fought an election in 2011 on the basis that the then Government was addicted to debt, and now of course it really cannot bring itself to tell the people the truth of its financial position. It should be a matter of legal certainty and not a political football what the true state of our finances are.

1955 The Government, I note, has accepted the legal grounding for the first part of my motion, namely that public debt is, and I quote, ‘all debt charges for which Gibraltar is liable’. You would think that that is sufficient for the Government to accept the logic of the rest of my motion, in that you cannot then hide public debt behind public companies.

Mr Speaker, I rehearsed part of this argument when debating the increase in the public debt limit earlier this year when I gave an example of what had happened in the Cayman Islands, and I shall repeat what I said as follows, for the benefit of Members.

1960 In the Cayman Islands the finances became so dire that in November 2011 the Cayman Islands had to agree a so-called framework for fiscal responsibility with the United Kingdom government. This required the Cayman government to pass into law the Public Management of Finance (Amendment) Law 2012. As part of that law, they had to define what public borrowing was deemed to include, and in that Act the following was deemed to be included: conventional
1965 borrowing from commercial and concessional institutions; the capitalised value of all alternative financing transactions, including PFI/PPP arrangements that would place future financial obligations in terms of increased expenditure or reduced revenue on the Cayman Island government; the risk-weighted debts and PPP/PFI arrangements of statutory authorities, government’s corporations and companies; borrowing that was contracted by the Cayman
1970 Island government but then not lent; and any other debts guaranteed by the Cayman Islands government. That was pretty much a very tight definition that was handed to the Cayman Islands government by the United Kingdom, but there can be no doubt from that definition what is to be included in the definition of public borrowing. At the time I challenged the Government to adopt such a definition of public debt, as it would once and for all finish this discussion.

1975 Mr Speaker, all this is before the Chief Minister in his Budget address revealed a £300 million borrowing secured on public housing estates that, in the Government’s words, and I quote:

To clarify, the £300 million did not become part of the Government’s useable cash reserves but of the cash pool of the Government companies ... It has nothing to do with the Government’s direct borrowing or spending ...

I quote again: 'It has nothing to do with the Government's direct borrowing or spending'. Mr Speaker, I am baffled. If the Government did not borrow that money, then who did? Was it the Government's fairy godmother perhaps?

1980 Mr Speaker, I would like to quote from the Public Finance (Borrowing Powers) Act under the heading Section 12 'Loan agreements and interest rate swap agreements to be tabled', which states as follows:

12. Every agreement specified in section 11

– loans and interest rate swaps –

shall be laid on the table of the Parliament at the next meeting of the Parliament commencing after the date on which the agreement is made.

1985 Mr Speaker, we have learnt in this House that the agreement was finalised on 31st May 2016. In his Budget reply on 8th July 2016, the Chief Minister protested as regards its disclosure, and I quote:

In respect of the £300 million financing, we have disclosed that in a speech by the Chief Minister at the first sitting at Parliament after the transaction was closed.

Mr Speaker, is it me, or does the Chief Minister's language reflect that action required by the Public Finance (Borrowing Powers) Act, other than he has not tabled any agreements? Is this, then, not public debt?

1990 I am, as usual, grateful to the Editor of the *New People*, the Chief Minister's favourite publication, and indeed mine, who wrote the following on 29th September 2016 in his editorial, and I quote:

The Government has always argued that the main reason for raising a £300 million loan is that there was an opportunity to raise a public loan

– I repeat, public loan –

at a very reasonable rate and payable long term.

1995 The editor of the *New People* is therefore of the view that the £300 million is a public loan and thus a public debt. The editor of the *New People* then goes on to say:

Whether the Government then uses this loan to eliminate more expensive loan agreements or for capital projects is a different matter.

And then he goes on:

If a loan is not repaid, this would not happen in any circumstances given that should there be difficulties in meeting the repayments, which of course is a totally hypothetical situation because the Government has other assets and recourse to its rainy day funds, it can divert funds from other sources to pay this particular loan.

2000 Mr Speaker, a loan is a loan is a loan, as recognised by the *New People*, and a public loan at that. It is not a miraculous investment and it is a loan secured on public housing estate buildings, as the Chief Minister himself has admitted. I truly fear for the state of our public finances if the Government can pull off a stunt like mortgaging public assets and yet not increasing public debt. It is a magic trick worthy of Houdini. This is a public loan, pure and simple. As an accountant and former auditor, I was taught to consider the substance of a transaction over its legal form. The Government is trying to hide behind a strict legal interpretation of a loan and not call it public debt, when in substance there is no doubt it is a debt of Gibraltar and not a debt of the
2005 Government's fairy godmother.

Mr Speaker, the Government has delighted in an official press release to call me sanctimonious. Well, let me illustrate my point by considering what would be their interpretation of a 10th commandment, which, for those who forget, starts off saying 'thou shall not covet thy neighbour's house'. The Government are, in effect, acting like commercial lawyers and saying, 'Okay, we understand the 10th, but if it's not your immediate neighbour that's okay, it's fine, because, strictly speaking, the law allows that – and besides, other people have done it before.'

Mr Speaker, the Government are missing the point. We are not sitting in this House as commercial lawyers trying to find clever ways of exploiting legal loopholes to suit political agendas, but as lawmakers. He himself said it earlier today. We are in this House here as lawmakers who are meant to set down the principles that govern us and bind us together as a nation.

Mr Speaker, the people of Gibraltar deserve to know where we, as a nation, stand financially, and thus I commend my motion to the House. Thank you, Mr Speaker. *(Banging on desks)*

2020

Mr Speaker: I now propose the question in terms of the motion moved by the Hon. Mr Clinton. Does anyone wish to ...? The Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Mr Speaker déjà vu indeed, but actually, I am pleased to say, now I am presented with a slightly different argument than the ones that we were this morning, although a much less effective argument and one which is so considerably flawed that it will be easy even for my children – if they are watching, because it is obviously I am not going to make it for their bedtime – to understand.

Mr Speaker, the hon. Gentleman starts by saying we need to have legal certainty on what Gibraltar's debt is. Well, we have legal certainty on what Gibraltar's debt is. We had legal certainty between 1972 ... Well, let me start in 1969 under the old Constitution and the initial Borrowing Powers Act. We had legal certainty between 1988 and 1996, we had legal certainty between 1996 and 2011, and we have had legal certainty since 2011. Of course we have.

Mr Speaker, it is one thing to say 'I think that this is, in effect, public debt and if you add them together you would be exceeding ...' You can say that if you like, but you cannot say it is not certain. Of course it is certain, it is entirely certain; and if it were not certain, the Principal Auditor should have said so, because if the Principal Auditor were looking at substance above form and said, 'That should be captured', then it would be captured, because he is not the only person who is an accountant who has been told to look at substance over form.

Now his argument is going to be 'But this is in the company structure and the Auditor has no jurisdiction over that.' No no, it is that their argument is that this is not the company structure, because they start from the premise that this is a debt of Gibraltar. Mr Speaker, this is not trying to be an artful lawyer; it is that Gibraltar is the Exchequer of Gibraltar and if something is in a company, even if the shareholder is Gibraltar, then it is not a liability of Gibraltar. And this is not Picardo talking; this is everybody who has been dealing with the public finances of Gibraltar since 1969. AACR, IWBP, GSLP, GSD, all of them and all of the correspondent Principal Auditors and all of the correspondent Financial Secretaries that between 1969 and 2006 were appointed by the United Kingdom out of the National Audit Office and they all thought that this was the way to define Gibraltar, and between 1996 and 2006 in particular, where we had UK-appointed Financial Secretaries and we had the invention of company borrowing by the GSD.

And so the hon. Gentleman needs to understand. He might not, from what I detect of him, like lawyers. It is up to him whether he likes lawyers or not. I do not dislike accountants. I do not judge people based on what their profession is. I know there are some who do, *(Laughter)* but this is not just lawyers. This is auditors and accountants and Financial Secretaries who are accountants, who have all understood that there is clear certainty – until, in the past four or five years, even before he arrived, it is clear that somebody thought that the argument that they

2055

thought they could make to salvage an unsalvageable political career, was to try and pretend that there was an issue with liability.

2060 It is clear that there is legal certainty as to what the debt of Gibraltar is, and the best demonstration of it came in the course of his own speech, because in his motion he quotes the position under the Gibraltar Constitution and the Public Finance (Borrowing Powers) Act and then goes on to refer to the amendment in the Cayman Islands which actually specifically by law imposed by the UK – they came very close to direct rule for issues unrelated to any of the sort of thing that we are debating here, very close to direct rule – they have a specific law that provides
2065 the things that the hon. Gentleman provided for. We do not. So he cannot, by a motion, say to us ... impute that that definition adopted in the Cayman Islands is how we must read the different definition which has existed in our law. It is utter nonsense, and one does not have to be a lawyer, an accountant or more than a four-year-old to understand it. There is a specific provision in the Cayman Islands.

2070 Let's be very clear: we consider that in this area we will continue to act as the Gibraltar Social Democrats did when they invented the concept of company borrowing not being a liability of Gibraltar and therefore not being part of the public debt – and they sit as Members of the GSD absent the hon. Lady. One of the things that they say to the public is judge them on their record and how well they did. Well, look, on this we agree they did well and we are continuing what
2075 they did. So what he is trying to persuade us to do, as I told him this morning, is to upend their practice, and he is trying to do it not even by an amendment to a law. He is trying to do it by a motion that the law should be interpreted in a particular way, which would be valueless even if we were to agree. Even if we were to agree, the Financial Secretary, the Principal Auditor and the Chief Justice, if something was challenged before them, would say, 'Look, this is nonsense –
2080 you have all had a spanking good time, you spent three hours debating it, you told us what you think it means, but you were not making law, you were having a debate on a motion.'

Hansard cannot be referred to when interpreting legislation because of something we debate in a motion. The rule is that you can look – I think it is *Pepper v Hart* – at *Hansard* when the Parliament that is making the law is debating the law if there is uncertainty in the law. There is
2085 no uncertainty. The only persons creating uncertainty as to the public debt of Gibraltar are the people who have now been elected for the GSD, because the people who were previously elected for the GSD are very clear as to what is public debt and what is company debt. It is the new GSD that is trying to undo the old GSD's certainties and is proposing that there is no certainty. But debating it in a motion would never change any of that.

2090 The hon. Gentleman can bring an amendment to the Public Finance (Borrowing Powers) Act, and if it is not one that he has cleared with the Government he knows what the result is going to be; and if it is one that tries to overturn what we are saying now, that we support the way they used to do it, he knows what the result is going to be. We are going to stick with Peter Caruana's way of doing things. We want to be like the greatest Gibraltarian of all time.

2095 So how can he be baffled when I told him that the £300 million that we borrowed was not public debt? It is very simple: it is borrowed through Government companies, therefore it is not a debt of Gibraltar even though the shareholder may be the Government of Gibraltar – because there is a very big difference between a company borrowing and the Government borrowing. He needs to understand it. The Government has not entered into an agreement. They themselves
2100 have produced documents, as if they were producing something secret out of a treasure trove, that demonstrate that the estates were in companies – and we will come back to that issue when we have the meeting. In companies. They were not held by the Crown. The Crown divested itself of ownership – we say in their time; for some reason they say in our time – in their time. Therefore, the borrower is the company, not the Government, and there is no
2105 Government guarantee. I do not know if the hon. Gentleman has understood that: there is no Government guarantee for Government company borrowing, because if there is the Government has to come here and by resolution of the House the guarantee has to be approved. So the Government companies trade without a guarantee.

2110 But, of course, as the hon. Gentleman said during the course of the debate, it is unlikely that the Government is ever going to go bankrupt – I do not know whether they are going to row back from that – and the Government will stand behind its companies, because that is the way it does business. But it does not have to, because there is no Government guarantee. This is an issue of legal liability. Public finance works on the basis of legal liabilities.

2115 He knows that there is a company called Credit Finance established with money from the Savings Bank, owned by the Government, etc. He knows that there is a Government company called Gibraltar Capital Assets. It does not come here immediately that it has to be tabled in that way; it comes here in the first debate, because it does not have to be tabled. It is not caught by the rules the hon. Gentleman is talking about. I am telling him because I believe that the people should know. That is how they found out, because I believe that the people should know, even though it is not on that part of the balance sheet which is public debt. That is why I told them at 2120 the first meeting of the Parliament in the Budget debate after we had done the transaction, but not because it is caught by the rule. He is confusing all of that.

Mr Speaker, the one thing that I am impressed about is that ... I have never seen the *New People* quoted so authoritatively in this House (*Laughter*) until the hon. Member was elected. I know that he got himself into a lot of trouble for quoting it at Peter Caruana. He will not get into any trouble for quoting it at me. But I must tell him that I speak for the Government, and not the *New People*. It is not the *Gazette*, although I am not entirely disabused of the idea that it might perhaps in future be the *Gazette*. Given that the hon. Gentleman is almost supporting that people should read it, perhaps it should be the *Gibraltar Gazette and New People* that we should issue in the future. So he is wrong to say, ‘Ah, but the *New People* said this’, as if that were one of the documents in the legal hierarchy of documentation which he can look at to make his case. I shall tell the editor of the *New People* of the fondness with which he regards everything that he writes, and if I ever have anything to say to him and I cannot find him or raise him by phone – he does not appear to have e-mail – I shall just put an article in the *New People* in my name and be 2135 sure that at least by Thursday morning he will have read it.

I am the Chief Minister of Gibraltar, we are the Ministers for Gibraltar, we speak for Gibraltar and the official documentation of Gibraltar is not the *New People*. It does teach you something though, Mr Speaker: if you ban someone from reading something, then the last thing they are going to do is stop reading it, and I know that the hon. Gentleman was banned by Peter Caruana from reading the *New People* – and look at the effect it has had. I should go round banning people from reading the *New People* and perhaps the circulation would increase, as it deserves to increase. 2140

Then he says, Mr Speaker, a loan is a loan. Well, of course a loan is a loan and you look at substance and not at form, but whose loan is it? It is, frankly, infantile – and I say that despite being as fond of him as the Hon. the Father of the House is, although perhaps today that fondness might have been lost in the passion with which I field the arguments, but it is absolutely infantile to think that you can look through a company. The hon. Gentleman has made a career of being in banking and in Gibraltar and dealing with companies. The shareholder of a company is not the person with liability; it is the company. There is something called the doctrine of separate legal personality and the shareholder has a different personality to the company. And so for the hon. Gentleman to say ‘I see straight through a company where the shareholder is the Government of Gibraltar’ is really something that he knows is not the reality. There is no guarantee on public assets either, because they made the case that we had alienated the assets into the companies. There is the reality. And he says ‘I fear what would happen if they get away with creating a mortgage over public assets and it is not public debt.’ Well, then, he must be very fearful of going around telling people that he represents the Gibraltar Social Democrats, because they are the ones who showed us how to do it. They showed us. They sunk the estates into the companies, but more so they took a loan using Government assets, creating a mortgage over Government assets, to invest in the Midtown development when it was being carried out by one of their favourite developers. Remember that? That did not increase public 2150 2155 2160

debt. They took a loan over Gibraltar Car Parks when they had cars parks in there, and that did not increase public debt.

2165 So I am sorry to say that the wizard is the greatest Gibraltarian of all time, not me. I am no David Copperfield. I am no magician. But you can only make the arguments the hon. Gentleman is making if you look at it from the point of view of turning a complete Nelsonian blind eye to what they represent, to what they were trying to continue in 2011 and in 2015. We have no fairy godmother. We work very hard indeed for Gibraltar to ensure that Gibraltar is able to take advantage of the opportunities that present to it as Government.

2170 I recognise the hon. Lady is leaving. I am sorry that we have to sit so late tonight, I genuinely am.

Hon. Ms M D Hassan Nahon: I appreciate that you normally [*Inaudible*]

Hon. Chief Minister: I am sorry about that.

2175 We have to work very hard indeed, Mr Speaker, to create opportunities for Gibraltar and then decide whether those opportunities are taken by the Government itself or by the company structure which we inherited from the GSD.

2180 It is because we are lawmakers that in this place we must respect the laws that are already made as well, unless we believe they should be changed. He obviously thinks we need to be going down a Cayman sort of road. I suggest he should speak to the Chief Minister of the Cayman Islands, the Premier, about what he thinks about what the UK did to him and to his country by the imposition of that definition of public debt. He might find that his advice might not be to pursue that sort of definition. We have to respect the laws that are made, and if we want to change laws we do not have to come with motions about how laws are interpreted, we have to come with amendments and win the 10-7 debate, and either pass it with 17 or 8-9 or in some other way.

2185 People do deserve to know what the public debt is, and they do know what it is. When they made such a song and dance of what they said the public debt was before the election and they said that was the principle plank on which they were defending their manifesto, their pamphlet – that and the explosion that could happen at North Mole and take out most of Gibraltar ... Those are the two issues on which they fought the election, and they were so roundly rejected by the people they had to accept that the people had confidence about the way in which we are running the economy and the public finances and that their view was one which did not prosper.

2195 Given all of that, Mr Speaker, and given the events of this morning in this House, I think the only appropriate way to deal with this motion is to propose an amendment to it. I therefore give notice that I move the following amendment to the private Member's motion presented by Mr Clinton, which dealt with section 73(1) of the Gibraltar Constitution, and that is namely to delete every word after the words 'This House' when they appear in the third paragraph of the motion, with the following words:

This House thus further endorses the motion approved by the House already today and standing in the name of the Chief Minister, which approved the practice established under the former GSD administration under both the 1969 and 2006 Constitutions that borrowings by Government owned and controlled companies are not considered and included in the measure of public debt.

2200 Mr Speaker, I shall pause before I speak on the amendment whilst the Clerk kindly circulates it.

2205 Mr Speaker, I understand hon. Members now have the proposed amendment. What this amendment does, obviously, is reflect what I have said during the course of the debate this morning and what I have said during the course of the debate this afternoon about the reasons why it is right to continue with the definitions as they are today, and why in fact just enjoying a

debate on a motion – the sort of thing that all of us enjoy, otherwise we would not be in this Parliament – is not going to avail us of an opportunity to change the definitions and interpretations of a law and a constitution, however much fun it may be to debate those definitions.

2210 Having dealt with all the things that the hon. Gentleman has said already, and having already this morning indicated why I believe this was the right conclusion for the House to reach on the similar motion which I brought standing in my name, I intend to say very little other than I commend the motion as amended to the House and I ask the House to support the amendment that I now put before it.

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Mr Speaker: I now propose the amendment moved by the Chief Minister, and therefore I invite hon. Members to speak on it.

2220 **Hon. T N Clinton:** Mr Speaker, the editor of the *New People* will be most disappointed this evening to hear that the Chief Minister disagrees entirely with his analysis. I am sure that Joe will appreciate what I am saying, yes?

2225 We have heard today, or in fact just now, the Chief Minister say, ‘Ah, well, look, this borrowing, this £300 million, is not on that side of the balance sheet.’ Well, what side of the balance sheet is it on, then? There are only two sides to it, and in this particular case it would be a liability; so if it is not on the balance sheet it is off balance sheet, as we have always maintained.

2230 Mr Speaker, in the 2015 General Election, the one in which the Chief Minister is so fond of reminding us that 70% of the electorate voted for him and his party, I wonder if they would have voted for him if he had been entirely honest with them – if he had told them the day before the General Election he had incorporated Gibraltar Capital Assets Ltd and it was his intention to mortgage the buildings, you will recall in that, on the Government housing estates, six of them, for £300 million. If you read their GSLP manifesto, there is not a word about it in there. And he has the audacity to say, ‘Well, look, it’s in a company, we cannot pierce the veil of incorporation – you should know that, even if you’re not a lawyer.’ Yes, of course I know that. I also know about sham companies and the cases where you do pierce the veil. And what he actually said just now, which I am sure will be in *Hansard* ... He said, ‘Mr Speaker, this Government stands behind its companies.’ Well, if that is not a guarantee, what is?

2240 So, Mr Speaker, at the end of the day, regardless of how he wants to amend my original motion – and yes, we have had the debate this morning – the fact of the matter is hiding behind public companies, regardless of the intention at the time to borrow money for public purposes, must be by definition public debt, no matter in what shape or form he puts it.

2245 I could have perhaps accepted it if he had said, ‘Mr Clinton, we need to borrow £300 million, we are going to reschedule the debt, we are going to set up an SPV, we are going to mortgage the estates and then we are going to transfer that money into the Government’s coffers.’ But he has not done that; he has kept it off the Government books. If that money had then found its way onto the Government books by way of additional borrowing, then we would not be having this discussion because then the official gross debt of Gibraltar would be somewhere in the region of, excluding Credit Finance, £700-odd million. Simple maths. If you add Credit Finance, it would be over £1 billion.

2250 And so, Mr Speaker, I really cannot accept this amendment to my motion, although of course he has the majority – although I did find it interesting when the Father of the House did say, ‘If I was not subject to the collective vote I would vote in whatever way I would wish,’ which begs the question ... well, I thought he did already. In any case, I think, no matter what I say, the general public will see this magic trick for what it is. It is nothing more than a sleight of hand: he has taken £300 million of public assets, raised money on it and he will have us all believe it is not public debt. Well, Mr Speaker, I wish him luck in trying to convince the public of that.

2255 Thank you, Mr Speaker. (*Banging on desks*)

Mr Speaker: Any other contributor to the amendment? The Hon. the Leader of the Opposition.

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Hon. D A Feetham: Yes, Mr Speaker, very briefly.

The hon. Gentleman has asked what has changed from the practice under the GSD administration and the practice now. Well, let me summarise – and I am reiterating some of the points that I have made before, but let me summarise: Greece in 2008; worldwide recession; the move to greater financial transparency across nations, particularly in Europe; Credit Finance has happened; and a £300 million mortgage of the six estates. That is what has happened – and, my hon. learned Friend Mr Phillips reminds me as well, Brexit – and in those circumstances we should be moving towards greater not lesser transparency, which is what we are advocating.

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Mr Speaker, it really does not, in our view, matter, nor should it matter to them, whether the position of the GSD pre 2008 was the fact that Government-owned companies and the debt of Government-owned companies did not count as Government debt. At the end of the day, since I have been the Leader of the Opposition in 2013, one thing that they cannot accuse me of not having been consistent on is this point, because from the very first moment that I stood up and I started talking about these things, I said two things: one, I actually think Credit Finance ... effectively, the Government, in what it is doing, is breaching the legal borrowing limits. That is one thing that I said, and the hon. Gentleman made some of the points that he is making today. And secondly, the point I made was that even if technically there is no breach of the legal borrowing limit, because technically it does not form part of the debt of the Government, the reality is that in a community like Gibraltar we ought to be looking at the substance – what is the indebtedness of the community, not just technically the Government, but the community and that includes Government-owned companies. The hon. Gentleman says Government-owned companies are a separate legal personality – yes, of course they are a separate legal personality – one of the most trite statements the hon. Gentleman has made, but of course the Government is a shareholder but the Government is also, effectively, through public servants, also controls those Government-owned companies and are directors of those Government-owned companies. Nobody is going to say to me that the Chief Secretary – when he was, because the position changed and they are now corporate directors, but the Chief Secretary and the Financial Secretary, when they were directors of Credit Finance Company Ltd, they were making decisions in relation to what loans would be made by that company devoid of the opinions and the guidance of Government. That is not how it operates, Mr Speaker. The reality is that at the heart of this debate what we have is an argument on this side of the House that we should be realistic about how we view the public indebtedness of this community, and therefore we ought to take into account the debt of Government-owned companies and their view, which is, 'Well, no, let's take the narrow, technical, legal view, hide behind corporate legal personality, just simply to argue that our gross debt is £446 million, when if you take into account the debt of Government-owned companies, it would be over £1.1 billion.'

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That is really the substance of the debate, that is the heart of this debate, and that is what really divides that side of the House from this side of the House, and of course I commend not only to this House but I commend to the community generally that our view is the correct view, because at the end of the day you cannot talk about the indebtedness, what this community owes, without taking into account that £700 million or £800 million that Government-owned companies actually owe. For that reason, we will be voting against the amendments, and for all the reasons that my hon. Friend very eloquently, I have to say, and in his usual erudite way has espoused in the course of his own intervention, Mr Clinton. We will be voting against the amendment by the Chief Minister. *(Banging on desks)*

Mr Speaker: Is there any other contributor to the amendment?

I will, then, call on the Chief Minister to reply.

2310 **Hon. Chief Minister:** Mr Speaker, it is really, frankly, quite incredible to have to be dealing with these arguments. The Hon. the Leader of the Opposition says he has been consistent – well, as usual, he has been totally inconsistent, and I am going to start there, Mr Speaker.

He sat next to the former Chief Minister in this House during the course of the Budget debate of 2011 and subsequently on a motion brought by the former Chief Minister, saying that I was
2315 unfit to govern Gibraltar because I said, ‘If you take the Gibraltar debt as it is today and you take the company debt and you bring it together, and the Savings Bank debt’ –

Minister for Economic Development, Telecommunications & the GSB (Hon. J J Bossano):
No, you were asked about the gross debt.

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Hon. Chief Minister: In fact, the Hon. the Father of the House is right – he was arguing that we should not be dealing with the gross debt, we should be dealing only with the net debt. But on top of that, if you threw in the liability of the Government at the time in respect of what was not public debt –

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Hon. J J Bossano: Which we never criticised.

Hon. Chief Minister: – which we never criticised and I was very clear about, we would have exceeded the spending limit. And they all sat here and said it was terrible to even mention that.

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So, Mr Speaker, the idea that he can say that he has been consistent in anything – his politics in particular, let alone this issue – is completely undone. It is completely undone. But he says, ‘The community must know this and the community must know that.’ Well, this is the argument he was making in the election and seven out of 10 people in the community told him, ‘No, actually, we do not think you are right about that – we want to pursue the GSLP Liberal approach instead.’

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So when he starts talking about Brexit and Greece and those things being the reason why we should shackle ourselves even more and we should put ourselves into more strictures, not give ourselves more flexibility, I am left thinking in the words of that song, that this must be ‘a life of elusion, a life of control mixed with confusion’ and ask myself what we are doing here, because I cannot be hearing these things from the people who were doing them for 16 years, when he was sitting here like one of those puppy dogs that nods at the back of a car, nodding at everything that Mr Caruana said when he was doing exactly these things, and then saying, ‘Well, you would be breaching the borrowing limits if this were taken together, even if technically they are not to be taken together.’ He is a lawyer; he spends his life arguing technicalities. At least Mr Clinton can allege that he is not a lawyer and he does not argue technicalities – although much of what he has said is technically completely wrong. (**Hon. J J Bossano:** Yes.) But he is not just accusing us of getting this wrong; he is accusing us and every auditor and every Financial Secretary at least since 1996 of getting it wrong.

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To hear the Hon. Mr Clinton say that he knows about sham companies, as if this were a sham company – is that the spectre he was trying to raise by saying, ‘I know about companies and I know about the doctrine of separate legal personality and I know about sham companies’? How dare he even pretend to even raise that spectre about a company and a structure established by the Royal Bank of Canada, which has wanted to become involved with Gibraltar, by Stocks & Co, by Hassans, the law firm that were advisers ... of a company that has James Levy QC and John Collado and Charles Serruya as its directors – that is what he is saying is a sham company – and about a structure on which we were advised on by Peter Montegriffo, who I understand was always the man *he* supported for the leadership of the GSD, the founder of the GSD. That is what he is calling a sham company, or trying to pretend to use that language to raise that spectre of. For goodness sake, Mr Speaker, they really do need to engage brain before tongue – or, in his case, abacus before tongue if he is going to start making any sensible points.

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Mr Speaker, this is not magic, this is not sleight of hand, this is not an area where there is a lack of disclosure. This is an area where I have told him that through the Government company structure we have borrowed £300 million, where I have told him what the security is. That is what we have told them. There is no sleight of hand when what you do is say, 'This is what I have done.' Now, if you try and hide it, if you try to pretend it is not there, the hon. Gentleman might then want to accuse somebody of sleight of hand, which would be exactly what happened under the GSD when they mortgaged public assets, through the Government company structure that they created, to raise a loan by a mortgage to invest in the Midtown development. That was sleight of hand, applying his definition, not somebody saying, 'I have done this, I think it is a very good thing; I have done it through the company structure,' and saying it in this Parliament.

That is the problem that they have. I do not have the problem of getting away with anything. I am not trying to get away with anything; I am doing what I think is the right thing for Gibraltar and I am explaining it. The problem that they have is that they have to create the spectre that I am somehow trying to do something which is sleight of hand, although we have spent the better part of the three months since we have done it talking about it and I have invited them to a meeting to see it all. *(Interjection)* Yes, I know you are waiting for it. I have been to New York to defend Gibraltar's sovereignty, which is more important than sitting round the table with you and helping you to understand something that most people would have understood already. **(Hon. Miss S J Sacramento: Hear, hear.)**

And so, Mr Speaker, what needs to happen is that people need to not fall into the trap – and I think very few ever will, perhaps less now than even in December last year – of thinking that there is somehow a lack of certainty in the calculation of Gibraltar's debt liability, because that does not exist. However hard the hon. Gentlemen might try to create that uncertainty, they cannot do so, because when people come to make the determinations as to debt they look at the law, not at press releases. They do not even look at *Hansards* of motions. They look at what the Constitution says in section 73, they look at what the Public Finance (Borrowing Powers) Act says, and that is how they make determinations which are certain – the way that they have been making them for the past 20 years.

Mr Speaker, I understand that hon. Members feel very hard done by at being caught out again on a motion that they should have given more thought to. I understand that they do not like the fact that I am amending their motions to reflect reality on what is proper and appropriate and not the foolishness that they would rather lay on the *Hansard* for eternity and perpetuity. On this side of the House we are keen to ensure that we continue to provide legal certainty and that nothing starts to, in any way, even bring a dew or a dust over it, and for that reason I have proposed this amended motion, and nothing I have heard, whether it was the Hon. the Leader of the Opposition singing us 'Grease' or whether it was the Hon. Mr Clinton lamenting that once again his labour of love, which is his motion of July, is being amended, none of that moves me away from the importance to this community of having the legal certainty it needs, and for that reason I ask the House to support the motion, as amended, although the amendment should be made so that the motion as amended now goes forward. *(Banging on desks)*

Mr Speaker: I will now put the Chief Minister's amendment *(Interjection)*. The hon. Member has spoken on the amendment. He is able to speak at the end of it all. We are going to take a vote. *(Interjection)* Call a division, yes.

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A division was called and voting resulted as follows:

FOR

The Hon. P J Balban
The Hon. J J Bossano
The Hon. Dr J E Cortes
The Hon. N F Costa
The Hon. Dr J J Garcia
The Hon. G H Licudi
The Hon. F R Picardo
The Hon. Miss S J Sacramento

AGAINST

The Hon. R M Clinton
The Hon. D A Feetham
The Hon. T N Hammond
The Hon. L F Llamas
The Hon. E J Phillips
The Hon. E J Reyes

ABSENT

The Hon. Ms M D Hassan Nahon
The Hon. A J Isola
The Hon. S E Linares

2415 **Mr Speaker:** There are 8 votes in favour of the amendment, 6 against, and there are 3 Members absent. The amendment is carried.

Does anybody wish to speak now on the motion, as amended, standing before the House?

Hon. R M Clinton: Mr –

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Mr Speaker: If the Hon. Mr Clinton speaks now, then he is exercising a right to reply and that would preclude anybody else from speaking. Does any other Member of the House want to take part in the debate before I ask Mr Clinton to reply?

2425 **Hon. D A Feetham:** Mr Speaker, I am just going to, by way of my last contribution, read from the motion that the hon. Gentleman referred to during the course of his own intervention on the amendment, which was a motion that was brought by the then Chief Minister, Sir Peter Caruana, in relation to a video podcast that had been posted by the hon. Gentleman on I think it was Facebook – in actual fact, his Facebook page. There is a transcript of what he said, and he said this. *(Interjection)* No, there is a transcript of what he... The then Chief Minister referred to a transcript of what he said in the podcast.

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Hon. Chief Minister: Read into *Hansard*?

2435 **Hon. D A Feetham:** Read into *Hansard*, absolutely – which just illustrates the remarkable role reversal that we find ourselves in during the course of this debate this evening. This is what the hon. Gentleman said during the course of the podcast. He was talking about gross debt at the time; it was not net debt:

Gross debt, in other words the amount owed by the Government of Gibraltar, is now up to £480 million. The ceiling is £500 million. It is already £480 million. Well, the gross debt borrowing limit is £500 million. If you add the £480 million that we have already borrowed in respect of gross debt and the £20 million that Mr Caruana has borrowed from banks, using Government buildings which he has put in a company, then you have reached a total of £500 million. That second £20 million, for technical reasons, does not count as Government borrowing, but in fact the Government now owes more than the law allows them to owe.

2440 End quote, Mr Speaker. *(Banging on desks)* End quote, Mr Speaker. *(Interjection by Hon. Chief Minister)* End quote, Mr Speaker.

I have to say, Mr Speaker, that I do not think that I have enjoyed quoting from the hon. Gentleman as much as I have enjoyed quoting from that very famous infamous podcast from 2011.

2445 **Hon. Chief Minister:** I am saying exactly the same thing, so quote it as often as you like because I will be very happy with great satisfaction.

Mr Speaker: Is there any other contribution before I call on the Hon. Mr Clinton to exercise his right? The Hon. Joe Bossano.

2450 **Hon. J J Bossano:** So I take it, Mr Speaker, that what the hon. Member is saying is that my friend and colleague was wrong when he said that – which is what he is saying now, but it is now right when he is saying it.

Hon. Chief Minister: Exactly.

2455 **Hon. J J Bossano:** Well, at least that argument I understand, although I do not share the argument. I think they were both wrong: he is wrong now and he was wrong then! *(Laughter)*

2460 But I have to tell him that what I find frightening is the level of ignorance about the accounts and the public finances of Gibraltar demonstrated by Members opposite, and I might understand it if people have been here a short time but I cannot understand how the Leader of the Opposition, who spent four years in Government, following four years when he campaigned on public debt as one of the key issues –

Hon. D A Feetham: In 2003 remember what I said.

2465 **Hon. J J Bossano:** In 2003 he was saying that the debt was too high at £100 million and he was accusing me – *(Interjection by Hon. D A Feetham)* No, Mr Speaker, we can go back and search it, but I do not need to search because my memory is not yet failing me.

2470 Independent of the PFI he was saying that in fact he was criticising the fact that the debt would have to be rolled over because the bulk of it was held by Community Care. There was a debate on the radio in the election campaign, where he actually accused me of siding and agreeing with the then Chief Minister because I was saying £100 million is not high debt. The moment that he changed sides – this was before the start of the love affair – when they started flirting together, then he changed his tune *(Interjection by Hon. Chief Minister)* and he moved from saying that the debt of £100 million is too high and you are going to have to borrow to repay it, to the argument that came on later in 2011, which was the argument that was being defended by the then Government, including him, he subscribed to that argument, and that argument, for example, was the result of what happened the first time they breached the limit. Forget the PFIs and forget whether they borrowed £20 million on the car park, because, as far as I am concerned, when we were in Opposition we did not oppose it, we did not accuse him of anything. It might have been said on that particular occasion by my Learned Friend the Chief Minister, but I can tell him that it is not something that we discovered then – we knew it before. In fact, one of the explanations that we were given the first time that it happened was that, because it was not Government debt, there was assumed to be a higher level of risk by the lender and that the rate of interest was higher than the rate would have been on Government debt. That is a record in *Hansard* he can go back and search for. He will find that the definition used by the GSD Government included the interest that they paid on what was not Government debt, was higher than they would pay on Government debt because it was assumed that it was secure on the asset and not on the results of the Government.

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2490 But the kind of arguments that they have put today are incredible. The hon. Member has told us that if they add the £300 million the debt would be so much – and that was excluding Credit Finance from the balance sheet, because if they included Credit Finance to the balance sheet the debt would be even higher. Is it that they do not know that the Government does not have a balance sheet? Haven't they even discovered that much after four years? Does he not know that there is no balance sheet? That these are cash accounts? That every time you spend money in buying an asset it does not appear on a balance sheet as an asset, it disappears, it is non-existent? So you could not put Credit Finance on the balance sheet of the Government because there is no such balance sheet, but if the balance sheet existed it would not go on the liability side; it would be an asset worth £400 million. You have got a company, that is worth
2495 £400 million, which is not on any balance sheet, but if you put it on a balance sheet it is an asset
2500 not a liability. The liability rests with the borrower of the money, not with the owner of the

company. So what is he saying? That if we lend money to somebody in a business it becomes a Government debt if it is from Credit Finance? And if it is from the Gibraltar International Bank, what does it become? Or is it that because one has got a moneylender's licence and the other one has a credit institution licence the story changes? Is he saying that every time somebody puts money into the International Bank as a deposit our public debt grows? Is he saying that every time they make a loan on a mortgage our public debt grows? This is an insane definition of public debt. *(Laughter)* There is no limit to it. Never mind Greece: we will have more money than the entire world.

There was a headline, Mr Speaker, that I noticed in yesterday's paper, and, given the importance that is attached to debt by the Members opposite, when I saw that the IMF was worried about the level of debt I began to say to myself, 'I have to read this', because it says 'Global debt record risks economic stagnation', and I said, 'Could it be that they have been persuaded by Clintonian economics?' Not so. The concern of the IMF is not about the record size of the debt, but the consequences of debt being reduced. The concern of the IMF is that, notwithstanding everything that Governments are doing to stimulate economies, the level of debt which is predominantly private debt is being run down and therefore the stimulus of borrowing and spending by the Government is being contradicted and negated by the fact that people are not in a spending mood and people are actually reducing their exposure to debt. That is the risk of stagnation. Stagnation can be brought about because you go into a situation which is deflationary. Does he not know that the response to the crisis has been that the debt of every single member state in the European Union has grown after the crisis? Does he not know that? Where does he get his analysis from?

Does he not know that, notwithstanding what they used to say in Government when they came and told us here that the borrowing limit that they were setting was for net debt because that was what was the standard of the EU, they were not telling the truth. The Maastricht Treaty clearly says that the monetary union and the single currency require that member states keep their gross debt at 60% of their GDP. And the GSD, the first time that they decided to link debt to GDP – because they did it, nobody else. I know the Members opposite think that it should not be linked to GDP now that they are in opposition, but when they were in Government they first linked GDP to gross debt and they put in the formula 40% of the GDP. They could have put 60%, because that is what is required by the EU. If they had put more than 60% they would have been in breach of the requirements of the EU, but they put 40%. But what happened is that within a year of putting 40% of gross debt they breached it and they had to change it retrospectively. They did more than change it retrospectively – they actually redesigned the accounts, and if I wanted to be less generous I would say they did not redefine them, they cooked them. The accountant/auditor should have a look at that, Mr Speaker. They cooked it, because do you know, Mr Speaker, what they did? In order to ensure that the GDP was not caught out by the revenue, the one element that the hon. Member was reluctant to change ... I explained that to him before. The problem with the ratios is that if you have got 40% of the GDP and the biggest thing that pushes GDP back up is company profits and you are taking 10% of company profits in revenue, then every time your GDP goes up by 100 your company profits pay 10% tax. So the GDP goes up by 100 and the Government revenue goes up by 10. So the ratio of 40:80 fails to work the moment you change the tax system, and instead of addressing that problem what they did was inflate the revenue. And how did they inflate the revenue? By having the same money cycled twice, in and out of the authorities. You pay rates to yourself. And they did it retrospectively. They brought an amendment to the Budget law backdated to change the accounts, backdated because they had breached their ceilings.

We did not make a song and dance about it and accuse them of anything. This is what they did. They created a rod for their own back because they did not know what they were doing and they put in things which then they could not breach. They could not work, they could not borrow the money they needed, and if the Government wanted to invest in doing things that were good for the economy and good for Gibraltar we were not going to say on a technicality, 'What you

2555 are doing is wrong, because you are not doing it ...' They created a law that they thought would allow them to borrow certain amounts of money and they discovered in practice they could not do it.

2560 So the next step, after they had put through the cycle everything they could think of and they ran out of things to do, the next step was to come back having argued that the rest of the world was being far less prudential than we were, because they all linked it to net debt but we were doing it as gross debt. The greatest Gibraltarian said, 'We are better than any of the guys anywhere else because we are being more conservative.' And a year later he came back and he said the very opposite. He said, 'No, no, no, it is not gross debt, it is important that it is net debt – you are all wrong when you keep on...' Well, look, I had been talking of gross debt for all the time that he has been talking of gross debt. He decided in one year it was no longer convenient, 2565 because he could not balance the books, to talk of gross debt, so the new correct version was the net debt, and anybody who had been talking about gross debt had now to move to the new conversion to net debt.

2570 Well, the reality of it is that I actually think gross debt is a better marker, but we moved to net debt this year and I think the first thing that the hon. Member opposite did was congratulated us. At least we were both now in agreement to use the net debt. Fine. If they want to talk about the net debt, on the eve of the election what the GSD did was they hired somebody from the London School of Economics to tell us – and appear on GBC – that in fact the net debt at 25% of GDP was enough to make the rest of the planet green with envy. No mention of anything that was not debt as defined in the law. Well, it is now 20%, so should the rest of the 2575 world be greener? No. Dr Cortes would be very happy if they were greener, but greener with envy, because now we are 20% and we have got a manifesto that is designed to bring us to 12.5%, half of the 25% that the professor from the London School of Economics was brought to Gibraltar to say that everybody would be green with envy if they could have 25% of GDP. Nobody uses a percentage of revenue anywhere else. I explained that before as well. The only 2580 people who use it are the people who have it rammed down their throat – like the Cayman Islands, who get told by the UK, 'Either you do that or you can go independent.' They cannot say it to us, they cannot say 'Either you do it or you go independent', but is what they do to the other colonies.

2585 The fact is that the level of debt is the debt of the Crown. The debt in the book is the debt of the Crown and if the debt of the Crown – which is the £447.7 million gross, £460 million aggregate and £366 million net – is so irrelevant, then why did they have a press conference to kick up a fuss about not being given the relevant figures? Why, if it does not matter? It does not matter whether he knows it is £450 million or £350 million, because it is not relevant. It is a billion – it is £1.1 billion according to him. Well, it is not £1.1 billion. It is insane to suggest that 2590 every time you have got a business that is Government owned, the Government debt goes up. Should the Government debt have included the ship repair yard? Should it have included the sand company that they had in the 1970s, where Maurice Featherstone was the chairman of the company and they would not answer any questions in the House because it was a commercial entity and they did not have to give information here as to the debts that the company had? Is 2595 the Gibraltar International Bank, which is 100% Government owned, increasing the public debt every time there are deposits in it?

2600 Don't hon. Members understand that if it is a question of arguing something logically their arguments do not hold water? Not only are they not consistent with everything they have said before ... They may be consistent in the case of Mr Clinton, who has not said anything else in the short time he has been here, but he sometimes gives me credit and I am grateful to him that he learns something from it. Well, look, he has got to learn that this is not an issue that we are saying we have chosen not to call something Government debt because we are borrowing money that we do not want to show. Government debt is defined in a particular way in the Constitution and in the law. It is the debt of Gibraltar. Gibraltar is the Crown. If Gibraltar buys a 2605 business, the indebtedness of that business does not become a debt on the liability of the

Crown. In fact, the asset does not even show. So every time we have invested in something through the Improvement and Development Fund there is no asset showing the investment we have made.

2610 Therefore, Mr Speaker, I have to say that they have not been able to make a case for what they want us to do. In fact, I think it is a disaster. If we followed what they wanted us to do it would be a disaster. What they wanted to do in the election would have been a disaster. Can they think of anything worse that they could do to this country, to the economy, to our ability to survive, to our ability to counteract Brexit and our ability to counteract Spain if they went round telling everybody that we have got a £1.1 billion debt, which nobody would understand was
2615 being calculated in the bizarre way that they want to calculate it? Everybody would think that the £1.1 billion debt was the debt on the books. That is what they would think. How many investors do you think are going to come to Gibraltar if you say there is a crisis like Greece? There is a crisis in the whole of Europe because of Brexit and we have got an additional crisis because Spain has made clear that anything that the UK manages to negotiate for itself they will
2620 try and block applying to us. They have made that clear and we should be under no illusions about that; and the answer to deal with that is that we must have more transparency.

Shall we send all our books to La Moncloa, so that they can get on with the job of destroying us? More transparency. We are going to tell them, 'No, we are indebted to our eyebrows and we are going to go bankrupt.' And this is the way we are going to defend ourselves! I have to say to
2625 the hon. Members: with friends like that who needs enemies? That is the last thing we want to be saying to them. Even if what they were saying were true, we should be keeping quiet about it, not parading it – and it is not true. This is like an issue that we have had in this House for years: since 1972 and between 1998 and 1996, figures on imports of certain commodities were provided and never mentioned in public. They were provided to me confidentially and I provided
2630 them to the Leader of the Opposition confidentially. Why? Because it is not in our interest to provide ammunition to our enemies. We are not enemies of each other. We have got different views, but we are not enemies of each other because we are all in the same boat. If the boat sinks, we all sink with it. The enemy is outside, and therefore our sense of responsibility, Members should know, requires us at the very least to be accurate, and if we really believe that
2635 something is right when it is not right, then at least do it in a manner which is not something that can create ammunition for those who want to see us disappearing from the face of the planet. And that is all I have to say on the subject, Mr Speaker. (*Banging on desks*)

Several Members: Hear, hear.

2640

Mr Speaker: Any other contribution?

I call upon Mr Roy Clinton to reply.

Hon. R M Clinton: Mr Speaker, we are indeed getting a veritable lesson in economics this
2645 afternoon and this evening from the Father of the House. I do not dispute a word of what he said about Keynesian economics, but we are not here to talk about Keynesian; we are here to talk about what is in fact our true level of borrowing.

He has just said effectively that we on the Opposition benches should turn a blind eye because it is in the collective interest of the community not to ask awkward questions – it would
2650 appear to be the case. Mr Speaker, it puts me in a quandary, because how can I on the one hand not ask questions, which is what I am here to do, and on the other hand turn a blind eye? I am afraid I cannot do either in terms of reconciling that position.

He spoke about the press conference that we gave about him not giving me an answer on even the aggregate debt figure, only to hear this morning that the Chief Minister will be putting
2655 it on a website for everybody to see, and for that I guess I am grateful to the Chief Minister. But the Hon. Mr Bossano also said, 'It was an absurd press conference because, hey, you know, you're not interested in the £400 million, you think it is a bigger number.' Well, in fact, this is

2660 what we are debating right now here today. Furthermore, in his answers he did not give any
 information on gross debt, and so when I speculated, 'Well, perhaps they are going to borrow
 more,' he immediately issued a press release saying, 'No, that's incorrect, we're not going to
 borrow more – that's nonsense,' which is fine, because he would not tell us in this House
 whether he was going to borrow more or not, or what the aggregate level of debt was, which is
 why we need to know what the aggregate level of debt is when we ask the question, because
 2665 otherwise, we can only speculate. But I am grateful to the Chief Minister, who it would appear
 will be publishing this information on a timely basis on a Government website, and I will
 obviously be following that avidly.

Coming back to my motion, even though it is now amended beyond recognition, there is one
 particular phrase the Chief Minister used, and I am sure when we get *Hansard* we can all look it
 up. He said, and I quote, 'We have borrowed £300 million.' Well, Mr Speaker, who is 'we'? Is
 2670 'we' the GSLP, 'we' the Crown, 'we' Hassans, 'we' Crown agents? *Who* is 'we'? 'We the people', I
 guess. And if it is 'we' who have borrowed it, then it is the Government and nobody else. He can
 structure it any way he wants, but at the end of the day it is a debt of this community and we
 cannot get away from it.

He took great exception to the use of my word a 'sham' company. In *Hansard* you will find
 2675 that when I asked about Credit Finance and who made the decisions for Credit Finance it has no
 employees. Treasury officials act on it. Not even the directors of the company make decisions for
 Credit Finance, it would appear. And Mr Bossano made it quite clear, when I asked, 'Well, who
 controls Credit Finance?' He said, 'It's the outfit.' I asked, 'Well, who is the outfit?' and he said,
 'We are the outfit.' So, Mr Speaker, it is a sham company. It has no substance. It is those
 2680 Ministers opposite who, the lawyers amongst them will probably appreciate, they are all shadow
 directors according to that contribution by the hon. Member, because – (*Interjection*) Yes.

And so, Mr Speaker, it really is unforgivable of this Government for the way they have dealt
 with my motion. As I have said before, the people of Gibraltar will see this £300 million for what
 it is: it is a public borrowing, pure and simple.

2685 With that, Mr Speaker, I stand down. Thank you.

Hon. Chief Minister: Mr Speaker, I call a division on the vote.

2690 **Mr Speaker:** Right, I now put the Chief Minister's amended motion to the vote and the Clerk
 will call a division.

A division was called for and voting resulted as follows:

FOR

The Hon. P J Balban
 The Hon. J J Bossano
 The Hon. Dr J E Cortes
 The Hon. N F Costa
 The Hon. Dr J J Garcia
 The Hon. G H Licudi
 The Hon. F R Picardo
 The Hon. Miss S J Sacramento

AGAINST

The Hon. R M Clinton
 The Hon. D A Feetham
 The Hon. T N Hammond
 The Hon. L F Llamas
 The Hon. E J Phillips
 The Hon. E J Reyes

ABSENT

The Hon. Ms M D Hassan Nahon
 The Hon. A J Isola
 The Hon. S E Linares

2695 The motion as amended by the Chief Minister is carried by 8 votes to 6 with 3 Members
 absent.

The Hon. the Chief Minister.

Hon. Chief Minister: Mr Speaker, I have the honour to move that the House do now adjourn
sine die.

Matter of Urgent Public Importance

Procedural

2700 **Mr Speaker:** I now have to inform the House that on 27th July – and this was the first occasion that Parliament met after the Budget debate – the Hon. Roy Clinton gave me notice of his intention to seek leave under Rule 24B for the purpose of discussing a definite Matter of Urgent Public Importance in respect of the Gibraltar International Bank Ltd.

I did not inform the Chief Minister about this notice that I had received until lunchtime today, because it was going to be pertinent today. I did that because I was following the practice of Mr Speaker Vasquez during the years when I was a Member of this House, and he only informed the House – Mr Bossano will correct me if I am wrong – of the notice that he had received when the Chief Minister of the day moved the amendment.

2710 On reflection, however, having regard to the fact that here we have a matter for which the Minister responsible from Government is Mr Albert Isola, who is unable to be present this afternoon, I wonder on reflection – and it is a matter ultimately for me to decide – whether the correct thing would not be to actually inform the Government at the time that I received notice, because then that will enable arrangements to be made for the Minister who is responsible for answering to the debate to do so.

2715 The Rules of the House are very unhelpful, because when I receive notice of the intention by a Member to raise a Matter of Urgent Public Importance on the amendment, it cannot be taken until the end of all public business – in other words, for all intents and purposes until the Chief Minister moves the adjournment of Parliament *sine die*. This is why I have been advocating, since I became ... in fact, before I became Speaker, when I was the Chairman of the Commission and the Commission so recommended that the Rules should be amended as a matter of urgency, so that a matter can be raised when the House adjourns – from 27th July, let us say it adjourned until 9th September. If the rule had allowed that, the debate which we can now have would have taken place on 27th July. That would have been much more logical and the likelihood is that the Minister responsible would have been here.

2725 The requirement under Rule 24B is ... first of all, there is no formal motion and therefore there is no debate. A maximum time allowed is 40 minutes. Members of the Opposition, not just the person who has given me notice but other Members of the Opposition can speak, and obviously what they desire is that someone from the Government should reply. Therefore, although there is no rule about it, the practice here during the years when Members invoked this rule was to give the Government a reasonable period of time out of those 40 minutes to be able to reply.

2730 So, before I call on the Hon. Mr Clinton, is there anything that is not clear in what I have said? Is there anything that Members require clarification on? If not, it is now 8.12, so 40 minutes ... I will allow until 8.52.

Gibraltar International Bank Ltd

2735 **Mr Speaker:** I call upon the Hon. Mr Roy Clinton.

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

Mr Speaker, first of all, thank you for allowing me to raise the matter of the Gibraltar International Bank on the adjournment.

2740 The Gibraltar International Bank Ltd is, as you yourself, Mr Speaker, stated in Parliament on 26th February 2016, and I quote:

A National Bank. It is going to play an important role in the economy.

The creation of the bank was something that was supported by the Opposition at the time in order to fill the void left by the departure of Barclays Bank from the local retail market. Being a national bank with a taxpayer funded capital of £25 million, it is naturally a Government-owned bank in which is a legitimate and real public interest.

2745

When I enquired politely of the Hon. Minister for Financial Services and Gaming whether he would make available the full audited financial statements of the bank to all Members of Parliament when they were completed, his response was, and I quote:

The full audited financial statements of the bank will be filed at Companies Registry and available for public inspection in accordance with the Companies Act. It will therefore not be just for Members opposite but for the whole community to see.

Mr Speaker, you will of course recall the subsequent comical exchanges with the Chief Minister offering to pay the £30 fee to obtain a copy from the Registry for me and then to hand deliver it personally. I am pleased to advise the House that, as I stated I would, I wrote to the board of directors of the bank, who have kindly sent me a copy of their audited financial statements at 31st December 2015 with their compliments. I will place a copy of this document in the antechamber of the House for all Members to read with my compliments. In any event, the Government can also obtain a copy from Companies House for £30, these having been filed on 22nd July 2016.

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The bank was incorporated on 23rd April 2013 and I will, for the benefit of Members who have not yet had sight of the bank's audited results, read an extract of the directors' report for 31st December 2015 as follows. I quote:

The bank obtained its full regulatory authorisation on 20th April 2015 and opened its doors for business on 5th May 2015. As a result of the announced closure of one of the main international retail banks in Gibraltar and the urgency to open a retail bank within a limited period of time, the bank had previously sought, as authorised by the Financial Services Commission in October 2014, to open current accounts online for customers on condition that these accounts would remain inactive and unfunded until the bank obtained its full regulatory authorisation and had opened for business.

The purpose of this exercise was to alleviate a potential situation whereby, upon the bank opening, thousands of customers would require current accounts and the bank would have been overwhelmed and unable to cope with the situation from an operational perspective. As a result of the exercise, the bank held 3,500 accounts in its books ready to be funded and utilised by clients on the first day of opening for business.

Although a success, a considerable number of personal and corporate customers applied to open accounts post bank opening, to the extent that appointments were being taken for months in advance. Simultaneously, in excess of 400 mortgage loan appointments were taken for the Government's housing scheme purchases, although none of these lendings would be drawn in 2015.

As at 31st December 2015, 5,286 client accounts had been opened with an aggregate deposit balance of £119.6 million. From the outset it was envisaged that the sheer volumes of opening and mortgage loan applications would stretch the bank's resources to the limit, and in order to reduce the waiting times for customers wanting to open accounts staff members were redeployed from other departments to assist the operational workload. During the eight months from opening to December, and as stated in its business plan, the bank concentrated its efforts and all its resources in establishing and consolidating its client base.

2760 Well, Mr Speaker, I think this House now has an appreciation of the challenge that the bank, its board, senior management and staff faced. I think it only right that we offer them our collective congratulations.

All, however, is not entirely peachy. The Minister was able, at the Budget in June, to give the House an update, in that as at 30th June 2016 the bank had achieved deposits of £224 million with over 7,000 accounts and a lending book of £43 million with 450 mortgages. However, the most important piece of information was omitted, namely being its financial results.

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I will now quote from the directors' report again as at 31st December 2015, under the heading 'Profits and Dividends':

As anticipated in the business plan, the bank reflected a loss for the year after taxation which amounted to £6,029,288 with a comparable number of £1,404,674 in 2014. Again in respect of the available for sale financial asset of £549,370 comparable number nil has been recognised in other comprehensive income, resulting in a total comprehensive loss of £5,479,918 compared to a 2014 loss of £1,404,674.

The bank has no accumulated distributable profits. Accordingly, the directors do not recommend a dividend for the year ended 31st December 2015.

2770 In other words, Mr Speaker, the bank, as at 31st December 2015, has lost a cumulative total of £7 million or 28% over a quarter of its original £25 million taxpayer fund of share capital.

Before the Government Ministers opposite turn blue in the face with screams of scaremongering, this is now public information, and I accept that the bank has always said it would take three years to break even. Furthermore, I would point out that, per note 20.5 of the financial statements, I quote:

The bank's capital ratio as at 31st December 2015 was 40.82% (the minimum is in fact 8.625% regulatory requirement) with a surplus capital of £15,700,225.

2775 So, Mr Speaker, the bank is soundly capitalised as at 31st December 2015. However, this is the capital position before the drawdown of mortgages, which reached 450 as at 30th June 2016, and no doubt the ratio will have inevitably decreased.

2780 I would encourage the Minister to provide more regular updates to this House, and not just at Budget time, as evidently he has access to information from senior management as and when he deems it appropriate to report to Parliament. In addition, it would be useful if he would also provide this House with annual audited financial results and capital ratios, as I have just done, because this House and the taxpayer both have a legitimate interest in the banks performance and expect more than a 'get it yourself' attitude in respect of such information. I would expect the Minister to stand up each year and make a statement in respect of the bank's performance.

2785 Mr Speaker, for the avoidance of doubt, I once again congratulate the bank's board, senior management and staff for the hard work and trust that in years to come this community will reap dividends, not just in financial terms, but in the products and services that are offered and much needed by all.

Thank you, Mr Speaker.

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Mr Speaker: Does any other Member from the Opposition benches wish to speak?
Then I invite the Government to reply, if they so wish.

2795 **Chief Minister (Hon. F R Picardo):** Well, Mr Speaker, I do not think I have detected absolutely anything in what the hon. Gentleman has said that could be described as urgent on 27th July or urgent on 7th October. All that we have been treated to is the hon. Gentleman giving us what is his own analysis of the accounts of the bank, of a document that is public which he says was sent to him by the bank because he wrote to them, and which he has now had an opportunity of reading out – and which any member of the public could also have had an opportunity of seeing.

2800 Frankly, I do not detect that there is absolutely any reason, therefore, why the people who are listening and who are considering the debate in Parliament today, would have been persuaded that there is anything urgent to consider – except, of course, if there was a loss which needed to be made good, but the hon. Gentleman has said it is well capitalised, so there is no need for that. We do not deal in sham companies or in sham banks, Mr Speaker, although he
2805 was the manager of a bank that invested with Mr Madoff, and that got him into court on a number of occasions and that was clearly a sham, but the companies that we operate do not deal in sham. And because there is a three-year business plan, it is clear that this is not a loss that was unexpected. This is not an urgent matter that needs to be brought to the attention of

2810 the public because there is a sudden loss. If you do a business plan and you say we are not going to be profitable until the third year, it is not urgent to say in the first year that you are not profitable. So, it seems to me that the argument of urgency is entirely unavailable to avail the hon. Gentleman of any assistance whatsoever.

2815 But, Mr Speaker, what the Hon. Mr Isola, who is not here today for the reasons you have indicated, and I would have thought the easiest thing for the hon. Member was to say, 'Well, I will deal with this motion next time that we adjourn and Mr Isola is here ... What he said was this. This was in the context of his Budget speech:

I start by congratulating the Gibraltar International Bank for making a complete success of its first year in operation. Since it opened last year the Bank, led by Lawrence Podesta and Derek Sene, the staff and the Board of Directors have worked tirelessly and deserve the congratulations and thanks of this House and of the community at large for the fantastic start the bank has made in its first 12 months of operation.

Over 7,000 accounts opened; £244 million in deposits; and an increasing loan book, with some 450 mortgages, is a testament to the work of the team at GIB. Many spoke of the doom and gloom at the departure of Barclays in late 2013 and yet today it is a distant memory, with a seamless transition to this modern, innovative and digital bank. There is, of course, still work to be done but I believe that the target date for break even and profitability after three years trading will be met.

As we speak, they are working on new areas in terms of products and functions, including of course, mobile banking which I much look forward to seeing in operation. My sincere thanks to Lawrence, Derek, the Board of Directors and of course the staff at GIB for their professional commitment in delivering the quality and service we asked of them.

2820 Mr Speaker that is what the Hon. the Minister said at the time of the Budget. I think that might have been 26th July, if not 27th July or earlier in the month. So it is not even necessary to get up to represent thanks, because we have already given them on behalf of the Government and on behalf of all of the Parliament in what the Hon. the Minister said at the time. It is not necessary to give the same figures that the Hon. the Minister gave now in this Parliament again, because he gave them when he stood up and gave the information that he gave at the time of the Budget.

2825 But we are now asked to give *more* information *more* often. Well, Mr Speaker, we are going to give the information in relation to the bank that we consider is appropriate, in exactly the same way as we give information about Gibtelecom only when it is appropriate and they, when they were on this side of the House, gave information about Gibtelecom only when it was considered to be appropriate. We are not going to stand up whenever the hon. Gentleman likes, to give him information about the bank, because that is not the way that it is possible to operate in the context of Gibraltar's democracy. And we *are* going to tell him to go and get it himself when it comes to accounts that are going to be public. That is the position that he is going to find: we are going to tell him to go and get them himself, or we are going to put them on websites. And if he wants to go and get them from the bank to save himself £30, despite the fact that he is paid £36,000 to turn up here once a month, or if we are going to require him to get them free of charge from a website, that is the way we are going to continue to operate. That is the greatest level of transparency that this community has ever seen, because he is able to have access to this information. Nobody is preventing him from having access to the information. As he can see when he wrote to the Directors, they were not being told not to send him anything.

2840 He says that we exercise control of the bank and therefore we must say more. Well, look, if they sent him copies of the accounts because they know him from his time as a banker – as a sham banker, to apply to him the standard that he applies to the directors of Credit Finance, who are upstanding members of the community, civil servants who are the controllers of the corporate controller of Credit Finance – it is fine, we have absolutely no difficulty with that. He went out and he got them himself and he saved himself 30 quid. Good for him. The taxpayer's salary that they pay him can be saved in respect of that amount.

2845 Mr Speaker, I am conscious that the accounts were filed at Companies House with a date of 22nd July, so if he did not have them before then – I do not know whether he said on what he

2850 date he got the accounts – he certainly had them or was able to access them by then, and they set out in 36 pages of detail everything that might want to be known about a company like the Gibraltar International Bank and that it is appropriate to know about a company like the Gibraltar International Bank if it is going to operate like an independent commercial entity, fulfilling the function that we all wished to see it fulfil in the context of the departure from Gibraltar of Barclays Bank.

2855 There is a report from the chairman which sets out a lot of detail of what it is that the bank is doing, there is a directors' report which is very detailed also and signed by the company secretary, and then there is the independent auditor's report to the members of the Gibraltar International Bank, which is filed on behalf of Ernst & Young. How can hon. Members suggest that this is not all of the information that they might wish to have in respect of the operation of a bank like the Gibraltar International Bank, which is an independent bank and which we said
2860 from the beginning would be operated like an independent bank and would be allowed to operate like an independent bank? Mr Speaker, one thing is to say one thing and then do another, because that is political hypocrisy. If we had said, 'This is going to be an independent bank', and then we were exercising control over every step that the directors took – for example, saying to them, 'Don't send Roy Clinton, the sham banker, the audited accounts when
2865 you have them,' well then we could be accused of political hypocrisy. But when we say that a company is going to operate as an independent commercial entity it is quite something, given that that is one of the things that the Opposition say they agree with us on, that what they should seek that we should do is that we should interfere with the running of the company, obtain information which is not the information that a commercial company has to by law
2870 comply with, and bring it here to satisfy the thirst for raw data that the hon. Gentleman seems to display. We are not going to fall into the trap of being lured into political hypocrisy, because that is to pretend to trap us into doing the opposite of what we have said we would do, which was what they had originally asked us to do as well.

2875 So, Mr Speaker, this very detailed report – which is 36 pages, setting out all of the accounting policies and all of the detail of what the bank has done and the financial statements in considerable detail for 2014, which is the year that the bank started operation, and 2015 – in the view of the Government sets out absolutely all the detail and data that the public can want to have if they also want to have the confidence that the bank that we call the Gibraltar International Bank is operating at an entirely arm's length from the Government and in a way
2880 that is entirely commercially free standing and not being interfered with.

2885 But it is clear, in the context of what the bank has done and is doing, that the capitalisation of the bank is not just designed to deal with the regulatory requirements, it is also designed to deal with the bank's need for capital in the context of its trading, and if there is something which is clear about the way in which the accounts have been filed and what the Hon. Minister said in the context of the debate in Parliament, it is that the bank is acting in a manner that is entirely consistent with what the Parliament has been told. I think the hon. Gentleman has recognised that in what he has said, which just leaves me completely adrift in terms of what it is that he is trying to raise as an issue on an adjournment debate. I do not know whether it is just an attempt to say, 'Ah, you see, I did not have to travel down to Companies House, I did not have to put my
2890 hand in my pocket in order to obtain the annual audited accounts; I was able, by dint of a letter' – no doubt marked 'Urgent Parliamentary Business' – 'to obtain a copy of the accounts myself.'

2895 I do not know if that is the point that the hon. Gentleman is trying to make, but he needs to remember the point that I was making when I was telling him that we would not treat him in a way that was privileged. The point I was making at the time – and hon. Members will recall that this is a point that comes up very often at Question Time, when people who are asking questions and answering questions fall into the trap that you always seek that we should not fall into, Mr Speaker, which is debate, and we fall into the trap of arguing over whether it is right to have to bring things here or whether in fact it is more appropriate in the modern technological age in which we live to simply be able to make things accessible online on the world wide web, so that

2900 every member of the community can have access to it. Well, Mr Speaker, the position of the Government remains that that is the better way to proceed and that the better thing to do is not to provide privileged access to Members opposite, in particular Mr Clinton, to documentation but to provide that documentation in a way that is accessible to all of the community in Gibraltar.

2905 That is what transparency is about. Transparency is not about giving them information; transparency is about making information available to the general public and a better way of making information available to the general public – who may not have, let's face it, the patience to sit through some of the debates that we have in this House in order to pick up a morsel of information that may pass between us – is to put it online. And so the Government's
2910 approach has consistently been that things which can be put online should be put online. The bank in this case files its data and its information, its audited accounts, as required by law – and, by the way, a Government wholly owned company filing its accounts on time, something which hon. Members are not able to boast of in respect of the party the initials of which they represent in this House – and those accounts are filed at Companies House in a manner that, by the way, is
2915 also accessible online to those who happen to have an account with Companies House or those who are able to go down there.

I have yet to understand what the hon. Member's great objection is. I would have understood him perhaps today if at the end of the evening he were to say to me, 'Fabian, given that you have acceded to my totally unreasonable request to establish a Public Accounts
2920 Committee, which is now going to take a lot of my time, I am no longer going to be able to be retired and putting my feet up in the afternoon, I have no time to go down to Companies House and still not the inclination to spend £30 in obtaining a document,' then I might have understood that he would have suggested that we should send him the account. But this is not the situation, we have not acceded to his totally unreasonable request to create the Public Accounts
2925 Committee, and so therefore I think it is entirely appropriate that we should report to this House in the way that we are committed to do in the context of all of the companies, in the way that has traditionally been the case during the course of the Budget debate. During the course of the Budget debate what we will do is we will provide the sort of headline information that we think it is appropriate for the public to have about the company, which will be very much in keeping
2930 with what is going to be filed publicly in the company's accounts.

I do not know whether that is going to completely dissatisfy him. Given what he is saying today, it appears that it might completely dissatisfy him. Well, he is going to end up having, in the words of Mick Jagger, no satisfaction, Mr Speaker, because we are not going to allow him to in some way, ruin or spoil the chances of Gibraltar International Bank to make a success of itself
2935 by in some way requiring us to give more information than is given about banks like Gibraltar International Bank, or by any competitor of Gibraltar International Bank. Because in respect of the bank of which he was a manager, nobody got a blow by blow account of how the profits were going, of how many people he was employing, of how many mortgages he was giving or how much was invested in Madoff. It was only when the requirement to file accounts was a legal
2940 one that bit that people would be able to go for payment of the same £30 to Gibraltar's Companies House – if they were established here, if they had a branch – and see those accounts and see those investments. Why should we put the taxpayer's investment in Gibraltar International Bank at risk by creating for Gibraltar International Bank a less level playing field than the one that applies to all of the other banks which operate in the same jurisdiction? It would be foolish to in some way allow the opportunity that is being dangled in front of us to be presented to members of the public as an opportunity for the bank to do better. This is actually an opportunity for the bank to find itself in a difficult situation when it comes to its competitors and in a way that would not, frankly, avail the taxpayer of any advantage, because at the end of the day the moneys that have been used to capitalise this bank – like the moneys that have been
2945 used to establish the University, another great building block of nationhood that we established
2950 in the course of the last Parliament – is taxpayers' money, which is voted by this House for those

specific purposes and which we have an obligation to protect. We can have arguments about whether other amounts of money that we have been debating today are taxpayers' money or savers' money or not, but we have no argument that the amount which creates the capitalisation of Gibraltar International Bank is taxpayers' money, and given that it is taxpayers' money we have an obligation – and again this is a subject, I have no doubt, on which we do not disagree – to ensure that that money is protected and that we make the most of it going forward.

Mr Speaker, in that context, understanding how the bank has been created and the purpose for which the bank has been created, it would seem to me that it is not possible to accede to a request from the hon. Gentleman which, as I say, would, in effect, unlevel the playing field for the bank that we have created. He has just spent a moment trying to ingratiate himself to the directors and to the employees of the bank by giving them the thanks that he should have given them before, and which Mr Isola gave them at the time of the Budget, the fulsome thanks that it is absolutely right that this community should give them for the work that they have done in the establishment of the bank, and yet at the same time he is trying to entice us to unlevel the playing field in a way that might result in all of those people finding that the bank which they have created and for which they have been so fulsomely thanked fails because it is providing public information quite beyond the obligations that apply to all of its competitors. In fact, I should pause there, Mr Speaker, and refer to the fact that some of its competitors are also owned by governments, but not governments that are required to give the sort of information that the hon. Gentleman is suggesting that we should give about Gibraltar International Bank, because I cannot imagine that he would have survived very long if he were opposite George Osborne and not Fabian Picardo and he had told George Osborne to please send him a copy of the annual audited accounts of the Royal Bank of Scotland, which is majoritarily owned by the United Kingdom government, or of Lloyds Bank PLC because he did not want to go down to the Companies Registry or online in order to obtain for himself a copy of the accounts of that bank.

It seems to me, Mr Speaker, therefore, that given he was earlier telling us that the way that things are done in Westminster, some of the things that we should be copying and we should be doing things in the same way, that if he were at Westminster he would find that his entreaties during the course of the budget debate would have fallen not on deaf ears but in a great cry from the Chancellor of the Exchequer of 'Who does he think he is to get better treatment than any other member of the public!' Indeed, he would have been seen to be endangering the operation of Royal Bank of Scotland and of Lloyds Bank, that operate in a highly competitive banking environment, just like GIB in the context of Gibraltar, given that the products that it offers in the Gibraltar market are products which can be more or less attractive depending on the competition, and of course for us the requirement is that this is a bank that should succeed in its own right. We do not want to be pumping more money into a bank, unless of course it is that the bank does so well that it requires greater capitalisation because it is growing to such an extent that it is the right investment for our community to capitalise it further. That could, of course, become the case. It could be that Gibraltar International Bank grows beyond our own expectations and quicker than our own expectations, and if that is the case I am sure that initially we will hear them complaining and then eventually when they come to their senses they will come back to this place in order to thank and congratulate those they should have thanked and congratulated earlier.

Mr Speaker, the same, for example, is entirely true of the University. When we established the University, one of the other things that the hon. Gentleman was asking for was copies of annual reports, etc. Well, again, the commitment that we entered into in respect of the University is that it would operate entirely independently, and Members who were present may have detected that at the installation of the Chancellor and the Vice-Chancellor, one of the things that I said was I referred back to the mantra of 'Joe Bossano, no ordinary Joe' in the context of Gibraltar's political emancipation when he talked about the road to self-determination being paved by self-sufficiency. And in the context of the installation of the Vice-

3005 Chancellor I think it was also important to ensure that we made the point not just of recognising
the sterling work that Gilbert Licudi had done in the establishment of the University, the
‘political Father of the University’, as I described him at the time, but also the importance for the
University of standing on its own two feet and being a commercially viable entity that we could
be proud of being not just academically independent but also commercially independent.

3010 In the context of the bank, Mr Speaker, the same of course is true. Of course it is entirely
independent from a regulatory point of view and it is entirely independent as an entity. It must
also be financially independent, and unless what happens is that the community finds that its
bank has grown so successfully that it requires further capitalisation, the business plan is what
we must ensure we see compliance with, and in that context we would otherwise need to have
good explanations why the business plan has been failed.

3015 But what the hon. Gentleman has come today to tell us as a matter of urgency on an
adjournment debate is that the bank is doing exactly what he was told the bank was doing. In
other words, the bank has lost money in its first year, exactly as he had been told, and is
therefore likely also to lose money in its second year, exactly as he has been told, because he
has been told it is a three-year business plan and it will be in the third year of operation that the
bank will operate at a profit. *(Interjection by Hon. G H Licudi)* Break even, sorry.

3020 So, Mr Speaker, I have yet to understand what it is that the hon. Gentleman has tried to
achieve by his 24B statement today in his letter to you. And if I may say so, Mr Speaker, dealing
with the mechanics that has brought this debate today, I think it is important, even if it is not
necessary, that as a matter of courtesy if a Member of the Opposition wishes to raise an issue on
the adjournment then they should tell the Government, so that if they want to have a real
opportunity to question or to debate, the Government should be able to reply. Otherwise it is
very easy to simply say, ‘On the adjournment I am going to raise whatever I like without telling
you,’ and the Government will then reply and say, ‘Well, given that you have not given us notice
of what it is that you are going to be dealing with, it is not possible for us to do anything other
than say that we will look into the things that you are talking about, or that we will counter the
things that you are talking about from our general knowledge of the particular subject matter
that may have been raised, but without the ability to bring to the House the benefit of the
information that might otherwise have been obtained in the context of putting something across
to Members of the Government is an issue that Members wish to raise.’

3035 The hon. Member, as he has told the House, has written me three letters. I do not know
whether it is three or four, or more, or whatever it is, but he seems to take great gusto, every
time he writes me a letter, in CC-ing the Speaker and CC-ing the Leader of the Opposition and
CC-ing anybody else whom he thinks might have an interest in reading our correspondence. I
have absolutely no difficulty ... If he wants, what he can do next time is he can post a letter that
he would like me to read on Facebook and as long as he sends me a link to it in an appropriate e-
mail address that he knows I will read, then I can read the letter on Facebook. I have absolutely
no difficulty, because it is not as if he is going to be telling me anything sensitive or I am going to
be responding in respect of a letter, whether it is posted publicly or posted privately, marked
‘Urgent Parliamentary Business’ or not, in a way that is different.

3045 So I am surprised, Mr Speaker, that in the context of this opportunity which he has to raise an
issue on the adjournment he should choose to communicate only to you and that it should be
down to you, Mr Speaker, out of your desire to see the operation of Parliament to be more
effective, so that none of us waste any of our time, to have alerted us to the issue that there was
going to be an adjournment debate. Because given the practice that the hon. Gentleman has of
copying all and sundry in respect of the correspondence that he has with us, if only he had given
us notice that he had wished to raise this issue on the adjournment, then what we would simply
have done is to advise him that Albert was not going to be here, which particular area was it that
he wished to raise, and one of us would have been perhaps better prepared to deal with it. Of
course, that is before we heard him, and it was not as if he wanted to raise anything of any
particular concern which would have required us to go back to look into something and be able

3055

to respond to him in a particular way, because all that he has done is get up and give a speech about the bank. That is literally all that we have been treated to.

3060 The hon. Gentleman has said, 'Adjournment motion: I would like to get up and speak about the bank,' and he has spoken about the bank and he has told us the things that are public about the bank and the things he was told about the bank in the Budget debate, and he has told us all of that again – and then he has told us that he wants to be told more about the bank. Well, Mr Speaker, none of that is, with the very greatest of respect, what this mechanism that you have rightly been pointing us all towards since you became Speaker, long before Mr Clinton became a Member of this House, none of that is what this particular part of the Standing Orders and Rule 24B is about or is for, and I would commend hon. Members to use, on both sides of the House, as you often do, the mechanism of the opportunity to raise matters on the adjournment but when they are urgent. Otherwise, all that happens is that we are going to be here for 40 minutes talking about things (*Interjection and laughter*) that are not urgent and are simply keeping us away from our families, our friends, or whatever it is that we might be prepared to do.

3070 As I say repeatedly, I am in politics because I am a parliamentarian. I love Parliament and I have relished the opportunity today to debate with hon. Members on all of the subjects on which we have debated. As far as I am concerned, they can consider that, despite the vehemence with which I argue my point, it does not change the fondness that I have for some of them – I cannot say all of them, but I am hoping that one day it will be all of them. But when it comes to the adjournment debate, Mr Speaker, I think it is important, for the purposes of ensuring compliance with the rules and ensuring that we do honour by the rules and respect them, that we do only raise on the adjournment issues which are urgent. That is not to say that there could not in future be something which becomes urgent and which has to be raised in this way.

3075 I see that the rule says that something has to be brought to your attention by five o'clock. That makes sense to me, Mr Speaker. It is sufficient time, I think, for one to be able to obtain information, as I was able to obtain, once I knew what the subject matter of what the hon. Gentleman wanted to speak about. To, in order to be able to reply to any urgent point that he made I have now had an opportunity of reading the Gibraltar International Bank Ltd Annual Accounts Report of 31st December 2015, filed, as the hon. Gentleman has said, on 22nd June, and would have been ready to reply to anything that he might have raised in any part of the 40 minutes that he might have spoken, which might have been urgent and requiring my attention. But I think, given where we are and given that it is 8.52 and that he raised nothing else, I should just move that the House do now adjourn *sine die*. (*Banging on desks*)

3080 **Hon Members:** Hear, hear.

3095 **Mr Speaker:** I also love Parliament, but I was within a minute of behaving like the Chairman of the Fourth Committee!

The House will now adjourn *sine die*.

The House adjourned at 8.53 p.m.