



PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

MORNING SESSION: 11.13 a.m. – 12.43 p.m.

Gibraltar, Wednesday, 27th July 2016

Contents

Congratulations to Mr Clinton on recent marriage.....	3
Personal Statement by the Leader of the Opposition.....	3
Bills	4
First and Second Reading	4
Pensions (Widows and Orphans) (Amendment) Bill 2016 – First Reading approved	4
Pensions (Widows and Orphans) (Amendment) Bill 2016 – Second Reading approved.....	4
Pensions (Widows and Orphans) (Amendment) Bill 2016 – Committee Stage and Third Reading to be taken at this sitting.....	5
Limitation (Amendment) Bill 2016 – First Reading approved	5
Limitation (Amendment) Bill 2016– Second Reading approved	6
Limitation (Amendment) Bill 2016– Committee Stage and Third Reading to be taken at this sitting	12
Fast Launches (Control) (Amendment) Bill 2016 – First Reading approved.....	12
Fast Launches (Control) (Amendment) Bill 2016 – Second Reading approved.....	13
Fast Launches (Control) (Amendment) Bill 2016 – Committee Stage and Third Reading to be taken at this sitting.....	16
Employment Regulation (Offences) (Amendment) Bill 2016 – First Reading approved	16
Employment Regulation (Offences) (Amendment) Bill 2016 – Second Reading approved ...	17
Employment Regulation (Offences) (Amendment) Bill 2016 – Committee Stage and Third Reading to be taken at this sitting.....	17
Financial Services (Listing of Securities) (Amendment) Bill 2016 – First Reading approved..	17

Financial Services (Listing of Securities) (Amendment) Bill 2016 – Second Reading approved.....	18
Financial Services (Listing of Securities) (Amendment) Bill 2016 – Committee Stage and Third Reading to be taken at this sitting	18
Financial Services Ombudsman Bill 2016 – First Reading approved.....	18
Financial Services Ombudsman Bill 2016 – Second Reading approved	19
Financial Services Ombudsman Bill 2016 – Committee Stage and Third Reading to be taken at this sitting	22
Committee Stage	22
Pensions (Widows and Orphans) (Amendment) Bill 2016; Limitation (Amendment) Bill 2016; Fast Launches (Control) (Amendment) Bill 2016; Employment Regulation (Offences) (Amendment) Bill 2016; Financial Services (Listing of Securities) (Amendment) Bill 2016; Financial Services Ombudsman Bill 2016.....	22
<i>In Committee of the whole Parliament</i>	22
Pensions (Widows and Orphans) (Amendment) Bill 2016 – Clauses considered and approved	22
Limitation (Amendment) Bill 2016 – Clauses considered and approved.....	23
Fast Launches (Control) (Amendment) Bill 2016 – Clauses considered and approved	23
Employment Regulation (Offences) (Amendment) Bill 2016 – Clauses considered and approved	23
Financial Services (Listing of Securities) (Amendment) Bill 2016 – Clauses considered and approved	24
Financial Services Ombudsman Bill 2016 – Clauses considered and approved.....	24
Third Reading	28
Pensions (Widows and Orphans) (Amendment) Bill 2016; Limitation (Amendment) Bill 2016; Fast Launches (Control) (Amendment) Bill 2016; Employment Regulation (Offences) (Amendment) Bill 2016; Financial Services (Listing of Securities) (Amendment) Bill 2016; Financial Services Ombudsman Bill 2016 – Third Reading approved: Bills passed.....	28
Adjournment.....	28

The Gibraltar Parliament

The Parliament met at 11.13 a.m.

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

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

Clerk: Mr Speaker.

5

Congratulations to Mr Clinton on recent marriage

Mr Speaker: The Chief Minister.

10 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I understand that in the period of the adjournment, one of the Members of the House has entered into a contract with a member of the public which is oft referred to as a nuptial contract. (*Laughter*) It is no doubt an occasion for happiness, and I am sure the whole House will want to join me in wishing Mr Clinton and his wife all the very best for years to come in every sense, except the political of course. (*Laughter and banging on desks*)

Personal Statement by the Leader of the Opposition

15

Mr Speaker: The Hon. the Leader of the Opposition wishes to make a personal statement.

20 **Hon. D A Feetham:** Mr Speaker, I rise to deliver a personal statement and it is to give my thanks, not only on my behalf but also on behalf of my wife, Julia and my family, to the brave men of the Fire and Rescue Service, who the day before yesterday, at one o'clock in the morning, came to the Upper Rock in order to rescue my dog, Blue, which had actually fallen off a cliff opposite our house at the Genoese Battery. Anybody who knows the Genoese Battery will know that they are very, very steep cliffs indeed around the area. He had fallen 50 metres and had landed on a ledge and had he fallen off that ledge, it was a vertical slope downwards and he would have perished.

25 The operation took, Mr Speaker, five hours in total, involving seven firefighters, three of which had to go down with the use of pulleys and ropes, and I want to thank Station Officer Mañasco, Leading Firefighter Navarro, Firefighters Yeo, Cruz, Abudarham, Sivers and Buttigieg – in particular, Firefighters Yeo, Abudarham and Buttigieg who were the Firefighters who actually went down, descended and got the dog up. They were literally risking their lives in doing so.

30 Just to give hon. Members an idea, the dog is a Swiss Shepherd, which is the equivalent of a white Alsatian. It is a big dog, and Firefighter Yeo actually strapped the dog to his chest, a dog that was obviously very nervous, and with the weight of the dog, actually dragged himself up a cliff in order to save the dog.

35 I am just lost for words, Mr Speaker, in relation to the bravery that these men have shown in order to save our dog, and from the bottom of my heart and the bottom of the hearts of my family, I want to thank them and stand up and recognise their bravery today in Parliament.

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

40 **Chief Minister (Hon. F R Picardo):** Mr Speaker, can I, as the representative of those in public service, thank the hon. Member for his kind words. I think there has never been any doubt of the bravery of the Gibraltar Fire and Rescue Services, the work that they do and how essential it is and how delighted we are in this part of the House that they had the resources necessary in order to be able to do the rescue in question.

45 We pride ourselves, Mr Speaker, in funding our public sector to enable them to have the resources to do the work that they need to do, which on occasion involves the happy resolutions that the hon. Gentleman has alluded to in what is no doubt probably the least important work that the Gibraltar Fire and Rescue Service do in the scheme of things, but hugely important to those who benefit from it and to the hon. Gentleman's family.

50 So on behalf of the Fire and Rescue Service, thank you for the hon. Gentleman's kind words and on behalf of the Government, we are very proud indeed that we have been able to spend on the public services with the resources that they need in order to undertake these operations.

BILLS

FIRST AND SECOND READING

Pensions (Widows and Orphans) (Amendment) Bill 2016 – First Reading approved

55 **Clerk:** We now go back to the Order Paper and we carry on with Bills, First and Second Reading.

We commence with a Bill for an Act to amend the Pensions (Widows and Orphans) Act.
The Hon. the Chief Minister.

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

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Pensions (Widows and Orphans) Act be read a first time.

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

65

Clerk: The Pensions (Widows and Orphans) (Amendment) Act 2016.

Pensions (Widows and Orphans) (Amendment) Bill 2016 – Second Reading approved

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

70 Mr Speaker, the purpose of this Bill is to enable former contributors to the Widows and Orphans Pension Scheme to apply, to resume contributions.

The scheme was closed off to contributions more than 25 years ago as new pension arrangements were put in place for the Civil Service. Contributors to the scheme were refunded their monies and these refunds were subsequently applied to the new pension arrangements.

75 Over the years we have received representations from numerous former contributors, some 200 to date in fact, who consider that the terms of the scheme suit them better than their current arrangements.

We have listened, Mr Speaker, and therefore propose to open up the scheme to these and only to these former contributors. The proposed legislation requires a contributor to first notify
80 the Government of his intention to resume contributions and for the Government to approve such a resumption.

Importantly, the Bill allows a contributor's widow to make the necessary contributions in the contributor's stead if the contributor has notified the Government of his intention to resume contributions but then passes away.

85 Mr Speaker, this Bill allows those who were required to leave the Widows and Orphans Pension Scheme to help secure their future and those of their loved ones, and I commend it to the House.

Mr Speaker: Before I put the question, does any hon. Member wish to speak on the general principles and merits of this Bill?
90

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

Clerk: The Pensions (Widows and Orphans) (Amendment) Act 2016.

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

95

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

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

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

Clerk: A Bill for an Act to amend the Limitation Act.
The Hon. the Minister for Education, Justice and International Exchange of Information.

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

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

Clerk: The Limitation (Amendment) Act 2016.

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

115 **Minister for Education and Justice & International Exchange of Information (Hon. G H Licudi):** Mr Speaker, I beg to move that a Bill for the Limitation (Amendment) Act 2016 be read a second time.

This Bill, Mr Speaker, implements one of our manifesto commitments by amending the Limitation Act to remove the limitation period for claims against the Government in cases of child abuse whilst under the care of Social Services and in respect of Mesothelioma alleged to have been caused by exposure to asbestos during the course of employment under the Crown.

120 This Bill also makes an amendment to dis-apply the Limitation Act with regard to proceedings initiated by the Government for the recovery of any debts owed to the Government. Certain types of Government debt, Mr Speaker, have gone uncollected for a number of years, especially with regard to housing arrears.

125 This has led to that debt becoming time barred under the Limitation Act. By dis-applying the limitation period for such actions, the Government is ensuring that claims for the recovery of debts owed to the Government will not in future be subject to the limitation period and also allow for the recovery of present debts allowed to the Government which had become time barred under the Limitation Act.

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

Hon. D A Feetham: Mr Speaker, before the hon. Gentleman sits down, can he give way?

135 **Hon. G H Licudi:** Yes, I will.

Hon. D A Feetham: Mr Speaker, I am grateful. It is just that I do not want to, in my reply, ask the hon. Gentleman questions. I would like to ask this question of the hon. Gentleman before I reply.

140 Has the Government taken advice in relation to the dis-application of the limitation period in a situation where effectively a debt is statute barred in the light, for example, of the Constitution and whether that infringes the Constitution in terms of rights to property and other such rights?

145 Because it strikes me that, effectively, a situation where a debt has become statute barred because it has not been pursued over a period of six years – some of these debts may go back years and years and years, even longer than six years – and then all of a sudden the Government comes back and says, ‘Well, actually now we can sue for all these debts’, that that may have Constitutional implications. I just wonder whether the hon. Gentleman can enlighten this House in relation to that. Because of course the Government would not bring a Bill to the House if it felt that there were provisions that were unconstitutional.

150 **Hon. G H Licudi:** Mr Speaker, that is most certainly the case: we would not pass legislation here which we believed, or had been advised, were contrary to the provisions of the Constitution. The point that the hon. Member makes is certainly a very valid point from the point of view of what we are doing in this case, and it is clearly something that the Government had considered.

155 I have made the point during the course of my intervention in moving that the Bill be read a second time, that this not only acts in terms of the future by removing the limitation period for any debt that might become time barred as from the commencement of this Bill, but it removes the limitation period in respect of all Government debt so that the Government can go back and recover and take steps to recover those debts.

160 There will be practical questions as to whether in practice it is possible to recover a debt that might have accrued say ten years ago and whether it is feasible, and those are practical considerations that the Government will have to consider in taking any steps.

165 As regard the issue of the legal point, we are aware that there are different opinions but the opinion that we have taken and the view that we have taken is that it is possible to dis-apply the limitation period, notwithstanding that that limitation period might have expired and therefore the debt might have already been time barred.

170 There is the issue whether somebody has essentially an accrued right because the limitation period has already expired and we have taken the view that it cannot be considered a right, it cannot be considered, somebody who has had a debt and who is simply taking advantage of the flux of time, of the limitation period having expired, and that debt not being enforceable as a result of that limitation period having expired, that is not a right which has accrued but simply taking advantage of a certain provision in the legislation which we are now undoing in respect of Government debt.

175 So for those reasons, we believe that it is not unconstitutional, that it is right that we can do this, there are practical considerations as I have said, but it can become a question which can be argued at a later stage. We acknowledge that it can become a live issue in respect of those matters, and that is clearly something that the Government may take into account in deciding what practical steps it takes in respect of any of these debts.

180 I give way to the hon. Member.

Hon. D A Feetham: Yes, I am thinking in particular for example a situation and I do not know whether such a situation exists, but I am thinking of a situation where the Government is currently suing someone.; that person by way of a defence files a defence saying, 'This debt is statute barred.' By us legislating now, effectively what we are doing is we are removing that person's defence, a defence that existed for that person.

185 Now that is something that would not normally be done by Parliament. Parliament would not, a Government would not normally pass an amendment to legislation, depriving a litigant against it of a defence. Certainly I can think of several arguments why we should not be doing something like that.

190 Does he know if such a case exists, for example, that someone is being deprived effectively of a defence, although I am conscious that of course everybody is going to be deprived of a defence who had a debt that was statute barred. But does he know of any proceedings currently afoot where the Limitation Act is being raised as a defence?

195 **Hon. G H Licudi:** Mr Speaker, I do not. Personally I do not believe ... our understanding is that there are no proceedings afoot in which a defendant might have taken advantage of the right to present a defence. Therefore, as far as we are aware, there are no such proceedings currently afoot.

200 But the point really is that whether a defence has been filed or has not been filed, the right to file a defence is being denied for future cases in respect of people that without this amendment to the legislation would have had that right. So are we denying a present right or are we denying a future right and are we entitled to deny that future right to file a defence in a prospective case in the future given, that our understanding is that there is no current case where such a defence has been filed?

205 The view that we have taken is that we have to show the community at large that this Government is serious about recovering Government debt. For whatever reason, debts have accumulated – they accumulated during the period that the hon. Members were in office and some debts have accumulated during our period as well – and it is important that the message is sent out that simply because the Government has not acted in a particular time frame, does not mean that those individuals who owe debts to the Government can get away with it.

210 That is the message that this Parliament is sending by passing this piece of legislation and I would hope that the hon. Members opposite would want to join us in sending that message to the community, that this community is serious, not only about recovering debt but about the whole issue of becoming indebted to the Government.

215 What we are trying to do is to discourage people from becoming indebted to the Government and making it clear, loud and clear, that where a person becomes indebted to the Government, that person can be pursued whether it is next year, in three years' time or in six years' time, which would not otherwise have been the case after six years had passed under the limitation period.

220 So that is the extent of the seriousness of the commitment that we are engaging and what we are trying to do is discourage people from becoming indebted to the Government in the first place.

I give way once again.

225 Let me just say, Mr Speaker, that I am happy to give way but the hon. Member will have an opportunity to make a contribution as part of the Second Reading and therefore instead of this exercise, I am happy if the hon. Member wants –

Mr Speaker: And in Committee as well.

230 **Hon. G H Licudi:** And in Committee as well, but he can make his contribution – (*Interjection by Hon. D A Feetham*) Right, but during the Second Reading he can make a contribution and I can answer all his points. If he wants me to give way before that I am happy to do that, but it is up to him.

235 **Hon. D A Feetham:** Just one more question.

Hon. G H Licudi: I am happy to give way.

240 **Hon. D A Feetham:** Mr Speaker, yes. The hon. Gentleman, what he is really saying and this would allay concerns on this side, is that whether or not this Act is effective in order to deprive somebody of a defence will be very fact specific, and it will depend on the facts.

245 For example, I can think of a situation where a debt has become statute barred, there may have been correspondence with the Government or the Government may have had correspondence with a particular individual. That particular individual through lawyers has said it is statute barred. That person may have changed his position to his detriment.

But what he is saying is, and I would just ask him, it is very fact specific and that it does not deprive any individual, should he be advised by his lawyers or should he be inclined, to effectively raise whatever constitutional arguments that he may have in relation to this.

250 And that there may be circumstances, we do not know whether that person may be able to rely on constitutional rights, we just simply cannot really foresee the circumstances at the present moment. We cannot cater for everybody at the present moment in time, but there is no intention here to effectively deprive anyone of constitutional rights that may have accrued.

I think that is important and it would allay our concerns on this side of the House.

255 **Hon. G H Licudi:** Mr Speaker, we can certainly say there is no intention to deprive anybody of any constitutional right. There is no ability by this Parliament to deny anyone of a constitutional right, even if we had that intention, which we clearly do not.

260 This does not stop anybody in the sort of situation that the hon. Member has mentioned from filing a defence, that the debt is in fact time barred and that that person has the right to raise the defence. And if that person raises that defence notwithstanding the amendment that we are proposing today, then the issue will have to be determined by the court.

265 So if that person is alleging a constitutional right which we clearly do not intend and cannot in any event take away from that person, then that argument can be presented to the court, we believe what we are doing is correct from a constitutional point of view. It does not deprive anybody of the ability to raise the point, raise the defence and say, 'I am entitled to put forward this defence because this amendment is invalid because it infringes the Constitution', and that

will be determined by the court, so the same point can be raised in any of these proceedings and the court will be the arbiter as to whether the Constitution is engaged or not.

270 The view that we have taken is that it is not and that is why we have proposed to go down this route. I sincerely hope that allays the hon. Members' concerns and that they will be able to vote with us to show that the whole House is united in the commitment to recover Government debt.

275 **Mr Speaker:** Does the Hon. the Leader of the Opposition wish to speak on the general principles and merits of this Bill?

Hon. D A Feetham: Yes, Mr Speaker, very briefly. Mr Speaker, I thank the hon. Gentleman. It has gone some way of allaying concerns – not all, but we will be voting in favour of the Bill.

280 In terms of the constitutional impact of a provision like this, when we talk about constitutional impact, there are two types of impact. One is whether the section itself is unconstitutional in the light of the fact that it seeks to deprive people of accrued rights in this particular case and an accrued defence, because that is what it is. The debt is due and owing. It is a defence to a claim, that is what this seeks to deprive. And that the hon. Gentleman has said he has received – or the Government has received – advice and the advice that the Government
285 has received is that the section itself is not unconstitutional.

I would not expect him of course to come to this House, putting before the House any legislation that is unconstitutional, although there are mechanisms indeed, and in that context I note that the Government is going to be moving in due course, amendments to the Constitution Declaration of Compatibility Act. And I introduced the original Act and the purpose of that Act was effectively to be able to put in the hands of the court, any Act where there was a doubt as to whether it was constitutional or unconstitutional.
290

And in this particular case the Government must therefore feel very confident that this is not unconstitutional because otherwise it would have gone through that mechanism. I am very grateful for that and we on this side of the House also rely on the Government's view in relation to that.
295

Then secondly, there is the point about whether in any given circumstance the reliance by the Government on this section would deprive an individual of his constitutional rights. That is the point that I made earlier during the course of our earlier interventions. And in relation to that of course, it is almost impossible to predict because it is going to be very fact specific. There may be circumstances where somebody may say, 'Well look, this was determined some time ago in correspondence between myself and the Government.' And for the Government now to rely on this section is unconstitutional.
300

I think the hon. Gentleman is right that in relation to that obviously it is impossible to predict. It is very fact specific and it would just simply be an impossible task. Obviously I rely on the reasonableness of the Government in any given situation to do, obviously on advice, the right thing by individuals that are faced with that kind of situation.
305

As far as the general principle is concerned of this particular amendment, I say this: that on this side of the House, we have been consistent proponents of the principle that Gibraltar, and the Government and Opposition, politicians in particular, have got to be responsible and have got to tackle the culture of entitlement and expectation that unfortunately has gripped parts of Gibraltar society.
310

The fact that we have Government debts that accrue years into our years in Government, but also the hon. Gentleman – and I am grateful for that because it shows objectivity in his address – has accepted that it is also during their years in Government – but there are people who believe that they do not have to pay their debts to the Government, they do not have to pay rents for their homes when rents have been historically very low; that that is not right.
315

And there is always a balance to be struck between the state's duty to an individual and the individual's duty not only to the state but also to the rest of their fellow Gibraltarians, because

320 the person who does not pay, it then means that unfortunately everybody else is having to pay
for them, and that is wrong. It is for that reason, Mr Speaker that we are going to be supporting
this Bill today, whatever concerns that we may have at the back of our mind in relation to this
particular amendment.

325 It is also right that the Government should bring an amendment in order to amend legislation
to dis-apply a limitation period in relation to asbestos-related claims. I have had, in my
professional capacity, cause to represent people who have been dying of cancer and who have
since died of cancer as a consequence of handling asbestos, and I think it is right that the
Government should take responsibility and should say, in relation to those types of claims, it is
just simply not right that there ought to be a reliance on a limitation period, particularly when it
330 is a disease that develops over time, sometimes over decades, and by the time that somebody
knows that that person is dying of cancer, the limitation period would have expired.

So the Opposition will be supporting this Bill, we think that it is a worthwhile Bill to support
and we will be voting in favour, Mr Speaker.

Chief Minister (Hon. F R Picardo): Mr Speaker, it is a source of great pride to me that this Bill
335 is moved by the Minister for Justice. In the time that I was in practice as a lawyer, I met a
number of people who suffered from asbestosis and who had a very difficult situation indeed as
a result of the limitation period affecting their ability to bring claims. It was as a result of that the
executive committee of the party that I lead considered that it was appropriate that the 2011
manifesto should include a commitment to legislate to remove the limitation period in respect
340 of such claims.

It has taken us some time in respect of this matter to be able to bring the amendment, which
although it seems simple at first blush, has required a lot of advice indeed to be taken on the
subject and we are now able to move the Bill, which apart from dealing with issues relating to
debt, will also I think deal with this important area of personal claims that has been provided for,
345 for some time, in the United Kingdom, but had not been provided for in Gibraltar. I am very
happy indeed that the Government which I lead is bringing this Bill.

Mr Speaker, in relation to the issue of debt and the constitutional issues that the hon.
Gentleman has raised, I must say I have been surprised to hear him make these arguments.
Because he will recall, Mr Speaker, that the last time that we had this discussion in relation to
350 the limitation period, it was when we were dealing with the issue of the arrears at Question
Time and I was the one who raised the issue of limitation and how that affected some of the
claims.

And the hon. Member opposite then, with the former Chief Minister, Peter Caruana, was
making the argument that whether or not limitation periods had expired, we should not write
355 off the amounts, that they should remain on the books and that we should use other methods of
pressure to be able to recover those amounts.

So, Mr Speaker, to now hear him argue in favour of the constitutional rights of those who
may have thought that they had got away without paying a debt to the Government, is to see
him in effect in my view, argue for an entitlement not to pay the Government. That culture of
360 entitlement that he says he is against but which at least in respect of those who have owed
money for more than six years, he seems to be defending, Mr Speaker.

Because you see, really there is no constitutional right to owe money. There is no
constitutional right, Mr Speaker, to see others around you pay and you get away without paying.
There is no constitutional right, Mr Speaker, which this Government would ever trammel over.
365 And we have very carefully taken advice to ensure that we are able to make this legislation,
although of course, the ultimate arbiters of whether or not a constitutional right is infringed, as
the Hon. the Minister for Justice indicated in his statement, are not the Members here either on
one side of the House or the other; it is in fact the Supreme Court and the Judges of the
Supreme Court who, if the defendant to any action brought by the Government were to assert
370 that they had an accrued right, would then determine whether this Bill is able to undo that right

or not, given that the Constitution is a principle, an overriding enactment, as I do not tire of reminding the House.

And, Mr Speaker, in respect of the recovery of arrears, if I may say so, everybody in this House must value the work that has been done by the hon. Lady's Department and by the hon. Lady in particular, in driving down those debts in ensuring that at last the issue of arrears is being addressed.

In ensuring that despite the fact that we have been in Government for a much shorter period than they were, we are the ones tackling what he calls the culture of entitlement and I call a failure of people to pay their debts, a failure of people to understand the privilege that they have when they are in a Government tenancy at a low rent and the fact that this Government is tackling that which the Government that he was a Member of failed to deal with.

And, Mr Speaker, if I may say so, the hon. Gentleman also needs to get used to the fact that he cannot talk about those on that side of the House. I have the advantage, Mr Speaker, of being able to say, as do all my colleagues when we get up to present Government Bills and other motions, that we speak on behalf of those on this side of the House. He now needs to remember that he speaks for those on that side of the House that he represents. He no longer represents all of them.

Hon. G H Licudi: Mr Speaker, I am glad to see and to hear the hon. Member say that the Opposition will be voting in favour and will be supporting this Bill. I had a sense of uneasiness and concern when the hon. Member first stood up and put a little bit of doubt as to whether the Opposition would be supporting this or not. And although I did say, as the hon. Member has repeated, that debt accumulated during their period in office and there has been some debt which has accumulated during the time that we have been in office since 2011; but let us be clear about one thing: the only debt that today is time barred, in other words that is at least six years old, is debt created during their time in office.

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

Hon. G H Licudi: And for the hon. Member to say that they were thinking of voting against this Bill so that we would not be able to recover debt accumulated during their time in office, really takes the biscuit!

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

Hon. G H Licudi: The hon. Member has also spoken about ... so I am glad to see that they have finally come round to their senses and they will be voting in favour of an amendment which will see us recovering their debt.

The Hon. the Chief Minister has also spoken about this, the so-called culture of entitlement that the hon. Member refers to. We really need to show that this so-called culture of entitlement is no more than a myth. As the Hon. the Chief Minister said, there is no entitlement and there cannot be a culture of entitlement not to pay.

And there is no entitlement anymore for a berth in the small boats marina, whilst you have accumulated debt and you have decided not to pay. So by taking the action that we have taken, which we started with the provision that we included in the regulations on the allocation of berths for the small boats marina so that people with debt were not entitled – were dis-entitled, essentially, from their ability to acquire a boat or to acquire that particular berth – what we are doing with that and with this measure and with the practical measure that we will be taking, what we are doing is doing away with any notion of any possible myth that there is a culture of entitlement in Gibraltar in respect of Government debt.

It is important to point out lastly, Mr Speaker, that this Bill as has been acknowledged, is not just about Government debt, there are also other fundamental provisions in relation to the Bill

425 which we had included in our manifesto commitments. In particular, cases of child abuse whilst
in the care of Social Services in Gibraltar and in respect of the very serious disease of
Mesothelioma and suffering from cancer caused by exposure to asbestos. And it is right that we
move on and that we give people the entitlement to make claims where those claims are valid in
respect of those very important issues which will have affected their lives very seriously indeed.

430 For all those reasons, Mr Speaker, I commend the Bill to the House and I certainly look
forward very much to a full vote of the House in favour of the Bill, to allow us to recover GSD
debt. *(Banging on desks)*

A Member: Hear, hear.

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

Clerk: The Limitation (Amendment) Act 2016.

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

440 **Minister for Education and Justice & International Exchange of Information (Hon. G H
Licudi):** Mr Speaker, I beg to move that the Committee Stage and Third Reading of the Bill be
taken later today if all hon. Members agree.

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

**Fast Launches (Control) (Amendment) Bill 2016 –
First Reading approved**

445 **Clerk:** A Bill for an Act to amend the Fast Launches (Control) Act 1987.
The Hon. the Minister for Education, Justice and International Exchange of Information.

**Minister for Education and Justice & International Exchange of Information (Hon. G H
Licudi):** Mr Speaker, I beg to move that a Bill to amend the Fast Launches (Control) Act be read a
450 first time.

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Fast
Launches (Control) Act 1987, be read a first time. Those in favour? **(Members: Aye.)** Those
against? Carried.

455 **Clerk:** The Fast Launches (Control) (Amendment) Act 2016.

**Fast Launches (Control) (Amendment) Bill 2016 –
Second Reading approved**

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

460 This Bill, Mr Speaker, amends the 1987 Fast Launches (Control) Act so as to allow for the exemption of certain vessels from the regime created under that Act, if those vessels meet certain and very specific criteria.

The Bill comes about particularly as a result of the substantial increase in pleasure boats arising from the opening of the Mid-Harbour Small Boats Marina. From the Government's point of view, Mr Speaker, we are very glad to see that the marina and the associated amenities and the public promenade have been universally welcomed by both the boating and the wider community and it has become in fact a very much resounding success.

465 The Bill comes about particularly as a result of the substantial increase in pleasure boats arising from the opening of the Mid-Harbour Small Boats Marina. From the Government's point of view, Mr Speaker, we are very glad to see that the marina and the associated amenities and the public promenade have been universally welcomed by both the boating and the wider community and it has become in fact a very much resounding success.

470 Mr Speaker, boat manufacturers are increasingly moving to outboard engines for larger boats due to reliability and low maintenance issues, including traditional fishing or pleasure boats that previously have used inboard engines. Those boats that require higher than 200 brake horse power engines would currently be classified as fast launches under the Act.

475 The Government has received numerous representations for a change in the law in order to allow the licencing of these boats without the boats falling under the fast launch regime, and there has also been an online petition to this effect. The Government has acknowledged the force of these arguments and has decided to create an exemption to the fast launch regime provided that certain criteria are satisfied.

480 At the same time, the Government has recognised that law enforcement agencies are equipped with faster and better boats than they were in 1987 when the Fast Launches (Control) Act was brought into force. As such, it is now possible for a new category of vessels to be created outside the restricted regime under the 1987 Act.

485 For the purposes of putting together this Bill and this new category, Mr Speaker, there was a Ministerial sub-committee created composed of myself, my colleague the Minister for the Port, the Hon. Paul Balban and the Minister for Maritime Services, the Hon. Albert Isola. We have all consulted with relevant stakeholders, in particular with the Captain of the Port and his staff, as well as the Royal Gibraltar Police and with Customs. All of those stakeholders with whom we have consulted have agreed the measures which we are proposing to introduce by this Bill today.

490 Mr Speaker, under the proposed regime, owners or prospective owners of vessels may apply to the Captain of the Port in order to certify certain vessels which are currently defined as fast launches as being exempt vessels, if they meet the criteria which is set out in the new schedule to the principal Act.

495 This is a very strict set of criteria and is intended to cover such vessels which currently fall within the fast launch regime but which due to their nature, design and purpose it is felt should no longer be as strictly controlled. The criteria, Mr Speaker, are that (1) the vessel does not under normal operating conditions exceed a speed of 40 knots; (2) it is not of a type, characteristic, colour or description, the certification of which would be in the opinion of the Captain of the Port, in consultation with the Government, against the public interest; (3) it is not an inflatable boat or a rigid inflatable boat; (4) it is of a particular minimum hull beam, hull length and hull displacement; and (5) it is not equipped with an engine or engines with a brake horsepower which exceeds the manufacturer's maximum engine recommendation.

500

If the vessel, Mr Speaker, meets all the criteria and the Captain of the Port in his discretion and with the approval of Government certifies the vessel as exempt, certain restrictions included in the principal Act as to its use will no longer apply. These restrictions are mainly concerned with those contained in Part 3 of that Act relating to the vessel's use within the controlled area, the need for users other than the holder of a valid licence to be authorised, the use of a vessel at night, restrictions on where the vessel may be moored, annual surveys and the need to report arrivals and departures.

However, Mr Speaker, exempt vessels will not be exempt from all of the restrictions contained in the principal Act. The vessels will still need to be marked for identification purposes, engines may not be modified without permission of the Captain of the Port and there are restrictions on the carrying of fuel.

It is our view, Mr Speaker, that this new category of exempt vessels should cater for most vessels that boat users will want to own for recreational purposes and which are currently caught by the fast launch regime. In a way, we expect that regime to become – the fast launch regime – to become almost redundant. We have not, however, done away with the regime altogether as there may exceptionally be some vessels which may be licensed already as fast launches and which will continue to be subject to all of the restrictions and conditions contained in the Act.

Mr Speaker, when we were putting this together, the view that we took was that we should not change the fast launch regime at all and that instead we should simply create this new category of exempt vessels. However, after the publication of the Bill, we decided that there were in fact a couple of changes to the fast launch regime which ought to be made.

These, Mr Speaker, are set out in a letter to Mr Speaker, which we sent earlier this week, containing a number of amendments which I will be moving at Committee Stage. The main amendment, Mr Speaker, is the insertion of a provision for a new section 14A into the principle Act.

Mr Speaker, the Government has taken the view that it is desirable and indeed it is necessary, for certain types of vessels to be required to be insured and for users to have successfully completed a relevant proficiency test. These are new requirements which we are now introducing for recreational vessels.

We have not, Mr Speaker, formed a final view as to all the types of vessels for which there should be the insurance and proficiency requirement, but we have nevertheless determined that at this stage, we should impose these requirements on at least three categories of vessels, jet skis, fast launches and those vessels that fall within the new category of exempt vessels which we are introducing under this Bill.

Mr Speaker, with regard to jet skis, these provisions will be contained in rules, not in the current Bill or the Fast Launches Control Act. These rules will amend the Seaside Pleasure Boat Rules 1989. The rules will be published at the same time as we commence the amendments to the Act which we are debating today. In addition, the rules will introduce a restriction on the operation of jet skis at night, which is not currently the case.

We acknowledge, Mr Speaker, that the insurance and proficiency requirements cannot reasonably be imposed immediately on the coming into force of legislation or the rules, as these may take some time to organise. We do not want to prejudice existing users of these vessels and therefore, we will allow a period of grace of three months for those jet skis that are already licensed in Gibraltar and operational in Gibraltar. New jet skis coming in will of course be subject to the new requirements in order for them to be licensed.

Turning to the specific provisions which affect the Bill today, the new section 14A of the Fast Launches (Control) Act imposes the insurance and proficiency requirements on fast launches and exempt vessels. These new requirements are that the vessels may only be used if covered by a policy of insurance in respect of third party risks as may be approved by the Captain of the Port and also that such vessels may only be used by persons who have successfully completed a

proficiency course approved by the Captain of the Port or who are accompanied and supervised by a person who has completed such a course.

555 There are offences included regarding the use of the vessels contrary to these provisions and also regarding the failure to produce a copy of the insurance or evidence of successful completion of the relevant proficiency course.

560 Mr Speaker, in order to ensure that persons who currently own, in a similar way to what I mentioned in relation to jet skis, so for those persons who currently own and operate a launch which is licensed as a fast launch under the current regime, and again to give them an opportunity to regularise their position, we are proposing an amendment to clause 1 of the Bill which delays the application of the proposed section 14A for a period of three months from the commencement of the Amendment Act, in relation to the use of fast launches which have already been licensed under the Fast Launches Control Act, prior to the commencement of this Act and in relation to which, there is in operation on the date of commencement of this Act, there is a licence in operation.

565 Finally, Mr Speaker, I will be proposing two further amendments which I included in the letter at Committee Stage, in the form of tidying up of the principal Act. The first changes the time when the use of a fast launch is prohibited which, under the current legislation is between 10.00 p.m. and 7.00 a.m. to between half an hour after sunset and sunrise. This is simply to give a more realistic definition of night-time operation. As it stands at the moment, it is 10.00 p.m. to 7.00 a.m. all year round. As hon. Members will know, night changes essentially on a day-to-day basis.

570 We have adopted in part and the Hon. Mr Trevor Hammond will be very familiar with the rules on night-time operation in relation to aviation, whereby in the UK and Gibraltar, it is half an hour after sunset and half an hour before sunrise. In Spain for example, it is sunset to sunrise and we have adopted almost a halfway house between those by saying that night operation for these purposes is half an hour after sunset and up to sunrise.

580 The second amendment, Mr Speaker, allows for the Captain of the Port to provide for alternative manners of reporting arrivals and departures. The reason for that is that currently there is a need to go to the reporting berth every time a fast launch leaves or arrives in Gibraltar. There is, as we know currently no reporting berth and therefore there is a need to give a discretion to the Captain of the Port to propose and to prescribe an alternative manner of reporting those arrivals and departures.

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

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

590 **Hon. L M Llamas:** Mr Speaker, I would just like to say that I am extremely pleased in the way that the Government has handled this Act. In particular, in the way in which it plans on dealing with the rules for other vessels in the future, in conjunction with this Act and the timely manner in which it will all come into operation.

I have to commend that they have done a very good job. Thank you. *(Banging on desks)*

595 **Mr Speaker:** I now put the question –

Hon. G H Licudi: Mr Speaker –

Mr Speaker: Yes?

600

Hon. G H Licudi: Simply in reply, to acknowledge the very kind words of the hon. Member. I do want to acknowledge that in relation to insurance and proficiency, the hon. Member made

the point in a recent *Viewpoint* programme when he was interviewed in relation to the small boats marina, that this would be desirable.

605 We have made an amendment, not just because the hon. Member said so, but because we have received representations and as I have said, this is a start of the imposition of that requirement to all vessels. How far we should go on insurance and proficiency requirements – clearly a small dinghy and a small rowing boat will not have them – where do we draw the line is a matter that we will have to debate and we will have to decide. But we have taken this opportunity of this amendment to impose these requirements on fast launches and exempt vessels and at the same time we were advised that we should do it particularly in relation to jet skis that can be quite fast and can be quite dangerous if in the wrong hands.

610 I am very, very glad to see that the Government will not just be supporting the Bill but they agree with the way that we have been doing this.

615 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Fast Launches (Control) Act 1987 be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

620 **Clerk:** The Fast Launches (Control) (Amendment) Act 2916.

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

Minister for Education and Justice & International Exchange of Information (Hon. G H Licudi): Mr Speaker, I beg to move that the Committee Stage and Third Reading of the Bill be taken later today, if all hon. Members agree.

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

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

Clerk: A Bill for an Act to amend the Employment Regulation (Offences) Act.
630 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 that a Bill for an Act to amend the Employment Regulation (Offences) Act be read a first time.

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

640 **Clerk:** The Employment Regulations (Offences) (Amendment) Act 2016.

**Employment Regulation (Offences) (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.

645 Mr Speaker, the Bill seeks to amend the Employment Regulation (Offences) Act by extending the circumstances in which the Director of Employment may revoke a Fixed Penalty Notice. The power to evoke a notice was previously limited to labour inspectors; the power now rests solely with the director.

650 Whilst labour inspectors may recommend the revocation of a notice, it is ultimately the director who will take a final view on the revocation. The power to revoke a Fixed Penalty Notice was previously only exercisable where a labour inspector had reason to believe that an error or misapprehension of their part, or to the provision to them of incorrect information, had caused a Fixed Penalty Notice to be inaccurate.

655 This power has now been amended to circumstances where the director believes there has been an error, misapprehension or provision of incorrect information to a labour inspector. The power to revoke has also been extended to circumstances where the Director has reason to believe that the service of a notice operates against the public interest. The Bill also clarifies the Director of Employment has discretion to serve a new Fixed Penalty Notice or not, upon the revocation of an existing notice.

660 **Mr Speaker:** Before I put the question, does any hon. Member wish to speak on the general principles and merits of this Bill? No.

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

665 **Clerk:** The Employment Regulation (Offences) (Amendment) Act 2016.

**Employment Regulation (Offences) (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.

670

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

**Financial Services (Listing of Securities) (Amendment) Bill 2016 –
First Reading approved**

Clerk: A Bill for an Act to amend the Financial Services (Listing of Securities) Act 2006.

675 The Minister for Business and Employment on behalf of the Hon. the Minister for Financial Services and Gaming.

680 **Minister for Business and Employment (Hon. N F Costa):** Mr Speaker, I have the honour to move that a Bill for an Act to amend the Financial Services (Listing of Securities) Act 2006, be read a first time.

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Financial Services (Listing of Securities) Act 2006 be read a first time.

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

685 **Clerk:** The Financial Services (Listing of Securities) (Amendment) Act 2016.

**Financial Services (Listing of Securities) (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.

690 Mr Speaker, this Bill amends the Financial Services (Listing of Securities) Act 2006. The Bill inserts two new subsections to section 28 in order for the Minister to be able to prescribe fees with regard to the application for listings made under the official Listing Rules 2007.

New subsection (5) provides the power to prescribe such a fee after consultation with the listing authority.

695 New subsection (6) states that the prescribed fee must be published by notice in *The Gazette*.

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

700 I now put the question, which is that a Bill for an Act to amend the Financial Services Listing of Securities Act 2006 be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Financial Services (Listing of Securities) (Amendment) Act 2016.

**Financial Services (Listing of Securities) (Amendment) Bill 2016 –
Committee Stage and Third Reading to be taken at this sitting**

705 **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.

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

**Financial Services Ombudsman Bill 2016 –
First Reading approved**

715 **Clerk:** A Bill for an Act to establish the Financial Services Ombudsman to provide for the alternative resolution of Consumer Disputes in respect of Financial Services and for Connected Purposes.

The Hon. the Minister for Business and Employment, on behalf of the Hon. the Minister for Financial Services and Gaming.

720 **Minister for Business and Employment (Hon. N F Costa):** Mr Speaker, I have the honour to move that a Bill for an Act to establish the Financial Services Ombudsman to provide for the alternative resolution of consumer disputes in respect of financial services and for connected purposes, be read a first time.

725 **Mr Speaker:** I now put the question, which is that a Bill for an Act to establish the Financial Services Ombudsman to provide for the alternative resolution of consumer disputes in respect of financial services and for connected purposes, be read a first time. Those in favour? **(Members: Aye.)** Those against? Carried.

730 **Clerk:** The Financial Services Ombudsman Act 2016.

**Financial Services Ombudsman 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.

735 Mr Speaker, the introduction of the Financial Services Ombudsman was a manifesto commitment which will be met with the introduction of this legislation.

The Act aims to provide an alternative resolution of consumer disputes in respect of financial services. The Act establishes the Financial Services Ombudsman and sets out its powers, functions and duties. It requires financial services providers to participate in dispute resolution procedures conducted by the Ombudsman.

740 The legislation will enable the Ombudsman with the consent of the consumer, to impose binding solutions upon financial services providers. The Ombudsman will have the function of investigating facilitating, mediating, proposing or determining solutions to disputes, including the power to make compensatory awards to consumers.

745 The Act also requires financial services providers to give consumers certain information about the Ombudsman. The Ombudsman will be appointed by the appropriate Minister.

I commend the Bill to the House.

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

750

Hon. R M Clinton: Mr Speaker.

Mr Speaker: The Hon. Roy Clinton.

755 **Hon. R M Clinton:** Mr Speaker, those of us in this House who dealt with family, friends and relatives who were involved or caught up in the TEP plan saga a number of years ago, will very much welcome the introduction of a Financial Services Ombudsman, which has been very sadly lacking in Gibraltar, in that in the past anybody who had any dispute went to the Financial Services Commission only to be told, 'Well actually, we do not deal with these types of disputes.'
760 So certainly this side of the House will welcome the introduction of this legislation which is probably long overdue and probably is required to meet EU requirements and certain legislation as well.

765 I have perused the legislation and with the assistance of my learned colleague, the Hon. Mr Phillips, and I have certain questions that perhaps the Minister, the Hon. Mr Costa, will be able to address in terms of the funding of the Financial Services Ombudsman.

It may be a question of drafting and maybe we will get to it at the Committee Stage, but there is a very important principle that arises, and that is who pays for the cost of the Ombudsman?

770 Now, we are all aware that in the UK it is done by way of levy on industry and certainly I would not from an industry point of view, I am sure the industry has enough levies to deal with at the moment and it would be very welcome by the industry that it would be the Government picking up the Bill for this.

775 However, having looked at the charging section, and this is where the constitutional lawyers amongst us will have some fun, I notice in section 6(4) where it talks about the appointment etc. of the Ombudsman, it says:

The salary, expenses and allowances of the Ombudsman are to be—
(a) approved by resolution of Parliament; and
(b) a charge on the Consolidated Fund without the need for appropriation.

Now to me, that seems to be a contradiction. Either it is approved by resolution of Parliament or it is a charge, but it cannot be both. So that may be something the hon. Member may wish to check.

780 And then this is where as I said the constitutional lawyers will have some fun, because looking at – and I cannot help it, the book-keeper in me, I cannot avoid this – looking at the accounts of the Government, the charges on the Consolidated Fund are very specific officers. Some of which are normally laid down in the Constitution and in fact the Constitution provides that officers of Parliament, for example the Principal Auditor, the Ombudsman, the Clerk to Parliament etc. are officers of Parliament and then become charges on the Consolidated Fund
785 without any further reference to Parliament, which is logical and the same goes for the judges and other officers such as the Governor. Those are enshrined in the Constitution.

Now, and again I am happy to be enlightened by the lawyers in the House, but it strikes me that either apart from the charging clause being slightly contradictory and I can see perhaps the logic in that if the Ombudsman is a charge, then surely a Financial Services Ombudsman would
790 be a charge. But then does he become an officer of Parliament? Also I notice that he reports to the Minister and not to Parliament.

So which is it? Is he an officer of Parliament or is he not an officer of Parliament? If he is not an officer of Parliament, I do not think it should be appropriate that he should be a charge on Parliament to the Consolidated Fund without reference to this Parliament, especially since he
795 reports to the Minister and not to this Parliament. There is no requirement in the legislation as I can see, that says that his report will be tabled to Parliament.

So that is the crux and my question really is the funding of the Ombudsman and the scrutiny of his expenditure. Perhaps the Hon. Minister can shed some light or maybe we can deal with this at Committee Stage, but I think there is a fundamental principle here in terms of scrutiny.
800 Because if we just by legislation keep on adding charges to the Consolidated Fund, and nor am I suggesting we do this, it is entirely possible that you could make everything a charge on the Consolidated Fund and there would be no need for any parliamentary resolution for anything.

I think it is an important point to make in that when you do create a charge on the Consolidated Fund it is for an office that is either laid out in the Constitution or it is of such public interest that it is a charge on the Consolidated Fund without reference to Parliament. I
805 think this is an important question that we need to address in respect of this legislation.

Personally I do not believe that the Financial Services Ombudsman in any case which is dealing with commercial entities is an officer of Parliament and should be a charge on Parliament but rather a charge on the Consolidated Fund by way of resolution.
810

And that, Mr Speaker, is my contribution.

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

815 **Minister for Economic Development, Telecommunications & the GSB (Hon. J J Bossano):** Mr Speaker, I think there is no conflict between the Parliament deciding what the pay should be initially but then not having to approve it every year. Because the only reason why this mechanism exists is, theoretically, to give a higher level of independence to the entity that is directly charged to the Consolidated Fund so that once the decision is taken, the pay then becomes an obligation under the law over which the Parliament no longer has control.

820 It is a matter of choice for the Parliament to do this or not do this, but I do not think there is a conflict in saying we are creating a Financial Services Ombudsman and we are going to link him or grade him in line with some other entity, but in order to give the same kind of theoretical independence, which I think is just frankly a way of sending a message – no more than that because it is not as if the Parliament ever interferes with the Civil Service in the cases where it boasts a salary ...

825 But one thing that never gets amended in this Parliament and I think when we had the recent debate about being able to amend things from the Opposition, I reminded Members that at one stage when Mr Speaker was part of the Government and I was in the Opposition, I tried to reduce somebody's salary by £1 and I was told I could not do it. So there you have got a situation where Parliament in fact was already inhibited from being able to do anything in respect of those salaries that are in the Consolidated Fund and paid from the Consolidated Fund by an Appropriation Bill.

830 The mechanism is not that it makes him a servant of the Parliament; it is that it makes him in theory, and on paper, enjoy a greater degree of independence from control by Parliament by virtue of the fact that he is guaranteed that the salary is by law payable from the Consolidated Fund and the Parliament cannot interfere with the salary.

835 I do not think there is any other intention to the creation of this mechanism. It was something that was done a number of years ago. Initially there were very few positions and a few have been added but out of the 5,000 public servants we may have four or five whose salaries are not controlled by Parliament.

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

845 The Hon. Samantha Sacramento.

Minister for Tourism, Housing, Equality and Social Services (Hon. Miss S J Sacramento): Mr Speaker, by way of assistance, this mechanism for payment of the Ombudsman already exists and it is the same as it is in section 4 of the Public Ombudsman's Act 1998. So, Mr Speaker, the mechanism which the GSD introduced back in 1998, Mr Speaker.

850

Mr Speaker: I call upon the hon. mover to reply?

Then I put the question which is that a Bill for an Act to establish the Financial Services Ombudsman to provide for the alternative resolution of consumer disputes in respect of financial services and for connected purposes, be read a second time.

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

Clerk: The Financial Services Ombudsman Act 2016.

**Financial Services Ombudsman Bill 2016 –
Committee Stage and Third Reading to be taken at this sitting**

860 **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.

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

COMMITTEE STAGE

**Pensions (Widows and Orphans) (Amendment) Bill 2016;
Limitation (Amendment) Bill 2016;
Fast Launches (Control) (Amendment) Bill 2016;
Employment Regulation (Offences) (Amendment) Bill 2016;
Financial Services (Listing of Securities) (Amendment) Bill 2016;
Financial Services Ombudsman Bill 2016**

865

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

870 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to move that the House should resolve itself into Committee to consider the following Bills clause by clause: the Pensions (Widows and Orphans) (Amendment) Bill 2016; the Limitation (Amendment) Bill 2016; the Fast Launches (Control) (Amendment) Bill 2016; the Employment Regulation (Offences) (Amendment) Bill 2016; the Financial Services (Listing of Securities) (Amendment) Bill 2016; as well as the Financial Services Ombudsman Bill 2016.

In Committee of the whole Parliament

**Pensions (Widows and Orphans) (Amendment) Bill 2016 –
Clauses considered and approved**

875

Clerk: A Bill for an Act to amend the Pensions (Widows and Orphans) Act.
Clauses 1 and 2.

Mr Chairman: Stand part of the Bill.

880

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

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

885

Clerk: A Bill for an Act to amend the Limitation Act.
Clauses 1 to 4.

Mr Chairman: Stand part of the Bill.

890

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

**Fast Launches (Control) (Amendment) Bill 2016 –
Clauses considered and approved**

895

Clerk: A Bill for an Act to amend the Fast Launches (Control) Act 1987.
Clause 1 as amended.

Mr Chairman: An amendment has been proposed by the hon. mover. It has been circulated to all hon. Members. May we take it as read?

900

This amendment stands part of the Bill.

Clerk: Clause 2 as amended.

905

Mr Chairman: Again, in the same letter the Minister informed Members of his intention to move this amendment. May we take it as read?

Therefore it stands part of the Bill.

Clerk: The long title.

910

Mr Chairman: Stands part of the Bill.

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

Clerk: A Bill for an Act to amend the Employment Regulation (Offences) Act.
Clauses 1 and 2.

915

Mr Chairman: Stand part of the Bill.

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

**Financial Services (Listing of Securities) (Amendment) Bill 2016 –
Clauses considered and approved**

920

Clerk: A Bill for an Act to amend the Financial Services (Listing of Securities) Act 2006.
Clauses 1 and 2.

Mr Chairman: Stand part of the Bill.

925

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

**Financial Services Ombudsman Bill 2016 –
Clauses considered and approved**

930

Clerk: A Bill for an Act to establish the Financial Services Ombudsman to provide for the alternative resolution of consumer disputes in respect of financial services and for connected purposes.

935

Hon. R M Clinton: Can I say something at some point or are you going to read it all? I can say something now, yes? (*Interjection*) Right.

Clerk: Clauses 1 to 10.

Mr Chairman: Stand part of the Bill.

940

Clerk: Clauses 11 and 12 as amended.

Mr Chairman: Now, back in February, earlier this year, the Hon. Albert Isola gave notice to me of some minor amendments which have been circulated to all hon. Members.

945

May we take them as having been read? (*Interjection*) Yes, and I understand that the Hon. Mr Clinton wishes to speak on one of these clauses.

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

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Coming back to the intervention by the Hon. Mr Bossano, I would just like some clarification as to how clause 6.(4)(a) and (b) are going to work in operation.

He says well, Parliament can set the salary and then they will have to set it thereafter, but if you read clause 6.(4)(a) and (b), salary expenses are to be approved by resolution of Parliament and a charge without the need for appropriation. But how does this work in practice?

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Minister for Economic Development, Telecommunications & the GSB (Hon. J J Bossano): If you have a resolution where the Parliament approves the budget of the Ombudsman, then it is coming to Parliament independent of the Appropriation Bill. That is what that clause provides.

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And where you have got a reference to the charge being without any appropriation, it is that it does not have to be included as part of the Budget. Where that is there symbolically the only significance – because in practice it does not make any difference – is that it enhances the concept of the level of independence enjoyed by an Ombudsman and this is why there are very few officers that are defined in that particular way.

965 **Hon. R M Clinton:** Mr Chairman, yes I understand that, but in practice does that mean that there will have to be a motion presented by Government every year, setting out the expenses and salary allowance every year separately to the Budget?

Hon. J J Bossano: In effect it is the budget of the office, not just his personal emoluments.

970 **Hon. R M Clinton:** Mr Chairman, so I take it we are agreed that basically every year there will have to be a separate resolution of this Parliament setting out the salary expenses or at least agreeing to them.

975 **Hon. J J Bossano:** I think the only way that that can be interpreted is if there was a case where the provision that was approved by a resolution did not change in a subsequent year then there would not be any need for a resolution.

But if there were changes and the first resolution carried specific numbers then clearly what becomes a direct charge is the numbers that are in the original resolution.

980 **Hon. R M Clinton:** Without wanting to create a rod for my own back, I guess if he removed clause (a) he would not have a problem at all because then he would not have to seek a resolution of Parliament each year or whenever there was a change.

985 **Hon. J J Bossano:** Mr Speaker, if the hon. Member has been persuaded by the exchanges since the First and Second Reading but now he is suggesting removing a little (a), then in fact there would be less control; but a few minutes ago he wanted more control. I have no problem with less control. *(Laughter)*

990 **Hon. R M Clinton:** As the hon. Member will know I am always in favour of more control, I am just saying in terms of practicality as to how he is going to do this, if what he is saying is that every year he will present a resolution to Parliament and if there is no change at least the resolution is saying there is no change but you still have to present a resolution even though there is no change.

995 **Chief Minister (Hon. F R Picardo):** The Government does not read the section like that. The Government reads the section in saying that there has to be a resolution of the Parliament to approve the salary, expenses and allowance of the Ombudsman. It does not say that it has to be every year. It has to be that resolution, once that resolution is in place; if the resolution has to change then you have to come back to Parliament because the Government is not able to do
1000 resolutions on its own. But once that resolution is in place, whilst it does not change, that creates an expense which is a charge on the Consolidated Fund and we do not need to come back here.

1005 **Mr Speaker:** Is there a need for other officers whose salaries are paid out of the Consolidated Fund to have an annual resolution? It just does not happen.

Hon. R M Clinton: Mr Chairman, I thank the hon. Members for the clarification. One other point I have in relation to – I do not know if these clauses have been called yet –

1010 **A Member:** One to 10 have been called.

Hon. R M Clinton: One to 10 have been called yes, was in relation to 16 so I will wait.

1015 **Mr Chairman:** Can we ask the Clerk therefore, to call clauses up to 10 so that it is clear after these exchanges, that they do stand part of the Bill.

Clerk: Clauses 1 to 10.

Mr Chairman: Stand part of the Bill.

1020 **Clerk:** Clauses 11 and 12 as amended.

Mr Chairman: There are very minor amendments as I said for which notice was given some time ago.

We will take them as read and they stand part of the Bill.

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Clerk: Clauses 13 to 18. I believe –

1030 **Hon. R M Clinton:** Mr Chairman, it is just a point on the annual report to the Ombudsman: clause 16.(1) is providing a report to the Minister, but there is no requirement to table any copies to this Parliament. I was just wondering if the Members opposite may wish to consider whether a report to the Minister or a report to the Minister and a tabling in Parliament.

1035 **Hon. Chief Minister:** Mr Chairman, the Ombudsman reports to Parliament and tables his report because in effect he is a parliamentary Ombudsman. In a financial services situation of the sort that we are dealing with here, there are different ways in which the Ombudsman can report, the position is the report to Ministers. There may be other sensitivities involved in a report of this nature and we do not think it is in Gibraltar's wider economic interest that such a report be laid in Parliament.

1040 **Hon. R M Clinton:** Mr Chairman, if I can direct the Chief Minister to clause 16.(3), the Ombudsman must publish a copy of any report under this section on its website, on a durable medium upon request and by any other means the Ombudsman considers appropriate.

1045 **Hon. Chief Minister:** Mr Chairman, that is the report like the report that comes here after the report has gone to Ministers. But, Mr Chairman, what the hon. Gentleman surely cannot be telling me is that he wants us to bring to Parliament something that is public. We do not think that is appropriate.

1050 If something is public then it is in Parliament. The hon. Gentleman and the Government have this debate constantly, he wants things which are filed in the public companies registries delivered to him. He wants things which are filed in the public companies registers laid in Parliament.

Mr Chairman, we lay in Parliament things that are published by the laying in Parliament, not things which are otherwise published.

1055 **Hon. R M Clinton:** Mr Chairman, that is exactly the point I am making, that the Ombudsman surely should provide his report to Parliament rather than making it public before Parliament sees it and this is exactly at this stage in the process of writing legislation where we can do this.

1060 I am not asking for a document that is in the public domain already; I am just saying that here we have an opportunity for these reports to come to Parliament and do the hon. Members opposite wish to do that or not? And he is obviously saying not.

But he just contradicted himself in that he said these are sensitive reports: does he really want them to come to the public domain where the requirement is already there in legislation where they will be published publicly? So which is it?

1065 **Hon. Chief Minister:** Mr Chairman, the hon. Gentleman has not been in Government. He does not know that Ombudsman's reports are brought to Ministers before they are published. So in the case of the parliamentary Ombudsman, the Minister receives the report before it is laid

in the Parliament and I would expect that in relation to this, Ministers will receive the reports before they are published, Mr Chairman.

1070 There is good reason for that and it is set out, if he cares to read back to the *Hansard* that the Hon. Sir Peter Caruana was speaking on the Bill when he presented the Ombudsman's Bill, the Parliamentary Ombudsman's Bill, he will see why that provision exists.

1075 Now, Mr Chairman, this is not about bringing things to Parliament. This is about publication of things and we think that things in some instances need to be published more widely than just in Parliament. Now, if things are brought to Parliament, they can be published from Parliament and after Parliament. But there is no reason, Mr Chairman, that today things should be brought to Parliament when they can be put on a website, whether they are accounts of banks or things which are filed by companies in their public accounts and which are accessible online to people. We think that is a better and wider publication of things than the hon. Gentleman suggests in terms of bringing things to Parliament.

1080 There are things which are appropriate to bring to Parliament. In respect of the Parliamentary Ombudsman, it is particularly relevant that his report be brought to Parliament. This is financial services, Mr Chairman, and therefore we think it is appropriate that it should be dealt with in this way and not as the hon. Gentleman suggests. This is a more modern and wider way of dealing with publication than simply bringing things to Parliament and he is not going to persuade the Government, we are not going to narrow the publication as he wishes. We are going to continue to have it in this way as set out in section 3.

1090 **Mr Chairman:** May I point out that, of course as hon. Members know, if a report is going to be laid on the table here, it is confidential until it has been laid. If it is published elsewhere on a website then it immediately becomes a public document.

1095 **Hon. R M Clinton:** Mr Chairman, thank you very much for that. Of course as the Hon. Chief Minister knows, his documents that are laid here are made public as soon as they are tabled in this Parliament and I am just a bit concerned as to the suggestion that it is far better to put these documents on public registers and issue them outside Parliament.

For example, why table the Auditor's Accounts and the Gibraltar Electricity Authority? Why bother, why not remove all references to Parliament in any legislation?

1100 **Hon. Chief Minister:** Mr Chairman, I think it is a very good idea that follows the Government's thinking, (*Laughter*) because I think the publication online of reports is much better than simply the laying of things in a tradition that comes from a time, from Parliaments beyond Gibraltar, where people used to bring documents which would then be in a library which people would then be able to find in some instances only there, Mr Chairman.

1105 But if the hon. Member wants to now move a motion to amend 16(3) to produce a laying in Parliament, he is going to find he does not enjoy the support of the House. If in future he finds clauses which slip past us which suggest that things should be laid in the House instead of being published online and he moves an amendment to have them published online, he will have our support. Because that means, as the hon. independent Member has said, it is about making information more accessible to people, about making budgets more accessible to people, about making this sort of report more accessible to people, not more accessible to him.

1115 **Hon. R M Clinton:** Mr Chairman, I think we have exhausted this line of exchange and obviously it is not about things being accessible to me; it is about transparency and the relevance of this Parliament. But I venture to suggest that one of the hon. Members will add this to his bucket of transparency. But never mind.

Hon. Chief Minister: Well, Mr Chairman, the hon. Gentleman would be completely wrong, Mr Chairman, because if you want transparency then you want things published not just to

1120 yourself and 16 others first and then to the world; you want it published to the world and to every citizen so that every citizen can access the report and every citizen can see it and that is what this Government stands for, and I am sorry to see that he is still in an age where things are only published in Parliament.

1125 **Clerk:** I shall recap. Clauses 13 to 18.

Mr Chairman: Stand part of the Bill.

Clerk: The long title.

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Mr Chairman: Stands part of the Bill.

THIRD READING

**Pensions (Widows and Orphans) (Amendment) Bill 2016;
Limitation (Amendment) Bill 2016;
Fast Launches (Control) (Amendment) Bill 2016;
Employment Regulation (Offences) (Amendment) Bill 2016;
Financial Services (Listing of Securities) (Amendment) Bill 2016;
Financial Services Ombudsman Bill 2016 –
Third Reading approved: Bills passed**

1135 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to report that the Pensions (Widows and Orphans) (Amendment) Bill 2016, the Limitation (Amendment) Bill 2016, the Fast Launches (Control) (Amendment) Bill 2016, the Employment Regulation (Offences) (Amendment) Bill 2016, the Financial Services (Listing of Securities) (Amendment) Bill 2016, and the Financial Services Ombudsman Bill 2016 have been considered in Committee and agreed, in some instances with and in some instances without amendment, and I now move that they be read a third time and passed.

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1145 **Mr Speaker:** I now put the question, which is that the Pensions (Widows and Orphans) (Amendment) Bill 2016, the Limitation (Amendment) Bill 2016, the Fast Launches (Control) (Amendment) Bill 2016, the Employment Regulation (Offences) (Amendment) Bill 2016, the Financial Services (Listing of Securities) (Amendment) Bill 2016, and the Financial Services Ombudsman Bill 2016 be read a third time. Those in favour? (**Members:** Aye.) Those against? Carried.

ADJOURNMENT

1150 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I move that the House do now adjourn to Friday, 9th September at 3.30 p.m. I take this opportunity to wish all hon. Members all the very best for what is left of the month of July and August, for the summer months.

Mr Speaker: The House will now adjourn to Friday, 9th September at 3.30 in the afternoon.

The House adjourned at 12.43 p.m.