



PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

AFTERNOON SESSION: 4.04 p.m. – 4.58 p.m.

Gibraltar, Friday, 10th March 2017

Contents

Prayer	2
Confirmation of Minutes	2
Communications from the Chair	2
Estimates of Expenditure.....	2
Statement by the Speaker	3
Suspension of Standing Order 7(1) to proceed with Government Bills	5
Bills	5
First and Second Reading	5
Governor's Emergency Powers Bill 2017 – First Reading approved.....	5
Governor's Emergency Powers Bill 2017 – Second Reading approved.....	5
Governor's Emergency Powers Bill 2017 – Committee Stage and Third Reading to be taken at this sitting	14
Committee Stage	15
Governor's Emergency Powers Bill 2017 –	15
<i>In Committee of the whole Parliament</i>	15
Governor's Emergency Powers Bill 2017 –	15
Clauses considered and approved.....	15
Governor's Emergency Powers Bill 2017 – Third Reading approved: Bill passed	15
Adjournment	15
<i>The House adjourned at 4.58 p.m.</i>	16

The Gibraltar Parliament

The Parliament met at 4.04 p.m.

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

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

PRAYER

Mr Speaker

CONFIRMATION OF MINUTES

Clerk: Meeting of Parliament, Friday, 10th March 2017.

Order of Proceedings: (i) Oath of Allegiance; (ii) Confirmation of Minutes – the Minutes of the last meeting of Parliament, which was held on 13th, 15th and 20th February 2017.

5 **Mr Speaker:** May I sign the Minutes as correct? (**Members:** Aye.)

Mr Speaker signed the Minutes.

COMMUNICATIONS FROM THE CHAIR

Clerk: (iii) Communications from the Chair.

10

Estimates of Expenditure

15 **Mr Speaker:** As hon. Members are aware, it is a requirement under section 69 of the Constitution that the Estimates of Expenditure for the next financial year should be tabled in the House before 30th April. Since the House is not due to meet next month, I am proposing that the provisions of the Constitution will be deemed to have been met if the Estimates are circulated to all hon. Members before the end of April. This is what I have been doing for the last few years and so I propose that it should be the case again for this year. Is that agreed?

Members: Aye.

Statement by the Speaker

20 **Mr Speaker:** There is another matter that I wish to refer to. In last Friday's edition of the *Gibraltar Chronicle* it is reported that, when asked how he had found his first year as an MP, the Hon. Mr Clinton said, and I quote:

There is no manual that you get given, or even an induction course into Parliament. You get shown your seat and you get shown your microphone, but that's about it.

Now, while it is true that there is no induction course as such for newly elected Members, it is not the case that the only guidance and assistance that the new cohort of Members who were elected in November 2015 received was just as described by the hon. Member.

25 Hon. Members will understand that it is incumbent upon me that I should set the record straight.

At the ceremonial Opening of Parliament on 9th December 2015 I assured new Members that they would always find me, the Clerk and the staff at their disposal in order to help them in the exercise of their important duties. Most of them, if not all, in fact, took up this offer prior to the first working meeting of Parliament in January 2016. To that end the Clerk and I, and the staff, met with them and explained to them not just the procedures of parliamentary meetings but also the technical arrangements for the broadcasting of proceedings. Later, once they had received the draft Estimates of Expenditure at the end of March 2016, we held other separate meetings with them at which we explained the salient aspects of that special meeting, which is the Budget session of Parliament.

35 Since elected, the Hon. Mr Clinton in particular has had a number of meetings with the Clerk and myself at which we have given him every possible assistance which he has requested, including more recently the procedures for the introduction of Private Members' Bills and Petitions to Parliament.

40 In the absence of any clarification from the hon. Member since his remarks were published last Friday, I feel compelled to draw attention to what I consider to be unfair, implied criticism of the Clerk of Parliament, the staff and myself.

45 **Hon. R M Clinton:** Mr Speaker, for the record, as you know, I did meet with yourself and the Clerk at 10.30 this morning to try and understand what your issue was with the *Chronicle* article last Friday. It is, however, regrettable that we could not see eye to eye on it and you have made the statement you have. I stand by all I said in the *Chronicle* article and it is regrettable that you have seen fit to make the statement you have.

50 Having said that, may I ask the Speaker if he has had time to consider the contents of my letter of 24th February in relation to the application of Standing Order 45(12)?

55 **Mr Speaker:** No, you will do no such thing. We are going to proceed ... You have had an opportunity, having heard my communication from the Chair. We are going to move on to the next item, if you wish to take up any other matter with me, you can write to me about it.

Hon. R M Clinton: Mr Speaker, with respect I did ask you in my letter to actually make reference to it in directions from the Chair, and if I gather from what you are saying is that you have chosen not to do so.

60 **Mr Speaker:** It is not that I ... You are referring to a matter which has got nothing to do with this, and therefore this is not the appropriate time at which to raise it. The matter that you are referring to is not connected with the Communication from the Chair, with the statement that I have felt compelled to make. It has got nothing to do with it.

65 **Hon. R M Clinton:** Thank you, Mr Speaker. Well, frankly, your earlier statement I think had nothing to do with the proceedings of Parliament. (*Interjections*)
I have actually written to you –

Mr Speaker: Will the hon. Member sit down.
70 It has a lot to do not just with the proceedings of Parliament but with the manner in which Members of Parliament conduct themselves – not just within Parliament but outside.
I would commend to the hon. Member that he reads through the Parliament Act, in particular references to criticism of the Speaker where that is not justified.
Now, if he wishes to continue to contest the matter I will allow him, but ultimately he knows
75 what the rules are and ultimately what I say remains said. It is on the record and that is all there is to it.

I have given the hon. Member an opportunity. He met me this morning and he remains intransigent. So be it. I have had my say and that goes on the record because there are aspects that he needs to understand: respect for the Speaker, respect for the institution that is
80 Parliament and the people who work here for him and for all the other Members.

Hon. R M Clinton: Mr Speaker, I thank you.
I refer back to my letter of 24th February and I would be grateful if you would give an indication whether you would give some kind of statement as regards the content of my letter –
85 or is it that you are choosing to ignore it completely?

Mr Speaker: I may or I may not, because I have considered the *Hansard* of the meeting and before the matter reached the stage which it reached in respect of the acrimony involving Mr Llamas, I made a statement ... If you would care to go back and ... I have checked with the
90 *Hansard* and I know that what I was saying amounted to a defence of Mr Llamas because I explained that it was not easy for Members to arrange their affairs when Parliament meets unexpectedly, and that is the position in which Mr Llamas had found himself and indeed other Members. So I had already defended his position, safeguarded his position, and I said that nothing more should be said about the question of Members being absent.

95 There are Members absent here this afternoon: so what? There is only one person really that needs to be here, apart from a quorum, and that is me. I have no deputy, I am always here and it would be very difficult, the way that things are in Parliament, for any of the other 17 to sit here and keep matters under reasonable control.

I will allow the hon. Member one last opportunity to speak and then we are going to move on
100 to the next item.

Hon. R M Clinton: Thank you, Mr Speaker, but in your view, Standing Order 45(12), does it or does it not prohibit the ... If I use the words:

The conduct of ... members of Parliament ... shall not be raised ...

105 Full stop.

Mr Speaker: Yes, the conduct. I do not consider that what Mr Llamas did amounted to conduct. If anybody from the Government criticised him in respect of his conduct, that is not conduct. Conduct is a habitual behaviour. Conduct has to do with a way of life. An incident in which an hon. Member is absent for one meeting, possibly for very good reasons, does not
110 amount to the conduct of a Member. Therefore, if the Chief Minister or anybody else criticised him in that respect, in my view he was not criticising his conduct, he was criticising the fact that he had not been here for a particular meeting of Parliament. That is all I am going to say.

Clerk, will you please now call the next item: Petitions.

115 **Clerk:** (iv) Petitions; (v) Announcements; (vi) Papers to be laid; (vii) Report of Committees.

**Suspension of Standing Order 7(1)
to proceed with Government Bills**

Clerk: Suspension of Standing Orders. The Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Mr Speaker, I beg to move, under Standing Order 7(3), to suspend Standing Order 7(1) in order to proceed with Government Bills.

120

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

BILLS

FIRST AND SECOND READING

**Governor's Emergency Powers Bill 2017 –
First Reading approved**

125

Clerk: Bills: First and Second Reading.

A Bill for an Act to make provision for the exercise of emergency powers in accordance with section 18(2)(b) of the Constitution where a public emergency arises or is likely, and for connected purposes.

130

The Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move that a Bill for an Act to make provision for the exercise of emergency powers in accordance with section 18(2)(b) of the Constitution where a public emergency arises or is likely, and for connected purposes, be read a first time.

135

Mr Speaker: I now put the question, which is that is that for a Bill for an Act to make provision for the exercise of emergency powers in accordance with section 18(2)(b) of the Constitution where a public emergency arises or is likely, and for connected purposes, be read a first time.

140

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

Clerk: The Governor's Emergency Powers Act 2017.

**Governor's Emergency Powers Bill 2017 –
Second Reading approved**

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move that the Bill for the Governor's Emergency Powers Act 2017 be now read a second time.

145

Mr Speaker, hon. Members will know that section 35(3) of the Constitution provides as follows:

Every bill shall be published in the Gazette, and the Parliament shall not proceed upon any bill until the expiration of six weeks after the date on which the bill was so published, unless the Chief Minister certifies by writing under his hand that consideration of the bill is too urgent to permit such a delay.

I have certified that this Bill is urgent under section 35(3) of the Constitution, Mr Speaker. I have written to you to this effect, and although I am not required by the Constitution to do so, I have also written to the Leader of the Opposition and the independent Member, Mrs Hassan Nahon, informing them of my certification of the Bill as urgent.

Mr Speaker, this Bill also engages another part of the Constitution, which requires that Parliament be alert to the manner in which it proceeds today. Section 35(2) of the 2006 Constitution, which establishes this Parliament – which is the one just above the one that allows the certification of urgency – states that:

Except with the consent of the Governor, acting in his discretion, signified by the Chief Minister, the Parliament shall not proceed upon any bill (including an amendment to any bill) that, in the opinion of the Governor, acting in his discretion, signified as aforesaid, concerns a matter for which he is responsible under section 47(1).

Mr Speaker, I have already indicated to you in writing my communication of urgency and that His Excellency the Governor, Lieutenant General Edward Davis, has given his consent, as required by section 35(2) of this Bill, to proceed through the stages in this House. I have confirmed the same to the Leader of the Opposition and Mrs Hassan Nahon, the independent Member, also.

Mr Speaker, turning now to the substance of the Bill, I must tell hon. Members that I have particular pleasure in bringing this Bill to the House because, as the House will know, the exercise by the Governor of powers in an emergency already exists. At present that power is conferred by the Emergency Powers Order 1939 as amended from time to time. In fact, that Order has been amended quite considerably. Amendments range from 1952 to 1973, and that Order in Council is of direct application in Gibraltar – in other words, a piece of UK law which has direct effect in Gibraltar. The 1939 Order has been on the statute book in the United Kingdom for a long time and its application was first specifically provided for in the 1969 Constitution. Whilst the 2006 Constitution continues to refer to the 1939 Order in Council, it also provides that in the alternative there be ‘any law enacted by the Legislature to like effect’ which would then have effect in periods of emergency. Mr Speaker, this Bill, if passed by the Parliament, will be that law, that alternative law enacted by this legislature.

In order to understand the importance of this rule and the Bill that is before the House, Mr Speaker, we should reflect that there are 11 substantive references to an emergency in the Constitution. As lawyers and constitutional scholars will know, the words ‘an emergency’ are usually used to defeat the application of fundamental rights that are protected in a constitution. One must always therefore be very careful when dealing with situations in which we would accept the application of a provision that defeats or blunts the application of the constitutional rights which form the framework of our laws. So, in these circumstances, before bringing to this Parliament a Bill, the Government would be very circumspect indeed to understand that we are not in any way creating any powers which would be potentially used to defeat fundamental constitutional rights. Those rights could be the rights of individuals in the Chapter of Fundamental Human Rights or they could equally be the rights of the home grown institutions of Gibraltar, created by or under the Constitution, which may somehow be suspended or have their powers curtailed in the relevant applicable circumstances. We on the Government side are satisfied that this Act will not curtail such individual or institutional rights in any material way for reasons that will become apparent. In other words, there is no derogation of any powers which the Government may now hold and exercise by the passing by this Parliament of the Governor’s Emergency Powers Act.

Let us also, before going any further, look at where the references in the Constitution are to the 1939 Order in Council and to emergencies generally. Principally, Mr Speaker, sections 17, 18, 45 and 78 of the Constitution contain in these references.

The original reference is in section 17(1). That is the section that provides for periods of public emergency. Section 17 (1) says this:

Nothing contained in or done under the authority of any regulation made under the Emergency Powers Order in Council 1939 or any law enacted by the Legislature ...

195 And, Mr Speaker, that means *this* legislature. It does not mean the UK Parliament; it means *this* legislature. The word 'Legislature' appears capitalised and is therefore subject to the definition of legislature in the Constitution. So:

... any law enacted by the Legislature to like effect shall be held to be inconsistent with or in contravention of section 3, section 4(2) or any provision of sections 7, 9, 10, 11 or 12, section 13(1) or (3) or section 14 to the extent that the regulation or law in question makes in relation to any period of public emergency provision, or authorises the doing during any such period of anything, to the extent strictly required by the exigencies of the situation arising or existing during that period for the purpose of dealing with that situation.

Mr Speaker, all of those sections referred to in section 17 are sections that deal with individual rights protected under the Fundamental Human Rights chapter of our Constitution.

200 Mr Speaker, section 18 sets out when an emergency is deemed to have occurred under the Constitution and I will deal with section 18 in greater detail later in my address when I am dealing with the substantive provisions of the Bill before the House.

Section 45 of our Constitution is in particular relevant when there is an election on foot in Gibraltar. In fact, Mr Speaker, it is important that we look at that section in its interplay with this Bill because that will indicate to hon. Members just how important this Bill is.

205

Section 45(9) of our Constitution provides that:

Upon the dissolution of the Parliament the Chief Minister and Ministers in office at the time of such dissolution shall remain in office and shall discharge their functions until new elections are held and a Chief Minister appointed in accordance with this Constitution following such elections; but such executive authority may not be exercised

– *may not be exercised*, and this is the important parenthesis, Mr Speaker –

save in the event of public emergency (including public order or safety), to commit or bind the next successor Government of Gibraltar to public funding or liability except in the ordinary course of the day to day affairs of Gibraltar.

So, in other words, Mr Speaker, once an election is called, section 45(9) of the Constitution bites, there is still a Chief Minister, there are still Ministers, but we cannot engage spending, other than immediately required, in respect of which there might be any commitment, unless there is an emergency. And those are the types of situations that we are dealing with here.

210

It is important to reflect, Mr Speaker, that in such an emergency being declared the Constitution is not suspended, so neither does cabinet government cease. We are not dealing with the suspension of the Constitution and the United Kingdom taking powers – something that we saw in most recent constitutional history in the Turks and Caicos Islands; neither are we seeing the Constitution remaining but cabinet government being suspended. We are seeing a situation where there is an emergency but the Constitution is still in place and cabinet government is still active, and in that context what we are going to deal with this afternoon creates powers which are complementary to the powers of cabinet government. Indeed, the reality is that the declaration of an emergency will, in effect, in such circumstances allow the Government, through the Governor, to take extraordinary measures for the purposes set out in the Bill – and indeed there are other Acts in our statute book which are relevant, which I will come to in a moment.

215

220

Section 78(5) of the Constitution sets out that:

References in this Constitution to the Emergency Powers Order in Council 1939

225 – which is the one I am referring to the House –

are references to that Order as from time to time amended and include references to any Order or other law replacing that Order in relation to Gibraltar.

It is important, Mr Speaker, that hon. Members keep that in mind.

You see, Mr Speaker, in order for this Parliament to legislate in this field, the 1939 Order in Council must cease to apply. In that regard I would draw the Parliament's attention to the Emergency Powers (Overseas Territories) Order 2017, which is Statutory Instrument 181 of this year of the United Kingdom Parliament and which comes into operation on 16th March this year – that is to say next Thursday. That Order was made on 15th February and was laid before Parliament as recently as 22nd February. It is for that reason that we have not been able to publish our own Bill, which is the localised version of that Order, that new modernised Order, until last week, although we have been doing a lot of work with UK colleagues. But of course the Order in the UK is not crystalized until laid and published.

Mr Speaker, the new Order in Council will have the effect of replacing the 1939 Order with a regime that is substantially the same in effect, albeit with some modernisation. The relevance of the 2017 Order in Council is that it will not apply to Gibraltar but only once this Bill becomes an Act and is in operation. Article 1(2)(b) of the 2017 Order in Council made in the UK a week ago provides that that Order extends to Gibraltar but only to the limited extent provided for in article 3(3) of the Order itself, and article 3(3) of the Order states this:

In relation to Gibraltar, the instruments specified in Schedule 2 that apply to Gibraltar are revoked with effect from the date that equivalent provision comes into force.

'Equivalent provision' being the reference I made earlier, Mr Speaker, that is in the Constitution – in *our* Constitution.

Mr Speaker, therefore what hon. Members will want to know is that this Bill, once it is an Act passed by this Parliament, will be that equivalent provision which will obviate the need for the application of the new Order in Council to Gibraltar. It is therefore the Government's intention that if the Bill is passed by the Parliament today the Act should receive Assent and be published before 16th March. In that way and observing that chronology, the 2017 Order in Council will not ever have applied to Gibraltar.

Hon. Members will know, Mr Speaker, that there is a convention since the 2006 Constitution that the United Kingdom does not extend the application of Orders in Council to Gibraltar, although it has the right to do so. The provisions of the new Emergency Powers Order in Council must nonetheless be provided for in order to ensure that there is constitutional completeness. In the circumstances, we are now providing that constitutional completeness via this home-grown Gibraltar Parliament Act. And indeed, Mr Speaker, in terms of constitutional theory, what this Act will do is ensure a closing of the circle in respect of emergency powers in a way that is entirely home grown.

To summarise all of that constitutional backdrop for hon. Members in non-legal and understandable plain English, Mr Speaker, I will put it like this. The Governor is an emanation of the Gibraltar Constitution. This Parliament is an emanation of the Gibraltar Constitution. And now, with this Act, with this Bill if it becomes an Act, the powers that the Governor would enjoy in an emergency will also be powers granted by an institution which is created by the Constitution. In every way, therefore, we are localising the grant of powers that would be operating in the context of a declaration of emergency by the Governor. We are granting the Governor those powers, Mr Speaker. The grant of powers created by the UK Order in Council – either the 1939 Order or the 2017 Order – would be obviated, as I said before, by the grant of powers by this legislature.

It is important that we put into context what I have just taken the House through and in what circumstances an emergency could be declared and what it would amount to.

Mr Speaker, section 18 of the Constitution provides for the interpretation of its provisions and with respect to emergency it defines them thus:

In this Chapter “a period of public emergency” means any period during which –

(a) Her Majesty is at war;

(b) the provisions of Part II of the Emergency Powers Order in Council 1939 are in operation in Gibraltar, or any emergency has been declared under any law enacted by the Legislature to like effect.

Declarations of war not being the subject of this Bill, Mr Speaker, clause 3(1) provides for there to be a public emergency when declared pursuant to the Act.

275 Such a declaration is made by the Governor issuing a proclamation to that effect, but a proclamation may only be made where the circumstances set out in clause 3(2) apply. That is to say an event or situation that threatens serious damage to human welfare in Gibraltar whether in whole or in part, an event or situation that threatens serious damage to the environment of Gibraltar whether in whole or in part, or an event or situation that threatens serious damage to the security of Gibraltar.

280 The power to make a Proclamation of Emergency is then set out in clause 4 and, unless a shorter period is specified or a proclamation is earlier revoked, the proclamation lapses after 30 days, although a new proclamation can be made pursuant to sub-clause (3).

Sub-clause (5) requires that any Proclamation of Emergency made under this section shall be published in the Gazette as soon as practicable after it is made.

285 Mr Speaker, I think it is important that hon. Members have in mind that the proclamation and the declaration of the emergency do not suspend the Constitution. What they do is they allow for things to be done which might otherwise be caught by certain sections of the Constitution, which are the sections I took the House through before.

290 A regulation-making power is provided for also, which is the basis for action to be taken following the issue of a proclamation of public emergency, and this power is provided for in clause 5.

Such powers are, however, to be exercised where specific conditions are met only, and those are the ones set out in clause 6, and require:

(a) that the provision is necessary for the purpose of preventing, controlling or mitigating an aspect or effect of the state of public emergency in respect of which the regulations are made;

(b) that the effect of the provision is proportionate to that aspect or effect of the state of public emergency; and

(c) that the need for the provision is urgent.

295 **Hon. R M Clinton:** Will the Chief Minister give way?

Hon. Chief Minister: It is very unusual to ask for way to be given in the context of this part of the speech. I think it is probably better if the hon. Gentleman raises an issue in the context of his opportunity to question me during the Second Reading.

300 **Hon. D A Feetham:** The reason why he is doing it is to inform his own contribution in response. That is why I have –

305 **Mr Speaker:** Why doesn't he let the Chief Minister finish? If the point that he wishes to have clarification of is not covered by the Chief Minister, then he can raise the matter and invite the Chief Minister there and then by giving way to reply. That is the proper conduct. I think it is not a very customary thing to ask anybody moving a Second Reading of a Bill to give way. It has never happened.

310 **Hon. D A Feetham:** Mr Speaker, it never happens, no. I have been on that side of the House –

Mr Speaker: It has never happened during the time that I have been in the Chair.

Hon. D A Feetham: Mr Speaker, it has happened when I have been a Government Minister. I have also been a Government Minister. Mr Speaker unfortunately often forgets that, but I have
315 been a Government Minister and I have given way (*Interjections*) from that side of the House.

It is true, Mr Speaker, you are absolutely right, that of course it can be done the other way. And of course we will defer to Mr Speaker, but to say that it never happens – that, certainly in my own experience, is not the case.

Mr Speaker: It is very unusual for that to happen and given the memory that I have, I do recall that the hon. Member has been a Minister of the Government from 2007 to 2011. Am I correct?

Hon. D A Feetham: Yes, Mr Speaker, you are correct.
325

Mr Speaker: Thank you.
Chief Minister, carry on.

Hon. Chief Minister: Mr Speaker, we all remember what parties he used to belong to as well!
330 And one often wonders why it is that the Opposition spend more time opposing the Speaker than the Government!

Anyway, Mr Speaker, I may deal with issues that the hon. Gentleman wants clarified in what is left of my address; otherwise I will be happy to deal with them in the context of my response.

335 Limitations are imposed on the scope of the regulations that can be made, and in particular the Act of course specifically provides that anything done by regulation by the Governor when a Proclamation of Emergency is extant does not allow for the Constitution to be amended – and this is an important point. One could argue that the clause is unnecessary, as a law created by this legislature cannot give power to amend the Constitution which created this legislature, but I think it is important it should remain in because it imputes into the Bill the clarity that the
340 Constitution is not suspended at that point: the Constitution is active and current at that point.

Clause 8 creates offences for breaches of regulations made under clause 5.

Clause 9 provides supremacy over other enactments should there be any inconsistencies.

Clause 10 confers discretion on the Governor in exercising powers conferred under the Bill.

345 However, Mr Speaker, sub-clause (2) specifically provides that, so far as it is practicable to do so, the Governor shall consult the Chief Minister. Mr Speaker, the practicability here is the essential aspect. It may not be practicable to consult because of communications being impossible between the Chief Minister and the Governor in such eventualities. It may not be practicable for a host of reasons which we cannot imagine today. If it is practicable, however, then consultation must occur.

350 Mr Speaker, the House will know that that the Civil Contingencies Act 2007 is the flip side of the coin and confers powers which are not dissimilar to those we are dealing with here, but not powers that relate to security. That Act goes further in the establishment of structure, such as the Civil Contingencies Committee and the Civil Contingencies Co-ordinator post is created. This Act will, however, be relevant in an instance where the structures and powers set out under the
355 civil contingency laws are sometimes potentially not operable, in a situation where a complete breakdown of our institutions could have occurred.

This Act creates an avenue for action which does not require the suspension of the Constitution or the cessation of cabinet government but enables action to be taken or start to be taken in order to re-establish the needs of civil society.

360 Mr Speaker, in making this Bill an Act we will in effect be bringing into the purview of this House the final piece of the jigsaw outstanding in respect of the internal architecture of the current 2006 Constitution. No power which has been granted to the Government of Gibraltar under that Constitution is in any way diminished by this Bill. We would not have brought the Bill if it did. Indeed, we are in effect becoming masters of our own destinies, even in an emergency,

365 as even in that eventuality all the actors will remain creatures of this Constitution and all the powers exercised will emanate from it and its institutions, the most important one being this Parliament itself as we create the powers within the Bill.

Mr Speaker, for all of those reasons I commend the Bill to the House and I look forward to dealing with any issues hon. Members opposite may wish to raise.

370

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

The Hon. Mr Clinton.

375

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

I am grateful to the Chief Minister for his explanation and analysis of what is a fairly comprehensive piece of legislation and is obviously being tabled on an urgent basis.

380

I am not much of a historian – as perhaps the Deputy Chief Minister is – more of an amateur historian, but if I recall correctly, in 1939, which is obviously the period when the original Order in Council was put in place, the City Council itself was suspended and the Government then appointed one individual to exercise powers in respect of civilians by himself.

385

I heard the Chief Minister say that the Constitution is not suspended and everything carries on as normal as it can be in the circumstances, and that the cabinet government will carry on. Well, my question to the Chief Minister is: what happens to this place? Does Parliament continue to meet? Is Parliament de facto suspended? Will we continue to be able to pass laws? Or is it just held in suspense? In which case, is this de facto – and this happens all the world over – a Bill for the imposition of martial law?

390

It is a fairly serious matter and I do not think it is something that we can not discuss, or at least have some discussion about it. I understand the reasons for it and I understand that the Governor probably had the powers to do this in any case, and by codifying it in our own legislation we obviously avoid having it imposed upon us. But really, for me, it is just an understanding, as a parliamentarian, as to what our role would be under this Act. Will Parliament continue to sit monthly? Will we be able to pass laws? What is the role that this particular Chamber will perform? Or is it just that the Cabinet will continue to meet and try to run civilian government as best as it can?

395

As I say, I am just looking at it from the point of view of historical precedent, where in 1939 or thereabouts the City Council itself was suspended and I believe the powers were vested in a possibly Major Patron. My memory fails me, but Dr Joseph Garcia, the Deputy Chief Minister, will no doubt be able to confirm or not. That is really what I am trying to understand: what this Bill will do in terms of the wider context of this Parliament. I would be grateful if the Chief Minister in his response could address that.

400

Thank you, Mr Speaker.

405

Mr Speaker: Does any other hon. Member wish to speak on the general principles and merits of the Bill? No.

No, I will then call the Hon. the Chief Minister to reply.

410

Hon. Chief Minister: Mr Speaker, the hon. historian, the Deputy Chief Minister, reminds me that in fact the City Council was suspended in January 1941. There was a little something going on then, which was called the Second World War. I have no doubt that the Emergency Powers Order in Council, given that it was dated 1939, may have been related to the planning that Great Britain was doing about what it would do around the world in respect of war, and in fact the first opportunity to declare an emergency in the definition set out is if there is a war. But as I told the Parliament, we were not dealing with that sort of situation, but I will deal with it in the context of my reply.

415

In 1941 I understand all powers were taken by the Governor, but 1941 was a different time and absent the issue of war there was also no Constitution in Gibraltar that granted powers to a Parliament. We were dealing with a City Council that was a municipality. Indeed as the hon. the historian reminds me, all of the personnel in Gibraltar that were not able to join the war effort were evacuated from Gibraltar. That was a context which may indeed have, theoretically, the possibility of arising again – please God it will never happen – but there is a difference between a situation where a constitution is suspended and where emergency powers are being taken.

Now, the hon. Member asked me does this Parliament continue to meet. Well, Mr Speaker, this Parliament might continue to meet, but we do not know whether it would be possible for this Parliament to continue to meet. What he needs to understand in the context of what I have said is that I have already told the House that the Constitution continues in place, and if he looks at the powers granted to the Governor in this instance they are powers that relate principally to the suspension of personal liberties. So, nowhere in the context of what is set out in the provision is the legislature or the executive in any way curtailed. In other words, sections 24 to 43 of the Constitution, which create the Parliament, and sections 44 to 53 are not where the grab occurs. The grab occurs in respect of personal liberty. In other words, protection from slavery or forced or compulsory labour, which is section 4. The right to personal liberty, the protection of the freedom of expression, the protection of the freedom of assembly and association, the protection of the freedom to establish schools, the protection of the freedom of movement and the protection of discrimination on the grounds of race, etc. Those are the clauses that actually engage, Mr Speaker. In other words, those are the ones where, looking at it in stark terms, things can be done in that situation which may in another time offend those sections but in that time may be necessary.

And so this is not a suspension of the Parliament. The Parliament, Mr Speaker, is based on personal membership of the legislature by individuals. We happen to stand in political parties. Political parties exist because we have the freedom of association. The freedom of association might be suspended, but even in our most revolutionary moments I do not think we have done anything that might warrant emergency powers being taken.

Minister for Economic Development, Telecommunications and the GSB (Hon. J J Bossano):
Not that I remember. I would know if we had! (*Laughter*)

Hon. Chief Minister: And so, Mr Speaker, in a situation where there might be war, the first parenthesis, or the second parenthesis, those emergencies, some things may have to happen which might at another time have offended those parts of the Constitution, but the Parliament is not one of the things that is stopped from meeting – but it may be that the Parliament might not meet.

We have seen the Parliament meet every month since we were elected, except when the Referendum was called, and we have seen times not of war and not of emergency where the Parliament has met twice in a particular year or three times in a particular year, which is what the Constitution provides for. So the Government might not be able to come to Parliament either because of indisposition or because, if there is an emergency on, we might all agree that we do not want to come to Parliament, we want to deal with the emergency. The important thing is that the Constitution is not suspended. That is why it is necessary to say those parts of the Constitution will not have the effect that they have in peace time because the Constitution continues in place, the powers of the legislature under the Constitution continue to have effect and the powers of the executive government under the Constitution continue to have effect.

And so, Mr Speaker, you could not be further from a declaration of martial law, which is what the hon. Gentleman has suggested to me this might be doing. This is not martial law. I think the hon. Gentleman needs to understand what martial law is. You could not have martial law and the Constitution alongside each other; you would have to suspend the Constitution, because it would be a very strange martial law indeed that allowed us to come here and say what we liked

about the martials, assuming that we were not the ones declaring martial law, which of course we could not be because we do not have an army. The only people who have an army and who
470 have the constitutional responsibility in respect of the raising of an army and security are the United Kingdom, and the powers that have been given to the Governor by this legislature could not be powers to empower the Governor in respect of the army. And so, Mr Speaker, nothing could be further from what this Bill will do if it becomes an Act than the declaration of martial law.

475 The hon. Gentleman should rest assured that, although we may not see eye to eye on many things, if I was asked to move a Bill to allow for martial law I would say so in the context of my address. I would not pretend to hide such a thing, because as a civil libertarian I would want people to be aware that I had been asked to bring a Bill to the Parliament and, I assume, asked also to convince my ten colleagues to raise their arms at the right moment in order to support it
480 – and that would be something I would not agree with. No.

Mr Speaker, the provisions of this Bill do not do that. They would not be enjoying the support of the Government if they did do that. But the hon. Gentleman might wish to know that of course it is open to a British government to declare martial law in Gibraltar or in any other territory, or indeed in the United Kingdom. I think that that has been shown historically to be
485 anathema to the British system of democracy and that is why it is one of the many strands of the affinity that the people of Gibraltar have with British democracy, the most mature and established democracy in the history of the planet.

But it could happen, and in Gibraltar it would take effect by the simple suspension of the Constitution – and the United Kingdom has not been shy to suspend constitutions. It suspended
490 the constitution of the Turks and Caicos Islands because of financial irregularity, and so therefore that is not something that would be dealt with in the context of emergency powers such as this.

Now, what sort of instances would we be dealing with? Well, they are very difficult to imagine, Mr Speaker, but they would really be instances related principally to natural disasters.
495 They might be instances related to other types of eventualities that make transport, communications and all the rest of it almost impossible. Although cabinet government is not suspended, it might be impossible for cabinet government to operate in the way that it tends to do with Cabinet meetings every week etc., although one is almost tempted to say that we have had the suspension of cabinet government before by Chief Ministers who have not met with the
500 Cabinet as often as one might have expected them to – but that is for a separate discussion.

In this instance, Mr Speaker, in my view, because of the quasi parallel civil contingencies provisions, what we are really dealing with is that although Government and executive authority is not suspended, although the Constitution is not suspended, it is not possible to do things in Gibraltar in order to re-establish Gibraltar, and things have to be done for Gibraltar but they are
505 done through the offices created in the Gibraltar Constitution, which is how we would all like to see it happen, and the proclamation and the period of proclamation is as short as is possible. Therefore the 30 days or shorter period and the extension only by a further 30 days which is provided for so that the operation of cabinet government is re-established as quickly as possible and the executive authority is re-established as quickly as possible.

510 So I would say to the hon. Member opposite that in effect what you are seeing in this Bill is the groundwork for the opposite of martial law – in other words, the groundwork for the ability to once again govern ourselves after an emergency as soon as possible.

Mr Speaker, for all of those reasons I think this is a Bill that the House should approve, and in particular I would draw to the attention of the hon. Gentleman the dates I gave him. The English
515 Order in Council will apply in all the Overseas Territories as from 16th March. I think it is in the interest of all Members of this House that we demonstrate that once the trigger of the repeal of the 1939 Order has been pressed by the United Kingdom we move as quickly as possible to ensure that we act in this Parliament to prevent a new Order in Council taking effect on

16th March here by making this Bill an Act seeking assent before 16th March and publication
520 and promulgation before then.

For all of those reasons, Mr Speaker, hoping I have dealt with the hon. Gentleman's query as
fully as I could on my feet, I commend the Bill to the House.

Mr Speaker: Could I suggest to the Chief Minister that he might check as to what exactly
525 happened during the Second World War. The civilians that remained behind surely were not
subject to military law in respect of any offences which they may have committed of a civil
nature – traffic offences and so on. They were not subject to military law. Weren't the courts still
in Gibraltar? Was there no Chief Justice in Gibraltar during the Second World War? I think this is
a matter that can be easily looked into, surely.

530
Hon. Chief Minister: I am sure, Mr Speake. I am sure, and in fact Mr Speaker is confirming in
the way that he postulates those questions that this sort of Order – the 1939 Order is the first
emanation; this is the modern version, which is going to become this Act – does not have the
effect of suspending a constitution, although then there was not a Constitution to suspend.

535
Mr Speaker: But the courts were there.

Hon. Chief Minister: Of course. There were the courts, there were institutions, etc. and those
540 that continue to function would continue to function, and the effect of the Order in Council was
not to suspend them – and in fact I am just being reminded by the Hon. Deputy Chief Minister
that Sir Joshua at that time was actively involved in representation before tribunals that
continued in effect, etc.

Mr Speaker: I now put the question, which is that a Bill for an Act to make provision for the
545 exercise of emergency powers in accordance with section 18(2)(b) of the Constitution where a
public emergency arises or is likely, and for connected purposes, be read a second time.

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

Clerk: The Governor's Emergency Powers Act 2017.

**Governor's Emergency Powers Bill 2017 –
Committee Stage and Third Reading to be taken at this sitting**

550 **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 – and, Mr Speaker, no
other Bill will be dealt with today, only this one.

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

COMMITTEE STAGE

Governor's Emergency Powers Bill 2017 –

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 Bill clause by clause: the Governor's Emergency Powers Act 2017.

In Committee of the whole Parliament

560

**Governor's Emergency Powers Bill 2017 –
Clauses considered and approved**

Clerk: A Bill for an Act to make provisions for the exercise of emergency powers in accordance with section 18(2)(b) of the Constitution where a public emergency arises or is likely, and for connected purposes.

Clauses 1 to 10.

570

Mr Chairman: Stand part of the Bill.

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

**Governor's Emergency Powers Bill 2017 –
Third Reading approved: Bill passed**

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to report that the Governor's Emergency Powers Act 2017 has been considered in Committee and agreed to without amendments and I now move that it be read a third time and passed.

Mr Speaker: I now put the question, which is that the Governor's Emergency Powers Act 2017 be read a third time and passed.

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

ADJOURNMENT

585

Chief Minister (Hon. F R Picardo): Mr Speaker, late on a Friday afternoon, on the cusp of a long week – and having read this morning, by the way, in *The Times*, I cannot resist telling the House that today was the day that Crufts commenced in London – I have the honour to move that the House do now adjourn until Friday, 17th March at 2.30 p.m.

Mr Speaker: I now propose the question that the House do now adjourn to Friday, 17th March at 2.30 in the afternoon.

I now put the question, which is that the House do now adjourn to next Friday, 17th March at 2.30 in the afternoon.

590 Those in favour? (**Members:** Aye.) Those against. The House will now adjourn to next Friday at 2.30 in the afternoon.

The House adjourned at 4.58 p.m.