



# PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

**MORNING SESSION: 10.04 a.m. – 10.35 a.m.**

**Gibraltar, Friday, 14th December 2018**

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# The Gibraltar Parliament

*The Parliament met at 10.04 a.m.*

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

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

## Order of the Day

### BILLS

#### FIRST AND SECOND READING

#### **Mutual Legal Assistance (Council of Europe) Bill 2018 – First Reading approved**

**Clerk:** Meeting of Parliament, Friday, 14th December 2018.

Order of Proceedings: (ix) Bills – First and Second Reading.

5 A Bill for an Act to give effect in Gibraltar to the Council of Europe's European Convention on Mutual Assistance in Criminal Matters made in Strasbourg on 20th April 1959.

The Hon. the Minister for Health, Care and Justice.

10 **Minister for Health, Care and Justice (Hon. N F Costa):** Mr Speaker, I have the honour to move that a Bill for an Act to give effect in Gibraltar to the Council of Europe's European Convention on Mutual Assistance in Criminal Matters made in Strasbourg on 20th April 1959 be read a first time.

15 **Mr Speaker:** I now put the question, which is that a Bill for an Act to give effect in Gibraltar to the Council of Europe's European Convention on Mutual Assistance in Criminal Matters made in Strasbourg on 20th April 1959 be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

**Clerk:** The Mutual Legal Assistance (Council of Europe) Act 2018.

#### **Mutual Legal Assistance (Council of Europe) Bill 2018 – Second Reading approved**

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

It is a pleasure to have the opportunity to present to Parliament what I am sure the House would agree is an important piece of legislation.

25 The Bill is framed to enable Her Majesty's Government of Gibraltar to request the extension  
of the Council of Europe's Convention on Mutual Assistance in Criminal Matters made in  
Strasbourg on 20th April 1959 to Gibraltar, as it presently does not apply. To extend the  
application of the Convention to Gibraltar would allow us to continue to assist in the fight  
against international crime through the gathering and exchange of information which will assist  
in the enforcement of the criminal laws of the participating parties. It will also allow for the  
request of evidence for use in criminal investigations and prosecutions. Common rules in  
30 criminal legal assistance such as these achieve the aim of fighting crime.

As hon. Members are aware, this Bill has been certified as urgent as it stems from the  
Government's Brexit contingency planning. The Convention on Mutual Assistance has been  
identified by the United Kingdom as necessary to mitigate the effects of a potential no-deal  
Brexit. Hon. Members will know that Gibraltar currently provides assistance to and seeks  
35 assistance from member states under the European Investigations Order Regulations 2017,  
which on their entry into force disapplied the Mutual Legal Assistance (European Union)  
Act 2005 to member states other than Denmark and Ireland. A hard Brexit will result in the EIO  
no longer having any force because it is a mutual recognition instrument and there will be an  
urgent and serious need to address this legislative lacuna. Further, the Government Law Office  
40 has been working with the United Kingdom's Home Office officials, who have urged Her  
Majesty's Government of Gibraltar to enact this legislation before the end of the year if the  
United Kingdom's ratification of the Convention is to be extended to Gibraltar by exit day.

It is relevant to note, hon. Members, that the Mutual Legal Assistance (International)  
Act 2005 is the mechanism by which legal assistance in criminal matters may be provided  
45 between Gibraltar and other reciprocating jurisdictions. Some of the obligations under the  
Convention are already implemented domestically in the Mutual Legal Assistance (International)  
Act 2005 and require no further implementation in this Bill. This Bill, which enables the  
Government to implement the obligations under the Convention, establishes common rules in  
the field of criminal matters between all the states parties to the Convention. Clause 16 of the  
50 Bill clearly sets out that nothing in this Bill will offend the provision of assistance under the  
Mutual Legal Assistance (International) Act 2005 or any other enactment in Gibraltar.

Mr Speaker, the Bill consists of six Parts, made up of 17 clauses.

Clause 5 of the Bill provides for the Mutual Legal Assistance (International) Act 2005 to apply  
insofar as relevant defences and corresponding requests for legal assistance are concerned.

55 Clause 6 sets out the circumstances when assistance may be refused. These are additional to  
the criteria already contained in section 3(2) of the Mutual Legal Assistance (International)  
Act 2005.

Clause 7 allows for the execution of letters rogatory in Gibraltar. This provision sets out the  
powers and obligations of the judicial authority in Gibraltar should such a request be acceded to.

60 Part 4 sets out the circumstances and conditions where persons in custody may be  
temporarily transferred to a requesting state to provide assistance in the event they are  
required to appear as a witness.

Clause 10 deals with the circumstances where section 20 of the Mutual Legal Assistance  
(International) Act 2005 applies. Section 20 sets out the provisions in relation to the immunity of  
65 witnesses when making an appearance before the judicial authorities of a requesting state.  
Clause 10 sets out the circumstances when the judicial authority in Gibraltar should grant  
immunity under the Act.

Lastly, Mr Speaker, Part 6 contains general provisions. Clause 17 is an important provision  
within this Part as treaties between Gibraltar and the United Kingdom do not apply *inter se*. This  
70 clause therefore allows Her Majesty's Government of Gibraltar to extend the Act to the United  
Kingdom in the event of a request for assistance from or to the UK.

Mr Speaker, before commending the Bill to the House I would like to take this opportunity to  
place on the record my sincere thanks to the Members opposite for their agreement to the  
urgent certification and for voting, or at least for their intention to vote in favour of this Bill. I

75 think it is important that the world understands that our Parliament stands united in its  
solidarity to fight crime.

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

80 **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. Daniel Feetham.

85 **Hon. D A Feetham:** Mr Speaker, very briefly. The Hon. the Minister for Justice reached out to  
us three weeks ago. He spoke to me and he also met with the Hon. the Leader of the Opposition  
in relation to this. We have no hesitation in supporting this Bill and the next Bill that we are  
going to be debating. Extradition and indeed mutual legal assistance are one of the fundamental  
pillars of the system of international justice and co-operation. Both Bills are introduced on an  
urgent basis because – and I hope that it does not happen and I believe that it will not happen –  
if the United Kingdom effectively falls off a cliff on 29th March and we have a hard Brexit  
situation, there is a need for these pieces of legislation in order to ensure that we can co-  
operate internationally in the field of extradition and in the field of mutual legal assistance, and  
therefore it is of fundamental importance for us as a Parliament to stand united, supporting  
these measures and sending a very clear message that Gibraltar is ready to co-operate with the  
international community despite Brexit and anything else that might come our way. (*Banging on  
desk*)

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

**Chief Minister (Hon. F R Picardo):** Mr Speaker?

100 **Mr Speaker:** Yes, sorry, the Hon. the Chief Minister.

105 **Hon. Chief Minister:** Mr Speaker, just a short note, because I think it is important that this is  
reflected in *Hansard*. Section 35(3) of the Constitution, under which I have certified these Bills as  
urgent, does not require agreement between the Government and the Opposition as to the  
urgency and the cutting, therefore, of the period. We have traditionally sought that the power  
should not be exercised other than in instances where the Opposition is in agreement, but of  
course the Constitution does not require that agreement and there might be circumstances  
where the executive is required to signify that the power under section 35(3) is to be used  
absent that agreement.

110 **Mr Speaker:** I now put the question, which is that a Bill for an Act to give effect in Gibraltar to  
the Council of Europe's European Convention on Mutual Assistance in Criminal Matters made in  
Strasbourg on 20th April 1959 be read a second time. Those in favour? (**Members:** Aye.) Those  
against? Carried.

115 **Clerk:** The Mutual Legal Assistance (Council of Europe) Act 2018.

**Mutual Legal Assistance (Council of Europe) Bill 2018 –  
Committee Stage and Third Reading to be taken at this sitting**

**Minister for Health, Care and Justice (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.

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

**Extradition Bill 2018 –  
First Reading approved**

**Clerk:** A Bill for an Act to provide for the extradition of persons pursuant to any Conventions, Treaties, bilateral or multilateral agreements that apply to and have been extended to Gibraltar or any extradition arrangement or agreements which have been entered into by the United Kingdom and extended to Gibraltar and for connected purposes.

The Hon. the Minister for Health, Care and Justice.

**Minister for Health, Care and Justice (Hon. N F Costa):** Mr Speaker, I have the honour to move that a Bill for an Act to provide for the extradition of persons pursuant to any Conventions, Treaties, bilateral or multilateral agreements that apply to and have been extended to Gibraltar or any extradition arrangement or agreements which have been entered into by the United Kingdom and extended to Gibraltar and for connected purposes be read a first time.

**Mr Speaker:** I now put the question, which is that a Bill for an Act to provide for the extradition of persons pursuant to any Conventions, Treaties, bilateral or multilateral agreements that apply to and have been extended to Gibraltar or any extradition arrangement or agreements which have been entered into by the United Kingdom and extended to Gibraltar and for connected purposes be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

**Clerk:** The Extradition Act 2018.

**Extradition Bill 2018 –  
Second Reading approved**

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

Once again, it is a pleasure to have the opportunity to present to Parliament a further important piece of legislation. The Bill is framed to enable Gibraltar to request the extension of the European Convention on Extradition 1957 and its four Protocols. The Convention and the four Protocols do not yet extend to Gibraltar.

The Bill would enable the Central Authority in Gibraltar to receive and issue extradition requests from and to other states and territories under international conventions, treaties and bilateral or multilateral agreements that have been extended to Gibraltar. Further, it will include any future arrangements or agreements that Her Majesty's Government of Gibraltar would enter into.

Hon. Members will know that transnational crime is already caught under the Fugitive Offenders Act 2002 and the Transnational Organised Crime Act 2006. This Bill will instead cover crime that is not transnational in nature but caught by the criminal laws of a nation state or territory.

This Bill is based on the UK's Extradition Act 2003. Gibraltar is now in a position to offer a similar legislative framework by adopting the UK's model for legal assistance in the fight against crime.

160 As hon. Members are aware, this Bill has also been certified as urgent, as it stems from the Government's Brexit contingency planning. The Convention on Extradition and its four Protocols have been identified by the United Kingdom as necessary to mitigate the effects of a potential no-deal Brexit.

165 Further, the Government Law Office has been working with the United Kingdom's Home Office officials, who have urged Her Majesty's Government of Gibraltar to enact this legislation before the end of the year if the United Kingdom's ratification of the Convention is to be extended to Gibraltar by exit day.

170 Gibraltar currently is able to execute European Arrest Warrants and also issue the same under the European Arrest Warrant Act 2004, which gave effect to the Council Framework Decision on the European Arrest Warrant. However, if there is a hard Brexit this will not be possible, as Gibraltar, along with the UK, will no longer be a member state and an alternative way of providing assistance needed to be found. This Bill will pave the way for the Convention on Extradition to be extended to Gibraltar, which in turn will allow us to extradite and seek extradition from those Convention states.

175 The Bill consists of five Parts, 123 clauses and two Schedules.

180 Part 2 contains provisions on the procedures for dealing with extraditions to requesting states pursuant to the treaties, international conventions and agreements that apply to Gibraltar. The clauses therein sets out the Central Authority's duties when a valid request for extradition is received and also set out what constitutes a valid request. The procedure for transmitting an extradition request to the Central Authority, the basis on which a magistrate can issue a warrant for the arrest of a person, the power to remand a person in custody or on bail and the execution of warrants and provisional warrants by police and customs officers are all covered.

185 Part 2 deals with the detail concerning the commencement of extradition hearings, including the relevant timescales. The powers and duties of the magistrate in an extradition hearing, the bars to extradition, sufficiency of evidence to be considered and questions of compatibility with the Gibraltar Constitution Order are also addressed. Similarly, competing extradition claims, consideration of the physical and mental condition of the person and the transmission of the case to the Central Authority for a decision on whether the person is to be extradited are also covered.

190 Further, Part 2 concerns the functions of the Central Authority, such as the provision of information, situations covering the prohibition of extradition, the deferment of an extradition decision and the time limits for ordering extradition or discharge.

195 Part 2 comprehensively addresses appeals, procedural appeals and the powers of the Supreme Court and the Privy Council. Provision is made inter alia for the time periods for extradition when ordered, the procedure when a request for extradition is withdrawn at the different stages of the extradition process and in cases of competing extradition requests.

200 Even further still, Part 2 addresses the basis upon which a person may consent to their extradition, situations when they are to be returned to Gibraltar to serve the remainder of any sentence imposed here, costs arising from discharge after court appeals, and repatriation.

Part 3 contains provisions relating to extradition to Gibraltar. The basis and conditions upon which a person can be dealt with in Gibraltar for an offence committed before their extradition and the remission of punishment for certain offences are also dealt with.

205 Part 4 concerns police arrest powers when there has been a warrant issued under Part 2 and the issue of search and seizure warrants. The powers of a magistrate to make production orders are also covered.

Part 4 sets out the relevant application processes, the procedure, the requirements and the powers of police officers when dealing with matters relating to extradition.

210 Provisions covering treatment after arrest are within Part 4, including the taking of fingerprints and samples, searches and examination and the taking of photographs. The Central Authority may by order also apply certain provisions of the Criminal Procedure and Evidence

Act 2011, such as intimate searches, the right to have someone informed when arrested and the right to legal advice.

215 Clause 101 empowers the Commissioner of Police to issue codes of practice in connection with the exercise of the powers conferred by Part 4, namely: the retention, use and return of anything seized or produced under this Part; access to and the taking of photographs and copies of anything so seized and produced; and the retention, use, disclosure and destruction of fingerprints, a sample or a photograph taken under this Part. The Commissioner of Police has issued draft codes of practice, and following the required process these will be published and  
220 laid before the House.

Part 5 is the final Part. It contains miscellaneous provisions such as where there are competing extradition claims, the magistrates' powers in relation to deferred claims, re-extradition, special extradition arrangements, service of documents and the consequential amendments to the Criminal Procedure and Evidence Act, so that certain relevant provisions can  
225 apply where there are extradition proceedings under the Act.

Clause 120 empowers the Hon. the Chief Justice to make rules of court which supplement or modify those Criminal Procedure Rules and practice directions of the Chief Justice of England and Wales that apply to Gibraltar. The relevant provisions are currently found in part 50 of the Criminal Procedure Rules.

230 Lastly, Schedule 1 lists the conduct constituting an extradition offence and Schedule 2 deals with notifications where the provisions relating to a person's re-extradition applies.

Mr Speaker, I wish to thank the Hon. Mr Feetham for indicating that the Opposition will vote in favour of this Bill. I also wish to thank the hon. Lady for having indicated the same to me earlier on last week.

235 Once more, Mr Speaker, I think it is important that our Parliament stands united in its commonality of purpose, this time to maintain those elements of our criminal justice system that seek to ensure that those who have to face trial or sentence cannot avoid the consequences of their criminality by fleeing from a jurisdiction.

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

240

**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. the Leader of the Opposition.

245 **Hon. E J Phillips:** Mr Speaker, we will support this Bill. I am grateful to the Minister for setting out the basis on which he has approached us in relation to consulting with us in relation to the Extradition Bill and I note what the Chief Minister has said in relation to any agreement. It is not for the Government to reach an agreement with the Opposition – clearly not – under the Constitution, but I am grateful for him reaching out to us and discussing this Bill with us.

250 There was one question that was raised, just in the course of the delivery of his contribution, in relation to the definition of 'Central Authority'. I do understand from my learned hon. Friend Mr Feetham that it has always been the Chief Secretary who has been the Central Authority for the purposes of these types of cases, but in reading the Mutual Legal Assistance (Criminal) Act I noted that the Central Authority has been the Minister for Justice in respect of those matters. Can the Minister explain, hopefully in his reply, why it has always been the Chief Secretary who  
255 has been in receipt of those requests under this particular Act and the previous Act?

But insofar as what the Minister has said in relation to the criminal justice system and our support for it, I would associate ourselves with those statements and we will fully support this Bill.

260 **Mr Speaker:** I think the Hon. the Chief Minister will wish to place on record that we are proceeding pursuant to section 35(3) of the Constitution.

**Chief Minister (Hon. F R Picardo):** Thank you, Mr Speaker.

265 I think the Hon. the Minister for Justice has set out that I have certified, as I have indeed done so, under section 35(3) that the time available for consideration of this Bill before the House needs to proceed upon it is not able to be six weeks for the reasons of urgency that the Minister has already set out.

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

**Hon. N F Costa:** Mr Speaker, I think that I understood the hon. Gentleman correctly when he asked me a question as to the Mutual Legal Assistance. If I can refer him to clause 4(2), it says the Minister or any such person or persons as he may designate by notice in the Gazette is the judicial authority in Gibraltar for the purposes of this Act, so it allows me the power to be able to nominate the Chief Secretary or any other official whom the Government deems would be appropriate in the circumstances.

**Hon. D A Feetham:** Just on that, my understanding of these –

280 **Mr Speaker:** The hon. the mover has given way to the Hon. Daniel Feetham. Carry on.

**Hon. D A Feetham:** Thank you very much. I apologise, Mr Speaker.  
My understanding has always been with these notifications and receipt of requests that it has always been channelled through the Office of the Chief Secretary, and in fact if you actually look in other areas of the law where there have been requests that are made, they come to the Chief Secretary and then from the Chief Secretary they go out. I do not know whether that has been a relatively recent phenomenon – in other words, by ‘relatively recent phenomenon’ that it has been the last 13 or 14 years – but certainly when I was there in 2007 it was always the Chief Secretary and I think it is actually much wider than just these types of measures. The Chief Secretary was always the Central Authority for the purposes of receiving and directing requests. I think Mr Peralta may actually know a little bit more about this.

My learned Friend Mr Clinton says –

295 **Hon. R M Clinton:** Not learned, thank you.

**Hon. D A Feetham:** My quasi learned Friend Mr Clinton is saying that he is making decisions. The decisions are made by, for example, the Minister, or in other areas of the law it may well be the Attorney General or elsewhere, but it is actually channelled via the Chief Secretary and on advice of – in other words, he is not making independent decisions.

300 **Hon. N F Costa:** Mr Speaker, I think just to provide some clarity, the Extradition Act stipulates that the Central Authority is the Chief Secretary. I mentioned in the course of one of my two speeches – it must have been the speech on the Mutual Assistance – that we enacted the European Investigatory Orders Regulations and so we disapplied the Mutual Legal Assistance (European Union) Act. When we did that, the Attorney General, if I remember correctly ... I do not have the Regulations in front of me, but I am quite certain that it was the Attorney General that became the Central Authority under those Regulations. We can pull those up and we can discuss them, but as I said during the course of my speech, the Mutual Legal Assistance (European Union) Act was disapplied by virtue of those European regulations and when the European Investigatory Orders Regulations came in, the Central Authority became the Attorney General. We have to confirm it by looking it up, but for the purposes of extradition it certainly is the Chief Secretary.

315 **Mr Speaker:** The situation now is that the Hon. Neil Costa has the right to reply. If any other Member wishes to add something at this late stage he will have to ask him to ... We make the



assumption that he has not finished his contribution and that that is the only way under which he can give way to somebody else from the Opposition.

320 **Hon. N F Costa:** Mr Speaker, given that the issue has been raised as to the person who is the relevant Central Authority, and I have alighted, I think, on what it is that they are asking, we can very quickly check the answer for them, so maybe they can raise it at the Committee Stage and we will have the answer for them, I am sure, by that point.

325 **Mr Speaker:** I think we will deal with the matter at the Committee Stage.  
I now put the question, which is that a Bill for an Act to provide for the extradition of persons pursuant to any Conventions, Treaties, bilateral or multilateral agreements that apply to and have been extended to Gibraltar or any extradition arrangement or agreements which have been entered into by the United Kingdom and extended to Gibraltar and for connected purposes be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

330

**Clerk:** The Extradition Act 2018.

**Extradition Bill 2018 –  
Committee Stage and Third Reading to be taken at this sitting**

**Minister for Health, Care and Justice (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.

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

340 **Chief Minister (Hon. F R Picardo):** Mr Speaker, in the circumstances and having made such quick progress through those two important pieces of legislation, I move that the House should now adjourn to this afternoon at 3 p.m.

**Mr Speaker:** The House will now adjourn to this afternoon at three.

*The House adjourned at 10.28 a.m.*