



PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

AFTERNOON SESSION: 3.35 p.m. – 4.41 p.m.

Gibraltar, Thursday, 18th October 2018

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The Gibraltar Parliament

The Parliament met at 3.30 p.m.

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

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

Standing Order 7(1) suspended to proceed with Government Statement

Mr Speaker: The Hon. the Chief Minister.

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

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

Brexit negotiations update – Statement by the Chief Minister

Chief Minister (Hon. F R Picardo): Mr Speaker, I rise to provide further information to the
House and to the public about the ongoing negotiations for the departure of Gibraltar and the
10 United Kingdom from the European Union.

In making my address today I am conscious that the current Spanish Foreign Minister, Sr Borrell, made an address yesterday to the Spanish parliament's foreign affairs committee.

In the time since the Parliament last met and I updated the House, further rounds of negotiations have been held with the Spanish negotiating team. As hon. Members know, as a
15 result of these ongoing negotiations I decided not to attend the meeting of the Fourth Committee of the United Nations General Assembly. Instead, the Hon. the Deputy Chief Minister attended the UN session in New York and delivered the address on behalf of Gibraltar. I think all those of us who viewed Dr Garcia's intervention will have seen that he did an excellent job in representing Gibraltar in that forum, (**Several Members:** Hear, hear.) (*Banging on desks*) and it is
20 important that I should reflect that the Government which I lead considers that attendance at the UN is an essential part of the defence of Gibraltar. My decision not to attend this year was driven only by the exigencies of the Brexit negotiations. I was able to make that decision safe in the knowledge that Gibraltar's position would be ably and properly represented by the Deputy Chief Minister.

As a result, I travelled to London last week with the Deputy Chief Minister and the Attorney
25 General. Dr Garcia went on to New York and I remained in London to co-ordinate and strategise with colleagues in the Foreign and Commonwealth Office. On Wednesday I travelled to Brussels. On that day, I led the Gibraltar team in the negotiations, which lasted until the early hours of the morning. The negotiations were held in the residence of the British Ambassador to the European
30 Union, on Rue Ducale. The Deputy Chief Minister travelled from New York direct to Brussels in order to join us after his address at the UN and at Princeton University. We subsequently

returned to Gibraltar late on Friday. The Attorney General remained in Brussels to continue the work of analysing and drafting documentation over the weekend.

35 During the course of Saturday in Gibraltar I was able to brief the whole of the Cabinet on the latest progress of the talks. I was also able to brief members of the Brexit Select Committee. I want to thank all members of the Select Committee, in particular Mr Feetham and Ms Hassan Nahon, for their support to date.

40 In the early hours of Sunday morning, the Deputy Chief Minister and I returned to Brussels to conduct a further round of negotiations. That evening, the negotiating teams of Spain, the United Kingdom and Gibraltar reconvened at Rue Ducale. We finished in the early hours of Monday.

45 Hon. Members will know that at that stage it was expected that the whole Withdrawal Agreement would have been finalised by Monday. A meeting of the Sherpas of all the remaining 27 Member States was expected for 4 p.m. on the Monday, which would have confirmed agreement from the Member States to the draft agreement. In fact, as anybody keeping an even cursory eye on the news would know, the final agreement on other matters proved elusive and has not yet been finalised.

50 Mr Speaker, the shape of the application of the Withdrawal Agreement to Gibraltar is, however, clearer now as a result of these further negotiating rounds. I want, therefore, to say something about the structure of the deal that is being put in place.

55 There is now a fairly final Protocol on Gibraltar, which will be a part of the Withdrawal Agreement. I think it is important to keep in mind that the Withdrawal Agreement is between the United Kingdom and the European Union. That is to say it is not with each or any one of the Member States; it is between the UK and the EU. Additionally, the various Protocols that will be an integral part of the Withdrawal Agreement are also entered into between the European Union and the United Kingdom. The Protocol on Gibraltar is no different. It is not between the United Kingdom and any particular Member State; it is between the United Kingdom and the European Union. And this is text which is agreed, as it has to be, with Task Force 50, the group of legal experts of the European Commission that have carriage of the draft Withdrawal Agreement
60 as a whole with the UK team at the Cabinet Office and the Department for Exiting the European Union. The Protocol follows, in great measure, the structure of the Protocol on Northern Ireland, which is already published. It also addresses aspects of the structure of the arrangements being entered into.

65 Some of my reflections today arise in the context of Sr Borrell's remarks yesterday. The Protocol on Gibraltar between the United Kingdom and the European Union is not yet finalised, but there are not many points outstanding. Sr Borrell said yesterday that it was almost closed. He said also, more categorically, that it is closed and 'in green'. Mr Speaker, I interpret that as a reference to the analysis undertaken before the summer by the European Union's Chief Negotiator, Michel Barnier, and the former Brexit Secretary, David Davis, of the text of the
70 Withdrawal Agreement with different parts in different colours. The green parts of the text were those that were agreed.

In those circumstances, I believe that there is genuine reason for optimism that there is no longer any question mark whatsoever over the inclusion of Gibraltar in any transitional or implementation period. There is no longer talk of vetoing Gibraltar's inclusion in the transition or
75 implementation period. In fact, Mr Speaker, I think it is clear that neither the United Kingdom nor Gibraltar has ever doubted that this would be the case.

Beyond the Protocol, there are also to be a number of sets of practical arrangements reflected in various memoranda of understanding. These will reflect the co-operation in areas where both sides have identified irritants, as I highlighted in my Ministerial Statement in March
80 and in my last update to this House.

At this stage, we have reached a large measure of agreement on the substance of four such memoranda. The first of these sets of practical arrangements will deal with the implementation of the rights of citizens which are protected under the main Withdrawal Agreement.

85 The second will deal with matters related to the environment. As all hon. Members know, this has been an area on which Gibraltar has long wanted to co-operate with our neighbours. We have only one environment. There is no Planet B, as President Macron has rightly said. The environment knows no frontiers and we have long been keen to see co-operation in this area on a basis which is clearly without prejudice to the sovereignty, jurisdiction and control position on which we would never compromise, expressly or impliedly, in any respect, in particular in
90 respect of Gibraltar's British Gibraltar Territorial Waters.

The third memorandum addresses matters of police and customs co-operation. In this area there has long been an excellent regional co-operation between our respective law enforcement agencies in many respects. Unfortunately, there have also been some very high-profile instances of a lack of co-operation occurring between law enforcement agencies. We sincerely hope that
95 we can leave disagreements behind and move toward more fluid co-operation. Mr Speaker, the only ones who should tremble at the thought of this new approach to co-operation should be criminals.

The fourth memorandum will deal with matters relating to the trade in tobacco in order to progress the shared agenda of wishing to control illicit tobacco activity and to protect our
100 respective legitimate markets. This has been a key area of concern for me since my election, as hon. Members will know. In fact, in my time in Government I have already increased the price of tobacco in Gibraltar by 148% since my election. I have said, as recently as at the last Budget, that I consider this commodity to be on a permanent price escalator and that the health consequences of tobacco consumption concern me and the Government greatly. In this
105 particular respect, I sincerely hope we will be able to move forward in the co-operation we enjoy with relevant agencies and competent authorities across the Frontier. The work on this memorandum is not yet finalised, however, and we do want to continue discussions to seek agreement.

Finally, Mr Speaker, we are also seeking to try to agree a tax treaty to settle the perennial
110 misunderstanding by some in Spain of our internationally accepted tax system. This memorandum is also not yet agreed. I do not know if it will be possible to reach final agreement in respect of this matter at this stage, but we continue our discussions to seek agreement. The technical work on this memorandum is being ably undertaken for Gibraltar by the Financial Secretary and the Commissioner of Income Tax and their Senior Crown Counsel.

115 On the Airport, as Sr Borrell told the Spanish Foreign Affairs Select Committee yesterday, the position to be reflected will be the position of status quo. We have not found the PSOE government of Spain prepared to move to implement the arrangements agreed in Cordoba by the former PSOE government of Spain in this respect. Hon. Members know that those of us on this side of the House had our reservations about the Cordoba Agreement. There were aspects
120 of it that we did not like at all. Be that as it may, the Cordoba Airport Agreement was defended by them in the 2007 general election and they won that election. As a result, they went on to spend in excess of £84 million of taxpayers' money implementing the Gibraltar obligations under the Cordoba Agreement. The Government of Gibraltar takes the view that the Gibraltar side has complied with its obligations under the Cordoba Agreement and we are ready to see it come
125 into effect. There will be no change or progress in respect of enhanced use in relation of Gibraltar Airport, however.

Finally, Mr Speaker, I should reflect both my continued optimism that we will be in any
130 implementation period agreed, as well as the reality that the negotiations are not yet over. For that reason, it is not yet possible or prudent to share publicly our own analysis of each clause and how we have ensured that Gibraltar's interests are entirely protected.

It is important that we should keep in mind that these negotiations have reached the
advanced stage at which we are under a PSOE administration. The President of the Spanish government has repeatedly been positive in the remarks he has made about Gibraltar. When he first spoke as Prime Minister in the Spanish Congress he spoke of going beyond the eternal
135 sovereignty claim and using Brexit to create a positive dynamic with Gibraltar. In New York at

the United Nations he spoke of a new relationship creating mutual benefit for Gibraltar and the Campo de Gibraltar. And in the informal summit in Salzburg he was clear about the fact that there are two different levels to the withdrawal aspects of the agreements: the UK-EU level and the practical level involving arrangements between Spain and Gibraltar. Today, in Brussels, President Sanchez met with Prime Minister Theresa May and tweeted his view that he was confident that it was possible to reach a common agreement to finalise the Brexit negotiation and in respect of Gibraltar in a constructive spirit. We have welcomed that positive approach that leaves to one side the stale Spanish position on sovereignty, as was specifically agreed by Sr Dastis and confirmed by Sr Borrell and his President, Sr Sanchez.

Mr Speaker, I will not say more as the negotiation is not yet over. It is therefore not yet possible to publish the text. That moment will come as soon as final agreement is reached and the whole and final Withdrawal Agreement is published. But I am sure that I speak for every Gibraltarian when I say that we would never agree to anything which would in any way compromise, de facto or de jure, the sovereignty, jurisdiction or control of any part of the territory of Gibraltar or of British Gibraltar Territorial Waters.

I want to end by thanking all those who have supported me in this negotiation. The Deputy Chief Minister, the Attorney General and the Financial Secretary have been the core team. The Cabinet have been fully involved. The UK teams from the Foreign Office, HM Treasury, the Department for Exiting the European Union and the Cabinet Office have been enormously supportive and helpful.

Mr Speaker, I think for now that is as much as I should say. *(Banging on desks)*

Mr Speaker: Before I call the Leader of the Opposition, I trust that I do not have to remind Members of the Opposition that established practice over the years has imposed limitations on the extent to which Members of the Opposition can intervene in response to a Ministerial Statement.

The Hon. the Leader of the Opposition.

Hon. E J Phillips: Mr Speaker, cognisant of your warning to hon. Members regarding long contributions and statements, I will be short and brief and I will conclude with asking two questions for further clarification.

In general terms, Mr Speaker, we welcome the Chief Minister's statement in which he updates this House as to the progress of the ongoing Brexit negotiations as we, along with the United Kingdom, prepare to leave the European Union. It is right that we record that the Chief Minister has sought to provide a fuller and more lengthy briefing to my hon. and learned Friend Mr Feetham and my hon. Friend Mr Hammond at a meeting of the Brexit Select Committee last Saturday.

The Prime Minister told the British Parliament on Monday that insofar as Gibraltar is concerned there have been positive and constructive negotiations taking place but that they are still in progress. This was also repeated by the outgoing British Ambassador to Spain, Simon Manley, yesterday alongside an upbeat assessment of the potential outcomes for Gibraltar's future prosperity and that of our neighbour. We have been told by the Chief Minister that we are moments away from agreeing the terms of a Protocol to include Gibraltar in any Withdrawal Agreement and transitional arrangements reached between the UK and EU, and we are again told of his continuing optimism in relation to that. We understand from the Spanish Foreign Minister, Mr Borrell, that the Protocol for Gibraltar's inclusion in the UK and EU Withdrawal Agreement is practically sealed.

Whilst it is the Government's choice not to seek our full participation at any stage in the process over the last two years, and whilst we reserve our judgement on the handling and outcome of those discussions, we wish the Government all the very best in the delicate and technical work that remains in securing and protecting the best interests of the people of Gibraltar.

190 In relation to the Protocol and the five underlying memorandums so as to achieve the so-called 'soft landing' for Gibraltar in the wider context of our departure from the EU, we appreciate that the Chief Minister and his team bear a very heavy burden of securing the best outcome for our community, and that is why we continue to offer our assistance by way of full participation – and we again repeat that offer today.

195 To my questions, Mr Speaker. The first is: can the Government confirm that once the memorandums are agreed in principle, that the Chief Minister will make a detailed statement to this House as to their terms and his assessment of the actual and potential implications of the five memoranda?

Insofar as our second question is concerned –

200 **Mr Speaker:** We can take one at a time. I think it is preferable to give the Chief Minister –

Hon. Chief Minister: No, I would rather –

Mr Speaker: Do you want to take them all?

205 **Hon. Chief Minister:** I am grateful.

Mr Speaker: What about from other Members, if they so wish?

210 **Hon. Chief Minister:** I will take one at a time.

Mr Speaker: One Member at a time, very well. Carry on.

215 **Hon. E J Phillips:** Mr Speaker, in relation to the second question, a number of people in our community continually come up to Members opposite and ask the question, 'What is the contingency?' or 'How far are you involved in the process?' Of course, our answer to that is that of course we receive full briefings from the Chief Minister and his team. But one question I have is in relation to the contingency planning for a no deal and whether the Chief Minister could explain in more detail as to what steps have been taken by the Government to plan ahead, insofar as a no deal. I am grateful.

220 **Hon. Chief Minister:** Mr Speaker, I thank the hon. Gentleman for those questions. I do think he has got up to deliver a speech and then asked two questions. I do not think that is in keeping with the Rules of the House and I want to record that.

225 The hon. Gentleman in giving his address has said that he was grateful for the fuller briefing that we were able to give in private. We have given very full briefings in private. Hon. Gentlemen do not know anything that we do not know about these negotiations. But I do say to them, because in the context of those discussions they have made suggestions which we have taken on board: what else does 'full participation' mean? Is it that the hon. Gentleman is saying that I should be taking Members of the Opposition to the discussions and to the negotiations? That has not been the case in the context of the way that they conducted the affairs of this nation at
230 the time when we were facing the joint sovereignty negotiations between the UK and Spain etc. We have chosen to go out of our way to ensure that we brief hon. Members in great detail about everything that is happening in the negotiation. Indeed, Mr Speaker, one of the reasons I came back at the weekend was in order to be able to very fully brief the Cabinet and very fully
235 brief them in exactly the same terms so that they were aware of everything that was happening. We were able to look at the texts as they were on Saturday morning. If full participation means that the hon. Member thinks that he is going to become a part of the core team in the negotiations or that that is prudent or wise, or indeed that a person who is not even a Member

of this House might be included in that negotiating team, I have to tell him I do not think that
240 that is in any way sensible or reflective of the way that things are done.

Finally, Mr Speaker, in respect of the two particular questions that he asked: would I publish
the memoranda once they are agreed in principle? I will publish the memoranda once they are
agreed and it is agreed between all of the relevant actors involved in respect of the memoranda
that they will be published, not just when they are agreed in principle, as soon as we are able to.
245 Believe me, Mr Speaker, I want to publish them as soon as I can so that people can understand
what the issues in those memoranda are and can see our analysis of every single word that has
gone into them and the interplay between each word in each memorandum and the Protocol
and other memoranda.

Finally, on the issue of contingency, the work of the Government is very, very, very advanced.
250 This community is probably one of the few in Europe that understands what a contingency in
respect of the non-movement of persons and the non-movement of goods might actually entail.
We have lived through it; and in fact, indeed probably apart from the people of Berlin, the
people of Gibraltar are among the few in Europe who in living memory will know what the
contingencies entail. Just this morning I have seen an updated set of memoranda – internal
255 memoranda, not with anybody else – and spreadsheets setting out exactly the details of how
things would happen and when work would start. But I would say this: it is important that we all
keep in mind in Gibraltar that we have not benefited from membership of the Common Customs
Union to date and the biggest contingencies arise – although they also arise in respect of
freedom of movement of capital, potentially, and services – but the biggest contingencies arise
260 in respect of the freedom of movement of goods, and in particular the common customs rules,
which would disappear for the United Kingdom overnight and for the European Union with the
United Kingdom overnight in the event that there were a no-deal Brexit. Those issues will not
apply to Gibraltar. It is common ground between Gibraltar and Spain, not just in the negotiating
room but across the headlines that can be read around the world, that there will be no
265 interference with the ability of people to move freely, even if there is a no-deal Brexit.

And so, Mr Speaker, in those circumstances hon. Members should rest assured that plans are
very advanced, in the event that there were no deal, to ensure, as I have said repeatedly, that on
the morning of 30th March, even if there were a no-deal Brexit, there should be no materially
adverse change to the life of any person who needs to cross that Frontier or who relies, on
270 either side of the Frontier, on a service or goods moving to them or towards them in order to be
able to continue to run their businesses or to live their lives as they have before then.

Mr Speaker, I should add, of course, however, that this is a situation which is not of our
choosing. We have not chosen to enter this negotiation, we have not chosen to leave the
European Union. The people of Gibraltar chose to remain in the European Union, but the sum
275 total of the choice of the British people was that we should leave and we prepare for that
eventuality, although we did not choose it, and we negotiate our inclusion of the Withdrawal
Agreement, even though we did not choose that there should be such an agreement.

Mr Speaker: The Hon. Marlene Hassan Nahon.
280

Hon. Ms M D Hassan Nahon: Mr Speaker, I wish to thank the Chief Minister and the
Government for the briefings that they have provided to the Opposition and I am very happy,
not only as a Member of Parliament but as an ordinary citizen, to hear of the optimistic
prognosis for the deal or the negotiations that are being had.

285 I want to remind the Government that I stand available for any help that I can give or any
value that I can add at this crucial time for us all.

I feel, Mr Speaker, that I have to say, in terms of contingency planning, I want to confirm that
I have been briefed by the Deputy Chief Minister on contingency planning at various times
already as part of the Brexit briefings, on matters of transport fluidity, environment, law

290 enforcement and beyond, and I feel it is my place to let Gibraltar know that these matters are being looked at and have been discussed during the briefings that I have attended.

I take this opportunity to wish the Government well in finalising the negotiations. Thank you, Mr Speaker. *(Banging on desks)*

295 **Mr Speaker:** Yes. Questions.

Hon. D A Feetham: Questions, yes, absolutely. I am not going to plough into another speech, don't worry, Mr Speaker.

I know what the answer to this question is, but it is a question that is posed to me and I think that perhaps I would like to give the Government the opportunity to deal with, so that perhaps
300 some people who have asked me the question understand it better.

What we are talking about in relation to this is essentially what the Government is trying to do – and I am asking the question – which is to preserve as far as possible the status quo, what we have now, for the next two years until the UK exits the European Union. But the Government
305 is also, in parallel, working towards a potential situation where Gibraltar has a permanent deal that may provide Gibraltar with more European Union than the UK desires for itself. Can I ask if the Government will not leave any stone unturned in order to protect Gibraltar's position in that regard and ensure that, in as far as is possible – and I certainly am optimistic that it is possible, and I recognise there are all sort of difficulties but I believe that it is possible – that the
310 Government will work towards that permanent deal that secures Gibraltar's position, I believe, within critical areas of the EU, if I can put it that way, for an indefinite period of time after the UK withdraws?

Hon. Chief Minister: Mr Speaker, I am grateful to the hon. Gentleman for the opportunity to
315 address this subject in this way. I think it is not disclosing any confidence that in the course of the discussions we have had there has been a confluence of opinion between us that this is in fact the right course, and I value the opportunity to be able to say that in fact in terms of the wider structure of this process – a process on which we did not wish to embark – there may be the opportunity, which we have sought from the beginning, to have what I have termed a
320 'differentiated solution' for Gibraltar.

That differentiated solution is not so much a part of the process of withdrawal. The process of withdrawal extricates Gibraltar from the European Union in its different sort of membership to that which the UK already had. So we have a differentiated membership of the European Union to the UK and therefore we must leave in a differentiated sort of way.

325 As we look to the future, I think it is clear that although there will be a political statement on what the future framework is likely to be, there will not be a legal basis for that agreement, and indeed hon. Members will have been seeing on the news the discussion on whether the implementation period should be extended etc. All of that relates to how long it will take to conclude what in effect will be a new treaty between the United Kingdom and the European
330 Union as to their trading relationship in the future.

Some of the things that hon. Members will have heard repeatedly relate to how the United Kingdom will approach the free movement aspects of that and some of the trading aspects, and one of the key issues that we talk about in the context of this discussion is something called 'static alignment' and something called 'dynamic alignment'.

335 Static alignment means that you agree to comply with the rules of the European Union as at the end of the implementation period, so you are bound by them until the end and then the question is are you then entirely released from those rules and do you fall back on what is morally acceptable in the world; or do you bind yourself into static alignment going forward in respect of the rules on labour, on the environment, on financial services etc.

340 Or do you go into dynamic alignment, which means that although you are not a member of the European Union you are in dynamic alignment with their rules as they change. The other

side of understanding dynamic alignment is the way that the Rt. Hon. Mr Rees-Mogg might express it in the United Kingdom, or the former Foreign Secretary would say you become a vassal state because you are then implementing rules you have no ability to influence. So
345 dynamic alignment means you have access to the market in the future because you accept the rules which you cannot influence, or it means that you are a vassal state but you have access to the market in exchange for being a vassal state. So there are many points of view in that respect.

The question for Gibraltar is how do we calibrate our future relationship with the European Union, and as I sometimes might say in the course of discussions informally with British
350 colleagues, 'We might want more EU than you,' is the way that you might express it in shorthand because there might be aspects of free movement that are of great interest to Gibraltar, where we do not have an issue with immigration, where we have 14,000 people – and it is quite remarkable, Mr Speaker, when I became Chief Minister it was 6,000 people or 7,000 people –
355 14,000 people now cross the Frontier every day. And so I think it is hugely important to keep in mind that our attitude to free movement may be the complete opposite of the attitude to free movement that the United Kingdom may bring to the negotiating table when it comes to legally negotiating the future framework into a new international treaty between the United Kingdom and the European Union, and so we will need to be differentiating in that respect.

I think the choice to stay out of the Customs Union was absolutely the right one in 1972. I
360 have said on a number of occasions already that I do not know whether it is the right conclusion in 2020 or 2021 when we leave the European Union at the end of an implementation period. At that time the view might be – and I think it is a view that I hope we will take together in this House, Mr Speaker, or indeed in a future iteration of this House after the next General Election – that the right conclusion might be that we have membership in some way, shape or form, of the
365 Common Customs Union and have access to it; or it may not be, because there will be two sides to the coin.

Some will think that they can set a price for that, and if it is a commercial price, well, that is what nations negotiate about and that is how you adjust your markets, and you do so in the way that is most sensible for your people. If it is not a commercial price, and if anybody labours
370 under any misapprehension that anybody in this House or out of this House will be prepared to pay a price which is non-commercial, which crosses a line, or which, even if it is not ostensibly a red flag on sovereignty, we all understand – and I think people in Gibraltar understand this better than most anywhere else in the world – that it does go to the ingredients of sovereignty, jurisdiction or control, nobody is going to be prepared to pay the price here.

The same is true of access to the market in services, where the issue of dynamic alignment is not so obvious. In other words, with goods, dynamic alignment means your goods are homologated for access to the market in a particular way. With services the homologation happens in a metaphysical way, but you have to accept the rules to regulate your market in that way in order to have access to the market if the price is acceptance of the rules. Well,
380 Mr Speaker, as long as that is commercial acceptance of the rules and not, as I have said, anything else, then that is something that I think we have an obligation to consider. We would not be serving future generations of this community as well as Mr Speaker, the Father of the House and the hon. Lady's father did in 1972 – when they made the decisions that they made which created the prosperity that we have had for the past 46 years – if we do not make a
385 determination of what our final decisions are in respect of access to the single market in services and the single market in goods, what our decisions are in respect of the freedom of movement of persons and the fluidity that might come with that, and whether there are, or not, other potential Common Travel Area-like solutions that we might seek to mirror with the Schengen Area.

Those are the decisions we have to make. Those are the decisions that we have to bring to the negotiating table. I know that it has never been controversial in Gibraltar that there should be determination of disputes arising from the European treaties by the European Court of Justice. It is very controversial in the United Kingdom. So those issues which are the things I have

395 said before about our differentiated understanding of the European Union, our differentiated
value to those things, the differentiated reality of our geography, all of those things together
lead me to the same conclusion as the hon. Gentleman I think hinted at in the context of the
question that he has put: that as we look to the future, all of these things are the things that we
need to consider together and determine together, that the solution therefore that we end up
400 with, our future relationship with the European Union – and, Mr Speaker, let's be very clear, the
European Union for us will start in La Línea – those decisions are the decisions that we now have
to make.

I remember that in the old days we used to say 'the European Economic Community starts at
Europa Point, ends at Four Corners and doesn't start again until the Pyrenees'. We have left that
club. We are going to be talking to that club about how we can have a relationship with them in
405 the future, and that is going to be, for us, as important commercially as it is at a human level.
One of the things that I have been at pains to make sure is understood is that some workers
may, yes, be Spanish, and they may, yes, live in Spain, and they may come to Gibraltar every day
they work in our economy, but frontier fluidity is not just about that and it is not just about
popping up to Marbella to do a bit of shopping or crossing over to eat some fried fish, or indeed
410 for some to come over here to purchase perfumery or any other commodity. That Frontier cuts
across the heart and soul of many families and of many friendships, and seeing any barriers put
up, in particular that those barriers should be born from something that happens on the 50th
anniversary of its closure, would be a tragedy that certainly this Government, and I am sure all
Members of this House, would not want to see, that would leave any stone unturned to ensure
415 never happens again.

Thank you very much. (**Hon N F Costa:** Hear, hear.) (*Banging on desks*)

Mr Speaker: The Hon. Roy Clinton –

If you are going to ask arising from the last intervention of the Chief Minister, I think we are
420 going a little bit beyond what the most generous and liberal application of the Rules would
allow. Is it a question on the original Ministerial Statement, or what the Chief Minister has now
said in response to your questions? Otherwise, it is a never-ending process.

Hon. D A Feetham: Mr Speaker, I am going to sit down and I will not ask the question, but we
425 are facing the most important decision that Gibraltar has faced –

Mr Speaker: That is why I am being liberal with the rules.

Hon. D A Feetham: – in generations. The hon. Member has said something, and I think it is
430 important to emphasise an aspect of that because it is important for this community. I would ask
the Speaker to give me the leeway to ask this question and not to be over-technical at this
moment in time, because I do think it is in the interests of everybody.

Mr Speaker: Alright. Go ahead.

435 **Hon. D A Feetham:** Thank you very much, Mr Speaker.

I think that the Hon. the Chief Minister, if I may say so, is absolutely right: the Government
has an obligation to future generations of Gibraltarians to leave no stone unturned in the
manner that he has said that he will not. Indeed, he has a duty and an obligation to be, in my
440 respectful view, bold and ambitious in relation to this.

The question is this: does he not agree with me and does he not think that it is important that
a message comes out from this House – certainly from the Chief Minister of Gibraltar – that this
is a tremendous opportunity for Gibraltar and for Spain, and in particular for the neighbouring
region of Spain, because if Gibraltar were able to reach a permanent differentiated deal that
445 gives us more Europe than the United Kingdom, the attraction of establishing in Gibraltar and

the consequent economic benefits for the neighbouring region in terms of employment and economic activity would be absolutely tremendous, and that really we all have to work towards that goal with no sovereignty price attached, because if there is going to be a sovereignty, jurisdiction or control price attached, then it ain't going to happen and it will not happen with the support of this side of the House.

Hon. Chief Minister: Thank you, Mr Speaker.

I do think this is important and I am grateful that you have allowed the hon. Gentleman to follow through on his questioning on this.

455 He knows me. He knows I am bold and ambitious and that fortune favours the bold. That is why 27 months ago the Deputy Chief Minister and I said we need a differentiated solution in respect of what the future represents for Gibraltar. It is also true, Mr Speaker, that we said that as people who believed in the European project. We continue to believe in the European project, but we are first and foremost British, and the United Kingdom is leaving the European
460 Union and we are leaving with the United Kingdom.

The European Union has not covered itself in glory in the way that it has dealt with Gibraltar in the past 24 months – probably the most apposite use of a number. **(Mr Speaker: Or before.)** Or, indeed, before, Mr Speaker. It is true that sometimes when things are going well we do not realise the value of things, but there have been a couple of real troughs for the European Union,
465 in my view, in the way that they have dealt with Gibraltar in the past 24 months, and I am sure that this is something that he and I can agree on and every Member of this House too.

But it is also true that we have said on a number of occasions – and I know he is echoing this in the way that he has presented his question – that Brexit can present an opportunity, and I have said on a number of occasions that I believe that opportunity can actually favour the whole
470 of the region. He may recall that I tried to express that earlier this year by saying that it was possible, if we worked in a way that was designed to be positive and constructive rather than negative and destructive, to create a rainbow of opportunities that would touch every part of the Bay of Gibraltar. I believe that is the case.

I believe that the future framework can allow us, in its detail, if we negotiate the right deal for Gibraltar ... that that right deal for Gibraltar is also the right deal for the area around Gibraltar and that it can bring that shared prosperity that others suggest that they want to see in this area, which is not in any way being denied to the area by Gibraltar. In other words, it is not as if we have got a big cake that we are refusing to give half of to the people who live around us. It is that we believe that if the people around us are allowed – because I am sure that they are
480 able – if they are allowed, to do the things that we do in the way that we do them, in the proper way that we do them, then they too can grow a cake like this. The mutuality of benefit is obvious, because we would want to be a territory that is prosperous, as we are, next to a territory as prosperous as we are.

I think, Mr Speaker, that as the hon. Gentleman has indicated, there are opportunities to do that in the future if those with whom we have to negotiate are not for one moment thinking of sovereignty, jurisdiction or control, because I think it is absolutely clear that they would get no truck with anybody in this House, or indeed outside it, and if they do think about how to design a good commercial arrangement that looks at the benefits that Gibraltar brings to the equation – the many geostrategic benefits that Gibraltar brings to the equation as well as the professional
490 benefits that Gibraltar brings to the equation – in that way I think we can create a real mutuality of interest and mutuality of benefit.

The first step, however, is an orderly withdrawal. Just to put that in context, we would be very unlikely to get to a positive differentiated solution going forward on the basis of us being in dynamic alignment with the European Union at the end of the implementation period, which is
495 where we are talking about being – the UK will continue to follow the rules, and so will Gibraltar, until the end of the implementation period – if we did not have the implementation period. So, if we were out on 29th March and the United Kingdom continued to have an implementation

500 period, then at the end of the UK's implementation period either we would have had to put ourselves into dynamic alignment without any of the benefits of the implementation period, or we would have to catch up if we were still talking about that. I think leaving us out of the implementation period would have been such a mark of utter bad faith that it might even have been possible to persuade all of us in Gibraltar who voted Remain, who have believed in the European project, who believe in this potential mutuality of benefit going forward ... they might have been able to persuade us that we were wrong about them all the time.

505 But look, those threats seem to have receded, common sense seems to have prevailed, and what the hon. Gentleman has suggested in the context of his question, which I have confirmed in the context of my reply, I hope, seems to be what we will see happening, which is that there will be an implementation period, that we will be able to have the benefit of that period to negotiate about the future and that we will look to that future in a way that seeks to create
510 mutuality of benefit and prosperity, not just here but elsewhere, because that is indeed in our mutual interest also.

Mr Speaker: The Hon. Roy Clinton.

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

I have three questions, so it is really quite simple and to the point. I heard with interest the Chief Minister mention that one of the protocols that is being discussed is in respect of a double tax treaty with the Kingdom of Spain, which I must say, to be fair, would be seminal if it is achieved for Gibraltar and would certainly set a precedent to any future double tax treaties. I would ask the Chief Minister: is he, in parallel, discussing a double tax treaty with the United
520 Kingdom? That would truly be a worthwhile exercise to conduct in parallel, so that in settling a treaty with Spain we also have a treaty with the United Kingdom. The treaty with Spain I understand will be more relevant to cross-Frontier workers who may suffer unjust double taxation in the interim, but I think it would be worthwhile to hear if there is also a double tax treaty envisaged with the United Kingdom in the same timeframe.

525 My second question relates to telecommunications. I have not heard anything so far about telecommunications. I wonder if that is also included within one of the protocols, or it may be that it does not arise from the discussions and it may be covered by some other international treaty that is not affected by our withdrawal from the European Community.

530 Finally, Mr Speaker, in respect of the control of the illicit tobacco trade, obviously we welcome measures in that respect but I would like to hear confirmation from the Chief Minister that, in respect of any fixed price differential being discussed with the Kingdom of Spain, that local industry is also being consulted on that.

Thank you, Mr Speaker.

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Mr Speaker: Mr Speaker, I did not say anything about double taxation. I will read the hon. Gentleman the bit that I read:

Finally, Mr Speaker, we are also seeking to try to agree a tax treaty to settle the perennial misunderstanding by some in Spain of our internationally accepted tax system. This memorandum is also not yet agreed. I do not know if it will be possible to reach final agreement in respect of this matter at this stage, but we continue our discussions to seek agreement. The technical work on this memorandum is being ably undertaken for Gibraltar by the Financial Secretary and the Commissioner of Income Tax and their Senior Crown Counsel.

540 So I did not say anything about double taxation, but I have said – the hon. Gentleman has asked me whether we are pursuing a double taxation agreement with the United Kingdom – I have said as much in the context of the announcements that had been made after the joint ministerial council for Gibraltar's exit from the European Union. There have been a number of statements in respect of that already.

Mr Speaker, all of the memoranda and the Protocol are all about the implementation period. The only bit that survives thereafter, unless we decide to continue those arrangements, would be the arrangements in respect of citizens who are exercising EU rights. That is what the Withdrawal Agreement provides for. If the hon. Members are familiar with the Withdrawal Agreement, they will know that that is it. Anything which relates to the future is not being discussed now. This is what David Davis said would be the row of the summer in 2016, if necessary, but it was resolved by the European Commission on the first day of the first meeting in the first hour at the beginning of the summer, when he was told that the European Union would not discuss the future arrangements, just a political statement.

So, in that context, the issue of telecommunications will stay as it is until the end of the implementation period. Any future arrangements in respect of telecoms are not things that have been discussed yet. The discussion has not yet opened. That discussion does not open, other than potentially in respect of a political statement but no negotiations, until after the United Kingdom has left the European Union.

In relation to tobacco, Mr Speaker, we are confident that any differentials that may be agreed will not affect players in the market. We have talked to all those we talk to in the context of making determinations in respect of this commodity in the Budget.

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Mr Speaker: The Hon. Trevor Hammond.

Hon. T N Hammond: Just one point of perhaps expansion rather than clarification. The Chief Minister has very well described the situation as it exists at present – the protocols, the memoranda and how they will work, and the fact that obviously the key players here are the United Kingdom, Gibraltar and the Kingdom of Spain. Could the Chief Minister perhaps give us an appreciation of – beyond the EU itself, breaking the EU down a little into its Member States – whether there has been contact with other Member States, whether there have been sympathies towards Gibraltar’s position shown, whether some have been hostile? Just a general flavour of where we stand perhaps with some of the other individual states who may be also key players in the overall process?

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Hon. Chief Minister: Mr Speaker, I do not think that arises from my Statement, but I am happy to provide the answer.

The fact is that the Deputy Chief Minister and, to an extent, me too, but I think the bulk of this work was done by the Deputy Chief Minister and is done by the Deputy Chief Minister in his capacity both as Minister for Europe and Minister for Leaving the European Union – contradictory titles before the Crown if ever there might have been for this period in our history – we have been in contact with all the permanent representatives. That means all the ambassadors that the Member States have in the European Union, in Brussels. Remember, Brussels is a capital where most nations have three ambassadors – the ambassador to NATO, the ambassador to the European Union and the ambassador to Belgium. So we have been in contact with all the permanent representatives of the other Member States of the European Union. We have been in touch with a number of those in greater detail because there has been a community of interest in respect of Gibraltar and their interests also, and there is of course also the view – which I do not mind sharing with the hon. Gentleman – quite extensively throughout the European Union that the EU and this particularly seminal moment in its history should not be used by any one party to advance any claims it might have in respect of another party or a part of another party when it comes to sovereignty etc. There would be little patience for any attitude other than the attitude rightly taken by Spain under Sr Dastis and Sr Borrell if they thought that they were going to bring sovereignty to the table in any way – and not just in any material respect but in *any* way. In that respect, the position of Sr Margallo I think was very clear, very well understood and very much not shared by any one of the other 26 remaining Member States, or indeed any one of the institutions.

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**Congratulations to Gibraltar Football Association
on success in UEFA Cup of Nations**

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

Chief Minister (Hon. F R Picardo): Mr Speaker, before I read the suspension of Standing Orders – and I ran straight into the suspension before because it was the nature of the Statement – I think the whole House will want to join me in congratulating the Gibraltar Football Association for their magnificent home win on Tuesday evening against Liechtenstein, their second successive win in the UEFA Cup of Nations. I have seen so many comparisons to a London bus: you wait for ages – this is no comment on ours – and then two come along!

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605 The fantastic work of ‘Chino’ in goal, both in Armenia and in Gibraltar, and a moment of utter joy that propelled me to hug the person next to me when the whistle was blown – and it happened to be my predecessor as Chief Minister. So the magic of football, Mr Speaker, knows absolutely no bounds and I am sure the whole House wants to congratulate the boys of the GFA for their magnificent performance. (**Hon. N F Costa:** Hear, hear.) (*Banging on desks*)

**Standing Order 7(1) suspended
to proceed with Government motion**

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 a Government motion.

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

GOVERNMENT MOTION

**Social Security (Open Long-term Benefits Scheme) (Amendment of Benefits) Order 2018 –
Motion carried**

Clerk: The Hon. the Minister for Tourism, Employment, Commercial Aviation and the Port.

Minister for Tourism, Employment, Commercial Aviation and the Port (Hon. G H Licudi): Mr Speaker, I have the honour to move the motion standing in my name, which reads as follows:

That this House approve by Resolution, pursuant to section 46 of the Social Security (Open Long-Term Benefits Scheme) Act 1997, the making of the Social Security (Open Long-Term Benefits Scheme) (Amendment of Benefits) Order 2018.

615 **Mr Speaker:** I now propose the question in the terms of the motion moved by the Hon. the Minister for Tourism, Employment, Commercial Aviation and the Port. I am proposing, not putting, the question. I am proposing it, and therefore I then call on him to speak.

The Hon. Mr Licudi.

620 **Hon. G H Licudi:** Mr Speaker, following the Chief Minister’s Budget address of this year, which announced that the ‘old age pension will also increase in line with inflation’, the Order which is in draft before this House and which this motion is about seeks to give effect to that measure.

It is made, as set out in the motion, pursuant to section 46 of the 1997 Act. Section 46 says as follows and is headed 'Amendment of rates of benefit':

46. (1) The Minister may by order amend the sum in section 22 above and the sums specified in Schedules 1 and 2 below.

625 Section 22 refers to old age pension. Schedule 1 deals with sums of contribution, which we have dealt with separately, and Schedule 2 refers to the rates which are being amended by the Order attached to this motion.

Subsection (2) of section 46 says:

No order shall be made under this section unless it has been approved by resolution of the Parliament.

630 That is precisely what we are doing with this motion, seeking a resolution of this Parliament so that we can amend the rates of benefit so as to increase them in line with inflation, as set out by the Chief Minister in his speech during the Budget.

The rate at which it is to be increased is 2.5% with effect from 1st August 2018, which represents the rate which was also mentioned by the Chief Minister during his speech when he referred to inflation.

635 I beg to move the motion which stands in my name and I put the motion to the House.

Mr Speaker: If no other hon. Member wishes to speak, I will put the question.

640 I now put the question in terms of the motion proposed by the Hon. the Minister for Tourism, Employment, Commercial Aviation and the Port. Those in favour? (**Members:** Aye.) Those against? Carried.

Order of the Day

BILLS

FIRST AND SECOND READING

Financial Services (Insurance Companies) (Amendment) Bill 2018 – First Reading approved

Clerk: Bills – First and Second Reading.

A Bill for an Act to amend the Financial Services (Insurance Companies) Act.

The Hon. the Minister for Commerce.

645 **Minister for Commerce (Hon. A J Isola):** Mr Speaker, I have the honour to move that a Bill for an Act to amend the Financial Services (Insurance Companies) Act be read a first time.

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

Clerk: The Financial Services (Insurance Companies) (Amendment) Act 2018.

**Financial Services (Insurance Companies) (Amendment) Bill 2018 –
Second Reading approved**

655 **Minister for Commerce (Hon. A J Isola):** Mr Speaker, I have the honour to move that the Bill
now be read a second time.

Section 8(1) of Schedule 10 of the Financial Services (Insurance Companies) Act states:

Where the transferor is a Gibraltar or non-EEA insurer and any policy included in the proposed transfer evidences a contract of direct insurance or reinsurance, the Commission shall not approve the transfer unless—
... (b) it is also satisfied that every policy included in the transfer evidences a contract which was entered into before the date of the application;

660 The section envisages an insurance company seeking to transfer a portfolio after taking the
decision to either cease operating from Gibraltar or cease operating in its entirety. The Act does
not envisage the scenario where an insurance company would seek to continue writing
insurance contracts despite wishing to transfer its entire, or part, as in this case, of its portfolio
to another entity. An insurance company wishing to keep operating following a transfer to
ensure that its market share and presence are maintained is precluded from doing so by the
wording of section 8(1)(b) of the Financial Services (Insurance Companies) Act.

665 Mr Speaker, this amendment comes as a result of representations from a large Gibraltar
insurance firm seeking to transfer out of its existing entity a part of its portfolio business, namely
EU business, to a different vehicle. The group's restructure is being designed to circumvent the
issues if Brexit is created and the sole and primary objective is that of protecting policyholders.
This restructure has resulted in significant cost to the firm itself, but to maintain its Brexit-proof,
basically, UK business from within Gibraltar.

670 Mr Speaker, we have reviewed the EU Directives that have been transposed into the
Financial Services (Insurance Companies) Act and the Financial Services (Insurance Companies)
(Solvency II Directive) Act. The aforementioned Directives do not include any provision to limit
the transferable folio to the date of the application as it does in the Financial Services (Insurance
Companies) Act.

675 We would propose that section 8(1) of Schedule 10 be amended as follows:

Where the transferor is a Gibraltar or non-EEA insurer and any policy included in the proposed transfer evidences a contract of direct insurance or reinsurance, the Commission shall not approve the transfer unless—
... (b) it is also satisfied that every policy included in the transfer evidences a contract which was entered into before the effective date of the transfer;

which are the words which deal with the amendment that I am proposing.

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

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

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

685 **Clerk:** The Financial Services (Insurance Companies) (Amendment) Act 2018.

**Financial Services (Insurance Companies) (Amendment) Bill 2018 –
Committee Stage and Third Reading to be taken at this sitting**

Minister for Commerce (Hon. A J Isola): 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.

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

**Motor Vehicles (Miscellaneous Amendments) Act 2018 –
First Reading approved**

Clerk: A Bill for an Act to amend the Traffic Act 2005 and the Insurance (Motor Vehicles) (Third Party Risk) Act 1986.

The Hon. the Minister for Infrastructure and Planning.

Minister for Infrastructure and Planning (Hon. P J Balban): Mr Speaker, I have the honour to move that a Bill for an Act to amend the Traffic Act 2005 and the Insurance (Motor Vehicles) (Third Party Risk) Act 1986 be read a first time.

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Traffic Act 2005 and the Insurance (Motor Vehicles) (Third Party Risk) Act 1986 be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Motor Vehicles (Miscellaneous Amendments) Act 2018.

COMMITTEE STAGE AND THIRD READING

695 **Mr Speaker:** Chief Minister.

Chief Minister (Hon. F R Picardo): I have the honour to move that the House should resolve itself into Committee to consider the Financial Services (Insurance Companies) Act clause by clause.

In Committee of the whole House

700

**Financial Services (Insurance Companies) (Amendment) Bill 2018 –
Clauses considered and approved with amendments**

Clerk: A Bill for an Act to amend the Financial Services (Insurance Companies) Act. Clauses 1 to 3.

705 **Mr Speaker:** Stand part of the Bill.

Clerk: The long title.

Mr Speaker: Stands part of the Bill.

**Financial Services (Insurance Companies) (Amendment) Bill 2018 –
Third Reading approved: Bill passed**

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Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to report that the Financial Services (Insurance Companies) (Amendment) Bill 2018 has been considered in Committee and agreed to, and I now move that it be read a third time and passed.

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Financial Services (Insurance Companies) Act be read a third time and passed. Those in favour? (**Members:** Aye.) Those against? Carried.

Update re Protocol on Gibraltar

Chief Minister (Hon. F R Picardo): Mr Speaker, I move now to adjourn the House.

Hon. Members will want to know that whilst we were considering the Statement that I made, President Sanchez of Spain has made a statement in Brussels in which he has told the assembled press corps that the Protocol on Gibraltar is agreed from the point of view of Spain. I thought I should just update hon. Members with that, given that we were discussing exactly that point.

I now move, Mr Speaker, that the House should adjourn to 8th November at 3 p.m.

Mr Speaker: I now propose that the House do adjourn to Thursday, 8th November at three in the afternoon. Those in favour? (**Members:** Aye.) Those against? Agreed.

The House will now adjourn to Thursday, 8th November at three in the afternoon.

The House adjourned at 4.41 p.m.