



PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

AFTERNOON SESSION: 3.02 p.m. – 4.07 p.m.

Gibraltar, Thursday, 22nd November 2018

Contents

Standing Order 7(1) suspended to proceed with Government Statement	2
Brexit negotiations update – Statement by the Chief Minister.....	2
Standing Order 7(1) suspended to proceed with Government Bills.....	13
BILLS.....	14
FIRST AND SECOND READING.....	14
Crimes (Amendment) Bill 2018 – First Reading approved.....	14
Crimes (Amendment) Bill 2018 – Second Reading approved.....	14
Crimes (Amendment) Bill 2018 – Committee Stage and Third Reading to be taken at this sitting	15
COMMITTEE STAGE AND THIRD READING	16
Crimes (Amendment) Bill 2018 – Clauses considered and approved.....	16
Crimes (Amendment) Bill 2018 – Third Reading approved: Bill passed	16
Brexit documentation	16
<i>The House adjourned at 4.07 p.m.....</i>	<i>17</i>

The Gibraltar Parliament

The Parliament met at 3.02 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

Clerk: Meeting of Parliament, Thursday, 22nd November 2018.

Order of Proceedings: Suspension of Standing Orders. The Hon. the Chief Minister.

5 **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 Statement.

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

Brexit negotiations update – Statement by the Chief Minister

10 **Chief Minister (Hon. F R Picardo):** Mr Speaker, despite the parallel storm that has been raging on Gibraltar-related matters, I returned yesterday from Madrid with the Government's Brexit team, where we have negotiated the final details of the package of measures that will apply to Gibraltar in the context of our withdrawal from the European Union together with the United Kingdom.

15 This morning I briefed the Cabinet and the members of the Brexit Select Committee. I expect to make a full ministerial statement to the nation on the nature and effect of these Gibraltar measures sometime next week. By then, we hope, the European Summit to be held on Sunday, 25th November will have reached final agreement on the draft Withdrawal Agreement and the political declaration which has just been published and which sets out the framework for the future relationship between the European Union and the United Kingdom.

20 Today, I will update the Parliament on the progress made in this week's negotiations in Madrid and the meeting held with the Prime Minister in Downing Street last week.

25 Mr Speaker, the Withdrawal Agreement, as hon. Members know, contains a Protocol on Gibraltar. The Protocol refers to a series of memoranda of understanding and a tax treaty that will underpin the operation of the Protocol. Those are the documents that we have been discussing and I am glad to report today that agreement on all of these documents is now virtually complete, subject to a common final political agreement. Work has been finalised on negotiations of substance in respect of all matters.

30 The four MoUs concern citizens' rights, tobacco market access, co-operation on environmental matters and co-operation on police and customs matters. The tax treaty sets out provisions on fiscal transparency and tax residency rules typical of what is found in a double taxation or information exchange agreement, those types of agreements that we have with

many countries around the world and which we have long wished to have with Spain. All of these MoUs, except for the tax treaty and the citizens' rights MoU, create obligations only until the end of December 2020. That is to say these agreements are only for the 21 months of the so-called transition period between March 2019 and December 2020. Unless we agree otherwise, they drop dead then.

All of these documents are the product of a long and intensive negotiation that has lasted virtually the whole year. Nothing in these documents compromises any of our red lines. Nothing in them alters in any way whatsoever our Constitution and our constitutional competences. There are and there will be no concessions on matters of sovereignty, jurisdiction or control. In fact, they are expressly arrangements entered into without prejudice to all sovereignty positions. Indeed, neither do these documents require us to do things that we have any problem in doing. I can assure all Members that the terms of the MoUs are far removed from what others might have wished them to contain.

Mr Speaker, we are now presently engaged in a legal scrub and text stabilisation of the documents and the necessary translation of them, and we are confident that they will be ready for final political agreement and approval by Sunday. This means that as long as the Special European Summit on Sunday reaches final agreement between the EU27 and the United Kingdom, the terms on which Gibraltar will form part of the Withdrawal Agreement have been finalised and Gibraltar will benefit from the transitional period. This is what was at stake at this stage of the complex Brexit negotiations and this is what we are on the verge of achieving.

Mr Speaker, our objective for the first phase of the Brexit negotiations was to secure continued access to the UK markets. We achieved that in October last year. We are now on the verge of securing our objective for the second phase of the Brexit negotiations. That is to say our inclusion in the Withdrawal Agreement and the transitional period.

It is of critical importance that we bear in mind that without our inclusion in the Withdrawal Agreement, Gibraltar alone would have faced a cliff edge on 30th March 2019. That is to say EU law would have continued to apply to the United Kingdom for a transitional period running to at least December 2020, but not to Gibraltar. This was not the result we would have wanted. It would provide no certainty to businesses and to individuals. It is therefore with a great sense of satisfaction that I am able to inform the House today that, notwithstanding the threats that we have faced, notwithstanding the considerable challenges that we have faced, notwithstanding the claims that some voices have wrongly suggested Brexit presented Spain with the best opportunity it has had in the last 300 years to acquire sovereignty, or some part of it, over Gibraltar, Gibraltar will nonetheless and despite all of that be part of any Withdrawal Agreement and transitional period if there is one. This will secure a vital period of legal certainty for businesses and citizens that will last until at least 31st December 2020 and during which the future partnership between the United Kingdom – including Gibraltar – and the EU will be negotiated.

The memoranda of understanding and the tax treaty will be accompanied by a number of other documents, letters and political declarations, all of which are also being finalised as I speak. All of these documents form a single package that must be read and understood as such. I will explain them in some detail in my ministerial statement once they have all been finalised and the EU27 and the UK have reached an agreement on the withdrawal process.

There are two additional points I would like to make. Firstly, during the course of this week, the Spanish government has publicly expressed its misgivings with how Gibraltar has been treated in relation to one aspect of the Withdrawal Agreement. This concerns Article 184 of the Agreement, which Spain interprets as compromising the role it wishes to play in determining how the UK's future partnership with the EU will apply to Gibraltar. Let it be clear that this has nothing to do with what we have been negotiating, which is the terms of the differentiated involvement in the Withdrawal Agreement for Gibraltar and our inclusion in the transitional period and not the terms of the future relationship with the EU. That is not what we are dealing with at this point. Indeed, those who have criticised the Gibraltar Government for not having

85 obtained now a more enduring and permanent deal for Gibraltar at this stage of the negotiations continue to profoundly misunderstand how the Brexit negotiations are being conducted and how the legal texts must be interpreted. Perhaps the events of the last 72 hours may have served to clarify this.

Secondly, the memoranda and the tax treaty we have been negotiating underpin the operation of the Gibraltar Protocol that forms an integral part of the Withdrawal Agreement. They are therefore the product of requirements contained in the Withdrawal Agreement. That Agreement is an EU Treaty, which is a formally binding treaty under international law entered into by sovereign states. Gibraltar is constitutionally not, and constitutionally cannot be, a separate party to such an agreement. This said, it is important that the Protocol and the MoUs are understood in the light of Recital 2 of the Protocol, which states that the Protocol is to be implemented in accordance with the respective constitutional orders of the United Kingdom and Spain. This recognises that the rights and obligations set out in the Protocol and the memoranda are enjoyed and performed by the Gibraltar Government in accordance with the terms of our Constitution. This much was specifically confirmed in my meeting with the Prime Minister in Downing Street last week. Therefore, nothing has been imposed upon us and nothing will be done which is not in accordance with our Constitution. All the commitments entered into, whether under the Protocol or the MoUs, concerning Gibraltar have been negotiated by Gibraltar and the United Kingdom together. They are commitments entered into only as a result of the consent of the Cabinet of Her Majesty's Government of Gibraltar having been expressly given. The Government is the guardian of the Constitution as much as this legislature or the judiciary may be. We would not have countenanced agreeing to anything which might have resulted in our constitutional order somehow being compromised.

Mr Speaker, assuming all other hurdles to agreement are therefore surmounted, we must now also start to consider in greater detail what our future relationship with the EU should be after withdrawal. In great measure that is also a consideration of what we want our relationship to be with Spain, our neighbour, after our departure from the EU. We have never questioned that geographically we access Europe principally through Spain. Our geographic gateway to Europe is Spain. We have, therefore, more reasons for co-operation and discussion with Spain than we de facto do with any of the other remaining EU nations, so we wish to continue in our discussions about the future, to engage directly with Spain also in the spirit of co-operation and positive engagement we have enjoyed in this withdrawal phase of the negotiations. No one should think that we read any part of the Withdrawal Agreement in any way that would persuade us to avoid that genuine, human and political reality. Nobody needs a veto to bring us to a table.

Too often, Mr Speaker, Gibraltar and its people have been lost behind a fog of international legal theory. At this critical time in Europe's history Gibraltar can be the strongest foundation stone for a future relationship between the UK and the EU, not a rock on the road to agreement. That is our firm commitment and resolve.

Mr Speaker, as far as we are concerned, Brexit is a bad thing for the whole of Europe. (**A Member:** Hear, hear.) Brexit without an agreement for orderly agreed withdrawal would be an even worse thing for the whole of Europe. And for us Brexit is as bad an idea today in reality as it was in theory at the time of the referendum, but for us it is always best that we stick with Britain, despite Brexit. We have stuck with Britain in the past and we will stick with Britain in the future.

Mr Speaker, I look forward to the publication of the memoranda and to debating their content and effect with colleagues in this House. I will be happy to clarify any parts of my Statement that hon. Members wish me to clarify today. (**Several Members:** Hear, hear.) (*Banging on desks*)

Mr Speaker: The Hon. the Leader of the Opposition.

135 **Hon. E J Phillips:** Mr Speaker, conscious of your warning, we appreciate the indication that we will be permitted an opportunity to respond to the Government's Statement on the current position as regards Brexit and its impact on Gibraltar.

It is important, as Her Majesty's loyal Opposition, to reflect on the momentous week in politics both here and in London. Whilst we are an optimistic and positive community, there is a growing concern amongst many in our community as to what positive measures have been secured for Gibraltar as a result of this process on which the Chief Minister and his team are said to have worked day and night for the last two years. Clearly we all want to achieve the best deal for Gibraltar, and to that extent of course the Government has had our support in these negotiations. We did not wish to leave the EU, so any deal will be worse than remaining in the EU.

145 The Chief Minister, on 15th November, issued a statement confirming that the number-one priority of the Gibraltar Government has been achieved, namely the terms of the Withdrawal Agreement and the transition period will apply to Gibraltar and that, as a consequence, Gibraltar will not crash out of the EU in March 2019 and that things will largely remain as they are until the end of 2020. The Chief Minister also confirmed that the Government of Gibraltar has been fully involved in the negotiations as they affected Gibraltar, whilst also stating that the Withdrawal Agreement, the Gibraltar Protocol and the underlying memoranda will come to an end on 31st December 2020 – of course, with exception to the two that the Chief Minister highlighted in his contribution just now. The Chief Minister has been steadfast in his support for Mrs May's efforts and fast to confirm that the deal is good for the UK and therefore Gibraltar as a member of the UK family.

The Chief Minister has issued several conclusions: (1) that the Withdrawal Agreement, or the deal, subject to the formal agreement and ratification by the EU and the UK, is far better for Gibraltar than crashing out of the EU in four months' time; (2) that the Protocol contains absolutely no concessions on sovereignty, jurisdiction and/or control and there are no issues of bilateralism that can cause any concern; (3) there are no matters which in any way change our fundamental position on key issues; (4) the Chief Minister confirmed on 15th November that he would expect to make a ministerial Statement explaining the Protocol and the memoranda this week – he has now confirmed that during the course of next week those memoranda will be explained in detail to the people in a statement to the nation. In summing up, the Chief Minister confirmed that he was satisfied – and he again repeated that word today – that the aspect of the proposed Withdrawal Agreement which relates to Gibraltar works for Gibraltar.

160 Mr Speaker, Her Majesty's Opposition provided its initial reaction on the same day and we stated that it was too early to do a complete evaluation of the impact of the deal on Gibraltar. It is clear that the Protocol refers to at least four UK-Spain memoranda. These have not been published and we have not been allowed advance copies of these documents so as to be able to study their content and implications. We understand that there are other documents that the Chief Minister and his team are working on; therefore, we will need to carefully analyse and evaluate their impact, once they are published in full, to assess whether this is the best deal for Gibraltar in all the circumstances or whether they contain features which are adverse to our interests. We acknowledge that we have had briefings from time to time ahead of all public statements by the Chief Minister, and when the remaining documents are available we will refer the matter to the party's Brexit policy group to review. Thereafter, we will make a statement on our view of whether this is good or a bad deal for Gibraltar.

175 Mr Speaker, the latest demands by the Spanish Foreign Minister and Spanish Prime Minister in recent days calling for our exclusion from negotiations as to the UK's future relationship with the EU, or the Withdrawal Agreement, until our future relationship has been negotiated bilaterally between the UK and Spain is clearly unacceptable. At best it reflects Spanish party politics, political electioneering and playing to Spain's domestic audience; or, at worst, it represents more than just an 11th-hour spanner in the works. We will all hold our collective breath to see how the next few weeks pan out.

190 There has also been speculation in Spain whether the government there will table a proposal for joint sovereignty in the context of our exit from the EU and the future relationship. Certainly from these benches opposite this is entirely unacceptable to the Opposition and the people of Gibraltar.

195 Mr Speaker, the position of the Spanish government raises further concerns as to the Spanish government's commitment to adhere to any agreement over Gibraltar. For now, we will reserve our assessment until such time as the position becomes clearer but continue to express our misgivings. I am sure that we share the dismay of the whole House that Spain should be seeking to exclude Gibraltar from negotiations on the future relationship with the EU until it gains a political advantage. The Government will need to remain vigilant that nothing is changed in the current text of the Withdrawal Agreement to further undermine Gibraltar's position.

200 Mr Speaker, we fully appreciate that the Withdrawal Agreement is temporary in nature in large measure, but we have expressed our initial misgivings about whether the Withdrawal Agreement, the Gibraltar Protocol or the full memoranda and the tax agreement meet our objectives to lay the ground to secure actual benefits for the people of Gibraltar and our businesses beyond a very short 21-month period.

205 We have also questioned whether Gibraltar has lost time over the last two years towards the opportunity of recalibrating our relationship with the EU on a more permanent basis or whether this set of arrangements represents an intrusion into our affairs by Spain. We await the publication of the documents so that we can make a full evaluation. We think the sooner the Government publishes these documents the better, so that the public can make up their own minds on such issues. We will not rush to judgement on such questions.

210 On another note, there remains a significant concern in our community in relation to our readiness and preparedness for a no-deal Brexit. We have been told that there are detailed contingency plans for all levels of Brexit, and we would appreciate clarity as to what levels of Brexit the Government are referring to.

215 Mr Speaker, we have understood that these are challenging times, which on the Chief Minister's own assessment are difficult and dangerous. There have been times in our history where we have faced challenges together and we have offered to assist the Government on Brexit in a spirit of unity. The Government has chosen to shoulder the whole burden of this challenge and simply provide the Opposition with briefings from time to time. That is their right and of course that has meant that we have not had any effective ability to participate or influence the shape of these arrangements that we will now have to fully and properly scrutinise once the documents are published. The Government has had significant leeway from us and political space to negotiate and conclude these arrangements, which we have given in the best spirit and in the public interest.

220 Mr Speaker, there is much political speculation as to whether the Brexit deal, if concluded by the European Council on Sunday, will make it through the British Parliament in December and the consequences if that were not to happen. We must be ready for any eventuality in this constantly evolving process. Indeed, there are growing voices in the UK for a people's vote or second referendum if the Brexit deal does not make it through the Parliament. As things stand, this may look unlikely, but for our part we have made it clear that if in the UK political dynamic momentum grows so that there is a vote on either supporting this Brexit deal or remaining in the EU, we would support such a vote.

230 I much suspect that there will be a month ahead of constantly shifting sands in this Brexit debate. We do not set out our stall on this possibility and agree we should be concentrating on the emerging Brexit deal and whether this is ultimately good for the people of Gibraltar.
(Banging on desks)

235 **Mr Speaker:** Chief Minister.

Hon. Chief Minister: Mr Speaker, I am grateful to the hon. Gentleman for his statement in respect of what I have said to the House today, and I discern a number of points which I think he
240 was asking for my clarification on, so I shall endeavour to provide it as succinctly as I can.

Mr Speaker, yes, there are four memoranda which we have not yet published, but I think it is important that hon. Members reflect to the whole community that they have seen the memoranda at every stage of their development. They have not been able to take copies away and I recognise that a full analysis requires one to be able to review the documentation, but
245 members of the Brexit Select Committee have been able to see the documentation and I have today, during the course of the briefing we have had, informed them that as soon as we have what is known in this business into which we have been thrown as a text stabilisation – in other words, when we have the final texts; and we are not at final text yet, it is still going through legal scrub, as I told the House – we will endeavour to provide it to hon. Members immediately, even
250 though that may not be the date of publication, so that they can start doing their assessment. I would have thought that they have understood now that these are at the moment unpublishable texts because they are not yet stable texts.

The hon. Gentleman then took us to the issue of the topical Article 3/Article 184 read across in the Withdrawal Agreement and the issue of how Spain, in his interpretation, was throwing an
255 11th-hour spanner in the works, and I think it is a reference to a statement that we ourselves issued earlier in the week when the issue first arose. I think the important thing that we need to make clear ... I think the message that the Government is sending, the message that the whole Parliament is sending and that we have been sending as a community for many generations, is that Spain does not need a veto to get us to a table. In other words, the fourth largest economy
260 in Europe does not need a whip to get the smallest economy in Europe to sit round a table with it and have a meaningful discussion about co-operation. We genuinely, I think from all sides of the community, believe that as long as we are not talking about issues relating to sovereignty, jurisdiction or control – as long as those things are respected – we yearn for a normal neighbourly relationship and that those things that would deliver genuine growth and prosperity
265 across the board, not just for Gibraltar but for the whole region, are the things that Gibraltar believes we should be doing to mutual benefit. And so there is no need for us to be under the cosh of whatever may emerge in the next 48 or 72 hours, or under the cosh of a clause 24 style reference in negotiating guidelines, to be forced to do that which we wish to do. I think that is what I discerned from what the hon. Gentleman said was an element of common ground
270 between us.

Mr Speaker, the hon. Gentleman then went on to this issue of whether we had lost an opportunity to recalibrate our future relationship with the European Union. I do not think today is the day for me to tell him that he got things wrong in his understanding of the architecture and structure of the Brexit negotiations. I just refer him to that part of my Statement where I
275 made clear that – at the insistence of the European Union in June of 2017, I think, now two summers back – the EU made very clear that its interpretation of the Article 50 process was that there would be first only a discussion about withdrawal, and only once withdrawal had occurred a discussion about the future. And so the hon. Gentleman is saying that we have not been able to achieve that which the United Kingdom has not been able to achieve because it is set out in the interpretation of the Commission and of the Council in Article 50 of the Treaty as it is. In
280 other words, ‘You cannot do the recalibration at this stage, because we will not allow it.’

I agree with him that I think that was a massive mistake on the part of the European Union because it compartmentalised the process of negotiation in a way that was neither good for the United Kingdom and therefore Gibraltar, or indeed for the European Union, but that is the political reality with which the negotiators were faced. And if I may say so, they are sometimes
285 subject to I think quite brutal criticism in some sections of the British press and in some parts of the British Parliament, but the negotiators – not the politicians, the officials who have engaged across the floor from each other, who come with parameters given to them, which are in some instances unnegotiable parameters – have done exceedingly well to be able to produce at least a

290 document; whether you like it more or you like it less, they produced a document. But that document does not recalibrate the relationship for the future between the United Kingdom and the European Union because that is what the European Union has said it is not prepared to do.

There is now a political declaration that has been published, I think an hour ago. That political declaration sets out the parameters for the discussion in the future that might lead to that recalibration, and it does not mention Gibraltar because it is not mentioning the territorial scope of the discussion that is to be had. The territorial scope is set out in Article 3 as interplayed with Article 184, which is not in my view an axe across the territorial scope but an important reference to who is and is not covered potentially by those discussions, something which the Prime Minister, in relation to Gibraltar, has made repeatedly clear is inclusive of Gibraltar. But in respect of the recalibration, I think the hon. Gentleman needs to read again what I said.

300 In terms of preparedness for no deal, Mr Speaker, we are ready for any potential eventuality. It may sound arrogant for a government to say that, especially the government of a small community, because all of Europe is looking at what happens in the event of no deal; it is not just the United Kingdom that is looking at planning for all eventualities. But of course there is only one part of Europe, apart from West Berlin, that has had to deal with a blockade in living memory, and so I do not believe that a hard Brexit, or a no-deal Brexit, leads to a blockade, but a lot of the things that we might have wanted to consider doing in such circumstances we already do for ourselves as a matter of course. So if, for example, we were about to fall off the European grid for electricity, we never formed part of the European grid of electricity. If we were to fall off the European mechanisms for the purchase and sale of water, we produce our own water. But insofar as matters which are to be dealt with have had to come into consideration, all of them have come under consideration and all of them are eventualities that we are ready for.

Our aim is therefore to ensure that people and businesses can continue to go about their ordinary lives on 30th March in the same way as if a hard Brexit – which we all hope does not happen – had not happened, and we are ready for that eventuality. I have said, I think in the evidence I gave to the Select Committee of the House of Lords, that the planning had been done and the implementation would start after 1st January next year if we were then in a situation where there was not yet a deal. Having lived through European brinkmanship in the past six months, I will not know that there is not a deal until 11.59 on 28th March, I think, but certainly by 1st January we need to start the implementation process in respect of the planning that we would have done.

Then the hon. Gentleman said that this was a difficult and dangerous time and that we had not involved them in decision making. Well, I think to be fair to us, in the process of giving the briefings that we have given we have always asked them whether they think that we should be doing something more; and if I may say so, with the very greatest of respect to hon. Members opposite, I think Mr Feetham on occasion has made a number of suggestions and indeed the hon. Lady, and he and others I think have said more than once that the Government has done everything possible and left no stone unturned. I appreciate that hyperbole sometimes infects those who are announcing something which they believe is successful and that success has many fathers whilst failure is of course an orphan, but if you have said that somebody has done everything humanly possible and left no stone unturned, I wonder what it is that they were going to tell us to do that they have not already said that we have done. But we are open to ideas, of course, as we tell them at the end of every meeting of the Brexit Select Committee.

I want to thank members of the Brexit Select Committee, all of them across the floor of the House, for the work that they have done with us and the understanding that they have brought to the discussions and the useful contributions that they have made in the process of those meetings – and, if I may say so, also in some instances outside the course of those meetings in some of the things that they have said not about the Government but about how matters should be dealt with. But we do not have a government of national unity and we did not think there was a need for a government of national unity, and I think the fact that the nation continues to

prosper and our economy continues to grow demonstrates that we were not in a situation where we should have gone for a government of national unity.

Historians – therefore likely the Deputy Chief Minister – will write for themselves in future and determine when the moment of greatest difficulty and danger arose for this community, whether it was after the referendum on 24th June 2016 or whether it was during the course of the joint sovereignty campaign pursued by both the government of the United Kingdom and the government of Spain in 2002 and 2003. If historians conclude that the moment of greatest difficulty and danger was in 2002 and 2003 and not in 2016, then they will ergo also conclude that we did the right thing by not having a government of national unity now that there was not as much danger and difficulty as in 2002 and 2003 because they did not have a government of national unity in 2002 and 2003 or indeed a joint sovereignty select committee where they might have asked us what we thought. They only heard what we thought in the context of the debates in this House.

I do nonetheless think it is a little harsh of him to say there is no ability to influence, because I think they have influenced and Mr Feetham in particular has put some ideas, as I said in the context of my earlier discussion.

Mr Speaker, finally, I think the hon. Gentleman dealt in his final contribution with the issue of the potential second referendum. I have been on record, I think since July 2016, saying that the terminology of ‘second referendum’ was, in my view, wrong. I was harshly criticised, I think, by Members opposite at the time when I told the *Financial Times* and other international media that I did not think that there should be a second referendum because you do not go back and ask the same question again, and that is what you would describe as ‘second’. If anything, there might be a democratically legitimate opportunity, once a deal had been done about what the future meant, to put that to the people as opposed to the reality of membership of the European Union. That would not be a second referendum, it would be a first referendum, a new referendum on a new issue: now that you know what your options really are, do you wish to (a) stay as you are, or (b) go to this new status? I do not know whether it is possible to put a third question on the ballot paper, or a third option on the ballot paper; that might be democratically not so valid and the Electoral Commission might have something to say about that.

My view was very clear in July 2016 – I have not changed my view – but the political reality that this community has to deal with is that that is not an option at the moment. If it were to become an option – and I think Mr Feetham has said something about that very explicitly in that respect, with which I do not disagree – if that were to become an option, then the position of the Government of Gibraltar, and I think the position of this Parliament as a whole, would be that having participated in the 2016 referendum the people of Gibraltar should of course also be included in the franchise for such future consultations, ‘people’s vote’ as it is now called in the vernacular.

Mr Speaker, I think I have dealt with all the matters that the hon. Gentleman has raised. I think I have dealt with that already in the context of 2002-03.

Mr Speaker: The Hon. Marlene Hassan Nahon.

Hon. Ms M D Hassan Nahon: Mr Speaker, I rise to seek clarification on a point, but firstly I would like to take this opportunity to thank the Gibraltar and the UK governments for their hard work and solid defence of our people by protecting our sovereignty and constitutional position in the draft Withdrawal Agreement, as well as the rest of the work they have done and continue doing at this key juncture of Brexit negotiations, which are of course so crucial and vital for the people of Gibraltar. I am pleased to note the optimism of the Chief Minister and that we are at a stage where the memoranda of understanding between us and Spain are reaching the final stages with what looks like a reasonable set of agreements for the future. Of course, we have to remain aware of the reality that we still have to wait to see how the Withdrawal Agreement will be voted on in Parliament, because without the Withdrawal Agreement passing through

Westminster all of these agreements could well come to nothing and I therefore sincerely hope this will not be the case.

395 I would like to seek clarification from the Hon. the Chief Minister regarding Spain's position
on discussing the matter of joint sovereignty. Spain has openly talked about the tabling of this
issue for future talks or negotiations, so I would like to ask how the Chief Minister will manage
this aim of the Spanish government and whether it would stand any chance of impeding a
workable deal which benefits both sides of the border. Would that be our own backstop,
400 Mr Speaker?

Mr Speaker: The Hon. the Chief Minister.

Hon. Chief Minister: Mr Speaker, I want to thank the hon. Lady for her contribution today
405 and indeed all her contributions when we have debated this issue and I have updated the House
in the time that I have been trying to ensure that the community gets as much of the
information on Brexit that we are able to share.

I am sorry, I just quickly needed to read that message coming in.

If I may, Mr Speaker, I think the hon. Lady is raising a point that the hon. Gentleman raised in
410 the course of his statement and that I did not deal with, and I do not know whether that is what
the hon. Gentleman was pointing out to me. It is absolutely true that the hon. Lady will have
detected I think two or three occasions when some who have current responsibility have said
that they will be considering tabling the potential for joint sovereignty in the context of the
negotiation of what future arrangements should apply between Gibraltar and the European
415 Union. I have heard it a lot, actually, in the last three months, but I have heard it more from
those who do not have a responsibility than from those who do have a responsibility. I think this
is an important point, because the hon. Lady will know in her work with us in respect of the
Brexit Select Committee that the really seminal moment comes when the former-former Spanish
Foreign Minister, Sr Margallo, is moved on by his party and Alfonso Dastis, until then a career
420 diplomat – in fact, the permanent representative in Brussels of Spain – became the Foreign
Secretary of Spain. Sr Dastis moved matters on quite considerably and quite quickly and he was
the one who set out the new Spanish position, after Sr Margallo, that the issue of sovereignty
would not form part of Spain's claims in the context of the Withdrawal Agreement. So when
they were in a position of responsibility, the Partido Popular through Alfonso Dastis were not
425 pursuing joint sovereignty. I think it is true to say that there are nuances in what they said which
limited that position to the stage of withdrawal, not also to the future negotiation.

Mr Speaker, I thought the best and clearest position on this was actually put by Spanish State
Secretary Marco Aguiriano, who I had the pleasure to meet earlier this week, in an interview
430 that he gave last week when he was pressed as to why they had not put joint sovereignty to the
Gibraltarians in the context of this discussion. He said, 'Well, if we do, we can, but they will get
up and go.' And yesterday in a radio interview he said that he had been in meetings with the top
tier of Gibraltarian representation in the Brexit negotiations and when asked whether he had
put the issue of joint sovereignty he said, 'They would just literally have shut their bags and
gone.' Mr Speaker, that is the political reality and the sooner that everybody in Spain
435 understands that the people of Gibraltar are no closer to accepting the principle of dilution of
our sovereignty today than we were in 2002-03 – the moment of potential greatest difficulty
and danger that we may have faced until June 2016, or 1967 when it was last put to us – the
sooner we can move on to a mature and genuine political relationship between neighbours.

Absolutely it should be clear beyond peradventure to whoever is misguided enough to want
440 to countenance it that the people of Gibraltar will never pay a sovereignty price, (**Two
Members:** Hear, hear.) in particular for something as esoteric as access to a single market.

I do not know that people have not misinterpreted in some ways what our 96% support for
remaining in the European Union means. The people of Gibraltar voted 96% to remain in the
European Union because we thought that was the best way to defend ourselves against the

445 Spanish sovereignty claim, not that we are so pro-European – although we may believe in the European project and its ideology – that we are prepared to pay even a sovereignty price to stay in the European Union. That would be the upside down interpretation of our 96% vote.

And so, Mr Speaker, it heartens me to hear serving politicians of the Spanish government recognise that putting the issue of sovereignty and joint sovereignty is not going to lead to anything other than to negotiations not being able to flourish because the Gibraltarians are not going to engage in them, and I think it helps to evidence where people are in the democratic spectrum when there are others who say that it should be imposed on us. Those who seek to impose sovereignties on any others are not playing the democratic game. The conclusions of democratic games can go any way the people want, but the imposition of will can only go one way, as far as I am concerned, and that is right out the door – and I know that I speak for everyone in this Parliament when I say that and when I say that the Government of Gibraltar, whoever might be forming the executive, would never be prepared to countenance any proposal of joint sovereignty that would be put and that, in fact, the sooner we move on from that the sooner we move on to a good, modern relationship based on good neighbourliness.

460

Mr Speaker: The Hon. Daniel Feetham.

Hon. D A Feetham: Mr Speaker, just one point of clarification. Does the Hon. the Chief Minister agree with us that it is important that the United Kingdom hold a line in respect of Article 3 and the definition of the United Kingdom, which currently includes Gibraltar, and its interplay with Article 184, and that in holding that line it is important that the United Kingdom government does not agree to any watering down of language that gives Spain hope that it may be able in the future to extort concessions on sovereignty, jurisdiction and control as a price for reaching a permanent deal in respect of Gibraltar and its permanent relationship with the United Kingdom; and, indeed, that it is only by the United Kingdom being firm with Spain that Spain will understand that, actually, if it really was to agree something that is of mutual benefit to Gibraltar and the neighbouring region – which can be a very positive, very beneficial agreement – the only way to do so is in fact to park issues of sovereignty, jurisdiction and control and that today would be a bad time indeed to be agreeing to any watering down of language in the current Withdrawal Agreement? (*Banging on desk*)

475

Hon. Chief Minister: Thank you, Mr Speaker.

I think that is a useful point to clarify the Government's understanding of what the state of the texts is, and I think the understanding of governments around Europe is that the Withdrawal Agreement text is closed. In other words, the Article 3 text and the Article 184 text form part of the Withdrawal Agreement, which includes the Protocol, and is closed text, and the political declaration and the future framework are also closed text and therefore there will be no change to the text of Article 3 and the text of Article 184.

485

There may be interpretive notes, there may be declarations. Treaties, once agreed, are immediately the subject of buyer's remorse by one side or the other and immediately declarations are made about interpretations etc. I would imagine that the airwaves are full of discussions about those things at the moment, but as long as the texts are sound, everything else in international law does not have the standard of enforceability that legal text might have.

490

But be that as it may, the provisions of Article 184 are provisions about an agreement to agree, and that is something that the Government of Gibraltar believes should be honoured in good faith and that the best demonstration of good faith that we have seen has been the repeated position of the Prime Minister of the United Kingdom, who has set out that she is negotiating, from the word go, for the whole of the British family, including Gibraltar. There were some who doubted whether she would see that through into the Withdrawal Agreement and Gibraltar's inclusion in the Withdrawal Agreement. Well, Mr Speaker, Gibraltar is now included in the Withdrawal Agreement and in the transitional period, so those who doubted the

495

500 Prime Minister have at least got that piece of evidence to reassure them that she has stood her ground right the way through to the closing of the text and we are in the Agreement and in the transitional period. As long as there is an Agreement and there is a transitional period, we are in there with Britain.

505 The position that the Prime Minister has set out in relation to the application of Article 184 and the view of the United Kingdom is that she is negotiating those future arrangements in respect of the whole of the UK family including Gibraltar, for the benefit of the UK family including Gibraltar, and I think that is a clear and robust statement of position which she is now entitled to ask us to be less cynical and less sceptical about. I think everybody in this House is rightly cynical and sceptical about the assurances given to Gibraltar by UK politicians. Theresa May I think is one of the few who is entitled to say, 'I have demonstrated to you that I gave you an assurance and I have seen it through.' And she has, because in this phase 1 and phase 2 period in which we have been engaged we have had delivered to us the two things that we were 510 assured of: access to the UK market, phase 1; access to the Withdrawal Agreement and the transitional period, such as it may be if there is such an agreement by Sunday.

515 And so the hon. Gentleman is absolutely right that the best way to create confidence in Gibraltar is for the United Kingdom to be robust in the assurances it gives to Gibraltar and to stand by those assurances. What happens when Gibraltar is confident that the UK has our back is that we are confident in being able to engage in a safe dialogue with our neighbour and that helps us to get over the very difficult history that we have had with our neighbour and to demonstrate our still, in relation to our neighbour, sceptical and cynical approach to their approach to negotiations, but to at least demonstrate our willingness to engage and our good faith in trying to reach arrangements which are for the common benefit of all, always with what 520 we might call in our bilingualism 'the fly behind our ear' that they will then actually perform on the obligations, always now knowing – and I think the hon. Gentleman will agree with me post the expensive Cordoba experience, £84 million on an Airport and Spanish pensioners still being paid, something which I have never wished to see stopped – that we must calibrate our performance in a way that plays off continued Spanish performance. So we should not give 525 open-ended commitments to perform obligations which are not linked to Spain performing obligations.

530 All of that, Mr Speaker, with a robust British Prime Minister behind you – who has demonstrated that she does what she says and that she does not wobble at the knees, as some others might have done, and at the last minute give way – is what builds confidence and enables us to go forward. That is what she has done on phase 1 – market access to the United Kingdom – and that is what she has done on phase 2, which is the Withdrawal Agreement and the transitional provision. A lot of people thought that we would not be in the position that we are in today vis-à-vis the support of the United Kingdom. We are there and I think the hon. Gentleman has recognised that in the way that he posed his question, for which I am grateful.

535 Mr Speaker, of course the best next step in that analysis is for Spain to continue to park matters of sovereignty, jurisdiction and control in order to be able to advance in areas which are not infected either by our very clear – and I am always impressed by Arlene Foster's way of expressing this, Mr Speaker – 'blood red lines' on those issues and indeed on the ingredients of sovereignty, jurisdiction and control, which are as important as sovereignty, jurisdiction and 540 control *simpliciter*, and to be able to engage with us in a way that enables us to reach the agreements and the arrangements for ordinary people who benefit from cross-Frontier movement, whether it is for trade or for personal reasons, to be able to benefit from that.

545 If there is one thing that I think it is helpful to have had in particular highlighted in the context of withdrawal – withdrawal; not the future, just withdrawal – it is the recognition of the benefit and value to the whole region of freedom of movement in the period of common membership of the European Union. Hon. Members will know from their reading of the Gibraltar Protocol to the Withdrawal Agreement that that is specifically recognised in the UK-EU document, and I think that augurs well for an understanding of the importance of free

550 movement going forward as we negotiate the future arrangements between the United Kingdom and the European Union and what will be of particular benefit in this part of the world.

I do not know whether I have dealt with everything that the hon. Gentleman wanted me to deal with. I will give way if he wants me to. I am grateful.

555 **Mr Speaker:** The Hon. Roy Clinton.

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

I would just like to ask the Chief Minister about a very narrow point in relation to the tax treaty, which we discussed briefly last time the House sat, and I note that this time he has, in fact, used the words 'as the sort of things you would see in a double tax treaty'. What I would like to ask the Chief Minister are two things. Is this treaty capable of surviving or being put into effect into its own right outside the Withdrawal Agreement? Really what I am trying to say is: is it dependent entirely on the Withdrawal Agreement, or can it exist in its own right? And secondly, given that it would survive the two-year transition period, how long would this tax treaty be for? Does it not have an envisaged end date?

565 **Hon. Chief Minister:** Mr Speaker, I have not said that we are entering into a double taxation agreement with Spain, having said that we were not going to. What I said was that there are tax residency rules which we are dealing with in that agreement of the type found in double taxation and information exchange agreements. Mr Speaker, the word precision is important in a Parliament where we are discussing our words, so I think it is important the hon. Gentleman have a look at the text of my Statement when it is published and he addresses what I have said, rather than what he wishes he had heard.

570 Mr Speaker, the tax agreement is not limited to drop dead on 31st December 2020 – I think I made it very clear that it was the former memoranda that fall dead on that date – because a tax agreement is not something you can put in place in such a short period. You need time to ensure that people are aware of the rules and to be able to make assessments which bring people and their information within the provisions of the agreement. Neither do we wish for there to be a definite period for determination of the obligations under the agreement. We want this to endure, Mr Speaker.

580 One of the issues that Spain has repeatedly used in the international media against Gibraltar is the issue of taxation, and therefore reaching an arrangement in respect of taxation with Spain is something that we want to see endure so that that weapon is not available in the past. We genuinely want to have an open and transparent relationship with Spain, as we do with many other nations, none of the others of which are our neighbours, in respect of taxation so far as it goes to residency rules etc. So that is one of the agreements that will not end at the end of December, and in fact I think I said so explicitly and I think the Leader of the Opposition recognised explicitly that I said that the citizens' rights memorandum and the tax agreement were the ones that did not end at 31st December.

Mr Speaker: Does any other hon. Member wish to raise any question?

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

590 **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.

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

BILLS

FIRST AND SECOND READING

**Crimes (Amendment) Bill 2018 –
First Reading approved**

Clerk: Bills – First and Second Reading.

A Bill for an Act to amend the Crimes Act 2011 so as to make certain Acts of voyeurism an offence.

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

600

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 amend the Crimes Act 2011 so as to make certain Acts of voyeurism an offence be read a first time.

605

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Crimes Act 2011 so as to make certain Acts of voyeurism an offence be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Crimes (Amendment) Act 2018.

**Crimes (Amendment) Bill 2018 –
Second Reading approved**

610

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.

615

This Bill makes certain acts of voyeurism, commonly referred to as ‘upskirting’, an offence in Gibraltar. This highly intrusive practice typically involves offenders taking a picture under a person’s clothing without them knowing. This unacceptable practice has seen significant media attention in recent months, especially in the UK, where a campaign was led by victim Gina Martin. Gina was at a music festival in London when two men took indecent photographs of her by angling the phone cameras under her skirt when she was distracted. These images were then shared by the men on WhatsApp.

620

Reports suggest that in the UK there have been 78 cases of upskirting recorded by police since 2005, although they have been prosecuted under other existing offences such as the offence of outraging public decency. Gina campaigned for upskirting to be specifically made an offence and a Private Member’s Bill was submitted to Parliament. It did not pass its Second Reading, due to an objection by Sir Christopher Chope MP, who as a matter of principle objects to all Private Bills. However, after much outrage – understandable, in my mind – the UK Prime Minister, the Rt Hon. Theresa May MP, quickly intervened and adopted the measure as a Government Bill. The UK Bill is still working its way through the Houses of Parliament.

625

There is no harm, Mr Speaker, and I think everything to be gained, to criminalise specifically this vile behaviour.

I now turn to the clauses of the Bill.

630

Clause 3(1)(2) introduces the offences, under a new section 293A entitled ‘Voyeurism: additional offences’.

Subclause (1) makes it an offence for a person to operate equipment underneath a person’s clothes without their consent for the purpose of obtaining sexual gratification or to cause humiliation, distress or alarm to that person.

635 Subsection (2) sets out a similar offence for recording an image beneath another person's clothing for the same purposes.

Subsection (4) stipulates that these offences will carry a penalty, on summary conviction, of imprisonment for 12 months, or the statutory maximum fine, or both. A conviction indictment will carry two years' imprisonment.

640 Clause 3(4) amends Schedule 3 of the Act by adding the new section 293A to the list of offences. Part 13 of the Act, which deals with notification requirements and orders in relation to sex offenders, applies to all those offences listed in Part 13, which will now of course include the new section 293A.

Mr Speaker, I commend the Bill to the House.

645

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

Hon. E J Reyes: Just simply to inform the Clerk that it is our indication to support the Bill.

650

Mr Speaker: Very well.

I now put the question – No? Ah, yes, my apologies. The Hon. Samantha Sacramento.

Hon. Miss S J Sacramento: Mr Speaker, attempting to take a photograph underneath a skirt, also known as image-based sexual abuse, is a gross violation of privacy and potentially an act of indecency; and whichever way, this is a form of sexual harassment.

655 This offence will mainly affect women, for obvious reasons, and therefore this law serves to protect women from these circumstances. As Minister for Equality, I am pleased to recommend this specific law, which is fit for purpose to combat this phenomenon. The introduction of this new law is good news and is yet another achievement from the equality lens.

660 Mr Speaker, any form of sexual abuse is an infringement against the rights of women, and as most victims of this act will be women it constitutes discrimination against women on the grounds of her sex. This new offence serves to enhance the recognition of women's rights to privacy, dignity and sexual expression.

665 We must do everything possible to protect women and girls from sexual offences and ensure that those committing such offences are punished. Therefore, Mr Speaker, I commend the Bill to the House. (*Banging on desks*)

Mr Speaker: Is there any other contribution to the Second Reading of the Bill?

670 I will now put the question, which is that a Bill for an Act to amend the Crimes Act 2011 so as to make certain acts of voyeurism an offence, be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Crimes (Amendment) Act 2018.

**Crimes (Amendment) Bill 2018 –
Committee Stage and Third Reading to be taken at this sitting**

675 **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.

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

COMMITTEE STAGE AND THIRD READING

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

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 Crimes (Amendment) Bill 2018.

In Committee of the whole House

**Crimes (Amendment) Bill 2018 –
Clauses considered and approved**

685 **Clerk:** A Bill for an Act to amend the Crimes Act 2011 so as to make certain acts of voyeurism an offence.
Clauses 1 to 3.

Mr Speaker: Stand part of the Bill.

690

Clerk: The long title.

Mr Speaker: Stands part of the Bill.

**Crimes (Amendment) Bill 2018 –
Third Reading approved: Bill passed**

Mr Speaker: The Hon. the Chief Minister.

695

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to report that the Crimes (Amendment) Bill 2018 has been considered in Committee and has been approved of without amendments. I move that it should now be read a third time and passed.

700 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Crimes Act 2011 so as to make certain acts of voyeurism an offence, be read a third time and passed. Those in favour? (**Members:** Aye.) Those against? Carried.

Brexit documentation

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move that the House should now adjourn to Thursday, 6th December at three o'clock in the afternoon.

705

Given what we anticipate will be the timetable of progress at a European level, it is anticipated – nothing is clear, it is *anticipated* – that we may be able to see the whole suite of documentation that I have referred to the House should be published either late in the weekend or early during the course of next week, and I should then have an opportunity of letting hon. Members have it probably long before that. If I can, by close of business on Friday I hope to be

710 able to let them have that document and that then there should be a period for the whole community to be able to see the documentation.

I expect then, as I have said, to make a ministerial Statement and then to come to this House to be able to have the debate in this House, so that hon. Members are able to put to the community their views in respect of those documents and what I have said about them in the context of the ministerial Statement.

715 So I move that the House should now adjourn to Thursday, 6th December at 3 p.m.

Mr Speaker: The House will now adjourn to Thursday, 6th December at three in the afternoon.

The House adjourned at 4.07 p.m.

720