



PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

AFTERNOON SESSION: 3.30 p.m. – 5.06 p.m.

Gibraltar, Tuesday, 24th July 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*]

Order of the Day

Cemeteries Bill 2018 – First Reading approved

Clerk: A Bill for an Act to provide for the management and control of cemeteries. The Hon. the Minister for the Environment, Energy, Climate Change and Education.

Minister for the Environment, Energy, Climate Change and Education (Hon. Dr J E Cortes): Mr Speaker, I have the honour to move that a Bill for an Act to provide for the management and control of cemeteries be read a first time.

Mr Speaker: I now put the question, which is that a Bill for an Act to provide for the management and control of cemeteries be read a first time. Those in favour? (**Members:** Aye.)
5 Those against? Carried.

Clerk: The Cemeteries Act 2018.

Cemeteries Bill 2018 – Second Reading approved

Minister for the Environment, Energy, Climate Change and Education (Hon. Dr J E Cortes): Mr Speaker, I have the honour to move that the Bill be now read a second time.

The current Cemetery Act was commenced in 1889 and, needless to say, it required review. The purpose of this Bill is to revise and modernise legislation pertaining to cemeteries. To this
10 end, subsidiary legislation accompanying the existing Cemetery Act will be revoked and new subsidiary legislation, the Cemeteries Regulations 2018, will be put in place. These Regulations will be introduced when the Cemeteries Act 2018 is commenced.

The existing Cemetery Act only applied to the cemetery at North Front and did not extend further. This has been rectified in the Bill and it now applies to all cemeteries within the control
15 of the Government of Gibraltar. The Cemeteries Bill amends the manner in which the North Front cemetery itself is managed, and now follow some of the main changes.

Albeit the post of superintendent remains, this is short lived as it is intended that this post will eventually disappear. Instead, the functions currently exercised by the superintendent will

be carried out by the Cemetery Authority in conjunction with the cemetery keeper. The post of superintendent will be determined by notice in writing by the Cemetery Authority.

A Cemetery Authority will be established, which will be responsible for the general management and supervision of the cemetery, and registration and control of burials. It will act in accordance with the policies of the Government. To this end, the Cemetery Authority will do all things it considers necessary or desirable for the proper management, regulation and control of the cemetery.

As provided for in the Bill, the Cemetery Authority may delegate any of its powers to a cemetery keeper. The post of keeper will continue in the new Bill, save that the keeper will now be under the direction of the Authority. More than one cemetery keeper may be appointed by the Minister by notice in the Gazette.

The Board of Visitors established under the current Cemetery Act remains, save that it is now known as the Cemetery Board, and it advises the Cemetery Authority on matters concerning its powers, functions and responsibilities under the Act and brings to the attention of the cemetery keeper any matters relating to the upkeep of the cemetery.

In regard to definition of 'burial', such a definition was absent in the existing Cemetery Act. For the sake of clarity it has now been defined in the new Act to include a human body or remains, cremated remains or the bodies of stillborn children or cremated remains thereof. Given the development in legislation since the existing Cemetery Act was drafted in the late 1800s, and specifically in light of the Crematoria Act 2008, it was appropriate to include cremated remains in the definition.

The definition of 'burial rites' has been revised and it is clearly stated within the body of the Act that burial rights do not afford any legal or equitable right to a plot of land. Instead, the Act provides that a burial right grants a person the exclusive right to burial on a plot of land, subject to such terms and conditions as may be prescribed by the Cemetery Authority.

On the question of registration of burials in the register, the procedure for the registration of burials has also been modified, making it a requirement that specific information be entered into the register as soon as reasonably practical after each burial. The register will be maintained by the Cemetery Authority and may only be altered with the consent of the Authority. Additionally, an electronic copy of the register will be compiled by the Authority and is to be forwarded annually to Gibraltar Government Archives. This is a new provision in the Bill.

Removals or alterations remain the same, save that this power now lies with the Authority as opposed to the superintendent. This also applies to powers pertaining to the maintenance of good order and appearance in the cemetery.

Offences in the cemetery are not taken lightly and were in need of essential review, particularly the level of fines, which has now been increased. Previously, the fine for any person who made any 'noise or disturbance' or 'was guilty of any disorderly conduct' in the cemetery was liable on summary conviction to a fine of £5. This has now been increased to a fine not exceeding level 3 in the standard rate – that is, a £1,000 fine. Furthermore, offences in a cemetery have also been reconsidered and will now range from wilfully creating a disturbance in the cemetery, committing any nuisance in the cemetery, wilfully interfering with any burial taking place in the cemetery, playing any game of sport and remaining in the cemetery after it is closed to the public.

Mr Speaker, this Bill is essential in modernising Gibraltar's legislation. It replaces an Act 129 years old and clearly out of date. It will ensure better and more effective management of the cemetery and cemeteries and, together with the recent improvement in the landscape maintenance, will provide more dignity to the cemetery and to those who this community lays to rest.

Mr Speaker, I commend this Bill to the House. (**A Member:** Hear, hear.) (*Banging on desks*)

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

Hon. T N Hammond: Thank you, Mr Speaker.

Thank you, Minister, for that explanation of the Bill, which we will, on this side of the House, be supporting. It is an important update to the existing legislation, which, as the Minister has pointed out, dates back to the 1800s.

75 I think there is only one point that I would just ask for a little bit of clarification on, and that is on the establishment of the authority itself. How or who or what body does the Minister envisage playing that particular role? Clearly it is quite an important role.

In terms of the legislation, the cemetery, or as the Bill, or the Act when it is passed, makes clear, it will be cemeteries that are covered by this, are all obviously very important to our community. They frequently feature in the local press, where people raise concerns reference 80 their condition. I am sure this Act, when it is passed, will go some way to ensuring that a focus is maintained on the condition of our cemeteries and that they are looked after in an appropriate manner, bearing in mind their importance to our community.

Thank you, Mr Speaker.

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Mr Speaker: Does any other hon. Member wish to speak on the Bill?

The hon. the mover.

Hon. Dr J E Cortes: Mr Speaker, yes, in order to clarify that, at this point in time the duties of the Cemetery Authority it is intended, at least in the short term, are to be carried out by the Department of the Environment, which is the authority that currently manages the cemetery. This may or may not continue in the longer term and I am looking forward to having discussions with the new Cemeteries Board as to whether they feel that there should be some different mechanism, but at this point in time it will be the Department of the Environment that will be 95 the Cemetery Authority.

I welcome the support of the Members opposite and obviously look forward to commencing this Act once passed and to updating the Cemetery Rules, which will be published at the time of commencement.

100 **Mr Speaker:** I now put the question, which is that a Bill for an Act to provide for the management and control of cemeteries be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Cemeteries Act 2018.

**Cemeteries Act 2018 –
Committee Stage and Third Reading to be taken at this sitting**

105 **Minister for the Environment, Energy, Climate Change and Education (Hon. Dr J E Cortes):** 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.

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

**Nature Protection (Amendment) Act 2018 –
First Reading approved**

Clerk: A Bill for an Act to amend the Nature Protection Act 1991.

The Hon. the Minister for the Environment, Energy, Climate Change and Education.

Minister for the Environment, Energy, Climate Change and Education (Hon. Dr J E Cortes):

115 Mr Speaker, I have the honour to move that a Bill for an Act to amend the Nature Protection Act 1991 be read a first time.

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Nature Protection Act 1991 be read a first time. Those in favour? (**Members:** Aye.) Those against?
120 Carried.

Clerk: The Nature Protection (Amendment) Act 2018.

**Nature Protection (Amendment) Act 2018 –
Second Reading approved**

Minister for the Environment, Energy, Climate Change and Education (Hon. Dr J E Cortes):
Mr Speaker, I have the honour to move that the Bill now be read a second time.

125 The Nature Protection Act was published in 1991. It is now 27 years old. This is a long period, during which changes may arise in scientific thinking and the status of plant populations. The changes to the Act take these points into account.

130 Taxonomy – the classification of organisms – is always in a state of flux. This is normal. Improvements in scientific methods inevitably lead to a fine-tuning of knowledge of relationships between species. The past decades have especially been important in this respect as advances in molecular analyses, which unravel patterns in DNA, have produced many rearrangements of plants classification, including quite a number of surprises. The updated schedules reflect this latest knowledge in nomenclature.

135 Another point is the changes that populations of organisms undergo over time. These take place constantly but at an accelerated rate in our rapidly changing world. Thus, some species in Gibraltar are comparatively more rare now than 27 years ago, and vice versa. These changes have been taken into account when upgrading or downgrading species' protected statuses. So too have any improvements in our knowledge of species populations and dynamics over the past three decades.

140 Finally, the Nature Protection Act Schedule 2 reverse lists, so that species that are not listed are automatically protected. The current changes provide more robust measures to ensure that only new species that have colonised the Rock naturally are protected, without providing protection to exotic invasive species or garden plants in the sense that it will not be illegal to deadhead one's pelargoniums.

145 The proposed changes will all result in an even more sensible and practical Act affording added protection to our special and important flora and I commend this Bill to the House. (**Several Members:** Hear, hear.) (*Banging on desks*)

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

155 **Hon. T N Hammond:** Mr Speaker, may I say the Minister's enthusiasm for this particular Bill is very clear to see and those of us on this side of the House will be supporting these amendments. It is obviously necessary to amend these lists from time to time and it should become ... it is a regular occurrence. So yes, we will be supporting the Bill.

Mr Speaker: I now put the question that a Bill for an Act to amend the Nature Protection Act 1991 be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

**Nature Protection (Amendment) Act 2018 –
Committee Stage and Third Reading to be taken at this sitting**

160 **Mr Speaker:** The Hon. Minister – Committee?

Minister for the Environment, Energy, Climate Change and Education (Hon. Dr J E Cortes): 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.

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

**Director of Public Prosecutions Act 2018 –
First Reading approved**

Clerk: A Bill for an Act to establish the office of Director of Public Prosecutions under the direction of the Attorney-General and for matters connected thereto.
The Hon. the Minister for Health, Care and Justice.

170 **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 establish the office of Director of Public Prosecutions under the direction of the Attorney-General and for matters connected thereto be read a first time.

Mr Speaker: I now put the question, which is that a Bill for an Act to establish the office of Director of Public Prosecutions under the direction of the Attorney-General and for matters connected thereto be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

175 **Clerk:** The Director of Public Prosecutions Act 2018.

**Director of Public Prosecutions Act 2018 –
Second Reading approved**

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

180 In accordance with one of the Government's manifesto commitments, the Bill establishes the office of the Director of Public Prosecutions (DPP). Currently, as there is no such position in our legislation, the day to day work of the DPP in Gibraltar has been carried out by the Attorney-General (AG). This arrangement is distinct to that in different parts of the United Kingdom where the DPP or the local equivalent and the Attorney-General or the local equivalent are two separate entities. Consequently, Government was committed to making the necessary changes so that our system would replicate that in the United Kingdom and in particular that in England and Wales.

185 The appointment of the DPP is set out at clause 4 of the Bill. Previously the Bill provided that such appointment would be done by the Government in consultation with the AG. However, after further discussions with the Attorney-General and in order to be absolutely certain that there is no question of the independence of the post, I shall be moving amendments at Committee Stage so that the appointment is made instead by the Attorney-General after consultation with the Governor. Furthermore, the person appointed must not only have relevant experience and expertise in criminal law and litigation, but also be a fit and proper person. I shall also be amending this clause to set out further the qualifications the DPP must hold.

190 In line with the amendments mentioned above, the AG, after consultation with the Governor, also retains the power to suspend and ultimately remove such person from office for misbehaviour, neglect of duty, material breach of contract of employment or instrument of appointment, incapacity, incompetence or bankruptcy.

195 As regards reappointment, once a person's appointment to hold office as DPP has expired he may be eligible for reappointment provided he has not resigned beforehand or been removed from office by the AG, again after consultation with the Governor.

200 The main changes resulting from this Bill, Mr Speaker, are as follows, namely the DPP shall head the Office of Criminal Prosecution and Litigation, akin to that performed by the Crown Prosecution Service in England and Wales; he or she shall carry out such functions and exercise such powers as conferred upon him or her under general special instructions issued by the AG in accordance with section 59(3) of the Gibraltar Constitution Order 2006; on a day to day basis carry out criminal law and litigation work on behalf of the AG; and may do anything that appears to him or her to be incidental or conducive to the carrying out of the duties. However, the DPP will not be able to act in any manner contrary to any instructions given to him or her by the AG or be able to act in cases where the AG has personally exercised a power or discretion.

205 Further, Mr Speaker, I wish to note that the Hon. Mr Feetham called me to discuss the Bill and he was happy to note that his concerns had been addressed by my letter to Mr Speaker of 14th June of this year. I am therefore pleased to count on the support of the hon. Members opposite.

210 For all those reasons, Mr Speaker, I commend the Bill to the House. (Banging on desks)

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

Hon. D A Feetham: Mr Speaker, thank you very much.

220 Yes, as the Hon. Minister has said during the course of his address, the Opposition is going to be supporting this Bill. Mr Speaker, we had grave doubts about the Bill as originally drafted, which we felt could potentially be unconstitutional in terms of the way that the Director of Public Prosecutions was going to be appointed, but those have been dealt with by the

225 amendments that the Hon. Minister is going to be moving and therefore our support is for the Bill as amended.

Mr Speaker, just a little bit in relation to that before I come and say a few words about the post itself and how in particular this is a post that has also been adopted in other Overseas Territories. The post of Her Majesty's Attorney-General for Gibraltar is a post that is recognised in the Constitution and it is protected in three ways.

230 It is protected because the Attorney-General of Gibraltar is appointed by the Governor on advice of a specified Appointments Commission. So it is a specified Appointments Commission that effectively undertakes the process, interviews candidates and then will advise the Governor on the most appropriate candidate. It is designed to ensure that the process is independent, in particular of the Government, which is not unusual in most jurisdictions where the Attorney-
235 General is not a political appointment. Remember that in the United Kingdom for many years the Attorney-General was a political appointment. I will come back to that in relation to Bermuda in a moment.

The Constitution also seeks to give the Attorney-General security of tenure by preventing the removal of an Attorney-General except in very specified circumstances, which have now been
240 clarified by the Supreme Court in the decision involving the former Chief Justice in 2009.

It also protects certain functions of the Attorney-General. Sorry, I beg your pardon, does the Hon. the Chief Minister want me to give way? (**Chief Minister (Hon. F R Picardo)**: No.) Sorry, I beg your pardon. (*Interjection by Hon. Chief Minister*) It also seeks to protect certain functions of the Attorney-General, which are the functions that are prosecutorial functions. That is in
245 contrast with some other Overseas Territories where not only are prosecutorial functions also protected by the Constitution but advisory functions. Here in Gibraltar it is just the prosecutorial functions and those functions are functions that can only be delegated by Her Majesty's Attorney-General for Gibraltar. That is why when the Bill said that the appointment of the Director of Public Prosecutions was going to be by the Government, or the person who made the
250 appointment was going to be the Government on advice of the Attorney-General, we felt on this side of the House we could not support it because potentially it fell foul of section 59 of the Constitution. That is no longer the position, as a consequence of these amendments.

Mr Speaker, I think that this is a matter that in due course will have to be dealt with by any constitutional conference that is convened between the Gibraltar side and the UK side, because I
255 think that it is important that the role of Director of Public Prosecutions also be enshrined in the Constitution. Until very recently in fact – and I talk of very recently, the last 10 to 15 years – the only Overseas Territory constitution that provided for a Director of Public Prosecutions was Bermuda. Hon. Members may recall... In fact, in this Parliament I think it is only Dr Garcia who was a member of the Select Committee on Parliamentary Reform –

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Deputy Chief Minister (Hon. Dr J J Garcia): And the Minister for Economic Development.

Hon. D A Feetham: And the Minister, yes, but present today was only Dr Garcia, and Dr Garcia will recall that the draft constitution that was presented to the United Kingdom as a
265 start of the negotiations for a new constitution with the United Kingdom... I think the draft constitution was completed in 2001, it was presented to the UK in about 2002-03. He will correct me if I am wrong in relation to my dates, but that copied the Bermuda constitution in terms of Director of Public Prosecutions, which is that if there is in Bermuda somebody from the Parliament of Bermuda who is a legal practitioner, who is appointed as Attorney-General, then
270 the role of Director of Public Prosecutions is exercised by somebody else. That is designed to keep both roles separate. During the course of those negotiations we were told by the UK negotiating side that that was something that would not happen ever again in any other constitution the UK agreed to – that specific – and that is why it is not included in our Constitution. Otherwise, we would have had a situation where, for example, the Hon. Minister
275 Costa could have performed the role of Attorney-General under the Constitution that we

proposed and then the Director of Public Prosecutions role would have been somebody else, who would have been independent of the Government. Therefore, even in 1999, 2000, 2001 it was envisaged by the Select Committee then that it was possible that the creation of a post of Director of Public Prosecutions was something that would have been beneficial for Gibraltar, albeit in those circumstances.

Since we negotiated a Constitution with the United Kingdom there have been several other new constitutions, and in fact the Cayman Islands, Montserrat and the British Virgin Islands have all decided that they would also have a Director of Public Prosecutions but that would be enshrined in their constitution to make sure that the Director of Public Prosecutions is independent in appointment, in tenure and in relation to its functions as I outline.

I just want to read to this House a passage from a textbook which is very good on British Overseas Territories, called *British Overseas Territories Law*. It is by Ian Hendry and Susan Dickson. The edition that I have is 2011, although my learned and hon. Friend the Leader of the Opposition says that there has been an edition that has been published this year. It basically says this, and I quote:

In the Cayman Islands, Montserrat and British Virgin Islands the Director of Public Prosecutions is appointed in the same way, has the same security of tenure and enjoys the same constitutional protection for his or her pension as the Attorney General. In Bermuda the Governor appoints a Director of Public Prosecutions in his or her discretion, may only remove the Director for inability or misbehaviour and on advice of an independent tribunal, and there is a constitutional protection for the Director's remuneration and pension. These various provisions provide a high degree of constitutional independence for the Directors of Public Prosecutions in these territories, the importance of which cannot be overstated.

I think that is an important quotation and I think that when the time comes for us to review our existing Constitution this should be one of the issues that should be at the top of our list of priorities to make sure that the independence of the Director of Public Prosecutions is enshrined in our Constitution.

I am told by the Leader of the Opposition that in the UK the Attorney General is still a political appointment. I do not know how much further that takes the debate.

Chief Minister (Hon. F R Picardo): The opposite of what you said.

Hon. D A Feetham: Was it the opposite that I said? Sorry, I beg your pardon. If that is the impression that I caused this Parliament, I apologise. I was not 100% certain whether the position in the UK about the Attorney General being a political appointment continues even today. I knew that until very recently a government Minister was also the Attorney General, but I was not 100% certain. It was not my intention to create the impression that that had changed in the UK, but in any event my learned Friend has asked me to clarify the position and I happily do so.

Mr Speaker: Does any other hon. Member wish to contribute to the debate on the Second Reading of the Bill?

I will ask the mover to reply. The Hon. Neil Costa.

Hon. N F Costa: Mr Speaker, to take the hon. Gentleman's points hopefully in turn, in respect of whether the post of DPP should be enshrined in the Constitution in the same way that the post of the AG is enshrined in the Constitution in section 59, it certainly is not a matter for us here today. It would be a matter for a select committee of this House, should the point arise where there should be a further negotiation to further develop the Constitution, although without wishing to be political I daresay that the GSD would tell us that there would be no need because as far as they were concerned it achieved the maximum level of self-government. So it

is surprising to hear the hon. Gentleman say that there may be a need to progress the
320 Constitution and indeed the need may arise in the future.

If I may take the hon. Gentleman to section 59(2), it says:

The Attorney-General shall have power in any case in which he considers it desirable so to do –
(a) to institute and undertake criminal proceedings before any court of law

And then, at section 59(3):

The powers of the Attorney-General under subsection (2) may be exercised by him in person or through other
persons acting in accordance with his general or special instructions.

Therefore, what the Bill does is to provide a formal framework for the AG to be able to
delegate that part of his responsibilities as are set out in the Constitution of Gibraltar.

325 Mr Speaker, the reality is that the creation of the DPP was as a result of various, I thought
detailed, discussions. Of course, no one here is seriously suggesting that any Crown Counsel or
any person previously carrying out the functions, in effect, of the DPP is anything other than
entirely removed and entirely independent from the Government, so that Gibraltar has not
330 whatsoever of anybody discharging the functions of a Crown Counsel to have been anything
other than entirely independent from the executive branch of Government.

To give the Gentleman comfort in the issues that he raises, he will have noticed that at the
very end of the Bill, and as part of the changes that I propose to move at the Committee Stage,
at clause 6 it says:

The Government may by regulations make such modifications or adaptations of any enactment except for this Act.

335 Of course it goes without saying that the lawyers in the House will know that you cannot
amend a primary piece of legislation other than by coming to this House with a Bill, but it is in
order to provide no doubt whatsoever that the contents of this Bill will not be able to ... any
amendment through subsidiary legislation that we insisted that the words 'save this Act' be
included at clause 6, which is to address the points that the hon. Member has made.

340 I hope that I have been able to address his issues.

Mr Speaker: I now put the question, which is that a Bill for an Act to establish the office of
Director of Public Prosecutions under the direction of the Attorney-General and for matters
connected thereto be read a second time. Those in favour? (**Members:** Aye.) Those against?
345 Carried.

Clerk: The Director of Public Prosecutions Act 2018.

**Director of Public Prosecutions Act 2018 –
Committee Stage and Third Reading to be taken at this sitting**

Minister for Health, Care and Justice (Hon. N F Costa): Mr Speaker, I beg to give notice that
the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

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

**John Mackintosh Will (Variation of Trusts) Bill 2018 –
First Reading approved**

Clerk: A Bill for an Act to vary certain provisions contained in the will of the late John Mackintosh.

The Hon. the Minister for Culture, the Media, Youth and Sport.

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Minister for Culture, the Media, Youth and Sport (Hon. S E Linares): Mr Speaker, I have the honour to move that a Bill for an Act to vary certain provisions contained in the will of the late John Mackintosh be read for the first time.

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Mr Speaker: I now put the question, which is that a Bill for an Act to vary certain provisions contained in the will of the late John Mackintosh be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The John Mackintosh Will (Variation of Trusts) Act 2018.

**John Mackintosh Will (Variation of Trusts) Bill 2018 –
First Reading approved**

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Minister for Culture, the Media, Youth and Sport (Hon. S E Linares): Mr Speaker, I have the honour to move that the Bill now be read a second time.

This Bill varies clause 22(b) of the will of the late John Mackintosh dated 6th March 1938. Clause 22(b) of the will states that the trust fund is to be used ‘for educational purposes for the benefit of children whose parents are resident in Gibraltar and in particular for the purpose of promoting the teaching in Gibraltar of the English language and of English history and literature and generally to promote and strengthen so far as practicable by educational means the ties between England and Gibraltar’.

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The trust property included a piece of land on which a public hall known as the John Mackintosh Hall was erected. The property is let to Her Majesty’s Government of Gibraltar and is used for a wide variety of purposes not limited to educational purposes.

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As we all know, the John Mackintosh Hall is one of our main cultural centres and is used for a wide variety of purposes, including conferences and lectures as well as musical performances and General Elections. As a result, the trustees of the Mackintosh Hall applied to the Supreme Court to seek to widen the use clause of the premises of the John Mackintosh Hall. In this regard the cy-près application was made to amend the terms of the trust declared by the will to enable the terms of the lease to cover the uses for which it was being used. However, the application was refused and in a judgment on 8th December 2015 the judge noted that a better course of action was to legislate specifically to allow the amendment of a similar fashion to such which occurred in 1967. In 1967 clause 22(b) of the will was subject of a variation by Act of Parliament whereby the terms of the will were widened in order to expand the definition of schools in England to include universities, colleges, higher education or similar institutions.

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Mr Speaker, this Bill seeks to vary the terms of the John Mackintosh will so that:

the trustees of the Trust fund ... shall have the power, and shall be deemed always to have had power, to maintain ... the John Mackintosh Hall ... and to use or to allow the use of the John Mackintosh Hall ... for the following purposes –

(a) the cultural development of Gibraltar including lectures, theatrical activities, concerts and plays; and

(b) generally for the benefit of the public in Gibraltar including for professional and trade meetings, political activities such as rallies, meetings and general elections, whether in the English language or otherwise.

Mr Speaker, I therefore commend this Bill to this House.

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

Hon. E J Phillips: Mr Speaker, I am grateful, and I am grateful to the Hon. Minister for setting out the background to the Bill, particularly in relation to the judgment of the then Mr Justice Jack.

395 Just one point of clarification in relation to I think it is paragraphs 38 and 39 of the learned Judge's judgment, where the Judge talks about the alternatives between passing an Act in this House and also dealing with this by way of a trustee simply renting the John Mackintosh Hall to the Government. I think the suggestion by the Judge in court was either the trustees could rent the hall to the Government, which is what the Hon. Minister alluded to in respect of what has
400 happened in the past; or alternatively – not, as the hon. Member said, the better course of action – the alternative was for this House to pass an Act to vary the will accordingly. Of course we support the Government's position on that, but we just wanted to clarify the position that the purpose of this is to expand the use of it to non-educational purposes. But the two points raised by the Judge in his judgment were those two that I have explained. One is that it was an
405 alternative, not a better use. A better way of dealing with this but an alternative way of dealing with it.

It would be helpful if the Minister could just clarify his remarks in respect of those two points.

Hon. S E Linares: Mr Speaker, I am grateful that the hon. Member is going to vote in favour of this Bill.
410

I take his point. I should have probably said that there are two alternatives as opposed to one. We have taken this course of action. We believe that this is the best course of action to have taken, and that is why I am presenting this Bill to the House. So yes, I take the point about the judgment.

415 I commend the Bill to the House.

Mr Speaker: I now put the question, which is that a Bill for an Act to vary certain provisions contained in the will of the late John Mackintosh be read a second time. Those in favour? **(Members: Aye.)** Those against? Carried.
420

Clerk: The John Mackintosh Will (Variation of Trusts) Act 2018.

**John Mackintosh Will (Variation of Trusts) Bill 2018 –
Committee Stage and Third Reading to be taken at this sitting**

Minister for Culture, the Media, Youth and Sport (Hon. S E Linares): 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.
425

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

**Town Planning Bill 2018 –
First Reading approved**

Clerk: A Bill for an Act to revise the law governing planning and development and for connected purposes.

430 The Hon. the Minister for Infrastructure and Planning.

Minister for Infrastructure and Planning (Hon. P J Balban): I have the honour to move that a Bill for an Act to revise the law governing planning and development and for connected purposes be read a first time.

Mr Speaker: I now put the question, which is that a Bill for an Act to revise the law governing planning and development and for connected purposes be read a first time. Those in favour? **(Members: Aye.)** Those against? Carried.

435

Clerk: The Town Planning Act 2018.

**Town Planning Bill 2018 –
Second Reading approved**

Minister for Infrastructure and Planning (Hon. P J Balban): Mr Speaker, I beg to move that the Bill for the Town Planning Act 2018 be read a second time.

The purpose of the new Bill is to revise, modernise and strengthen the law on town planning.

440 Under the existing Town Planning Act 1999 the procedure for planning application and notification of a planning application was unclear and inadequate. The Department of Town Planning would often find itself in receipt of planning applications without supporting documents. This had a twofold effect. First, the Department would invariably have to chase applicants for outstanding documentation on various occasions. This was time consuming, 445 frustrating and an inefficient use of staff resources. Second, because the Department did not hold a complete set of documents pertaining to the application, this meant that members of the public were unable to inspect the complete application at the offices of the Department within the allowed timeframe and make an objection if they so wished.

450 The new Town Planning Bill 2018 has brought about a number of changes to rectify and address these concerns and other matters raised by industry-related professionals conversant with the Town Planning Act 1999 who wanted to improve the current regime. I shall now highlight these changes.

455 The term 'permits' in the Town Planning Act 1999 has been revised. Previously, under the Town Planning Act 1999, applications for planning fell into two categories: outline planning permission and permits. Under the new Bill, applications for planning permission now fall into outline planning permission and full planning permission. Collectively, the above terms are referred to as 'planning permission'. The reason they have been revised is to align them more closely with the widely accepted terminology used within the town planning profession. It is hoped that this will also reduce the confusion that sometimes arose with applicants, who often 460 had to obtain additional permits from other statutory bodies.

Outline planning permission is defined in the Bill as an in-principle decision to grant planning permission. It must be stressed that this does not allow the carrying out of development per se. This can only happen once full planning permission has been obtained. The advantage of keeping outline planning permission in the draft Bill is that it allows an applicant to learn within

465 the early stages of a proposed development, before incurring great expense, whether his application will have a strong likelihood of success. We wanted to keep this in the new Act.

Mr Speaker, the second category planning permission falls into is full planning permission. Full planning permission, previously referred to as a permit in the current Town Planning Act 1999, gives permission to develop in accordance with the terms of the permission and provisions
470 of the Bill.

The new Bill clarifies the procedure involved for making an application for planning permission. If a development does not fall within a class of development designated by regulations, the applicant has to follow the procedure set out in clause 22. If, however, the development does fall within a class of development designated by regulations, the applicant
475 has to, in addition to the procedure laid out in clause 22, adhere to the provisions set out in clause 23. Under clause 23 the application and all the supporting documents are submitted to the Town Planner, who then validates the application. The date of validation is crucial in this procedure, as only when the application is validated by the Town Planner will 21 working days start to run for members of the public to make representations on the application. This gives
480 objectors the opportunity to make representations within the aforementioned 21 working days.

This new provision, which was absent in the current Town Planning Act 1999, is an important amendment to the procedure on application for planning permission. Not only will it give objectors the opportunity to make representations within a stipulated time frame as mentioned above, but this emphasis on 21 working days will address situations where the public
485 participation period falls over a holiday period, for example Christmas, which in the past had the effect of limiting the opportunity for the public to view and comment on the application at hand. Another change in procedure is that we now require publication in the Gazette and two newspapers in Gibraltar. Previously, a daily and a weekly newspaper was specified.

Mr Speaker, the new Town Planning Bill allows an application for planning permission to be
490 made online by the applicant. Furthermore, the Bill makes it a requirement for the Development and Planning Commission to publish all applications received electronically. It is worthy of mention that this has been done since the e-Planning portal was introduced. This further enhances the transparency of the planning process. So too the Development and Planning Commission's decision will be published and made available online. Collectively, these provisions
495 will greatly enhance the public's access to information on applications that may affect them and will ensure at least a minimum period for public participation.

Mr Speaker, the definition of 'development' has been revised. Clarification is provided that development includes inter alia operations such as the enclosure of a balcony or veranda; removal, replacement or installation of shutters; removal, replacement or other alterations of
500 any window; and the replacement of existing roof coverings. It must be mentioned, though, that where said replacement of windows and shutters does not materially affect the external appearance of a building and is on a like-for-like basis using the same materials, then it does not constitute development. In these circumstances, approval needs to be sought under the Building Rules 2017.

It is important to emphasise and clarify for the avoidance of doubt that most building works will require planning permission under town planning legislation as well as approval under the Building Rules 2017. However, building works that do not constitute development under town
505 planning legislation and consequently do not require planning permission shall nonetheless still be subject to building rules and require approval from the Building Control department.

Additionally, the definition of development has been further amended to exclude works to
510 the interior of a building from the definition. Therefore, works of this nature do not require planning permission, albeit, as mentioned above, they may still require building control approval under the Building Control Rules 2017. It must be noted, though, that patios, courtyards and other similar spaces are considered to form part of the external appearance of a building, thus
515 they fall within the definition of development and require planning permission.

Mr Speaker, Government projects are now subject to the planning process under the provisions set out in the Town Planning Bill. Consequently, certain classes of development as designated by regulations will be subject to public participation and will require a site notice and publication online. It must be said that, albeit currently Government applications have no public participation requirement under the Town Planning Act 1999, Government has been submitting applications voluntarily to the DPC for its advice and guidance.

In contrast to the current Town Planning Act 1999, the new Act makes it a requirement, as contained in Schedule 1, that meetings of the Commission relating to planning applications are to be held in public, subject to certain exceptions – that is in the interests of security of Gibraltar. This also applies to Development Appeals Tribunal meetings. It is also worthy of mention that anybody who makes a representation on an application shall be given an opportunity of being heard by the Development and Planning Commission at a meeting. This provision was absent in the current Town Planning Act 1999.

Under the new Town Planning Bill, the enforcement procedure, known as enforcement orders in the current Town Planning Act 1999, has been modified to enable the DPC to issue an enforcement notice where a breach of planning control has taken place. Failure to comply with said enforcement notice constitutes an offence. This differs from the arrangement under the current Town Planning Act 1999, where the DPC had to first criminally convict a person in court before enforcement proceedings could be commenced. It is hoped that this change will assist in the speedy enforcement of planning control and reduce the need to go through lengthy and costly court proceedings, except of course when a person refuses to comply with the requirements of an enforcement notice.

Additionally, the new Town Planning Bill now allows the DPC to take legal action and commence proceedings for an offence 12 months from the date of the commission of the offence or the matter complained of was discovered. This differs from the previous standards under the Town Planning Act 1999, where cases were required to be brought to court within six months, and also further highlights that time starts to run from discovery of the offence and not from the date it actually occurred.

Mr Speaker, appeals against enforcement notices were also absent in the current Town Planning Act 1999 and this has now been catered for. Equally, the penalty for being found in breach of an enforcement notice has now been increased to a fine at level 5 on the standard scale and to a daily fine at level 3 on the standard scale for each day the terms of the notice are not complied with. The level of fines within the new Act has also been increased in relation to stoppage orders and general offences.

Mr Speaker, the current Town Planning Act 1999 gave the Commission the power to modify planning permission. It did not cater for situations when applicants wanted to make minor amendments to planning permission after it was granted. However, we have now catered for this and the Bill allows an applicant to make an application to the Commission for a minor amendment to a previously granted planning permission. This provision gives the Commission the power to accept these minor changes provided that they are within the parameters stipulated therein. It also allows the Commission, if it considers it appropriate, the right to require an applicant to serve notice of the minor amendments on certain individuals and allows them an opportunity to make representations. Along the same lines, but in this case before planning permission has been granted by the DPC, the new Bill also gives an applicant the power to modify his application provided permission is sought and obtained from the DPC for such modification beforehand. If this power is indeed exercised by the applicant, the DPC may then require that said modifications sought are subject to the public participation process.

In addition to the requirements for notification, the Commission may require applicants for planning permission to bring the application to the attention of specified individuals. The majority of people within the vicinity of the land to which applications relate are thus made aware of the application.

Mr Speaker, finally, the new Town Planning Act provides a regulation-making power to regulate the painting of the external facade of any buildings and also provides a right of appeal to the tribunal from a decision by the Commission on advertisement of applications. This was
570 absent and not catered for in the current Town Planning Act 1999.

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

Mr Speaker: Before I put the question, does any hon. Member wish to speak on the general principles and merits of this Bill? The Hon. Trevor Hammond.
575

Hon. T N Hammond: Thank you, Mr Speaker.

This is a very welcome Bill and I can assure the Minister that on this side of the House we will be supporting the Bill.

Of course, elements of the Bill originate in the GSLP's 2011 New Dawn manifesto. Obviously
580 they were not delivered during that period but they are now being delivered, so they are welcomed in that respect. It is a shame that the Bill was not presented earlier and seven years have passed, because obviously a number of projects – some of which may be considered controversial by some – have been put through by Government, which may otherwise have received more challenge through the DPC process. I am thinking, for instance, of the current
585 blocks being built at Europa Point, which are not necessarily the most popular and may have received some challenge. Nevertheless, I do not want to make this a political argument. To be honest, it is a welcome piece of legislation.

Coming to the legislation itself, I wonder if the Minister would consider or clarify why perhaps some of these points have not been considered as part of the Bill, or that they may be
590 incorporated going forward.

In terms of the appeals process – which I know in this Bill is a copy-paste, effectively, of what was previously there – as I said, the previous legislation allowed only planning applicants to appeal decisions of the DPC, which seems to load the process somewhat in favour of the applicants, and I thought perhaps that that was something that this Bill might have addressed. I
595 do regret not bringing it to the Minister's attention sooner but would ask Government whether they would consider introducing such amendment to allow objectors to appeal to planning decisions and thereby redress that current imbalance.

The newest and arguably most important part of the legislation is that requiring Government projects to be subjected to the planning process, a change which we on this side, as I have said,
600 wholeheartedly welcome. There is a caveat in that particular part of the legislation for urgent cases and I would ask the Minister to explain further how this clause might be invoked and in what circumstances – in other words, what might be considered urgent – because it would be unfortunate if such a clause were to be used as a matter of convenience out of political expediency. I am sure this is not the intention, but clarification would be welcome.

Mr Speaker, another question that arises from this section of the Bill is whether Ministers will continue to sit on the DPC when it is considering Government projects. There would be a very clear conflict of interest in such cases and I would again ask the Minister if such has been considered and would provision be made, when these circumstances inevitably arise, to deal with such conflicts by excluding Ministers or having Ministers recuse themselves, as perhaps
610 would be the case for other members of the Committee should an application be received from them specifically. The next step, of course, might be to remove Ministers entirely from the DPC, and I am sure that is something that may be subject to further debate and further discussion possibly at future General Elections; but doing so would clearly increase the independence of that particular body, the DPC, from the executive.

615 Mr Speaker, I say again we will be supporting this Bill.

Mr Speaker: Does any other hon. Member wish to speak on this Bill? The Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Yes, Mr Speaker. I want to just highlight the seminal importance of this Bill, which is one that, in the same way as with the Freedom of Information Act, was originally trailed in our first manifesto and, for reasons which the Hon. the Deputy Chief Minister and now the Minister for Infrastructure and Planning, Paul Balban, have explained, was not delivered in that original first period in government. They are now being delivered.

I was struck by one of the things that the hon. Gentleman said, which was the apparent regret on the side of Members opposite – representing, the last time I checked, the party that I used to know as the Gibraltar Social Democrats; their regret that we had not brought the Bill during the lifetime of the first period in government of the GSLP/Liberals. And yet, Mr Speaker, over lunch, just to amuse myself, I went back and read some of the things that they had said about this policy during the lifetime of the last Parliament under the former, former Leader of the Opposition. *(Interjection)* It was in fact Sir Peter Caruana – the man some opposite have wanted to describe as the greatest Gibraltarian of all time, for whom hon. Members threw a lavish party at Grand Battery House – who advised us to include the caveat that the hon. Member has described about urgency etc. should we be foolish enough to progress with the policy of having this particular Bill on the statute book and subjecting Government projects to the town planning process.

Indeed, Mr Speaker, when we used to criticise hon. Members opposite and say that when they said we were not transparent and that we had failed to be a new dawn, we reminded them inter alia not just of the publication of information that we do as a matter of course, which they do not even have to ask us for, which is covered by the Freedom of Information Act, but in particular in respect of town planning we used to say, ‘You didn’t have an open planning process. You held the planning meetings behind closed doors. You didn’t even publish the minutes.’ They said to us once, Mr Speaker, dealing with that issue and saying that we were reflecting that to them under the previous administration meetings would be held behind closed doors and minutes would never get published ... ‘But to such charges there are simple answers,’ their spokesman for town planning said to us during the lifetime of the last Parliament *(Interjection)* when he tells us that we should have brought this Bill. *(Interjection)* That was the policy of the GSD then and it remains the policy of the GSD now.

Mr Speaker, I suppose in the context of seeking a unanimous support and conviviality in the passing of legislation we just gave them a chance to think things through and a few years later what was the policy of the GSD then is no longer the policy of the GSD now. They have now aligned themselves with us and they are voting with us for this Bill, so I guess we are all commending the Bill to the House. **(A Member: Hear, hear.)** *(Banging on desks)*

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

Hon. P J Balban: Thank you, Mr Speaker.

I think the Hon. the Chief Minister has already eloquently responded to most of the points across the floor.

I would like to thank Members opposite for supporting the Bill. It is a very important Bill. It puts right many things that were not addressed before and issues that the Department were facing for a while with procedure, and brings the legislation up to date, which is important.

I would also like to thank the Deputy Chief Minister, who left the Bill ready but for the full stop at the end. I thank him for the help while he was Minister with responsibility for town planning and building control.

Just to sum up then, as I said, we have gone a long way. The Chief Minister has explained how meetings of the DPC were not held in public. Nowadays they are held in public. This Bill also allows for the tribunals to be held in public, which were not the case also. So there is full transparency in that respect.

670 I think this Bill will not only help applicants but it will also help the Department of Town
Planning and Building Control to continue doing the great work that they do for the
Government.

Thank you.

675 **Mr Speaker:** I now put the question, which is that a Bill for an Act to revise the law governing
planning and development and for connected purposes be read a second time. Those in favour?
(**Members:** Aye.) Those against? Carried.

Clerk: The Town Planning Act 2018.

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

680 **Minister for Infrastructure and Planning (Hon. P J Balban):** Mr Speaker, I beg to give notice
that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members
agree.

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

COMMITTEE STAGE AND THIRD READING

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

690 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to move that the House
should resolve itself into Committee to consider the following Bills clause by clause: the Tobacco
(Amendment) Act Bill 2017, the Immigration and Asylum Bill 2018, the Freedom of Information
Bill 2016, the European Parliamentary Elections (Amendment) Bill 2018, the Heritage and
Antiquities Bill 2018, the Cemeteries Bill 2018, the Nature Protection (Amendment) Bill 2018 and
the schedule of all the species relevant thereunder, the Director of Public Prosecutions Bill 2018,
the John Mackintosh Will (Variation of Trusts) Bill 2018 and the Town Planning Bill 2018.

In Committee of the whole House

695

**Tobacco (Amendment) Bill 2017 –
Clauses considered and approved with amendments**

Clerk: A Bill for an Act to amend the Tobacco Act 1997.
Clause 1 as amended.

700 **Chief Minister (Hon. F R Picardo):** Mr Speaker, the first amendment, which hon. Members
will not see in the marked up version of the Bill that was sent, is of course the date, which at the
moment reflects 2017 and will need to reflect 2018.

Mr Chairman: Clause 1 as amended stands part of the Bill.

705 **Clerk:** Clause 2.

Mr Chairman: Stands part of the Bill.

710 **Clerk:** Clause 3 as amended.

Hon. Chief Minister: Mr Chairman, that is the amendment, in red.

Mr Chairman: The amendment has been circulated in what I shall describe as a rather novel fashion. It is perfectly acceptable if hon. Members understand what it amounts to, but I want to make sure, because there is a departure from the more accepted form, that hon. Members are able to follow what the amendment is. If they are, then there is no problem and it will then be for the Clerk, acting on behalf of Parliament, to transmit the amended version for publication. Is that clear for hon. Members of the Opposition? Are they clear on what –?

720 **Hon. D A Feetham:** Tracked changes are much more useful and much easier to follow.

Mr Chairman: But it is a departure from the Rules, in a sense. Clause 3 as amended stands part of the Bill.

725 **Clerk:** The long title.

Mr Chairman: Stands part of the Bill.

**Immigration and Asylum Bill 2017 –
Clauses considered and approved with amendments**

Clerk: A Bill for an Act to make fresh provision in relation to immigration and asylum and for connected purposes.
730 Clauses 1 to 13.

Mr Chairman: Stand part of the Bill.

735 **Clerk:** Clause 14 as amended.

Mr Chairman: Members have received notification. To clause 14 there is an amendment. Is it agreed to?

740 **Hon. D A Feetham:** Mr Chairman, we are content to have the letter setting out the amendments having been read to this Parliament.

Mr Chairman: Clause 14 as amended stands part of the Bill.

745 **Clerk:** Clauses 15 to 61.

Mr Chairman: Stand part of the Bill.

Clerk: Clause 62 as amended.

Mr Chairman: Stands part of the Bill.

750

Clerk: Clauses 63 to 72. (**Mr Chairman:** To 71.) I beg your pardon, clauses 63 to 71.

Mr Chairman: Stand part of the Bill.

755

Chief Minister (Hon. F R Picardo): Sorry, at the end, out of the numbering because it came in late, there is an amendment to clause 69, over the page.

Clerk: Clauses 63 to 68.

760

Mr Chairman: Stand part of the Bill.

Clerk: Clause 69 as amended.

Mr Chairman: Stands part of the Bill.

765

Clerk: Clauses 70 to 71.

Mr Chairman: Stand part of the Bill.

770

Clerk: Clause 72 as amended.

Mr Chairman: Stands part of the Bill.

Clerk: Clauses 73 and 74.

775

Mr Chairman: Stand part of the Bill.

Clerk: The Schedule as amended.

780

Mr Chairman: Stands part of the Bill.

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

**Freedom of Information Bill 2016 –
Clauses considered and approved with amendments**

785

Clerk: A Bill for an Act to make provisions for the disclosure of information held by public authorities or by persons providing services for them and for connected purposes.
Part 1, clause 1 as amended.

Mr Chairman: Stands part of the Bill.

790

Clerk: Clauses 2 to 3.

Mr Chairman: Stand part of the Bill.

Clerk: Part 2, clauses 4 to 11.

795

Mr Chairman: Stands part of the Bill.

Clerk: Part 3, clause 12 as amended.

800

Mr Chairman: Stands part of the Bill.

Clerk: Clause 13 as amended.

805

Mr Chairman: Stands part of the Bill.

Clerk: Clauses 14 to 16.

Mr Chairman: Stand part of the Bill.

810

Clerk: Part 4, clause 17 as amended.

Mr Chairman: Stands part of the Bill.

815

Clerk: Clauses 18 to 22.

Mr Chairman: Stand part of the Bill.

Clerk: New clause 23.

820

Mr Chairman: Stands part of the Bill.

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

**European Parliamentary Elections (Amendment) Bill 2018 –
Clauses considered and approved**

825

Clerk: A Bill for an Act to amend the European Parliamentary Elections Act 2004.
Clauses 1 to 3.

Mr Chairman: Stand part of the Bill.

830

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

**Heritage and Antiquities Bill 2018 –
Clauses considered and approved with amendments**

835 **Clerk:** A Bill for an Act to make provision for the conservation, enhancement and enjoyment
of Gibraltar's heritage, antiquities and objects of archaeological interest, for the preservation of
monuments, buildings, historical conservation areas and archaeological areas, to establish the
Heritage and Antiquities Advisory Council, to provide for the management of the Gibraltar
National Museum and the Gibraltar National Archives, to provide for the continued existence of
the Gibraltar Heritage Trust and for connected matters.

Part 1, clauses 1 to 5.

840

Mr Chairman: Stand part of the Bill.

Clerk: Part 2, clause 6 as amended.

845

Mr Chairman: Stands part of the Bill.

Clerk: Clause 7 as amended.

Mr Chairman: Stands part of the Bill.

850

Clerk: Clauses 8 to 9.

Mr Chairman: Stand part of the Bill.

855

Clerk: Clause 10 as amended.

Mr Chairman: Stands part of the Bill.

Clerk: Part 3, clause 11 as amended.

860

Mr Chairman: Stands part of the Bill.

Clerk: Clauses 12 to 13.

865

Mr Chairman: Stand part of the Bill.

Clerk: Clause 14 as amended.

Mr Chairman: Stands part of the Bill.

870

Clerk: Clause 15 as amended.

Mr Chairman: Stands part of the Bill.

875

Clerk: Clauses 16 to 18.

Mr Chairman: Stand part of the Bill.

Clerk: Part 4, clauses 19 to 22.

880

Mr Chairman: Stand part of the Bill.

Clerk: Part 5, clause 23 as amended.

Mr Chairman: Stands part of the Bill.

885

Clerk: Clauses 24 to 29.

Mr Chairman: Stand part of the Bill.

890

Clerk: Part 6, clause 30.

Mr Chairman: Stands part of the Bill.

Clerk: Clause 31 as amended.

895

Mr Chairman: Stands part of the Bill.

Clerk: Part 7, clause 32 as amended.

900

Mr Chairman: Stands part of the Bill.

Clerk: Clauses 33 to 35.

Mr Chairman: Stand part of the Bill.

905

Clerk: Clause 36 as amended.

Mr Chairman: Stands part of the Bill.

910

Clerk: Clause 37.

Mr Chairman: Stands part of the Bill.

Clerk: Part 8, clauses 38 to 45.

915

Mr Chairman: Stand part of the Bill.

Clerk: Part 9, clause 46 as amended.

920

Mr Chairman: Stands part of the Bill.

Clerk: Part 10, clauses 47 to 50.

Mr Chairman: Stand part of the Bill.

925

Clerk: Clause 51 as amended.

Mr Chairman: Stands part of the Bill.

930

Clerk: Clause 52 as amended.

Mr Chairman: Stands part of the Bill.

Clerk: Clauses 53 and 54.

935

Mr Chairman: Stand part of the Bill.

Clerk: Schedule 1.

940

Mr Chairman: Stands part of the Bill.

Clerk: Schedule 2 as amended.

945

Mr Chairman: Stands part of the Bill.

Hon. E J Reyes: Mr Chairman, may I? On Schedule 2, part 5, the Minister gave a notice, the 'Bombay Bristol bomber', and after that the entry alongside 'East side aircraft', referring to the part of the location. He is now clarifying that by putting 'off Eastern Beach'. I just want to make Mr Chairman aware that behind the Speaker's Chair I did have a word with the Minister, and if the Minister can confirm that at some future date when the Government is ready for it, the whole of Part 5 needs a bit of clarification on the locations. We are talking about submerged heritage and although it does pinpoint how deep down it is, we have no idea. The amendment the Minister proposed has certified that the East side aircraft is actually off Eastern Beach, but the others, one has no idea whether to search on the East side or the West side of the Rock. What I am trying to say is that we have no difficulty in accepting this, but the understanding, for the record, is that the locations will be actually modified or better pinpointed in future. Perhaps the Minister can contribute to this one as well.

950

955

Minister for the Environment, Energy, Climate Change and Education (Hon. Dr J E Cortes):

960

Mr Chairman, I did explain it to the hon. Members who met with me, but the Hon. Mr Reyes was not there. This has all been plotted on GIS and therefore this will be available in hard copy officially as a formal document in the Minister for Heritage's office and will also be available in electronic form. So it will be absolutely clear exactly what the limits of all these sites are. This will be available, I am informed, as soon as the Act is commenced.

965

Hon. E J Reyes: It is acceptable to me, Mr Chairman; it is just a question of someone reading the Bill when it becomes an Act there, unless there is some specific note that says, 'Go to the Minister's office to find the location' is just ... One has to rely on something other than primary legislation to know the exact location. I am just making an enquiry as to the validity if one sits in an office and looks at the actual Act.

970

Hon. Dr J E Cortes: It is stipulated. I am just having the legal draftsman who worked very, very hard on this and all the other Bills... just checking the exact location, but there is a reference to that.

975

I thank my legal adviser for that. In section 12 (2) it says:

Schedule 2 shall be in such form as prescribed by the Minister and accompanied by such plans as deposited at the offices of the Minister with responsibility for heritage.

So that will be the formal register, so to speak, of the Schedule and it will be there, available both in hard and electronic copy. So it is clearly specified that that will be there.

Hon. E J Reyes: I am grateful for that clarification, Mr Chairman.

980

Clerk: We resume. Schedule 5 as amended.

Mr Chairman: Stands part of the Bill.

Clerk: Schedule 6.

985

Mr Chairman: Stands part of the Bill.

Clerk: The long title.

990

Mr Chairman: Stands part of the Bill.

**Cemeteries Bill 2018 –
Clauses considered and approved**

Clerk: A Bill for an Act to provide for the management and control of cemeteries.
Clauses 1 to 18.

Mr Chairman: Stand part of the Bill.

995

Clerk: Schedules 1 and 2.

Mr Chairman: Stand part of the Bill.

1000

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

**Nature Protection (Amendment) Bill 2018 –
Clauses considered and approved**

Clerk: A Bill for an Act to amend the Nature Protection Act 1991.
Clauses 1 to 3.

1005

Mr Chairman: Stand part of the Bill.

Clerk: The long title.

1010

Mr Chairman: Stands part of the Bill.

**Director of Public Prosecutions Bill 2018 –
Clauses considered and approved with amendments**

Clerk: A Bill for an Act to establish the office of Director of Public Prosecutions under the
direction of the Attorney-General and for matters connected thereto.
Clauses 1 to 3.

1015

Mr Chairman: Stand part of the Bill.

Clerk: Clause 4 as amended.

1020 **Mr Chairman:** Could I seek clarification from the Hon. the Minister that clause 4(1), once amended, will read ...? Would he explain exactly how it will read when those amendments are made? It will not be the Government. Will it be 'The Attorney-General shall in consultation with the Governor appoint a person by notice'? Am I correct?

Minister for Health, Care and Justice (Hon. N F Costa): Yes.

1025 **Mr Chairman:** Thank you.

Clerk: Clause 4 as amended.

1030 **Mr Chairman:** Stands part of the Bill.

Clerk: Clause 5.

Mr Chairman: Stands part of the Bill.

1035 **Clerk:** Clause 6 as amended.

Mr Chairman: Stands part of the Bill.

1040 **Clerk:** The long title.

Mr Chairman: Stands part of the Bill.

Hon. D A Feetham: Mr Chairman, may I look back to this?

1045 **Mr Chairman:** Yes.

Hon. D A Feetham: Did Mr Chairman say 'shall'?

1050 **Mr Chairman:** The amendment of which notice has been given is to take away 'Government' and substitute in its place 'Attorney-General' –

Hon. D A Feetham: Yes, that makes sense.

1055 **Mr Chairman:** – and therefore it will read: 'The Attorney-General shall in consultation with the Governor' – (**Hon. D A Feetham:** No.) No?

1060 **Hon. D A Feetham:** No, there is no 'shall' there, because this is a removal. It is 'may only remove', not 'shall'. So, what it reads is: 'The Attorney-General after consultation with the Governor may only remove' –

Hon. N F Costa: No, Danny, Mr Chairman is referring to clause 4; you are referring, I think, to clause 4(6). (*Interjection by Hon. D A Feetham*) Yes, Mr Chairman was referring to clause 4 and therefore he has correctly read the substitution of –

1065 **Hon. D A Feetham:** I beg your pardon. I was reading that and thought this cannot be 'shall' because it's missing one.

Clerk: Clause 4 as amended.

1070 **Mr Chairman:** Stands part of the Bill.

Clerk: Clause 5.

1075 **Mr Chairman:** Stands part of the Bill.

Clerk: Clause 6 as amended.

Mr Chairman: Stands part of the Bill.

1080 **Clerk:** The long title.

Mr Chairman: Stands part of the Bill.

**John Mackintosh Will (Variation of Trusts) Bill 2018 –
Clauses considered and approved**

Clerk: A Bill for an Act to vary certain provisions contained in the will of the late John Mackintosh.

1085 Clauses 1 to 3.

Mr Chairman: Stand part of the Bill.

Clerk: The Schedule.

1090

Mr Chairman: Stands part of the Bill.

Clerk: The long title.

1095 **Mr Chairman:** Stands part of the Bill.

**Town Planning Bill 2018 –
Clauses considered and approved with amendments**

Clerk: A Bill for an Act to revise the law governing planning and development and for connected purposes.

Part 1, clauses 1 and 2.

1100 **Mr Chairman:** Stand part of the Bill.

Clerk: Part 2, clauses 3 and 4.

Mr Chairman: Stand part of the Bill.

1105

Clerk: Part 3, clauses 5 to 14.

Mr Chairman: Stand part of the Bill.

1110 **Clerk:** Part 4, clauses 15 to 41.

Mr Chairman: Stand part of the Bill.

1115 **Hon. T N Hammond:** Mr Chairman, if I may, just on paragraph 22?

Mr Chairman: Clause 22 or paragraph? Is it clause 22?

Hon. T N Hammond: I believe it will be clause 22 – yes, 22(1)(a) is what I am referring to. I notice that there has been a subtle but possibly significant change from the previous Act insofar as it now reads:

a certificate stating that the applicant is the sole owner of the land to which the application relates;

It used to say 'is an owner of the land' and I just wonder, for my understanding, why that change was made and what is the effect of that change. Presumably it is possibly the case that there could be multiple owners, and how will that impact on their ability to apply?

1125 **Minister for Infrastructure and Planning (Hon. P J Balban):** Mr Chairman, this refers to applications where there is only one owner – that is a sole owner. If there is more than one owner, then this would not apply.

1130 **Hon. T N Hammond:** In which case, could the Minister perhaps point me to the section that applies to multiple ownership? I am not quite clear on where that section would arise.

1135 **Minister for Health, Care and Justice (Hon. N F Costa):** Mr Chairman, actually 22(1) (b) is when there are multiple owners. So section 22(1)(a) is for when there is only one, sole, owner, and the following section, which is section (b), is when there is more than one owner.

1140 **Hon. T N Hammond:** Yes, I understand that, but in a case where perhaps all the owners are of one mind, in other words they all wish to make an application – for example, a building where there are three owners and they want to put a lift in the building and they wish to apply as one – paragraph (b) does not really make for that particular provision, so I am slightly confused. What paragraph (b) says is that yes, if there are multiple owners an individual who wishes to make an application must notify those other owners. What is not clear to me is if there are multiple owners all of the same mind, what process would they follow, because at the moment this only applies to a sole owner.

1145 **Hon. P J Balban:** If there was more than one owner, they would still have to provide proof that they were in agreement. They would not be accepted. If it is only one sole owner, then (a) would be relevant. Otherwise, if it is more than one owner, even if they commonly believe that they want a lift in a block, they will still have to prove that the other owners are parties to that application.

1150 **Hon. T N Hammond:** So, if I understand it then, one of the owners – because he would not be a sole owner – even though they are all of the same mind, one of the owners would have to approach the other owners in accordance with paragraph (b) and go through that process. There is no way for them to put in a joint application for the property.

1155 Wouldn't it be sensible to have a process for a joint application where owners are of the same mind? It just strikes me as making it more straightforward for everybody involved if you could just have a single joint application in those circumstances.

1160 **Hon. P J Balban:** I would need to speak to Legislation, but I would assume if there is proof that the, say three, owners are in agreement and there are three signatures on one application ... I suppose that is something which can be considered and I will refer that back to the law drafters. Otherwise, there is no guarantee, unless there are three consents, that all three are happy with that application.

1165 **Hon. T N Hammond:** Mr Chairman, the reason I ask is purely because the previous legislation did not have that provision; it just said 'an owner', and so this change has been made deliberately in this Bill. I assumed perhaps there was some precedent, there was some reason why that change had been made and that the experience of the DPC indicates that there is value in making the change. But what I am understanding is that there is not necessarily any real value and it is just perhaps hindering a certain sector who may wish to make a joint application.

1170 **Hon. P J Balban:** Mr Speaker, I am told that this was because there have been applications before where someone has claimed that they are one owner. So the idea was if you are a sole owner then there will be no need to seek permission or approval from anybody else. There have been cases that have come to the Department, hence leading in the need to change or draft this section of the law.

1180 **Hon. T N Hammond:** Mr Chairman, I can understand the need to demonstrate where a sole applicant is making an application for a piece of land or... that they need to demonstrate that they are the sole owner, and were they not the sole owner and other applicants have not come forward for the same project there would clearly be a need on the part of that particular individual to seek the approval of the other owners, if they have not come forward. But surely where you have a situation where there are a number of owners all of the same mind and they have all signed the application, wouldn't it make sense to have a facility for them just to be able to sign the application rather than have to go through a separate process whereby one of the owners – and, I do not know, there could be 16 other owners of the same building – that one of the owners has to approach all of the other owners, who are in agreement with him anyway just to comply with part (b)? It would be far more straightforward, surely, if the application itself could be signed by all the owners to say, 'We are of one mind'.

1190 **Hon. P J Balban:** Mr Speaker, I am just being told that if it is of help, what can happen is we can say, as part of clause 22(1)(a), 'a certificate stating that the applicant is the sole owner/s'. So we can add 's' and that will maybe address the issue.

1195 **Hon. T N Hammond:** If we said 'is/are the sole owner/s', that would obviously deal with that issue, so that would make sense, yes.

1200 **Mr Chairman:** If we are going to have a small amendment to that, I require it in writing. Let me see it before you circulate it.

1205 This does not make sense, the English: the applicant cannot be the sole *owners*: applicant is singular and owners is plural.

1210 Perhaps 'sole owner/owners', possibly? The amendment would then be: 'That clause 22(1)(a) be amended by substituting for "the applicant is the sole owner" the words "the applicant is the sole owner/s".' Is that understood? Effectively, by omitting the word 'owner' in 22(1)(a) and substituting therefor the word 'owner/s', it is either one or the other.

Hon. T N Hammond: In which case, Mr Chairman, surely grammatically it would have to read 'The applicant is/are the sole owner/s'.

Mr Chairman: But there is only one applicant. There would be one application made on one single form, and that would be on behalf of owner or owners.

Okay? That is then the amendment. Is that approved? Call it out. Clause 22 as amended.

Clerk: Clause 22 as amended.

Mr Chairman: Stands part of the Bill.

Clerk: Clauses 23 to 41.

Mr Chairman: Stand part of the Bill.

1220

Clerk: Part 5, clauses 42 to 53.

Mr Chairman: Stand part of the Bill.

1225

Clerk: Part 6, clauses 54 to 60.

Mr Chairman: Stand part of the Bill.

Clerk: Part 7, clauses 61 to 64.

1230

Mr Chairman: Stand part of the Bill.

Clerk: Part 8, clauses 65 to 73.

1235

Mr Chairman: Stand part of the Bill.

Clerk: Schedules 1 and 2.

Mr Chairman: Stand part of the Bill.

1240

Clerk: Schedule 3 as amended.

Mr Chairman: There is a minor amendment there.
Stands part of the Bill.

1245

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

**Tobacco (Amendment) Bill 2017,
Immigration and Asylum Bill 2018,
Freedom of Information Bill 2016,
European Parliamentary Elections (Amendment) Bill 2018,
Heritage and Antiquities Bill 2018,
Cemeteries Bill 2018,
Nature Protection (Amendment) Bill 2018,
Director of Public Prosecutions Bill 2018,
John Mackintosh Will (Variation of Trusts) Bill 2018 and
Town Planning Bill 2018 –
Third Reading approved: Bills passed**

1250

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to report that the Tobacco (Amendment) Bill 2017 – 2018 now, the Immigration and Asylum Bill 2018, the Freedom of Information Bill 2016, the European Parliamentary Elections (Amendment) Bill 2018, the Heritage and Antiquities Bill 2018, the Cemeteries Bill 2018, the Nature Protection (Amendment) Bill 2018, the Director of Public Prosecutions Bill 2018, the John Mackintosh Will (Variation of Trusts) Bill 2018 and the Town Planning Bill 2018 have been considered in Committee and agreed to, some with and some without amendments, and I now move that they be read a third time and passed.

1255

1260

Mr Speaker: I now put the question, which is that the Tobacco (Amendment) Bill 2017, the Immigration and Asylum Bill 2018, the Freedom of Information Bill 2016, the European Parliamentary Elections (Amendment) Bill 2018, the Heritage and Antiquities Bill 2018, the Cemeteries Bill 2018, the Nature Protection (Amendment) Bill 2018, the Director of Public Prosecutions Bill 2018, the John Mackintosh Will (Variation of Trusts) Bill 2018 and the Town Planning Bill 2018 have been agreed to by the Parliament – in the case of the Immigration Bill, with abstentions from the Members of the Opposition. Other than that, all Members have voted in favour and therefore these should all be read a third time and passed. Those in favour? **(Members: Aye.)** Those against? Carried.

1265

ADJOURNMENT

Chief Minister (Hon. F R Picardo): Mr Speaker, it has been a long session. We have dealt with the Appropriation, we have dealt with more Bills than this House has dealt with for a long time and the mood inside has not been as hot as the temperature outside, which is always of benefit to hon. Members' blood pressure.

I now move that the House should adjourn for the long vacation and adjourn *sine die*.

1275

Mr Speaker: In moving that the House should adjourn *sine die*, I wish to express a hope that all Members will have a very peaceful and restful vacation.

The House will now adjourn *sine die*.

The House adjourned at 5.06 p.m.