



# PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

**MORNING SESSION: 11.10 a.m. – 1.10 p.m.**

**Gibraltar, Tuesday, 24th July 2018**

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# The Gibraltar Parliament

*The Parliament met at 11.10 a.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 permit laying of papers**

**Clerk:** Meeting of Parliament, Tuesday, 24th July 2018.

Order of the Day. 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 the laying of a report on the table.

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

## **PAPERS TO BE LAID**

10 **Clerk:** Papers to be laid. The Hon. the Chief Minister.

**Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to lay on the table the Gibraltar Annual Policing Plan for 2018-19, the Audited Accounts of the Gibraltar Regulatory Authority for the year ended 31st March 2018 and the Integrated Tariff (Amendment) (No. 2) Regulations 2018.

**Mr Speaker:** Ordered to lie.

# Order of the Day

## **BILLS**

### **FIRST AND SECOND READING**

#### **Tobacco (Amendment) Bill 2017 – First Reading approved**

**Clerk:** Bills – First and Second Reading.

A Bill for an Act to amend the Tobacco Act 1997. The Hon. the Chief Minister.

20

**Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to move that a Bill for an Act to amend the Tobacco Act 1997 be read a first time.

**Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Tobacco Act 1997 be read a first time. Those in favour? (Members: Aye.) Those against? Carried.

25

**Clerk:** The Tobacco (Amendment) Act 2017.

**Tobacco (Amendment) Bill 2017 –  
Second Reading approved**

**Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to move that the Bill now be read a second time.

30 As everyone in this community knows, and indeed everyone in the right-thinking international community knows, Her Majesty's Government of Gibraltar fully supports our law enforcement agencies in their fight against illicit activity, in particular illicit tobacco activity.

In the last six years, since we were first elected, we introduced a number of amendments to the Tobacco Act and subsidiary regulations under the Tobacco Act which fully supported the changes proposed to us by law enforcement agencies in respect of tobacco licences, so that the  
35 Collector of Customs has more control over licensees.

Hon. Members will also recall the introduction of new special zones, and in particular red zones in the area of the Frontier and in some of our residential estates. The introduction of these tighter controls has, in effect, facilitated the eradication of the unattractive "*Matutera*" style activity, as it was known, at the entrance and exit points from Gibraltar, which did  
40 absolutely nothing for Gibraltar's image.

Additionally, we have also ensured that tobacco shops in residential estates have been moved on, and this has dealt an important blow to the antisocial activity that had been allowed to fester in some of our residential areas. Furthermore, in 2016 we issued a new ministerial direction to the Business Licensing Authority to discourage the issuing of tobacco licences.

45 Mr Speaker, as I mentioned in my Budget speech earlier in the session, I will shortly present the House with further wide-reaching amendments to this Tobacco Act to further tighten controls and the movement of tobacco products and to extend the reach of the Tobacco Act beyond just cigarettes.

The amendments before the House today follow extensive consultation with the Collector of  
50 Customs and are designed to curb illicit activity in respect of this commodity, as well as to protect the law enforcement officers who are, in the execution of their duty, dealing with their obligations under this Act.

The essence of the amendments is really best summarised in four ways. Firstly, there is the extension of powers to search retail premises licensed under the Act without the need for a  
55 search warrant. This will facilitate the enforcement of the conditions placed by the Collector of Customs on tobacco retailers and better regulate the sale of tobacco products. The amendment will also provide stiff penalties where force or violence is used against customs or police officers executing their duties under the Tobacco Act, and consequently the amendment introduces the first either way offence contained in this Act. That is to say it creates offences triable in the  
60 Magistrates Court or in the Supreme Court. The amendment also broadens the action as a result of which a person may be deemed to obstruct an officer in the performance of any duty or in the exercise of any power imposed or conferred on him under the Act, and additionally the amendment introduces offences in relation to giving false information to customs or police in respect of any tobacco.

65 Finally, Mr Speaker, I will be moving some minor amendments at the Committee Stage, of which hon. Members have been given notice.

I commend the Bill to the House.

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

**Hon. E J Phillips:** Mr Speaker, we welcome the amendment to the Tobacco Act, and of course it is important to continue to strengthen the laws to curb illicit tobacco activity. Everyone in this House is committed to the anti-smuggling agenda and we welcome the comments made by the Chief Minister in relation to those four areas that he explained in relation to the Bill.

I just have one observation in relation to the amendment that has just been handed up to us now relating to the removal of 'in either a retail or wholesale in a retail licence' and I would be grateful if the Chief Minister could clarify that.

Subject to that observation, we would welcome this amendment.

**Mr Speaker:** Does any other hon. Member wish to speak on the general principles and merits of the Bill?

Does the Chief Minister wish to reply? (**Hon. D A Feetham:** Can I –?) Oh, sorry, the Hon. Daniel Feetham.

**Hon. D A Feetham:** Yes, just to ask ... Obviously, as the Leader the Opposition has said, we welcome anything that tightens up the law in this area or takes us further down the journey in relation to ensuring that any kind of illicit activity is controlled and is dealt with in Gibraltar.

The Chief Minister mentioned a number of objectives in relation to the Act, and I note that one of them is free access to any premises by police and customs officers in relation to licensees – but in relation to assaulting or resisting officers and obstructing officers, these are offences that are contained elsewhere and are imported into this Act? I would find it very surprising if these were not already offences elsewhere, and I just wonder whether he could clarify that. Are we effectively consolidating or importing offences that are existing offences into this particular Act?

**Mr Speaker:** The Hon. the Chief Minister.

**Hon. Chief Minister:** Mr Speaker, I thank hon. Members for indicating their support for this Bill.

If I can just deal first with the point raised by the Hon. the Leader of the Opposition, what this Bill does is create rights of access to law enforcement agents – principally customs officers, who are the ones most often involved in the policing of the Tobacco Act – to access premises without a warrant. Under our regime, access to premises in respect of law enforcement officials must always rightly be curtailed in a way that there are warrants issued unless there is actual commission of offences at the time, so that the entry is not something which is available as if law enforcement agents were able to access any property without consent from judicial officers where relevant, unless there is a serious arrestable offence etc. set out in the other parts of our law which regulate the procedure for police and other law enforcement agents to have access to premises.

In this instance what we are doing is creating the right of access without warrant, and the Collector's view is that that is required to retail premises but is not required to wholesale premises. In the original draft both types of licensees were covered, but on reflection the Collector feels that that unimpeded access without warrant is required in places of retailing of tobacco, given the concerns there may be as to the commission of offences there at the sharp end, at the coalface, and in respect of premises which are open to the general public. So we are dealing with a police officer or a customs officer or other law enforcement agent having access to that place and being able to see almost in real time the documentation that relates to sales etc. That is why it makes sense for the Collector to seek that access and he has asked the

120 Government not to seek that access in respect of wholesale premises, where he is satisfied with the access already provided for in the law.

125 Mr Speaker, my understanding in respect of the offences being set out in respect of obstruction etc. is that these are required in this Act with the provisions as to offences and to the provisions as to penalties, which are set out here in a manner that is not designed to consolidate in any way but to set out specifically under this Act as the Collector has considered appropriate and I understand is advised would be most helpful to ensure that law enforcement agents are able to go about their business with stiff penalties should anybody seek to obstruct.

130 **Mr Speaker:** I put the question, which is that a Bill for an Act to amend the Tobacco Act 1997 be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

**Clerk:** The Tobacco (Amendment) Act 2017.

**Tobacco (Amendment) Act 2017 –  
Committee Stage and Third Reading to be taken at this sitting**

135 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

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

**Immigration and Asylum Act 2018 –  
First Reading approved**

140 **Clerk:** A Bill for an Act to make fresh provision in relation to immigration and asylum and for connected purposes.

The Hon. the Chief Minister.

145 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to move that a Bill for an Act to make fresh provision in relation to immigration and asylum 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 make fresh provision in relation to immigration and asylum and for connected purposes be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

150 **Clerk:** The Immigration and Asylum Act 2018.

**Immigration and Asylum Act 2018 –  
Second Reading approved**

**Chief Minister (Hon. F R Picardo)** Mr Speaker, I have the honour to move that the Bill now be read a second time.

As the explanatory memorandum accompanying this Bill explains, the Bill updates and streamlines Gibraltar's immigration and asylum legislation, in particular by replacing the  
155 Immigration, Asylum and Refugee Act 1962 to make clearer and more transparent the requirements of Gibraltar's immigration system and, looking ahead to the outcome of the United Kingdom's departure from the European Union, to provide a framework which will be adaptable for the future.

The Act is intended to provide a clear and positive framework for those foreign nationals  
160 whom Gibraltar welcomes as key contributors to its workplaces and its economy, to provide an asylum and humanitarian protection regime based on the highest international standards but at the same time to provide a robust system for the refusal of entry and residence and the removal of those persons whose contribution to or whose presence in Gibraltar is not acceptable or is a threat to the safety and security of our community.

The Act comprises six parts and one schedule and I think it is absolutely timely that the House  
165 should now be considering this new Act in advance of the final outcome of the current Brexit negotiations to ensure that Gibraltar's immigration system is best placed to adapt to the future. This is not just about a new immigration relationship with the European Union, but also it is about tackling the increased security requirements on all governments around the world, to  
170 screen those who want to visit or live in a particular jurisdiction and to ensure that we can take effective action to exclude and remove those who represent a threat to our society.

Most obviously the Act updates the constitutional changes of the 2006 Constitution to reflect the respective roles of His Excellency the Governor and of the Ministers of Her Majesty's  
175 Government of Gibraltar in the administration of our affairs, in particular in relation to immigration. In fact, we have probably relied too long on officials using out of date means of implementing our immigration law and it is timely that we should be updating our legislation now as we prepare to leave the European Union.

The new Act will set out the principles of how our immigration controls will function and we expect that the basic framework it provides will be futureproof against the changes which Brexit  
180 may bring. Some changes will be relevant for those currently here under the provisions of EU law, as that will be inevitable, but there will not be any changes to the broad approach that we have been adopting until now. In fact, much will depend on the final picture of the text of the withdrawal agreement and the future arrangements between the United Kingdom and the European Union.

The extant 1962 Act has been added to over the years in a way which mixes principles and  
185 detail in a sometimes confusing way, and we shall bring forward sets of rules and regulations under this new Act to give those details and set out transparently, where possible, the conditions for entry into Gibraltar and the conditions applicable to those subject to immigration control in Gibraltar, and indeed also for setting out how people exercising what we have known  
190 until now as community rights can go about having their rights recognised.

The 1962 Act has been used to implement certain EU provisions, in particular the provisions of free movement of EU nationals and the penalties for those trafficking persons across the EU, and so we need to ensure that a future Act is coherent for the longer term after Brexit and that its structure is not reliant on EU provisions.

195 So essentially, Mr Speaker, we are replacing an Act that was done before we were members of the European Union and which has been adapted for the past 46 years to reflect our membership of the European Union, with a new Act that will preserve those parts of our membership of the European Union which are relevant going forward and will be adaptable to the new regimes that will apply in future as we leave the European Union.

200 Mr Speaker, Part 1 is a key innovation in the introduction of a Strategic Policy Committee to  
put formally into place the necessary co-operation between Government Departments on  
immigration issues, in particular as regards future employment requirements which Gibraltar  
has and the way in which immigrants to Gibraltar can contribute to our society. That is in  
particular set out in section 4. And given the close consideration which will need to be given to  
205 the status of EU nationals working in Gibraltar and the future impact of changes of EU law on  
our domestic immigration system, it is the Government's current intention to ask the Attorney  
General to chair this important Committee.

Part 2 of the Act sets out the basic principles of the structure of immigration control. Here,  
our overall policy objective is to ensure that a person subject to immigration control has a clear  
210 status and the opportunity to prolong or change that status at each stage of what we might call  
his immigration career in Gibraltar. When a person no longer has that status and if he does not  
leave voluntarily, the Act will provide powers for the authorities to respond to remove or  
ultimately to deport him. Each person I think will have greater clarity now of his or her status  
and of the expectations on him or her to stay within the law in Gibraltar.

215 A key provision in this new Act is the publication of Immigration Rules which will set out the  
Government's policy on the admission of those subject to immigration control. We have not had  
any such public document in Gibraltar before and my intention is to ensure that those wishing to  
visit or live in Gibraltar have publicly available information as to the requirements they will need  
to meet in order to come here. This will be at least an objective statement and will remove the  
220 subjectivity which decision-making can, on occasion, give rise to in this particularly sensitive  
area, and these rules will be non-legislative and will therefore be capable of swift change to take  
account of new categories of workers and investors which it may be in Gibraltar's interest to  
attract. Indeed, it should be said that it may be that there will be an element of turmoil in the  
context of the period after we leave the European Union, and if the United Kingdom and the  
225 European Union are not able to agree a settled status for future travellers or those wishing to  
settle between one area and the other – and that is not an impossible outcome of the period  
before 29th March 2019 – then these rules give us the flexibility to adapt as those issues are  
settled.

Finally, Mr Speaker, this second part of the Act sets out the different considerations for  
230 arrival by land, air and sea, and in particular hon. Members will see that in sections 16 to 18. It is  
interesting to note that despite being surrounded by British Gibraltar Territorial Waters on three  
sides, Gibraltar has not before had specific controls on entry by sea to Gibraltar. The approach  
we have taken now, as we move from almost zero, is a light touch one to reflect the nature of  
our important maritime business, not least cruise traffic, and to ensure that the position of those  
235 subject to immigration control is taken into account without being unduly burdensome.  
Nonetheless, of course, we have a duty to ensure that arrivals by sea do not represent a weak  
link in our security and immigration controls, and provided that the arrival of a person subject to  
immigration control is notified by either the Port Authority, or the captain of the vessel where  
no port authority exists, all persons will be deemed to have entered lawfully for a 24-hour  
240 period and after that can, if necessary, seek to extend their stay. That particular provision for  
extension is in 17(7) of the Act. A person with deemed leave may nonetheless be questioned by  
an immigration officer and be refused leave to enter, in which case deemed leave ceases to  
apply in appropriate circumstances.

Mr Speaker, Gibraltar's compliance with the international norms for the status of refugees  
245 and those seeking refuge is currently provided for via regulations which implement EU  
regulations on the subject. Now, Part 3 of the Act will set out the principles of providing asylum  
and humanitarian protection and largely replicates the existing EU base rules. It is, however, the  
Government's intention not to commence Part 3 of the Act nor those parts of this Act which  
provide for asylum appeals until the United Kingdom and Gibraltar have exited the European  
250 Union. That will avoid the complications of overlapping provisions for asylum procedures based



on EU and domestic law, given the earlier lack of domestic legislation on this very important issue.

255 Part 4 of the Act begins the enforcement aspects of the legislation. It defines precisely the categories of refusal for which the legislation provides and the rights of appeal against such refusal. Earlier legislation has provided a right of appeal only for those exercising community rights or applying for asylum. The Government has decided to introduce a general right of appeal for all applicants, save for certain limited categories which are set out in section 49, most obviously security cases but also those who have been admitted to Gibraltar for only a limited purpose.

260 Mr Speaker, the fifth part of the Act sets out a series of offences, many of which were already there in the 1962 Act, to address issues such as illegal entry, assisting such illegal entry and trafficking. These include those currently required as a result of EU instruments, but go more widely to tackle those who assist illegal immigration globally, something that all hon. Members will know is happening around us and sometimes has an effect on us. Given the pressure in  
265 certain areas internationally from human trafficking of persons escaping zones experiencing war and civil conflict, this is a most important provision to ensure that Gibraltar can play its own part in tackling such trafficking should it touch Gibraltar in any way.

Mr Speaker, finally, Part 6 contains the technical provisions for repeals, for savings, for transitional and consequential amendments resulting from the introduction of this Act, and this  
270 Part also includes, of course, the powers for differential commencement of the Act, which is relevant to my comments about the later commencement of Part 3 of the asylum procedures.

The Schedule is providing the powers relating to the different role which different agencies will fulfil in respect of the new Act.

275 Mr Speaker, I will be moving some minor amendments, of which hon. Members should have had notice, in the course of the Committee Stage, which are self-explanatory and which are contained in the letter which is being circulated, or has been circulated already, to all hon. Members.

280 Finally, Mr Speaker, one of the important parts of the administration of our immigration controls is the men and women of the Borders and Coastguard Agency. The Government is today appointing a new Chief Executive Officer of the agency, as provided for in section 10 of the Borders and Coastguard Agency Act 2011, and it is the Borders and Coastguard Agency that will be at the sharp end of the administration of much of the work that the new Immigration Act will require.

285 Mr Speaker, the Borders and Coastguard Agency Act 2011 was one of, if not the final Act of hon. Members opposite when they were in power, having received its Royal Assent on 5th October 2011 and having been commenced on 14th October of that year, weeks before we won the election.

290 I wish to congratulate Mr Aaron Chipol on his appointment to the role of Chief Executive Officer of the Borders and Coastguard Agency under section 10 of the Borders and Coastguard Agency Act, and I look forward to working with him in the future.

Mr Speaker, I commend the Bill to the House.

295 **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, there is much to be welcomed in relation to this legislation. It is a modernising piece of legislation that modernises an Act that was woefully out of date and indeed created very significant problems for a number of British citizens who had Gibraltarian status. Indeed, there had been a number of occasions, that across the floor of this House we  
300 have debated or discussed, where I have asked questions about situations where Gibraltarian men married to foreign women were blatantly discriminated against under the old legislation because their wives and indeed their children had no right of abode in Gibraltar, whereas if you

were a British national Gibraltarian woman married to a foreign man he had the right of abode in Gibraltar and indeed so did her children. So this is very welcome because it deals with those  
305 anomalous areas of discrimination that existed in the old law which were harking back to our colonial past. Indeed, there are other areas in this legislation which are very welcome indeed.

Mr Speaker, before the Opposition, however, makes a decision as to whether it is going to be supporting this Bill, or indeed abstaining – we will not be voting against – I would appreciate clarification from the Chief Minister on this. When I read this particular piece of legislation, I  
310 thought that – and indeed on this side of the House, the colleagues ... we discussed it, and indeed the leader of the GSD took the view that it may have been premature, because under the previous legislation, although section 7, which is the section on people who have a right of abode in Gibraltar ... If hon. Members look at 7(2), virtually all of them – in fact, all of them – relate to people with a connection one way or another to Gibraltar, and those were the people  
315 who had an automatic right of abode in Gibraltar. By virtue of European law, the position was that European nationals had the right of abode in Gibraltar by virtue of the free movement provisions in the various European treaties. Of course, you could discriminate against British nationals, and that is what allowed Members opposite in the 1990s to introduce legislation which allowed for discrimination against British nationals in the job market.

In this situation now, we are aware we are effectively looking at Brexit. We do not know, but potentially none of those free movement provisions are going to be applying to EU nationals, and in those circumstances it is right that Gibraltar might say, and the Hon. Chief Minister said, 'Well, look, we have got the possibility of introducing regulations where those regulations may extend rights of abode to European nationals in circumstances where British nationals may have  
320 a right of abode in European countries,' and we do not know what is going to be negotiated, although quite frankly it looks like the situation is rather pessimistic as it stands at the present moment in time. But our concern is British nationals. What happens to a British national who is resident in the United Kingdom, who wants to come to Gibraltar and reside in Gibraltar? There are very strong links between Gibraltar and the United Kingdom and we are concerned that this Act at this present moment in time may send the wrong message by restricting... And if I am  
325 wrong, the Hon. the Chief Minister will explain it to us and no doubt will persuade us that we are wrong, but I think that it sends a wrong message to have an Act at this present moment in time that restricts the ability of British nationals living in the United Kingdom to come to Gibraltar and have an automatic right of abode here in Gibraltar.

I understand that of course, administratively, if there is an application here in Gibraltar the Government and emanations of the Government could decide in any given situation to allow a British national wanting to come to Gibraltar the right of abode here in Gibraltar, the right to work here in Gibraltar, but at this moment in time we certainly feel uneasy about a situation where we are restricting the rights of British nationals living in the United Kingdom to come here  
330 to Gibraltar, to live here and to work here, in the way that this Act appears to us to do, Mr Speaker.

**Mr Speaker:** Before I call on the Chief Minister to reply, does any other hon. Member wish to speak on the general principles and merits of this Bill? The Hon. the Chief Minister.

**Hon. Chief Minister:** Well, Mr Speaker, I thought it was surprising that the hon. Gentleman would get up to welcome anything that I did without there being a spectre of a reason of trying to raise a ghost that might allow him to grab a headline. But he is, of course, as usual, going down a blind alley with a dead end.

There is absolutely no desire on the part of the Government to send any signal to the United Kingdom and to its citizens other than that of deep friendship and continued partnership going forward, nor indeed any intention to change the right of abode that United Kingdom born British citizens may have in Gibraltar in the future.

355 I have already said in the context of my speech that there is a lot that needs to be taken into  
consideration in coming months and years as we see what the conclusions of the discussions and  
negotiations between the United Kingdom and the European Union will be, and in particular the  
aspect that relates to Gibraltar in respect thereof. But in respect of British citizens there is  
absolutely no need for the hon. Gentleman to remind us of the things that were done in the  
360 context of the 1st July law, when I think at that stage he was a member of the GSLP, or a  
supporter of the GSLP – or he used to talk about his deep connection with the GSLP and used to  
accuse me of not being in the GSLP, except that now he wants to say that it is something that we  
did.

Well, Mr Speaker, it is something that happened in the 1990s for reasons that hon. Members  
are aware of. It is not something that is envisaged under the provisions of this Act, it is not  
365 something that is provided for under this Act, it is not something that is the intention of the  
Government, it is not the policy of the Government. We have not imagined the possibility of  
doing it, but the hon. Gentleman has. So if he thinks that there are any grounds on which one  
might want to discriminate against British citizens, we think he would be wrong to think that  
that is an appropriate road down which to progress and we have absolutely no desire  
370 whatsoever to pursue that road. Indeed, Mr Speaker, he will know that I think it is fair to say  
that the relationship between Her Majesty's Government of the United Kingdom today and Her  
Majesty's Government of Gibraltar today is stronger than it ever has been.

And so the hon. Gentleman is pursuing Casper the Ghost, but he is not here in the spirit of  
this legislation or in the letter of it.

375

**Mr Speaker:** I now put the question, which is that a Bill for an Act to make fresh provision in  
relation to immigration and asylum and for connected purposes be read a second time. Those in  
favour? (**Members:** Aye.) Those against?

380 **Hon. D A Feetham:** Abstain, Mr Speaker.

**Mr Speaker:** The Opposition abstain. Carried.

**Clerk:** The Immigration and Asylum Act 2018.

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

385 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to move 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.)

**Freedom of Information Bill 2016 –  
First Reading approved**

390 **Clerk:** A Bill for an Act to make provision for the disclosure of information held by public authorities or by persons providing services for them and for connected purposes.  
The Hon. the Deputy Chief Minister.

**Deputy Chief Minister (Hon. Dr J J Garcia):** I have the honour to move that a Bill for an Act to make provision for the disclosure of information held by public authorities or by persons providing services for them and for connected purposes be read a first time.

395 **Mr Speaker:** I now put the question, which is that a Bill for an Act to make provision for the disclosure of information held by public authorities or by persons providing services for them and for connected purposes be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

**Clerk:** The Freedom of Information Act 2016.

**Freedom of Information Bill 2016 –  
Second Reading approved**

400 **Deputy Chief Minister (Hon. Dr J J Garcia):** I have the honour to move that the Bill be now read a second time.

Mr Speaker, this Bill delivers a commitment from our General Election manifesto.

405 The House will know that a Command Paper in respect of the Bill was published on 9th February 2015. The practice of issuing Command Papers was introduced by this Government. It provides for a formal period of consultation with interested parties and with the general public. No comments were received from anyone during the standard period of consultation provided for under the Command Paper.

410 The Bill was first published on 14th May 2015. Lieutenant General Sir James Dutton was then the Governor. The Government owes the House an explanation as to the reasons why the legislation before us today has not been taken earlier. This had been the Government's intention. I should add that the Opposition has been informally kept abreast of developments throughout this period.

415 The cause of the delay was representations that the Government received from the United Kingdom government. A number of points were raised by the UK after the Bill was first published. These arose in relation to the application of the Bill both to the Office of the Governor and to communications between the Convent and the United Kingdom. There were lengthy discussions and a number of meetings took place throughout the spring and summer of 2015. A new wording was agreed between the UK and Gibraltar governments. That agreed wording was set out in a letter to the Speaker, which amended the Bill. The Government was then asked to hold back once again, so the Bill was not taken in Parliament, and instead the discussions continued.

425 Mrs Alison MacMillan was sworn in as interim Governor on 28th April 2015. In October, the Gibraltar Parliament was dissolved to make way for a General Election. A further wording was agreed after the election had taken place. Three changes were made to the Bill: first, the current clause 13 was added, entitled 'Governor's responsibilities and communications with the United Kingdom'; second, it was agreed that information exempt from disclosure under clause 13 would not be subject to review by the Information Commissioner – it would, however, be subject to challenge in the Supreme Court; and third, the ministerial certificate clause would not apply to

430 information exempt by clause 13. The Freedom of Information Bill was then amended once again. I should add at this point that a series of comments made to me in writing by the then GSD Opposition were incorporated into the Bill at that time. It was then republished on 24th December 2015 after the General Election. The second publication of the Bill resulted in a request for even further changes from London.

435 On 19th January 2016, Lieutenant General Ed Davis was sworn in as Governor. There were changes in personnel in London as well, particularly amongst Foreign Office legal advisers. Even more discussions took place. Those discussions continued throughout 2016 and into 2017. A number of proposals made to the Government were deemed to be unacceptable. I am happy to report, Mr Speaker, that the UK and Gibraltar governments have now, for the third time, agreed the areas under discussion. Those regulate how the legislation will operate in relation to the  
440 Office of the Governor and to correspondence between that Office and Her Majesty's Government in the United Kingdom.

Mr Speaker, this toing and froing accounts in large measure for the time that it has taken to discuss the Bill in this House. I have given notice that I will at Committee Stage move amendments to the Bill. Most of those amendments are the result of those discussions with the  
445 UK and the Office of the Governor.

Mr Speaker, the United Kingdom adopted Freedom of Information legislation in 2000. This covered England, Wales and Northern Ireland. Scotland has its own separate legislation, which dates to 2002. The UK Freedom of Information Bill was moved in the House of Commons by the then Home Secretary, Jack Straw. He opened by saying:

Unnecessary secrecy in Government and our public services has long been held to undermine good governance and public administration.

450 The recognition that secrecy without justification is not in the public interest is not a novel concept. The UK, for example, debated the matter for some 20 years before the Bill was finally introduced.

If I may, I would like to address certain general principles before dealing with other matters.

455 This Bill provides a basis upon which citizens will be entitled to access information that is held by public authorities. The basic principle of the Bill is that a person is entitled to information held by a public authority. The term 'information' is interpreted widely. It is defined in clause 2 as information recorded in any form. A public authority includes not just Government Departments but also a body or person that carries out functions of public administration.

460 The second premise of the Bill is that information should be disclosed unless there are reasons requiring it not to be disclosed. Clauses 3(3), 4(1) and 12(2) speak to that general theme. In other words, as far as possible and subject to specified exemptions, information requested should be made available. The Bill makes it clear that administrative discretion should be applied in favour of the disclosure of information. There are time limits, generally one month, in which information requests should be replied to.

465 The Bill establishes an Information Commissioner and provides for the Commissioner to give advice with regard to all matters relating to this legislation. This includes the question of the listing of public authorities in the schedule. The Information Commissioner will be the Gibraltar Regulatory Authority. Mr Speaker, I have given notice that I will at the Committee Stage move an amendment to the Bill so as to replace all references to 'Commissioner' with references to  
470 'Information Commissioner' in the interests of clarity.

475 The Government recognises that a successful implementation of this Act requires careful management. This is why, rather than apply the Act across the entirety of the administration in one go, the Bill in clause 3(1) provides a mechanism whereby public authorities are to be listed in the Schedule one or more at a time. This listing will take place as and when public authorities are deemed to be in a position to comply with the provisions of the Act.

The mechanism for gradually populating Schedule 1 will be precisely on the advice of the Information Commissioner. The objective is to allow for a smooth and successful implementation of the Freedom of Information regime. This process will allow the GRA to deal with the matter in a more structured way. The House should also note that the GRA intends to  
480 publish guidance notes for individuals and public authorities. This will explain exactly how it is envisaged that the legislation will work. There will be presentations made to Government Departments, to other public authorities and to interested parties.

Mr Speaker, the UK Act which was adopted in the year 2000, and therefore, did not come into force until 2005. In Malta, a Freedom of Information Act was published in 2008 but not fully  
485 commenced until three years later. The reason for this was because the public administration had to adapt itself to the new system. The same will happen in Gibraltar. In that context it is important to bear in mind that every Department and public authority will now have to designate an existing member of staff as a Freedom of Information Officer. This officer shall handle requests for documents submitted by the public.

Once a public authority has been listed in the schedule, there is scope for the bedding in to continue, in particular during the first 12 months after listing has taken place. In that regard, there is a power to extend the time period set out in the Bill by up to six months by regulation which may be made by the Minister.

Mr Speaker, I am grateful to former Opposition Member Mr Bossino, who in 2015 submitted his comments to the Government on the Bill that was published before the last General Election. A number of the suggestions made on behalf of the then Opposition have been taken on board and are now included in the Bill as it now stands. I am also grateful to the Leader of the Opposition, Mr Phillips. We have met to discuss the Bill and the Government has been happy to provide the clarification requested in certain areas.

Mr Speaker, a further general point that may assist the House in considering the Bill relates to the exemptions which are provided for. Most of the exemptions that are covered by the UK Freedom of Information Act are to some degree replicated, except for five exemptions which exist in the UK and which have not been included in this Bill.

The first is an absolute exemption for information which is the personal data of the requester. In the UK this falls under section 41. The purpose of section 41 of the UK Act is to require the requester to apply for information under the data protection legislation. The Bill allows for such a request, but clearly the Data Protection Act also applies.

The second exemption relates to information intended for future publication, as provided for in section 22 of the UK Act. This exemption is subject to the public interest test.

The third exemption relates to public authorities which conduct '(a) the audit of the accounts of other public authorities or (b) examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions'. The same effect can be achieved in Gibraltar by simply not listing such bodies in the Schedule.

The fourth exemption relates to communications with Her Majesty, the Royal Family or concerning honours, which is found in section 37 of the UK Act and is subject to the public interest test. Her Majesty's Government of Gibraltar does not engage in such communications and to the extent that the Convent does so, the rules are applicable to the Convent.

The fifth exemption covered in the UK by section 38 and subject to the public interest test is health and safety.

Turning now, Mr Speaker, to the specific provisions of this Bill, clause 3 provides a basis for the application of the legislation to public authorities.

Subclause (2) defines the circumstances in which a public authority is in possession of information. This occurs not only when it physically is in possession of the information but also when such information is held on its behalf by another person.

Part 2 of the Bill deals with access to information.

Clause 4 is of singular importance to the ethos of the Bill, setting out as it does that access to information is a legally enforceable right. It also sets out the eligibility criteria, which is based on age – a minimum of 18 years – and on residency.

530 Clause 5 sets out how to go about making an application to access information. It places two duties on the receiving public authority. In the first instance it requires that information is made available as soon as possible and in any event not later than one month, and that the information provided shall be up to date and accurate.

Clause 6 relates to the form and format of the information, which may be specified in the request. Reasons will be provided if the request cannot be complied with.

535 Clause 7 provides for an extension of the one-month period to two months where matters such as complexity and volume are an issue. The applicant will be informed in those circumstances where the complexity and volume of the information sought requires that additional time.

540 Clause 8 provides the basis for charging for information supplied, including how to treat requests for information where a public authority requires an advance payment. The scale of fees and charges is not contained in the Bill. As is common practice, such procedural matters are left to delegated legislation and thus a regulation-making power is included. The clause sets out the circumstances under which fees may not be charged. Where there is a charge to be levied, the public authority may seek advance payment after having notified the applicant.

545 There may be instances where a person seeking information is not able to formulate a request or may not be able to formulate it in such a manner as would allow a public authority to act on the request. Clause 9 therefore creates a duty for public authorities to assist both applicants and prospective applicants to the extent that it would be reasonable to expect such assistance to be given. Particular regard must be had to instances where requests may be formulated in too general a manner. In such instances, rather than refusing a request the public authority is under a duty to seek to assist the applicant in providing particulars that would allow the authority to respond.

550 Where the wrong public authority receives a request it knows that it must be addressed to another, it must, pursuant to clause 10, forward it and advise the applicant accordingly. Where an authority ceases to exist but its functions are taken over by another, the surviving public authority is required to deal with the request. Clause 10 also provides for the procedure to be followed where a public authority is defunct and its functions have also ceased. In such cases the functions will fall on a public authority which is nominated by the Minister or, absent such nomination, on the Gibraltar National Archives.

560 Where an applicant is not satisfied with the response by a public authority, clause 11 permits an applicant to refer the matter back to the public authority in question. On receipt, the public authority is required to revisit the matter and provide the applicant with written notification of its decision. Where it accepts that it has not complied with the provisions of the Act, it must set out the next steps and the time frame.

565 Mr Speaker, Part 3 of the Bill is about providing checks and balances. Freedom of Information cannot be safely operated without these. As such, clauses 12 and 13 deal with the exceptions to the duty to disclose.

570 In clause 12, for the exceptions in subclause (1) to apply, one of the exceptions in subclauses (4) and (5) must first be identified. In the case of subclause (5) there is also a public interest test to be performed.

By subclause (2) the presumption in favour of disclosure is made the default position.

Instances warranting non-disclosure include circumstances involving personal data, unreasonable requests etc., and these are set out in detail in subclauses (4) and (5).

575 In certain cases it may not be advisable to confirm the existence of the information sought. Such cases are catered for by subclause (6), which allows a response neither to confirm nor to deny the existence of the requested information.

Similarly, clause 13 sets out two exceptions to the right to information that relate to the Office of the Governor. The first is information that relates to the responsibilities of the Governor and the second is communications of the Office of the Governor, which is intended for communication to or discussions with UK government departments.

By virtue of subclause (2), these exceptions are subject to the public interest tests.

As in clause 12(6), subclause (3) allows a response to neither confirm nor deny the existence of the information. The reliance on an exception under this clause is not the subject of review by the Information Commissioner but can be the subject of an appeal to the Supreme Court under clause 20.

As previously alluded to, personal data may fall within the exception to the general rule. Clause 14 provides further details and is to be read in conjunction with the Data Protection Act 2004 to identify the sort of data which may properly be withheld.

The refusal of a request for disclosure under clauses 12(1), 13 or 14(1) needs to be made in writing pursuant to clause 15. Such notifications have to set out the reasons, including any exception relied upon. The applicant will also be informed of the right to ask for the matter to be reconsidered and also of the possibility of applying to the Information Commissioner for a determination, if applicable.

Notwithstanding the need for greater openness, there are occasions where disclosure would not serve the wider public interest. In such cases, as is provided for in clause 16, it is appropriate for the matter to be dealt with by a ministerial certificate.

Part 4 of the Bill makes provision for redress and other matters. Clause 17 of the Bill creates an Information Commissioner, which by subclause (2) is the Gibraltar Regulatory Authority. The function of the Commissioner is to determine, upon receipt of an application to that effect, whether a public authority has complied with the provisions of the Act. The Commissioner will either not make a decision, stating the grounds and informing the applicant of the same under the right of appeal, or serve a notice on the public authority setting out the steps to be taken.

At the Committee Stage I will be moving an amendment to the Bill in order to insert a new clause 17(a). This new clause will introduce a mechanism of consultation with the Office of the Governor where a public authority receives an application for information that relates to the responsibilities of the Governor. In such a case a public authority is under a duty to consult with the Office of the Governor prior to disclosure.

Clause 18 explains the role of the Commissioner in the context of the matters contained in the Act.

Where the Commissioner needs information in order to carry out its duties under the Act it may seek this from a public authority via an information notice in clause 19.

Clause 20 confers jurisdiction on the Supreme Court to hear appeals from the Governor's decision under clause 13 and the Commissioner's decision under clause 17.

A regulation-making power is set out in clause 21.

Mr Speaker, we are breaking new ground here in Gibraltar with this legislation. This is the first time that Freedom of Information legislation will go down on our statute books. Members will know, as I said earlier, that the UK has had such an Act on its books since 2000 and for Scotland since 2002.

The House will recall that former Prime Minister Tony Blair, who was ultimately responsible for adopting the UK Act, has since described it as one of the biggest mistakes of his career. In the UK around 120,000 requests are generated each year, 60% of which come from private citizens, and the Act cost £35.5 million to implement in 2005.

On 17th July 2015 the UK established an Independent Commission on Freedom of Information in order to review the workings of the Act a decade after it came into force. It was an advisory non-departmental public body. The Commission reported in March 2016 and concluded that the UK Act was generally working well. However, it made 21 recommendations to improve clarity and certainty around the operations of the Act. The Commission was dissolved after it reported.



630 Mr Speaker, our Freedom of Information legislation, like that of the UK and indeed  
elsewhere, will not be set in stone. On the contrary, it is essential that the workings of the Act  
are properly monitored. This is all the more so given that this process will be completely new  
635 both to the public and for the administration itself. This oversight of the workings of the Act will  
be achieved through annual reports which will be submitted by the Information Commissioner  
and tabled before Parliament by the Minister in accordance with clause 22. Those reports will  
640 provide this House with the opportunity to assess how the system has worked and to identify  
any changes that may be required to the manner of its operation in the future. Therefore,  
Mr Speaker, the Government is fully committed to a full review of the workings of the Act in  
order to assess its operation. However, we believe that it is essential to ensure that the  
framework is finally in the statute books in order to get that process going; otherwise, the  
legislation will never get off the ground.

Mr Speaker, at Committee Stage I will be moving an amendment to the Bill to introduce a  
new clause 23 to make consequential amendments to the Data Protection Act 2004 and  
subsidiary legislation. This will mean that the term 'Information Commissioner' used in this Bill  
shall apply to the Data Protection Act and related subsidiary legislation to ensure uniformity.

645 Mr Speaker, I commend the 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 the Bill? Yes, the Hon. the Leader of the Opposition.

650 **Hon. E J Phillips:** Mr Speaker, today we are debating part of cornerstone GSLP/Liberal policy;  
that is to say the GSLP/Liberal Alliance's self-proclaimed commitment to open and transparent  
Government. During the 2011 election campaign the GSLP unveiled with much fanfare their New  
Dawn manifesto, which promised our community a new style of government. In fact, I think it  
was the Hon. the Deputy Chief Minister who said, 'We will be absolutely implacable in the  
655 pursuit of changing the political system.'

Mr Speaker, in principle, the Freedom of Information Bill, which advances open government,  
is welcomed by those of us on this side of the House. However we have a number of comments  
on the Bill, particularly the application of section 12(4)(f)(i) to (v).

660 Before we deal with those points it is worth reflecting on the fact that it has taken the  
Government over six years and two General Elections to bring this Bill to the House – although I  
do appreciate the difficulties encountered by the Government, and particularly the Deputy Chief  
Minister, in dealing with elements outside the control of the Deputy Chief Minister, particularly  
with those that emanate from London.

In their Strongest Foundations manifesto the GSLP/Liberal Alliance committed to:

legislate to create the right for every citizen to have access to all Government information under a Freedom of  
Information Act based on the legislation in the UK. Subject to certain exceptions, this will allow every citizen to  
obtain copies of any Government documents – as the Government belongs to you and should not be controlled  
for the benefit of a privileged few.

665 I am, Mr Speaker, grateful to the Hon. the Deputy Chief Minister, who met with me in order  
to allow me to share our concerns about the Bill. A number of largely mechanical and specific  
questions that we had in relation to the operation of the proposed legislation have been  
answered by the Deputy Chief Minister in our engagement and to some degree we are satisfied  
by those responses.

670 Our overarching comment is that the Bill as currently drafted could benefit from more  
fleshing out, and I note what the Deputy Chief Minister said about getting the foundation of this  
on the statute books now – or the framework, should I say – so that we can deal with any future  
amendments post a workable Freedom of Information Act coming into place. I also welcome the  
further explanation as to the operation of 12(4)(f)(i) to (v).

675 I am told in not so many words, and it has been repeated by the Deputy Chief Minister again today, that the proposed Act will radically change the way in which the citizens of our community interact with the state and request disclosure of documents which would have otherwise not been available to the public.

680 Mr Speaker, the Deputy Chief Minister has given us on this side of the House reassurances as to the proposed Act's remit and application and further explanation as to our question on section 12(4)(f). Subject to clarification on the points that we raise in relation to 12(4)(f)(i) to (v), we will support this Bill. We have been told that it is important to ensure that this piece of legislation is added to the statute books, and to some extent there will be much learning to do and potentially amendments once we have been given the opportunity to see how this type of  
685 legislation can operate in the context of our resources and existing infrastructure.

I think the Deputy Chief Minister said in his contribution in moving the Bill that this has cost the taxpayer in the United Kingdom in 2005 some £35 million, so quite clearly it is going to ... It remains to be seen what type of request we will see and how our resources will be able to react to requests of this nature.

690 In light of what we have said, Mr Speaker, and in the event that after assessing how this Bill will operate in practice, should this legislation not deliver the required access to Government documents in the way that has been promised we would expect the Government to promote amendments before this House.

It is clear that the architecture of the Bill currently before Parliament has some features of the United Kingdom's Freedom of Information Act 2000 but it is not entirely based on it. There are a number of critical and significant differences. Whilst we on this side of the House do not support the wholesale copy and pasting of UK legislation on our statute books, given that we are our own jurisdiction and what may be good for the UK may not necessarily be good for Gibraltar, it is right that we learn from other nations' experiences, especially in relation to nations which  
695 have systems of laws that closely resemble our own.  
700

The purpose of the Freedom of Information legislation is to confer a statutory right to access information in relation to bodies that exercise functions of a public nature. The explanatory note to the Bill before the House states:

This Act provides for the disclosure of information held by public authorities or by persons providing services for them.

705 Mr Speaker, we will advance four points. The first one we make is in relation to the very description contained in the explanatory note. The United Kingdom Act, for instance, covers three distinct bodies: (1) one public authorities; (2) quasi-public authorities, such as the BBC; and (3) publicly owned companies, i.e. companies which are wholly owned by the government or a public authority.

710 For the purposes of the UK Act, the definition of 'public authority' encompasses, for example, any and all government departments: the House of Commons; the House of Lords, which is included in Schedule 1 to the UK Act; public authorities, such as local government, a creature of statute – the Local Government Act 1972; the National Health Service; higher education institutions, such as universities and colleges of further education; police authorities; other quasi bodies, such as the Advisory Council on Misuse of Drugs; the British Broadcasting Corporation I  
715 said earlier; the Civil Aviation Authority; the General Medical Council; and lastly, importantly, any wholly owned companies of a public authority or quasi-public authority.

Interestingly, universities are caught by this legislation. Many in this House may remember the challenges by certain redbrick universities and Oxford and Cambridge in relation to the extent to why they should be subject to Freedom of Information. No amendments or any private  
720 Member's Bill have been brought to the United Kingdom to amend that, as far as I understand the position, and they are all caught by the Freedom of Information Act in the United Kingdom.

725 Mr Speaker, on the face of section 2 of the Bill it would appear that the Government has made provision for the Minister to schedule, as described by the Deputy Chief Minister, a list of public authorities which are within the definition of 'public authority'. I have been given certain assurances by the Deputy Chief Minister that examples would include the Gibraltar Broadcasting Corporation, the University of Gibraltar, the Gibraltar International Bank and GJBS to name a few. I believe that all of us in this House and the general public would welcome a further explanation by the Deputy Chief Minister in that regard.

730 I know, from our very useful meeting that we had in relation to this Act, that there was every intention, as far as I understand the conversation I had with the Deputy Chief Minister, that they would all be included, and in the context of this, Freedom of Information legislation will be scheduled, as he has quite rightly said, by the Information Commissioner – but I would reiterate our request for clarification as to the extent to which that will be operational.

735 I did speak to the Deputy Chief Minister, Mr Speaker, about an amendment that was being moved to the Freedom of Information legislation in the United Kingdom by an MP there, in which it is suggested that even private companies that are offering services to the government may well be caught by that legislation if the amendment is moved at the Second Reading in the Westminster Parliament in October of this year. We on this side of the House consider that all bodies exercising functions of a public nature as defined in the Act should be captured by the definition of public authority. As the Hon. Deputy Chief Minister will appreciate, we have set out those concerns to him at the meeting and we would welcome a further explanation as to that.

740 Mr Speaker the second point that we raise is in relation to section 12(4)(b): a public authority may refuse to disclose information which is manifestly unreasonable. In our exchange, and as the Deputy Chief Minister is aware, the United Kingdom includes provisions in its Act for exemptions where the cost of compliance of the request exceeds an inappropriate amount and a provision for exemptions in relation to vexatious requests. In relation to the former, the public authority may charge for the provision of information where the request exceeds an appropriate amount, therefore protecting the right to access information even if the request is excessive.

745 It therefore seems to us on this side of the House that the Authority could reject a request that it believes to be manifestly unreasonable by reference to section 12(4)(d). If the request for information is formulated in too general a manner it can be refused by a public authority, which would seem to suggest that this deals with subject matter rather than volume. Logically, the words 'manifestly unreasonable' must relate to volume of the request, and if that is the case we do not understand why a public authority, when receiving a request, should refuse the request on that basis.

750 The United Kingdom Act does not deal with manifestly unreasonable requests, I assume given the resources available to it. However, it does provide for the refusal of requests which are vexatious, which the Deputy Chief Minister may wish to further consider. I know that we have had an exchange on this point. The Deputy Chief Minister has made the point that we may need to see how this particular section operates in practice, given that we clearly do not have the resources available that would otherwise be available to the United Kingdom, for instance.

755 The third point, Mr Speaker, is in relation to the 20-year rule. On 27th October 2015 the GSLP issued a report and policy paper on democracy, in which they referred to the implementation of a rule to disclose historic Government documents under a 20-year rule, proudly attempting to demonstrate that they had gone further than the United Kingdom legislature. The Government also committed to working on storing many historic Government documents electronically. This will make them searchable more easily for research and disclosure purposes, and it was said 'this is also an important part of the exercise of modernising the archive material available to all'. Mr Speaker, we have asked why the 20-year rule could not be included in this legislation and I am told that it appears to be working well in isolation, and therefore there are no plans, as far as I understand the Deputy Chief Minister's position, to centralise this within any process envisaged by the current Bill before the House. Apart from the practical implication, we would have thought that the 20-year rule should be embodied in statute rather than just a mere reference in

775 the manifesto and in fact the completion of that manifesto commitment and policy, and it is right in our view to give it a statutory footing.

Mr Speaker, the fourth point and probably the most difficult point in relation to the Freedom of Information is the exemptions that are set out at section 12(4)(f) of the Bill, which provides that a public authority may refuse a request which involves:

- (i) internal communications, including communications between public authorities,
- (ii) cabinet documents (whether in draft form or otherwise),
- (iii) communications between Ministers,
- (iv) briefing papers specifically prepared for the use of a Minister in relation to a matter submitted, or proposed to be submitted to Cabinet,

780 It is worth pausing at this point and reminding the House of the promise in 2011 and 2015 General Elections. They promised access to all Government documents and copies of any Government documents. It would appear, Mr Speaker, on the face of section 12(4)(f), that this may be curtailed and it would be helpful if the Chief Minister could in some detail allay our concerns in relation to this point. It would be helpful also if the Deputy Chief Minister could clarify what documents the public could request as a matter ... as it would appear that the right to access is being curtailed by this specific provision.

785 Mr Speaker, although the Deputy Chief Minister in his contribution to the House looked at various aspects of the UK Act, including I think section 31, it should be noted that the UK does not have equivalent provision in the Freedom of Information Act 2000. The United Kingdom does, however, provide that if a request for disclosure would be prejudicial to the effective conduct of public affairs, then it can be refused – and I refer the hon. Gentleman to section 36 of that particular Act. In our view, we may be, depending on what the Deputy Chief Minister says about this point, looking down the wrong end of the telescope and restricting the provision of information.

790 Mr Speaker, in summary, what the Bill does is create an absolute exemption to Government documents listed in section 12(4)(f)(i) to (v). In our view, there should be some form of qualified exemption which protects the right of the citizen to request information and also protects the Government from disclosing documents which would be prejudicial to the effective conduct of public affairs.

800 Mr Speaker, in summary, this is an important piece of legislation for our community and we do need to get it right. We on this side of the House will support the principle and rationale behind the Freedom of Information, but we must highlight the potential pitfalls and possible lack of statutory muscle in relation to the right to access of Government documents. And I do very much appreciate the Deputy Chief Minister's comment as to the reason why we are doing it now – otherwise this legislation will never get off the ground – but we would just highlight those potential pitfalls.

805 Mr Speaker, we offer our comments in a genuine way so that the passing of this Bill does not represent a missed opportunity for this community. As proponents of constructive and progressive engagement with the Government, we on this side of the House do not wish to oppose for the sake of opposing. It is for those reasons I have articulated, and despite the reservations in some of my comments that I have had, which in part have been allayed by the meeting I have had with the Deputy Chief Minister, I can confirm that the Opposition will support the Bill.

810 The only other approach that we could have taken in respect to this Bill was to propose a motion after the Second Reading under Rule 32, seeking the committal of the Bill to a select committee of the House. But given the Deputy Chief Minister's very productive meeting with us in relation to the comments that we have got on the Bill, we thought it helpful – and we agree with his analysis in terms of getting this Bill on the statute book so that we can at least take Freedom of Information forward in a positive way – that we would support the Bill at this stage

820 despite those reservations, and therefore this side of the House will be supporting the Bill,  
Mr Speaker.

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

825 I call on the mover to reply.

**Hon. Deputy Chief Minister:** Mr Speaker, let me say first of all I am very grateful to the hon. Member for the tone of his contribution and for his constructive approach throughout this long wait we have had to endure to bring the Bill before the House. I will attempt to answer some of his points as I go down the list here in my notes, but obviously I understand ... I will try to do that  
830 in the same tone and the same constructive way in which he did it, but he will forgive me if I have to point out a few points as I go along.

The hon. Member referred to our manifestos of 2011 and 2015 and he correctly highlighted the references made there to Freedom of Information and to it being based on UK legislation subject to certain exemptions, and it is correct to say that. I think I mentioned when we spoke  
835 that we had also looked at the legislation in other territories and in other jurisdictions, particularly in small jurisdictions. Bearing in mind the issues that had arisen in the United Kingdom itself with Freedom of Information and how the Prime Minister who introduced it, Tony Blair, described it as one of the worst decisions he had ever made, and the cost of implementing the legislation and the burden on the public administration, I think it is fair to say  
840 we wanted to be cautious in the approach we took to this and obviously to leave the door open to a full review of the way the system has worked. I think the hon. Member has indeed understood and acknowledge that.

In the same way, I am sure he will forgive me if I point out that Freedom of Information in the Gibraltar context was not something which we had invented and this was in the GSD manifesto  
845 in 1996 as something which was going to happen in that period of time –

**Chief Minister (Hon. F R Picardo):** You would never have guessed.

**Hon. Deputy Chief Minister:** – and then it was repeated in the 2000 manifesto as something that was going to happen in that term of office, and it did not happen either. And then in 2003  
850 **(Hon. Chief Minister: Intractable.)** there was a reference to ‘availability of information’ rather than to Freedom of Information. But I say this in the spirit and in the constructive way in which the hon. Member has framed his own contribution before the House this morning.

I will just go down the points the hon. Member made. As I said, I will just answer the point on  
855 the six years and two General Elections: I think it was 16 years and three General Elections, or four General Elections, in their case.

The hon. Member is correct when he says that the Act will change and will evolve. It is true. That is what we expect and it is the undertaking that I have given the House, that it is something which needs to be looked at. It is not set in stone. We do need to see how it works. The whole of  
860 the public administration will be involved in the implementation of this Act, depending obviously where the questions are asked, so it is a mammoth exercise and something which is completely new to the system.

The hon. Member referred to the 20-year rule and that is a totally separate process which is not included in the Freedom of Information Act. As I understand it, in the UK they have the  
865 30-year rule, which is not included in their Freedom of Information legislation either. But the reality is that in Gibraltar it seems to have worked well. We have had instances of members of the public requesting specific information. I recall at the very beginning one case that came to me from a former Leader of the Opposition who was interested in specific minutes of the Gibraltar Council which involved him. That went through the system and it came to me and I  
870 said, ‘Look, this is something which should be determined by the Chief Secretary, not by the

political Government,' so it went to the Chief Secretary of the time. I understand the information was disclosed to the person responsible. I am not aware of... No other requests have come to me, so the system, as we understand it in terms of these historical documents, seems to be working well, so I see no reason to change that – only to point out that it is not included in the UK Freedom of Information legislation either.

I think there is also a considerable amount of online data which is available now which obviously was not available earlier, and this did not exist before, apart from the fact that the archivist himself is very involved in extracting and extrapolating information and putting that information online to allow researchers and others to have access to that information from wherever in the world they may be. I think that process is also working well, independently of the Freedom of Information legislation.

As I said, it is not based on the UK only; we have learned from others. For example, in Guernsey there is no Freedom of Information legislation. They have a Code of Practice on Freedom of Information which sets out what it is that Members should be doing but not what they have to do, and there are no legally enforceable rights. We took the view that we would go further than them.

On the point of defining the public authorities and who you include in the Act or not, this is a discussion, as he rightly says, that we had when we met. I pointed out to him that although there are a number of categories which are listed in terms of what authorities should be included, there is a reference in clause (d) of the definition which allows the Minister to actually list a person or body declared by the Minister to be a public authority, and there are some of the persons or bodies that he mentioned where we would feel this should apply. But again there is a general caveat to all of this, which is that this is already a wide enough exercise as it is with only Government Departments, agencies and bodies, let alone extending that to other entities. But as I said, it is something the Government sees happening in the future. I would not be prepared to commit to which entities that would apply to, but certainly the power is there to go as far as – or further, indeed – than the UK.

When he asked me the question, the answer the drafters provided for me is that the UK provides for full designations also in a similar way, and that in general the UK public authorities include government departments, local authorities, the NHS, state schools and police forces. It does not necessarily cover every organisation that receives public money – for example, it does not cover some charities that receive grants and certain public sector organisations that perform public functions – but the discretion is there for the Minister or for the government of the day, this Government or any other government, to take a policy decision as to who to include or not as a public authority which would then be covered by the definition of the Act.

**Hon. E J Phillips:** Could you possibly just give way for one minute?

**Hon. Deputy Chief Minister:** Yes.

**Hon. E J Phillips:** I am grateful to the Deputy Chief Minister for giving way just on this particular point.

What I did raise in my contribution was the specific statutory provision available in the United Kingdom for publicly owned companies to be scheduled in the context of their legislation. I think what I asked him for is clarification as to whether that is the intention of the Government – I think it is section 36 of their Act – to include publicly owned companies in the context of Freedom of Information requests.

I am grateful to the hon. Member for giving way.

**Hon. Deputy Chief Minister:** Mr Speaker, the definition of 'public authority' at the moment includes, as the hon. Member said:

- (a) government departments;
- (b) any other body or other person, that carries out functions of public administration;
- (c) any other body or other person, that is under the control of a person falling within paragraphs (a) or (b) and—
  - (i) has public responsibilities,
  - (ii) exercises functions of a public nature, or
  - (iii) provides public services, or clause (d)

– which I referred to –

- (d) a person or body declared by the Minister to be a public authority.

925 The Government has not really considered this in terms of how far we are going to go, but certainly we are going to start with all the Departments, agencies, authorities and anything that comes under that definition, but then there is the scope and the power there to extend that even further at a given moment in time should we or any future government wish to do so.

930 The hon. Member then referred to clause 12(4)(b) on the ‘manifestly unreasonable’ point. On that one, when the question was asked the drafters did agree that there is a legal difference between vexatious and unreasonable requests. That distinction is made in the UK. Section 14 is headed ‘Vexatious or repeated requests’ and includes those requests which are groundless and those which are made repeatedly by the same person. ‘Unreasonable’, in the absence of a definition, will be interpreted here having regard to the particular circumstances of the case. It could be a vexatious request in terms of the UK definition, but it could also be one where the volume is such or even the costs are such that it would not be reasonable to expect the public authority to comply. But again, I think because we are breaking new ground here, all this would fall under that area where we really need to wait and see how it works and what type of requests come in, and that would allow us to take a view as to whether this is something which needs to be tightened up in the future.

940 I think the hon. Member then made the final reference to placing the Act before a select committee. I mentioned to him when we met that I felt that would simply delay the legislation further still and that we felt it was better, as a matter of policy, to put it on the statute books and get it working as soon as we can, then be able to review it fully once we are in the position to do that.

945 Thank you.

**Mr Speaker:** I now put the question, which is that a Bill for an Act to make provision for the disclosure of information held by public authorities or by persons providing services for them and for connected purposes be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

950

**Clerk:** The Freedom of Information Act 2015.

**Freedom of Information Bill 2016 –  
Committee Stage and Third Reading to be taken at this sitting**

**Deputy Chief Minister (Hon. Dr J J Garcia):** 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.

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

**European Parliamentary Elections (Amendment) Act 2018 –  
First Reading approved**

**Clerk:** A Bill for an Act to amend the European Parliamentary Elections Act 2004. The Hon. the Deputy Chief Minister.

960 **Deputy Chief Minister (Hon. Dr J J Garcia):** Mr Speaker, I have the honour to move that a Bill for an Act to amend the European Parliamentary Elections Act 2004 be read a first time.

**Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the European Parliamentary Elections Act 2004 be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

965

**Clerk:** The European Parliamentary Elections (Amendment) Act 2018.

**European Parliamentary Elections (Amendment) Act 2018 –  
Second Reading approved**

**Deputy Chief Minister (Hon. Dr J J Garcia):** Mr Speaker, I have the honour to move that a Bill for the European Parliamentary Elections (Amendment) Act 2018 be read a second time.

970 Mr Speaker, this is probably the first consequence of our departure from the European Union and that is why this Act has been brought before the House today.

The elections to the European Parliament were last held in May 2014. They are held every five years and are thus scheduled to be held again in May 2019. This therefore necessitates an amendment to the European Parliamentary Elections Act 2004. This is because section 9(2) of Schedule 1 of the European Parliamentary Elections Act 2004 requires that a canvass be held on 15th October in any year preceding a European parliamentary election. This obliges us to conduct a canvass in October of this year, Mr Speaker. Given that it seems we will not participate in future EU elections, this would seem to be a futile and costly exercise to carry out. The Bill simply replaces a date for a canvass as set out above to a date to be appointed by the Chief Minister by notice in the Gazette. The Government intends to repeal the European Parliamentary Elections Act 2004 in our EU Withdrawal Bill. The reason we are not repealing the Act in this Bill is because the European Parliamentary Elections Act 2004 works in conjunction with UK legislation on European elections which apply to Gibraltar. The UK's EU Withdrawal Act 2018 will repeal the UK's European Parliamentary Elections Act 2002, but that provision has not yet been brought into force.

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

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

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**Hon. E J Phillips:** Mr Speaker, we will support this Bill. Clearly we would not want to involve ourselves in a futile task as described by the Deputy Chief Minister, and clearly, which would lead to a huge cost to the public purse, and therefore we support this Bill.

995 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the European Parliamentary Elections Act 2004 be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

**Clerk:** The European Parliamentary Elections (Amendment) Act 2018.



**European Parliamentary Elections (Amendment) Act 2018 –  
Committee Stage and Third Reading to be taken at this sitting**

1000 **Deputy Chief Minister (Hon. Dr J J Garcia):** 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.)

**Heritage and Antiquities Bill 2018 –  
First Reading approved**

1005 **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  
1010 the Gibraltar Heritage Trust and for connected purposes.

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):**  
1015 Mr Speaker, I have the honour to move that 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  
1020 connected matters be read a first time.

**Mr Speaker:** I now put the question, which is that 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  
1025 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 be read a first time. Those in favour? (**Members:** Aye.) Those against?  
Carried.

1030

**Clerk:** The Heritage and Antiquities Act 2018.

**Heritage and Antiquities Bill 2018 –  
Second Reading approved**

**Minister for the Environment, Energy, Climate Change and Education (Hon. Dr J E Cortes):**  
Mr Speaker, I beg to move that the Bill for the Heritage and Antiquities Act 2018 be read a second time.

1035 I do this approximately 18 years after the Government of the time undertook to review Gibraltar's heritage legislation and I am extremely pleased and proud to be doing so.

This Bill creates a new Heritage and Antiquities Act in order to reform and strengthen legislation pertaining to Gibraltar's heritage.

1040 I will now proceed with the main changes brought about by the Bill, but I do refer, Mr Speaker, to my letter to you of 13th of July. Although extensive, the proposed amendments at Committee Stage follow constructive discussions with the hon. Members opposite, the Hon. Roy Clinton and the Hon. Trevor Hammond, and with the board of the Gibraltar Heritage Trust. I am grateful particularly to the Members opposite for the constructive way in which they have gone about responding to this Bill, and indeed to the Heritage Trust, the National Museum and  
1045 many others who have contributed to bringing us to where we are now. They also adjust a number of typographical errors.

Mr Speaker, Part 1 contains preliminary matters concerning the Bill. Under this Part, specifically clause 3, reference to an antiquity has been extended to include an object of interest. Consequently, this widens its definition, since it now encompasses an antiquity *or*  
1050 object of interest. It includes, for example:

any object, whether movable or part of immovable property, which is a work of architecture, sculpture, graphic art, painting or any form of art or craftsmanship;

The scope of the application of the Bill is established in clause 4. This provision sets out that the Bill shall apply to the following four categories:

- (a) antiquities or objects of interest;
- (b) scheduled monuments or buildings;
- (c) scheduled historical conservation areas and scheduled archaeological areas; and
- (d) archaeological or historical areas of interest not scheduled under this Act, and these are situated in Gibraltar, whether on land or within British Gibraltar territorial waters.

1055 These four categories are at the heart of the Bill. They comprise Gibraltar's heritage and the provisions in the Bill are drafted with them in mind. They are a welcome change, providing structure and a clear departure from the current 1989 Act.

1060 Part 2 of the Bill establishes the Heritage and Antiquities Advisory Council (HAAC). This is a new body. The functions of this body are wide and varied and include making its views known to the Minister on how to promote and secure the conservation, protection and enhancement of Gibraltar's heritage, fostering understanding and facilitating the enjoyment of Gibraltar's heritage, advising on Gibraltar's heritage – for example, advising that any activity in relation to Gibraltar's heritage always be carried out in a sustainable manner by a suitably qualified person, and identifying present and future issues which require or may require addressing in relation to Gibraltar's heritage. They also include, as per amendments contained in my letter to you, Mr Speaker, a requirement to consult owners of monuments or buildings before any action is  
1065 taken on private property.

1070 Additionally, Schedule 1 sets out procedural matters relating to the HAAC and its constitution. In discharging its functions it must take account of certain prescribed matters, including the need for social, cultural and economic development in Gibraltar and the interests of the community in general. As well as the HAAC, in cases where the Minister requires advice on specific matters he may appoint other ad hoc advisory committees.

Part 3 of the Bill focuses on one of the categories outlined above concerning Gibraltar's heritage, namely the protection of monuments and buildings. It provides a definition of 'monument or building' and 'site of monument or building' which, as per my letter to you, Mr Speaker, has been amended so that the definition applies throughout the Bill. It operates on the basis of listing in Schedule 2 those monuments or buildings or sites of monuments or buildings, therein referred to as 'scheduled monuments or buildings', that should benefit from a regime of protection from damage or alteration through works. Damage, including damage by demolition through to depositing any refuse, rubbish or litter, is considered an offence.

It must be mentioned that the inclusion of any monuments or buildings or sites of monuments or buildings in Schedule 2 is done by order published in the Gazette. Furthermore, before making a said order to include, remove or amend an entry in the Schedule, the Minister must consult the HAAC, any other body which appears to him to have special knowledge and, where there may be ecological or other environmental implications, the Nature Conservancy Council. As can be appreciated from this consultation requirement, careful consideration will be given before a monument or building or site of monument or building is included in Schedule 2.

Furthermore, it must be noticed that works to a scheduled building or monument may be undertaken provided these have been authorised by the Minister with the issue of scheduled monument or building consent. Consent can be given subject to conditions pursuant to clause 15 and they may be modified, if the need arises, under clause 16.

Furthermore, where urgent preservation is required, the Minister may order remedial works to be undertaken and the cost thereof be recovered from the owner of the scheduled monument or building under clause 17.

Part 4 pertains to historical conservation areas. It allows certain areas of important architectural or historical interest to be listed under Schedule 3 as scheduled historical conservation areas. Inclusion of historical conservation areas in Schedule 3 will operate in much the same way as the system in place for listing of monuments or buildings in Schedule 2, by publication in the Gazette after the required consultation.

Again, as with entries in Schedule 2, demolition of scheduled historical conservation areas contained in Schedule 3 may only be undertaken provided it is authorised by the Minister with the issue of historical conservation area consent.

Mr Speaker, in the case of unoccupied structures within a scheduled historical conservation area the Minister may authorise urgent works to be carried out to the unoccupied structure if, following a report submitted by the HAAC or otherwise, it appears to him necessary for the preservation of the scheduled historical conservation area.

Part 5 deals with archaeological areas and archaeological findings. By listing an area under Schedule 4 as a scheduled archaeological area, operations that may be carried out within that area are restricted. As with other scheduled entries, scheduled archaeological area consent is required from the Minister. If any antiquity or object of interest is found within such an area, a person is required to report his findings to a police officer or to the curator within a prescribed period of time – that is 24 hours after the object has been found. Mr Speaker, no areas have as yet been entered in Schedules 3 and 4 and these will be considered by the newly constituted HAAC.

Part 6 provides for the appointment of an Archaeological Officer. It sets out the qualification required and the general functions of the post. Essentially the Archaeological Officer will advise Government on archaeological heritage and conservation matters and be responsible to the Minister. This is a new role absent in the 1989 Act.

Part 7 pertains to the Gibraltar National Museum. It provides for the appointment of a Curator and sets out his general functions. Property in the museum held by the Curator vests in the Crown, subject always to the terms on which they were acquired. Furthermore, property vested in the Crown in right of the Government of Gibraltar is held for the benefit and enjoyment of the public.

Part 8 establishes the Gibraltar National Archives and provides for the appointment of an Archivist and the role and general functions of the post. This was absent in the 1989 Act and falls under the responsibility of the Minister responsible for archives.

1125 Part 9 concerns the Gibraltar Heritage Trust. It specifically provides that albeit the 1989 Act shall be repealed, the Trust will continue to exist and operate as if it had been established under this Act instead. The functions, constitution and procedures of the Trust are contained in Schedule 5.

1130 Miscellaneous provisions are included under part 10, namely the creation of a register of scheduled monuments or buildings, scheduled historical conservation areas and scheduled archaeological areas. It also contains provisions on restrictions on the removal of antiquities or objects of interest from Gibraltar and restrictions on the use of the equipment. Most importantly, as per the amendment contained in my letter to you, Mr Speaker, this Part will now contain a regulation-making power allowing the establishment of a legal deposit library or  
1135 libraries in line with other jurisdictions. This new provision prescribes that a copy of all published work appertaining to Gibraltar be deposited within a designated legal deposit library in order to cater and preserve Gibraltar's cultural heritage.

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

1140 **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. Roy Clinton.

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

I must begin by declaring my real interest in this Bill, in that I am a life member of the Gibraltar Heritage Trust and I have been now for a good number of years. Indeed, both the  
1145 Minister and I are also perhaps in the unique position in this House of having both served as trustees at different times of both the Gibraltar Heritage Trust and indeed the Gibraltar Garrison Library Trust, and thus Mr Speaker, the subject matter of this Bill, is one that is both important and familiar to us both.

I first of all have to thank the Minister for agreeing to a meeting with myself and my  
1150 colleague the Hon. Trevor Hammond, the result of which has been, I would say, broad agreement on a number of very constructive amendments which will, as the Minister has indicated, be raised at Committee Stage.

For the benefit of the House, Mr Speaker, the most amusing printer's devil which we discovered jointly was a reference on Schedule 2, Part 5, under the 'East side aircraft', where,  
1155 under the title 'Location' was actually written in the Bill, 'Need to check if still there due to runway tunnel works', which I am sure, Mr Speaker, we should all agree should not be there.

Mr Speaker, this is a Bill which will enjoy the full support of Her Majesty's Official Opposition, but as in any legislation there is always room for improvement and different approaches, some of which I would like to touch upon.

1160 In reviewing the Bill, I have had to compare and contrast it with the Command Paper issued on 13th July 2015, the Gibraltar Heritage Trust Act 1989 – and I have even looked back at the old Museum and Antiquities Ordinance 1931.

The biggest difference to the 2015 Command Paper is that the Gibraltar Garrison Library Trust is no longer to be included in this legislation. The Minister has explained that he envisages  
1165 bringing it in at a later date but did not want to delay the main Bill, which I understand. For the meantime, the Garrison Library Trust will continue under its own legislation but I would welcome the Minister's thoughts as to the possible designation or location of the legal deposit library being brought in as an amendment at the Committee Stage.

Mr Speaker, the Gibraltar Heritage Trust is, of course, the biggest beneficiary of this Bill, in  
1170 that they will now have the majority of seven elected trustees versus five Government appointees. As an NGO it will also have explicit financial support under Schedule 5, section

9(1)(d) in the form of ‘an index-linked subvention from the Government to cover employee and administration costs of the Trust’.

1175 Mr Speaker, the creation in this Bill of the Gibraltar National Archives is a welcome step which can only serve to help preserve our records for the benefit of future generations. My only observation in this respect is that the National Archives in this Bill comes under a Minister with responsibility for archives and not the Minister with responsibility for heritage, which although is perhaps unusual, I am assured by the Minister for Heritage will not result in any conflicts or inefficiency and is to be seen as complementary – indeed, two Ministers being better than one.

1180 Mr Speaker, looking now in a more granular way at the Bill, there are two main areas that I would have liked perhaps a little bit more thought and work on, especially when contrasting with the methods used in the United Kingdom.

1185 The first of these is in the discovery of antiquities or objects of interest. Under the old Heritage Trust Act 1989 section 24 and even the Museum and Antiquities Ordinance in section 5 this was specifically dealt with, whereas under the current Bill, section 5, this is dependent upon regulations yet to be made by the Minister. Given the success of the Portable Antiquities Scheme in the UK, although admittedly not without controversy, it is a shame that the specific provisions have been left to secondary legislation and thus not subject to the scrutiny of this House.

1190 The other area of interest is the method by which buildings are to be included on Schedule 2, and this includes both public and private. From my reading of this Bill, there is no grading of listing, as in the UK, nor in fact as under the old Heritage Trust Act 1989, which has a category A list and a category B list. Now, everything on Schedule 2 is to have the maximum protection under the Bill, regardless of relative merit. As a lover of heritage, as the Chief Minister will attest, 1195 I cannot, of course, condemn this, but I wonder if perhaps a graduated listing system with differing levels of protection, as in the UK, might have been an option. This would also encourage private landlords to voluntarily seek listing of their property.

1200 Mr Speaker, I should point out that the Bill strips out entirely the rights of landlords to appeal notices of listing as currently provided in sections 42 to 48 of the Gibraltar Heritage Trust Act 1989. The Bill provides powers to list without an obvious appeal process, other than resorting to judicial review of a decision. To some this may appear as perhaps unnecessarily draconian and I would suggest could perhaps be improved upon in future.

1205 A general observation on this Bill is that the role of the Heritage and Antiquities Advisory Council is in fact just that, advisory to the Minister and in fact has no powers in his own name. The Minister, in this Bill, has complete discretion in most matters, and – in jest – having played the part of Prince John to rave reviews in amateur theatre, he now seems to want to play the part of Henry VIII in some of the powers he will assume. I will illustrate this point by reading some of the main discretions allowed to the Minister in this Bill. I quote:

The Minister may, by order published in the Gazette, amend or vary the provisions contained in Schedule 1.

Subject to subsection (4), the Minister may, by order published in the Gazette, amend Schedule 2 ...

The Minister may by order published in the Gazette, amend Schedule 3 ...

The Minister may, by order published in the Gazette, amend Schedule 4 ...

The Minister may, by order published in the Gazette, amend or vary the provisions contained in Schedule 5.

1210 Mr Speaker, whereas Schedules 2 to 4 relate to the listing of protected items, buildings or areas, Schedule 1 relates to the workings of the Heritage and Antiquities Advisory Council and Schedule 5 relates to the functions and constitution of the Heritage Trust.

1215 I can understand the need for the Minister to have the power to list items, but not necessarily the ability to vary the workings of the Heritage and Antiquities Advisory Council or the Heritage Trust, which should, I think, properly, would have to come back to this House ordinarily by way of primary legislation.

Mr Speaker, as I said in my opening, I know the Minister shares a very keen interest in Gibraltar’s heritage, but my concern is when there may in future be another individual in that

1220 position with differing views and wide powers to ignore the advice given by the Heritage and Antiquities Advisory Council. Who, then, will protect our heritage? The legislation as drafted makes no provision for guardians, who are neither Government Ministers nor Government employees, to take up that cause with any legal power in their own right.

1225 Mr Speaker, having thus expressed my reservations on certain areas of the Bill, I do however recognise that in the round this Bill is a positive step in the right direction and does indeed provide new protections and flexibility in preserving our community's heritage, be it written or electronic, buildings, monuments, artefacts on land or under the sea, and for these reasons I am happy to support this Bill and recommend it to my colleagues on this side of the House.

Thank you, Mr Speaker. (*Banging on desks*)

1230 **Mr Speaker:** Does any other hon. Member wish to contribute to the debate on the Second Reading of this Bill? The Hon. Danny Feetham.

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

May I add my voice of congratulation to the Hon. Minister for bringing this Bill. I think that it is a seminal piece of legislation.

1235 My hon. colleague Mr Clinton is absolutely right that everything can be improved, but this is the first major step in something of this kind in relation to heritage, which is very much needed in Gibraltar and it is something that the Hon. Minister should be congratulated on, as indeed anybody else who has had a part in producing this legislation.

1240 For my part, there are two aspects that I would like the Hon. Minister perhaps to explain to this House. The first, and again my hon. Friend Mr Clinton touched upon this, is that in the UK there is a system of grading – you have ancient monuments, you have grade I, you have grade I\*, grade II, grade II\* – and it protects not only the fabric of the building but it also protects the interior of the building. We often forget that protecting buildings is not only about protecting the outside, the fabric of the building. There are very important architectural and historical features within a building that need to be protected.

1245 I will always remember a conversation that I had with somebody who was involved in the demolition of Governor's Cottage some years ago, who said that there was a wonderful fireplace in Governor's Cottage and that fireplace simply disappeared. There are wonderful architectural features of that sort in many buildings in Gibraltar that really need to be protected, and I just wonder if the Hon. Minister can explain how we get to a situation where those public buildings, both the exterior and the interior of those buildings, are protected against that sort of, what in my respectful view is pillaging of our national heritage, so that that does not happen in the future.

1250 The other point is that it is all very well to say that there is a legal obligation for somebody who finds something of architectural interest or value to report it within 24 hours, but the reality is that unfortunately we all want it to work differently but sometimes human nature does not work in that way. In the UK what you have is a system of legislation whereby, for example, anybody who wants to go on to a piece of land with a metal detector has to first of all, as a matter of law, ask for permission of the landowner. If something then is found on that land there is an obligation obviously to declare it, but a special committee is then formed in order to value the find and the value of the find is then divided as between the landowner and the person who finds it. In fact, what happens is that a museum or other public bodies are given an opportunity to purchase the artefacts that are found at the value that the committee values the artefacts at, and then the money is then paid half to the landowner and half to the person who finds it.

1265 Hon. Members may be aware of an absolutely wonderful find very close to the motorway in Staffordshire – it is the Staffordshire Saxon Hoard, which is the largest Saxon hoard ever found in the United Kingdom. It is actually larger than all the other Saxon hoards put together. What happened there was that that was land belonging to a farmer and somebody who went on to

1270 the land and found with a metal detector the actual hoard. It was valued at £3.2 million by the  
committee, and museums were then told, 'You have got to raise the money in order to pay the  
landowner £1.6 million and the person who found it £1.6 million. Without having that type of  
1275 legislation that at least compensates the person who finds something, it may be difficult to  
actually persuade somebody to hand something in that is of value. That is something that I urge  
the Government to take into account, perhaps not now but in the future, in order to marry it  
with this very important piece of legislation so that we make the legislation as effective as  
possible.

Thank you very much, Mr Speaker.

1280 **Mr Speaker:** Is there any other contribution to the debate?  
I call upon the mover to reply.

**Hon. Dr J E Cortes:** Mr Speaker, I would like to thank both the Hon. Mr Clinton and, in  
particular, the Hon. Mr Feetham for their energy in supporting this. I appreciate the comments  
1285 that have been made.

If I may just refer to the two main points that the Hon. Mr Feetham has made, I think that the  
question of fireplaces and so on is adequately covered in the definition of 'antiquity'. Obviously  
we have to see how this evolves and how we actually implement all this.

I take note on the question of the finding of objects and so on, and I think this is one of the  
1290 things that the new Advisory Council will take on board. They will have a long agenda for the first  
meeting and these are things that I think need to be addressed on an ongoing basis.

On the question of the Garrison Library, yes, that is work in progress. We did not want to  
delay this important piece of legislation, and that will come in at a later stage and fit in.

As far as the legal deposit of publications – which is an initiative of my colleague the Hon.  
1295 Steven Linares, and I am grateful for all the work that he did in getting to Command Paper stage  
when he was Minister for Heritage – although it could be library or libraries, at this point in time  
the intention is that that should be the John Mackintosh Hall Library, which is the current active  
public library, but there are other libraries in Gibraltar, the Garrison Library and the University  
Library, which could also feature in the future.

I take the point that we have opted for one grading of listing. I think this will make it easier to  
1300 administrate in a jurisdiction the size of Gibraltar and will reduce the complication of having all  
sorts of different applications depending on the grading. Certainly in the case of private land, all  
the ones that are currently included in the Schedule have been in consultation with the  
landlords and there will clearly be consultation with the landlord before any private monuments  
1305 or buildings are added.

Mr Speaker, I note the Hon. Mr Clinton's concern as to who might be the future Minister for  
Heritage and I am grateful that he is very confident in the fact that I will protect heritage under  
the powers that I have – so those who care about heritage will clearly have to ensure that I  
continue to be a Minister for many years to come, and that will include the Hon. Mr Clinton!  
1310 *(Banging on desks)*

I think that the Act does provide for wide consultation, and in fact some of the consultation  
processes were actually extended after the meeting that we held.

Mr Speaker, before finalising, I think I should say – and this reflects some of what we have  
been saying – protection of heritage almost by definition has to be work in progress because we  
1315 are developing and creating heritage as we go along. Gibraltar's heritage, as we know, is  
extremely rich and we have a duty to respect it and to protect it continuously. I think that this  
Bill does not only do this but also provides a mechanism whereby this can continue to evolve.  
The HAAC has a tremendously important role in this and already, as I have said, has a  
considerable agenda to deal with.

Mr Speaker, this Bill clearly proves the Government's commitment to ensuring that we look  
1320 after our past as we look towards the future. **(A Member: Hear, hear.)** *(Banging on desks)*

1325 **Mr Speaker:** I now put the question, which is that 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 be read a second time. Those in favour? (**Members:** Aye.) Those against?  
1330 Carried.

**Clerk:** The Heritage and Antiquities Act 2018.

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

1335 **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.

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

1340 **Chief Minister (Hon. F R Picardo):** Mr Speaker, with that I move that the House should  
ensure that this morning's proceedings are forever kept in *Hansard* and read in the future by  
those who look to Gibraltar's heritage and why it is protected, and that we break, at this seminal  
moment, for lunch until 3.30 p.m.

1345 **Mr Speaker:** The House will now recess to 3.30 p.m.

*The House recessed at 1.10 p.m.*