



# PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

**AFTERNOON SESSION: 3.17 p.m. – 9.45 p.m.**

**Gibraltar, Friday, 12th July 2019**

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# The Gibraltar Parliament

*The Parliament met at 3.17 p.m.*

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

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

## BILLS

### FIRST AND SECOND READING

#### **Pet Animals (Sales) (Amendment) Bill 2019 – First Reading approved**

**Clerk:** A Bill for an Act to amend the Pet Animals (Sales) Act 2005. The Hon. the Minister for the Environment, Energy, Climate Change and Education.

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**Minister for the Environment, Energy, Climate Change and Education (Hon. Dr J E Cortes):** Mr Speaker, I have the honour to move that a Bill for an Act to amend the Pet Animals (Sales) Act 2005 be read a first time.

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**Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Pet Animals (Sales) Act 2005 be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

**Clerk:** The Pet Animals (Sales) Act 2005.

#### **Pet Animal (Sales) (Amendment) Bill 2019 – Second Reading approved**

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

15

In the almost 15 years since the Pet Animals (Sales) Act 2005 was enacted, awareness and concern for the welfare of animals bought and sold in pet shops has grown considerably. Attitudes towards the keeping of pets generally has developed, public campaigns for responsible ownership of animals are widespread and there is increasing demand for pet shops to source animals from responsible and reputable breeders rather than contribute to the cruel industry of puppy mills and other forms of pet farms which can leave animals with serious health and behavioural problems caused by poor conditions and treatment.

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The amendments to this Act seek to ensure that pet shops in Gibraltar are bound by law to observe high standards of animal welfare, from the moment an animal is sourced from a breeder to the point of sale to a customer and the whole period in between while the pet shop is responsible for it. A more recent policy change which has received considerable public backing in the UK is the so-called Lucy's Law, being the ban on the sale by pet shops of puppies and kittens they have not bred themselves. This Act aims to protect against the same concerns,

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albeit in a manner which is appropriate for the particular circumstances of Gibraltar and in particular the fact that many members of the public will purchase pets across the border.

In the new provisions with relation to licence conditions when granting a licence to operate a pet shop, the licensing officer imposes conditions to be complied with by the licensee. While previously the licensing officer imposed conditions in accordance with best practice, these conditions will now have statutory backing and will be contained within regulations which will be enacted following this Act. In addition, the Act provides for the inclusion in the licence of certain conditions to be mandatory, including conditions relating to specific species being sold and prescribing a minimum age for the sale of certain species of animals. This will address the sale of mammals at very early ages, where removing them from their biological mothers and transporting them can have serious adverse impacts on their health and development.

In addition to the existing matters a licensing officer must have regard to when granting a licence, the Act has added the requirement for cats and dogs under four months of age to have been bred by approved breeders. A pet shop or breeder can apply to the licensing officer for approval and must demonstrate compliance with certain standards of animal welfare. This includes, keeping the number of animals kept within an area which is reasonable considering the space and staff on the premises, and not breeding animals if causing them to breed would have a detrimental effect on health or well-being. The approval must be renewed annually, thus ensuring that standards do not slip once the approval is obtained. A consequential amendment will be made to the Animals Rules to ensure that the same standards are met when considering whether an import licence will be granted to a person who is importing dogs and cats under four months old for commercial purposes.

The age of children to whom pet animals can be sold will also vary. The age of a child to whom a pet shop may sell a pet animal has been raised from 12 to 16. This reinforces the view that pet animals are a considerable long-term responsibility rather than a temporary source of entertainment or a toy. This section has also been extended so as to create a new offence of entering into an arrangement with a child where an animal can be won as a prize.

The criminal implications for the commission of an offence under this Act have not been amended. However, in order to more efficiently clamp down on improper conduct by pet shops, the powers to revoke a pet shop licence or disqualify a person from keeping a pet shop have been extended to the licensing officer, being the Environmental Agency and the Minister with responsibility for the environment. In addition, where there are reasonable grounds to believe any premises are being used for the sale of pets without a licence, magistrates may grant a warrant for those premises to be inspected. This has now been extended to allow for a warrant to be granted to search private dwellings, as unfortunately instances of pets being improperly kept for commercial purposes in homes have come to light.

Lastly, Mr Speaker, if a person was convicted of an offence under the Act, previously only the court could cancel a pet shop licence. The amendment to this Act will allow the licensing officer or Minister to revoke licences in such cases while preserving the right of the licence holder to appeal to the court.

With these, I think marked, improvements in the interests of the welfare of animals, I commend this Bill to the House. *(Banging on desks)*

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

**Hon. E J Phillips:** Mr Speaker, I welcome the Bill presented by the hon. Gentleman.

I just have one question. Insofar as the non-commercial importation of pets, and particularly given the fact the United Kingdom introduced regulations on 1st October 2018 of which the purpose of that was to ensure, and to compel individuals who were purchasing pets to conduct the transaction in person to avoid, of course, online transactions in relation to animals, how does that sit with this Bill insofar as the border is concerned and the fact that people do buy pets

and transport them across the border? I would just like a bit more information about that aspect in relation to this Bill and how it interacts with it.

85 **Mr Speaker:** Does any other hon. Member wish to speak on this Bill before I call on the mover to reply?

**Hon. Dr J E Cortes:** Mr Speaker, I have just had some advice from the drafter of this Bill. The rules already provide for the need to have a licence to import, so that can be covered there and in fact we could even tighten it by regulation. I would be very happy to consider those concerns separately and then, as we are going to be having to amend regulations to conform to this Bill, I would be happy, behind the Speaker's Chair, to discuss those concerns and, if possible, add another clause to that.

I have nothing further to add, so I commend it to the House.

95 **Mr Speaker:** Any other contributor to the Second Reading?  
Does the Hon. Dr John Cortes have anything further to add?

**Hon. Dr J E Cortes:** No, Mr Speaker.

100 **Mr Speaker:** I will put the question then. I now put the question, which is that a Bill for an Act to amend the Pet Animals (Sales) Act 2005 be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

**Clerk:** The Pet Animals (Sales) Act 2005.

**Pet Animals (Sales) (Amendment) Bill 2019 –  
Committee Stage and Third Reading to be taken at this sitting**

105 **Minister for the Environment, Energy, Climate Change and Education (Hon. Dr J E Cortes):** Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

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

**Crimes (Amendment) Bill 2019 –  
First Reading approved**

**Clerk:** A Bill for an Act to amend and clarify the law relating to termination of pregnancy by registered medical practitioners and for connected purposes.

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

115 **Minister for Health, Care and Justice (Hon. N F Costa):** Mr Speaker, I have the honour to move that a Bill for an Act to amend and clarify the law relating to termination of pregnancy by registered medical practitioners and for connected purposes be read a first time.

120 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend and clarify the law relating to termination of pregnancy by registered medical practitioners and for connected purposes be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

**Clerk:** The Crimes (Amendment) Act 2019.

**Crimes (Amendment) Bill 2019 –  
For Second Reading –  
Debate commenced**

125 **Minister for Health, Care and Justice (Hon. N F Costa):** Mr Speaker, I beg to move that the Bill for the Crimes (Amendment) Act be read a second time.

The Chief Minister presented a Command Paper on 27th September of last year after the Government's Inter-Ministerial Committee on Abortion had consulted a number of groups and individuals who had expressed views or concerns on the matter. The committee, chaired by the Hon. the Chief Minister, also includes the Hon. Dr John Cortes, the Hon. Albert Isola, the Hon. Samantha Sacramento and myself.

130 The committee was formed after the decision of the Supreme Court of the United Kingdom following an appeal in the matter of an application by the Northern Ireland Human Rights Commission for judicial review. In that case, the Northern Ireland Human Rights Commission was seeking a declaration that the abortion laws in Northern Ireland are incompatible with Articles 3 and 8 of the European Convention on Human Rights. Article 3 of the European Convention provides that:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 8, at 8.1 states:

Everyone has the right to respect for his private and family life, his home and his correspondence.

140 The Supreme Court held that it had no jurisdiction to make the declaration of incompatibility because the Northern Ireland Human Rights Commission do not have the power to institute abstract proceedings as it had in that case.

145 However, having considered the full arguments and evidence, the court proceeded to express conclusions on which the majority view was that the current law in Northern Ireland is disproportionate and incompatible with Article 8 insofar as it prohibited abortion in cases of fatal foetal abnormality and where pregnancy results from rape or incest. The majority of the court felt that the prohibition of abortion in those specified circumstances was an interference with the right to respect for private life as set out in Article 8 and that the interference was not justified under Article 8.2.

Article 8.2 provides, and I quote but I only read the relevant parts:

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the protection of ... morals, or for the protection of the rights and freedoms of others.

150 The issue the court consequently considered was whether the interference was necessary in a democratic society: did it strike a fair balance between the rights of a pregnant woman and the community's interest in protecting the foetus? The court indicated that the unborn foetus was not a person in law but emphasised that its potential had to be respected. It is important to note that the position in law is that a foetus is not a person.

155 Against this backdrop the court found that the agony of having to carry a child to birth and to have a potential responsibility for a lifelong relationship with the child against the mother's will could not be justified. This was said in respect of incest but applies equally to rape. In the case of fatal foetal abnormality the court felt that the law:

failed to achieve its objective in the case of those who are well informed and well supported, merely imposing on them harrowing stress and inconvenience while it imposes severe and sometimes lifetime suffering on the most vulnerable who commonly, because of lack of information or support, are forced to carry the pregnancy to term.

160 Mr Speaker, Gibraltar is under a duty to observe the provisions of the European Convention, much of which is similar, if not identical, to the terms of the Gibraltar Constitutional Order 2006. As relayed by the Gibraltar Court of Appeal:

When the United Kingdom subscribed to the Convention in the early 1950s it did so on its own behalf and also on behalf of Gibraltar. If Gibraltar does not observe the Convention, the UK is in breach of its international obligations and liable to be brought before the European Court of Human Rights.

The Gibraltar Constitution Order unequivocally requires Gibraltar courts to consider where relevant, when considering a matter involving the protection of constitutional fundamental rights and freedoms, the views and findings of the European Court of Human Rights.

165 Article 8 of the Convention, as already cited, provides for the right to respect for private life. The provisions of section 7(1) of our Constitution are in almost identical terms to Article 8.1 of the European Convention. Section 7(1) of our Constitution provides that:

Every person has the right to respect for his private and family life, his home and his correspondence.

Section 7(3) of the Constitution goes on to provide that – and once again I quote but only in respect of the relevant provisions:

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -  
(a) in the interests of ... public morality ...  
(b) for the purpose of protecting the rights or freedoms of other persons;  
...  
(e) ... except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

170 As already highlighted, section 7(3) has broadly the same effect as Convention Article 8.2, which Gibraltar must observe.

175 Mr Speaker, the law on abortion in Gibraltar today mirrors the law applicable in Northern Ireland. It is that law which the Supreme Court in the United Kingdom considered was incompatible with Article 8 of the European Convention. That law is derived from the Offences Against the Person Act 1861, which was the law in the whole of the UK until the changes made in 1967 to permit abortions in certain circumstances. However, the 1967 changes did not extend to Northern Ireland.

180 Government, in the knowledge that our laws are in direct breach of both the European Convention on Human Rights and our own Constitution, cannot allow the situation to persist. In the circumstances, to ensure that Gibraltar law is compliant with the European Convention and our own Constitution, Government has proposed a change to the law, in the terms of the draft Bill set out in the Command Paper, in order to remedy the defects identified in the judgment of the United Kingdom Supreme Court.

185 Mr Speaker, the present state of the law on abortion in Gibraltar ought to be the right place to start when considering the Bill. The law is governed by the Crimes Act, which in section 162 refers to the unlawful administering of any poison or noxious thing or the unlawful use of any other means with the intent to procure a miscarriage. The Crimes Act therefore tells us what is unlawful but not what is lawful, and this is what this Bill develops.

Clause 3 of the Bill amends the Crimes Act by inserting new sections 163A through to 163E.

190 Proposed section 163A decriminalises the medical termination of a pregnancy by a GHA  
doctor in four specified circumstances when certified in good faith by two registered GHA  
doctors, save where immediately necessary to save a life or to prevent grave permanent injury.  
The grounds required are set out in proposed sections 163A(1)(a) through to (d)

195 Proposed section 163A(1)(a) provides the first ground when the pregnancy is under 12 weeks  
and two GHA doctors certify that terminating the pregnancy would lessen the risk to the physical  
and mental health of the pregnant woman. This is the ground that is designed to cover those  
cases of rape and incest the United Kingdom Supreme Court considered.

200 Section 163A(1)(b) deals with terminations necessary to prevent grave permanent injury to  
the physical or mental health of the pregnant woman. This does not have a 12-week limit but  
requires a much higher standard by requiring the two GHA doctors to certify that the  
termination is necessary to prevent grave permanent injury to the mother. The important points  
to highlight in respect of this section are the requirements of necessity and grave permanent  
injury, therefore establishing an extremely high threshold.

205 Proposed section 163A(1)(c) covers situations where the continuation of the pregnancy  
would involve greater risk to the life of the pregnant woman than if the pregnancy were  
terminated.

Lastly, proposed section 163A(1)(d) covers situations where there is a substantial risk that the  
child is suffering from a fatal foetal abnormality.

210 Proposed subsections 163A(3) and (4) also designate the places in which abortions can be  
carried out, such as hospitals, as authorised by the Minister for Health. Mr Speaker, it is  
important to note that the Government will not authorise private clinics as it does not wish to  
foment an abortion industry in Gibraltar.

215 Proposed section 163B allows for the making of regulations requiring the provision of  
information on abortions to the Director of Public Health. Government has draft regulations to  
be published, which (a) prescribe forms for the purpose of certifying opinions under  
section 163A and the time limit for the making of such certifications, (b) provide for the  
preservation and disposal of such certificates, (c) require notice of the abortion and information  
relevant to it to be given to the Director of Public Health, and (d) restrict the disclosure of such  
notices and information.

220 Proposed section 163C allows conscientious objectors to not participate in the certified  
treatments – save where necessary, of course, to save the life or to prevent grave permanent  
injury to the physical or mental health of a pregnant woman. It therefore only gives a qualified  
right and is only included in an abundance of caution, as the General Medical Council, in its Good  
Medical Practice and Personal Beliefs and Medical Practice Guidelines, provides that the GMC  
does not prevent doctors from practising in line with their beliefs and values as long as they  
225 explain to patients if they have a conscientious objection to a particular procedure. In such  
circumstances, clinical guidance will require practitioners to inform the patient that they do not  
provide the particular treatment or procedure, being careful not to cause distress or imply  
judgement. The practitioner will tell the patient that they have a right to discuss their options  
with another practitioner who does not hold the said objection and will ensure that she has  
230 enough information to arrange to see another doctor who does not hold the same objection. If  
not practical for the patient to arrange to see another doctor, the practitioner will make sure  
that arrangements are made without delay for another suitably qualified colleague to advise,  
treat or refer the patient.

235 Mr Speaker, this Bill has been the subject of extensive and passionate public debate. There  
were 103 responses to the Command Paper received prior to the closing date, with a small  
number making their way after this. Some of those respondents have written to Government  
since the Bill which we are now debating was published. I wish to highlight how thoughtful the  
majority of the responses were and how this is a great example, if ever there was one, of the  
vibrant and participatory democracy we enjoy in Gibraltar.

240 The debate has been largely two sided. I wish to start by saying that I do not necessarily  
agree with either characterisation of either camp. In the first place, I dare say that the great  
majority of women who have an abortion choose to have one in the loosest sense that I can  
conceive the meaning of the word. Before a woman decides to terminate a pregnancy, given the  
seriousness of that action it is more likely than not that the word 'choose' is not the most  
245 appropriate. I have trouble, therefore, with the 'pro-choice' nomenclature, but I will use the  
reference to pro-choice because not every woman who supports a woman's right to  
reproductive choice supports abortion at a personal level. Similarly, I also have difficulties with  
the label 'pro-life' to describe the group against abortion in any circumstances, because I also  
consider myself pro-life. I would never seek to intentionally harm a person and I am only in  
250 favour of abortions in the limited circumstances set out in this Bill.

Mr Speaker, before I enter into the debate around abortion, I think it is crucially important to  
set out that this Bill, contrary to what has been said by some in public, is not radical and does  
not allow abortion on demand but only in the circumstances set out. It equally does not provide  
for terminations on the basis of sex selection. It is much more restrictive than the Act on which it  
255 is based, which some in the UK are asking be modernised by the removal of the requirement for  
the certification of two doctors and the decriminalisation of abortion completely. On the one  
side, the pro-choice argument seeks, on the whole, a right to choose for the pregnant woman.  
On the other side, those who oppose abortion have mainly advocated for the right to life of the  
unborn foetus.

260 Those who oppose abortions have sought to distinguish the Supreme Court decision, saying  
that the Government is not obliged to take action as a result. It is argued that the case is not a  
legally binding ruling and that the relevant statements made by the majority of the judges did  
not form part of what they actually decided in the case. In my view, that is a – with respect –  
technical argument. The key statements on the compatibility of the law would have formed part  
265 of the decision in the Northern Ireland Human Rights Commission had the Commission been a  
pregnant woman living in Northern Ireland. Nothing more. No one can argue, to our mind,  
therefore, that those statements do not amount to anything less than exceptionally persuasive  
remarks on the constitutionality of our law on abortion and the European Convention on Human  
Rights, and I suspect that the lawyers advising those who oppose abortion are fully aware of this  
270 point.

Further, and critically, Lord Mance, in concluding his judgment – and I replace 'Gibraltar' for  
'Northern Ireland' and the Crimes Act for the 1861 Act – said:

Those responsible for ensuring the compatibility of [Gibraltar] law with the Convention rights will no doubt  
recognise and take account of these conclusions, at as early a time as possible, by considering whether and how to  
amend the law, in the light of the ongoing suffering being caused by it as well as the likelihood that a victim of the  
existing law would have standing to pursue similar proceedings to reach similar conclusions and to obtain a  
declaration of incompatibility in relation to the [Crimes] Act.

275 Mr Speaker, only earlier this week Parliament in Westminster has enacted to rectify the law  
in Northern Ireland. These amendments were brought by backbench MPs who argued that the  
UK government's contention that amendments of the Northern Irish laws on abortion could only  
be made by the devolved Northern Irish government was defunct, given that the devolved  
government has been suspended since the beginning of 2017. In our view, such bold action  
shows the importance that this Government must pay to Lord Mance's warning.

280 Those who oppose abortion have also argued that the matter could still come back before  
the Supreme Court and on that occasion the judges could decide differently. Such advice, in our  
respectful view, can only be categorised as a rolling of the dice. Put differently, such an  
argument is tantamount to advice to continue to act unlawfully until stopped by the Supreme  
Court of Gibraltar. As Minister for Justice, on having sworn an oath to uphold the rule of law I  
cannot tolerate a law which the Supreme Court of the UK has advised is in breach of the



285 European Convention on Human Rights. The correct approach therefore surely must be that the law ought to be changed – and should a new majority decide differently, changed once again.

It has also been argued that the Supreme Court did not express the view as to how the law ought to change, that the clauses of the Bill go beyond what is required. This is, however – once again, with respect – to ignore the logistical barriers and drafting complexities that arise in  
290 ensuring that the abortion is available following sexual offences and incest. It is the wording in the UK Abortion Act as amended in our Bill which brings us closest to the desired aim of allowing for terminations in the circumstances set out by the Supreme Court.

Mr Speaker, nowhere in the world and with the best will in the world would a rape or incest trial be heard within 12 weeks, assuming even that the woman were to complain of the incident  
295 on the same day. It would further be wrong to have the woman prove that the pregnancy is as a result of rape, which is why the Bill is drafted as it is and we can have the period of 12 weeks, given the Supreme Court’s concerns about the rights of the pregnant woman given the harrowing stress, suffering and mental agony such a process would likely involve. An alternative formula to the Bill – and I think this is quite telling – has not been provided in any of the  
300 submissions received from any of the entities. It is not hard to devise why such alternative suggestions have not been received.

Mr Speaker, those who oppose abortion frequently cite the United Nations Universal Declaration of Human Rights when discussing the rights of the foetus, but it may do us well to remember that the UN Deputy High Commissioner for Human Rights recently pointed out that  
305 the committee of experts assigned to monitor the implementation of the nine core human rights have ‘each independently declared the absolute prohibition of abortion to be against human rights’. In September 2018 a group of human rights experts urged governments across the world to:

enhance the progress towards ensuring the rights of every woman or girl to make autonomous decisions about their pregnancy.

They went on:

This is at the very core of a fundamental right to equality, privacy and physical and mental integrity and is a precondition for the enjoyment of other rights and freedoms.

310 On the other side of the argument we have submissions for the 12-week limit for abortions on the basis of risk to the woman’s physical or mental health to be extended to 24 weeks and for abortions to be allowed without indication for up to 14 weeks. It has also been proposed that limiting abortions to rape and incest is objectionable, condescending and degrading. To those arguments we say that we are seeking to ensure that our laws are compliant with the European  
315 Convention and our Constitution. Government does not support on-request abortions, as this would be tantamount to holding abortion in the same light as a routine dental procedure. Abortions are clearly not that and we on this side of the House certainly cannot agree with any such proposition.

In addition to the receipt of written submissions, Government has also consulted widely and met with interested persons and groups. One result of such a discussion has been the removal of terminations where there exists a substantial risk, if the child were born, that it would suffer from such physical or mental abnormalities as to be seriously disabled. This is principally due to the Royal College of Obstetricians and Gynaecologists report that highlighted the need for specialisms which would not be brought to Gibraltar. The report recommends a multi-  
320 disciplinary group, including foetal medicine specialists, neonatologists, paediatric surgeons and geneticists – which are services that are not provided in Gibraltar – to discuss the case and conclude whether the grounds for the termination are met. The report concludes that optimal  
325 care for women after a diagnosis of foetal abnormality also relies on this multi-disciplinary

330 approach. In any event, it was the view of the Government that such terminations went beyond the Supreme Court's majority statements.

Mr Speaker, there have always been very difficult decisions to make as a servant of the community, and in discharging our public duties we have to deal with the facts before us. This is certainly, for me, the most difficult matter I have dealt with yet. I do not enter into arguments of conception, for the potential of life is important and termination is the end of that potential. My house, as the houses of many here in this Parliament, will have been divided on this issue. You are either for or against. This subject is one that permits no grey areas.

335 There are plenty of philosophical and bioethical texts on the subject matter, where the arguments therein that are taken to their logical end are, in one way or another, illogical. I do not intend to take the House through an intellectual examination of these papers, but I do reiterate that the research on either side shows that there are no grey areas. Those in favour and against both deftly explain why each other's arguments are inherently flawed.

340 Whether it is right or wrong to terminate a pregnancy is, having personally considered the literature on the subject, a question of ethics. Each of us eventually will have to make our own decision. Should the hon. Members be interested in reading further on this, there are two papers which I will be glad to provide to them.

345 But, Mr Speaker, this is not about me. I am not a woman, and what is worse than abortion is not allowing for abortions in the specified circumstances of rape, incest and fatal foetal abnormality. The facts of life are such that if we do not provide for abortion in such circumstances we are forcing our young women to travel abroad to undergo potentially unsafe terminations, which in cases can even cause significant harm. This has also meant that these women have undergone these terminations many a time as a result of rape and domestic abuse in unfamiliar surroundings and without the support of their loved ones. Providing a safe, clinical environment in familiar surroundings with support is therefore, in our view, a moral good.

350 The issues surrounding this topic are intricate and, as we have experienced over the past year, provoke passionate emotions among those for and against. This measure, this Bill, will have satisfied neither camp, which demonstrates that the Government is doing what it feels is right in the circumstances.

355 Mr Speaker, it is proper to place matters in context and important to note that Gibraltar mothers have undergone terminations, following referrals by the GHA, since at least 1997. A mother at present undergoes a test for foetal abnormality: if the tests confirms a risk, the mother is sent to the United Kingdom for a second test which confirms whether the foetus will suffer an abnormality at birth. It is then for the mother to decide how to proceed, and the GHA has historically funded the procedure chosen by the mother. This therefore means that likely every government of Gibraltar since, certainly the documents show, 1997 has provided funding for abortion. It would console all past Ministers for Health that the Attorney General has advised that the GHA has acted lawfully in funding terminations in the UK, in such circumstances.

360 There have been occasions when medical experts expressing grave concern over an expectant mother's life have approached me to determine whether a determination is within the law. The GHA has obtained urgent legal advice as to how to proceed, demonstrating how seriously it takes its ethical and legal responsibilities to the foetus. Such ethical behaviour also seriously undermines the argument that doctors of the GHA will certify anything that is not true medically. It is also worth remembering, Mr Speaker, that all doctors are regulated by the GMC, which is not a toothless tiger. A doctor will not ignore the threat of the GMC unless they wish to lay their careers on the line.

375 Mr Speaker, whilst we debate today the amendments to the Crimes Act, no one should be left in any doubt as to the value that all members of Government place on persons and life. In this respect it is to be noted that the GHA spends whatever money it must when a baby's life is in danger. It is no secret that the GHA refers mothers and their babies to specialist centres, such as in Cádiz, both pre and post birth. It is not insignificant to note, in the interests of this debate, that the GHA has also increased its complement of paediatricians from two to five, only in the

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last 24 months, and is about to open a dedicated Children's Health Centre. Further, Mr Speaker, mental health services for the young have substantially improved, not least by the opening of the Child and Adolescent Mental Health Services.

385 Mr Speaker, having highlighted in the briefest of terms the importance the GHA places on the treatment of babies and neonates, I could say much more, but now, of course, is not the time for such elaboration. The reality of the situation today is that young women, either with the support of loved ones or alone, travel to the United Kingdom or cross the border to undergo privately funded terminations. The Inter-Ministerial Committee needs to make a decision based on what is happening at present and not on what should happen in an ideal world. It would therefore be  
390 remiss, Mr Speaker, for a health service provider not to offer counselling for women who are considering terminating their pregnancies and the GHA has employed two counsellors who can discuss the issues and explain the options available to women who need support, this in the hope that it might help the woman reconsider their case with assistance or for later adoption or fostering. The mother will see that there are options available to her. However, talking to a  
395 counsellor is no guarantee that a woman will not have the termination, but at least by providing counselling services there is a chance that the woman will consider her position afresh. If the woman does decide to proceed with a termination, after having seen two GHA doctors, who confirm that the criteria set out in the Bill are satisfied, then a service, in our view, needs to be provided, as otherwise we lose total control as to how we care next for the woman. By retaining  
400 a degree of control the GHA can ensure optimal clinical care. We otherwise risk women undergoing terminations in clinics not meeting the GHA's clinical and safety standards. And in this world, Mr Speaker, highly regrettably and unfortunately, we can only choose to act on the lesser of two evils. We ought to take the route where a woman's decision does not result in a botched up procedure somewhere outside of Gibraltar and in the infliction of harm to the foetus  
405 and to the mother. This Bill will especially help women who do not have the means to spend money in clinics with high standards of safety and care.

Those who oppose abortion, Mr Speaker, have argued that we ought to do no more than provide counselling. But, of course, the concern is that it is less likely for a woman to avail herself of counselling if abortion is not an option. If abortion is available the woman is more  
410 likely than not to engage with counselling – this is the reality of the world.

Women can go across the border to obtain a termination without at all passing through the GHA. Additionally, the GHA has started a new sexual health clinic which provides for the availability of freely available advice and contraception to protect against unwanted pregnancies. The GHA will continue to remind the public of the support that exists from health  
415 professionals in respect of family planning. Long acting reversible contraception, such as the implant, injection and coil, are provided along with oral, barrier, and emergency contraception methods. In this respect, family planning clinics provide the time necessary, in a completely confidential setting, to ensure that the right contraceptive option for a patient is recommended, that both a patient and partner would feel comfortable with and confident in using.

420 The new Well Person Unit is an important and crucial innovation for the GHA in the field of sexual health, as patient records will be stored under a unique Well Person Unit number and test requests and results will be anonymised. Anonymisation is essential to ensure that patients feel confident and secure in accessing GHA services. The GHA will continue to provide appropriate advice in respect of the morning after pill and other non-invasive mechanisms for terminations  
425 in a manner that is, where appropriate, consistent with the proposed amendments to the Crimes Act. Advice and support, including mental health support, is to be provided both before and after a termination is carried out.

Mr Speaker, I also want to take the opportunity to clarify an argument that keeps rearing its head in public discussion which is this: the morning after pill has an inverse relationship with  
430 abortion. It does not cause an abortion; it stops a pregnancy from occurring and therefore prevents the need for an abortion.

435 The Government has set up support mechanisms for pregnant women so that no woman makes a decision to seek an abortion or feels they need to because of mental health matters related to their social or economic circumstances. This advice would be primarily provided through the Care Agency. If a woman is considering a termination due to social or economic reasons and a woman seeks support from Social Services instead of her GP, this would give an indication that she would consider continuing through to full-term under the right circumstances, and therefore social workers will consider available options, including arranging appointments with other Departments such as Housing and the Department of Social Security or, of course, counselling to consider options such as adoption.

440 Mr Speaker, notwithstanding all that I have said, even though I confirm that we have an obligation not to tolerate a breach of the Constitution and of the European Convention on Human Rights, there is one issue that gave the Inter-Ministerial Committee pause for thought. The lawyers in the House will recognise the space for manoeuvre, albeit fettered and limited, that national authorities enjoy when fulfilling their obligations under the European Convention on Human Rights, referred to as the margin of appreciation. This margin has in the past been used with Article 8, as it has an accommodation or limitation clause, namely Article 8.2 recognises the tension created between individuals and society. A margin of appreciation has been allowed in this respect for the protection of morals on the ground that moral concepts vary from nation to nation. Given that none of the parties have a mandate on whether to permit abortions at all or in particular circumstances, and given the passionate and opposite held views on the morality of this subject, the Government proposes that the question as to whether to commence these amendments to the Crimes Act should be decided in a referendum to be held on 19th March of next year.

455 Mr Speaker, I need to be clear that personally I think it is highly unlikely that the margin of appreciation will be enough for Gibraltar to prevent terminations in the circumstances we have set out in this Bill. The general position in Europe on the question of terminations would likely place the present circumstances in Gibraltar beyond the margin of appreciation. The European Court of Human Rights has decided that a state's discretion in the field of the protection of morals is not unfettered and it is reviewable. On having said that, Mr Speaker, the Inter-Ministerial Committee cannot be absolutely certain of the legal position in the light of the margin of appreciation. As a result, the Government is committing today to respect the result of the referendum and hence the Bill provides for commencement if a majority were to vote in favour of commencing the Bill.

460 I feel I must point out, Mr Speaker, that events could overtake everyone in this House before the date of the referendum, should a woman bring a challenge before the Supreme Court. But that is not for us.

465 Mr Speaker, on behalf of the Inter-Ministerial Committee, I commend the Bill to the House. *(Banging on desks)*

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

475 **Hon. E J Phillips:** Mr Speaker, I am grateful to the Minister for Justice for setting out the rationale for this Bill and what I propose to do is set out the position of Her Majesty's Loyal Opposition and my learned and hon. Friend, Mr Feetham, will deal with the legal analysis in order to counter the points that have been made by the Minister for Justice.

480 Mr Speaker, the Bill promoted by the Government seeks the amendment to certain provisions of the Crimes Act 2011 to allow for terminations of pregnancies in certain defined circumstances. Whilst the express intention of the Bill is, on the Government's own argument, based on making our law constitutionally compliant, it does, in our view, go beyond that and let us be clear – it introduces, for the first time, abortion on demand.

485 It is our view that there has been no serious attempt at drafting a law to cater for clear,  
narrow and limited exceptions. In addition, there is nothing in our constitutional law that  
requires Gibraltar to introduce a law modelled on the English law of abortion. Her Majesty's  
Opposition will not go along with this misrepresentation and misleading of our community on  
this fundamental issue.

490 The statements made by the Government at the Command Paper stage and on the  
presentation of this Bill are tantamount to misleading the good people of this community. Whilst  
I empathise with the groups that have fought hard and articulated their cases, namely the  
pro-choice and pro-life groups, this Bill does very little to reassure either side of this debate and  
neither does it reassure the remainder of this community that the Government has properly and  
comprehensively subjected this Bill to a deep reflection on the principle, the substance or  
indeed the drafting.

495 Yesterday, Mr Speaker, and again repeated by the Minister for Justice this afternoon, the  
Government announced that after this Bill has been passed by this House and before it is to  
receive Royal Assent it will subject the Bill to the people in a referendum. The Government are  
seeking the sanction of this Bill by the people. They are effectively asking the people to confirm  
their wish to the change in the law. This is entirely the wrong approach. The people deserve an  
500 opportunity to voice their views on this subject outside the constraints of this Bill and Act and  
which already have been pushed through and will be pushed through this House today. The  
Government, in my respectful view, should do the following: (1) unilaterally withdraw the Bill,  
which has been based on a false and misconceived premise now; (2) publish the legal advice  
they have received on the purported constitutional necessary exceptions; (3) subject their  
505 support for abortion on demand to a referendum of the people. The front page, Mr Speaker, of  
*The Chronicle* again is spin, and the headline detracting from the truth. What the GSLP Liberal  
Government wants to do is to obtain the community's blessing and sanction of this Bill and not  
to have an open and free debate on this fundamental question facing our community. Her  
Majesty's Opposition will neither legitimise or whitewash the Government's political  
510 incompetence in dealing with this issue by voting for the Bill.

It is said, Mr Speaker, on behalf of the Government that the basis upon which this Bill is  
brought is the finding by the Supreme Court of the United Kingdom in respect to the legality of  
the law of abortion in Northern Ireland. It is said, by those promoting the Bill, that the law of  
Northern Ireland is effectively identical to the law of Gibraltar and therefore, given that it is  
515 argued that the law of Northern Ireland is disproportionate and incompatible with Article 8 of  
the European Convention on Human Rights, which is almost identical to Section 7 of our  
Constitution, we must amend our law to ensure that it is constitutionally compliant. The  
Government have clearly taken the view that if our current legal framework is challenged in *our*  
highest court, the Privy Council, the court is more likely than not to adopt the same rationale as  
520 the Supreme Court of the United Kingdom, given that the judiciary are drawn from the same  
cadre. If that is the Government's conclusion, on advice, they should say so publicly and make  
that advice publicly available. They have passed the buck.

In the title of the Command Paper the Government stated that it is being forced to legislate  
in the way it proposes because it is required by the jurisprudence of the Supreme Court of the  
525 United Kingdom. It also asserted, in the accompanying narrative, that the proposed legislation is  
to ensure that Gibraltar law is compliant with the European Convention on Human Rights and  
that the Gibraltar constitution ... In his interview on GBC on 28th September 2018, the Chief  
Minister, Mr Speaker, repeated the same point. That statement, in our view, is plainly false and  
misconceived.

530 Mr Speaker, having said that, as a lawyer I can see the argument that a Privy Council  
constituted hearing a claim may well adopt the approach to the United Kingdom Supreme Court  
case in the Northern Ireland case. But that is not what is being said by the Government. They  
have not, after careful reflection, said to the public that this is their view on balance and that a  
change to our law will more likely than not ultimately see our final appellate court determine

535 the issue in the same way as the UK Supreme Court. The Government have clearly come to the view that our law is unconstitutional and that urgent reform is required to make our law compliant.

Mr Speaker, the basis upon which the Bill, and prior to that the Command Paper, was advanced was to allow for minor amendments to the Crimes Act 2011 to ensure that our law on the Government's own argument was constitutionally compliant. As I have said before, Mr Speaker, to the House, this goes much further and allows under certain circumstances abortion on demand. No doubt my colleagues will address that point and, of course, the Hon. Mr Feetham will address that point in bit more detail.

We are aware, Mr Speaker, and the public are now aware as from yesterday, that the Government has received a number of letters: (1) from a Member of the House of Lords, The Rt Hon. Lord Alton of Liverpool, together supported by other leading politicians; (2) leading jurists from the leading universities of Oxford, Princeton and Faulkner universities, all of which have fundamentally called into question the position – the latter concluding that the Government's position that Gibraltar is required to introduce the law of abortion, and I quote, 'was false and wholly misconceived.' World-leading academics go on to conclude that contrary to the Government's public statements, there is no human rights obligation whatsoever for Gibraltar to change its law on abortion. These comments by senior and respected parliamentarians and leading academics, whatever your personal view on abortion is, and I respect all views, are a damning indictment on the appalling mismanagement by the Government of this most sensitive issue and they should be ashamed to push through legislation without giving it serious rethinking.

We have invited them to think again, take advice and to go to the people but they have, despite the serious concerns, driven this through without any serious thought as to the issues that it raises. We of course note that the hon. Lady has argued vociferously for and campaigned for a consultative referendum. She now needs to explain to this House where she is now, given that 82% of her own party voted for a referendum, I will wait to hear what she has to say about that, Mr Speaker.

To have a group of leading academics from world-leading universities to label the Government's approach as false and wholly misconceived really does bring this Government into disrepute, Mr Speaker. They have misled the people and this House and this is why we oppose the Bill. The twist in this sorry story is that they now wish to put the false and misconceived premise of the Bill before this community for their blessing, for their sanction, Mr Speaker. They have lost respect for this House and more importantly for those that put them in the seats that they sit and we will not support this Bill.

The bringing of a Bill to allow abortions in Gibraltar, Mr Speaker, is not a Bill that anyone in this House anticipated having to deal with during this Parliament. It is one of the most highly divisive issues that our community, certainly in my lifetime and I join with the Minister for Justice on this particular issue, has had to face. The strength of feeling within our community is palpable. No political party, as the Minister for Justice has said, stood on a platform to introduce abortion laws and therefore none of us in this House have a mandate from those who voted for us to pursue laws which for the first time make provision for abortion on demand.

I repeat that there has been no comprehensive analysis to test the opinion of this community on this subject and the only way to do so would be by referendum, a referendum free of falsehoods, free from spin and free from a misconceived premise, Mr Speaker. The last minute change in position not only demonstrates their political incompetence, it illustrates their political dishonesty at the highest level over competing rights of the unborn and the mother.

Mr Speaker, as regards abortion generally, irrespective of whether your view is based on a belief system or a scientific analysis, I am sure that we can all agree that, although not a full moral person with equal ethical status – *(Interjections)* Have you quite finished?

585 **Mr Speaker:** Order, order!

**Hon. E J Phillips:** Mr Speaker, I will just wait for the Chief Minister to stop muttering.

590 **Mr Speaker:** May I call the Chief Minister to order, please. You must not interrupt, Chief Minister.

**Chief Minister (Hon. F R Picardo):** I am not interrupting, Mr Speaker, I am having a conversation –

595 **Mr Speaker:** You are interrupting the proceedings. Let the Hon. the Leader of the Opposition finish his speech without any interruption whatsoever. In the same way as the Hon. Neil Costa was allowed to speak and you yourself when you intervened, I would ensure that you would be heard without interruption.

600 **Hon. Chief Minister:** Mr Speaker, you are perfectly entitled to conduct the proceedings of this House in the appropriate way. The Government is perfectly entitled to conduct conversations on this side of the House –

605 **Mr Speaker:** Not in conversations that can be heard across the floor or be heard by me!

**Hon. Chief Minister:** I am not interrupting the diatribe of the Hon. the Leader of the Opposition, who has decided to come to this House simply to insult the Government.

I am going to look forward to my opportunity to reply but in the context of doing so I am going to exercise my right to continue to consult with my colleagues.

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**Hon. E J Phillips:** I am sure that all of us in this House can agree that, although not a full moral person with equal ethical status to someone who has been born, the human foetus is of moral value and holds a significance that increases as it grows throughout pregnancy. It is therefore correct that the respect due to foetal life must be weighed against the significance of respect for a woman's autonomy, gender equality and reproductive health. I think we all can accept, and those on different sides of the polarising debate, that there is a balancing of rights.

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I do not believe that the pro-choice campaigners take the view that a human foetus has no moral value or ethical value; as much as I do not believe that the pro-life campaigners take the view that the mother's rights to autonomy, gender equality and reproductive health have no value in this debate.

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We must all in this House and in our community recognise and respect the fact that rights of the mother and the unborn child are critically engaged in this debate. That debate is one that our community should have and it should not be by way of sanctioning a Government Bill that they are pushing through today. It is simply, what they are trying to do, is put the cart before the horse. The difficulty with this debate that we are having in this House is that it is focused on two arguments which have been articulated at the polar ends, where one side says that one set of rights trumps another once the balancing exercise has been conducted. I firmly believe that the real debate about abortion has not even happened and, given the course set by the Government, it will not be allowed to happen. A real debate, a real referendum, must be conducted free of falsehoods, free of misrepresentation, free of spin and false premises on which this Bill is based. Debating a Bill in the public fails to provide our community with a free and unrestrained discussion of our values as a society.

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The last minute change yesterday and repeated again this morning, handcuffs our community and it is an affront to democracy. I will continue to question what about the large number of people in the middle of this debate who have only been exposed to the arguments put forward by the two polarised views on abortion? Have we as a community genuinely lifted up the drains and had a deep period of reflection and truly tested the views of our community? No, we have not, Mr Speaker. I would argue that we have not even begun to reach out and ascertain the view

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of the moderate majority of this great community. The Government must test the public view on this subject before even beginning to balance rights in this way.

I think we can all in this House agree that all human life is precious, and I am sure we all recognise the very significant special position of the pregnant woman. I believe that the debate we are having is fundamentally flawed because it fails to properly – by which I mean fails to fully and honestly allow the people of our community to debate this most important and sensitive issue.

Reforming the law of abortion requires a very honest appreciation. Religious values should be weighed as a matter of religion, ethical considerations should be debated as matters of ethics, medical assertions should be evidenced through a robust scientific base. We cannot afford for political ideology masquerading as scientific fact. The Government have, in our view, stifled the fullest possible public debate on this issue and I say this for one simple reason, and I think it has been alluded to by the Minister, neither side of this polarised debate is satisfied with the Bill before the House and it is this Bill that the Government wish to put before the people. Both sides, for different reasons, say that it does not work. On the pro-choice side they say it does not go far enough, and I believe that they say this because the Government are simply proposing to introduce the UK law as it was amended in 1967, in a way a copy and paste, and ignoring all the evidence and the experiences of a 52-year-old abortion law, which was introduced to combat the health risks to women in the late 1960s from backstreet abortions. On the pro-life side, it would appear that any law proposed, including a law that may from a purely legal perspective appear to be unconstitutional, insofar as its application to rape, incest or fatal foetal abnormality, is still too far.

If the Government believe in abortion on demand, as their Bill intends to introduce, they should have the courage to say it. And they should also have the courage to pause, reflect and allow for our community the important opportunity to have the fullest and widest possible debate on the question of abortion. A free referendum on abortion, decoupled from this Bill, is necessary and a failure to recognise this is a failure to listen to the voice of the majority of this community.

When we speak for people in this place it is our duty to represent them. However, it is also our duty to speak for them after careful reflection of their instructions to us. I do not believe that all of those people in the middle of this debate, i.e. those who do not fit neatly into one category, people like me for instance, who have been given the opportunity to express our view on this subject because we have not been given the opportunity to express a view on this subject because the debate has only been at the two polarised ends. That cannot be right in the context of the most important decision facing our community. Let our community speak freely, and not just on the Bill.

The Government have misled the people of this community and have promoted the Bill on a false premise, that it is constitutionally necessary. However, reading the Bill numerous times shows that this law for abortion on demand is a simple copy and paste of a 52-year-old law, without proper consideration of expert evidence: evidence of the UK's experience of the 52 years; evidence from experts on moral ethics, medical legal issues and scientific ethical perspectives.

I have listened to citizens, families, the pro-choice debate and the pro-life debate I have also read, I am sure as the Minister for Justice has alluded to, academic journals and listened to many arguments which reflect on the changes made to the law of England back in 1967. Interestingly, in 1985 a veteran pro-choice campaigner argued that the 1967 Abortion Act, the very law the Government seeks to introduce in 2019, was a halfway house which handed the abortion decision to the medical professional. So you can see, by one pure example of this, that there are many arguments that have not been deployed in the context of this debate. What the Government is seeking to do is simply to introduce laws which do not seek to offend the positions of certain sectors of our community.



690 If the Government were courageous and principled and believed in their abortion on demand  
law they should have no difficulty in accepting the view of the people and subject the decision to  
the widest possible debate in an unrestrained and free referendum. If we truly allowed our  
people to express the view in an unrestrained referendum it may well be the case that abortion,  
695 beyond the exceptions, is not where our community is at. Conversely, it may well be the case  
that the public may believe that patient autonomy fertility decisions should be placed with the  
pregnant woman.

It is the debate that is missing here and it is the debate which has effectively been refused.  
What the people are effectively being asked to express is their view on this Bill and this Bill  
alone. The Government pray in aid of public interest but what analysis have they done to really  
700 test the moral barometer of this community in assessing how it sees abortion in the year 2019?

I commend both the pro-choice and pro-life campaigns in equal measures for their courage,  
passion and for expressing their beliefs and their moral judgment, which does allow for some  
reflection. However, not listening to all those in the middle, effectively excluding those from the  
debate does not allow anyone in this House the right to propose and support laws without well  
705 informed debate.

I believe that it is in the interest of this community to withdraw this Bill, publish the legal  
advice, and allow for an unhindered debate so that we can have the widest possible  
engagement with all sectors of the community. The Government are pushing through a 1967 law  
without a mandate, misleading the Committee on the context, which is demonstrably clear from  
710 its consultation process on the face of the Bill. They are asking the people to sanction their false  
and misconceived Bill that cannot and must not be the approach to this issue. The Government  
has sought to amend the law on an urgent basis. We cannot, until our community has fully been  
allowed the opportunity to debate and provide this House with its instructions. It is wrong for  
the Government to force through this legislation.

715 I urge the Government to allow our community to express their views on this subject before  
it is too late, and not simply to ask them to sanction a Bill which has been passed by this House.  
Middle Gibraltar should be allowed the opportunity to speak in a free, unrestrained referendum.  
The Opposition will not support this Bill, Mr Speaker. *(Banging on desks)*

720 **Mr Speaker:** Before I call on any other Member to speak I want to make clear that, given the  
sensitivity of this issue, and given the fact that the Hon. the Leader of the Opposition is speaking  
on behalf of the official opposition, I have not interrupted him, but he has been repetitive. He  
has said the same thing four or five times and I have allowed it, even though the Rules refer to  
the need not to repeat the same. You have used exactly the same words three or four times.

725 Now, having laid that marker that I have not interrupted you because you are the official  
spokesman for the official Opposition, I will not allow any other Member to do that. The  
moment that I find that there is unnecessary repetition of the same point again, and even the  
same words being used, I will interrupt the speaker, I hope that that is clear.

I would not wish to have to intervene during the course of this debate, but it is up to you,  
730 hon. Members, to ensure that that is not the case.

Now, I understand that the Hon. the Deputy Chief Minister wishes to speak but I have  
previously been asked by the hon. Lady that she wishes to speak and therefore I am calling on  
her to take the floor. The Hon. Marlene Hassan Nahon.

735 **Hon. Ms M D Hassan Nahon:** Thank you, Mr Speaker.

Mr Speaker, I rise today fully conscious that what we are dealing with here today is a very  
divisive and emotive issue. This debate and the amendment to this Bill could prove an important  
step towards greater protection and equality for the women of our community, a collective that  
for very evident and very visible reasons, I feel particularly duty bound to represent in this  
740 Chamber. It is also an issue that many in our community feel encroaches on their most  
fundamental moral and spiritual beliefs, and this is not something I take lightly, Mr Speaker.

745 It came as a wake-up call to me and so many others when the GWA proposed the decriminalisation of abortion on *The Gibraltar Chronicle* some 18 months ago. To this end, I feel I and the many women out there campaigning for a change in the law, owe a huge debt of gratitude to the GWA and Tamsin Suarez, who raised this issue before anyone else did, sparking this conversation which has led us to where we are here today.

750 Similarly, Mr Speaker, I take this opportunity to commend the various civil society groups from No More Shame to Choice Gibraltar, the Secular Humanist Society Gibraltar, Unite the Union and the Equality Rights Group for their tireless activism and campaigning to bring to light the urgency of this legislative change.

755 Mr Speaker, before I was a Member of this House I remember once describing the issue as a 'political hot potato' because I knew it was one of those that would inevitably cause controversy if it ever came to a head locally. I had not previously been a campaigner for the legislation of abortion nor had I studied in enough depth the consequences of abortions not being made available here. In fact, until the issue was unambiguously raised by the GWA I never felt like there was a social clamour to change the legislation that was evidently outdated, that did not reflect today's Gibraltar or puts us on a similar standing to the community of nations whose values we purport to share. With regard to women's reproductive rights we were a rare anachronism in Europe. Our laws were barbaric and reactionary, yet the issue remained dormant. And therefore when the topic came up I undertook a process to understand fully the controversy surrounding the abortion debate. I also realised that, as a Member of this House, I no longer had the privilege to sit back and watch political hot potatoes evolve or be pushed back into the long grass, but that I had an obligation to the people of my community to be honest about where I stood on the debate and face this political hot potato myself if I was to be accountable to the people I represent and to those who I do not.

760 Which brings us to the crux of the matter, Mr Speaker, and that is hypocrisy. Nothing else explains this ridiculous incongruent other than plain, simple hypocrisy. As all of us in this House and outside know full well that Gibraltar is a stone's throw away from a jurisdiction that has amply recognised women's reproductive rights in this respect. If a woman wants an abortion she can drive 20 minutes across the border and have it, and so they do, and so they have for generations, and this is something that we all know about, but we choose to look the other way.

770 Mr Speaker, abortions happen, it is a fact. They have been happening for millennia. Evidence of abortions goes back to the classical era, with Greek and Roman texts supporting this historical fact. As far back as Plato's *Theaetetus*, he mentions a midwife's ability to induce abortion in the early stages of pregnancy. Mr Speaker, women since thousands of years back, have sought ways of ending pregnancies they did not want or did not feel ready or able to carry.

785 Because let's not underestimate the significance of embarking on motherhood, Mr Speaker. Motherhood is a life-changing experience and women through the ages have sought ways to end their pregnancies when they have felt that they simply were not ready for it, when they have fallen pregnant unexpectedly, when they have had no money in the bank and have not been able to feed themselves, let alone another human being who would be brought into a life of suffering only to experience an underprivileged lifestyle in a difficult and competitive world. When a teenager or even an adult woman has been raped and does not wish to give birth to a child born out of such a despicable act, when a woman has been in a controlling and abusive relationship and knew that bringing a child into this world would only make him or her a victim of her circumstances. When a woman already has children and knows that having another child will mean she cannot meet their needs. When a woman has been confirmed to be pregnant with a baby presenting syndromes simply not compatible with life, like Edwards Syndrome, anencephaly, massive hydrocephalus, or simply when a woman has known that motherhood is just not for her at a given moment.

790 And yet, in Gibraltar, like everywhere else this eventuality, which let me add, Mr Speaker, is not taken lightly by the vast majority of women who undergo abortions, is punishable with life imprisonment. And although we know that women in Gibraltar have not gone to jail for aborting

795 because they have not actually aborted in Gibraltar, the fact that the law stands as is  
perpetuates a stigma and a charge on them which is simply archaic, patriarchal and totally out of  
line with best international medical practice, as endorsed by the World Health Organization.

There are lobbies of people, as we well know, fighting for the unborn but I am here to fight  
for the born and living, Mr Speaker. My duty as a woman and a Member of this House is to put  
forward the argument that first and foremost favour those of us living in the world here today,  
800 those of us with a history, with memories, with traumas, with experience, with reason, with  
families and relationships and with what should be the autonomy to do what we require with  
our own bodies.

And despite these lobbies accusing me of not having a mandate because this topic came up  
during the life of this Parliament and is not emboldened in anybody's manifesto, this is what I  
805 have to say to them: the democratic process does not just depend on a booklet from four years  
to four years. Societies evolve in between electoral cycles and this is what Parliament is there  
for. There are plenty of other Bills on matters that have come to and continue to come to this  
Parliament which were not even thought of or inscribed in manifestos at election time.

Further, for those out there who will throw at me that I stood with a party that today is  
810 largely espousing anti-choice policies, even though they still do not actually spell out where they  
stand because they talk about a referendum but then they do not want a referendum and they  
do not even know what to do. *(Banging on desks)* I will say this to them, to allay their  
frustrations about my stance: even if I were sitting with the GSD here today no one in the GSD  
would have ever persuaded me or whipped me into casting my vote here to deny women access  
815 to safe, legal and local abortions. *(Banging on desks)* I would have always – regardless of which  
side of the House I was sitting in, or who would be leaning on me to appease certain voter  
demographics – have stood up for women's reproductive rights. And maybe it would have been  
this very Bill which would have by now led me to have had to leave the party anyway on a point  
of principle. So it is just as well, Mr Speaker, that I already have. *(Laughter)*

820 Further, I believe that the most crucial aspect of this debate is for our political class and our  
Members of Parliament to be honest with themselves and with those that they represent. And  
similarly, with those that they do not represent, who form part of our society and are entitled to  
a clear view. All too often during this debate we have heard politicians on this side of the House  
flip-flopping on this issue so as not to lose their sway with certain anti-choice lobbies. They have  
825 said one thing one day and another thing another day, all to secure their conservative vote while  
simultaneously trying to appeal to the more forward thinking and pragmatic members of the  
electorate, Mr Speaker, and that is grossly dishonest and certainly not what the electorate pays  
us for.

Today, no doubt, a lot of these lawyers over here will be continuing to lock horns on legalities  
830 and clauses and judicial reviews using their long words, that nobody understands, to win their  
argument without the minimum regard for what this is really all about and who it affects.

I have come to make several enemies during the course of this debate, Mr Speaker, some of  
whom were great friends once upon a time and no longer look at me in the face. It has been a  
difficult journey for me, but at least even those who intensely dislike me today and disrespect  
835 my views on the issue will know that I was always honest and forthcoming and not opportunistic  
and sly because that is exactly what Members of this House do not have a mandate for, Mr  
Speaker.

So obviously, as you can see, I am vehemently pro-choice and it is funny to hear the Leader of  
the Opposition asking me, of all people – *me*, the one Member of this House who has been clear  
840 from the beginning – to explain my stance, when I have been the one who has been clear from  
the beginning. But I will unpack the issue regarding the referendum stance from a year and a  
half ago at the right juncture when we talk about the commencement clause on referendum.

So my particular stance explains the full extent of what this position really means. Believe it  
or not, Mr Speaker, I would never have an abortion myself. I am a proud mother of four children  
845 and despite having had to overcome the typical challenges of motherhood and the workload

that comes with having a large family I have always had a strong support network and the means necessary to provide for my children. Ultimately, it has been *my* choice as to how to exercise my reproductive rights. However, I do not consider that I have the right to tell other women, many of them subject to multiple vulnerabilities, what to do with their own bodies. This is the essence of being a pro-choicer. Those on the other side of the debate brand pro-choicers as pro-abortion, and that is simply a twisted analysis of the pro-choice position. Pro-choice is just that: respecting and not judging other women's decisions or reasons for what they feel they need to do with their own bodies. This is about trusting and respecting women, Mr Speaker, just like all the data and research tells us we should, and not about promoting abortions.

Mr Speaker, even if the law is changed so that abortion is available in Gibraltar, the religious beliefs of the people in Gibraltar will continue to be respected. Medical professionals are not required by this Bill to act in contravention of their conscience. Nobody, of course, will be required to have an abortion but neither will people be denied the ability to access essential reproductive health care in their own health service because that procedure is considered morally or ethically unacceptable by some people who hold a certain set of religious beliefs. Those beliefs are, of course, respected by all of us here but they are not and should not be the basis of law making. That should be based on compliance with Human Rights law, alignment with international best legal practice, international best medical practice and the democratic entitlement of women in this country to equal treatment in law, including access to the reproductive health care that they should need.

I also believe that the judgemental element of this debate has to be left to one side in order to come to an objective place when legislating. The way I see it, Mr Speaker, that is precisely what lies beneath the ethos of the anti-choice campaigners. Like I have said before, I myself am against abortion in principle but I only feel justified to go as far in that decision for myself and myself alone. And perhaps it is my own social circumstances and conditioning that have led me to take that decision for myself because if I fell pregnant I have the ways and means to bring a child into the world, I myself have a support system, a loving family, financial backing and a stable job – well, for now anyway. *(Laughter)*

But the point is that my set of circumstances does not apply to all women and therefore I am no one, Mr Speaker, in my relatively privileged position within this community, to impose motherhood on those who may not be so fortunate or ready to embark on motherhood. And that is what lies at the crux of this debate, separating the element of judgement and imposition between oneself and others. It is not about wanting more abortions or being 'abortion happy'.

Mr Speaker, on the contrary, since the start of this debate, over a year ago, I have always said that the aim of legislating is twofold: keeping abortion safe and rare. But I firmly believe that this debate has to be health care led and not judgement led.

Therefore, Mr Speaker, I believe it is incumbent on us in this House to really unpack the effects of what abortion legislation actually brings to a community in order to properly diagnose what we are effectively getting ourselves into.

Banning abortions does not stop abortions. Banning abortions just stops safe abortions. Banning abortions simply drives abortions underground, creating risks for women who for whatever reason cannot continue with their pregnancies and take desperate measures to try to end them. Many of those women are already mothers, and by compelling them to take unnecessary risks to end their pregnancies we jeopardise also the families and happiness of those living, breathing children.

The only way to make abortion rates decrease is by making abortion less necessary through properly supporting parenting and safe and consensual sexual lives. In order to do this, as the legislation is passed, the following measures should be introduced in tandem: firstly, the introduction of mandatory sex education for all children is imperative, as is the provision of free contraception in primary healthcare. Introducing these policies across schools and our Primary Care Centre would go a long way to minimise unwanted pregnancies. This sex education should extend to boys and men in a way that teaches them to take responsibility for their actions and to

treat sex and sexuality as emancipatory and joyful, when undertaken with full consent and care between persons who treat one another with dignity, respect and equality.

900 We suffer, Mr Speaker, in our community from a culture that blames women and girls when unwanted pregnancies and subsequent abortions arise, while boys and men lie on the sidelines with respect to taking responsibility in respect of these pregnancies. Healthy reproductive and sexual lives are to be aspired to, and achieving this requires both boys and girls, men and women to become educated and empowered to be respectful and responsible parts in equal and loving sexual relationships.

905 Further, in the course of the last year and while the abortion debate was played out in our social media playgrounds, I noticed more than ever how prevalent the blame culture is on the topic of sexual assault, where the victim is often blamed because she was 'wearing provocative clothing' or by default consenting because 'she was drunk'. We are duty bound to rectify this culture of blame on our women, which then in turn stigmatises her and does very little to minimise the illicit actions by the men who assault them.

910 Mr Speaker, the anti-choice lobby would also do well to campaign to close the wage gap where in Gibraltar women earn a staggering 22.5% less than men, the highest gender pay gap within the EU I must add, before condemning women to a pregnancy they are not ready to carry to term. They should also campaign, as I do regularly, for mental health services to be boosted for a cohesive and robust drug strategy to come into place and for women enduring domestic violence issues to be taken into a safe space where they will not fall pregnant under duress and as a means of controlling them. These are the issues the anti-choice lobby should be espousing before judging and shaming women for their decisions not to continue with a pregnancy.

915 Mr Speaker, I think everyone in this place is agreed that what we want is for abortion to be used only when absolutely necessary and for people who wish to be parents to be able to. And that requires social and economic reform on which we can and should work together. Expending energy on trying to prevent the legalisation of abortion, in limited circumstances, does nothing to address why people feel unable to continue with pregnancies, putting energy there truly would be pro-life politics.

920 I have further comments by way of amendments on the issues raised by this piece of legislation which I shall be going into depth on when I propose such amendments in committee stage, Mr Speaker. For the record, I shall be voting for this Bill but will be voting against the commencement clause dependent on a referendum at committee stage, where I will also make my reasons for this decision known to the House.

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

**Mr Speaker:** The Hon. Dr Joseph Garcia.

935 **Deputy Chief Minister (Hon. Dr J J Garcia):** Yes, Mr Speaker.

First of all I want to thank my hon. Friend and colleague, the Minister for Health and Justice, for the well-argued, clear, coherent and eloquent exposition of the Government's position on this issue. **(A Member:** Hear, hear.)

940 I think there can be no doubt that the arguments on different sides of the abortion debate are based on beliefs that are genuinely held. I use the term 'different sides' as opposed to 'both sides' for it is clear to me that perhaps there are more than simply two. This is not black and white, it is not a simple yes or no. There are some people against legal provision for abortion at all, in any circumstances. There are some who would agree with abortions taking place only in limited defined conditions. There are also some who believe in abortion on request or on demand. There are others still who would support abortion in limited circumstances before a prescribed number of weeks. Indeed, the number of weeks appears to me to be the subject of a totally separate debate in itself.

945 I will not claim, Mr Speaker, to be an expert in any of this, neither am I a lawyer. I would note though that the variety of opinions on the subject is reflected in the way in which such

950 legislation has been adopted internationally. The House knows that abortion laws vary widely  
from country to country. Two countries in Europe, Malta and the Vatican, have banned  
abortions completely. In Latin America, the Dominican Republic, El Salvador and Nicaragua have  
the same position. Some countries provide for abortion on request. This includes places like  
Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Switzerland to name but a  
955 few. Others have chosen to allow abortion but to define the circumstances in which the  
procedure can take place. This could be, for instance, where there is danger to the life of the  
woman, where there is a threat to her physical or mental health, in cases of rape or in cases of  
incest.

It is clear that the passion and the intensity of the debate in Gibraltar matches the passion  
960 and the intensity of the debate elsewhere. However, we should not make the mistake of  
thinking that we are the centre of the world on this, or that somehow what we choose to do or  
indeed not to do here will change the planet. The world, Mr Speaker, has generally rehearsed  
these arguments long before we have done, because the truth is that this debate has taken its  
time to reach Gibraltar. And I say that as someone who has served in this House now for over 20  
965 years and as someone involved in active politics continuously for more than 28. I do not think  
that anyone in favour or against decriminalising abortion has ever written to me until now. That  
is why I said earlier that I would not claim to be an expert. There has been certainly, so far as I  
am aware, no historic record of lobbying of Members of Parliament on the subject. There has  
been no need to prepare consultation papers. Abortion was, as the hon. Lady rightly said, simply  
970 not talked about. The existing discussion, with all its passion and intensity, has arisen from  
nowhere, almost out of the blue.

The current debate, Mr Speaker, is nonetheless, of course, very welcome as is the level of  
interest in the proceedings of this House. Sadly it is rare that the public should take such an  
interest in our agenda. But what has changed? Why is this an issue here now? The truth is that  
975 women resident in Gibraltar who have wanted or needed an abortion have had this performed  
abroad for decades. I am not aware of anyone who was faced criminal charges for having done  
so. Therefore the debates cannot ignore the fact that this has been happening already. It has  
just not been happening here, in Gibraltar. Indeed, for decades there have been probability  
tests, pregnancy tests conducted or offered to parents as a matter of course with a silent option  
980 of termination depending on the results.

The narrow argument before this House today, as I see it, is about whether such abortions  
should be regulated so that they take place in Gibraltar instead of taking place abroad.  
(**A Member:** That is right.) And I ask the question, is there any reason to believe that by making  
provision for such abortions to take place here there would be more of them? (**A Member:** No.)  
985 Because surely that must be the crux of the debate, would those women who choose to have an  
abortion today proceed with such an abortion anyway and would those who will choose not to  
have an abortion continue to hold the same view? Therefore would more women choose to  
have an abortion if we legislate for these to be provided locally? I will not pretend for one  
moment to know the numbers, nobody can. What I can suggest is that the desire for anonymity  
990 may very well drive resident women abroad anyway, whether we have the legal framework in  
place or whether we do not. (**A Member:** Agreed.) In those circumstances a substantial amount  
of the argument would be academic.

Mr Speaker, it is not easy to remove emotion from all this. We are dealing with an issue that  
raises emotional reactions on different sides of the debate. I do believe, however, that we as  
995 legislators should nonetheless try to remove the emotion and concentrate instead as much as  
we can on the cold facts. That is our duty to the people that we serve. I repeat that this is  
difficult. We are dealing with fundamental questions like the rights of the unborn, questions like  
the rights of the mother and questions about the very origin of life itself. I have to say that the  
advent of social media has created a series of armchair experts on every conceivable topic under  
1000 the sun, unsurprisingly including this one, and not only in Gibraltar.

When I started in politics social media did not exist. Anyone who felt strongly enough about writing would vent their frustration by writing to the local press, posting a letter or sending it by fax and waiting for it to be published. There was also an editorial filter in place. Nowadays many people comment on any issue instantly. This often happens in the heat of the moment, and  
1005 sadly sometimes with little or no respect for those who may hold a different point of view. I would submit, Mr Speaker, that particularly in this debates strongly held opinions should be expressed with the utmost respect for those who think differently, and may I add perhaps not only in this debate. **(A Member: Hear, hear.)**

In recent times Gibraltar has probably seen more debate and consultation on the question of  
1010 abortion than on any other matter. **(A Member: Hear, hear.)** *(Banging on desks)* I know that my colleagues in the Inter-Ministerial Committee have held a number of lengthy meetings with individuals and with groups representing different views. I purposely chose not to meet with anyone. Instead I have read the relevant material and have considered the matter seriously and carefully. But our inboxes, Mr Speaker, have been flooded with emails, often with opposing  
1015 views, from Gibraltar but also from abroad. Some of them well-meaning, most of them well-meaning and indeed well-argued. **(A Member: Hear, hear.)** Others more arrogant and patronising in their tone. **(A Member: Hear, hear.)** All this forms part of a legitimate debate.

The House knows that a detailed Command Paper was published last year. Over 100 responses were received to the consultation. The Government said at the time that it would  
1020 consider the submissions and consult further before the publication of the Bill. We have heard that yet another consultation process ensued and the Bill was published finally on 25th April. It therefore beggars belief for the hon. Member to say that there has been no consultation and no discussion. *(Banging on desks)* I have been here for more than 20 years and I have never seen so much discussion on one subject.

The Bill contains a number of amendments which precisely followed the consultation that had taken place. No one can possibly argue that the Government has not listened. I have to say that my colleagues on the Inter-Ministerial Committee have done a magnificent job in distilling the issues, certainly for somebody like me. I would not pretend to be an expert, as I said, in any of this. However, I can safely say that whatever decision this House takes it will be taken with  
1030 the utmost respect for all the sides of the argument. And some, Mr Speaker, will agree with that decision, others will not, that is their rights.

I posed a question earlier as to why all this should be an issue now, at this moment in time? Gibraltar resident women, I said, have had abortions performed abroad for decades. The only difference now is that the procedure has taken place in a different country. No doubt part of the  
1035 reason might be a concern that a difficult border post-Brexit might somehow prevent women from going to Spain for an abortion. There is also the realisation that our current law is no longer compatible with the Constitution and with the European Convention on Human Rights. This is not an argument which rests on a moral position or on a religious point of view, it is an argument based on a legal reality.

It has been argued that the view expressed by those judges of the UK Supreme Court on the law in Northern Ireland is not a binding declaration of incompatibility, but I ask how far can the opinion of those judges simply be ignored and cast aside now that we know it – the cold facts, Mr Speaker, that I referred to earlier. So now we have legal arguments to be added to the melting pot along with a wide variety of other different opinions.

The Bill before the House sets out a proposed legal framework to regulate and provide for  
1045 abortions to take place in Gibraltar. The Government, as I have said, has listened very closely and very carefully to the different views put across in arriving at the text contained in the Bill. Given the nature of the issues at stake, and the explanation given by my hon. Friend, it makes perfect sense for this Bill, if passed by the House, to be put to a referendum of the people of Gibraltar so that they can decide whether it should be commenced or not commenced. What  
1050 would not make sense, Mr Speaker, is what has been argued today: to put the basic principle of abortion yes, or abortion no, to a referendum. There is a need to define precisely what is meant

by abortion, and this is exactly what the Bill does. (**A Member:** Hear, hear.) A referendum on the basic premise of whether or not abortion should be decriminalised in Gibraltar would raise even more questions in the event of a positive vote. How many weeks? In what circumstances? At what location? Authorised by whom? Indeed, Mr Speaker.

Members will recall that this is exactly what happened with the Brexit referendum. (*Banging on desks*) There was no clarity in June 2016 as to what leaving the European Union actually entailed, people did not know the detail of what they were voting for. This has been a major criticism of the Brexit referendum, both in the United Kingdom and here in Gibraltar itself, including in this House. That is precisely why there are now calls for another referendum on the UK EU withdrawal treaty and on the future relationship.

Mr Speaker, clearly we are dealing with a different issue today, but the overarching principle is the same one. (**A Member:** Exactly the same.) Any public vote needs to be on the detail. It is not enough to hold a vote on the general principle of whether or not to provide a legal framework for abortion. The House needs to spell out exactly what we expect the people of Gibraltar to support or to reject in commencing or not commencing the Bill. We cannot repeat the same mistake that the UK made in 2016. Mr Speaker, the Government has spent many months listening to the views of different sectors of the community. That intense consultation has led to the Bill before the House today. As often happens with these issues, it may even go too far for some and not far enough for others. So now let the people decide whether or not the Bill should come into effect.

Thank you, Mr Speaker.

**A Member:** Hear, hear. (*Banging on desks*)

**Mr Speaker:** The Hon. Daniel Feetham.

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

I am going to be outlining our views on the legal position in respect of abortion laws as they stand and what in our view are the legal issues involved.

Now, I do so not because I enjoy being or acting the lawyer – I have enough time doing so outside of this House, to do so also in this Parliament – but because the Government comes to this House and the Government says, ‘We are here with this Bill because we are compelled by the law, the Constitution and the European Convention on Human Rights to do what we are doing today. That is the basis, this is the reason why we are here today.’ If the Government – and indeed politics is about making and defending decisions, Mr Speaker – had said, as the hon. Lady has said, ‘We believe in abortion on demand, for all the reasons that have been expressed by various individuals including the hon. Lady and therefore we are presenting this Bill because that is what our policy is’, then of course there would be no need to talk about the legality, except perhaps on a peripheral basis. But the reason why we are here today, Mr Speaker, is because they have told the people of Gibraltar, ‘This is what we are required to do by the Constitution.’

Before I take the House to the legal analysis, I want to make a number of preliminary observations. The first observation is this, Mr Speaker, of all the debates that certainly I have formed part of in this Parliament, this has been the most difficult, and I know that a lot of Members in this House feel exactly the same. It is a debate that obviously polarises opinion, and it is a debate where our own personal beliefs and our own life experiences also shape the decisions that we are all taking in relation to the position that we take on this particular issue. I do not want it to be said by anybody that I am personally hiding behind any legal issue, because I believe that people are entitled to know what my personal beliefs are in relation to abortion. I am against it, Mr Speaker. That is my own personal position, I speak for nobody on this side of the House, that is my own personal position.



1105 It is my own personal position, Mr Speaker, because I believe that life starts at conception  
and therefore having come to that conclusion it is then very difficult for me to support a Bill that  
effectively allows for abortion on demand. And, of course, I am a middle-aged man and I accept  
that, a million miles away from the type of very difficult decisions that women in this kind of  
situation have to go through in making a decision whether they do or they do not have an  
abortion. But I am also a legislator, a Member of the legislature, and therefore if a Bill comes to  
1110 this Parliament asking me to vote on it, my own personal beliefs obviously are going to shape  
the way that I vote and I cannot support a Bill that allows for abortion on demand. It has nothing  
to do with left or right or socialism or conservatism. In fact, this particular debate cuts across the  
political divide.

1115 Also, when I say that it is shaped by personal beliefs and life experiences, not only is my view  
shaped by the fact that I believe that life starts at conception. My mother became pregnant at  
the age of 17, she had to get married in what colloquially is called a 'shotgun wedding' and  
ended up divorced 10 years later. This is my own personal view, I do not want to deprive other  
unborn children of the opportunity to live fulfilling lives or perhaps less fulfilling, depending on  
what view you take of my life! But, Mr Speaker, I do not want to be part of a vote that effectively  
1120 votes for that. That is my own personal view, I make it public, people can judge me, people can  
vote for me or against me on that basis. I do not hide behind the legal analysis that I am going to  
be making in due course.

But I also say this, Mr Speaker, whatever my personal views are, as I have outlined them, if I  
felt that the current law on abortion was unconstitutional I am here to uphold the Constitution  
1125 and the rule of law and I would have no hesitation – (**A Member:** Hear, hear.) having told you  
what my personal views are – absolutely no hesitation, in voting for a change of law if I felt that  
the Constitution required a change of the law. I do not, for reasons that I am going to develop in  
due course. And indeed, there is an inherent contradiction, if I may say so, in the Government's  
position. I do not want to be unduly political about this because I think this is a debate that  
1130 transcends politics completely, but there is an inherent contradiction in the Government's  
position, because what the Government are saying is, 'We are being compelled by the  
Constitution and the European Convention on Human Rights to introducing this Act.' On the one  
hand, on the other hand it is saying, 'But we are going to put it to the people of Gibraltar in a  
referendum.' Mr Speaker, if there is a constitutional compulsion to do something you do not put  
1135 it to the people of Gibraltar in a referendum, it is inherently contradictory, Mr Speaker.

I have a lot of sympathy for some of the views that have been expressed by the Hon. the  
Deputy Chief Minister when he said – and it is tied to this particular point –there may be more  
than two positions, there may be a third position, there are a variety of positions. It is a view  
that has also been expressed by the Leader of the Opposition. And I think that gives rise, Mr  
1140 Speaker, to how I believe that we ought to be proceeding, which is the Government ought to be  
seeking in relation to our Act, the one that exists, the Crimes Act, a declaration of compatibility  
in the Supreme Court. Let the Supreme Court – the law allows for it – tell us whether the law is  
incompatible with the Constitution. Because if the court comes back and says the law is  
compatible, it is not incompatible, then we are in a different ballgame altogether, Mr Speaker.

1145 Indeed, I do not agree with the Government when the Government says, 'Well, there is an  
issue with rape, fatal foetal abnormality and incest but we cannot legislate for those specific  
areas.' I believe that it is possible to legislate for those particular areas. But if the Supreme Court  
came back and said these are the areas where the law is or is not compatible then, of course, we  
could then go – if the Government chose to do so – to a referendum and ask not one question or  
1150 two, but perhaps even three options. Because you see, Mr Speaker, you cannot go to a  
referendum on something that the Constitution requires you to do, that is inimical to our  
obligations as parliamentarians. The Hon. the Minister for Justice spoke about the rule of law. If  
you take the view that it is unconstitutional it is unconstitutional, you have got to change the  
law. You cannot ask people, 'Do you want us to change the law in order to comply with the  
1155 Constitution?' But the court may come back and may say our law is completely constitutionally

compliant, and the Government may take the position, well actually, what we want to do is to have a referendum asking the same question as, for example, people in Ireland were asked but we also have a third way, even though we are not constitutionally compelled to do so, but we are asking the people of Gibraltar whether they want abortion in cases of rape, fatal foetal abnormality and also in the cases of incest.

1160 What I am getting at, Mr Speaker, is that without actually knowing what the true position is legally it is very difficult to be having the type of debate based on the premise that the Government comes to this House justifying this Bill, which is that the law at present is not constitutionally compliant.

1165 The final observation that I make, before I drill down into some of these legal issues is this; the Northern Ireland case, Mr Speaker, was about very exceptional circumstances. It was about abortion in the case of rape, incest, fatal foetal abnormality, i.e. where the child will not survive. That is what the Supreme Court in the Northern Ireland case was dealing with; and not about abortion on demand. The proposed Bill on abortion is essentially based on the English Abortion Act, which in practice has meant, in the United Kingdom, abortion on demand. There is no legal basis for the assertion that the Northern Ireland case requires Gibraltar to legislate in order to provide for abortion on demand, Mr Speaker.

1170 That is not an argument that is based on a technicality. I am not saying that the Supreme Court case in Northern Ireland is not binding in Gibraltar. I do believe that that is the case too; it is not binding. But in fact what I am saying, Mr Speaker, goes further than that. I am saying it does not justify what the Government is attempting to do today in attempting to pass this Bill through the House.

1175 When assessing the legal issues, there are two principles that we have always got to bear in mind when dealing with human rights, but in particular human rights in the context of abortion. The first – and I will develop that in a moment – is that it is very fact specific. So there was always a limitation, indeed, as to how far you can just simply pick out a case, the Northern Ireland case for today's purposes, and say, 'Because of that case the law in Gibraltar is unconstitutional'. I will develop that in a moment.

1180 The second point is that, as the Hon. the Minister for Justice has explained, but not quite correctly, Mr Speaker, there is a margin of appreciation. The Government yesterday, in its press release, said there is a limited margin of appreciation and the Hon. Minister has repeated that today. In fact, all the cases that have been decided in the European Court of Human Rights and indeed in the Supreme Court in the Northern Ireland case have not said it is a limited discretion. It is a wide discretion, Mr Speaker. That is what we are talking about in the context of abortion laws and considering whether abortion laws are constitutional or not constitutional. Indeed, the words used are large measure or broad measure. That is not a limited measure, Mr Speaker, and again I will take the House through some of the cases.

1185 But just dealing with the fact sensitive, the first point – fact sensitive. Now the hon. Lady, and indeed, reflected as well in the observations of the Hon. the Deputy Chief Minister, they both said we are a stone's throw away from an abortion clinic in Gibraltar. The Hon. the Deputy Chief Minister said in 28 years that he has been involved in politics, *no one* had ever, prior to a year and a half ago, complained about the state of our abortion laws and indeed the House has got to ask itself why, and this has an impact on whether our laws are constitutional or are not constitutional for this reason.

1200 In Northern Ireland, women in Northern Ireland had to travel across the Irish Sea – and I am not justifying the law, I am just testing the law on whether it is constitutional or not constitutional, these are the factors that the Supreme Court considered. They had to travel across the Irish Sea to England, stay in a hotel, have the abortion; much more increased costs, much more detrimental for women. Now, here in Gibraltar, Mr Speaker, there has never been a complaint about our abortion laws and one has to ask why. If you stand here, just outside this Parliament, you are walking 45 minutes away from the nearest abortion clinic in La Línea – 45 minutes away. Our law does not have extraterritorial effect, so anybody that goes from

Gibraltar and has an abortion in Spain is not committing a criminal offence by having an abortion in Spain.

1210 Here in Gibraltar, the Hon. the Minister – I did not know, but the Hon. the Minister, said that since 1997 (**Hon. N F Costa:** At least.) I apologise, since at least 1997 he said that the GHA was funding certain terminations. He also, I know from my own conversations with him as he has told me, that there are pre and post care and counselling facilities here in Gibraltar that were not available to women in Northern Ireland. Now, you can criticise the law, as the hon. Lady has done, for being hypocritical. She says, ‘Well, the law that allows somebody from Gibraltar to walk those 45 minutes to Spain, and have an abortion in Spain, but does not allow it in Gibraltar is hypocritical.’ Look, I think that it is a legitimate criticism of the law. The flip side of that is, of course, that our laws reflect the moral values of the community and there are many in this community that do not want the facilities of the GHA to be used in order to abort healthy children, Mr Speaker, as they see it.

1220 Therefore there are two different competing views in relation to whether our laws are hypocritical or whether in fact our laws are a reflection of the moral values of the community. But the point that I am making, because of course I am talking about the legal position, is that all those factors, when taken together, Mr Speaker, they take this case out of the factors that were being considered in Northern Ireland, or at the very least, the analogies that have been drawn in the Northern Ireland case by the Supreme Court cannot just simply be taken to apply to Gibraltar lock, stock and barrel, that is the danger.

1225 Now, if that was the only point that I would make on the legalities of our law, I would not be making them, Mr Speaker. But there is another point – that is the margin of appreciation. Testing the legality of abortion laws of any country involves an examination of its moral values. The Hon. the Deputy Chief Minister said it is not about morality. Actually, if you look at the legality, if you are testing the legality, it is about the morality for this reason: this is an area where the European Court on Human Rights has consistently held that countries are given what is referred to as a broad margin of appreciation when balancing the protection of Convention rights, for example, the right to private and family life, with a general interest of the community. In other words, countries are afforded a large measure of discretion to derogate from convention rights in certain circumstances where those countries feel that the public interest justifies it. In the case of *Re G [2009]*, which is a case decided where one of the judges was Lord Mance, who was also a judge in the Supreme Court case in Northern Ireland, he said that the margin of appreciation is rooted in the respect due:

to the decisions of a representative legislature and a democratic government within the discretionary area of judgment accorded to those bodies.

The decisions of those legislatures or governments in the public interests are in turn a reflection of the moral values of the society whose abortion laws a court is considering, Mr Speaker.

1245 I will give the House an example: in *Open Door Counselling and Dublin Well Woman v. Ireland* – that is a 1992 case in the European Court of Human Rights – it found that the protection afforded under Irish law to the right to life of the unborn was based on a profound moral value concerning the nature of life which was reflected in the stance of the majority of the Irish people against abortion in the 1983 referendum. The abortion law in that case was found to pursue the legitimate aim of the protection of the morals of which the protection in Ireland of the right to life of the unborn was one aspect.

1250 Indeed, the European Court of Human Rights has consistently demonstrated a huge awareness of the sensitivity of this topic. It is never interpreted, *never, not once* – and anybody in this House disagrees with me can refer to the case where I am to be proved wrong – not once, has the European Court of Human Rights ever interpreted the

1255 European Convention as requiring contracting states to introduce laws permitting abortion either generally or in relation to particular categories.

In the seminal case of *A, B and C v. Ireland*, which was a case in 2010 – and I digress, but I should also inform the House of this: I was the Minister for Justice that introduced the Crimes Act. When I introduced the Crimes Act I sought advice in relation to certain aspects of the Act, and one of the aspects that I sought advice was in relation to abortion. The advice that I received was that the law as we proposed to enact, which was an enactment of what was already there, was constitutionally compliant and compliant with the European Convention on Human Rights, and the case that was cited in support of that proposition was this case that I am referring the House to: *A, B and C v. Ireland*.

1265 The Court there observed that, and I quote:

State authorities are in principle in a better position than the international judge to give an opinion [not only] on the “exact content of the requirements of morals” in their country,

but also:

... on the necessity of a restriction intended to meet them ...

That is at paragraph 232. It then continued, again I quote:

There can be no doubt as to the acute sensitivity of the moral and ethical issues raised by the question of abortion or as to the importance of the public interest at stake. A broad margin of appreciation is, therefore, in principle to be accorded to the Irish State in determining the question whether a fair balance was struck between the protection of that public interest, notably the protection accorded under Irish law to the right to life of the unborn, and the conflicting rights of the first and second applicants to respect for their private lives under Article 8 of the Convention.

Mr Speaker, the Northern Ireland case decided last year by the Supreme Court did not alter that basic legal analysis. When you analyse the judgments of all the judges that said that there was an infringement under Article 8 ... because under Article 3 there are separate considerations but, I think from memory, there was only one judge that said there was an Article 3 breach, there was a majority that indicated that there was an Article 8 breach. And there is a distinction between the two that again I perhaps ought to mention to this House. Article 3, Mr Speaker, is a right not to be subjected to torture or inhumane types of behaviour. There is no balancing act in relation to that. If there is a breach of Article 3 you cannot trump that by the public interest. The public interest only comes into play in relation to Article 8, when you are balancing the right to family and private life of the woman with the public interest. That is why Article 8 is important.

When examining the case, the Supreme Court, all the judges that decided there was a breach, essentially found that there was persuasive evidence that was placed before them that the Northern Irish people were in support of abortion in relation to the limited circumstances. That is the evidence that was before those judges. So on the basis of that evidence they were then able to conclude that the moral values of the people of Northern Ireland were in favour of a change in the law. That is what made it in breach of the European Convention on Human Rights, because the margin of discretion that is given to a state is a reflection of the moral values of that country, not the moral values of countries internationally. That is the reason why, Mr Speaker, in relation to abortion, Ireland was able for many years to maintain a separate position to the vast majority of other European countries.

You look at the moral values to decide whether something is in breach of the European Convention on Human Rights – you look at the moral values of that state; moral values that effectively are enshrined in law, protecting the rights of an unborn child is something that is in the public interest and does trump the right of an individual under Article 8. That was the essence of those decisions that I have taken the House to a few moments ago. But I want to draw attention to passages from the Supreme Court case, which is the case that the

1295 Government is relying upon in support of the contention that they are compelled to do what they are doing today. If one looks at paragraph 22 first of all; that is the decision of Lady Hale. She decided that there was a breach and she said this:

Where there is no consensus of opinion among the member states of the European Union, the Strasbourg court will usually allow individual member states a wide (though not unlimited) “margin of appreciation”...

So it is not limited, Mr Speaker. This is a judge that decided, effectively, what they are saying that they have to do. She is saying:

... a wide (though not unlimited) “margin of appreciation” when undertaking such balancing exercises.

1300 **A Member:** ‘Not unlimited’ means limited.

**Hon. D A Feetham:** Not unlimited, absolutely – not unlimited but wide. (**A Member:** Wide.).

Then she went on to examine the case of *A, B and C v. Ireland*, and at paragraph 24 she said this, and I quote:

The position in this case is quite different.

1305 She was talking about how public opinion in Ireland had been against a change in the law. That is why the European Court of Human Rights had decided that the laws in Ireland, pre the last referendum, was not against the European Convention of Human Rights. She says this:

The position in this case is quite different. In the first place, there is no evidence that the profound moral views of the people in Northern Ireland are against allowing abortion in the three situations under discussion here. Quite the reverse. There is a remarkably consistent series of public opinion polls showing majority support for abortion in these circumstances. The most recent survey was a serious academic study, more rigorous than a conventional opinion poll (the results of the Northern Ireland Life and Times Survey are set out in para 110 of Lord Mance’s judgment). This evidence cannot be lightly dismissed when the argument is that profound moral views of the public are sufficient to outweigh the grave interference with the rights of the pregnant women entitled in making them continue their pregnancies ...

1310 So effectively what she is saying there is, ‘There is evidence before me that the moral values of the people of Northern Ireland were not the same as the moral values of the people of Ireland’, essentially. And I will come back to that in the context of Gibraltar in a moment.

1315 Then, Mr Speaker, if we then turn to Lord Mance’s judgment which is at paragraph ... Well, the relevant paragraph I want to draw the House’s attention to is paragraph 110. Lord Mance then said this about moral values, the reflection of the moral values and society, said, ‘On the other hand,’ – again, he is examining the position of Ireland and then he turns to Northern Ireland:

On the other hand, the Commission now submits that there is a strong public support for Lord for changes in the law. A poll commissioned by Amnesty International in 2014 found that respectively 69% 68% and 60% of those polled people considered that abortion should be permitted in rape, incest, fatal foetal abnormality. In 2017 the Northern Ireland Life and Times Survey, a joint project of Queen’s University, Belfast and the Ulster University, reported on the results of a survey undertaken in 2016, which showed the following percentages definitely or probably in favour of permitting abortion in the following situations:

Mr Speaker, he then goes through the fact that the survey had shown that in Northern Ireland public opinion was in fact in favour of what the court was considering. In other words, should the law be legalised in those three limited circumstances.

1320 And again, if one then looks at Lord Kerr, with whom Lord Wilson agreed, paragraph 321, he says this:

Clearly, therefore, the Strasbourg court in *A, B and C* considered that it should continue to deal with the question of justification of the restrictions on abortion in Ireland on the basis that they reflected the “profound moral

values” of a majority of the Irish population. Whether that was justified on the basis of a referendum held 28 years before in which only 53.67% of the population voted is at least questionable but, in any event, no such assumption may be made in respect of the population of Northern Ireland. For the reasons that I have given, the vote in 2016 in the Assembly cannot be taken as an indication that the majority of the elected representatives opposed reform. To the contrary, it is evident that a majority was prepared to contemplate an amendment of the current law. For that reason alone, *A, B and C v Ireland* cannot be regarded as a significant decision in the present case.

And again, went through the opinion polls and all the surveys and all that body of evidence that indicated that public opinion in Northern Ireland was different to public opinion in Ireland.

1325 Mr Speaker, there is also a fundamental distinction between the position in Northern Ireland with a position in Gibraltar that is also recognised in this judgment – comes through in this judgement – and it is this; that those judges that decided that there had been an infringement, they remarked on the fact that in Northern Ireland you could not have a referendum on this particular issue. That is not the position in Gibraltar, hence why they were paying so much importance to public opinion polls and surveys that had been conducted by a number of bodies.

1330 Mr Speaker, you cannot, therefore, not only because human rights in the context of abortion laws are very fact sensitive, but also because abortion laws, when you come to consider whether abortion laws are constitutionally compliant or whether they comply with the European Convention on Human Rights, central to that are the moral values of the community whose laws you are examining. For those reasons it is not possible to take the Supreme Court case as, even in my respectful submission, a very persuasive authority in the context of our laws in Gibraltar. I do not believe that is the position and therefore it is of limited assistance, in my respectful submission, in judging whether our laws are constitutional or are not constitutional.

1340 There is an important distinction as a matter of fact between the position in Northern Ireland and in Gibraltar and it is this, Mr Speaker. Although the provisions of 161 to 164 of the Crimes Act are provisions that date back to the 19th century – those are the ones dealing with or have their genesis in the 19th century – those provisions were restated by this Parliament as late as 2011. So as late as 2011 the value that that law, which is a reflection of society too and the moral values of society, attributed to the protection of the unborn child, which is a reflection in 161 to 164, that was restated by this Parliament in 2011, Mr Speaker.

1345 It was also restated in 2012 when they commenced the Bill; because we introduced the Bill, but they had no obligation to commence it. It was not law until December 2012. So therefore, they themselves must have thought, in 2012, that there was a value, Mr Speaker, to protecting the life of an unborn child.

There has also, in Gibraltar, been a petition that has been signed by some 6,300 people calling on the Parliament to protect the rights of the unborn child.

1350 Mr Speaker, I do not say that those are conclusive elements. I am not saying, and I am not submitting to this House, that that means that the moral values of Gibraltarians are against abortion on demand or against abortion in certain circumstances, no, I am not saying that. But what I am saying is that there is absolutely no evidence to say that the moral values of the people of Gibraltar are reflected in this Bill. And it is only by doing so that you can then say that in fact that margin of appreciation, that broad margin of appreciation – (**A Member:** Limited.) that is afforded – broad but unlimited, yes but broad, wide. (*Interjection*)

**A Member:** Limited but broad.

1360 **Hon. D A Feetham:** Broad, wide, unlimited discretion afforded has been infringed, and therefore it cannot be said that this law is unconstitutional. The whole basis, Mr Speaker, of why the Government brings this Bill to this House falls away when you accept that analysis. Of course I understand that you do not. I have no right for my legal views to be (**A Member:** Foisted) accepted and I do not seek to foist them on the hon. Gentlemen’s either. They know that I have written to them; I have done the proper thing. I have written to them, I have set out my views in

writing, I have attempted to persuade them why there is no constitutional compulsion; they have rejected it.

1370 But look, bearing in mind what I have said and what the Minister for Justice has said, where as I understood it, he has at least accepted that there is some doubt over the position. The right thing to do is to ask the Court what the legal position is. Because once we know what the legal position is then we can have a proper debate on what the law constitutionally requires and anything over and above that that is a matter of political policy. And I think that what we are doing today is blurring political policy with constitutional compulsion.

1375 Mr Speaker, that is my contribution today on an important Bill. I do not want to leave my contribution without saying, in fairness to the Minister for Justice, that I certainly do appreciate the work that he has done to persuade Members on his side of the House that at the very least this ought not to proceed without a referendum. I certainly appreciate that, Mr Speaker. I say that despite the fact that I am going to be voting against that amendment because I do not believe that we ought to be conflating issues, but certainly I know that he has put a lot of work into this and at the very least we are not going to have a situation where because of a misconceived view about what the legal position is that this law was going to be commenced as from tomorrow or next week.

1380 Mr Speaker, those are my views, for what they are worth. *(Banging on desks)*

1385 **Mr Speaker:** The Hon. the Chief Minister.

**Hon. Chief Minister:** Well, Mr Speaker, the hon. Gentleman is an advocate who knows I do not find him persuasive, but he can certainly clear a room with his eloquence. He did it this morning and he almost did it this afternoon. **(A Member:** You are still here!) *(Laughter)* We had no choice! We are not as pro-choice as we could be in respect to being able not to listen to it, Mr Speaker.

1390 I think that this is not an easy debate and I want to thank, in particular, the mover for an excellent, sensitive and very careful introduction to this debate **(A Member:** Hear, hear.) which I think demonstrates that Neil Costa has really grown in stature in the time that he has been a Member of this House. He now leads, Mr Speaker, one of the largest Ministries in my Government, with the greatest responsibilities and he does so admirably and you see that quality when you deal with difficult issues as we are dealing with today.

1395 Mr Speaker, when the Inter-Ministerial Committee was considering who should present the Bill, it was clear that given that this matter affected both matters of Health and Justice – and it has of course also a tangential connection to Care – the best person to present the Bill was the Minister for Health, Care and Justice. And despite this being, as the Hon. Lady has said, at the very least a political hot potato, he did not flinch in being the person who would carry the ball, and I think he has done an excellent job of summarising the work and the conclusions of the Inter-Ministerial Committee. In fact, I very much look forward to his wider response to all of the speeches this afternoon.

1400 I also want to, just for a moment, stop and reflect, before I answer in detail the speeches that we have heard up to now, on the hon. Gentleman's contribution and Mr Feetham's contribution – I will deal with it later – but I think it was, again, a contribution which sought to analyse rather than in any way politicise; and I am grateful for that. He wrote to me on 4th July and set out the issues that he has now taken the House through, so I had an opportunity of looking in detail at the paragraphs of the judgment that he refers to, without having to listen to him now and actually being able to look at them in the context of my own copy of the judgment. I am very grateful for him having approached the debate in that manner.

1405 I thought the hon. Lady gave the best speech she has given in the past four years since she has been a Member of this House. I thought that she approached this issue, literally as – at least in this House – the girl who kicked the hornet's nest and got the whole thing going, and has brought the sensitivity of a woman to this debate, which I think is important.

I thought the Hon. the Deputy Chief Minister did the usual excellent job of analysing things from a non-legal perspective, but in a logical and chronological perspective, in a way that I think has contributed greatly to the way that the House has the benefit of now making a decision about the Bill before us.

The Hon. Mr Phillips got up and insulted us as much as he could, and as you said, he repeated those insults four times, and that was the sum total of what his contribution was about. It was all about politicising this; it was nothing to do with the sensitivity of the issue. It was literally just 'get up and call them everything I can as much as I can'. I will deal with that when I come to answer the points that he made, because I think the points he made deserve to be shown to be the shallow attempt at politicisation that they are.

Mr Speaker, I am the father of three children, I cannot imagine my life without them. There are other parents in this Chamber. I have never been in the position of those who have had to have an abortion. Of course, I am a man; I could never be in such a position. But I have never even had to walk in their shoes as the partner of a person who has had to make such a difficult decision. Therefore, Mr Speaker, I want to be clear that in all of the determinations that we have made, in all of the discussions we have had as an Inter-Ministerial Committee, in every consideration of an approach we have had by somebody in the consultation process on one side or the other, I have not, and I will never judge a person who has had an abortion.

Similarly, Mr Speaker, I do not have a deeply held belief that positions me in the view that abortion is an aberration. The Hon. Mr Feetham has told us his view, and I commend him for being clear and honest in the way that he has set out his view. He has expressed a little of his history that perhaps we did not know that much about and why he has that view, and I think that the human element to that is to be welcomed in our understanding of his view. And both the hon. Lady and the Hon. Deputy Chief Minister have also told us their particular views as did Mr Costa.

Mr Phillips did not have to tell us his view; it was not a prerequisite in order to be able to launch the insults. But if I had such a deeply held view, if I considered abortion an aberration, then I could not support this Bill and, of course, I could not have supported it being presented as a Government Bill.

But similarly, Mr Speaker, I do not judge those who do hold such beliefs, whether those beliefs are religious or moral. And the strength of this community for generations has lain in our, what we call, tolerance and in our respect for each other's views. **(A Member: Hear, hear.)** We have not sought to name-call those who are different to us, and that means we have not insulted people simply because they have a different religious view to us and therefore perhaps might have a different moral view to us. That is one of the greatest strengths of this community.

I share the view of the Deputy Chief Minister, Mr Speaker, that in this social media age, when people can sometimes be very brave behind a monitor and a keyboard, the anonymity that social media brings is starting to fracture that precious tolerance and respect that we have enjoyed so far.

I do hope, Mr Speaker, that people on both sides of the debate will regain that tolerance, respect and composure in argument that enables us to have a discussion, but not characterise those holding different views in a way that will damage the ability to build future consensus. And from Government we have to be particularly careful in that respect; although I do note that the leader of the Opposition has thrown away all attempt at future consensus.

Mr Speaker, that is a key issue here; whether we can build consensus on something as black and white as this issue is. It is what the Government has sought to do and that is why we have taken such an approach to the work of the Inter-Ministerial Committee, to hear the views of everyone who wanted to make representation to us. We had an initial period for people to submit to us, the submissions kept coming, we did not send anything back and we kept meeting people. I met people last week on both sides of the debate, but we have never considered the issue closed, if somebody felt that they had something to put to us. *(Interjection)*



1470 Indeed, Mr Speaker, the Hon. the Minister for Health, Care and Justice reminds me that we extended the formal deadline at the request of his Lordship the Bishop and then continued, in any event to receive representations.

1475 We have met, Mr Speaker, and discussed and debated with groups that want this Bill but want it to go further, and we have met and discussed with people who do not want this Bill and I think it is going too far – with all of them. We have read widely and we have debated internally, although the Leader of the Opposition specifically said that we had not read anything.

1480 What we have before the House is a Bill, published as a Government Bill, that does what it needs to do to ensure that our position is in keeping with what our advice is, the Constitution and the European Convention on Human Rights requires. I will do a little of the analysis to counter the views of the hon. Gentleman now and then when I answer him specifically, and I know that the mover of the Bill will also do that in greater detail.

1485 Mr Speaker, this Bill will become law at the end of this debate on it in this House. It is clear that this is presented as a Government Bill, and that the Government considers it has a majority for it, and not because Government Ministers are going to be whipped, Mr Speaker, to vote one way or the other, because I have told the House before when dealing with other matters that it is not my practice to whip Ministers one way or the other. But because the Inter-Ministerial Committee has made a recommendation to the rest of the Government and to the Cabinet about how to progress things and therefore how to proceed; and the Inter-Ministerial Committee was half the Government, Mr Speaker. We had five out of 10 Ministers engaged in this process. That is how we have reached this moment.

1490 That is why we want to go further in building that consensus across our community, if we can, because we do not want to impose this Bill, Mr Speaker. Indeed, we do not want to impose the Act on our community either. Because once this Bill passes its Committee stage and Third Reading, what the hon. the Leader of the Opposition did not understand in the way that he presented his counterarguments to what the Minister had said in moving the Bill, is that it is not the Bill that is going to go for referendum, it is the Act. There will be an Act of this Parliament passed by this House once we pass the Third Reading, and it is the commencement of the Act that is going to the people.

1500 That is a key difference and a failure of understanding of one of the fundamental structures of what we are proposing, which I think demonstrates that the hon. the Leader of the Opposition's approach to this has been to ignore the cornerstone of what it was that the Minister put to the House. There is no Bill after Committee stage and Third Reading, there is an Act. When the Act commences is a different thing. But you have moved from a proposed law to a law that is in effect, and all that happens is the commencement of the effect of that Act is what is proposed should be put to the people.

1505 And so, Mr Speaker, I want to be very clear that we will pass the Bill. The Bill will be an Act. The start button is what is going to the referendum.

1510 We want the time between the passing of this Bill and the commencement of the Act to be used wisely. We do not want it to be used in the context of a debate, as the Hon. the Deputy Chief Minister highlighted, of people making an argument in a referendum whether they are for or against something but being able to imagine for themselves what it is that they are being in favour of, a little as happened in the context of the Brexit referendum, as he said. So if we have, at large, the issue of what it is that being pro-abortion means, people can imagine that it is being pro-abortion at 36 weeks or pro-abortion at five weeks. That is why we are going to propose that it should be fixed. That the issue that goes to the people is clear, and that for the next few months, whilst the referendum process plays out, people have the ability to sharpen the arguments on those issues, and not leave to the imagination what it is that they are being asked to implement or not implement. That key misunderstanding therefore skewed everything that the Hon. the Leader of the Opposition said. And if I may say so, with respect to the Hon. Mr Feetham, I think at the end he was also addressing that and I think he made an error in that respect.

1520

1525 But that period, Mr Speaker, the period between now and March, in any event is likely to have been a period where we would not have been able to commence the Bill anyway. So we would pass the Bill here, the Bill would become an Act, but the Minister will not commence the Act anyway, because the Health Service needs to do a lot of things to be ready in order to be able to give effect to this Act, not least the things which we have said we are going to do around the Act, not just in the context of the Act. So this is time that we had anyway, in the context of even the Bill passing and becoming an Act.

1530 Mr Speaker, one of the things that hon. Members opposite have been saying for some time, since this issue really first came up, is that there should be a referendum on this subject, for all of the reasons that I think I have heard them say today. Indeed, the hon. Lady, although she started this political debate, certainly in the context of the politics, was talking about at least a referendum in order to achieve the change that she was proposing.

1535 Mr Speaker, that was a proposal we were not prepared to continue, at the time, because we believed there was no mandate in the lifetime of this Parliament to act in relation to this issue. And this is, as we know, a divisive issue that requires a view. I may or may not agree with Mr Feetham on his position as to how the Irish Court determined how it would act, I will come to that later. I do not think it really was a straw poll of how they felt the Irish felt that led to the legal judgment. But, Mr Speaker, certainly it is a divisive issue and therefore in the absence of a mandate I did not think it was appropriate for political parties to take a position.

1540 All of that changed when the decision in the Supreme Court in the United Kingdom came in, because we interpret that case as a clear imperative that we must act. I entirely disagree with the interpretation that the Hon. Mr Feetham has given, or indeed that purportedly very learned people have written to me about. Purportedly very learned people, Mr Speaker, because they are people who are writing to me with purportedly very good CVs behind them, but as hon. 1545 Members know, Mr Speaker, it is possible to find people to give you opinions one way or the other, and the opinions I have been receiving from outside Gibraltar are ideologically charged opinions – not legally argued opinions – designed to serve the ideological purpose for which they are obtained.

1550 But, Mr Speaker, things moved even further this week because the House of Commons has voted overwhelmingly in favour of imposing direct rule on Northern Ireland to give effect to the decision of the Supreme Court. Now, this is an important point. Northern Ireland is a devolved part of the United Kingdom; it is one of the nations of the United Kingdom. And the House of Commons has voted by an overwhelming majority to impose direct rule on an issue of devolution on Northern Ireland to give effect to the decision of the Supreme Court.

1555 Now, in referring to that development, Mr Speaker, I want to just reflect to what Ms Stella Creasy MP, who is a Labour Member in the House of Commons said there last week, because what she was saying was almost more powerful than some of the ratio in the case. She said this:

And I believe powerfully that we will never have true freedom if women do not have the same control over their bodies as men. If we say to women that we will force them to continue an unwanted pregnancy, they will always be second-class citizens compared with their male counterparts. That is exactly what we are saying to our fellow UK citizens in Northern Ireland.

For which hon. Members should read Gibraltar. We are, she continued:

... in the invidious position of rape victims having to go to court to have their rights upheld. That is torture, which is why the UN Committee against Torture censored our country ... [the United Kingdom] ... and said that how we treat the women of Northern Ireland is torturous.

1560 For Northern Ireland, read Gibraltar, Mr Speaker. **(A Member: Exactly.)** That is extraordinarily powerful.

That is exactly the same thing that would be said about Gibraltar in the same analysis, because the Northern Irish law is identical to the law of Gibraltar and that is the law being tested. Forget for one moment the European Convention on Human Rights and the Gibraltar

1565 Constitution. Listen to what has been said by a United Nations Committee of the United Kingdom in respect of the women of Northern Ireland.

Mr Speaker, the great hypocrisy that all Hon. Members, I think, have referred to is that women in Gibraltar do not have to cross the Irish Sea or indeed fly to London, they just walk 500 metres into Spain to have the legal right of abortion there. And when you put that in the factual matrix that the Hon. Mr Feetham tried to put it, if you look at it objectively, and you look at what 1570 the United Nations Committee is saying about the United Kingdom in respect of the 1861 Act, what you end up with is not a good reason for Gibraltar not to have to change its laws. It is a transparent reason why Gibraltar *must* change its laws.

Ms Creasy in her address to the Commons last week identified that the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW for short, 1575 has identified that this was a breach of women's rights in Northern Ireland, another United Nations Committee. Exactly the same finding would be made about Gibraltar because exactly the same issues arise. Now this is political, this is not legal, this is not the United Kingdom Supreme Court, this is a United Nations Committee looking at the sections of the 1861 Offences Against the Person Act. There was one aspect of the report in respect of the United Kingdom 1580 which is really jaw-droppingly shocking. It is this, the CEDAW Report on the Offences Against the Person Act 1861, the one which is identical to the one in Gibraltar, identifies that:

... a woman who is raped in Northern Ireland and seeks a termination after becoming pregnant will face a longer prison sentence than her attacker.

In other words, in Northern Ireland, and in Gibraltar, a woman who seeks an abortion will be sentenced, under the Offences Against the Person Act, the Crimes Act in Gibraltar, for longer 1585 than the man who rapes her. That cannot continue to be the law of Gibraltar, Mr Speaker. That is the situation in Gibraltar and we cannot allow it to continue. I cannot preside over a Government that has had that brought to its attention, and fails to act.

And I cannot agree, Mr Speaker, that what we need is a referendum at large to decide how we change our law to deal with that, when the United Kingdom has not got a stale law that 1590 is 60-years-old, has got an established piece of legislation that has worked for that period of time and which we have updated ourselves, because if the hon. Gentleman the Leader of the Opposition thinks that what we have done is copy and paste, what he has demonstrated is that he has not read either the Command Paper or the Bill before the House. Because if we had copy and pasted where it says '12 it would say '24', Mr Speaker.

1595 **A Member:** No doctor's certification.

**Hon. Chief Minister:** No doctor's certification, no insistence that things be done in the National Health Service etc. This is the least copy and paste of our laws, Mr Speaker.

Ms Creasy ended her address to the Commons last week by saying:

We must deal with the effects of this anachronistic, ancient law ...

1600 Well, Mr Speaker, hon. Gentlemen can get up and insult us as much as they like. I think, unfortunately, they think that is the best way for them to discharge their political office, not to contribute to the substance of the debate. Mr Feetham has in the way that he has presented his argument, as has the hon. Lady, but the Hon. the Leader of the Opposition got up, and in a bluster and flurry of insults, decided just to tell us that we had copy and pasted our rules. He can 1605 do what he likes, Mr Speaker, but how does he address in his conscience that what he is saying is that we should continue to have a law where a woman raped who seeks an abortion goes to prison for longer than the rapist?

If hon. Members think that what the Commons have done to Northern Ireland by their direct rule is not going to happen to us because we are an overseas territory, well, the overseas

1610 territories have always been more at risk of direct rule than any of the constituent parts of the  
 United Kingdom. But if hon. Members wanted to run that argument let me just take them back  
 six months, or is it that they have forgotten that the United Kingdom Parliament, the House of  
 Commons, has legislated to require every single one of the Overseas Territories to have public  
 registers of ultimate beneficial owners of companies. In other words, the United Kingdom has  
 1615 imposed direct rule on all of the overseas territories that do not have, of their own volition,  
 open registers of beneficial ownership of companies – which we do, so we have not suffered the  
 consequences of direct rule.

But Hon. Members are as the members of the assemblies in the Cayman Islands and the  
 British Virgin Islands etc. who are saying, ‘We are not going to do that public register of ultimate  
 1620 beneficial ownership of companies’, only to have Westminster do it for them. Do they want to  
 put Gibraltar in that position? I am sure that Ms Creasy has been advised of what the position in  
 Gibraltar is, because it has been carried in the same newspaper that has carried the stories  
 about Northern Ireland in *The Guardian*. So this is not an issue on which Westminster is blind.  
 Are they wishing for Gibraltar direct rule in this manner? Because if they are, Mr Speaker, they  
 1625 might find that one of their number, who was not elected at the last election and who has  
 written recently about what the real effects of the 2006 constitution is, might be more right  
 about the reality of constitutional progress in Gibraltar than they have been. (*Interjection by  
 Hon. D A Feetham*) I will come to that, Mr Speaker, and explain the detail of that because I do  
 not think he has quite understood it when it was explained to him the first time.

1630 There is *clearly* now a judgment call to be made. Do you allow Gibraltar to have those ancient  
 and anachronistic laws? Do you allow somebody else to come in and replace them for us?

Mr Speaker, we have absolutely no doubt in fact, that the provisions of Article 8 of the  
 European Convention on Human Rights are so identical to Section 7 of our Constitution that  
 what has been said by the Supreme Court of the law in Northern Ireland is as true of the law of  
 1635 Gibraltar. And we have no doubt that what CEDAW has said about our laws in the context of the  
 UN’s appreciation of the 1861 Offences Against the Person Act is true of our Crimes Act, which  
 has exactly the same derivation and is identical.

It is therefore trite for hon. Members to have started this debate by telling us that the  
 judgment does not create an obligation in Gibraltar. Law school 101, (*Laughter*) we all know that  
 1640 this does not create a direct obligation on Gibraltar, because it is a judgment of the United  
 Kingdom Supreme Court in respect of Northern Ireland. It creates an obligation, a direct  
 obligation, in respect to Northern Ireland. But, Mr Speaker, and I will do this analysis when I  
 come to the hon. Gentleman, exactly the same judges looking at exactly the same law, they  
 would have us believe are possibly going to reach a different conclusion in relation to Gibraltar  
 1645 because of the margin of appreciation, because there was a poll in Northern Ireland which  
 suggested that they were in favour. Mr Speaker, what they are saying is a *Panorama* poll in  
 Gibraltar, in front of those judges in the Privy Council, is what is going to turn them. Well look,  
 let’s not bother to have judges; let’s just put Joe Garcia Senior in charge of decision making by  
*Panorama* polls. (*Interjections*) This is utterly ridiculous in the context of trying to construct a  
 1650 serious argument about how the judiciary reaches its conclusions.

I do not believe that the hon. Gentleman can for one moment believe himself that what he is  
 saying is at all persuasive. The margin of appreciation is about a different thing, Mr Speaker. The  
 margin of appreciation is about a community that expresses its view in a plebiscite aka a  
 referendum and that carries the moral imprimatur of where the people are. Does he know  
 1655 where this comes from, Mr Speaker? This comes from the English concept of the custodian of  
 public morality. The custodian of public morality was the king, then the custodian of public  
 morality was the Court of King’s Bench and after the Second World War the custodian of public  
 morality were the courts generally for the people. If he follows all of the cases about the  
 publication of pornography etc., this is where the *costas monis* is developed in the jurisprudence  
 1660 of the United Kingdom, which then infects the jurisprudence of the European Convention on  
 Human Rights, because that was given to Europe by Winston Churchill after the Second World

War. That is what happened, if he wants the history lesson – although usually the Deputy Chief Minister, who is the better historian. As this is jurisprudential, this is what is behind it.

1665 Therefore the only slither of opportunity for the margin of appreciation to be accepted is through a referendum, although hon. Members are convincing me that we should perhaps just press on with this Bill because they are the ones who said first that we should have a referendum and now, faced with the prospect of a referendum, they are saying that they do not want one, but never mind, Mr Speaker.

1670 There is absolutely nothing which they have said which really has advanced our understanding of the legal issue. But are they really putting themselves in the situation, not just of a Stella Creasy style amendment in the United Kingdom, but of a pregnant woman going to the Supreme Court of Gibraltar as an interested party and seeking an abortion? If they did that and they were to put somebody through that horrific requirement, as they did – and they have form for doing so – with the same-sex tenants in common, who they forced to go through a  
1675 Supreme Court action all the way to the Privy Council, instead of knowing that they had to change the law to recognise same-sex partners as having rights in tenancies in common. If they did, what they would end up with is the same decision as the court delivered in Northern Ireland. The same judges with a slightly different title that would say in the Privy Council rather than in the Supreme Court of the United Kingdom, that is the reality. And in hon. Members’  
1680 hearts of hearts they know it, because Mr Feetham is progressive enough on the issue of same-sex couples to have wanted to go down that route on the issue of equality, age of consent equality. Although, Mr Speaker, perhaps that also should have been done in the same way. But they have form in seeking to protect the executive with the cloak of the judiciary. And we do not, we have a different sort of form – we consult more widely than some people would like us to see us consulting, we take longer than some people might like to see us do, but we do. And that is what we are going to do in this case.

1685 Mr Speaker, if I may say so, with respect, I am not persuaded but, of course, always impressed by the hon. Gentleman’s legal presentations, much more than I am by those who pretend to present to us from outside of Gibraltar. The hon. Gentleman is a Member of this  
1690 House, he does the analysis that he considers is appropriate. We may or may not share it but I respect it. He knows this community, and he and I might disagree as a matter of judgment on where this community is, but he is a member of this community.

1695 But, Mr Speaker, to have received allegedly impressive opinions from outside of Gibraltar that are allegedly much more impressive simply because of where they come from is not going to persuade any of us on this side of this House.

1700 In particular, Mr Speaker, because most of those opinions originate in a jurisdiction where abortion is legal to the 24th week. So people sitting in the United Kingdom ... I mean we can now save the life, thank God, of a child born at 23 weeks, and these people are writing to us and we are proposing to do a law that allows abortion to the 12th week, from a jurisdiction where it is allowed that the 24th week, to tell us that what we are going to do is wrong. Well, Mr Speaker, frankly those opinions are, in my view, no more than just a nuisance. It was a very unpersuasive way of trying to approach the way that the Government reached its conclusion.

1705 It is true, however, that the judgment which we have been referring to, the judgment in the case in Northern Ireland had the benefit of being produced after the judges, the judges being, probably I think the hon. Gentleman would agree with me, six or seven of the best legal brains of the United Kingdom, having been addressed by some of the best advocates in the United Kingdom and having received the best medical advice in the United Kingdom. And so, Mr Speaker, I think it ill behoves us to try and interpose our own legal analysis of what it is that should be the way to determine that case.

1710 The position also that has been approved by the majority of the House of Commons to be imposed by direct rule in Northern Ireland, it is important to remember, is not the Bill that we have before this House. So absent is the deep failure of understanding of the Leader of the Opposition of what this Bill is, compared to the Act in the United Kingdom this is a 12-week Bill,

1715 not a 24-week Bill. This contains a lot less of the choices, opportunities and freedoms that the UK Bill contains. This contains almost no freedoms, almost no choices. **(A Member: It does.)**

What is being imposed in Northern Ireland is the UK Act, full simpliciter. In other words, if you let this go to the House of Commons imposing it on Gibraltar what you are going to get is copy and paste, 24 weeks, all of the choices in there. **(A Member: Exactly.)**

1720 Mr Speaker, I think that what has not been appreciated is that the Bill before the House today is different. It is much more modern. I am against the 24-week time limit of the United Kingdom. I believe that that might have been the right position to have taken 60 years ago. I am against a 24-week law today. I think that is just now too much because, as I said, we are already saving the lives of children born at 23 weeks, thank God, and I think a 24-week limit is too high. But I think 12 weeks is the right balance. And everyone who is against the Bill, Mr Speaker, has to bear in mind that these controls, these options, these reductions of the position in the Bill from the UK position to the Bill that we have before us today are only possible if we make this Act, and not if it is imposed on us.

1730 Indeed, it is not just that the House of Commons, if it were to impose abortion on Gibraltar, would probably do it on the same terms as the UK Act. It is that if the Supreme Court of Gibraltar were to make a decision in the context of an application by a pregnant woman the decision, based on the UK Act, which might be limited in the way that the UK Supreme Court decision has been limited, might very well be in the form and terms of the UK Act also, the 24-week law.

1735 Mr Speaker, frankly therefore, I think it is important that people should realise what it is that the Inter-Ministerial Committee has tried to do. We have tried to shield Gibraltar against that. We have tried to modernise what the UK law would probably be today, if it were being made from scratch, and we have tried to ensure that we produce a better Bill for Gibraltar than simply the imposition of the UK position.

1740 It is also true, Mr Speaker, that despite that there is a deep social divide. This Bill is measured, it is reasonable, it is a compromise. It is designed to protect Gibraltar. But for some people it is not measured or reasonable enough. One side wants a total ban; others on the other side want absolute and total freedom. So this Bill is designed to be neither of the two, it is a social compromise, which we thought would work for everyone who believed in the need to build compromise.

1745 Mr Speaker, there might be that esoteric thing that the Hon. the Leader of the Opposition referred to as 'middle Gibraltar'. Maybe that is what middle Gibraltar is. I do not know what it is. Maybe that is where they are, neither absolute freedom nor a total blanket ban, that is what we have tried to do. And perhaps in doing so, Mr Speaker, we will please no one. But the Inter-Ministerial Committee and this Government is not there to help either side score a goal over each other. That is not how you build communities. That is not how you build consensus. That is not how you do government. That is why we are going to deliver the Bill which we consider delivers the right compromise and we are going to pass the Bill, Mr Speaker, but we are not going to impose the commencement of it. We are going to allow people to make the choice of that start button.

1755 Therefore, Mr Speaker, we are positioning ourselves in the most democratic of places. If the Hon. Members opposite sincerely believe that the only democratic place to be is to say, 'Here is a blank canvas, let us have a debate and decide whatever it is that any member of the community might like.' Well, Mr Speaker, that is more than just a referendum, because at some stage they are going to have to ask a question and at some stage – after the 2016 debacle in the United Kingdom – people are going to want some clarity on the question. Therefore at some stage they are going to have to do the exercise that we have done, and I put it to them that they would come to almost exactly the same conclusion that we have come to ourselves. That is why it is right that we should tie down the issue that people would be asked to vote for in a referendum.

1765 Outside this morning, when we came in, we saw that there are groups passionately in favour and against this Bill, and I respect everyone who was there. I am honestly grateful for the

passion with which they have made their arguments in their exchanges for us. But we do need to find that middle line. And we need to ensure, Mr Speaker, in that context that there are no winners and no losers, because this is not this is not a game of snakes and ladders. This is an important part of how our society develops and grows. In our view, there is now only one way that we can do that and that is to have this referendum, a referendum that will take this issue and pull it out for our society to make a separate and distinct choice about. Because, as Mr Feetham said, views in respect of this issue cut across the party political divide. There are people perhaps on one political side that take the view that there should be choice and there will be people on another political side that take the view that there should be no choice. Absolutely it cuts across the political divide. Therefore, Mr Speaker, it is absolutely right that we should take this out of the general political debate, stop it from polluting people's views on other issues, and give it the attention that it deserves.

Mr Speaker, I think it is also important to set out that many Gibraltarian women have had abortions before today. Whatever happens in this House today, Gibraltarian women will continue to have abortions. And it is utterly hypocritical to suggest that not changing the law is going to stop them from having abortions and that changing the law is going to, in any way, change behaviour and promote abortions. All that is going to happen, if we do not change the law, is that we are going to keep women who need terminations in a clandestine limbo. That is the reality, and I want to clarify that.

I want to clarify something, Mr Speaker, which Mr Feetham started to do but I think it is important that both sides of the House should do it and that we should do it together. What we have to say to women who have had an abortion outside Gibraltar is that they are not guilty of any offence in Gibraltar, and that they have absolutely no need to feel any shame.

Similarly, Mr Speaker, as we try and balance the concerns expressed to us by many who are against abortion in any circumstances why should we impose this law if there is genuinely a majority against it, which I believe there is not. I genuinely believe that there is not a majority against this law. But if there is a majority against it, why should we impose it? Hon. Members are right; we do not have a mandate to do a law on abortion. We believe there is a constitutional requirement to do it, but there is the margin of appreciation argument. So if there is, Mr Speaker, a large silent majority should we impose this issue on them, if constitutionally there is the ability under Article 8 not to impose it? But if there is, Mr Speaker, as I believe there is, a very large liberal body of opinion in Gibraltar that believes that this is an ancient law that is anachronistic and needs to be undone, why should we not take this step forward? And then to take the point that the hon. Gentleman was making – how do we decide that? By an opinion poll? Do we decide by likes on a Facebook post on Speak Freely, is that what this community has come to? Is that how we make these determinations? We are going to pass the law to fix the legal issue. Our body of law is going to be fixed at the end of this debate.

Then the start of that is going to be in the hands of the people and the issue of direct rule will be out of the question. And in my view, Mr Speaker, even the possibility of the Supreme Court acting would be out of the question, because by then we would already be in the process of having a referendum on the issue.

Mr Speaker, I also want to address those who have a belief in respect of this particular issue whose belief comes from religion or whose belief is religious because there is nothing to be ashamed of if people have a religious view in respect of this matter. Many have come to me in the time that we have been consulting on this issue saying, 'I am not in favour of abortion, but please do not think my view is religious', as if there was something to be embarrassed about in that respect. Frankly, there is nothing to be embarrassed about. Different people reach different moral decisions and many of them reach those decisions based on their firmly held religious beliefs and no one here need be ashamed or embarrassed of holding a belief simply because it comes from religion. I think people should not think that the pendulum has turned in such a way that they are not able to freely express that they have a deeply held religious belief that leads them to a conclusion.

1820 In that respect, Mr Speaker, thanks must go to everyone who contributed to the Inter-  
Ministerial Committee, the Catholic Church for a very carefully considered and well-argued  
paper that addressed the issues very dispassionately, they sought more time from us and I am  
very pleased that we agreed to give more time, because it was a very carefully thought out  
paper. Also, Unite the Union who also came in after the deadline had passed, who made an  
1825 excellent presentation on the subject and presented an alternative view even to the United  
Kingdom law as it is today, an even more progressive position than the UK law as it is today,  
something which I had not considered and which opened our eyes to how things are being done  
elsewhere – perhaps a little too progressively for us, at least at this stage. All of them have  
played a hugely important part of this campaign and I want to thank them all on every side of  
the political or of the view divide.

1830 Mr Speaker, the ladies who have had abortions and feel like criminals who have written to  
me to tell me that the law of their nation tells them that they are ‘baby killers’, they are the ones  
who deserve the most consideration, in my view. They have made hugely difficult decisions,  
none of them frivolous. They are people who carry those decisions with them for the rest of  
their lives, and people who have never walked in their shoes inflict pain on them when they call  
them ‘baby killers’. They write to their political leaders and they express this pain and I think it is  
1835 incumbent on this House to send out the message that they have nothing to feel shame about.

I do not believe that the foetus at 12 weeks of life is capable of independent survival and  
therefore I agree with the conclusions of the Supreme Court in the United Kingdom that the  
foetal body is not life.

1840 Mr Speaker, I do not believe – and I am going to tell the House what my views are – that  
women should be forced to have babies. I do not believe that women should be forced to seek  
underground abortions. I do not believe that women should be forced to go abroad to escape  
the effect of a law that criminalises the need for a termination. And I will not walk in the shoes  
of a person that I have no right to impose my beliefs on. I will not agree to continue to have in  
1845 place a law that hijacks the life of a person and forces them to go through a pregnancy. I will not  
add my name to continuing a law that requires that. I do not believe that we, society, and men  
in particular have the right to kidnap a woman, by law, who does not want to have a child, and  
use her as a biological incubator for nine months, I just do not believe that. I do not think that  
can be something that we can continue to impose on people. Those are my views. I am sorry if I  
offend some people with these apparently horrible views of mine, but I must tell you that some  
1850 people offend me with their horrible views of people who have had the temerity to think like  
me.

But we have to deal with these issues, Mr Speaker, and we have to look each other in the eye  
and be honest with each other, and that is what I think. If I am shedding the votes of some  
because I think this way, I am not at all concerned because in life and in politics we have to take  
1855 a view. We have to take a position, and this is mine. But I am one, Mr Speaker, in a Government,  
and I have never whipped my people and I do not want to do it now on an issue like this. So I am  
proposing that we change the law, but we allow the decision to implement it to the people.

Ironically, those who first said that the only way out of this was a referendum – hon.  
Members opposite and the hon. Lady who kicked the hornet’s nest in that way – are now going  
1860 to vote against the amendment we are going to propose in respect of the referendum. I am not  
surprised that hon. Members – not the hon. Lady – are going to do the opposite of what they  
said because other hon. Members in this House know that they have form in that respect, and I  
refer everyone to the debate we had on the Budget.

But, Mr Speaker, for Mr Phillips to take that position today is really quite something because  
1865 when this issue first came up and the matter was being debated and we were all being  
interviewed last year, he said it would not be right to require people to go outside of Gibraltar  
for abortions. But now he is going to be voting against the Bill that is going to allow people to  
have abortions in Gibraltar. He told GBC, in September last year, this:



... one thing that really bothers me about this subject and I've heard recently by the Chief Minister, who is on record as saying that we should consider sending young women and women to the United Kingdom to have abortions.

Now, frankly that in my view is at odds with the Supreme Court decision in relation to the Northern Irish question on abortion and not only is it at odds but it effectively says in the judgement, by one of the Supreme Court Judges, that it would demonstrate inhumane and degrading treatment to do that, to send Northern Irish women to England or Scotland to have abortions. Now what has the Chief Minister said, this is a complete political cop-out in relation to this issue.

1870 That is what he said in September last year. Now he has got the Bill in front of him that allows him to provide for women to have abortions in Gibraltar and what does he do, Mr Speaker? Cop out, and let them carry on going to the United Kingdom or crossing the frontier into Spain. Given the chance to live up to what he said was the thing that concerned him he turns tail and runs.

1875 And what about Mr Azopardi, their allegedly progressive leader, Mr Speaker, who was calling for a referendum but now appears to be whipping his party from beyond this place to vote against the referendum clause that we are going to propose in this Bill. Mr Azopardi said in an interview with GBC on 16th October last year:

We consider that this is an issue which is important enough for the society of Gibraltar to speak and to do so in a referendum.

1880 Well, Mr Speaker, they have the option of supporting a clause that sends this to a referendum. What are they going to do? The opposite of what they said they would. But what is wrong, what makes no sense, what the world has now seen is dangerous, is to go to a referendum in a vacuo, and we will not agree to that. That is why we will insist in changing our law today, we will insist that this Bill become an Act and we will put commencement of the Act to the people in a referendum, Mr Speaker.

1885 Mr Feetham said that this was the most difficult debate we have had. I think it always feels like that, but remember when we were in this place and some were saying that the sky was going to fall in if we allowed equal marriage? (*Interjection*) Well, I am not suggesting that it is on your side, generally, those sometimes beyond this place, those who had been on your side. Has the sky fallen in? No, of course it has not.

1890 Only last week, Mr Speaker, I attended a beautiful marriage ceremony between two men that made most of us attending absolutely and utterly emotional. The hon. Member sitting next to him was there too, although I do not know whether he shed a tear or not, I was not close enough to see him and he did not ask me for a tissue, and I had none left, I had used all mine. Mr Speaker, I was so proud to have delivered that Act for equal marriage and the civil partnerships between all orientations, even heterosexuals, Mr Speaker, even before the UK. But to deliver those things, Mr Speaker, we had to compromise.

1895 The hon. Lady says that we do not go far enough on anything that we do, on equal marriage because of clause 6B. Yet, Mr Speaker, she does not complain, rightly she does not complain that this Bill will not require doctors to carry out abortions. Well, if she were to become Chief Minister of Gibraltar tomorrow she would become the employer of 5,000 people who have different views, and with a responsibility also to those employees. Now, she would have to protect the minority in that number that do not believe in the rights of minorities also and do it in a way that protected the rights of minorities. And so, Mr Speaker, balance is necessary when you are governing. It is not a betrayal; it is not a let-down. It is because in order to achieve the big, good things that we are doing, we sometimes have to ensure that we do them in a method which is balanced. And sometimes we do more, Mr Speaker, with that balance than we might  
1900  
1905 without the balance.

Like this morning, on climate change, when she was from the position of not having responsibility, she was telling us that we were not doing enough and we were just paying lip service. Mr Speaker, I walk to work every day and I am a vegetarian now, two days a week. He told me I had to be a vegetarian one day a week and I had to have an electric car and he did not

1910 tell me I had to walk to work because he does not walk to work, Mr Speaker! We are doing what we can. This is not paying lip service. But we could do even more: we could shut down every power station in Gibraltar for 72 hours a week, that would be progressive, that would be doing more, but it is not what we want is it, Mr Speaker? I think that as much in the context of climate change, as much in the context of other debates, getting the balance right enables us to deliver, not as quickly as we might want to, we might be slower than we want to or indeed have to. But we get it right. And in respect of *this* Bill, this is the right compromise.

1915 Yes, it is compromise, but its success to change all those things that I referred to earlier and to deliver at least a new and modern law, without taking sides, Mr Speaker, without allowing one side to score a goal over each other, protecting Gibraltar from the circumstances that I have indicated we potentially could see on the horizon from the House of Commons, from the Supreme Court etc. and with a referendum on commencement.

1920 But I do think it is time that we do take this step and that we do protect women who need terminations. This is a serious decision, Mr Speaker, and it is one that many years from now we will look back on – probably as we look back on equal marriage – and we will wonder how it took us so long to take it. It is an important step and we will wonder why we took so long to walk in the shoes of the women that have needed our help and we have not heeded them before.

1925 Mr Speaker, the GHA is going to invest very heavily in providing these services, if we are re-elected. The GHA is going to provide services around this Bill, not just for this Bill. In particular in respect of sexual health counselling etc. and it is not lost on me that there is a lot of talk of abortion not being used as contraception, etc. but ironically a lot of the people who are against abortion are the people who are ideologically against contraception as well. And that irony I find impossible to bridge, Mr Speaker.

1930 Somebody threatening me not to vote for me is not going to change my view. Somebody threatening me not to vote for me is not going to make me take a different position, because I am not here to win elections, Mr Speaker. I am here to make the right decisions, with a sense of responsibility for every generation of Gibraltarian, future generations predominantly, in this case, of Gibraltarian women. And that is why we are not going to allow ourselves to play the game of popularity, which I suspect hon. Members opposite have fallen into. We are not going to allow ourselves to be looking at the tally of votes that we think we are going to garner. We are going to allow ourselves to perhaps disappoint, perhaps anger people on both sides of the debate, because we are going to do the right thing. Mr Speaker, that is why it is incumbent on me to tell it like it is and to tell every Member of this House what my views are and why I am supporting the Bill.

1935 I think I have addressed most of the points that I felt I had to address. The Hon. Mr Phillips, I have considerable pages of indignant notes, Mr Speaker, given that he repeated, as you identified, the same insult four times over, but in perusing what he said I can discern nothing that is worth responding to because all that I identify that he said, which required responding to, was that this was a copy and paste job, which I have already demonstrated was not the case.

1940 He said that he thought that we were going to put the Bill to a referendum, because he had not understood that we were putting the commencement of the Act to a referendum, and I am not going to bore Members of this House, or indeed those who may be here trying to understand our views, our separate views, on the substance of this Bill with simply calling him stronger names than he called me. I do not think he has any doubt of what I think of him.

1945 Mr Speaker, I do not think that the hon. Lady said anything beyond the things I have already dealt with where she requires me to give her an explanation of the Bill, but I will tell her that quite conversely she delivered her speech without one insult. She addressed the substance of the issue and the differences between us, but she delivered it without one insult.

1950 She made one point which I think is also a key point in this debate. It applies to me, and I know it applies to all the Members of this side of the House when we have debated this issue, that being pro-choice is not being pro-abortion, and I think that is a key point for people to keep in mind.

1960

1965 I think I have dealt also with all the points that Mr Feetham made in the context of the  
analysis I have been doing. The only final points I would make in respect of what he was saying is  
that the factual matrix in Gibraltar, in my view, makes it even clearer that a decision of the sort  
that we saw in the Supreme Court in the United Kingdom would be made in Gibraltar, because if  
you just have to walk 500 metres to an abortion clinic then really you are creating a legal fiction.  
But indeed the opposite may also be true, and this is the point that the Deputy Chief Minister  
highlighted, in the context of Brexit that option may disappear. The Gibraltar Women's  
1970 Association raised this issue when we did not know whether Brexit meant the frontier was going  
to be closed. And hon. Members need to put themselves in mind where we were two and a half  
years ago. Three years ago and a month ago Snr Margallo was saying the Spanish flag will be  
flying over Gibraltar in four years' time or that frontier will be closed and I will do what I like.  
And rightly this issue then arose, an unintended by-product of Brexit, if you like, Mr Speaker. So  
in doing his factual analysis and in setting things in the factual matrix against the law he needs to  
1975 have considered that also, which I think he failed to do.

I think the Hon. Minister will answer on the margin of appreciation.

Finally, I have come here to tell it like it is. I have come here to tell people what my views are  
and that is what I have done today. That is why I will obviously be supporting this Bill, which has  
been presented by the Government as a Government Bill, and that is why we will pass this Bill.

1980 Mr Speaker, I want to be categorical and I want to be clear. In a referendum I will campaign  
for it to commence.

Thank you very much. (*Banging on desks*)

1985 **Mr Speaker:** We have now been debating for three and a half hours. I am not sure how much  
longer the debate is going to go on, but both the Clerk and I require a comfort break, some  
members of the public may also. I am very grateful to them for the very attentive and courteous  
manner in which they have been following the proceedings. I would like them to stay, please do  
not go, or go and have a walk and come back. We will have a break for 15 or 20 minutes and  
then we will carry on with the debate.

1990

**Hon. Chief Minister:** Yes, Mr Speaker, so I move that the House should recess until 7 p.m.

**Mr Speaker:** Until 7 p.m.

*The House recessed at 6.47 p.m. and resumed its sitting at 7.03 p.m.*

**Crimes (Amendment) Bill 2019 –  
Debate continued –  
Second Reading approved**

**Mr Speaker:** The Hon. Lawrence Llamas.

1995

**Hon. L F Llamas:** Mr Speaker, I approach this debate by parking my personal views on this  
issue – which I publicly aired in *The Gibraltar Chronicle* of February 2018. I shall approach this  
debate in the measured and sensitive nature it merits.

2000 Life, Mr Speaker, life. The moment you start talking about life, you know it is going to get  
philosophically complex; and incidentally, that none of us in this House would neither agree or  
be completely right. Most religions state that life begins at conception with the fertilisation of an  
egg – but this is not the level of debate we are having here today. We are going further, beyond  
the religious dogma defining life. At approximately 22 days after fertilisation, a human heart  
begins to beat.

2005 I was immensely struck during a particular event last year, Mr Speaker. That event was Walk the Beat, organised to raise awareness about heart disease. One of the student nurses involved in the organisation of the event read out a poem, and in that poem, the following words were read: 'Life begins with the first beat of the heart and ends with the last'.

2010 Therefore we must protect an embryo or a foetus of 22 days and a person at the age of 100. It is that same heart that beats from the start to the end and we depend on that very same heart every day to stay alive. Nothing of what I have said, as objective as one can be, persuades me to believe that as of 22 days from conception, by any measure, that human life has not commenced.

2015 In my *Chronicle* interview, I did however recognise that, despite my personal views, I believed there may be need to review our legislation for limited circumstances, being fatal foetal abnormality, risk to mother's life and rape or incest.

2020 A few months after this publication, the Supreme Court dismissed an appeal brought by the Northern Ireland's Human Rights Commission. However, it did signal the need to reform Northern Ireland's laws to cater for, essentially, the limited circumstances. Firstly, I do not agree with the argument that this Bill is required by the jurisprudence of the Supreme Court of the United Kingdom, as has been touted since last year by the Government. In a Supreme Court judgment, a majority of five to two were of the view that the law of Northern Ireland on abortion was incompatible with Article 8 of the European Convention in relation to cases of fatal foetal abnormality and, by a majority of four to three, that it was also incompatible with the Article in cases of rape and incest. Additionally, Lord Justice Kerr went on to say that the views of the five Justices, although in no sense binding must nevertheless be worthy of close consideration by those in whose power it lies to whether the law should be altered.

2030 I do not believe we in this House have a mandate to change the law beyond what is constitutionally incompatible. But it is essential, as stated in the judgment, that close consideration must be given to determine whether any constitutional incompatibility exists. It is therefore my firm view that we must first analyse what those incompatibilities are and, if necessary, propose legislation accordingly. I agree that seeking to provide legal cover for women who wish to terminate their pregnancy as a result of rape or incest is the most difficult to navigate. But I do not believe it is impossible. There is no reason why a person cannot file a report with the Royal Gibraltar Police before accessing a termination if she so chooses.

2040 Whilst at the same time ensuring women have access to proper support and counselling, it would also deal with alleged perpetrators as well as ensure the specific legal recourse, if it does become one, is not abused. What the Government seeks to legislate today goes beyond what may be constitutionally required. That takes Gibraltar into very dangerous territory. It seeks to effectively transpose the UK Abortion Act into our domestic law, meddling with the very foundations that our society was built on, one of consequences, mutual respect and values.

2045 Gibraltarians, as a people, have prided themselves in their courage and principles. This is part of our identity and who we are. We have not shied away from responsibilities and when the going gets tough, we have risen to the occasion. I say this in full consciousness that it is not my decision to make on whether someone chooses to terminate their pregnancy at what will be the most difficult times of their lives; when your own life is at risk, when you have been abused or raped or when your child is unlikely to survive once outside the womb. These are very difficult choices, under the most emotive of situations.

2050 In considering our constitutional compliance, I would propose we carve those limited circumstances out and, after an informed recommendation has been laid, legislate to protect all parties involved. It is also our duty to ensure that any legitimate circumstances are not falsely appropriated by persons who simply want a termination as a means of contraception. This is a bold statement to make, Mr Speaker, but I do not say this without evidence.

2055 When we look at the latest UK statistics available, published on 30th June 2019 in respect of 2018, there are a total of 205,295 abortions performed. 39% of these abortions were performed on women who have previously had one or more previous abortions; that translates into over

80,000 abortions in one year. The proportion of women undergoing one or more abortions has in fact been steadily going up over the past 25 years, when compared to 27% in 1994. Surely the fact that abortions are so easily accessible in law and practice has contributed to that increase.

2060 Mr Speaker, it must also be noted that in the UK 97% of all abortions are carried out under the grounds that continuance of the pregnancy would involve risk greater than if the pregnancy were terminated or injury to the physical or mental health of a pregnant woman. However, 99.9% of those abortions are attributed to mental health and not the physical health of the woman. I am a huge advocate for improved mental health support in our community. However, 2065 using mental health as a means to terminate a pregnancy is an insult to those who live with mental health issues day in and day out.

There are many cases around the world, even in our very own community, where persons with severe mental health issues have thrived after having a child. But if there is a risk of permanent or serious danger to the mother's physical or mental health, options should be made 2070 available in a serious and controlled manner. So if the policy of the Government is to now pass this Bill and then take the Act to the people for ratification, I do not believe this is a responsible thing to do.

We have a duty to review legislation and pass such legislation which may compromise our constitutional obligations. The Government should consider setting up a select committee to report back to this House on the best way forward in this regard, so that legislation to cater for the exceptional circumstances; so that any constitutional obligations are enshrined in our law prior to a referendum. This is required because any constitutional obligation cannot be put before a referendum. Either they are breaching conventions or not. 2075

Mr Speaker, I would like to ask the Government, how could a future government deal with a potential scenario, post a referendum result, where there may continue to be breaches of constitutional rights? This makes the proposition of a referendum on the Act nonsensical and leads me to believe that there may not actually be a constitutional crisis as portrayed from the onset. Otherwise, there would still be a need to identify and legislate to comply with constitutional obligations in the future. 2080

I believe it is important to carve out any constitutional obligations, if they exist, ahead of a referendum, to ensure a referendum is undertaken purely on facts which are set out unequivocally and responsibly on reviewing legislation beyond what is required. 2085

**Mr Speaker:** The Hon. Albert Isola.

2090

**Minister for Commerce (Hon. A J Isola):** Thank you, Mr Speaker.

Mr Speaker, I think the first thing I would like to do is start by congratulating my friend, the mover of the Bill, the Hon. Mr Costa, for his extremely eloquent and sensitive manner in which he introduced the very difficult issues that this Bill undoubtedly produces for us all. He did it in a way that explained clearly each of the different aspects of what is being proposed to do, even in areas where I do not agree with him. But even those he did, I thought, with great sensitivity. 2095

But then asked myself, Mr Speaker, whether he was wasting his time, because it was obvious to me from the moment that Mr Phillips got up that he was going to read a pre-prepared speech irrespective of everything that my good friend had said in his speech. Of course, what Mr Phillips told us was everything except what we really wanted to hear, which is what does he think? Because nobody knows. Who remembers, from the Leader of the Opposition's intervention, what his position is in respect of this Bill? Mr Feetham – absolutely clear, categorical. Mr Llamas – clear. My good friend, the Lady: extremely clear. But what did Mr Phillips think? We are all, unfortunately, still in the dark. 2100

The reason for that is, I suspect, that the speech that he read us may not have been his – because, Mr Speaker, it was so disjointed from reality that it is difficult to believe that somebody sitting in this House could have made that statement knowing what he knows. To say, like he did – which I found absolutely remarkable – that the referendum was not a free and 2105

2110 unrestrained referendum, but that the people would be held in handcuffs, our democracy was  
 put into handcuffs – Mr Speaker, that is extraordinary. That is absolutely extraordinary.  
 (Interjections) I wrote it down because I could not believe what he was saying. He said the  
 approach was fundamentally flawed; that the debate has not happened. He said, it is the debate  
 that has been missing here. Well, where has he been for the last 12 months, Mr Speaker?

2115 I have sat on the Inter-Ministerial Committee, I know how many representations I have heard  
 from across all spectrums of our community, some of which I agreed with, some which I did not.  
 But I respect the views of every single individual that took the trouble and the time to write in to  
 the Inter-Ministerial Committee, which we then spent a huge amount of time discussing and  
 then meeting with all of the different groups and associations, before we then came back,  
 reviewed again; then more meetings with more associations, then more letters. We looked at  
 2120 them all. As I think Dr Garcia quite rightly said, this is probably the most we have ever debated  
 and consulted on in the history of Gibraltar. It is absolutely incredible the amount of time,  
 energy and work that has gone into this, and I thank those that have participated in that  
 important process.

2125 But to come here and say that we have not had a real debate – good Lord! And he did say it  
 four or five times, because it appears all over my notes. And so, in politics, in my view, Mr  
 Speaker, as the hon. Lady said – and this is what she started off with – one needs to be honest  
 with the community. I think to come here and just criticise everything that everyone else is  
 doing, even when some of the things that we are doing are things that you yourselves were  
 calling for, that is not political honesty, in my view, Mr Speaker.

2130 Now, to what end can somebody come to this Parliament, as the Leader of the Official  
 Opposition and not tell us what you think and not tell us why you do not want to tell us what  
 you think? I suspect this is nothing but politics. It is unfortunate and regretful, Mr Speaker,  
 because every intervention has not been political. Every intervention has been heartfelt, honest  
 and genuine; except that one. Except that one which was a political onslaught, using outrageous  
 2135 language in a debate that requires and demands much more sensitivity from somebody who  
 purports to be a responsible politician in this House.

And so I think the language that he used was unfortunate and I regret hugely, because the  
 suggestion that the people of Gibraltar are being lied to, when we have had as open and  
 transparent a debate as we have had, is again unfortunate.

2140 And yet, Mr Speaker, I find myself in the horrible position that I am going to be voting on the  
 same side as him, because I do not support this Bill. And I do not support it for the same reasons  
 that my friend Mr Feetham does not. My faith, my religion, prevents me from voting in favour of  
 this Bill. So from my own perspective, I will certainly vote in favour of the referendum – because  
 I believe that is a chance, as this will pass through Parliament today, for people to reflect,  
 2145 consider and hopefully come to different judgment than that that the Bill presents.

And then, yes, we have the issues that have been discussed throughout this debate on how  
 we deal with the issues that have arisen. But as soon as my friend got up and said that in law –  
 and of course he is right – a foetus is not a person, he lost me. He is a good friend of mine, but  
 he lost me, because my position is different to that.

2150 So, it is with a very heavy heart that I say that I will not be supporting my colleague's Bill. It is  
 important, Mr Speaker, that I say that I am hugely grateful to the Chief Minister and to all my  
 colleagues here who have not sought to whip me, who have not sought to bully me, who have  
 not sought to put me under the remotest bit of pressure to say go this way or go that way. I  
 think that is a sign of the maturity this side of the House in how we handle these sensitive issues.  
 2155 I am genuinely grateful for the respect they have shown me in my own beliefs, in allowing me to  
 vote in the way that I feel that I should. It is not that it is ever happened before, because I have  
 never been asked to vote in a particular way, but in this case I thought, well, they might just ask  
 me on this one. But no, not even on this one has the Chief Minister or any Member of  
 Government asked me to vote in a particular way.

2160 That is the responsibility, that is the leadership that this jurisdiction and this country needs. Not the words of passing the buck, misrepresenting and misleading the people of Gibraltar. No, it is completely the opposite. It is an open, transparent discussion where he set his views out absolutely clearly, as have all the Members in this House and everyone, with the exception of my friend Mr Phillips, who have done likewise.

2165 As I think the Chief Minister said, I very much enjoyed listening to the hon. Lady from the Opposition, because everything she said I could understand. It was logical, and I agree to disagree. I respect the views, absolutely, but I thought it was put across in a very sensitive, careful and good way, if I may say that.

2170 Mr Speaker, the referendum, as I have said, I am particularly grateful for, as it is an opportunity for further reflection and hopefully sufficient people to not commence the legislation that we are debating today.

2175 I also have to say thanks to the Inter-Ministerial Committee for the seriousness with which we have discussed this. We have had some very, very difficult meetings. We have had different views. We have argued with each other. But we respect each other and we do the responsible thing that being in a position in Government requires us to do; you have *got* to act responsibly. My thanks to all of them for having acted in that respectful and professional way.

2180 Mr Speaker, I do not seek to persuade anyone else or judge anyone else. I believe we are all mature and responsible citizens and we will each come to our own conclusions for our own good reasons. As I said before, I respect those of all sides and I hope and assume that they will respect mine.

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

**Mr Speaker:** The Hon. Trevor Hammond.

2185 **Hon. T N Hammond:** Thank you, Mr Speaker.

2190 I set out here to express my views on this Bill. They are very much my views; conclusions that I have drawn through a great deal of reading on this subject in the last 12 months or so since the idea of this Bill was put forward in the Command Paper and I very much respect that there are a whole range of views on this particular issue. Possibly no two people think the same way exactly on this issue – it is that varied. So it is difficult, these are my views, I very much respect the views of others and I have been in no way coerced towards these views either.

Mr Speaker, Article 12 of the Universal Declaration on Human Rights and Article 8 of the European Convention on Human Rights – which have already been alluded to – set out that:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.

2195 I should just make the point that here the word ‘his’ is actually the wording of the Convention, it is not my personal choice to use that word, but I shall just quote the Convention. Also that:

[1.] Everyone has the right to respect for his private and family life, his home and his correspondence.

[2.] There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and as is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

It is important to note here the wording is non-interference by the state. Nobody has a right to choose anything in particular, necessarily; it is about the right not to have your privacy interfered with.

2200 Now these are qualified rights. Your right to family life and privacy can lawfully be interfered with if it is in the interests of, for example, national security, as stated, public safety or the protection of rights and freedoms of others.

2205 Actually, interference with this right frequently goes beyond even these serious examples. I am going to cite a couple of fairly frivolous examples: helmets on motorbikes we must wear, seatbelts for cars, being very minor examples of laws which if ignored would harm no one, but which are nevertheless imposed on us as, perhaps, infringements of our right not to be interfered with. The state also prevents us from taking certain substances to avoid causing harm to ourselves. It allows us to enjoy other substances which may be as or more harmful. Is this not interference with our privacy?

2210 Of course the law also bans us from terminating our own lives. It is illegal to commit euthanasia, at least here and in most jurisdictions. Again, is this not an interference with our freedom with respect to this right? Yes of course it is, in my view at least.

2215 Now I have deliberately used examples where only an individual would be affected by the application or otherwise of the law, not laws where the privacy or freedoms of others may be impinged upon by certain behaviours. The state interferes with our freedom of choice in many ways, and while we may proclaim such a right, the need to live in a social group imposes many strictures on this right.

2220 This right is qualified. We are not automatically entitled to invoke it in every circumstance. Article 3 of the Universal Declaration of Human Rights and Article 1 of the European Convention on Human Rights set out that everyone has the right to life, liberty and security of person, and that everyone's right to life shall be protected by law. No one should be deprived of his life intentionally, save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2225 The right to life is not qualified, it is unequivocal. Killing another person in nearly every circumstance is wrong legally and morally. Even here there are exceptions of course. Self-defence may preclude legal sanction and will usually eliminate moral sanction. A soldier at war and the death sentence in some countries are further examples where the right to life is generally superseded by other imperatives – though there are many who would strongly argue against these examples and these are extreme and unusual cases. Few would disagree that we must all enjoy a right to life above *all* other things, above *all* other rights, because *all* of those things depend on being alive, and if life is extinguished any other rights is irrelevant.

2230 So, there are extraordinary circumstances where it may be acceptable to take a human life; the right to life might be set aside. But the circumstances in which this might occur are far more limited than those in which the right not to have one's life interfered with are set aside. Here is a profound difference between the two competing rights which are apposite to this legislation.

2235 Now it is true to say, and I think the Hon. Minister cited this example, that in 2017 the UN Human Rights Committee, composed of 18 experts, produced an interpretation on the right to life called 'A General Comment', which excluded the unborn child from Article 3 of the Declaration. That committee decided that it did not appear necessary to mention the Right to Life of the foetus. This was a significant shift from the previous General Comment of 2015, which recognised that states could adopt measures aiming at protecting the potential human life or the dignity of unborn children. It should be noted that about 100 countries protested the 2017 General Comment as an attempt to impose the practice of abortion. Those countries included the United States, Poland, Russia and Japan.

2245 While the General Comment may be influential, it remains an interpretation of the Convention. It is not a convention of itself. In contrast, the 1990 Convention on the Rights of the Child, which I do not think anyone has referred to yet, reiterates the 1959 Declaration of the Rights of the Child saying:



the child, by reason of his physical and mental immaturity, needs special safeguards and care including appropriate legal protection before as well as after birth

2250 Note, they do state in that Convention that the legal protection should extend before birth. This, from a convention ratified by the whole of the United Nations, carries more weight, surely for me, than the opinion forwarded by a committee of 18 individuals yet to be ratified. And this Convention is clear: before birth a child is to be given special safeguards and care.

2255 An important point is the value we as a society place on pregnancy. From the moment a pregnancy is announced, there is great excitement and joy in family and friends. We await news as to whether all is proceeding well with a pregnancy with great anticipation. We deeply desire that mother and child are healthy throughout and are deeply concerned about any medical issues that may arise. Indeed, where a pregnancy ends prematurely, even at the earliest stages, we suffer great sadness and this affects not just the parents to be, but family and friends. In many cases we mourn such a loss.

2260 These are not the behaviours we would associate with the loss of something unimportant. These are not emotions we would experience if we did not consider these circumstances as anything but the loss of a life. Is the unborn child only valued if it is wanted? It brings to mind Swift's *Modest Proposal* where children are considered expendable to the needs of adults as they have no rights.

2265 A pregnant woman is carrying a life from the moment of conception. It is a human life because it carries all of the genes necessary for the creation of a person. We may argue over personhood and at what point this might exist, a far more complex question I admit, but from the moment a sperm and an ovum combine to form a being with a human XX or XY chromosome, we have a life. A single-celled organism is a life; that is a scientific fact. A parasite  
2270 that can only survive inside a host organism is a life; that is a scientific fact. No argument will dissuade me that we are here, in this proposed legislation, dealing with the termination of a human life.

2275 The International Covenant on Civil and Political Rights actually states that in countries where the death penalty applies, such a sentence should not be passed on a pregnant woman. It does not say that the sentencing of a pregnant woman to death is acceptable provided the sentence is carried out prior to the passage of a certain number of weeks; it precludes it entirely. This would not be so if no value were attached to the unborn child, if it were not already considered a life. Whether embryo or foetus, two weeks, 10 weeks or 24 weeks old, it is afforded special protection, such that the crimes of the mother shall not be visited upon it.

2280 There is no question that what this legislation proposes is a set of circumstances in which it will be legal to take a human life. I have already provided some examples where this might already exist and they are rare. If we are to expand the scope of circumstances in which a life could be taken, it must be done with the utmost thought, the utmost consideration of circumstances and the utmost application of intellectual rigor. Is this legislation morally right?  
2285 Does it go far enough? Does it go too far? Will societies of the future look back on such legislation and consider it barbaric, as we now look back on aspects of our past and consider them barbaric? Is sentience relevant? Does awareness, the ability to feel, to hear, to see make a difference? I pondered long and hard over this as it might allow for a termination to take place at least at a time when we can be certain there will be no suffering; and this might be more  
2290 acceptable. And the point here is that if we inflict suffering then the act of termination is all the more concerning.

2295 The measure of suffering is something that we apply in many circumstances and not just to humans. We do not wish to see animals suffering; at least the vast majority of us do not. My understanding here is that it is at about eight weeks when an embryo becomes a foetus; that it becomes sentient in at least a primitive sense. So already, at least according to this measure, the seemingly arbitrary choice of 12 weeks for allowing a termination in the circumstances described in the legislation, is a worry. I have raised this point only to demonstrate that I have considered

it and for some time was persuaded by it. However, with further consideration I have found myself forced to discard it.

2300 I would like now, Mr Speaker, to turn to the specific circumstances described in the legislation, which are designed to limit the freedom to have an abortion and I accept that there may be circumstances where a life could be terminated through abortion. I have, after all, described other occasions where it may be acceptable to terminate a human life. Where the life of the mother is at risk at any point during the pregnancy, yes of course there must be a right for  
2305 a woman to protect herself in these circumstances and the law must allow for it. It is a form of self-defence and a woman must have access to medical and social care and support to deal with this most terrible choice.

The circumstances where continuation of the pregnancy might lead to grave permanent injury to the physical or mental health of the pregnant woman should be similarly treated. In the  
2310 case of mental injury it is not so straightforward to determine whether this outcome is probable or even likely. A great deal of supportive counselling should be made available to a woman, of course, where she is facing such a choice, as the termination in itself can cause grave and permanent injury to mental health.

2315 **A Member:** So you are voting in favour?

**Hon. T N Hammond:** I am not finished yet – where a decision to terminate is made (*Interjection*) because there is a substantial risk that the child is suffering from fatal foetal abnormality, again the woman will need a great deal of support having had to make such an  
2320 awful decision – because there is no denying, it is an absolutely awful decision to be confronted with such circumstances. These are all circumstances where the choice to be made by a family is horrible, situations in which none of us would wish to find ourselves or our loved ones in them and the law does need to provide assistance in these circumstances.

‘That the pregnancy has not exceeded its twelfth week and that the continuance of the  
2325 pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman’ – this particular clause gives me a problem, because it is very open to interpretation, particularly the mental health aspect. A number of contributors today have noted that fact and I did note that the Minister himself actually attributed the necessity for this particular clause to rape and incest. I cannot agree with the  
2330 Minister that we cannot specifically legislate for the circumstances of rape and incest and that we need a clause as vague as this, which is, whether we like it or not, the clause that is cited in the UK legislation as the abortion on demand clause. Far too broad a scope for allowing terminations, in my opinion.

So for all the reasons I have stated earlier, I am afraid it leads me to be unable to support this  
2335 Bill.

Thank you, Mr Speaker.

**Mr Speaker:** The Hon. Gilbert Licudi.

2340 **Minister for Tourism, Employment, Commercial Aviation and the Port (Hon. G H Licudi):** Mr Speaker, we have been debating this issue for a while, and a lot has been said on both sides of the House. The points, for the Government, have been clearly set out, firstly by the Minister for Justice, subsequently by the Deputy Chief Minister and also by the Chief Minister; and some aspects of that were also covered by my hon. and learned Friend Mr Isola. It certainly is not my  
2345 intention to rehearse those arguments for or to repeat. We have had enough of repetitions already today, but there are essentially only three points – I will be brief – only three aspects of what we have heard in the debate today that I want to just touch on very briefly.

But before I do so, Mr Speaker, I want to say that I am very proud to be part of a Government that respects plurality of views in the way that this Government does. Today has seen a

2350 demonstration of that, and it is a particularly proud day in that respect – particularly with the  
manner in which the debate, in most respects, and certainly on this side of the House, has been  
handled with due recognition of not just there being two sides of the argument, but as the  
Deputy Chief Minister put it, there are more than two sides, more than two arguments, that  
need to be taken into account; and certainly what I consider the very respectful way in which all  
2355 sides of the arguments have been put and alluded to by this side of the House, whether or not  
we agree with some or all of those arguments is another matter.

We could not have a clearer demonstration of the Government and a party – in this case two  
parties – that does really respect that plurality of views, than my colleague Mr Isola, having  
indicated that on a Government Bill he proposes to vote against for very clear and heartfelt  
2360 reasons, which we obviously respect, and accept that he is entitled to take those views in the  
circumstances of the debate that we have seen today. So what we see today is really not just  
respect, but democracy in action. We should all be very glad and very proud of what is  
happening here today, at least in terms of the debate.

I mentioned that I wanted to touch on just three short points. One is just to pick up on a  
2365 couple of issues raised by Mr Phillips; a second, about something that has already been  
mentioned, that abortions are happening in any event; and lastly a point that Mr Feetham made  
about what he suggested, an inherent contradiction between the Government's position relating  
to the constitutionality of the reasons for bringing this Bill and also at the same time saying we  
are having a referendum

2370 Mr Speaker, some of the points that Mr Phillips has addressed us on today have already been  
dealt with. But in a nutshell his argument was that we have been misleading our population, that  
Government's position is, in his words, false and misconceived, and in relation to the proposed  
referendum, which is going to be moved by the Minister for Justice at the committee stage,  
what Mr Phillips has done is echo the views expressed by the leader of the GSD; that in that  
2375 referendum people will be voting on a false premise. And that, in my view Mr Speaker, is a sign  
of disrespect of the electorate.

It is a suggestion that people can somehow be hoodwinked. That people can somehow be  
fooled. We can pull the wool over people's eyes with our arguments, with our misleading  
statements, with our false premises and everybody will go along to the voting booths with those  
2380 blinkers on and do what we have told them to do. That in my view, as I have said, is  
disrespectful.

They have called for what they have described as a clean and honest debate, and Mr Isola is  
right. Mr Phillips did say that when we go to this referendum, we will be placing our community  
in handcuffs. Those were his words. And that we should have an unrestrained debate – again his  
2385 words. As if they are restrained in any way in setting out their views to the electorate. As if we  
are going to take people to the voting booths in those handcuffs and force them in the manner  
in which they have to vote.

Does the Opposition not realise that they have a role to play in this debate? That they will set  
out their views? They may well disagree with us and they will set out their position to the  
2390 electorate, who I am sure and we will trust, will understand the issues and will vote, some of  
them with their consciences, some of them having looked at the arguments in the debate and  
taken a view one way or the other. But when they come to vote, as we have already said, we will  
have had not just a clean and honest debate but a fullest debate possible on these issues and  
people will vote knowing exactly what they are voting for.

2395 Therefore it is wrong to suggest, as Mr Phillips has been suggesting, that we are in some way  
capable of fooling the electorate in this particular way. That is as far from the truth as it can ever  
get. But having said that we are misleading, that Government's position is false and  
misconceived, he then goes and tells us that he does recognise that if this matter ended up in  
the Privy Council they could agree with the Government's position. They might do. Well, if the  
2400 Privy Council could agree with the Government's position, that is a recognition, at the very least,  
not that he agrees with the Government's position, but that the Government's position is legally

tenable and arguable. If it is legally tenable and arguable, how on earth can it be described as false and misconceived? (**Hon. Chief Minister:** Hear hear.) That is a direct contradiction in terms.

2405 You might not agree with our argument – he might not agree with our arguments – but we think that that is the reality of the legal position that has been taken, particularly as a result of the Northern Ireland position. But what the hon. Member cannot do is say what we are doing is false, but the Privy Council may agree with you. It is a blatant contradiction. On the suggestion that the hon. Member, the Leader of the Opposition has said on a separate referendum – that there should not be a Bill, there should be a referendum – we had the arguments already before  
2410 about what kind of referendum. Mr Isola has made the point that we just could not understand what the suggestion is.

When you have not just a Bill, but he will now understand as result of the explanations given by the Chief Minister, there will be an Act. Clear terms, an Act with these particular provisions, 12 weeks and all the other limitations set out in the Act. The commencement of that particular  
2415 Act is what people will be asked to vote for. What is the alternative and what is it that the hon. Member is proposing? The reality is that we do not know. But let's speculate. Keep the status quo, the law as it is, or change the status quo. That is exactly the position that was faced by the UK in the Brexit situation. Brexit or no Brexit. Leave or Remain. Status quo, you stay in the European Union, or you leave. What does leave mean? Nobody knows even now. They did not  
2420 know then, they do not even know now three years later.

So what is it that the hon. Member wants to put in that ballot paper on the referendum? Status quo, no status quo. What is no status quo? 12 weeks? 16 weeks? 24 weeks? What are the limitations on demand or we put a long list in the ballot paper so that people can tick it off? Why is it that hon. Members come to this House to make a case for something and do not even  
2425 explain what that something is and what the consequences of that something is. (*Banging on desks*)

How can anybody agree with him and take that argument seriously? It is impossible. And we have seen the effect of having that kind of referendum already and the negative effects that this brings. At least this referendum will have the effect of certainty. And that is what referenda are  
2430 supposed to do lead to certainty. You decide one way, you act in one way, you decide in another way, you act in the other way; and you result in certainty having canvassed the views of the electorate. That is what the democratic societies do.

Second point, Mr Speaker, is the issue about – as addressed in particular by the hon. Lady – about some people going either across the border or to the UK and having abortions in any  
2435 event. It is clear that it is something that we cannot ignore. But there is one point which I do not believe has been mentioned yet but I think it is important in that context. When people go – when women, not people – when women decide to make that particular choice for whatever reason, whatever the circumstances of that particular case, that woman, that girl, takes the decision and goes outside Gibraltar to have the procedure performed.

2440 That person does so, and we have seen, as far as we know, there have never been any prosecutions in Gibraltar for that. There is, as far as we can gauge, no breach of Gibraltar law. But those people go and do so subject to the laws of other countries. Why should we subject women in Gibraltar to have to carry out procedures subject to the laws of the other countries? Whatever the parliament in Spain says, that is the condition that our women are subjected to?  
2445 Whatever the Parliament in the UK says, those are the conditions that our women are subjected to?

Our women who take these serious decisions, and I am sure that nobody takes it lightly, should be subjected to the laws of the country that they live in: Gibraltar. And we should provide the necessary limitations, restrictions and safeguards that are compatible with our residents. It is  
2450 no less than our women and our girls deserve: to be protected by our laws and not have to face the consequences of laws in other jurisdictions. Our laws should apply to them and not other laws.

2455 The last point, Mr Speaker, is Mr Feetham's suggestion that there is an inherent contradiction to say that there is constitutional compulsion in bringing this Bill, but that there should be a referendum. I must say that I have some sympathy with that view, because it is something that has troubled me. During the course of our arguments, when we have looked at the Northern Ireland case, and we have taken a view ourselves that for Northern Ireland in some of them is the paragraphs that have been read, you read Gibraltar. And for the Offences Against the Persons Act of 1861 you read the Crimes Act of 2011. I ask myself, well, if all that is true, and our position and our belief is that this is incompatible with our Constitution, then we have a responsibility to act. We have a duty to act if that is our view. Therefore, I have had reservations about the issue of the referendum.

2460 Again, it shows the plurality of views, the difference of views that we have had and the honest debate we have had ourselves before coming to a particular conclusion. The conclusion that we came to as a Government was that we should have a referendum. That is a conclusion that I will support an exercise of collective responsibility. But not just that, but because I am satisfied, despite my reservations and despite having sympathy with the hon. Member's proposition, that what we cannot be, as a Government; although we can take a view, we cannot be absolutely certain. (**A Member:** Exactly.) That is the point that the Minister for Justice said.

2470 So in recognition that we cannot be absolutely certain about the true position, in recognition of the passages in that judgment that talk of margin of appreciation and moral values of a community and the hon. Member's argument that we cannot simply transpose the moral values of Northern Ireland to Gibraltar – in recognition of all of that – I have come to the view, despite my reservations, that it is right that we should have a referendum and we should let the people decide.

2475 That is what democracy is all about and that is what this Government is doing and I am proud to be a member of it.

**A Member:** Hear, hear. (*Banging on desks*)

2480

**Mr Speaker:** The Hon. Edwin Reyes.

**Hon. E J Reyes:** Mr Speaker, my view is that this Bill is neither necessary nor desirable.

2485 This Bill does not help unborn children and it does not help women. It is a radical Bill that the Supreme Court has not asked for. It is something that women have not asked for and that Gibraltar as a whole has not asked for. I implore this House to reject it. We must send a message to women and to the unborn children of Gibraltar that we are here to offer them protection. We must send a message to the people of Gibraltar that we represent the collective values of our society as a whole.

2490 Mr Speaker, I asked a question, where does this Bill come from and who has asked for this? Some of the views expressed today have led us to the conclusion that the Supreme Court requires us to pass the Bill. But yet my colleague Mr Feetham has said that he disagrees with that and went on to express his opinions, and I must say I share those that he so eloquently put out before.

2495 We are now at the position that – if I start to look into statistics and estimates and so on – the passing of this Bill would probably result in about two abortions taking place in Gibraltar every week. That would take us to roughly 100 terminations in a year. Mr Speaker, there are thousands of Gibraltarians alive today who would not have been born if this law had been introduced the same as in the UK back in 1967.

2500 Mr Speaker, there are over 6,000 Gibraltarians who have signed a petition that was laid here in this Parliament in support of the right of life of the unborn child. Mr Speaker, there is not any evidence that abortion helps women if we just give abortion on the grounds that have been placed on the Bill. On the contrary, statistics show that 98% of the abortions that are carried out

2505 in the UK are carried out on the grounds of mental health and the evidence shows that abortion actually worsens a woman's mental health.

In England, we are seeing about 200,000 unborn children killed every year. We are seeing millions of unborn children, beating hearts ended, hearts that start beating just three weeks after conception. We see 9,000 babies each year killed by dismemberment abortions, where the baby is torn apart limb by limb by forceps and the skulls crushed before or while exiting the womb. We have seen sex-selective abortions offered, we have seen 90% of babies diagnosed with Down's Syndrome killed. We are seeing hundreds of babies born alive each year and then left to die. We are seeing their bodies burned and incinerated to help heat hospitals. Just in the last few weeks, we have even seen a High Court judge attempt to force a woman to undergo a late-term abortion against her will, only overturned at the very last minute by the Court of Appeal. Mr Speaker, this Bill takes us 90% of the way there, with only the slightest of modifications offered, in order to present this Bill as moderate. It is nothing of that sort.

2510 This Bill betrays Gibraltarian children by taking their lives. It betrays Gibraltarian women by subjecting them to a traumatic medical procedure, increasing their risk of suicide and death several fold. This Bill, in my opinion, is not pro-woman, it is not pro-child, it is not pro-Gibraltar. Mr Speaker, this Bill betrays us by straightforwardly deceiving us about the legal obligation for such a Bill in order to sell the idea that caters for just one part of the community.

2520 Mr Speaker, no one else in Gibraltar can back this Bill to the extent it has been presented and I still believe that this Bill is neither necessary nor desirable. This is not progressivism. This is not democracy. This Bill is anti-woman, anti-child and anti-Gibraltar. Mr Speaker, in all the contributions that have been made by those wanting to support the Bill, not a word has been said about the right to life and legal protection of the unborn child. Mr Speaker, this issue of abortion is not just solely a woman's issue.

2525 Mr Speaker, I conclude by saying that I find it impossible to subscribe to a philosophy that believes that the destruction of human life is a legitimate solution to a problem that is mostly social, economic and sociological. In reality, most women choose abortion because they believe they have no other choice. So therefore, Mr Speaker, it is the duty of this House to show true compassion, to help people in difficult situations and not just offer an end to life, especially the life of their children. *(Banging on desks)*

2535 **Mr Speaker:** The Hon. Dr John Cortes.

**Minister for the Environment, Energy, Climate Change and Education (Hon. Dr J E Cortes):** Mr Speaker, let the House be in no doubt that in my case, too, this is the one issue to which I have given most thought and consideration in my time as a Minister in Her Majesty's Government of Gibraltar and indeed the most difficult one. Given the subject, the fact that I hold religious beliefs and a huge amount of public debate, this will not come as a surprise except of course to Mr Phillips, who does not think that any of us have given this any thought at all; something to which I take great offence. Well Mr Speaker, I will explain the journey that I have been through.

2540 As a biologist and in scientific speak, I know that a new organism is formed at the moment of fertilisation with all the genetic material capable, if the environment is right, of developing into an adult of the species. This is of course true in the human species. We call it conception and the juvenile form of the child begins its life and continuous growth to adulthood from that moment. As a practising Catholic, I respect the teachings of the Church. I believe in the sanctity of life from its beginning and the importance of considering the life of the unborn. As a caring human being, I care about pregnant mothers faced often with the anguish of taking an often heart-wrenching decision on termination of their pregnancy.

2545 As a freethinker, I believe in the freedom of choice of every individual in taking decisions about themselves, their bodies and their lives and the well-being of those around them; families and friends. As a Christian, I believe in that basic tenet of Christianity, free will. As a socialist, I do

not subscribe to imposing my beliefs on everyone, indeed on anyone. I know that no matter how strongly I may believe something or in something, I may be wrong. Indeed in humility I cannot assume that I am right and that everyone, nay anyone, else is wrong.

2560 In what I have said so far, Mr Speaker, I have made arguments that are used by both of what have come to be known as the pro-choice and the pro-life movements, seemingly so far apart. Therein, Mr Speaker, the conflict within me.

2565 Mr Speaker, I believe that termination results in the death of a human being at an early stage of its, his, her development. As a Christian, I care passionately about the suffering that may face a young woman considering a termination, an anguish that, depending on circumstances, can be desperate, life-threatening, life-changing, with serious and often dire consequences for her and her family. Mr Speaker, try as I might, pray as I might, I cannot reconcile the two. I believe in freedom of choice. But then if the choice is to terminate I know that a life will end. But in certain circumstances if the life has not ended the suffering may be intolerable. The mother's life may be at risk or the rest of her life and those of her loved ones may be seriously affected in a terrifying way.

2570 Mr Speaker, I listen to some of the arguments from those who base them on religion, and then I think that the Church, within limited conditions, will sanction the just war, *jus ad bellum*, where thousands of innocents may die. (**A Member:** St Augustine.)

2575 So, Mr Speaker, how does someone, at the same time a practising Catholic, a freethinker and a progressive socialist, conflicted and placed in the unenviable position of being one of 17 people having to vote on this Bill – how can someone like that; how can I – respond? Mr Speaker, the only way is a pragmatic approach. Looking at the reality of the situation in the face, not what I may like or not like. Because I have a duty as an elected representative of the people to look beyond my own beliefs and I have to leave that to one side and consider this: what is the practical consequence of this Bill passing or not passing on the people who I represent?

2580 Mr Speaker, in many ways the fact that the Bill now provides, or will provide, for a referendum passes the baton on to the rest of the community, so that it will not be just 17 who decide, but thousands, and I will have one vote in that referendum where I can vote however I feel in conscience.

2585 Sure, some of course argue that these are issues that are not for a referendum: that right is right and wrong is wrong. So therefore, I have no recourse, but to go back to pragmatism, Mr Speaker. We are not living in a vacuum, nor are we living in the 19th nor the early 20th century, nor in a community so isolated that what does not happen here will not happen somewhere else. The fact is undeniable that regardless of whether it is right or wrong, abortions are happening. A pregnant woman in Gibraltar who wishes to have an abortion will have one. It may be in Spain or in the UK, but it is available legally in those countries under their law, and it is happening and will continue to happen whether this Bill passes or not. In most cases, it is done secretly, in hiding, without the proper advice as to options; without the right support and at the fringes of legality for that part of it that happens in Gibraltar.

2595 This is not right. It is not right for the decision, for the mother, for the child or for the family. If women are going to have terminations, Mr Speaker – and let's face it, they will – this must not be done surreptitiously. It must be as openly as the woman wants without the fear of arrest, trial and imprisonment, and with full, open access to advice and support which can be asked for and provided openly and without threat or fear. Mr Speaker, bringing abortion into the open will not make it right or wrong. It will recognise a reality, a fact, not an opinion and allow society, religious and secular, to deal with it with understanding and compassion.

2600 In the circumstances that this Bill proposes, I firmly believe, Mr Speaker, that given that there will not be the presumed shame of doing something illegal, women will be more likely to seek advice and access advice and support, including advice on alternative choices. (**Hon. N F Costa:** Hear, hear.) Therefore, Mr Speaker, I am convinced that it is much more likely that the number of abortions in the Gibraltar context will decrease rather than increase. Even more certainly, Mr

Speaker, not passing this Bill will neither stop nor reduce abortions in our community. If we think otherwise, Mr Speaker, we are denying reality and are but fooling ourselves.

2610 It must, Mr Speaker, go hand in hand with enhanced counselling and advice, which I commit to providing in those areas for which I am politically responsible. There will be enhanced education, school counsellors are at the point of being appointed and this will continue. I genuinely believe that this practical approach is the only solution to my dilemma. That recognising the reality of the situation is the only way to bring together all sides, which from the widely diverging perspectives could in fact work together in providing the support that women  
2615 in these situations need now, regardless of the law.

It is not about 'quedar por encima'. It is not about saying proudly or shamefully, depending on how you see it, 'Gibraltar has no abortion laws' or equally proudly or shamefully, depending on how you see it, 'We got an abortion law in Gibraltar through'. That, Mr Speaker, is not the point. This is about real people in real situations. It is not about one side winning and the other  
2620 losing. It is about not burying our heads in the sand and not hiding the lamp under the bushel. It is about accepting the reality and working to help those who really need the help. It is not about choice or about life. It is about love and compassion which transcend any legal instrument.

And so, Mr Speaker, it is with love and understanding for all the sides in this debate, not hiding from the different views and the heartbreak, but looking reality right in the eye after a great deal of thought, and believe me, Mr Speaker, a great deal of prayer, that I will support this  
2625 Bill. (*Banging on desks*)

**A Member:** Hear, hear!

2630 **Mr Speaker:** The Hon. Roy Clinton.

**Hon. R M Clinton:** Mr Speaker, I am of the firm belief that we are all here to pass laws that will benefit the majority in our community and also protect the minorities in our community. I believe that is something we should have at the top of our minds when we debate and pass any  
2635 legislation in this House.

Mr Speaker, I am a great fan of Edmund Burke, who famously told his Bristol constituents that 'I am here to exercise my judgment, not yours'. But Mr Speaker, as has been said already in this House, none of us here actually has a mandate from the people to change the status quo. Looking at the explanatory memorandum, it starts by saying, 'This Bill arises from a finding'.  
2640 Most of the other Bills that come before us are couched in much more positive terms. 'This is a Bill to enhance', 'This is a Bill to provide for', 'This is a Bill to provide benefits'; much more positive approach in tabling a Bill to the House.

I confess I am not a lawyer and I certainly do not pretend to be one, I have no desire to be one. But a lot of what has been said today is couched in legal terms. Mr Speaker, we have heard  
2645 a lot about the need for political honesty, and to an extent I can sympathise with the hon. Lady's view that perhaps this should be a debate, not about what the Supreme Court thinks, but what we as a community think and what laws we want in Gibraltar. Is there actually any requirement, Mr Speaker, to copy what has been done elsewhere? I have a lot of sympathy with what the Hon. Minister Licudi said, in that we should be passing, or doing what we do, under our own  
2650 Gibraltar laws, not the laws of other jurisdictions and I agree with him on that point.

But Mr Speaker, we have heard lots of terms today – some of which, to be honest, I have heard for the first time myself – things about the margin of appreciation, moral values, in terms of where the balances as to whether things are constitutional or not. Mr Speaker, the Hon. Minister Licudi says, in terms of being unconstitutional or not, that we cannot be certain. In that  
2655 case, Mr Speaker, we really should be seeing those legal opinions that the Government I am sure must have, that say these are your options and these are the legal risks. There is also talk in the UK on Brexit legal opinions; I do not see why the Government cannot publish its own legal opinions on what is an extremely important matter for this community.



2660 Mr Speaker, a Bill that is only three pages long is occupying disproportionately a lot more  
time than the Financial Services Bill, which runs at over several hundred. But the reason for that  
is this is a very, very important issue to this community. We have heard words of political  
honesty, and yes I agree, we need to be honest. We need to be honest with ourselves and we  
need to be honest with the community. But everything I have heard so far, Mr Speaker, in terms  
2665 of the reasons for this Bill, have been about fear: fear about the Supreme Court ruling in the UK;  
fear about it being unconstitutional; and even more bizarrely, fear of direct rule.

Mr Speaker, either we in this House believe that this proposed Bill is for the benefit of our  
community and is a law that our community desires or it is not. Is this actually legislation that  
will be imposed upon us? Mr Speaker, this is why I also have a major problem with this Bill,  
because the way it is presented to the House, Mr Speaker, is in very negative terms. It is saying,  
2670 Mr Speaker, if we do not pass this Bill it will be imposed upon us. This is again why I have some  
sympathy with what Mr Licudi is saying: he says, well actually, if it is unconstitutional, why have  
a referendum? Because we will have an actual duty to pass this into law, whether we all like it or  
not.

This is where I find some of the arguments have been made today, and again I am not a  
2675 lawyer, I do not claim to be a lawyer, I have no desire to receive a QC, honorary or not.

**Several Members:** Ooh! *(Laughter and interjections)*

2680 **Hon. D A Feetham:** There's your QC out of the window. *(Laughter)*

**Hon. R M Clinton:** Thankfully Mr Speaker, I will never have that dilemma.

But Mr Speaker, how – *(Interjections)* I have no problem with that Mr Speaker, I am very  
proud to be a bean counter.

Mr Speaker, I would like the Minister honestly to answer this question for me: what happens  
2685 if this Bill goes – or the Act, as he says, once it is passed today, since he seems to have the  
majority he desires – once this Act is passed and goes to the people, and the people say, 'Well  
actually, thank you very much, we have read it – you know what? We do not like it, no.' Oh my  
God, it is unconstitutional! Oh my God, we are going to have direct rule! Is that what is going to  
happen? Is the UK going to suddenly say, 'Well, I am sorry guys but you have to pass this Bill'? Is  
2690 that the legal reality? Because if it is, we are wasting our time.

Is that the honest truth, Mr Speaker? That is what I need to know. In all honesty, can the  
Minister tell this House that there is a threat of direct rule if we do not pass this Bill in this exact  
form? If there is not a threat of direct rule, he should tell us, because the Chief Minister is  
making a big song and dance about to it saying, 'Oh my God, if we do not do this, shock horror,  
2695 we will have direct rule!'

Mr Speaker, either we in this Parliament are here to legislate for our people or we are not. I  
think we need to know the answer to that question. So I really need the Minister to answer the  
simple question that if the people of Gibraltar reject this Act, will there be any consequences?  
Because if there are no consequences or there are consequences to rejecting the Act, then the  
referendum is frankly meaningless. Because if the people of Gibraltar do not give the right  
2700 answer, they will have this imposed upon them, by the Chief Minister's own logic.

I would like an answer to that question, Mr Speaker. I will say I cannot support the Bill in this  
form.

2705 **Mr Speaker:** Right, I will now call upon the mover – oh sorry, yes; I have got a note here.  
The Hon. Samantha Sacramento.

**Minister for Housing and Equality (Hon. Miss S J Sacramento):** Mr Speaker, my hon. Friend  
the Minister for Justice as the mover of this Bill has already dealt with the substance of this in  
2710 great detail and we have all, on this side of the House, dealt with this at great length. Therefore,

Mr Speaker, this leaves me to be concise in my contribution. And my contribution to this, Mr Speaker, is as a Member of Parliament, as the Minister for Equality and as a woman.

2715 Mr Speaker, abortion is an issue for many women. But it is of course an issue for everyone and that is evidenced by everyone who has engaged in this debate. This debate, of course  
2720 needless to say, is an incredibly emotive one on both sides of the argument. It is an important and a serious one. As such we have met as the Inter-Ministerial Committee and consulted with interested parties at length, as well as debate of this matter among ourselves. Insofar as consultation, Mr Speaker, as you have heard, it has been substantial and substantive, and I am grateful to everyone who has engaged with us, given us the opportunity of their views and the opportunity for us to have the real and meaningful engagement which we have.

2725 This Bill, Mr Speaker, provides a framework to provide for abortion in the limited circumstances as defined. It is a framework that has never before existed and it is therefore important that it does. This Bill does not, Mr Speaker, as we have heard, subject anyone to have an abortion, nor does it force anybody to have one. Abortions, Mr Speaker, as we know, have  
2730 always happened and I dare say that the reality is that they will continue to occur irrespective of this proposed legislation. This is why, therefore, Mr Speaker, it is important that the framework is in place. Indeed, Mr Speaker, I dare say if anything there is a probability that this legislative framework, and more importantly perhaps the resulting changes offering support, may actually result in the reduction of women choosing abortions. **(A Member: Yes.)**

2735 But for me, Mr Speaker, in the context of the debate, the proposed legislation is but one factor and there are others that are equally important. This, as I see it, is important progress that we have made as a result of the debate in addition to the legal framework that is being proposed, because I have no doubt that anyone who considers undergoing an abortion will not take such a decision lightly. We must therefore ensure that advice and support mechanisms  
2740 exist. As such, our duty is to inform on such options. But these can only work if a choice is available to begin with. As my hon. Friend Mr Costa says, this is not just any procedure that the Bill will provide for and it will not be taken lightly.

2745 First of all, Mr Speaker, it is important that we understand the issue of unplanned pregnancies, and I know that the Minister for Education has done a lot of good work to advance sex education in schools to make it more relevant and effective. However, to suggest that circumstances of unplanned pregnancies only apply to young girls is wrong and we must move away from this stereotype if we are to serve the process with the justice that it deserves. We must therefore look beyond that, so that in the event of an unplanned pregnancy, it is not automatically an unwanted pregnancy. This is where I think it is very crucial that the changes –  
2750 the policy changes – that we have introduced will make a significant difference to women beyond the law. Mr Speaker, it has been said that people choose abortions because they feel that they have to do this because they have no other choice. This may very well have been the position up to now. But this is precisely why choice and the support framework is important.

2755 Significantly, the changes that we have made beyond the legislation and the additional support are as a result of the focus which has arisen from this debate and on the back of this proposed legislation. This I think, Mr Speaker, will make all the difference to those who may be considering an abortion. And importantly, that they be aware of these other options. But ultimately, where a woman feels that it is necessary to do so, Mr Speaker, it is important that they have the choice available to them. These new support systems, Mr Speaker, have been introduced by way of counselling or support by the Care Agency or changes by the Department of Education.

2760 We have heard the Minister for Health and the Minister for Education go through these in detail. I on my part, insofar as providing support to women in my Departments, when they may be considering socioeconomic circumstances as a factor when considering abortion, have looked at the Departments that I am responsible for and we have looked at our procedures in the Housing Department. Similarly our proposals to review existing maternity leave provisions and

extend these to priority and paternity leave, again Mr Speaker, I think will be an important factor.

2765 But Mr Speaker, ultimately, this proposed legislation is about choice and it is therefore necessary and important that this choice is available. And Mr Speaker, on that basis I commend this Bill to the House. (**A Member:** Hear hear.) (*Banging on desks*)

**Mr Speaker:** The Hon. Neil Costa. (*Interjection*) Oh, the Hon. Sir Joseph Bossano.

2770 **Minister for Economic Development, Telecommunications and the GSB (Hon. Sir J J Bossano):** I was not planning to speak, Mr Speaker, because I thought everything had been covered. But I think there is one point about the position of the Opposition that I have difficulty in understanding.

2775 I would like to deal with the question of whether we have a mandate, which the Hon. Mr Clinton suggested; we should not be doing this because we do not have a mandate. We did not have a mandate in 2015 to do anything about Brexit. We did not know it was going to happen. And therefore, when you are in Government, what you put in the manifesto is not in fact something that reflects everything that is going to happen in the next four years except the economic performance, which is what I put in and is always right. But everything else is based on  
2780 the policies that we want to put in and then having to deal with things that happen which were unexpected. Certainly the ruling in the United Kingdom which has been referred to, and which the advice we have got is something that is capable of being directly applied in Gibraltar in comparable circumstances, was not something we knew in 2015 was going to happen. So we have to deal with that.

2785 But when there is the issue of whether we should legalise something that is legalised in most of Western Europe here in Gibraltar, we had not taken, previously, a position on saying 'Yes we are going to legalise it', in the knowledge that it was something that there was a substantial body of opinion here in Gibraltar that was opposed to it and that therefore it is the people who were against it who were insisting – from my personal knowledge of the debate, before it has  
2790 become as obvious and as open as it is now – who were insisting that something as serious as this should not be decided by a Government and an Opposition vote. I mean, something like introducing the right to abortion should not be a matter where a majority of three people should decide.

2795 But it was predominantly the people who did not want it to happen that took that position. The people who were calling for a referendum through all the occasions when this thing has surfaced has been the ones who felt that if a Government came in with a manifesto commitment to do it, it is not the kind of thing that should be allowed to happen without testing public opinion. Therefore it seems to me that since they are all ... or possibly all but one, because Mr Clinton has not said that he is against it, he says he is unhappy with the Bill, but he has not  
2800 said 'I am against abortion'; all the others have said they are against abortion. So therefore the policy of the Official Opposition is that they oppose by a majority or by unanimity, presumably they would give the freedom to any individual if he felt differently, that they would oppose it. If they were in Government there would not be a need for a referendum because not doing it does not require a referendum. Doing it requires a referendum.

2805 So if we had decided that we wanted to do this, we would have taken note of the fact that there was a strong enough opinion that needed to be tested to make sure that we were representing a majority view. If that is indeed amongst those who feel this should not be done, because they believe passionately that it should not happen, then the safeguard that they have got is that they have got the opportunity to persuade others that the Bill should not actually be  
2810 given effect. And if indeed, it is something that we should be doing because that is the legal opinion that we have got, then that position is not that the United Kingdom is going to suspend the Constitution like they did in the Turks and Caicos because of this. The position is that there

will be an argument based on the result of the referendum of why there was a conflict of doing something which a majority of the people did not want done.

2815 So I think, essentially, what we have is a safeguard for those who do not want it to happen. Because those who want it to happen do not need a referendum. If the majority of the people on Gibraltar want this to happen, then the view of the minority that does not want it will not change. But there are two important issues in this question of a referendum. One is, what is the right of people ... why should males tell females that they cannot have an abortion? Why? Who  
2820 are we to say it? It is not our body that is doing it. So it is in fact gender discrimination of the first order when the people who cannot be put in that dilemma tell the ones who can they are not permitted to do it.

But the reality of it is that there is not and there has never been until now in Gibraltar the level of debate about this and what we have been living, as I think the hon. Lady said, in a hypocritical situation of looking the other way and pretending that it was not happening, in the knowledge that everybody knew that it was happening. In fact part of the reason why the people do not have it here, independent of whether it is available or not, is because more people are going to find out if it is here than if it is elsewhere. And that is another reality in the hypocrisy of the situation. But I have to say that the honest thing for the people on the other  
2825 side to say is that if they go to an election they would not have a referendum and they would repeal this law and there would be no abortions available in Gibraltar. Because that is what had been reflected today and that is what they should have the courage to say in the election when it happens this year.

2835 **Several Members:** Hear, hear. (*Banging on desks*)

**Mr Speaker:** Now, the Hon. Neil Costa can exercise his right to reply.

**Minister for Health, Care and Justice (Hon N F Costa):** Mr Speaker, thankfully my honourable  
2840 and learned colleagues have already canvassed a lot of the matters that I would have raised myself, so I will try to limit my contribution to what has been left unsaid until now.

I have to say, Mr Speaker, that the Hon. the Leader of the Opposition seemed angry in his contribution, almost as if there were people to his left listening to what he had to say. There was an almost a feel of theatrical appearance to his contribution on this occasion. He said that the  
2845 debate had been missing, that it had not been given thought, that we were misleading, that there should be unrestrained debate; and I have to ask the question of where the hon. Gentleman has been over the last 18 months. He said that we have not taken soundings. Mr Speaker, we have taken more soundings and consulted more people on this one issue that they consulted people in the whole 16 years of GSD Government and they know it. (**A Member:** Hear  
2850 hear.) (*Banging on desks*)

The reflections took over a year. We published a Command Paper which had 103 responses. We changed; we presented a Bill that was different to the Command Paper factoring those responses and the people and associations that we met. Mr Speaker, the Hon. the Leader of the  
2855 Opposition said, and he kept phrasing his speech in terms of 'it is argued'. It is argued this, it is argued that; it is not that we are arguing anything. We are dealing with a reality of a Supreme Court Judgment that has made remarks and conclusions which are, as we have all said, highly persuasive. No one on this side of the House has said that the Supreme Court decision is binding. No one has said that.

But the Hon. the Leader of the Opposition said, and he stressed the words Privy Council to  
2860 cast doubt on the Supreme Court decision; he said the Privy Council should make a decision, as if to suggest that the Privy Council is anybody other than exactly the same people that sit at the Supreme Court. So he knows, Mr Speaker, he knows very well that if he were advising a client in the privacy of his chambers, he would be telling him or her, 'Look, the Supreme Court Judgment, of course it is not binding, but any Supreme Court Justice in Gibraltar would find the conclusions

2865 highly persuasive and therefore we must take account of those conclusions', and he does know that, Mr Speaker.

He said that the manifesto does not provide for us to provide a law in the terms that have been published in this Bill. But as the Hon. Mr Bossano has said, the manifesto cannot possibly have in it every single eventuality that the Government will have to deal with in the future. The  
2870 manifesto, for instance, does not tell me of what I should do in the event of an emergency in the hospital. But nonetheless, whatever the reality is, I need to be able to act to that event, whether or not it is reflected in the manifesto. *(Interjection by Hon. Chief Minister)* Yes indeed, Mr Speaker, we could cite many examples of matters that were not in GSD manifestos, but that in fact were taken ahead by the GSD when they were in Government.

2875 He said, and I quote, 'the Bill is an affront to democracy'. Mr Speaker, the Bill cannot possibly be an affront to democracy. The Bill *is* democracy, Mr Speaker, because the Bill comes on the back of consultation, on the back of a Command Paper which had 103 responses, which led to meetings, to further meetings, to extensions of time-limits, so that everyone had the opportunity to put to the Inter-Ministerial Committee what they thought.

2880 Mr Speaker, for the hon. Gentleman to say that we have been disingenuous in this process and that we have not given it any thought *is* the misleading statement because we could not have given any more thought possibly to any one issue. This Government has had 18 months of considering this issue backwards and forwards, left and right, Monday through Sunday, and it has been an agonising and exhausting exercise because we had to properly understand what it  
2885 was that we were doing here, Mr Speaker. And he will have noted that I did not mention the Opposition at all in my contribution because the matter is so sensitive, the matter is so serious, that it called for a contribution that did not demean the quality of the debate by politicising it.

And yet the Hon. the Leader of the Opposition got up and he just spent whatever time he did angrily denouncing us for having paid no thought to this very important process, Mr Speaker. He  
2890 really forces me to remind him that – notwithstanding that I removed it from the Bill, from my speech, when I stood up to speak on the merits of the Bill – he said on public television that the Government was condemning our women by sending them overseas for terminations. That can only mean, Mr Speaker, that we have to have these terminations in Gibraltar. Otherwise what is the logic of saying that? First contradiction – publicly stated on GBC television and we have the transcript to prove it. He put on his same angry face and he condemned us and he said, 'How  
2895 can the Chief Minister allow our women to go all the way to the UK and other parts of the world to get terminations?' Ergo, we have got to do them here, there can be no other logical corollary to what he said.

He also said, as Mr Azopardi has said outside of this House, that there ought to be a  
2900 referendum and lo and behold, Mr Speaker, we come to this House explaining the fine legal arguments as to why we have come to the conclusion, notwithstanding our misgivings, that we have to go to a referendum and they are going to vote against the very thing they have said in public remarks that we should do.

Mr Speaker, they accused us of political dishonesty but the hon. Gentleman needs to have at  
2905 least consistency and there has to be an inherent consistency and logic in what they are saying. Have a referendum. Well, you know what, we do not want to have a referendum. But actually our legal advice is that this could be an issue so you have to go to referendum. Well, we are going to vote against it – alright. We are going to have a Bill that allows terminations in limited circumstances. Well, we are going to vote against the Bill as well. Has he not read the Bill?

2910 The Bill says, in clause 3:

Subject to the provisions of this section,

Ergo, in these limited circumstances terminations are allowed. So, Mr Speaker, to call this Bill – this carefully thought out, this thoughtfully crafted Bill – 'abortions on demand' is, quite frankly, the most extraordinary statement I have heard in this House for a *long* time. This Bill

2915 cannot possibly be abortion on demand when it sets out the particular circumstances in (a), (b),  
2916 (c) and (d) of when a termination is permissible. In other words, if it is not caught within these  
2917 four exceptions then they are not allowed. Therefore it cannot be on demand. It cannot be on  
2918 demand, and they know it, Mr Speaker.

2919 This ties me to the point that the Hon. Mr Feetham also said, he said that this Bill in effect  
2920 (*Interjection*) is abortion on demand. It cannot be abortion on demand, quite apart from the fact  
2921 that the limited circumstances which permit for abortions – which, by the way, there are  
2922 associations that think that this Bill is too restrictive and have told us it ought to be widened, and  
2923 we have not, bearing the decision of the Supreme Court in mind.

2924 Another reason why it is not abortion on demand is because unlike the UK law – of which this  
2925 is clearly not a cut and paste, you just need to put one Bill next to the other – that does not  
2926 require for there to be two NHS doctors certifying the abortion, we require women to undergo  
2927 certification by two medical practitioners. We have said in the Bill, notwithstanding that there  
2928 was no requirement to, because the General Medical Council makes it absolutely clear that  
2929 doctors cannot be forced to practice medicine in a way that is contrary to their beliefs, and yet  
2930 we included that so that there could be no doubt.

2931 Of course, Mr Speaker, the other reason why it could not be abortion on demand is because  
2932 we have made it clear that only the GHA will be able to carry out terminations, and therefore we  
2933 are expressly forbidding the creation of a private industry on abortions.

2934 So, for all of the reasons that I have just set out, and I am sure I have missed some, this Bill  
2935 cannot by any objective measure be characterised as abortion on demand. It simply cannot.

2936 Mr Speaker, the Hon. Mr Feetham, then goes on to take the House through the question of  
2937 the margin of appreciation, and with respect to the hon. Gentleman, I am not entirely sure  
2938 whether he was confused on this point when he started the Bill or during the course of the  
2939 speech, because he contradicted himself during the course of that speech. I have been  
2940 absolutely clear on this point: we are saying that the law, in the light of the judgment of the  
2941 Supreme Court, is unconstitutional as per our Constitution and also offends Article 8 of the  
2942 European Convention on Human Rights. If Article 8 was not a qualified right then there would be  
2943 nothing else to discuss. The Court has said that not permitting abortions in these defined  
2944 circumstances is a breach of the Article 8 right and therefore, on that point, it would be contrary  
2945 to the European Convention on Human Rights and contrary to our Constitution but Article 8 has  
2946 an Article 8.2 and that Article 8.2 provides that the States can interfere with the fundamental  
2947 rights of people in certain limited circumstances, one of which is the protection of morals. And  
2948 the advice is that on that limited basis it may be that Gibraltar can have a situation where  
2949 terminations are not conducted in Gibraltar, and that is a very narrow, limited circumstance in  
2950 which we have had to come to the conclusion that in the absence of a referendum where the  
2951 community can express a view on whether or not terminations are morally wrong or right we  
2952 cannot be absolutely certain of the position. If Article 8.2 did not exist and Section 7.2 of the  
2953 Constitution did not exist, then we would not be having this conversation because the  
2954 conclusions of the Supreme Court judgement would be clear.

2955 The reason – (*Interjection*) let me finish, Mr Speaker – why I said the hon. Gentleman was  
2956 confused was because he said during the course of his contribution that the margin of  
2957 appreciation is broad and is afforded to the States and he then actually read a statement from a  
2958 judgment that sets out clearly that the margin of appreciation is not unlimited. Right, so ‘not  
2959 unlimited’ means, to a six-year-old, limited, it cannot mean anything else. A plain reading of the  
2960 case clearly suggests that the margin of appreciation is limited. It is limited, Mr Speaker, and the  
2961 court and the courts in the very judgment you read out to us said this, and I quote:

The court cannot agree that the State’s discretion in the field of protection of morals is unfettered and unreviewable ... this power of appreciation is not unlimited.

Ergo, the margin of appreciation is fettered, reviewable and limited. All of the things that we said and contrary to everything that he said, Mr Speaker.

2965 The Hon. Mr Feetham gets confused on this point, apart from having quoted verbatim from the judgment that he quoted to us but neatly forgot this particular part of the judgment. Quite  
apart from that, where the European Court of Human Rights talks about the margin of appreciation being broad, what they mean by that is that a state has the right to establish the means by which they give effect to the convention, but that does not in any way remove the supervisory jurisdiction of the court in determining whether the means that the state have adopted are violations of the constitution of the convention or not. *(Interjection by*  
2970 *Hon. D A Feetham)* Well, yes, it means exactly the same thing.

So ... Yes.

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

2975 I thank the Minister for giving way. I do not think he has understood what I have said but I am not going to just reopen that.

But is the Government's position very simply this, and I would just appreciate some clarity in relation to this – I thought I had some clarity from the Hon. Mr Licudi, I am not so clear, having heard the hon. Gentleman now in reply – but does the Government's position amount to this: the Government *thinks* that the law may be unconstitutional but accepts that there is a doubt as to whether it is unconstitutional because of the measure of appreciation and that is the reason  
2980 why it has decided to go to a referendum? Because if that is the position really what the Government is saying is we are not sure about the compulsion, we are not sure that this is constitutionally necessary. We think it is, but we cannot be certain and therefore we are putting it in the hands of people in a referendum.

2985

**Hon N F Costa:** Mr Speaker, I have made the position extremely clear and obviously he was not listening to my speech when I was giving it.

And so, Mr Speaker, the hon. Gentleman also says that women who wish to terminate pregnancies are 45 minutes away from Spanish clinics.

2990

**Hon. D A Feetham:** No, I did not say that.

**Hon N F Costa:** Yes, you did, and I quote, you said, 'Women who are pregnant can from this Parliament to the closest clinic in Spain walk 45 minutes away.' *(Interjection)*

2995 No, Mr Speaker, that is exactly what he said whether he likes it or not. *(Interjection)*

**A Member:** The debate is over, he is replying.

3000 **Hon N F Costa:** But, Mr Speaker, the point is this: for a young girl who does not have the means to go to that clinic 45 minutes away, the 45 minutes could be 45 million miles, it does not matter. Persons with means have the ability to go to Spain or to the UK, but we are not here to debate the situation of women with means, because a young woman whose father will understand her position will get on a plane and go to the UK and go to the best clinic in the UK or cross the border and go to the best clinic in Spain. We are here, Mr Speaker, to debate the  
3005 reason for the Bill, which is to protect the most vulnerable. And the most vulnerable young women are those who do not have the means to go to the best clinic in Spain or the best clinic in the UK, or who cannot come to tell their parents that they are pregnant. Therefore, Mr Speaker, we live in a moment of, I have to say, hypocrisy. So it is alright if people of means travel to the UK and have a termination, 'but let's not have them here'. Well, Mr Speaker, I am afraid that we  
3010 have to discharge our duty and it is our duty to make sure that the most vulnerable in our society have exactly the same options and exactly the same opportunities as those with means. And so if young women and women who can afford to get private treatment in the UK or in

Spain can do so, then we must be here to say that those who do not have means as well have that right. And for as long, Mr Speaker, as we are debating this Bill we have to make sure that the GHA provides a service that is safe and that we can control as much as possible the safety of that process.

The Hon. Mr Feetham took us through, as the Chief Minister said, Law 101 where he said that we cannot just take principles *in vacuo* and apply it here. Mr Speaker, we are not seeking to make somersaults and superficial distinctions. The facts are simple: a pregnant woman is a pregnant woman here, in Ireland, in Spain and in Timbuktu. And therefore the need of the pregnant woman, whether she is in Gibraltar, Northern Ireland, in Spain or in the UK are exactly the same. So we are not seeking to draw fine distinctions or dancing on pins, no we are not, Mr Speaker. The distinctions that he seeks to say could be applied to other circumstances do not apply here. A pregnant woman here is the same as a pregnant woman in Northern Ireland, is the same as a pregnant woman anywhere else, and the law that the Supreme Court attacked with such clarity as being incompatible with a convention is exactly, Mr Speaker, the same law that we have here, therefore pregnant woman, same law as in Northern Ireland, the Supreme Court of the UK is saying, 'I am sorry, this law in Northern Ireland is incompatible with the rights of young women and women to their private life.' We have the same law here, it cannot mean anything else other than our law currently breaches our Constitution and breaches the European Convention on Human Rights.

I dare say, Mr Speaker, and I suspect that he does have sympathy for our position to put it to a referendum. And unlike the Hon. the Chief Minister, who has not whipped this Government on how to vote, I daresay, Mr Speaker, that on that House there may have been a collective imposition of what had to be said in respect of whether or not to vote for a referendum for the very simple reason that they have been saying all along, let's have a referendum. And when we say actually our legal advice is that we have no choice but to test the proposition by way of a referendum they shift their position.

Something must have happened, Mr Speaker between the clear position of the hon. Gentleman opposite that said referendum, referendum, referendum to all of a sudden, 'no, no referendum'. So they have not explained what happened between the clear position on the referendum and today saying no referendum. Mr Speaker, it does not take a political observer to realise that they have been hit hard with something on why a referendum is no longer acceptable.

Moving on to Mr Llamas, he speaks about the incompatibilities. The Bill sets out clearly when and when not terminations are to be allowed. Let me tell him this, Mr Speaker, he said that the Bill could have been drafted differently. We are yet to wait for anyone to tell us how to draft it differently and we have challenged some of the groups that have come to speak to us and have told them if you prepare a law that is better than ours and that only covers a Supreme Court judgment we will vote for it tomorrow, and they have not come with any wording that suggests that they could do it better because it is impossible to do it in any different way other than the way that we have done it, for the reasons that we explained. A woman who is pregnant as a result of incest will not be able to prove a case in a criminal process within 12 weeks, it would be impossible to do that, and so this wording takes into account the *reality* that between being pregnant and proving the rape or the incest years later, the pregnancy will continue its course and we have to find a mechanism, a practical mechanism, that allows for women who have been the victim of rape, who have been the victim of incest, to be able to deal with that horrible decision in a way that is sensitive to them first and foremost.

The Hon. Mr Llamas also talks about how the Act does not have sufficient controls and safeguards. Mr Speaker, I have to tell him that we have been told the very opposite by those associations who have told us that the law is too restrictive. They have told us that to have two GHA practitioners is certainly one too many. They have told us that to have a formal process of certification is too much. They have told us that to have on the face of the Act the ability of a doctor to object contentiously is also too much. So you see, it is not that this Bill is anything



3065 other than what we think is right, Mr Speaker. And this Bill will have pleased exactly no one because both camps when they have come to speak to us have told us it is too permissive and the other group has told us, 'No, you know what, this is too restrictive.'

The Hon. Mr Hammond cast his contribution basically saying that in effect the duty of the state is not to interfere with the rights enshrined in the Constitution. So he in effect says that the obligation on the state is a negative one, the job of a state is not to interfere with fundamental rights and liberties. But actually, Mr Speaker, without wishing to lecture him on the law, whereas he is certainly right as a first step, the European Court of Human Rights has also been equally clear that when they talk about non-interference that also means that the state has a positive obligation to ensure that its laws do not breach the Convention on Human Rights. So it is not enough that the state steps back and does not interfere with the right to privacy, it is not enough. The state also has a positive duty to ensure that within its domestic framework no one – not just the state, not private industry, no one – interferes with the Convention rights. So with respect to him, there was one part of his analysis that was missing.

And the simple reason, Article 1 of the Convention on Human Rights says each of, 'The High Contracting Parties shall guarantee the protection of rights in everyone in its territory'. I am paraphrasing, this is from memory, having read the Convention. But in effect, as I have told him, apart from the non- interference there is the positive obligation in Article 1 of the Convention, the first duty of the state is to ensure that no one interferes with any of the rights in the Convention.

Of course, the Hon. Mr Hammond talks that the right is qualified. Indeed, Mr Speaker, the right is qualified, which is why we are putting the matter to a referendum. And I hope he does not take this badly, but it is almost as if he had discovered America, 'Oh, but the right is qualified.' Yes, indeed, it is qualified which is why we are telling him that if the qualification did not exist then the law that we have today is unconstitutional. It is contrary to the Convention and it is the fact that there is a qualification to that right that gives rise to the advice that the state of Gibraltar, the national authorities may not have to legislate to permit abortions if there is a reason in respect of protection of morals. And that is where the margin of appreciation comes in.

He says, Mr Speaker, that we must protect women. Of course we must protect women, so he should vote for the Bill! I have got a quote, 'We must protect women.' Yes, protect women by voting for the Bill, it is the safest way to do so.

And then, in a few moments, they would certainly have had the most eminent bioethicists pulling out their hair with his McNuggets of wisdom on whether a foetus is a person. Well look, Mr Speaker, we are not going to enter into bioethical debate but he brought it into this Chamber, and we have to ask the question, is a foetus a person at one week, at three weeks, at 12 weeks? (*Interjection*) Yes. Are not some adult animals more developed than a foetus? And if we do accept that is the case we seem to have no compunction in killing dolphins, we seem to have no compunction in killing pigs, both extremely intelligent animals. So if he is going to bring in bioethical debates of when a foetus becomes a person we could not possibly do it justice because there would be seven chambers filled with all of the bioethical texts that determine whether or not a foetus is a person. And I can tell him because I have read some of them, that there is no conclusive determination of when a foetus is a person, if at all. So I ask him, Mr Speaker, not to enter into the slippery slope of having a bioethical argument when we are debating laws and not the morality of killing, or terminating rather, a foetus at three or up to 12 weeks of gestation.

He finishes, Mr Speaker, to say that the Bill is open to interpretation. Yes, every single Act in Gibraltar is open to interpretation but, like with every Act, if the Government feels on any particular section that the section is not working as it should, then it comes back to Parliament and it corrects it. And if it is not the Government that does it, then the court will, if they are asked to interpret that section, do it.

Mr Speaker, before I move on to the Hon. Marlene Hassan Nahon, the Hon. Mr Reyes said that women have not asked for this Bill. I ask him to turn left, Mr Speaker, there has been a huge clamour, which obviously he missed, that there should be a Bill that regulates the ability for Gibraltarian authorities to have safe abortions, so I have to disagree with him fundamentally that women have not asked for this. Women have asked for this, Mr Speaker.

He then says that this Bill is neither desirable nor necessary. Terminations of foetuses are not desirable, I do not think I have heard anybody here say ... Indeed, Mr Speaker, not a single person that has come to the Inter-Ministerial Committee have told us that terminations are desirable, but they are a fact of life, Mr Speaker. And in the circumstances that the Bill allows if that is the choice of the woman we have to provide the best care and the best way of doing it. So it may not be desirable, as he has said. No one is saying that it is desirable, but it certainly is necessary.

Mr Speaker, I really do not know where to start here, because I think the hon. Gentleman got his biological facts from Missouri State legislature.com when he said that there is a heartbeat at three weeks. Look, let's deal in fact, this is a difficult enough argument as it is without confusing the issues with facts that are not facts. There is no heartbeat at three weeks, Mr Speaker, there is not. There is no heart and therefore no heartbeat at three weeks. So he should not suggest so.

And the Hon. Mr Reyes, he knows I have great respect for him, he says that we should not allow for sex selection. Mr Speaker, I have read this Bill, I do not know how many times, and there is *nothing* in this Bill that indicates that sex selection is a ground for which a GHA doctor will certify that a termination ought to be allowed. So to talk of sex selection in circumstances where sex selection is not an exception allowed within the Bill, Mr Speaker, takes the debate a bit too far and it actually injects an emotion unnecessary to what should be a high quality debate.

Also, Mr Speaker, the hon. Gentleman said that this Bill is anti-woman, anti-child and anti-democracy. Mr Speaker, *(Interjection and laughter)* it cannot possibly be anti-women when what we are saying is that we have to have regulation for those women who, in the circumstances defined in the Bill, require a termination. So let's imagine the circumstance where you have a young woman without means who finds herself in one of the situations carved out in this Bill but who cannot go to Spain because she does not have money or only has sufficient money to go to wherever she first finds. And so she has a botched operation that does not just kill the foetus but also does serious harm to her. Therefore, Mr Speaker, in allowing for the regulation of safe abortions this Bill is pro-women.

He says that is anti-democracy: Mr Speaker, we have spent, I do not know, at least five hours debating this Bill. We have spent 18 months discussing the Command Paper and the Bill with all members of our community and we have considered all of the representations made to us. This Bill is the embodiment of democracy in action, Mr Speaker. I feel that I have to say that clearly to him.

Mr Speaker, Mr Clinton then goes on to say that the expenditure memorandum in the Bill is not positive. Mr Speaker, this is not a Bill for which to party. This is a Bill to bring to this Parliament for serious reflection and debate. No one wants to find themselves in a situation of having to determine whether or not to have a termination. Therefore, if the memorandum sounds negative in tone, it is because it is not celebratory. We have found ourselves in a situation where there is a judgment of the Supreme Court that we cannot ignore and that no one anticipated. Dealing with that fact, we say in the first line of the explanatory memorandum, 'arising from the decision of the Supreme Court'. We could not possibly have put it, Mr Speaker, in any other way.

He then goes on to say that he has heard certain phrases for the first time, he said, 'Mr Speaker, not being a lawyer, I have heard certain phrases for the first time,' and he says, and I quote, that he has heard about 'moral values'. Mr Speaker, it is extraordinary – surely, he has heard about moral values before he came to Parliament here. *(Interjection)* Yes.

3170 And then he says that we have brought this Bill out of fear. Mr Speaker, we are not emotionally covering about the fact that we could be in breach of the Constitution. It is just that on serious, mature reflection of a judgment of the Supreme Court that says that our law is unconstitutional, we have to take action. So it is not that we are acting out of fear; we are acting out of a sense, Mr Speaker, of duty.

3175 But I found it interesting, Mr Speaker, that notwithstanding that he asked us questions, he has not told us his view on abortion. We have all declared our views, except the Leader of the Opposition, so we have got two Members of Parliament who have asked us questions, who have come to debate in this House, but who have not had the courage – or the political honesty, to borrow their vernacular of today – to state their opinion of where they are on the issues of terminations, Mr Speaker.

3180 I then end, I think, on a positive note with the contribution of Marlene Hassan Nahon and she said that she will vote for the Bill because it does provide greater protection of women, although of course as far as she is concerned this Bill may not go far enough. I applaud the fact that she at least has the political decency to accept that this may not go sufficiently far enough, but it is certainly, Mr Speaker, a step in the right direction. But as I have told the House, Mr Speaker, at the end of the day, legal argument or no legal argument, irrespective of the Constitution, irrespective of what the Convention says, for all of us this would be a question of judgement. It will be a deeply held private decision which we have no choice but to give legal effect to; and that is what we have been debating, Mr Speaker, I think for the most part with sensitivity, over the past five hours.

3190 Mr Speaker, I cannot finish without saying that the hon. Lady said that mental health services ought to be boosted. I agree, we could always do more, but the hon. Lady has to accept that we have done *a lot* of work in respect of mental health issues; not least, Mr Speaker, the introduction for the first time in Gibraltar of Children and Adolescent Mental Health Service that has a psychiatrist, two psychologists, and provides mental health support to young persons and children.

3195 Mr Speaker, the community should be left in no doubt whatsoever that whereas we have taken the decision that this must be put to a referendum, I personally will be certainly campaigning passionately for the community to vote in favour of commencing, Mr Speaker, the Act when it comes into force at some point when we get to the committee stage.

3200 And so, Mr Speaker, for all of the reasons that I said in my original speech and for all of the reasons that I have now rehearsed and replied to Hon. Members on, I commend the Bill to the House.

**Chief Minister (Hon. F R Picardo):** Hear, hear. (*Banging on desks*)

3205 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend and clarify the law relating to termination of pregnancy by registered medical practitioners and for connected purposes, be read a second time. I imagine that a division is required, or not? (**Hon. Chief Minister:** Yes.) Yes, we shall have a division.

*A division was called for and voting resulted as follows:*

**FOR**

Hon. P J Balban  
Hon. Sir J J Bossano  
Hon. Dr J E Cortes  
Hon. N F Costa  
Hon. Dr J J Garcia  
Hon. Ms M D Hassan Nahon  
Hon. G H Licudi  
Hon. S E Linares  
Hon. F R Picardo  
Hon. Miss S J Sacramento

**AGAINST**

Hon. R M Clinton  
Hon. D A Feetham  
Hon. T N Hammond  
Hon. A J Isola  
Hon. L F Llamas  
Hon. E J Phillips  
Hon. E J Reyes

**Mr Speaker:** There are 10 votes in favour, 7 against, and therefore the motion is carried and the Second Reading of the Bill is carried.

3210

**Clerk:** The Crimes (Amendment) Act 2019.

**COMMITTEE STAGE AND THIRD READING**

**Crimes (Amendment) Bill 2019 –  
Committee Stage and Third Reading to be taken at this sitting**

3215

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

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

*In Committee of the whole House*

3220

**Crimes (Amendment) Bill 2019 –  
Clauses considered and approved**

3225

**Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to move that the House should now resolve itself into Committee to consider the following Bills clause by clause: the Private Sector Pensions Bill 2019; the Climate Change Bill 2019; the Pet Animals (Sales) Bill 2019; the Crimes (Amendment) Bill 2019; the Public Services Ombudsman (Amendment) (University of Gibraltar) Bill 2019; the Stamp Duties Bill 2019; and the Financial Services Bill 2019.

**Clerk:** A Bill for an Act to amend and clarify the law relating to termination of pregnancy by registered medical practitioners and for connected purposes. Clause 1.

3230

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

**Clerk:** Clause 2.

3235

**Mr Chairman:** The Hon. the Minister, the Hon. Neil Costa has given notice of amendment to clause 2. May I call upon him to formally move the amendment?

**Minister for Health, Care and Justice (Hon. N F Costa):** Yes, Mr Chairman, I formally move the amendment to clause 2 by substituting the wording in the Bill to the language that has been circulated to Hon. Members.

3240 **Mr Speaker,** there is also one point at 2(2): in that sub-clause there are references to 'percentage' twice – percentage of votes and percentage of votes – and on the advice of Mr Speaker, I intend to change that to 'the number of votes' on both occasions.

3245 **Mr Chairman:** Hon. Members, look at paragraph 2, instead of 'percentage of votes', 'number of votes' in both cases. The amendment to this clause is subject to debate if Hon. Members so wish.

**Clerk:** Clause 2 as amended.

3250 **The Chairman:** Stands part of the Bill. Do the Opposition wish to vote in favour?

**Hon. E J Phillips:** Mr Chairman, consistent with our position in relation to the Bill, we will be voting against these amendments.

3255 **Mr Chairman:** The Opposition are voting against this amendment. I take it all other Members are voting in favour of the amendment? *(Interjections)*

Is the hon. Lady voting in favour of the amendment? *(Interjection by Hon. Ms M D Hassan Nahon)* No? Against?

3260 **Hon. Chief Minister:** The first amendment – she is against the first amendment. *(Interjections)*

**Mr Chairman:** How will she vote? *(Interjections)*

3265 **Hon. Ms M D Hassan Nahon:** I will be voting against.

**Mr Chairman:** I still do not know what you are saying. Sorry, if Hon. Members ... *(Interjections)*

3270 Against – right, okay, fine. I did not hear what she was saying. Right, okay, we have got it. The Government are voting in favour, and all Members of the Opposition, including the hon. Lady, against. So the amendment is carried by 10 votes to seven.

**Hon. Chief Minister:** Normal service has resumed. *(Laughter)*

3275 **Clerk:** Clause 3.

**Mr Chairman:** And clause 3 ...

3280 **Hon. N F Costa:** Ah yes, Mr Chairman – *(Interjections)*  
Yes, Mr Chairman, in respect of –

**Mr Chairman:** The hon. Minister also has some amendments to clause 3, does he wish to speak to them?

3285 **Hon. N F Costa:** Well no, Mr Speaker, they are self-explanatory; I said that in the letter. Essentially the proposed section 163A.(1)(d) will replace 'child' with 'foetus'.

**Mr Chairman:** Very well. I will put the amendments of the hon. Member to clause 3 to the vote. Those in favour? Those against?

**Hon. E J Phillips:** The position remains the same, Mr Speaker, we are opposed.

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**Mr Chairman:** The same. And the hon. Lady?

**Hon. Ms M D Hassan Nahon:** I am for it.

3295

**Mr Chairman:** Should I have clarified the position – ?

**Hon. A J Isola:** No, you were right on the amendment, Mr Speaker.

**Mr Chairman:** I was on the amendment, right. (*Interjection*) Yes, very well.

3300

Now, so the hon. Minister's amendments are carried and we also have notice from the hon. Lady of some amendments of clause 3, and she has the floor.

Would she formally move them please?

3305

**Hon. Ms M D Hassan Nahon:** Mr Chairman, I beg to move that in clause 3, in section 163A.(1)(a), delete: 'and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman' and in place insert: 'an abortion may be carried out in accordance with this section by a medical practitioner where having examined the pregnant woman she or he is of the reasonable opinion formed in good faith that the pregnancy concerned has not exceeded 12 weeks of pregnancy'.

3310

In section 163A.(1)(d) insert 'severe or' before 'fatal'.

Number 3 of my amendments I shall be withdrawing, because the hon. Minister, Mr Costa has already moved his own one which is identical.

Number 4, in section 163A.(3), insert the words 'or place' following 'hospital'.

3315

And in section 163C, amend by adding a third clause, 163C.(3), after 'rely on it' saying 163C.(3) 'providing a person who has a conscientious objection referred to in section 163C.(1) shall as soon as may be make such arrangements for the transfer of care of the pregnant woman concerned as may be necessary to enable the woman to avail of abortion'.

Number 6, insert a new clause – sorry –

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**Mr Chairman:** Strictly speaking, it is not a new clause; it is a sub-clause.

**Hon. Ms M D Hassan Nahon:** A sub-clause.

**Mr Chairman:** Sub-clause 163F.

3325

**Hon. Ms M D Hassan Nahon:** I beg your pardon, Mr Chairman. Insert a sub-clause 163F: 'it shall never be a crime for a pregnant woman to have an abortion in respect of her own pregnancy'.

3330

Mr Chairman, if I may, with regard to the first amendment, risk to physical and mental health – as I have just stipulated my suggestion I will not repeat it – this Bill is a compromise for many women in our community. Twelve weeks is a low threshold, Mr Chairman, one that is well below the European average and one for which there seems to be little scientific basis. But I am also aware that this is a big leap for a society that prides itself in religious tolerance, for whom, obviously, spirituality remains an important value and a community that has lived under the cover of pretence and hypocrisy created by its leaders for far too long.

3335

I am therefore ready to support this compromise with some significant reservations. If we are to display an ounce of political courage on this issue, Mr Chairman, let's do it properly. We have lived in a convenient loophole for generations. The loophole provided by the conveniently placed jurisdiction with lax abortion laws that we all know about. Now we are trying to

3340 normalise this human rights apartheid, of sorts, yet we seem hell-bent on creating yet another loophole and continue the farce.

The proposed new section 163A.(1)(a) will provide for abortion to be lawfully provided where two doctors certify that a pregnancy has not exceeded 12 weeks and the continuance would involve a greater risk to physical or mental health than if the pregnancy were terminated of  
3345 injury to the physical or mental health of the pregnant woman. It mimics the letter of the law of other jurisdictions including the UK. But we all know that this is a loophole through which abortion happens on-demand within the established time parameters.

Mr Chairman, women with unwanted pregnancies all undergo a level of anxiety and stress that puts their mental health at risk and in general medical practitioners recognise that. So why  
3350 put the burden on the health care professionals? If we are already introducing a clause catering for conscientious objection, why add another layer of decision-making that is pure farce? There is only one reason, Mr Chairman, and that is political cynicism.

Also, it is important for this Chamber to do its bit to destigmatise the social climate around the issue. When we add provisions, such as the aforementioned, we are telling women that we  
3355 do not trust them with deciding over their own bodies. We are acting in a way that is paternalistic and patriarchal. We need to tell our community, openly and unambiguously, that we trust women to make this choice; to make a free mature and responsible choice on this most transformative decision of their lives.

The proposed new section 163A.(1)(a) will provide for abortion to be lawfully provided where  
3360 two doctors certify that a pregnancy has not exceeded 12 weeks and the continuance would involve a greater risk to physical or mental health than if the pregnancy were terminated of injury to the physical or mental health of the pregnant woman. I propose changing proposed section 163A.(1) by deleting ‘and the continuance would involve a greater risk to physical or  
3365 mental health than if the pregnancy were terminated of injury to the physical or mental health of the pregnant woman’. In place of this deletion, we would insert ‘an abortion may be carried out in accordance with this section by a medical practitioner having examined the pregnant woman, she or he is of the reasonable opinion, formed in good faith, that the pregnancy concerned has not exceeded 12 weeks of pregnancy.’

This will free the healthcare professionals from having to make the ultimate decision, taking  
3370 on the responsibilities we should be taking today, and will send an unequivocal message that we support and trust our women going through this difficult juncture. Further, Mr Chairman, this time restriction also presents two points of lack of clarity. The first of those is, what does 12 weeks mean here? Is it with reference to the LMP – the last menstrual period – or from conception? The latter is better and more in line with international experience. This will have to  
3375 be clarified, especially as it will be an offence to provide an abortion outside the terms of the law. I would appreciate it if my good friend the Minister for Health and Justice would clarify this in clinical guidance.

Secondly, how is gestation to be determined? Is an ultrasound needed or will doctors be  
3380 allowed to do non-invasive testing and or rely on the woman’s dates? Again, this is another point that I would urge the Minister for Health and Justice to ensure it is incorporated in clinical guidance, Mr Chairman.

The second amendment insert ‘severe or’ before ‘fatal’. Mr Chairman, the Bill will allow for  
3385 abortion after 12 weeks where (a) two doctors certify that (b) it is necessary to prevent great permanent injury to physical or mental health. Proposed section 163A.(1)(b), ‘or that continuing with the pregnancy poses a greater risk to the woman’s life than a pregnancy were terminated’. Section 163A.(1)(c) ‘or there is a substantial risk of a fatal foetal abnormality’. Section 163A.(1)(d) and (c) ‘the termination is done by a medical practitioner employed by the Gibraltar Health Authority’. This clause presents a lack of clarity again, Mr Chairman. The explanatory memorandum suggests abortion will never be allowed after 12 weeks. However, the text of  
3390 these provisions clearly means there is no time limit on the availability of abortion in these very limited circumstances. That needs to be made very clear so that there is clarity for doctors.

Obviously, it is the text of the law that is binding, not an explanatory memorandum. But it is important that the two are consistent and that the explanatory memorandum is corrected so that there is no confusion.

3395 Mr Chairman, in relation to clinical guidance; once again clinical guidance will be critical to determine how much risk is going to be considered sufficient to quality, how a fatal foetal abnormality will be defined, etc. The proposed section 163A.(1)(d) allows for abortion where there is a, and I quote:

substantial risk that the child is suffering from a fatal foetal abnormality.

3400 In this first instance, this term is not defined in the law; highlighting again the importance of clinical guidance in clarifying how the law will operate in practice. Secondly, the combination of this provision and the very short time limit on early abortion is such that people who find themselves with the diagnosis of very serious but not fatal anomalies and conditions for the foetus will not be able to access abortion under this law. Instead, they will continue to travel to the United Kingdom as they do now to access abortion in these cases. This is especially because  
3405 diagnostic tests, such as the Harmony test, cannot provide a diagnosis within the first 12 weeks. There are sadly situations in which pregnancies do have extremely serious diagnoses, but which may not be defined as fatal foetal abnormalities. This law does nothing for people who find themselves in this situation. I am therefore proposing an amendment in proposed section 163A.(1)(d) to insert 'severe or' before 'fatal'.

3410 Mr Chairman, if I may cite a recent example; a local couple I know recently found out in London that their baby had a severe foetal abnormality and were effectively forced to remain in the UK – approved by the GHA – awaiting their abortion, instead of being able to return to Gibraltar to have the abortion at home where they would have been able to absorb the trauma at home with their support network in place and the right emotional setup in order to navigate  
3415 through this difficult time.

Further, as an aside, with regard to this case in point, Mr Chairman, added to this less than empathetic reality for this couple, as I am sure has applied in the past to the many other couples who have seen themselves in similar situations, the amount of costs relating to having to remain in the UK while the abortion was organised and the time needed to be spent there post-abortion, resulted in a financial cost in the thousands for this couple and well beyond the scope  
3420 of the sponsored patients allowance, when we could be, instead, accommodating these difficult circumstances on home turf.

Mr Chairman, just because we may not have the resources in place locally for this today, this should not preclude the law from being open for when circumstances change in the GHA in the future. Closing our eyes to it, keeping it illegal and sending people to the UK for it is more of the  
3425 'not in my backyard' syndrome which this very Bill is supposed to break, Mr Chairman.

The next amendment, in connection with location: in section 163A.(3), insert the words, 'or place' following 'hospital'. On location of abortions, section 163A.(3) suggests that terminations can only take place in a hospital that has been approved by the Minister for Health even when the abortion is taking place abroad, but under the auspices of this proposed new Bill. While this  
3430 is appropriate for complex and later terminations, there is no need, for example, for early medical abortion, for example, the provision of pills, to be undertaken in a hospital. Indeed, in Scotland, England and Wales, a medical abortion can now be done at home; i.e. the woman takes the first pills with her doctor and the second set at home so that if she wishes she can self-manage her abortion in this way.  
3435

This is better for women and the principle should be to maximise the choices women have about whether and how to have abortions. It would be welcome to allow abortion to take place in other locations under section 163.(1)(a), i.e. under 12 weeks, where clinically appropriate and where medical abortion is being carried out. This is in line with the WHO safe abortion guidelines and best practice in the UK. It is also consistent with more efficient abortion care provision.  
3440



There is no need for hospital time and beds to be taken up with these early non-complex medical abortions – although of course this is not the case for surgical abortions.

3445 The next amendment relates to conscientious objection, Mr Chairman. In section 163C, amend by adding a third clause, section 163C.(3) after ‘rely on it’, ‘providing a person who has a conscientious objection referred to in section 163C.(1) shall as soon as may be make such arrangements for the transfer of care of the pregnant woman concerned as may be necessary to enable the woman to avail of abortion’. Mr Chairman, on the issue of conscientious objection, proposed section 163 allows for conscientious objection; but it is very wide. It says:

no person shall be under any duty, ... to participate in any treatment authorised ... to which he has a conscientious objection.

3450 Firstly, if I may just pick up on this actual clause, I would like to draw to the attention of the Chief Minister, following his comments earlier, that I provided a clause – which indeed I did – when the equal marriage came to be, where I protested against the clause 6 being equal marriage. I would just like to point out that to me and to *many* other reasonable thinking people, the issue of same-sex couples getting married is just that: two innocent people who are entitled to love each other and are also entitled not to be prejudiced by the law in place or by  
3455 Government workers who decide to prejudice them because they decide that they do not want to marry them. I believe that there is a very different situation here, which is the need to respect the beliefs and values of the doctor, in this case, or the medical practitioner who to him or her may feel that he or she is ending a life. And of course that has to be respected, because that is not offensive. That has to be understood and acknowledged and those people in that field need  
3460 to be protected if we acknowledge where they are at; and I believe that this is a very different case to boycotting two innocent adults getting married with no impact on anything or anyone else.

Moving on though, to the actual clause for amendment: this provision does not require a doctor who has an objection to ensure the transfer of the pregnant woman’s care to another  
3465 non-objecting doctor as soon as may be. This is important, especially under proposed section 163A.(1)(a); the proposed time limit is extremely short – 12 weeks – and it is important to strike an appropriate balance between respecting the deeply held beliefs of medical practitioners and ensuring the provision of health care to pregnant women. I therefore suggest amending proposed section 163C by adding a third clause section, 163C.(3), providing ‘a person who has a  
3470 conscientious objection referred to in section 163C.(1) shall as soon as may be make such arrangements for the transfer of care of the pregnant woman concerned as may be necessary to enable the woman to avail of abortion.’

Mr Chairman, once again, this clause also presents a lack of clarity. Who is covered by this? We can assume doctors, nurses and midwives, but what about receptionists in the zone, janitors? What does participation actually mean here? This should be clarified and the right not  
3475 to participate limited to persons directly involved i.e. doctors, nurses and midwives. If this is not done, what steps will be taken to ensure there is sufficient reception and other staff to ensure appointments are available at all times?

In either case, is the Government satisfied that there are sufficient doctors employed by the  
3480 GHA that will participate mindful of the fact that it is a States obligation, under international human rights law, to ensure sufficient resourcing so that conscientious objection does not undermine the right to access abortion care in line with the law. What arrangements will be taken for rostering etc. to ensure that abortion care will be available at all appropriate times, especially bearing in mind the very short time limit for abortion pre-12 weeks?

3485 The last amendment, Mr Speaker, relating to criminal offences: insert a new sub-clause 163F, I quote, ‘It shall never be a crime for a pregnant woman to have an abortion in respect of her own pregnancy.’ As a general matter, Mr Chairman, abortion remains an offence under the proposed new law. The Bill simply introduces exceptions to that offence. This, combined with

3490 the limited availability under the Bill, especially as grounds are very restricted after 12 weeks,  
means that it is likely that some women will still experience unmet abortion needs, although it is  
3495 hoped that this will be a very small number. However, for these women it is vital that abortion is  
decriminalised. It should never be an offence for a woman to have an abortion that she chooses  
herself.

Continued criminalisation stigmatises abortion and also makes it very difficult for women to  
3495 seek help, for example, if they have ordered and used abortion pills themselves and taken them  
illegally and then have abnormal bleeding or if they have travelled for abortion and have post-  
abortion medical complications. In accordance with best international practice, we should at the  
very least decriminalise abortion for women. For that purpose, I do propose an amendment by  
3500 means of the inclusion of a new section providing, 'It shall never be a crime for a pregnant  
woman to have an abortion in respect of her own pregnancy.'

The purpose of this form of decriminalisation is basic and very clear: that no woman should  
go to jail for ending her own pregnancy. It is a mantra that is clear even among the most  
anti-choice of anti-choice Americans. The new law in Alabama that criminalises all abortion does  
not extend to women. In Poland, where abortion is severely restricted to the detriment of  
3505 women's human rights, it does not criminalise women. Ireland does not criminalise women,  
France does not criminalise women and Canada does not criminalise women. In fact, 22  
countries across Europe do not criminalise women because they recognise that no matter their  
laws, no woman deserves to serve a prison sentence for ending her own pregnancy. I am not  
3510 asking, with this amendment, for the time limit to change nor for doctors to be exempt from the  
existing law, nor for the grounds under which abortion can be undertaken to be changed. All I  
am saying, with this amendment, is that no woman should be sent to jail. That is a very simple  
message on which I hope my colleagues could agree.

Meanwhile, Mr Chairman, I must add that if this amendment is passed, abortion would  
3515 remain a criminal offence for everyone except the woman herself. Abusive partners causing  
abortions would still and should still be prosecuted in exactly the same way as they can be now.  
Anybody who has forced a woman to undergo an abortion or who administered pills without a  
woman knowing, would be committing the crime of abortion which carries a life sentence.  
Non-consensual abortion is a heinous crime against the woman involved, and one for which the  
maximum sentence should continue to be life.

3520 Thank you.

**Hon. Chief Minister:** Mr Speaker, we are grateful for the hon. Lady's proposed amendments.  
I know that they are issues that she has raised sensitively with us before she has raised them in  
3525 Committee, and a lot of the issues that she has raised I know the hon. Minister has addressed in  
the course of her speech.

We sincerely believe that we have reached the right balance after the work that we have  
done over the past 18 months to produce the Bill as is, with the amendment that we propose,  
which is the Bill that should go to the people for commencement as an Act. Therefore we are not  
going to be accepting any of those amendments, although I am very grateful that she has  
3530 rationalised exactly why she was moving them and that is on the record, and those things can be  
looked at in future.

But, at the moment, I think this is the Bill that we are going to be supporting passing as an Act  
today and then commencing with the mechanism that we have proposed as an amendment to  
the commencement clause.

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**Hon. E J Phillips:** Mr Chairman, for different reasons, we will be agreeing with the  
Government in respect of their approach to these amendments suggested by the hon. Lady.

**Hon. D A Feetham:** Can I just ask a question, Mr Chairman? (**Mr Chairman:** Yes.) Can I ask a  
3540 question of the Government in relation to the points that the hon. Lady has made?

At the moment – and it is something that I forgot to mention in the course of my intervention – but at the moment what we have is a law that allows abortion for the preservation ... it says, ‘preserving the life of the mother’. Now, when we look at cases like *R v. Bourne* and other cases, that has been interpreted as meaning a serious long-term or permanent effect on the woman’s physical or mental health. So it is long-term or permanent effect on the physical or mental health of the mother. That is the law at the moment and there is no time limit in relation to abortion where that is the position. Actually that is why it is difficult to conceive of many cases in rape, foetal fatal abnormality and all the rest of it that would not fall within that because of the effect that a rape would have on a woman’s at least long-term mental health.

Now, if we look at this Bill it says 163A (b) –

**Hon. Chief Minister:** This is principles and merits, Mr Speaker, this is not Committee stage ... *[Inaudible]* and this is not Question Time either –

**Hon. D A Feetham:** It arises out of what she has said and out of Committee stage looking at the clauses. This says:

that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman;

And then it says:

that the continuance of the pregnancy would involve risk to the life of the pregnant woman,

Is the understanding of the Government that those two clauses also includes, because it says ‘permanent’, long-term effects on the mental welfare of the woman?

**Hon. Chief Minister:** Mr Speaker, there is a wealth of jurisprudence on the interpretation of those clauses, and we do not think it is appropriate, without notice, to be asked to provide a rationalised answer to that.

So, the hon. Gentleman will forgive us for saying that we are happy to research that with him but we think that the legislation that is proposed today is the right balance that should be passed today, the commencement of which should go to the people.

**Mr Chairman:** I am going to put the amendments moved by the hon. Lady to the vote. Those in favour? (**Hon. Ms M D Hassan Nahon:** Aye.) Those against? (**Several Members:** No.) The amendment is defeated.

**Clerk:** Clause 3 as amended.

**Mr Chairman:** Clause 3 as amended by the Hon. Minister stands part of the Bill.

**Clerk:** The long title.

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

**Crimes (Amendment) Bill 2019 –  
Third Reading approved: Bill passed**

**Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to report that the Crimes (Amendment) Bill 2019 has been considered in Committee and agreed to with amendments and I now move that it be read a third time and passed.

3585 **Mr Speaker:** I now put the question which is that the Crimes (Amendment) Bill be read a third time and passed. We are giving the Third Reading, we have come back from Committee to Parliament and we are voting on the Third Reading of this Bill.

**A Member:** As amended.

3590 **Mr Speaker:** As amended. (*Interjections*) Those in favour? (**Hon. Ms M D Hassan Nahon:** Aye.) Those against? (**Several Members:** No.) The Crimes (Amendment) Bill has been given a Third Reading and it has been passed, as amended.

**Clerk:** We now return to Committee Stage.

3595

**Clerk:** A Bill for an Act to amend the Pet Animal Sales Act 2005.

**ADJOURNMENT**

3600 **Chief Minister (Hon. F R Picardo):** Mr Speaker, we passed the Bill, it is now an Act and I am very proud of the way that this Cabinet and Government that I lead conducted the proceedings today. I am very grateful to the hon. Lady for the way that she addressed the House, the very moving speeches, in some instances from all sides of the House, except for some notable exceptions, which I have already referred to.

3605 So, at this time of the night, after almost six hours of debate and the whole day of debate on all matters, I propose that as Leader of the House and Chief Minister, both of which are not honorary positions but actual positions, that I should whip everyone to return at 9.30 in the morning on Monday, and wish the hon. Lady a *Shabbat Shalom* and apologise to her for having stayed so late on a Friday night. (*Banging on desks*)

3610

**A Member:** Hear, hear.

**Mr Speaker:** I take it that Monday is Monday the 15th, not Monday the 22nd?

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**Hon. Chief Minister:** Monday the 15th, sorry.

**Mr Speaker:** Monday the 15th, right. The House will now adjourn until next Monday at 9.30 in the morning.

*The House adjourned at 9.45 p.m.*