



PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

MORNING SESSION: 9.05 a.m. – 11.45 a.m.

Gibraltar, Monday, 15th July 2019

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The Gibraltar Parliament

The Parliament met at 9.35 a.m.

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

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

Order of the Day

BILLS

COMMITTEE STAGE

In Committee of the whole House

Pet Animals (Sales) Bill 2005 – Clauses considered and approved

Clerk: Meeting of Parliament, Monday, 15th July 2019.
Order of Proceedings: Committee Stage. We are currently at the Committee Stage of a Bill for
5 an Act to amend the Pet Animals (Sales) Act 2005.
Clauses 1 to 3.

Mr Chairman: Stand part of the Bill.

10 **Clerk:** The long title.

Mr Chairman: Stands part of the Bill.

Public Services Ombudsman (Amendment) (University of Gibraltar) Bill 2019 – Clauses considered and approved

Clerk: A Bill for an Act to amend the Public Services Ombudsman Act 1998 to provide for the
15 investigation of complaints by students about administrative acts or omissions of the University
of Gibraltar, and for connected purposes.
Clauses 1 to 3.

Mr Chairman: Stand part of the Bill.

20 **Clerk:** The long title.

Mr Chairman: Stands part of the Bill.

25

**Stamp Duties (Amendment) Bill 2019 –
Clauses considered and approved**

Clerk: A Bill for an Act to amend the Stamp Duties Act 2005.
Clauses 1 to 3.

Mr Chairman: Stand part of the Bill.

30

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

**Climate Change Bill 2019 –
Clauses considered and approved**

35

Clerk: A Bill for an act to set a target for the year 2050, and interim target for the year 2030, and to provide for progress targets for the reduction of greenhouse gas emissions; to establish a Committee on Climate Change; to confer power on Ministers to impose climate change duties on public bodies; to make further provision about mitigation of and adaptation to climate change; to make provision about energy efficiency; to make provision about the reduction and recycling of waste; to make other provision about climate change; and for connected purposes.

40

Minister for the Environment, Energy, Climate Change and Education (Hon. Dr J E Cortes): Mr Chairman, I would like to just mention, as I said on Friday, there is a letter dated 4th July and I will take it that those amendments are incorporated as we go through them.

I will have one comment to make at the end of the long title, which will also need to have a consequential amendment by changing 2050 to 2045.

Clerk: Part 1. Clauses 1 to 5.

45

Mr Chairman: Stand part of the Bill.

Clerk: Part 2. Clause 6.

50

Mr Chairman: Stands part of the Bill.

Clerk: Part 3. Clause 7.

Mr Chairman: Stands part of the Bill.

55

Clerk: Clause 8 as amended.

Mr Chairman: Stands part of the Bill.

60

Clerk: Clause 9.

Mr Chairman: Stands part of the Bill.

65

Clerk: Clause 10 as amended.

Mr Chairman: Stands part of the Bill.

Clerk: Clause 11 as amended.

70

Mr Chairman: Stands part of the Bill.

Clerk: Clause 12 as amended.

75

Mr Chairman: Stands part of the Bill.

Clerk: Part 4. Clauses 14 to 23.

Mr Chairman: Stand part of the Bill.

80

Clerk: Part 5. Clause 24.

Mr Chairman: Stands part of the Bill.

85

Clerk: Clause 25 as amended.

Mr Chairman: Stands part of the Bill.

Clerk: Clauses 26 to 29.

90

Mr Chairman: Stand part of the Bill.

Clerk: Part 6. Clauses 30 to 35.

95

Mr Chairman: Stand part of the Bill.

Clerk: Part 7. Clause 36 as amended.

Mr Chairman: Stands part of the Bill.

100

Clerk: Clauses 37 to 44.

Mr Chairman: Stand part of the Bill.

Clerk: Part 8. Clauses 45 to 63.

105

Mr Chairman: Stand part of the Bill.

Clerk: The Schedule.

110

Mr Chairman: Stands part of the Bill.

Clerk: The long title.

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

Hon. Dr J E Cortes: As amended.

Clerk: The long title as amended.

120 **Mr Chairman:** The long title as amended stands part of the Bill.

**Financial Services Bill 2019 –
Clauses considered and approved as amended**

125 **Clerk:** A Bill for an act to provide for the regulation of financial services and markets and fiduciary services; to make provision in respect of the Gibraltar Financial Services Commission; to establish a Financial Services Ombudsman; to make provision in respect of a deposit guarantee scheme, an investor compensation scheme and recovery and resolution arrangements and their financing; to provide for the regulation of the listing of securities, prospectuses and takeovers; to make provision in respect of market abuse; to provide for the control of insurance business transfers; to make provision in respect of occupational and personal pension schemes; to provide for the regulation of auditors and insolvency practitioners, and for connected purposes.

130 **Minister for Commerce (Hon. A J Isola):** Mr Chairman, there is a letter of 10th July and I would be grateful if those amendments proposed could be read in accordance.

135 **Mr Chairman:** This was given by the Hon. Minister on 10th July and it is a long series of amendments which we will be introducing now into the Bill.

Clerk: Part 1. Clauses 1 to 3.

Mr Chairman: Stand part of the Bill.

140 **Clerk:** Part 2. Clauses 4 to 19.

Mr Chairman: Stand part of the Bill.

145 **Clerk:** Part 3. Clauses 20 to 23.

Mr Chairman: Stand part of the Bill.

Clerk: Clause 24 as amended.

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

Clerk: Clauses 25 to 43.

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

Clerk: Part 4. Clause 44.

Mr Chairman: Stands part of the Bill.

160 **Clerk:** Part 5. Clauses 45 to 49.

Mr Chairman: Stand part of the Bill.

Clerk: Clause 50 as amended

165

Mr Chairman: Stands part of the Bill.

Clerk: Clause 51 as amended.

170

Mr Chairman: Stands part of the Bill.

Clerk: Clause 52.

Mr Chairman: Stands part of the Bill.

175

Clerk: Part 6. Clauses 53 to 61.

Mr Chairman: Stand part of the Bill.

180

Clerk: Part 7. Clauses 62 to 83.

Mr Chairman: Stand part of the Bill.

Clerk: Part 8. Clauses 84 to 85.

185

Mr Chairman: Stand part of the Bill.

Clerk: Clause 86 as amended.

190

Mr Chairman: Stands part of the Bill.

Clerk: Clauses 87 to 88.

Mr Chairman: Stand part of the Bill.

195

Clerk: Clause 89 as amended.

Mr Chairman: Stands part of the Bill.

200

Clerk: Clauses 90 to 102.

Mr Chairman: Stand part of the Bill.

Clerk: Clause 103 as amended.

205

Mr Chairman: Stands part of the Bill.

Clerk: Clauses 104 and 105.

210

Mr Chairman: Stand part of the Bill.

Clerk: Part 9. Clauses 106 to 123.

Mr Chairman: Stand part of the Bill.

215

Clerk: Clause 124 as amended.

Mr Chairman: Stands part of the Bill.

220

Clerk: Clauses 125 to 130.

Mr Chairman: Stand part of the Bill.

Clerk: Part 10. Clauses 131 to 134.

225

Mr Chairman: Stand part of the Bill.

Clerk: Clause 135 as amended.

230

Mr Chairman: Stands part of the Bill.

Clerk: Clauses 136 to 146.

Mr Chairman: Stand part of the Bill.

235

Clerk: Part 11. Clauses 147 to 157.

Mr Chairman: Stand part of the Bill.

240

Clerk: Clause 158 as amended.

Mr Chairman: Stands part of the Bill.

Clerk: Clause 159.

245

Mr Chairman: Stands part of the Bill.

Clerk: Clause 160 as amended.

250

Mr Chairman: Stands part of the Bill.

Clerk: Clauses 161 to 163.

Mr Chairman: Stand part of the Bill.

255

Clerk: Part 12. Clauses 164 to 175.

Mr Chairman: Stand part of the Bill.

260

Clerk: Part 13. Clauses 176 to 178.

Mr Chairman: Stands part of the Bill.

Clerk: Part 14. Clause 179.

265

Mr Chairman: Stands part of the Bill.

Clerk: Clause 180 as amended.

270

Mr Chairman: Stands part of the Bill.

Clerk: Clause 181 as amended.

Mr Chairman: Stands part of the Bill.

275

Clerk: Clause 182 to 187.

Mr Chairman: Stand part of the Bill.

280

Clerk: Clause 188 as amended.

Mr Chairman: Stands part of the Bill.

Clerk: Clauses 189 to 194.

285

Mr Chairman: Stand part of the Bill.

Clerk: Part 15. Clauses 195 to 235.

290

Mr Chairman: Stand part of the Bill.

Clerk: Part 16. Clauses 236 to 280.

Mr Chairman: Stand part of the Bill.

295

Clerk: Part 17. Clauses 281 to 287.

Mr Chairman: Stand part of the Bill.

300

Clerk: Part 18. Clauses 288 to 340.

Mr Chairman: Stand part of the Bill.

Clerk: Clause 341 as amended.

305

Mr Chairman: Stands part of the Bill.

Clerk: Part 19. Clauses 342 to 384.

310

Mr Chairman: Stand part of the Bill.

Clerk: Part 20. Clauses 385 to 404.

Mr Chairman: Stand part of the Bill.

315 **Clerk:** Part 21. Clauses 405 to 419.

Mr Chairman: Stand part of the Bill.

Clerk: Part 22. Clauses 420 to 432.

320

Mr Chairman: Stand part of the Bill.

Clerk: Part 23. Clauses 433 to 472.

325

Mr Chairman: Stand part of the Bill.

Clerk: Part 24. Clauses 473 to 536.

Mr Chairman: Stand part of the Bill.

330

Clerk: Part 25. Clauses 537 to 554.

Mr Chairman: Stand part of the Bill.

335

Clerk: Part 26. Clauses 555 to 591.

Mr Chairman: Stand part of the Bill.

Clerk: Part 27. Clauses 592 to 611.

340

Mr Chairman: Stand part of the Bill.

Clerk: Part 28. Clause 612.

345

Mr Chairman: Stands part of the Bill.

Clerk: Clause 613 as amended.

Mr Chairman: Stands part of the Bill.

350

Clerk: Clause 614 as amended.

Mr Chairman: Stands part of the Bill.

355

Clerk: Clause 615.

Mr Chairman: Stands part of the Bill.

Clerk: Clause 616 as amended.

360

Mr Chairman: Stands part of the Bill.

Clerk: Clause 617 as amended.

365

Mr Chairman: Stands part of the Bill.

Clerk: Clause 618 as amended.

Mr Chairman: Stands part of the Bill.

370

Clerk: Clause 619.

Mr Chairman: Stands part of the Bill.

375

Clerk: Part 29. Clauses 620 to 624.

Mr Chairman: Stand part of the Bill.

Clerk: Clause 625 as amended.

380

Mr Chairman: Stands part of the Bill.

Clerk: Clauses 626 to 628.

385

Mr Chairman: Stand part of the Bill.

Clerk: Part 30. Clauses 629 to 630.

Mr Chairman: Stand part of the Bill.

390

Clerk: Clause 631 as amended.

Mr Chairman: Stands part of the Bill.

395

Clerk: Clause 632 as amended.

Mr Chairman: Stands part of the Bill.

Clerk: Clause 633 to 635.

400

Mr Chairman: Stand part of the Bill.

Clerk: Part 31. Clauses 636 to 639.

405

Mr Chairman: Stand part of the Bill.

Clerk: Schedules 1 to 3.

Mr Chairman: Stand part of the Bill.

410

Clerk: Schedule 4 as amended.

Mr Chairman: Stands part of the Bill.

415

Clerk: Schedule 5.

Mr Chairman: Stands part of the Bill.

Clerk: Schedule 6 as amended.

420

Mr Chairman: Stands part of the Bill.

Clerk: Schedules 7 to 14.

425

Mr Chairman: Stand part of the Bill.

Clerk: Schedule 15 as amended.

430

Mr Chairman: Stands part of the Bill.

Clerk: Schedule 16.

Mr Chairman: Stands part of the Bill.

435

Clerk: Delete Schedule 17.

Mr Chairman: Delete Schedule 17 agreed.

440

Clerk: Schedules 18 to 25.

Mr Chairman: Stand part of the Bill.

Clerk: Schedule 26 as amended.

445

Mr Chairman: Stands part of the Bill.

Clerk: Schedules 27 to 29.

450

Mr Chairman: Stand part of the Bill.

Clerk: The long title.

Mr Chairman: Stands part of the Bill. Now I know that, instead of having to count sheep to go to sleep at night, I just have to say 'stands part of the Bill!' (*Laughter*)

**Private Sector Pensions Bill 2019 –
Clauses considered and approved**

455

Clerk: A Bill for an Act to make provision with respect to the provision of pension plans to employees employed in the private sector, to establish a Pensions Commissioner, and for connected purposes.

460

Hon. R M Clinton: Mr Chairman, I obviously have some amendments.

Clerk: Part 1. Clauses 1 to 3.

Mr Chairman: Stand part of the Bill.

465 **Hon. R M Clinton:** I have amendments, Mr Chairman.

Mr Chairman: It is normal to –

Hon. R M Clinton: Yes, I know, but arising from the debate.

470

Mr Chairman: Clause 4.

Hon. R M Clinton: Yes, but arising from the debate last week when we were looking at the Financial Services – in fact, we have just passed the Bill. On clause 2, ‘Interpretations’, under the definition of ‘pension plan’, as I made reference to last week, there is a reference to the Financial Services (Occupational Pensions Institutions) Act 2006, which in fact we have just repealed, or we will be repealing in Committee Stage in the Financial Services Bill, and I was just wondering what the Government’s view will be as to what they will do to replace that wording.

475

Chief Minister (Hon. F R Picardo): Mr Speaker, there will be consequential amendments throughout our body of laws. The Financial Services Act does not come into effect until October but this Bill comes into effect immediately, so it will be dealt with by draftsmen at the time.

480

Clerk: Part 1. Clauses 1 to 3.

485

Mr Chairman: Stand part of the Bill.

Clerk: Clause 4. An amendment was circulated.

Mr Chairman: I call on the Hon. Roy Clinton to formally move the amendment and then to speak to it.

490

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

Under Part 2, clause 4(5)(a), this particular clause, as it reads at the moment, says:

An employee-

(a) may elect, by submitting the prescribed form to the Commissioner, not to benefit from a pension plan provided under subsection (1);

495 What I propose, in order to allow for the opportunity for employees to revisit that decision on a regular basis, is to add the words, to the end of this particular sentence the ‘employers must continuously offer pension enrolment to employees who have so selected on the third anniversary of the date of the employee’s election not to benefit from a pension plan’. I have chosen three years as this follows the practice in the United Kingdom. As I say, the object of this is to ensure that employees are provided with every encouragement to save for retirement, as of course a decision made at the age of 19 may not be the decision you want to make at 23, 25 etc.

500

And so, what I would propose is that the revised clause 4(5)(a) read:

An employee-

(a) may elect, by submitting the prescribed form to the Commissioner, not to benefit from a pension plan provided under subsection (1);

(b) employers must continuously offer pension enrolment to employees who have so elected on the third anniversary of the date of the employee’s election not to benefit from a pension plan.

Mr Chairman: Before I put the question, does any hon. Member wish to speak on this amendment? The Hon. the Chief Minister.

505

Hon. Chief Minister: Mr Chairman, these amendments and the delay to this Bill arise from the hon. Gentleman telling us at the Second Reading that he was expecting a document that was being put together for him by the Chamber etc. I have to be very clear with the House that I have met with the Chamber and with the Federation of Small Businesses after the Bill was published and they have not raised any issue with us in respect of the Bill. Indeed, I met with the Federation of Small Businesses at some length and they did not raise any further issues in relation to the Bill after the five years of consultation that we have had with them. I understand, in fact, that the Hon. Mr Clinton has not met with any director of the Chamber, and indeed what I see from the documentation that he has provided from his letter in respect of these amendments are references to the public material that has been made available already by the Chamber, the Federation and Unite the Union.

Mr Chairman, this particular amendment I think starts the process of upsetting the balance that the Government has done, and it is the Government that has done that balance after five years of discussion, negotiation and consultation. In essence, in what we are going to see in the next little while there are two points which would be welcomed by the union and two points which would be welcomed by the Federation and by the Chamber. We have already done that balancing act. In relation to this particular amendment, what Mr Clinton is proposing is that employers should keep a record of the date on which every single member of their staff refuses to become involved in a pension scheme, and every three years thereafter – and that may not be a uniform date; that could be a different date for each individual – they have a legal obligation to offer again the pension to that employee. In the Government’s view, that is administratively burdensome, it is not in the interest of the business efficacy of the legislation and it is not in the interest of businesses generally. So, although the Chamber and Federation might be very pleased with points 2 and 5 of Mr Clinton’s letter, which we will come to, they will be very disappointed with points 1 and 3.

We believe we have done the right balance and therefore we will not be accepting this amendment.

Mr Chairman: Does the hon. Member wish to reply to this point? I know that the hon. Lady also wishes to contribute.

I call upon the Hon. Marlene Hassan Nahon.

Hon. Ms M D Hassan Nahon: Mr Chairman, after having stalled the introduction of this Bill for over a week I was expecting a lot more from the GSD’s amendment. After all, the Command Paper has been open to public consultation for a year and three months and the GSD has waited until the Bill has been brought to Parliament to consult stakeholders. It almost appears to me as if they have pushed the boundaries of the definition of usefulness to justify the delay they have caused by insisting that the Third Reading be taken another day. In fact, I would go further and suggest that the GSD’s amendments, particularly clause 2, are a retrograde step. What is the point of introducing a mandatory private sector pension if you are going to include a clause for exemptions reliant on a decision by a Minister? All you are doing is opening a door to cronyism, a mechanism really for an uneven playing field where some businesses have to pay into a pension scheme while others, fortunate enough to be in the Minister’s inner circle, might be exempt. In their proposal the GSD has not even set out a transparent process where the Minister’s decisions can be scrutinised.

Is this the kind of Gibraltar that the GSD want in the future, where one Minister can decide *a dedo* who has to meet the social responsibilities and who does not? (*Banging on desks*) Not on my watch, Mr Chairman, so naturally I shall be voting against this clause.

Hon. E J Phillips: Mr Chairman, is the hon. Lady speaking to the amendment or is she speaking to the entire amendment as issued by Mr Clinton? Just for clarification, is she speaking to the amendment?

560 **Hon. Ms M D Hassan Nahon:** Yes, the amendment, and I was guided by the Clerk to speak at this juncture, considering this was the point I was willing to make.

Mr Chairman: Yes, the Hon. Roy Clinton.

565 **Hon. R M Clinton:** Mr Chairman, I must confess to being surprised at the attack which we have just experienced by the hon. Lady. She will be aware that the Bill before the House is, of course, significantly different to the Command Paper. I do not know if she has taken the trouble to actually consult with any of the stakeholders, as I have. Despite what the Chief Minister says, they have concerns and certainly the union are not entirely happy with the Bill as drafted and certainly think it can be improved.

570 Whereas the Chief Minister has taken the view that he determines what is the balancing act, I would remind them it is Parliament that determines what is the balancing act and it is Parliament that passes legislation, and therefore it is for us in this place to determine where the balance lies, not him personally.

I would remind him as well that, as I have just said, there is significant difference between the Command Paper and this Bill, and certainly from conversations I have had with the Chamber, the Federation and the union, whereas they may not all agree with my proposed amendments, certainly they do feel there is merit in some of the amendments I am proposing.

575 For the Chief Minister and the Government to take the view that they do not agree with these amendments, certainly this particular one that we are considering at the moment is something that is law in the United Kingdom and if the United Kingdom do not consider it to be administratively burdensome I do not see why we should with less employers and less employees. So, really it is for the Chief Minister to explain to the union why they do not consider it is in the interests of employees to be consulted every three years, other than taking the side of the Chamber, in which, as he suggests, he thinks it may be far too burdensome.

580 Mr Chairman, if he has nothing further to add on this particular clause I would suggest we vote on it, on this clause.

585 **Hon. Chief Minister:** I do have something to add, Mr Chairman. Having been in this place now for a considerable period of time – since 2003, in fact; not as long as the Father of the House or indeed the Deputy Chief Minister – I have worked out that it is Parliament that legislates and not the Government. I also – and I think this is what the hon. Gentleman has not worked out – have worked out that the people sitting on the Government benches have a majority and therefore it is the Government, having presented a Government Bill, that is likely to determine with its majority which parts of the amendments are going to be accepted, not as a show of bravado in any way but simply because the Government has been involved in doing an exercise for five years on this Bill.

590 We published a Command Paper and we are accused of having changed the Command Paper before publishing the Bill. Well, Mr Chairman, as I told him in the Second Reading and general principles debate, that is exactly what the process was for: in order to understand which parts of our Command Paper unions representing working people, and Chamber and Federation representing businesses, felt went too far in each particular area, and we therefore, as the Government, having done the consultation, believe we have struck the right balance.

600 The hon. Gentleman says things today which are different to some of the things he was saying on Friday. He is saying if something is the law of the UK why can't it be the law here, where we have less businesses and less employees. Well, we have less women – shall we just make our law on abortion the law of the United Kingdom? It is obvious that if the hon. Gentleman is going to raise simply having carbon-copy versions of the law of the United Kingdom, then the person sitting to his right, who is the Leader of the Opposition, was saying the opposite in the course of the debate on abortion. So he is making a point which contradicts other points which they make. We

610 make our own laws in Gibraltar and they are calibrated in a different way in relation to each subject. We have done the calibration after a lengthy period of consultation in relation to this Bill.

He says that he has met individuals. Well, Mr Chairman, my understanding is that he is misleading the House, that he has not met directors of the Chamber and he has not met individuals in the union since we had the discussion at the Second Reading and general principles stage of the Bill, and all he has done therefore, as the hon. Lady rightly points out, is delay this Bill in order to do the homework that he could have done otherwise – because everything that he has put in the amendments that are before us now are things which the Chamber, the Federation and the union said, before the Bill came to the House for debate, in their public statements after the publication of the Bill, where they each did the balance and said, ‘We like some things that have been taken out from the Command Paper because we rejected those, but we wish some others had been left in.’ Both of them said the same thing, indicating to the Government therefore, and in the further discussions we have had with the Chamber, the unions and the Federation, that we have struck more or less the right balance.

Nonetheless, this is a work in progress and it will have to change in the future as it is introduced, and some of the things which we have taken out we may, in the future, in consultation again, decide to bring back in. But at the moment, this amendment, in the Government’s view – because it is the Government that has a majority in this House to legislate in this Parliament – is not something which makes sense on introduction of this Bill. That is why we did not introduce it ourselves, because it creates an administrative burden on businesses.

630 Mr Chairman, I do not know whether he cleared just points 1 and 3 with the union and 2 and 5 with the people he says he spoke to in the Chamber and the Federation, but certainly in the Chamber and the Federation they would not be welcoming this point. So, this point, having done the exercise and having done the balance, will not enjoy the support of the Government.

635 **Mr Chairman:** Roy Clinton.

Hon. R M Clinton: Mr Chairman, one last comment. The Chief Minister seems to be imputing a suggestion that I have not spoken to anyone. I would ask him to withdraw that suggestion unless he has evidence to the contrary, because I can assure him I have.

640 **Hon. Chief Minister:** Mr Chairman, I will not withdraw the suggestion. If the hon. Gentleman cares to look back at *Hansard* he will see I have said that he has not met with directors of the Chamber on the subject.

645 **Hon. R M Clinton:** Mr Chairman, I never said I had; I said I had consulted with the Chamber and the Federation and their representatives, naturally. He may choose to put words in my mouth, but what he is suggesting is entirely untrue, in terms that I have not consulted.

Hon. Chief Minister: Well, Mr Chairman, I insist that if an individual comes to this House and says that he has met with the Chamber and the Federation and he now admits that he has not met any director of the Chamber, then he has by his own mouth demonstrated that he was misleading the House. He may have met the cleaner of the Chamber, he may have met the secretary, he may have met the administrative assistant, but if he has not met a director of the Chamber, who has he met who is able to give him direction for the board of the Chamber? That is exactly the sort of mealy-mouthed attempt that the hon. Gentleman constantly makes to pretend one thing when he has in fact done another. And this is an attempt to pass through the head teacher the fact that he had not done his homework, that the dog had eaten it. He has now come to the House with a document purporting to bring amendments, all of which he could have done when we were considering the Second Reading and general principles and he did not do because he was not ready, and he therefore deprived working people of the operation of this Bill for a number of weeks as a result. Typical, Mr Chairman!

Hon. R M Clinton: I doubt the people I spoke to will consider themselves the cleaning individuals or anything of the like. They were certainly people in authority and he should know that.

665 Mr Chairman, I do not think there is any benefit in continuing this diatribe with the Chief Minister. I suggest we move to a vote.

Hon. Chief Minister: Well, Mr Chairman, I wonder who in the Chamber, who is not a director of the Chamber, is in authority to speak for the Chamber. I think the Chamber would take a slightly
670 different view to the one that the hon. Gentleman is self-servingly trying to put now.

Mr Chairman: The Hon. Marlene Hassan Nahon.

Hon. Ms M D Hassan Nahon: Mr Chairman, it is sad to see that it seems like the GSD believe
675 that they have a monopoly on conversations with the Chamber and interested stakeholders. I can tell you that I have had conversations with stakeholders, namely the union, which is there to protect the workers' interests and I think is the most relevant body for this issue in particular.

My comments are clear, so I would still ask the GSD, who have not been clear on the way back:
680 why would they want the Minister to have more discretion? They have not provided any explanation to date and I have no doubt that stakeholders from across the board would be interested to know where this clause comes from, or what benefit it brings to the worker, to the employer or to anyone.

Mr Chairman: The Hon. Trevor Hammond.

685

Hon. T N Hammond: Mr Chairman, if I may bring the conversation back to the clause in question, because we are talking about the first clause, I am quite surprised that the hon. Lady is voting against that clause if indeed she is endorsing the position of Unite the Union. (*Interjection by Hon. Ms M D Hassan Nahon*) Well, we are not actually discussing the second clause; we are
690 discussing the first clause. So, on the basis that she is going to vote against, presumably she is going to vote against the clause that is specifically requested by Unite the Union.

If I may take the conversation back to the specific merits of the clause, I really do not believe, as an employer myself, that requesting an employer to just refer back to an employee every three years whether they wish to join the pension scheme is overly burdensome in terms of
695 administration. Many of the larger employers have pension schemes anyway, if not all of them, so I do not think we are talking specifically or necessarily about them, although I accept there may be one or two that do not have pension schemes, and smaller employers probably do not have so many employees that they really should struggle to maintain that obligation.

I think the common sense behind an amendment of this nature and the common sense of
700 having a law that requires this is simply that yes, people's circumstances change and people may change their minds over time, and to exclude them from a pension scheme without having to change employer – in other words, in order to have an opportunity to reapply for a pension scheme they would have to change employer – (*Interjection*) Well, they would; otherwise, if they remain with a single employer for their entire employment period –

705

Hon. Chief Minister: Mr Chairman, the hon. Gentleman is completely wrong. He has completely misunderstood the amendment that they are moving. An employee can opt in at any time – he can say no one day and then the next day he can say 'I made a mistake, I want to opt in', but what hon. Members are doing ... And it may be that a different iteration of this can happen
710 in the future, but what hon. Members are doing and they have not understood is this: that any employee who has made an election to stay out of a pension scheme, on the third anniversary of such election must be expressly offered by the employer the option to join again the pension scheme.

715 Let me just give them an example: an employer with 300 people. Each of those 300 people, on
a different day in the year, makes his decision. Paul says on Monday the 1st, 'I've decided not to',
Albert says on Tuesday the 2nd, 'I've decided not to', and so on and so forth for the 300 working
days of the year. The obligation of the employer is to go back to Paul on the third anniversary of
Monday the 1st and to go back to Albert on the third anniversary of Tuesday the 2nd, and so on
and so forth, the 300 days of the year. The employer is, each day of the year, going back to
720 employees. This is not 'every three years at the end of the first quarter remind all your employees
who have opted out to opt in', this is not 'every two years or every three years give them the
choice'; this is 'on the anniversary of the individual's election to stay out, go back to the individual'.
So you have to keep a record of the day on which the individual said no, and on the third
anniversary go back to him. It is extraordinarily burdensome.

725 The Government is going to be looking at options with Unite the Union to ensure that
periodically, probably once every six months – not once every three years, as hon. Members are
suggesting; once every six months – we run campaigns for people to opt in. But as Mr Hammond
is completely wrong and you do not do yourself out of going into a scheme once you have said no,
then they will be able to exercise that option if they are, in the moment of our promoting it, of
730 the view that they were wrong a year ago, six months ago, three years ago, four years ago.

This clause creates more of an administrative burden on employers than I have ever seen any
Government bring to this House, because it requires a register running for three years from the
date of each negative election by an employee to choose to be in a pension scheme. They have
not understood what they are proposing. What we will propose – which is not in the legislation –
735 which is to run a biannual campaign to make employees realise the benefits of being in these
schemes, will be more effective, will be more periodic, will achieve more for working people and
will be more welcomed by those who represent working people and will take the burden away
from business. The Government and the union will carry that burden in carrying out a public
information exercise that will reach everybody in our economy. That is why we are not going to
740 accept this clause, that is why they are wrong to put it, and that is why they have not even
understood it.

Hon. Ms M D Hassan Nahon: Mr Chairman, can I interject here? I just want to say, for the
record of *Hansard*, I am never instructed by anybody. It seems like it is the GSD themselves who,
745 from what they show, are the ones instructed by religious moral lobbies and otherwise –
(Interjection) I am sorry – to enhance their votership. And they still have not answered my query,
Mr Chairman. I am sorry, but instructed by nobody. I have conversations and I draw conclusions
for the benefit of the people of Gibraltar.

Thank you.

750

Hon. E J Reyes: [Inaudible] are we talking on the amendment?

Mr Chairman: Hon. members are in a particularly fractious mood this morning. *(Laughter)*
Maybe it is because it is Monday. It is the first time we have had to meet for ages at 9.30 in the
755 morning on a Monday. Of course, we are in committee and therefore there is no problem – the
debate can swing one way and the other and they can have as many interventions as they wish.

Now, the Hon. Edwin Reyes wants the floor – or is it the Leader of the Opposition who wants
the floor?

760 **Hon. E J Reyes:** Mr Chairman, I just want to bring to your attention I have sat here quietly, I am
listening to the arguments put forward by both sides, I have a very open mind, I have a track record
in the unions, I am trying very hard to understand what the Chief Minister is saying and I must
admit there is a certain validity behind what he is saying. I look at the positive side. He has given
a good signal to the workers: because you opt out now it does not mean you are forever, for the
765 rest of your life.

So, having taken that as a constructive feedback from the Chief Minister, for a Monday morning I am a bit appalled as to why the Lady has decided to go on a party political broadcast fling, not really talking on the proposed amendment to this clause of the Bill. Mr Chairman, that is why one gets upset on a Monday morning.

770

Hon. Ms M D Hassan Nahon: Mr Chairman, I am equally appalled by the GSD accusing me of being instructed by anybody, and I do not think that is collegiate at all.

775

Mr Chairman: Right, unless anybody has any other point to make on this first amendment of the Hon. Roy Clinton, I am going to put it to the vote.

Those in favour? (**Some Members:** Aye.) There are 4 votes in favour at the moment. Those against? (**Some Members:** No.) The amendment is defeated.

The Hon. Roy Clinton now has the floor to move his second amendment.

780

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

As this clause is not being amended, I am at least gratified that there will be a public campaign to encourage employees to join schemes, which was what the object of the clause of the amendment was.

785

My second amendment is to do with start-ups. I know during the Second Reading the Chief Minister was not amenable to any suggestion as to excluding entirely start-ups, and he did mention the 12 month qualification period.

790

This is a suggestion that is entirely my own. This is not something that either the Chamber, the union or anybody else has suggested, but I just put this out there as an idea. I am happy for the House to express their views on it. The idea is this: if there is a start-up business that may be a significant area of employment for Gibraltar, it may be a bit like a business development licence and he may want to give them a period of grace in which to encourage such a start-up, which is why I have worded it in such a way that it must be supported by the Minister for Economic Development. This is something that would be, I imagine, not usual but exceptional for cases in which the Minister for Economic Development may have identified as being of merit. It is not a question of favouring anyone; it is a question of favouring Gibraltar's economy as and when an opportunity may arise. And so my suggestion is that we insert a new clause 4(8) under Part 2, which would read:

795

The Minister may provide for an exemption from the provisions of the requirements of this Act for a maximum period of five years for start-up businesses upon application, which must be supported by the Minister for Economic Development.

800

Again, the intention here is a bit like a business development aid licence, whereby this would be for economically significant activity for the economy of Gibraltar, which obviously would have to have the support of the Minister for Economic Development. This is not some kind of get-out clause for existing businesses in Gibraltar; this is something that I would envisage would only be used exceptionally. And there is no hidden agenda on this particular clause, Mr Chairman.

805

Mr Chairman: The Hon. the Chief Minister.

Hon. Chief Minister: Well, Mr Chairman, I wonder what the hidden agenda is on the other clauses, then! (*Laughter*)

810

Let me start by saying that I do not accept the first words that the hon. Gentleman said in introducing this amendment, that his previous amendment was about creating public awareness. His previous amendment was about private obligations in respect of employers, not public awareness, and what I have told him is about public awareness.

Dealing with this clause, I am very pleased that he has told us that it is entirely his own doing, because it is not something that the Chamber or the Federation would likely be proposing – for a

815 simple reason: the hon. Lady is right, this clause is about favouring some businesses, which are
the ones that the Minister decides should be backed. Why should one start-up be different to
another?

This Government has introduced a whole plethora of advantages for start-up businesses in
Gibraltar. They are exempted from Social Insurance, they are exempted from this and that, from
820 many things in order to encourage new businesses in Gibraltar. If you look at the growth of
employment and you look at the growth of numbers of businesses that we have had in Gibraltar,
it is a demonstration of the fact that we have got the balance right. When we introduce those
schemes, as the hon. Lady has pointed out, every start-up that comes within the definitions gets
the benefits of those you know, start-up advantages.

This is about a Minister giving a particular start-up business, when he has been convinced to
825 do so, a particular advantage. And what advantage? An advantage at the sacrifice of the workers
who are going to make that start-up a success, and not either in a huge amount, because let's be
very clear – 2% is not going to break a start-up, especially a start-up that is already taking the many
other advantages that we have introduced in our legislation and in our Budgets which already give
these start-up businesses an advantage.

830 But of course every business has a period of grace in respect of the operation of this law
because you have to have been employed by the business for a year before you are entitled. So a
start-up business in Gibraltar does not acquire the obligation to give pensions to its employees
the day that it starts up; it has to have been trading successfully for a year. That is a way to do it
which is objective, which is not in any way designed to give the Minister power to ingratiate
835 himself or be ingratiated to by a start-up.

I think the fact that this has not been requested by the Chamber or the Federation – or indeed
by the unions, who are very disappointed to see the hon. Gentleman move this clause, in particular
given the five years that he wants to have included – I think that is a self-same demonstration that
the hon. Gentleman is telling us the truth. This is all his own work and that is why it is tragically
840 flawed.

Mr Chairman: Does any other hon. Member wish to speak on this particular proposed
amendment?

Does the Hon. Roy Clinton wish to reply now?

845 I will then put the second of the Hon. Roy Clinton's amendments to the vote. Those in favour?
(**Some Members:** Aye.) There are 4 votes in favour, but not the same four as voted previously. I
hope that the Clerk is able to keep a record of who is voting for and who is not. There are 4 votes
in favour. Those against? (**Some Members:** No.) All the others are against. The amendment is
defeated.

850 The Hon. Mr Roy Clinton will now move on to his third amendment.

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

This one, I think, should be a lot clearer and easier for people to understand. The original
Command Paper had a clause under Part 2, which on that numbering of that Bill was number 8,
855 and that particular clause 8 contained a provision in respect of ... and bearing in mind that Part 2
is all about registration, administration, membership etc. of pension plans, it actually had a clause
8 which was headed up 'Annual statement of pension benefits'. That clause 8 read:

8. Annual statement of pension benefits

(1) The administrator of a pension plan shall provide annually, or at least at shorter periods as specified in a pension
plan, to each member a written statement containing the prescribed information in respect of the pension plan, the
member's pension benefits or account balance and any ancillary benefits.

(2) A person who contravenes section 8(1) is guilty on offence and is liable on summary conviction to a fine not
exceeding level 3 on the standard scale.

860 This clause has been omitted from Part 2 of this Bill. I cannot see this particular clause or any similar wording elsewhere in this Bill. I would therefore propose that this clause be reintroduced and inserted as a new clause 8 under Part 2. If accepted, subsequent clauses in the Bill obviously would have to be renumbered accordingly and the arrangement of the clauses amended, such that the new clause 8 would read as I just read.

865 I would be grateful for the Chief Minister to explain the reasoning as to why the annual statement requirement is removed, because of course it is a critically important document that employees should receive annually, which will show how their pension plans are doing and how their benefits are accruing and would enable them to take informed decisions as to whether their pension plan would be on target to provide the benefits on retirement or perhaps that they may need to make supplemental savings plans for the future. I would be grateful if the Chief Minister could give an indication as to why this has been removed; or, if it has been removed for the reason
870 that it is elsewhere, where is that elsewhere, because I do not see it.

Mr Chairman: Before we go any further – because this is an amendment to clause 8 – we have not voted on clauses 4, 5, 6 and 7, so members may now wish to vote that clauses 4, 5, 6 and 7 stand part of the Bill. Those in favour? (**Members:** Aye.) Those against? Carried. Clauses 4, 5, 6
875 and 7 stand part of the Bill.

The Chief Minister is now invited to respond to the Hon. Roy Clinton's amendment to clause 8.

Hon. Chief Minister: Well, Mr Chairman, the Command Paper already included something similar, but a number of pension providers explained to us, in the responses to the Command
880 Paper, that different schemes already under the existing financial services legislation applicable to pension schemes already have to provide this information to employees who are part of those schemes. Therefore the provisions were removed because they were considered to be superfluous, because the existing rules already require pension schemes to provide such information to employees in accordance with the terms of the rules and the type of scheme.
885 Therefore, if we were to introduce this provision it could lead to duplication and uncertainty.

Hon. Mr Chairman: Is there any other contribution to this amendment? The Hon. Roy Clinton.

Hon. R M Clinton: So, if I understand the Chief Minister correctly, he will be relying on the
890 Financial Services Commission to police the distribution of annual statements to employees – is that correct?

Hon. Chief Minister: That is not what I have said, Mr Chairman. I have said what I have said, which is that the provision that he wants to introduce is already in our law.
895

Hon. R M Clinton: Mr Chairman, could he indicate where in our law that provision is?

Hon. Chief Minister: Not right now, but I have told him where it is, in those parts of our financial services rules that govern pension schemes.
900

Hon. R M Clinton: Mr Chairman, we just went through the Committee Stage on our new Financial Services Bill and I do not recall that level of granularity in it.

Hon. Chief Minister: Mr Chairman, I think I have been very clear with the hon. Gentleman that
905 he is trying to introduce a duplication into the rules that will govern pension schemes, therefore this clause is not required. If he wants to ferret away and find where the duplication is, I am quite happy to, if necessary, try and dig back to when we did all of this work about a year ago and find where it was that the pension providers told us that this clause was already included. Our draftsman checked it and agreed and therefore decided that this was not necessary.

910

Hon. R M Clinton: Mr Chairman, it is a very important clause, it is so important that it was in the Command Paper, and yet he is telling the House that certain pension providers decided that it was duplication?

915

Hon. Chief Minister: Not decided. I said 'explained'.

920

Hon. R M Clinton: 'Explained', Mr Chairman, but I think we should at least know, if it is a duplication, where the duplication arises. It certainly is not in the Financial Services Bill we just went through the Committee Stage on and I think it is only right that the House be pointed explicitly to where this duplication is. I am happy to receive that information later if it is of assistance to the Chief Minister, but on what is a very important clause I think the House should at least have some visibility as to where this duplication arises.

925

Hon. Chief Minister: Mr Chairman, the House has full visibility on that. Just because I cannot point him to the exact clause where it is in our laws, all of which are public, does not mean that the House does not have visibility.

930

The House has to accept, as it always has, that if the Government is saying that it has a provision or it has been persuaded by those who are going to be affected by a piece of legislation that there is a similar provision which does the same thing and it does not have to be redone, it is not necessary for the House to be taken to the exact provision.

935

It is very simple, Mr Chairman. We introduced the principle of Command Papers. We introduced that principle to enable us to do this work. But when I say something, the hon. Gentleman misinterprets it. I say that pension providers explained something to us and that we looked at it and our draftsman agreed, and then he turns around and says, 'Oh, just because pension providers have decided that,' as if we had put this important piece of legislation – which we promoted and they did not, which we consulted on and they did not – in the hands of pension providers. We did not, Mr Chairman. We have done our work to ensure that we have the best possible provisions available. This particular clause is a duplication that could also cause uncertainty. That is why it has been taken out. I invite him to move the clause formally and let's vote on it.

940

Mr Chairman: I now put the first amendment of the Hon. Roy Clinton to clause 8. Those in favour? (**Some Members:** Aye.) Five votes in favour. Those against? (**Some Members:** No.) The amendment is defeated.

945

We now move to amendment number 4, which is also to clause 8. The Hon. Roy Clinton.

Hon. R M Clinton: Thank you, Mr Chairman, and since we obviously have not introduced a new clause 8, the numbering still follows from the original Bill.

950

This particular clause is directly drawn from Unite's response to the original Command Paper. From their point of view they are looking at the transparency of pension calculations and lump sum commutation payments and they suggested some very specific amendments, that subclauses 8(b), (c) and (d) under Part 2 be amended by the additional following words at the end of each subclause, as follows: 8(b) 'including details and calculations of any commutation payments'; 8(c) 'including details on calculations and any commutation payments available'; and 8(d) 'along with supporting calculations'.

955

So, Mr Chairman, the revised subclauses 8(b), (c) and (d) under Part 2 would then read as follows:

8(b) in the case of a defined benefit plan, the member's expected benefits as is normal at retirement, including details and calculations of any commutation payments;

8(c) in the case of a defined contribution plan, the amount of money standing to the member's account, including details and calculations of any commutation payments available;

8(d) in the case of a defined benefit plan, the transfer value of the expected benefits as determined by an actuary, along with supporting calculations;

That, Mr Chairman, is the reasoning, or the explanation for the proposed amendments.

960 **Hon. Chief Minister:** Mr Chairman, I have consulted with Unite the Union: they have no wish to proceed with these amendments.

Hon R M Clinton: Mr Chairman, I am not sure when he had the conversation. Certainly in the conversation I have had with them recently is they did not express any desire to remove them, but we can agree to disagree and just go to the vote on this clause.
965

Hon. Chief Minister: It is not a question of agreeing to disagree, Mr Chairman. The hon. Gentleman said he has moved the amendments because it was in Unite's original submission. I recognise it was in Unite's original submission when they published this, but ... I do not know when he has spoken to them. When I have spoken to them after he has moved the amendments he has said he has agreed with them, they have told me that as far as they are concerned we do not need to progress with these amendments.
970

Mr Chairman: I now put this amendment to clause 8 to the vote. Those in favour? (**Some Members:** Aye.) There are, I take it, 5 votes in favour. Those against? (**Some Members:** No.)
975

I will now put clause 8 to the vote. Those in favour? (**Members:** Aye.) Those against? Carried. Clause 8 stands part of the Bill.

Clerk: Clauses 9 and 10.
980

Mr Chairman: Stand part of the Bill.

Clerk: Part 3. Clause 11.

985 **Mr Chairman:** There is an amendment to the clause. It is the fifth of these amendments in the letter that has been circulated.

The Hon. Roy Clinton.

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

990 This is really a tidying up, I guess. It is just to ensure it is beyond any form of reasonable doubt as to what the intention is, and that is, as the Chief Minister explained during the Second Reading, when he said that it would be 2% each. In the reading of the contribution level under clause 11(1) under Part 3, at the very end at the moment it just ends with the wording 'a sum equal to 2% per annum of the employee's earnings', but it does not actually specifically spell out by whom.

995 Certainly if you look at the comparable legislation that was passed in the UK, they actually went to great lengths to spell out who paid what. I do not think that should be controversial at all if the Government is so amenable to just add the words 'each by employee and employer' at the end of that clause 11(1), so that the revised sentence in clause 11(1) reads:

from the date of membership in the pension plan, a sum equal to 2% per annum of the employee's earnings each by employee and employer.

Mr Chairman: The Hon. the Chief Minister.
1000

Hon. Chief Minister: Well, Mr Chairman, there can be no doubt because I was very clear in my speech; and if there is any doubt in our laws, under the authority of a case called *Pepper v Hart* it is possible to look at the debate in *Hansard* and the courts can then make that determination.

1005 But you do not even have to go that far and you do not even have to look at my speech. If you read clause 11 as a whole, then what we feel is that everything is clear, and in fact if you look at each of 11(1)(a), (b) and (c), they state this:

a member of a defined contribution pension plan and his employer shall both contribute ... a sum equal to 2% per annum of the employee's earnings.

1010 So, Mr Chairman, we really think that this is clear. We think in particular it is made clear in my speech. We do not think that there is any of the ambiguity that the hon. Gentleman suggests. Therefore, we do not think that this amendment is necessary and we will not be supporting it.

Hon. R M Clinton: Sorry, Mr Chairman, did he just say 'shall both contribute 2% equally'? That is not in my reading of the Bill under 11(1)(a), unless – (*Interjection*) Oh, I know, it is at the end. I may have misheard him.

1015 **Hon. Chief Minister:** I have got the Bill here, Mr Chairman. I will read it directly from the Bill:

Contributions.

11.(1) Subject to subsections (2) to (5)-

(a) a member of a defined contribution pension plan and his employer shall both contribute equally to the pension fund of the pension plan for the benefit of that member;

And then it continues, Mr Chairman.

Hon. Chief Minister: That is right, Mr Chairman, but I distinctly heard him say '2% equally' when he read out that clause previously, but obviously that is not there.

I have nothing further to add, Mr Chairman. If the view of the Government is that it is clear enough, then I suggest we proceed to a vote.

1020

Mr Chairman: Are you withdrawing it or putting it to the vote?

1025 **Hon. Chief Minister:** Mr Chairman, just to clarify, the reference to the 2% comes at the end of the sentence, so it is at clause 11(1)(a), (b), (c), and then it goes to the final sentence of 11(1) and there is the reference to the 2% at the end of that.

Mr Chairman: I now put the amendment to the vote. Those in favour? (**Some Members:** Aye.) Those against? (**Some Members:** No.)

1030 Now the next one. We are still on clause 11. There is proposed by the Hon. Roy Clinton amendment number 6 to that clause.

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

1035 This is particularly important, I think, in terms of the operation of the entire piece of legislation. The objective of the legislation obviously is to encourage and provide for pension schemes for employees in the private sector. Clause 11(8) at the moment, under Part 2, gives the Minister complete discretion, without notice or consultation, to vary the contribution rate, and at the moment, as the legislation stands, that would be a total of 4%, being 2% and 2% by employee and employer to take it to 4%. But certainly in the United Kingdom they took the view that the minimum standard for a defined contribution scheme should be 8% of what they called 'qualifying earnings', and certainly Unite, unless they have changed their view since, were of the view that 1040 2% on a matching basis would not necessarily provide a meaningful sum for retirement given the current economic climate.

1045 In the United Kingdom they set out clear future dates and targets such that they started off with 2% in total, then to 5% and then finally to 8% over a period of time. This Bill starts at 4%. If we intend to reach 8% perhaps we are on the halfway mark to start with, but I think it would be

beneficial if the Government would flag at this stage what it is that they believe should be the target rate for contributions as to the future level. Otherwise, of course, they would not have introduced this clause in the first place, 11(8), if they felt that 4% would indeed be sufficient to provide pensions to employees on a defined contribution level.

1050 So, what I would suggest is that to allow some flexibility to the Government as to when to bring in increases, if they desire to do so – and again at this stage I do not know if that is the Government's intention, but obviously they have introduced this clause – and also to provide at least a stopgap – and this is certainly obviously something that the directors of the Chamber and the Federation would probably welcome, more so than Unite, although Unite I think would also
1055 welcome some kind of indication of what the future target rate will be – we add the following words to the end of clause 11(8) under Part 3, as follows: 'subject to a maximum contribution rate of 4% per annum of the employees' earnings contributed by employers and employees each. Such increases to be given with one fiscal year's notice between date of gazette and implementation'. This would mean that the target total contribution rate would be 8% earnings effectively, and the
1060 notice period reflects the concerns of the Chamber that they would want some kind of notice as to any increases in future.

And so the revised sentence in clause 11(8) under Part 3 as amended would then read:

The Minister may, from time to time, by order vary the rate specified in subsection (1), subject to a maximum contribution rate of 4% per annum of the employee's earnings contributed by employers and employees each. Such increases to be given with one fiscal year's notice between date of gazette and implementation.

This would then give some certainty as to what the target rate is that is proposed by the Government and also the mechanism by which it would be introduced.

1065 Thank you, Mr Chairman.

Mr Chairman: The Hon. the Chief Minister.

Hon. Chief Minister: Mr Chairman, there is a very good Spanish saying that says that by the
1070 mouth dieth the fish. The hon. Gentleman has told us that the directors of the Chamber will 'probably' welcome this and that Unite 'may' welcome this, which suggests that he has not discussed it with either of them.

The clause that is being sought to amend is a clause that simply says this:

The Minister may, from time to time, by order vary the rate specified in subsection (1).

The hon. Gentleman has read us what he would like to include there and he wants to introduce
1075 very tight controls, a statutory cap on what the Minister is able to do. We believe that Ministers should have the freedom to be able to provide increases subject to their views on how the market is performing – indeed, this could be something that forms part of Budget debates in the future. If you ask the Chamber and Federation they will always tell you they want the longest lead-in period for any increases in costs possible, but this is about protecting the rights of workers and
1080 trying to reach the right balance – and the right balance in the future may be completely different to the balance that Mr Clinton today thinks is the right balance, the one that he wants to impose strictures on. He wants to handcuff Ministers from being able to provide more support for working people. This Socialist Party is not going to accept that and I think our colleagues in the Liberal Party will agree.

1085

Hon. R M Clinton: Mr Chairman, I fully agree with the Chief Minister that this is about pension provision for employees, but I have not heard him give an indication of whether the Government is satisfied with the 4% level at the moment, or what indeed is the aspiration for the future. Now, of course the economic environment may change from day to day, from month to month, from
1090 year to year, but certainly in other jurisdictions like the UK they were able to take a view that for

them 8% was the target rate. Does the Government have a target rate to which they are aiming? I think both employees and employers need to know if, for example, next year they intend to increase that rate by 2%, 4%, 10%. What per cent? Does he have any ideas at this present moment in time?

1095

Hon. Chief Minister: Mr Speaker, all the ideas I have about what I will do next year are subject to the views of the people of Gibraltar, to be expressed in a General Election and I await their verdict.

1100

Mr Chairman: Is there any other contribution? No. I will, then, put this proposed amendment to clause 11 to the vote. Those in favour? (**Some Members:** Aye.) Five votes in favour. Those against? (**Some Members:** No.) The amendment is defeated.

Clause 11, I will put it to the vote. Those in favour? (**Members:** Aye.) Those against? Carried. Clause 11 stands part of the Bill.

1105

Clerk: Clause 12.

Mr Chairman: Stands part of the Bill.

1110

Clerk: Part 4. Clause 13.

Mr Chairman: Stands part of the Bill.

Clerk: Part 5. Clauses 11 to 18.

1115

Mr Chairman: Stand part of the Bill.

Clerk: Part 6. Clauses 19 to 24.

1120

Mr Chairman: Stand part of the Bill.

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

FIRST AND SECOND READING

Damages Bill 2018 – First Reading approved

1125

Clerk: We now return to First and Second Readings of Bills and we commence with a Bill for an Act to make new provision in relation to the applicable rate of return on investment of damages for personal injury and for guidelines relating to the assessment of general damages in personal injury cases.

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

1130 **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 make new provision in relation to the applicable rate of return on investment of damages for personal injury and for guidelines relating to the assessment of general damages in personal injury cases be read a first time.

1135 **Mr Speaker:** I now put the question, which is that a Bill for an Act to make new provision in relation to the applicable rate of return on investment of damages for personal injury and for guidelines relating to the assessment of general damages in personal injury cases be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

1140 **Clerk:** The Damages Act 2018.

**Damages Bill 2018 –
Second Reading approved**

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

The Bill's publication followed consultation with stakeholders, including representations from members of the legal profession and insurance industry professionals and also with the Hon. the Chief Justice and the Financial Secretary. Further, the published Bill was then resent to the General Council of the Bar, as it was then, so that the Bar could examine the final version and make any representations at that time. This has resulted in one amendment, which I will be proposing at Committee Stage together with a change to the short title, to the Damages Act 2019.

The Bill makes provision for two separate but connected matters relevant to award of damages in civil cases before the courts of Gibraltar. The first of these, contained in clause 3 of the Bill, relates to the setting of the applicable rate of return on investment of damages for personal injury, the so-called discount rate. Compensation in personal injury claims is intended to put the claimant in the position they would have been in had they not suffered the injury. In some cases a claimant will receive a lump sum of compensation to cover their future financial losses, such as loss of earnings, further treatment and future care needs. A claimant is expected to invest this money and receive a return which they can then use for their future needs. The discount rate reflects the likely rate of return on the investment.

Prior to the cases that I set out below, and in absence of any specific legislation in Gibraltar, the value of personal injury claims has always been assessed by reference to (1) the Judicial College guidelines in relation to general damages for pain, suffering and loss of amenity, and (2) the English rate of return on investment on investment as set by the English Damages Act currently set as -0.75% under the Damages (Personal Injury) Order 2017 in relation to special damages.

In *Bernal v Riley*, reported in Gibraltar Law Report 2016 at page 314, in relation to the assessment of general damages the Hon. Mr Justice Jack, as he was then, found, without any adversarial argument and with no formal evidence of Gibraltar's economy, that the English guidelines were not appropriate for Gibraltar, finding that they were too low for the 'particular circumstances of Gibraltar' and that accordingly the Supreme Court should instead follow the Northern Irish guidelines, this being the submission of counsel for the claimant. The issue came before the Supreme Court again in the case of *Wesley Deane Paul Walker v Ormrod Electricity Supply Co. Ltd* in 2017, although this case is unreported. On this occasion the defendant submitted that the court was obliged to apply the English Judicial College guidelines. Nonetheless, Justice Jack remained of the view that the English guidelines were no longer appropriate and that the Northern Irish guidelines should be applied, again without any formal or independent economical or actuarial evidence but this time having considered the defendant's submissions as to Gibraltar's standard of living when compared with that of the UK.

Mr Speaker, in relation to the question of the applicable rate of return on investment, the comments made by the Hon. Mr Justice Jack in both *Bernal* and *Walker* have led to much speculation among personal injury practitioners in Gibraltar, be it insurers and the claim handlers and legal advisers or lawyers acting on behalf of claimants, as this issue was addressed but not
1180 determined in either case. In practical terms the uncertainty has meant that both sides have taken opposing positions on this question to their respective clients' advantage, naturally, thereby leaving a gaping hole between the parties' respective positions. This consequently meant that the prospects of an early out-of-court settlement greatly diminished or, where a settlement was achieved this was done via a sometimes unsatisfactory meet-in-the-middle approach, leaving
1185 insurers potentially overpaying on these claims as a result. The inevitable implication has been that legal costs have dramatically escalated, arguably disproportionately, due to the need to litigate these issues as part of the overall litigation process, which necessarily required costly expert economic and/or actuarial evidence to be obtained.

An option would be to require all claimants and defendants, in such cases where discount rates may be applied, to go to the expense of obtaining their own actuarial evidence and expert reports to argue the issue. The Government is of the opinion that it is not at all a sensible solution, given that coming to an actuarial decision on the discount rate is not an easy task and should not be decided in an ad hoc manner. At best this would result in further expense and time spent in court and result in no certainty with respect to the rate that may be set by the court. Further, and
1195 worryingly, it is entirely conceivable that the rate would differ on a case by case basis. Further, with claimants advancing such significantly different discount rates to the discount rate applied in England, the effect is that the value of claims is being increased from a few hundred thousand pounds to claims worth several millions of pounds. The inevitable result is that either insurance premiums will rise considerably – for example, in the hundreds of pounds for straightforward
1200 motor policies – or it will price out completely insurers providing the products in Gibraltar. Neither, of course, is a desirable result.

As such, the Bill deals with the uncertainty created by stating that the court, when determining the discount rate in a particular case, shall take into account such rate of return, if any, prescribed by an order made by the Minister with responsibility for justice after consultation with the
1205 Financial Secretary of Her Majesty's Government of Gibraltar. However, in the absence of such an order the Bill also provides at clause 3(2) that if and to the extent that a local rate is not prescribed, the England and Wales rate shall apply.

It is the view of the Government that this solution best balances the benefits of having a locally set rate based on a proper actuarial assessment of our economy with the need to have a temporary rate identified immediately for use by the courts, being the rate that most practitioners took as the applicable rate in Gibraltar in any event.
1210

Mr Speaker, the second area covered by the Bill is set out in clause 4 and is with respect to the guidelines to be used in the assessment of general damages in personal injury cases. In a similar fashion to the discount rate, there is provision made for the setting of legal guidelines which will be set by the Chief Justice. It is the requirement for consultation by the Hon. the Chief Justice prior to making such guidelines which would be the subject of a proposed amendment at Committee Stage. The amendment, at the request of the Bar Council, removes the specific need for the Chief Justice to consult with the Minister with responsibility for justice and will be replaced by the Law Commission before making any guidelines. This is what the Government has decided. The Chief Justice may of course still consult with the Minister for Justice should he consider it useful, but this will no longer be a requirement.
1220

Subclauses (3) to (5) of clause 4 deal with what the position will be if no local guidelines are issued by the Hon. the Chief Justice. As with the discount rate, the default interim position will be for the guidelines in effect in England and Wales to have effect. Again it should be stated that these are the guidelines that practitioners took as being applicable in Gibraltar before the effect of the decisions mentioned earlier.
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1230 Mr Speaker, this Bill has been drafted carefully with the two default positions set out above so that there is an immediate benefit of bringing certainty to an area in which there had always been certainty but in which certainty had been lost, whilst work can continue to achieve an appropriate local solution.

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

1235 **Mr Speaker:** Before I put the question, does any hon. Member wish to speak on the general principles and merits of the Bill? The Hon. Elliott Phillips, Leader of the Opposition.

Hon. E J Phillips: Thank you, Mr Speaker.

1240 We welcome the Bill as presented by the Minister for Justice. Anyone in this Chamber who is familiar with personal injury cases knows, of course, that they are generally and have been in the past plagued with huge cost and delay and have been met with heartache by claimants and certainly frustration by insurance companies, and that is right.

1245 I understand that there has been difference of opinion that has been expressed to the Minister for Justice from various areas of the legal profession, but it is right, in our view, that this Bill will remove those uncertainties; will, with any luck, lower costs and ensure that delay is considerably reduced. So the two amendments that are being proposed by this Bill have the support of the Opposition, together with the further amendment that the Minister will move at Committee Stage.

Mr Speaker: The Hon. Neil Costa.

1250 **Hon. N F Costa:** Mr Speaker, just very quickly, of course, to thank the Hon. the Leader of the Opposition for the support that the Opposition will be providing to this Bill.

It may interest the hon. Gentleman to know that, save for one firm, the other three firms that wrote to me were wholeheartedly in favour of this Bill having been published and to be brought to this House.

1255 The thrust of the Bill is as the hon. Gentleman has said, which is to try to encourage both parts of a claim to sit down and be able to have certainty to be able to settle the matter as quickly as possible, avoiding delay and unnecessary costs.

1260 **Mr Speaker:** I now put the question, which is that a Bill for an Act to make new provision in relation to the applicable rate of return on investment of damages for personal injury and for guidelines relating to the assessment of general damages in personal injury cases be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Damages Act 2018.

**Damages Act 2018 –
Committee Stage and Third Reading to be taken at same sitting**

1265 **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.)

**Police (Amendment No.2) Bill 2018 –
First Reading approved**

1270 **Clerk:** A Bill for an Act to amend the Police Act 2006, and to make consequential amendments to the Police (Discipline) Regulations 1991.
The Hon. the Minister for Health, Care and Justice.

1275 **Minister for Health, Care and Justice (Hon. N F Costa):** Mr Speaker, I have the honour to move that a Bill for an Act to amend the Police Act 2006, and to make consequential amendments to the Police (Discipline) Regulations 1991 be read for a first time.

1280 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Police Act 2006, and to make consequential amendments to the Police (Discipline) Regulations 1991 be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Police (Amendment No. 2) Act 2018.

**Police (Amendment No.2) Bill 2018 –
Second Reading approved**

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

1285 I have written to you notifying you of the intention to amend the short title in clause 1 from Police (Amendment No. 2) Act 2018 to Police (Amendment) Act 2019.

1290 This is a very short Bill, which seeks to amend the Police Act 2006 and the Police (Discipline) Regulations 1991 to replace the rank of Deputy Commissioner with that of Assistant Commissioner as the principal assistant to the Commissioner in the performance of his duties in respect of the Police Force. All this amendment achieves is to make the position of principal assistant to the Commissioner more commensurate with the position and structure in the United Kingdom. This Bill is merely reflecting a change that is already in use in practice and has no other effect than that stated.

1295 The change came about following the commission of a review of the RGP's rank structure by the Commissioner of Police, which pointed out that the Deputy Commissioner rank did not fully represent the role being performed by the Chief Superintendent both within the organisation or in multi-agency fora. The advice is that the role performed by the Chief Superintendent is comparable to that of an assistant chief constable in a UK county force or that of a commander in the Metropolitan Police. As an example, the Assistant Commissioner is the person who chairs the second tier of Gibraltar's national security apparatus, the Executive Committee of the Gibraltar Contingency Council, where most of the members are heads of departments. The role of Assistant Commissioner is also considered to better represent the position in the RGP's hierarchy as second in command and as deputy in the Commissioner's absence.

1300 Mr Speaker, it is not insignificant to note that the change does not represent any financial increase whatsoever to the RGP's budget.

1305 I commend the Bill to the House. (*Banging on desks*)

1310 **Mr Speaker:** Before I put the question, does any hon. Member wish to speak on the general principles and merits of this Bill? The Hon. the Leader of the Opposition.

Hon. E J Phillips: Mr Speaker, we will welcome the amendment insofar as what I believe the Minister for Justice describes as almost international recognition for the Assistant Commissioner but also to reflect the national structure that we have.

1315 Just one question so far as responsibilities: I think the Minister alluded to the responsibilities that the Assistant Commissioner has now vis-à-vis what he would have had as Deputy Commissioner. Has that improved in terms of identifying what he actually does insofar as those new responsibilities are concerned, or is it just that he has been continually doing those for some time?

1320 **Hon. N F Costa:** Mr Speaker, the Bill gives effect in law to what is already happening in practice. So the Assistant Commissioner will have been performing his duties now under that title for quite some time, but we thought it was right to give it legal effect not least because the rank of Deputy Commissioner had been removed from the statute books for some time back.

1325 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Police Act 2006, and to make consequential amendments to the Police (Discipline) Regulations 1991 be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Police (Amendment No. 2) Act 2018.

**Police (Amendment No.2) Bill 2018 –
Committee Stage and Third Reading to be taken at same sitting**

1330 **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.)

**Prison (Amendment) Act 2019 –
First Reading approved**

1335 **Clerk:** A Bill for an Act to amend the Prison Act 2011 and the Prison Regulations 2011 to amend the provisions relating to the release of prisoners and to substitute the current provisions relating to remission.

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

1340 **Minister for Health, Care and Justice (Hon. N F Costa):** Mr Speaker, I have the honour to move that a Bill for an Act to amend the Prison Act 2011 and the Prison Regulations 2011 to amend the provisions relating to the release of prisoners and to substitute the current provisions relating to remission be read a first time.

1345 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Prison Act 2011 and the Prison Regulations 2011 to amend the provisions relating to the release of prisoners and to substitute the current provisions relating to remission be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

1350 **Clerk:** The Prison (Amendment) Act 2019.

**Prison (Amendment) Act 2019 –
Second Reading approved**

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

1355 The Law Commission has met on a number of occasions to consider parole reform, in particular the point at which a person serving a sentence becomes eligible for parole. The Law Commission received evidence from the Prison Superintendent and the Deputy Prison Superintendent, the Parole Board and members of the Probation Services. After careful, extensive discussion, the Law Commission made a series of recommendations, which Government published for consultation by way of a Command Paper. Following the period of consultation provided for in the Command Paper, Government published the Prison (Amendment) Bill 2019. Mr Speaker, we did not receive
1360 any representations from the community.

The Bill seeks to increase the minimum time to be completed for inmates serving a fixed-term sentence from the current third to half of their sentence. Three new categories are created dependent on the overall length of sentence: prisoners serving sentences of 12 months or less will be automatically released at the halfway point of their sentences without licence conditions; those
1365 inmates serving sentences greater than 12 months and up to four years will also be automatically released at the halfway point – in such cases, however, inmates will be subject to licence conditions to be advised by the Parole Board, up to three quarters of the sentence, subject to any revocation or additional days that may be imposed; and inmates serving sentences greater than four years will be eligible to apply for parole at the halfway point.

1370 The release of such inmates would not be automatic and would require consideration by the Parole Board, as is currently the case. Licence conditions subject to any revocation or additional delays that may be imposed will remain in force for three quarters of the sentence.

The present system of remission will be replaced by a system of additional days. Additional days for disciplinary offences will be added to the computation of any period of time used to calculate any period governing a prisoner's release. The effect of the additional days is to delay release from prison by the aggregate number of additional days awarded. It also enables those days to be added to the licence period.
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1380 It is important to note that the changes brought about by this Bill will have prospective and not retrospective effect. This means that the amendments will only apply to persons first detained after the commencement of those new provisions being commenced.

Clause 3(2) substitutes section 51 of the Act, which presently provides for the remission of a sentence based on the grounds of the individual's industry and good conduct. Remission is not compatible with automatic release and the new section 51 makes provision for the award of additional days. Additional days are awarded to the computation of any period of time used to calculate any period governing a person's release. The effect of the additional days is to delay release by the aggregate number of additional days awarded. The section also provides for regulations made under section 71 for administering the additional days provisions.
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Clause 3(2) inserts section 51A and provides for the automatic release of a prisoner who has served the greater of five days or half of a sentence of up to four years' imprisonment. A person who has been sentenced to imprisonment for 12 months or less is at that point released unconditionally. Those serving a sentence of imprisonment greater than 12 months and up to four years are released on licence.
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Clause 3(2) also adds a section 51B and makes it clear that persons in prison in default of a payment of a fine are also subject to the new system.

1395 Clause 3(3) amends subsection 53(1) and requires that the Parole Board advise the Minister in respect of licence conditions, including their variation and cancellation for prisoners released under the automatic release provisions in section 51A(3), namely those serving sentences greater than 12 months and up to four years.

1400 Clause 3(4) substitutes section 54(1)(a) and permits for the possible release on licence after having served half of a sentence that exceeds four years. Prisoners serving sentences of over four years would therefore have to appear before the Parole Board should they seek release and licence at the midpoint of their sentence.

Clause 3(5) makes a consequential amendment to section 55 to reflect the change from one third to half of the sentence served.

1405 Clause 3(6) recasts section 56(1) and inserts new subsections (1)(A) and (1)(B). The effect of this subclause is to impose an expiry to the duration of the licence, which will be three quarters of the length of the sentence.

Subsection (1)(A) increases the three-quarter period by the number of additional days that a person may have been awarded for breaches of discipline under section 51, if any.

1410 Subsection (1)(B) provides that where a person is only released after having served at least three quarters of a sentence, that person will remain on licence until the expiry of the sentence.

Clause 3(8) inserts a new section 61A that provides that a sentence expires once a person has been released unconditionally or where the licence period has expired.

1415 Clause 4 amends the Prison Regulations 2011 in accordance with the Schedule to the Bill. Parliamentary counsel advised that we proceed in this way as the proposed amendments are not to apply to persons who either are or have been detained, remanded or imprisoned. By having both sets of amendments in one piece of legislation, its application in any given case should be more readily ascertainable. The amendments to the Act and the regulations are segregated. Clause 3 of the Bill relates to the Act, and clause 4 together with the Schedule effect amendments to the regulations.

1420 In addition to some consequential amendments, clause 4 reduces the period of cellular confinement to 14 days.

1425 Regulations 55 and 56 are in line with the recommendations made by the Council of Europe's Committee for the Prevention of Torture and make some provision for the effective operation of the added days scheme.

Regulation 59 is amended to provide for the prospective award of additional days to persons who have been on remand and who subsequently become fixed-term prisoners.

1430 Clause 5 ensures that a person who was detained by Police on remand or in prison continues to be governed by the law as it stood before the changes made by this Act. This is the case even if the same detainee or prisoner is subject to a second or subsequent order of detention or sentence whilst on remand or in prison. This is important, otherwise a person could be subject to two regimes and this would be unworkable.

1435 Mr Speaker, before concluding, I wish to thank all members of the Law Commission wholeheartedly for their invaluable contributions and expertise in carefully considering our parole laws. It was important for the Law Commission to take the time that was needed to get right the recommendations they made to Government. Any reforms to our laws that deprive persons of the constitutional right to liberty require extensive discussion and thoughtful analysis.

1440 In my view, the Bill strikes the right balance between the objective of deterring persons from committing criminal offences, protecting the public and promoting successful reintegration into the community.

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

1445 **Mr Speaker:** Before I put the question, does any hon. Member wish to speak on the general principles and merits of the Bill? The Hon. the Leader of the Opposition.

Hon. E J Phillips: Mr Speaker, we welcome this legislation being brought by the Minister for Justice. We congratulate him and also the Law Commission in the evidence that they have taken, and the Parole Board for co-operating in the process in making these recommendations to changes in the law.

1450 Of course, one of the most important aspects of parole reform – or least reform insofar as
remission is concerned – in our view, is rehabilitation of offenders in the context of prison, and
outside prison, and I think the Minister looked at ... The phrase he used towards the end of his
contribution was ‘successful reintegration into society’, and although these rules make it clearer
1455 who is eligible automatically for release with conditions and those who are not, past four years, a
more holistic approach to parole insofar as rehabilitation is paramount in our respectful view.
Therefore, if the Minister has any other comment to make in respect of rehabilitation programmes
that exist in the Prison, I am quite happy to talk to him separately about this, but of course the
most important aspect of this must be the reintegration of offenders within our community after
a period of sentence.

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Mr Speaker: Does any other hon. Member wish to speak on this Bill? The Hon. Marlene Hassan Nahon.

Hon. Ms M D Hassan Nahon: Mr Speaker, thank you.

1465 I echo the Leader of the Opposition’s point on rehabilitation and reintegration of the criminal coming out of prison.

Secondly, just one more point, which is that I regret to see that ... If the Minister for Justice remembers, a few months ago my party, Together Gibraltar, put across a four-point plan with regard to consulting families of victims of crime prior to the criminal coming out for release, and I
1470 am sorry that it has not been emboldened in law, in this Bill.

Thank you, Mr Speaker.

Mr Speaker: Do you want to reply?

1475 **Hon. N F Costa:** Yes, Mr Speaker, first of all to thank both the Hon. the Leader of the Opposition and the hon. Lady for expressing support for the Bill.

In respect of rehabilitation, I will be making a statement as to the extra measures that we have taken in addition to what I already set out in my Budget speech. I take on board the comments made by the Hon. Leader of the Opposition and the hon. Lady in respect of rehabilitation of
1480 offenders so that they reintegrate into the community as quickly as possible and to avoid any recidivist tendencies.

In respect of the point that the hon. Lady does make as to the consultation of families and victims – I think her paper suggested a more structured way to ensure that there is consultation – I wish to make the point that the Law Commission focused exclusively us to the point of eligibility
1485 for parole. It did not consider the separate aspect of how to better structuralise to receive representations of families and victims – that is the second step that the Law Commission will consider when considering further changes to the Prison Act.

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Prison Act 2011 and the Prison Regulations 2011 to amend the provisions relating to the release of prisoners and to substitute the current provisions relating to remission be read a second time. Those in favour?
1490 **(Members: Aye.)** Those against? Carried.

Clerk: The Prison (Amendment) Act 2019.

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

1495 **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.)

**Matrimonial Causes (Amendment) Act 2019 –
First Reading approved**

1500 **Clerk:** A Bill for an act to amend the Matrimonial Causes Act to make provision for no-fault divorces, reduce the minimum period of marriage required prior to the commencement of divorce proceedings from three years to one year of marriage and to make provision for financial relief applications following an overseas divorce.

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

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Minister for Health, Care and Justice (Hon. N F Costa): Mr Speaker, I have the honour to move that a Bill for an Act to amend the Matrimonial Causes Act to make provision for no-fault divorces, reduce the minimum period of marriage required prior to the commencement of divorce proceedings from three years to one year of marriage and to make provision for financial relief applications following an overseas divorce be read a first time.

1510

Mr Speaker: I now put the question, which is that a Bill for an act to amend the Matrimonial Causes Act to make provision for no-fault divorces, reduce the minimum period of marriage required prior to the commencement of divorce proceedings from three years to one year of marriage and to make provision for financial relief applications following an overseas divorce be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

1515

Clerk: The Matrimonial Causes (Amendment) Act 2019.

**Matrimonial Causes (Amendment) Act 2019 –
Second Reading approved**

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

1520

The Bill will make three substantive changes to the current legislation. The first substantive change will reduce the minimum period of marriage required prior to the commencement of divorce proceedings from three years of marriage to one year of marriage. This change is in line with provisions already in place in the UK. Parties who are in an unhappy marriage will be able to end that marriage after a period of one year of marriage rather than having to wait until they have been married for three years. This is particularly important in today's society, when couples, before marrying, very often have a lengthy period of cohabitation with children and intertwined finances. A party to the marriage or a couple's decision to end a marriage may come shortly after the marriage but following a lengthy period of cohabitation. The Government hopes this change will allow couples in these circumstances to be able to resolve particularly their co-parenting arrangements and their financial issues speedily without having to wait longer than is necessary.

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1535 The second substantive change is to the facts required to prove a divorce. The Matrimonial Causes Act in its current format provides for one ground of divorce, namely the irretrievable breakdown of the marriage. This must be evidenced by one of five statutory facts. Three of these are fault facts, namely adultery, unreasonable behaviour and desertion. The remaining two, the non-fault facts, are two years' separation, which requires the non-petitioning party's consent; and three years' separation, where the non-petitioning party's consent is not required. The proposed changes will retain the one ground for divorce, the irretrievable breakdown of the marriage, but it will no longer be a requirement for this ground to be proved by one of the five statutory facts, be it a fault fact or a non-fault fact.

1540 The current law does not make it easy for parties to end a marriage, particularly in circumstances where a fault fact has to be alleged and proved in order for a marriage to be ended. The proposed amendments will also make it impossible for a divorce to be contested or require the other party's consent.

1545 These changes will most certainly make the divorce process easier by removing the need to apportion blame or wait a period of separation, thereby taking the animosity out of what will already have been a difficult decision to end a marriage. This is all the more important when children are involved and the parties should be focused on co-parenting rather than having to deal with acrimonious divorce proceedings.

1550 By removing the facts required to be shown to support the sole ground of divorce, the Government thinks further that it will serve to protect those spouses who have been the victims of domestic abuse. This is because spouses who are victims of abuse will not (a) be forced to wait for a two- or three-year period after separation before they may bring the marriage to an end; or by not having to confront their abusers in court when giving evidence to allege a fault fact.

1555 To ensure, however, that parties who have decided to divorce have the opportunity to calmly reflect on their decision, the Bill increases the time period between the issue of the decree nisi, the first part of the divorce, to the issue of the decree absolute, the final part of the divorce, from six weeks to six months. This will afford those parties who do wish to reconsider the decision to divorce an extended cooling-off period.

1560 Mr Speaker, the final substantive change is for the provision for a party to a marriage to make an application for financial relief following an overseas divorce. The Government proposes to make this change as it will protect those members of our community who live and/or have property in Gibraltar but whose spouses have chosen to divorce in an overseas country, thereby potentially restricting the respondent party's claim to full and proper financial relief following that divorce. For example, a foreign couple born and married in a third country settle in Gibraltar, have children in Gibraltar and build up a successful business in Gibraltar. The husband or the wife, as the case may be, decides to issue divorce proceedings in their home country. As the law currently stands, the spouse would be unable to make any claim in Gibraltar for financial relief following a divorce in that third country, despite the majority of the matrimonial assets being in Gibraltar, and the spouse would be restricted to whatever relief they could claim in that other country. This proposed change to the Matrimonial Causes Act will change this and allow them to bring an application for financial relief in Gibraltar.

1575 In this respect, a new Part 12 is added to allow for an application to be brought for financial relief following an overseas divorce. Either party to a marriage may apply if the marriage has been dissolved, annulled or there is a legal separation in another country and the divorce, annulment or legal separation is recognised as valid in Gibraltar. Leave of the court must first be granted before an application for financial relief can be made. Where leave is granted, the court has the power to make orders for interim maintenance for the benefit of the applicant or the child of the family. The court shall only have jurisdiction to hear an application for financial relief if one or more of the following jurisdiction grounds are satisfied: (1) either party to the marriage was domiciled in Gibraltar on the date of application for leave or on the date of the divorce, annulment or legal separation in an overseas country; (2) either party to the marriage was habitually resident in Gibraltar for one year prior to the date of application for leave, or was resident for the year

1585 prior to the date on which the divorce, annulment or legal separation in the overseas country took
effect; (3) either or both of the parties to the marriage had, at the date of application for leave, a
beneficial interest in a dwelling house situate in Gibraltar which was at some time during the
marriage the matrimonial home. The court's power to make orders for financial relief following
an overseas divorce and the statutory factors to be taken into account are akin to those powers
and factors had the divorce been granted in Gibraltar; likewise the judicial separation proceedings.

1590 The Government is currently working with the Hon. the Chief Justice to amend the current
Family Proceedings (Matrimonial Causes) Rules to support the proposed amendments to the
Matrimonial Causes Act. The grounds for nullity proceedings will remain unaffected, of course, by
the changes, as nullity proceedings have a different legal effect. In other words, if successful, the
marriage is considered not to have been a valid one, whereas a divorce recognises that there was
1595 a valid marriage but a divorce dissolves it.

Mr Speaker, it is often the children in a marriage who tend to suffer from the consequences of
what can at times be a highly charged and hostile process. By way of this Bill the Government
intends to promote a more sensitive post-divorce environment, which would benefit both the
couple and the children by ending the often witnessed culture of blame. Further, the Government
1600 wants to tackle the significant impact that contested divorces can have on those who have
suffered traumatic domestic abuse at the hands of their spouse. In all, divorces are acrimonious
enough, in the Government's view, to have to bring blame into the equation. This Bill seeks to
bring about as harmonious a process of separation as possible. This is especially important to
minimise stress and hostility during what can be some of the most difficult periods in the lives of
1605 families, and children in particular.

Whilst the Government continues to support the institution of marriage, the publishing of the
Bill has demonstrated its equally steadfast commitment to address the real problems divorcing
families face.

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

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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.

1615 **Hon. E J Philips:** Mr Speaker, of course just echoing the last words of the Minister insofar as
respecting the institution of marriage, but it is right that this law reflects on the reality of marriage
in the modern context and we will give this Bill the support that it so richly deserves. It is an
important piece of legislation, in our view, removing blame and acrimony from a very tense
situation between couples, and focuses effectively on allowing parties to move on from that
relationship and assist, of course, most importantly, the children recovering from separation of
1620 their parents. Therefore, on this side of the House we fully support this legislation, we welcome it
and we congratulate the Government for bringing it. A very, very sensitive issue in our community,
but one which needs addressing and we thank the Government for bringing it.

Mr Speaker: The Hon. Marlene Hassan Nahon.

1625

Hon. Ms M D Hassan Nahon: Mr Speaker, I would like to congratulate too Minister Neil Costa
for spearheading this reform to Gibraltar's divorce laws, where the focus of divorce proceedings
will cease to be the ascribing of blame to one party or another and where the minimum period of
marriage required prior to presenting a petition for divorce will be reduced.

1630

Together Gibraltar, my party, welcomes the end of one partner having to prove the fault or
guilt of the other for matrimonial offences such as adultery, desertion and cruelty, to obtain a
divorce. Such an approach is usually very costly and complex and frequently causes irreparable
damage to the individuals involved, and more so when they have children in common. It is
therefore fair for a less adversarial and even amicable option to be available for married couples
1635 wishing to dissolve their legal bond to each other, namely a divorce on the grounds of irretrievable

breakdown. This reform to our divorce proceedings may help build bridges between individuals who may no longer love each other or wish to share their lives with one another but who may still desire to be good parents and feature prominently in their children's lives.

1640 Mr Speaker, the Matrimonial Causes Act dates back to 1962 and was later overhauled in line with 1974 UK legislation. It reflects outdated social positions regarding a woman's place in society. Over 50 years later, the idea that a divorcing couple needs to apportion blame for the breakdown of a marriage is not just wrong, it is perverse. It injects poison into an already difficult scenario by encouraging the public exhibition of personal lives. Of course the first casualty is the child, all too often used as a pawn in a chess game by one party seeking advantage over another. My party
1645 therefore supports this initiative, and should the Government not have acted so expeditiously would have proposed it itself.

1650 Mr Speaker, because it is well documented that children who experience separation and divorce yet have access to two loving and involved parents are more successful in gaining educational qualifications, in seeking out educational opportunities they are less likely to get into trouble at school and are less likely to exhibit negative behaviour or mental health issues than children who experience a messy divorce full of blame, conflict and ultimately the preclusion of seeing one of the parents on a regular basis. All these are reasons enough to remove the need for people to have to enter into a legal joust where one is unwanted and unnecessary. It is therefore a very positive reform and I once again commend Minister Costa for seeing it through.

1655 However, as I mentioned in my Budget speech just a few weeks ago, Together Gibraltar would like to see further reforms aimed at promoting a more sensitive post-divorce environment. We urge the Government to take the necessary and important steps to implement a Government-sponsored mediation service for family and matrimonial disputes. This would greatly assist separating couples to reduce the conflict that almost inevitably accompanies the breakdown of a
1660 relationship for the benefit of the couple – and, crucially, for the children of the relationship – without this assistance coming at a significant financial cost. Divorce should not bankrupt people financially and emotionally. It should be a vehicle that enables people to have another chance at happiness without making them go through hell to achieve it or cause irreparable damage to children in the process.

1665 Mr Speaker, if I may, on a few points and specific clauses, clause 2(10)(b), the reduction of time from three to one year is welcome, but a year is a long time to wait at times. If the Government can explain: why have they not just substituted it with 'reasonable time' and leave it to the courts on a case by case basis? I understand, for example, in the UK you can send your petition for divorce by post within a period of six months, I believe.

1670 Clause 2(14)(a): why the increase in time?

1675 Clause 2(18): I wonder whether the wording requires further thought. The definition has two legs to it. The first, in our opinion, is obvious and adds nothing to the mix because 'separated' means separated. Then the first leg refers to a separated couple needing to live apart for the courts to consider them as such, but then in the second leg of the definition the point is made that couples can live together and even share out household chores and still be considered separated. This is quite nebulous. I would appreciate some clarity. By the way, also, what does the phrase 'household services' actually refer to?

1680 Finally, Mr Speaker, this is a long-overdue process of legislation, and while respecting religious doctrinal views, my party will be supporting it. There is still a long road ahead, but I believe that Minister Costa has set us in the right direction with a clear destination visible on the horizon.

Mr Speaker: Before we carry on, perhaps I should, for the record, make clear that this Bill has been certified as being of an urgent nature.

Does any other hon. Member wish to ...? The Hon. the Chief Minister.

1685 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I am a divorcee, and in the process of understanding at a personal level how the divorce laws in Gibraltar work, I experienced things which I did not experience in the process of advising on divorce. I spent a lot of time advising on

1690 divorce at the time I started in practice, so when I saw that the United Kingdom were considering, through the Law Commission, these amendments to their laws, which had been spoken about for some time but had not really progressed, I immediately asked the Minister for Justice to look at how it might be possible for us to adopt whatever position the United Kingdom might seek to advance in respect of changing divorce.

1695 My experience is that divorce sometimes is made acrimonious by the state of our law. In other words, our current law requires the parties – who might have decided simply that they can no longer continue to have a loving relationship akin to marriage – to find fault or to pretend that there is fault, and even in the context of that pretence there is sometimes therefore an estrangement of what might otherwise have been a continued relationship of friendship.

1700 I think that it is long overdue that the United Kingdom should review its laws in this way and it is absolutely right that we should in fact in Gibraltar be making these changes before they have been made in the United Kingdom. So our laws in this respect would now be more a vanguard than the laws of the United Kingdom. The hon. Lady when she introduced civil partnerships introduced them also for heterosexual partners, something the United Kingdom had not done. The United Kingdom then did it. Here we are taking the benefit of the work that the United Kingdom Law Commission has done and making it already the law of Gibraltar.

1705 I sincerely believe that this will make the lives of those who decide that they can no longer continue in a marriage and who do not need to attribute to each other fault or blame that this will enable them to get on with their lives more quickly and in a way that is less requiring of guilt on the part of either party.

1710 I recognise that some years ago our laws did not even recognise divorce. Now they recognise divorce without the principle of fault, if this House supports this Bill as it has indicated that it will. I think that is a good thing, Mr Speaker. I think that this really is progress and I am very pleased indeed to have asked the Minister for Justice to pursue this and that he immediately took the issue up directly and has been able to bring this Bill to this House so quickly and with such clarity. *(Banging on desks)*

1715

Mr Speaker: Is there any other contribution before I ask the mover to reply?

The Hon. Neil Costa.

1720 **Hon. N F Costa:** Yes, Mr Speaker, again to thank the Hon. the Leader of the Opposition and the hon. Lady for expressing their support for the Bill, for the reasons that they have both expressed, especially to ensure that couples who decide to divorce can focus on the things that matter most, which is to get their co-parenting act together and for the process not to inject, as the Hon. the Chief Minister said, by the way that it works, unnecessary acrimony.

1725 Neither the hon. Lady nor the Hon. the Leader of the Opposition have made any comment as to the overseas divorce, but I do not think that we can underestimate the importance that those provisions will have to many members in our community, who unfortunately still tend to be women whose husbands separate in other countries and who, in the absence of these provisions, would not get what we would consider by our own values a fair share of the matrimonial assets during the course of that marriage.

1730 In respect of the question that the hon. Lady asked me, I think I understood her correctly – if she is referring to the separation agreements at, it would be proposed 3(1)(e)(vii)(b), the reason for that wording is because it relates to the declaration of separation that parties need to insert in a separation agreement, because of course some parties may not be able to live apart when they separate. By way of that declaration, then the clock starts to tick.

1735

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Matrimonial Causes Act to make provision for no-fault divorces, reduce the minimum period of marriage required prior to the commencement of divorce proceedings from three years to one year of

1740 marriage and to make provision for financial relief applications following an overseas divorce be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Matrimonial Causes (Amendment) Act 2019.

**Matrimonial Causes (Amendment) Act 2019 –
Committee Stage and Third Reading to be taken at same sitting**

1745 **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

**Damages Bill 2019 –
Clauses considered and approved as amended**

1750 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to move that the House should resolve itself into Committee to consider the following Bills clause by clause: the Damages Bill, the Police (Amendment No. 2) Bill, the Prison (Amendment) Bill and the Matrimonial Causes (Amendment) Bill 2019.

1755 **Clerk:** A Bill for an Act to make new provision in relation to the applicable rate of return on investment of damages for personal injury and for guidelines relating to the assessment of general damages in personal injury cases.
Clause 1 as amended.

1760 **Mr Chairman:** The amendment here is just to change the date from 2018 to 2019. Stands part of the Bill.

Clerk: Clauses 2 and 3.

Mr Chairman: Stand part of the Bill.

1765 **Clerk:** Clause 4 as amended.

Mr Chairman: The Hon. Minister circulated an amendment which he has explained during the Second Reading of the Bill, so clause 4 as amended stands part of the Bill.

Clerk: The long title.

1770

Mr Chairman: Stands part of the Bill.

**Police (Amendment No. 2) Bill 2019 –
Clauses considered and approved as amended**

Clerk: A Bill for an Act to amend the Police Act 2006, and to make consequential amendments to the Police (Discipline) Regulations 1991.

Clause 1 as amended.

1775

Mr Chairman: Again, this is just a change in the date, 2018 being substituted by 2019. So clause 1 as amended stands part of the Bill.

Hon. E J Reyes: Mr Chairman, is there a need now for amendment number 2 in the brackets, I think that should also be deleted?

1780

Minister for Health, Care and Justice (Hon. N F Costa): Mr Chairman, the amendment does not contain any reference to amendment number 2. The amendment now reads 'Police (Amendment) Act 2019'.

1785

Clerk: That was in the letter circulated on 8th July.

Hon. E J Reyes: I accept that. Just to clarify, because the Speaker in the verbal contribution, which is what goes in the *Hansard*, said it was just changing the date and I wanted to make certain that we recorded what the Minister and I had both understood clearly, but for the record.

1790

Clerk: Clause 1 as amended.

Mr Chairman: Stands part of the Bill.

1795

Clerk: Clauses 2 to 4.

Mr Chairman: Stand part of the Bill.

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

**Prison (Amendment) Bill 2019 –
Clauses considered and approved as amended**

Clerk: A Bill for an Act to amend the Prison Act 2011 and the Prison Regulations 2011 to amend the provisions relating to the release of prisoners and to substitute the current provisions relating to remission.

Clauses 1 to 5.

1800

1805 **Mr Chairman:** Stand part of the Bill.

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

**Matrimonial Causes (Amendment) Act 2019 –
Clauses considered and approved**

1810 **Clerk:** A Bill for an act to amend the Matrimonial Causes Act to make provision for no-fault divorces, reduce the minimum period of marriage required prior to the commencement of divorce proceedings from three years to one year of marriage and to make provision for financial relief applications following an overseas divorce.

Clauses 1 to 4.

1815 **Mr Chairman:** Stand part of the Bill.

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

**Private Sector Pensions Bill 2019 –
Climate Change Bill 2019 –
Pet Animals Sales Bill 2019 –
Public Services Ombudsman (Amendment) (University of Gibraltar) Bill 2019 –
Damages Bill 2018 –
Police (Amendment No. 2) Bill 2019 –
Prison (Amendment) Bill 2019 –
Matrimonial Causes (Amendment) Bill 2019 –
Stamp Duties (Amendment) Bill 2019 –
Financial Services Bill 2019 –
Third Readings approved: Bills passed**

1820 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to report that the Private Sector Pensions Bill 2019, the Climate Change Bill 2019, the Pet Animals Sales Bill 2019, the Public Services Ombudsman (Amendment) (University of Gibraltar) Bill 2019, the Damages Bill 2018, the Police (Amendment No. 2) Bill 2018, the Prison (Amendment) Bill 2019, the Matrimonial Causes (Amendment) Bill 2019 and the Stamp Duties (Amendment) Bill 2019, as well as the Financial
1825 Services Bill 2019 have been considered in committee and agreed to with some amendments and I now move that they be read a third time and passed.

1830 **Mr Speaker:** I now put the question, which is that the Private Sector Pensions Bill 2019, the Climate Change Bill 2019, the Pet Animals Sales Bill 2019, the Public Services Ombudsman (Amendment) (University of Gibraltar) Bill 2019, the Damages Bill 2019, the Police (Amendment No. 2) Bill 2018, the Prison (Amendment) Bill 2019, the Matrimonial Causes (Amendment) Bill 2019, the Stamp Duties (Amendment) Bill 2019 and the Financial Services Bill 2019 be read a third time and carried. Those in favour? (**Members:** Aye.) Those against? Carried.

Hon. Chief Minister: Mr Speaker, I now move that the House should adjourn to Friday, 19th July at 10am.

Mr Speaker: The House will now adjourn to Friday of this week, the 19th, at 10 in the morning.

The House adjourned at 11.45 a.m.