



PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

AFTERNOON SESSION: 3.10 p.m. – 5.09 p.m.

Gibraltar, Thursday, 14th March 2019

Contents

Standing Order 7(1) suspended to proceed with Government Statement	3
EU withdrawal developments – Statement by the Chief Minister	3
Order of the Day	21
Papers to be laid	21
Standing Order 7(1) suspended to proceed with Government Bills	21
Bills	21
First and Second Reading	21
Energy Drinks (Prohibition) Bill 2019 – First Reading approved	21
Energy Drinks (Prohibition) Bill 2019 – Second Reading approved	22
Energy Drinks (Prohibition) Bill 2019 – Committee Stage and Third Reading to be taken at this sitting	24
Proceeds of Crime and Terrorism (Amendment) Bill 2019 – First Reading approved	24
Proceeds of Crime and Terrorism (Amendment) Bill 2019 – Second Reading approved.....	25
Proceeds of Crime and Terrorism (Amendment) Bill 2019 – Committee Stage and Third Reading to be taken at this sitting.....	28
Committee Stage and Third Reading.....	28
Energy Drinks (Prohibition) Bill 2019 – Clauses considered and approved.....	29
Proceeds of Crime and Terrorism (Amendment) Bill 2019 – Clauses considered and approved.....	29
Energy Drinks (Prohibition) Bill 2019 – Proceeds of Crime and Terrorism (Amendment) Bill 2019 Third Reading approved: Bills passed	30

The House adjourned at 5.09 p.m. 30

The Gibraltar Parliament

The Parliament met at 3.10 p.m.

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

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

Standing Order 7(1) suspended to proceed with Government Statement

Clerk: Meeting of Parliament, Thursday, 14th March.
Suspension of Standing Orders. The Hon. the Chief Minister.

5 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I beg to move, under Standing order 7(3), to suspend Standing Order 7(1) in order to proceed with a Government Statement.

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

EU withdrawal developments – Statement by the Chief Minister

Mr Speaker: The Hon. the Chief Minister.

10

Chief Minister (Hon. F R Picardo): Mr Speaker, the events of last night in Westminster are unprecedented. The Prime Minister told the House of Commons at one o'clock yesterday afternoon that she would, of course, be voting in favour of the motion standing in her name later yesterday evening; yet, later yesterday evening she voted against her own motion as it had

15

been amended, although it was still standing in her name.
The Commons voted by motion to rule out a no-deal Exit from the European Union, but that the UK and Gibraltar will still leave on 29th March is still the position in law. It has not changed and the Article 50 notification can still be revoked or the period of two years provided for it extended, but that has not happened yet.

20

The motion before the Commons today seeks an extension to 30th June, so long as there is a Withdrawal Agreement in place before the end of next week, or a longer extension otherwise, but that motion is amendable. In fact, hon. Members will have seen that a number of amendments have been tabled, so the final motion of the Commons will not be clear until late this evening.

25

As I told our nation late yesterday, this is a time of unprecedented flux. We have not seen the like of such political uncertainty in the post-war modern democracy of the United Kingdom. The British government is being repeatedly defeated in its own House of Commons. The whipping system of parliamentary discipline has entirely broken down. As a result, I am sure I speak for all of us when I say that I am pleased that I believe that we are closer to a no-deal exit from the EU being entirely off the table, but let's be clear: we are not safely there yet. For now, the default position in law is still that we leave on 29th March, deal or no deal. Until the Withdrawal Act is amended, if the legislation to do so passes the Commons, the default in UK law is unchanged.

30

Even if the Act is amended, the UK will leave the EU on 29th March if the EU does not agree to an extension of the Article 50 process, because at the other end of the spectrum the United Kingdom may seek an extension of the Article 50 process, but that depends on the EU agreeing that extension; or the UK may revoke the Article 50 notification unilaterally in the absence of such an extension.

The Government must, therefore, in Gibraltar continue to plan for all options, including a now less likely no-deal exit. At the moment, all permutations remain possible. Too many still remain probable. We must therefore plan for all the eventualities that could emerge.

Revocation of the Article 50 notification is, nonetheless, also now a likely possibility. It is now being increasingly mentioned. Indeed, the Prime Minister mentioned it yesterday on a number of occasions and hon. Members will know that the Father of the House at Westminster, Ken Clarke, moved an amendment with Vince Cable and one other member from the Labour Party also, which was not selected by the Speaker and which was not voted on, seeking that the House vote for the revocation of the Article 50 notification. Mr Speaker, I believe that the revocation of the Article 50 notification leading to the United Kingdom and Gibraltar remaining within the European Union indefinitely would undoubtedly be the best outcome for Gibraltar.

A vote may also manifest itself. It may happen as a new referendum. Hon. Members know I try never to call it a 'second referendum', as this would be a new referendum on a new question, which I think would be the legitimate way to go about a new plebiscite. Indeed, as I have said since July 2016, the most legitimate new vote would be to put whatever mechanism for withdrawal or new deal has been agreed to the vote, with remaining in the European Union as the alternative. That option is now, in my view, undoubtedly the right one as the Commons has said no to a no-deal exit. It is also possible that the vote could manifest itself as a General Election in the United Kingdom.

We cannot let our guard down and we will not let our guard down, and we will not let Gibraltar down as we ensure that we are ready for whatever Brexit and the Commons throw at us. We must continue, we will continue and we do continue, in these times of unprecedented flux, to plan for every eventuality now.

For that reason, today the Government has published a Bill amending the Tobacco Act 1997, allowing the Collector to publish minimum retail prices of tobacco. Hon. Members will know that that is pursuant to one of the MoUs entered into in the context of the Withdrawal Agreement.

I have already given instructions for the drafting of whatever domestic legislation is necessary in order to give effect to the historic Tax Treaty we have reached with Spain. As I have already stated, I welcome the Tax Treaty, which I am confident will lead to putting an end to the irritating myth that Gibraltar is anything other than entirely co-operative when it comes to the exchange of tax information. This treaty and the co-operation it supports should put an end to that myth and I have this afternoon tabled a motion, that hon. Members may have seen, to enable this House to note the existence of this Tax Treaty. I intend to lay it on the table, Mr Speaker, at the end of this Statement also, so that it is formally before the House.

Finally, Mr Speaker, the past 48 hours in Westminster really have left me with a feeling of politics and democracy being practised almost as an extreme sport for thrill seekers. We must hold our nerve and we must hold our heads up high, and we must hold on for any result, but we must hope for developments that enable us at best to remain in the European Union or at the very worst to leave but with a deal. In doing so, we must be clear that reports of Mrs May's political demise have been premature before. We have heard for the better part of a year, in sometimes pretty distasteful terms, how she has entered the kill zone, how this is her week of reckoning, etc. We have heard it week after week, and yet she may still emerge as a Rocky Balboa type, with a last-second victory for her deal.

If it came to it and we were asked for our advice, what I would say to all colleagues in Westminster is that the best way to take back control of the process of leaving would be to revoke the Article 50 notification and remove the EU's ability to pressure the United Kingdom

85 Mr Speaker, after the events of the past 48 hours the Government today will only be able to deal with two Bills. I expect to be able to come back to the House next Thursday to deal with other Bills and other mechanisms which may need to be put in place in time for Gibraltar leaving on 29th March, if that were still the date by which we leave – and because every eventuality is on the table, we must prepare for that.

90 Mr Speaker, I am sure that the Clerk will enjoy the support of the whole House if he has to quickly plan for European parliamentary elections. I am sure it would be a problem we would all like to have and that we will all lend him our support by registering early and voting early also, if it came to that.

95 Mr Speaker, I think at this stage that is all I can reasonably say to the House in respect of the events of the past week and in particular the past 48 hours. I know that all hon. Members will want to know what happens this evening in Westminster, which may deal with at least a further part of the conundrum of how Brexit will be resolved finally falling into place.

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

100 **Hon. E J Phillips:** Mr Speaker, we are grateful for the Chief Minister's Statement in relation to updating this House as to the events that have happened over the last couple of days in London.

Of course this is a period of unprecedented flux, as the Chief Minister has said, and quite clearly the discipline in Westminster has completely broken down to the extent that we now see the Prime Minister voting against her own amendment.

105 Mr Speaker, we must, as the Chief Minister says, continue to prepare for all potential outcomes and all possibilities that occur as a result of tonight's vote.

110 We cannot, of course, go without a comment in relation to the Government's position throughout this process. We have reserved judgement in respect of the handling and management of this process, together with the position adopted by the Chief Minister in relation to the Withdrawal Agreement, for example, which has been both rejected conclusively by the UK Parliament, indeed twice now. No one will forget the comments by the Chief Minister in November last year in which he overtly supported Mrs May's Agreement and was probably the only person to do so.

115 In relation to the Chief Minister's comments in relation to tax, we have prepared, of course, to respond in some way to the Tax Treaty, but we are grateful for the indication given by the Chief Minister that he has filed a motion within which we can substantively debate the question of the Tax Treaty, and whilst we cautiously welcome the Chief Minister's Statement we will watch and see in relation to tonight.

120 One last thought should be, of course, for the general population insofar as the comments we receive on this side of the House, and I am sure the Chief Minister and his team receive, in relation to the very real concerns up and down Main Street in relation to our people and their businesses, who are concerned about the consequences of Brexit, are concerned about our exit from the European Union and the impact on their personal lives, their tax affairs and indeed their businesses – some reassurance by the Chief Minister in his reply to members of our community who have genuinely held concerns about the future of them and their families.

125 **Mr Speaker:** The Hon. Marlene Hassan Nahon.

Hon. Ms M D Hassan Nahon: Mr Speaker, I too thank the Chief Minister for his Statement this afternoon.

130 The last 48 hours have indeed been unprecedented in the United Kingdom to an extent that we have not seen since post-war Britain. Mrs May's deal has been defeated, her own Cabinet Ministers have rebelled against her, she has rebelled against herself in her own motions and Parliament is in total chaos. First we heard that no deal was better than a bad deal, then we heard that a deal is better than no deal, and now we are talking about extensions. The United

135 Kingdom seems to be throwing motions and votes about as if the EU does not actually have a
final say or is not actually even on board. This is something that seems to be forgotten these
days in Westminster. So, the fact of the matter is that, because of that, the UK could easily be
sleepwalking into a no-deal scenario on 29th March.

140 Mr Speaker, this political thriller still has not seen the end of the series, and my concern, as I
have said before, and needing clarification from this Statement, is due to the reality that the
Government have been championing Mrs May's deal. And it is something that can be
understood, considering that we are talking about the government of the UK and the
Government of Gibraltar lobbying and working with the government of the UK to achieve the
145 best deal possible, but the fact of the matter is that there is a possibility of no deal and we do
have situations that need clarifying – for example, as I raised back in December, the issue of
border inspection points; the issue of food and perishables, which I was told at the time was a
zero issue but today seems to be a possibility to become a massive issue and we still do not have
clarity. Businesses are reporting that there is no information being given to them. Mothers,
fathers, children need clarity, need to know what is going to be happening, and unfortunately it
150 seems that we have been putting all our eggs in one basket but not in parallel and at the same
time organising plan B, plan C and plan D because we do not know which one could transpire.

So, Mr Speaker, I kindly ask the Chief Minister to clarify how much contingency planning is
going on and offer more information to this community to put us at ease that the Government is
budgeting and dealing with every eventuality that could easily transpire.

155 Thank you.

Mr Speaker: The Hon. the Chief Minister – do you wish to take. On previous occasions when
you have made a Statement, you have replied one by one. After your reply to the Hon. Marlene
Hassan Nahon, I will call upon Mr Danny Feetham to ask a question.

160 **Hon. Chief Minister:** Thank you, Mr Speaker. I have no difficulty with that way of progressing.

I am grateful for hon. Members' interventions. The Hon. Mr Phillips, who is not a member of
the Brexit Select Committee – although he is now the Leader of the Opposition, the GSD has not
asked that we should replace another one of the members that they have on the Brexit Select
165 Committee with him – said that they reserve judgement on the work that the Government have
done. Well, I think it must be him reserving judgement, because a number of other members of
the GSD have said overtly, to use his terminology, that they think the Government has left no
stone unturned in the work that we have done to protect Gibraltar. In fact, although he is not a
member of the Brexit Select Committee, the Hon. Deputy Chief Minister reminds me that we
170 extended to him the courtesy of a briefing in respect of all our planning for no deal. So, he can
reserve judgement as much as he likes. But there are on the record statements of support from
other Members opposite.

And given how he decided that he was going to, in effect, attack the way that the
Government has handled the negotiations in respect of our departure from the European Union
175 – our involuntary departure from the European Union – he will allow me to tell him that if there
is a lack of discipline in Westminster and voting does not go as one expects, all that happens, if
you are sitting on this side of the House, is it reminds us of what it was like to see them voting
for the Budget two years ago, or rather some of them not voting for the Budget two years ago
and others leaving and voting for the Budget two years ago, although some of them have gone
180 back since then. So, I will not take lessons on overt support for measures from him.

But let's be very clear, Mr Speaker: I am entirely comfortable to have negotiated for Gibraltar
a strand of protection in the event of the United Kingdom leaving the European Union with a
deal – entirely comfortable. Indeed, I am not just comfortable about it, I am proud of it because
hon. Members will recall that the opening position of the European Union, with the
185 encouragement of Spain and in order to support Spain, was that the United Kingdom was leaving
the European Union, that they would negotiate a deal for the United Kingdom to leave with a

deal, but that Gibraltar would not form part of that deal, and we have negotiated for Gibraltar, conceding nothing in the process, that we should form part of that deal.

190 None of us want to leave the European Union – at least none of us on this side. I know that their executive is bitterly divided on this issue and I have seen in publications and I have seen on public social media that members of their executive want us to leave as soon as possible, whilst we on this side of this House are entirely united in not wanting to leave. That does not mean I devalue the support of those on that side of the House who are clearly also supportive of remaining in the European Union, as we are. But it appears – although we do not know what is
195 going to happen in the next half an hour – that the United Kingdom is leaving the European Union. It appears that that will now be with a deal, not without a deal; and it appears, because of the work that we have done, that Gibraltar will have the benefit of that deal.

200 What the hon. Member needs to realise is that he needed to have been the person sitting in my chair, considering the possibility that if the United Kingdom leaves the European Union against our wishes, takes us with them, has the benefit for itself of a transitional period and deal with the European Union and we do not have the benefit of that, we would have been the worst territory in Europe from which to do business as a result. So, when I gave overt support to the Withdrawal Agreement it was because that Withdrawal Agreement contained parts negotiated by me and the Gibraltar team, including the Deputy Chief Minister, the Attorney General of
205 Gibraltar and the Financial Secretary of Gibraltar – none of us known for our desire to make any concessions on anything to anyone, let alone Spain – in order to protect Gibraltar from the eventuality that the United Kingdom might leave with a deal and us not have the benefit of it.

210 If they thought for one moment that it was wise to see the Prime Minister of the United Kingdom negotiate a Withdrawal Agreement which provided for a transitional period on withdrawal and not to negotiate for the inclusion of Gibraltar, which is what would have happened if we had not moved, there would have been a Withdrawal Agreement, the UK would have had the benefit of the transition and we would not.

215 When the Withdrawal Agreement was done, the direction of travel was to depart, as it is today. Although there may be other hope, the direction of travel is to depart. We had to ensure that that Withdrawal Agreement, which provided for Gibraltar and protected Gibraltar, was the Withdrawal Agreement that passed and not another one.

220 Or is it that they do not fear, if the Withdrawal Agreement is reopened, that there is the possibility that all matters may be renegotiated, including Gibraltar matters? If they do not understand that, Mr Speaker, they really are not in a position to make informed decisions about this economy or indeed this community.

225 So I am very pleased, Mr Speaker, that the hon. Gentleman – thinking, I think, he was making a party political point that might be advantageous to him – gave me the opportunity to remind people of how important the work we have done has been to ensure that we were part of the Withdrawal Agreement and why we were right then and we would be right now to support that Withdrawal Agreement if the United Kingdom is going to leave and if it is going to leave with a deal.

230 The hon. Gentleman says that he has come ready to talk to the Tax Treaty. Well, I am very pleased that he has come ready to talk to the Tax Treaty. So have I come ready to talk to the Tax Treaty. I am looking forward to having the discussion about the Tax Treaty. I know that there are many commentators in Spain who are *very* disappointed with the Tax Treaty and what Gibraltar has achieved in it, and I know there are one or two commentators in Gibraltar, who are not in this House, who have said things about the Tax Treaty which are unfavourable – but I suppose you cannot please everybody all of the time, especially those who are hellbent on not being pleased. I have no difficulty with that. Indeed, Mr Speaker, I support the fact that there should
235 be people who make foolish points so that we can address them – and I do not mean the hon. Member, because he has made no point yet; I am talking about those outside the House. I shall mean him when he makes his point, no doubt.

Mr Speaker, the hon. Member says then, from the position of replying to a Government Statement when we have been living this every moment, 'We will watch and wait.' I am grateful
240 for that level of honesty, because that is what the hon. Members, or at least the hon. Member –
I am just addressing him – is doing. He is just watching and waiting. We have held hundreds of
meetings, travelled hundreds of thousands of air miles, conducted myriad negotiations, secured
Gibraltar's position, protected our businesses, ensured that our economy is going to be able to
245 continue to function and not just function but flourish – and he is just watching and waiting,
which is perhaps, given the fact that his party have not even proposed him for the Brexit Select
Committee, exactly what one would expect. There is a Spanish saying that says that the bulls are
best seen from the other side of the barrier. That is how the hon. Gentleman is seeing the
bullfight that is Brexit, and I commend to him that he should stay on the other side of the
barrier.

250 But then he says, 'We are watching and waiting and we are concerned about the
consequences of what might happen for Gibraltar.' Well, Mr Speaker, how can he then not be
pleased that we have dealt with the consequences, both in the context of a Withdrawal
Agreement so that there is the benefit of transition, that we have dealt with the consequences
in the context of no deal because the hon. Gentleman would have seen the *real decreto ley* that
255 has been issued in Spain and some of the contingency measures issued by the European Union,
etc., and indeed be very pleased by the fact that even no deal appears now to have been set
aside? But what he cannot do is say, 'I condemn you for being overtly in support of the
Withdrawal Agreement but I am concerned about what happens to Gibraltar.' I have just been
able to ensure in the Withdrawal Agreement that we are protected, so he needs to understand
260 that logically the things that he says cannot be juxtaposed and make sense.

And then he says that he is worried about the future for Gibraltar, he is worried about
Gibraltarians and their families, etc. Well, Mr Speaker – and I will say this both to the hon.
Gentleman and to the hon. Lady, who has said that she is concerned about mothers, fathers and
children – my mind, my heart, every sinew of my body and every kilojoule of energy that I have
265 used since the morning of 24th June 2016 has been engaged in protecting mothers, fathers,
children, people who may not be mothers or fathers, every soul that lives in Gibraltar and
indeed those who come to work in Gibraltar and make Gibraltar's economy a success. We have
protected them in the context of the Withdrawal Agreement. We have protected them in the
context of no deal. We have ensured that the future of Gibraltar is not in any doubt. Our
270 economic relationship with the European Union is in doubt and we must not fall into the
hyperbole that the Spanish would want us to fall into – and I only see this in the Spanish press
that says that the future of Gibraltar is in doubt. No, the future of Gibraltar is not in doubt, the
future of Gibraltar's sovereignty is not in doubt, the future of Gibraltar's economy is not in
doubt, the future of our prosperity is not in doubt: all of that will be secured, especially because
275 if there is a Withdrawal Agreement we are part of it.

What is in doubt is our relationship with the European Union. If I was talking in Westminster I
would say 'our biggest trading partner'. Our biggest trading partner is the United Kingdom. We
have protected that trade in our relationship with the United Kingdom until 2020 and indeed for
thereafter as well. The hon. Gentleman might say, 'Ah, but you have not secured our
280 relationship with the European Union to be the same as the UK after 2020.' Well, neither has the
UK, because the European Union has said, 'We are not going to talk about that until after you
have left. As a concession,' they said, 'we will talk about it before you have left if you sign the
Withdrawal Agreement and we are just in the process of implementation.' But the United
Kingdom has not signed the Withdrawal Agreement. So, the hon. Gentleman might want to say
285 whatever he likes but he cannot judge me harshly for not having achieved in a negotiation that
the other side to the negotiation has said it is not prepared to start yet with the United Kingdom
– a slightly larger nation than Gibraltar – because that is what he is saying.

I will give him one assurance, Mr Speaker: when the time comes and that negotiation starts,
the position of the Government of Gibraltar will not have changed by the time it ends. In other

290 words, we will not make any concession whatsoever, as we have not done to date, in respect of
sovereignty, jurisdiction or control over Gibraltar, and I will take on all comers who want to have
a debate on that subject when the time comes, when those provisions kick in, looking line by
line, full stop by full stop, comma by comma and, as Joe Bossano taught me and every other
Gibraltarian, letter by letter, because even issues of plurality in the Brussels Agreement, we
295 learnt, could have different meanings in one language and in another. I will take on all comers
that care to be deployed on behalf of Members opposite or elsewhere to suggest that a Cabinet
involving any of the 10 Members sitting on this side, including those two who are away on
Government business – the Minister for Sport in the Middle East with our fantastic special
Olympians and the Minister for Equality in New York on matters related to equality and on her
300 way also to Abu Dhabi – indeed, a team involving Joseph Garcia or Joe Bossano having been the
ones who made concessions in the context of those negotiations. He need not worry, therefore
about the future of Gibraltarians, their families or indeed for any concession.

Mr Speaker, I think the hon. Lady captured the feeling that I was trying to convey about the
high-stakes game that appeared to be played in Westminster and the fact that Mrs May ended
305 up, as she put it, rebelling against herself by voting against the motion that still stood in her
name. It is absolutely true, and the hon. Lady is making a point that I made and that Jacob Rees-
Mogg makes – so we are strange bedfellows with an arch Brexiteer – namely that the default
position still remains that the United Kingdom leaves on 29th March under UK law and under
the arrangements with the European Union, unless UK law is changed and unless the European
310 Union concedes an extension or the Article 50 notification is revoked, and therefore we have to
be ready for those eventualities. That is what I have told the House today.

So, when she said that she understood why I was championing Mrs May's deal, I think she
also wanted to reflect the fact that it worked for Gibraltar. I think she said as much and I am
grateful for that, but she then went on to suggest that some of our no-deal planning is not as
315 bullet proof as hon. Members would have wanted. Well, she has been briefed privately on some
of the subjects that she is now asking questions about, so I am going to be circumspect about
what I say, because Hon. Members will understand that if we are doing contingency planning it
is because we fear that a third party, either the European Union or a part of it, is going to try and
take steps which might be negative for Gibraltar and we need to avoid them. So, if I put out
320 there what we are doing to avoid them, then I will be playing into the hands of those seeking to
do those things.

On the issue of the border inspection posts in particular, Mr Speaker, the position of the
Government remains exactly as we set out to her. Indeed, it is improved. I told her that this
would be zero issue. This is now a zero minus issue. The issue of border inspection posts has
325 been dealt with entirely satisfactorily in the context of discussions we have had with the
European Union because the measure is a common agricultural policy measure which never
applied to Gibraltar and because the issues that obtain are issues relating to the checking of
perishable goods, in particular those originating in the European Union. There is only one minor
issue there and that issue does not relate to the exportation to Gibraltar of perishable European
330 goods; it obtains in respect to the ability of goods to exit the United Kingdom which will then be
a third country, be imported into the European Union and then be exported from the European
Union. We also have assurances in respect of the second exportation – in other words, the
exportation from the European Union to Gibraltar. The difficulty will be the first exportation, the
exportation from the United Kingdom into the European Union if there are issues well beyond
335 our frontiers, up Calais way etc., if there is a traffic jam there.

There is precious little that we can do about that, but that does not go to fundamentals and
the way that I have expressed this before – and the hon. Lady will have heard me express this in
some of the briefings she has had – is that the core function of Government is to ensure that
there is food in our shops and that we are able to victual Gibraltar generally. It is not that we
340 should have Bovril or Marmite or a particular type of Scottish beef; it is that there should be
beef. If there is a difficulty with goods being exported from the United Kingdom to continental

Europe, then that is something which I think will be a blip. I think even in the context of a no-deal Brexit it should be a short-lived thing whilst those mechanisms are resolved.

345 Therefore, Mr Speaker, in that context we do not need to dramatise more than is necessary for ourselves a very dramatic situation already by talking about worrying about mothers and fathers and children, etc. – and let's also remember that there are people who are neither mothers nor fathers and we must not ignore them. Looking after the interests of every Gibraltarian does not require us to worry about the ability to victual Gibraltar. That is not an issue. I told her it was a zero issue before; it is now a minus zero issue.

350 She said that therefore all our eggs are in one basket, but she knows from the briefings she has had that all our eggs are not in one basket. The Civil Contingencies Committee has been fully engaged. The Ministry of Defence has engaged with the Government of Gibraltar. There are many strands to what we would be doing. There are many routes into Gibraltar, which are not just the Frontier, in case the assurances we have received and even the laws that have been
355 passed are not adhered to, and we are the press of a button away from those routes being able to be engaged. If we had engaged them already, hon. Members would be saying to me the morning after they were not needed. 'It is disgraceful that you spend taxpayers' money on something that in effect you have wasted and you have thrown away.' So, the balance has been to ensure that we are ready and able to engage those resources without having engaged them if
360 that was not going to be necessary.

I think on reflection she will want to think that we have done what we needed to do in order to be able to give this community the guarantees it needs without having failed in our duty as guardians of the public purse in that respect.

I am quite happy to deal with any other points that hon. Members may wish to raise.

365

Mr Speaker: The Hon. Daniel Feetham.

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

370 I have two questions, but before I deal with the questions I want to deal with some of the things that the Hon. the Chief Minister has said because he was referring directly to me in some of the statements that I have made previously.

It is certainly true that I have said that the Government has left no stone unturned in its lobbying exercises in the United Kingdom and elsewhere, and indeed I said that both he and the Deputy Chief Minister had spoken to everybody that the Government needed to speak to. That
375 is what I have said.

I have made absolutely no comment at all in relation to the Memorandums of Understanding. There are a number of reasons for that, not least because it is not my area of responsibility. If I were asked – and indeed I am going to now touch upon it – 'Has the Government made concessions in relation to the Memorandum of Understanding?' yes, the
380 Government has made concessions. The issue is not whether the Government has made concessions or whether the Government has not made concessions, because in any negotiations of that sort you expect there to be an element of give and take. The issue is, taking into account what the Government has gained – in other words, for example, the extra two years and the ability that that gives to reposition the economy etc., which we have spoken about previously –
385 whether what the Government has given is justified. The GSD has taken one position and the Government has taken a different position.

But I will say this, that all that – in other words, the exchanges and the differences of opinion across the floor of this House – could have been avoided if the Government had accepted my advice from the beginning, which was to include the Opposition in the process. I said that not
390 only because I believe that that is the right way of undertaking politics particularly. I have to say that that may sound strange coming from somebody who likes a bit of a scrap now and again, but on something as important as this and with the challenges that we as a collective community

face, I think it was important and it was an occasion where the Government and the Opposition ought to have worked together in order to find and set that roadmap for the community.

395 I also said it because I do not believe that actually it is in anybody's interest, still less in Gibraltar's interest, for there to be these party political exchanges on issues of this importance, but the reality is that if we are going to look at and we are going to apportion blame for that, the Government has got to take its share of responsibility because the Government did not include the Opposition in that process from the very beginning, which was what I advised the hon.
400 Gentleman in good faith, and he knows that the advice that I have provided him has been in good faith.

What I have said publicly ... And they were not connected, in fact: the hon. Gentleman made a contribution to *The Times* when he asked MPs at Westminster to support the Withdrawal Agreement; I came out a day later with a letter to *The Times* arguing that I did not think that the
405 Withdrawal Agreement was good for Gibraltar. They were not connected, by the way. I was not responding to the hon. Gentleman in the international press. They were completely unconnected and I did not know that the hon. Gentleman was going to be making a contribution when I submitted my letter. But what I did say and what my position has been in the public statements that I have made on the Withdrawal Agreement – forget about the MoUs; I have
410 made no comment on the MoUs – has been that, actually looking at it, I did not think the Withdrawal Agreement that Mrs May has negotiated – this has nothing to do with Gibraltar – was good for Gibraltar because all it really does is it buys Gibraltar two years, but the reality is that Spain is going to block a permanent agreement applying to Gibraltar without having its pound of flesh, and therefore, actually, I thought that as a community, all of us, what we should
415 have been doing was attempting to persuade MPs at Westminster to try and ... The course of action that I have on social media and in my current irrelevance as a mere mortal on the Opposition benches ... a referendum on Mrs May's deal, indeed a referendum on three options: Mrs May's deal or no deal, and remain as an option. I think that we ought to have done that. That is not intended as a criticism of him; it is what I personally genuinely believed we ought to
420 have done.

Now, Mr Speaker, having dealt with that – and I had hoped that I was not going to be making a preamble of that sort, but I really did feel that I had to respond to the Chief Minister's comments about what I have said in the past – I will ask the Chief Minister two questions.

The first is: there is a difference between withdrawing the Article 50 notice, which the UK can
425 do unilaterally and that would mean that the United Kingdom and Gibraltar would remain part of the EU, and the United Kingdom asking for an extension, because asking for an extension, or the viability of it, depends on the 27 EU member states agreeing to it. How confident is he that Spain is not going to put the kibosh on the extension applying to Gibraltar? And, indeed, has he received any assurances from the United Kingdom government that the United Kingdom
430 government would resist that tooth and nail?

The other question that I would ask is: if Mrs May's Withdrawal Agreement goes by the wayside and the protocols therefore go by the wayside, is my understanding correct that the memorandums of understanding would also go by the wayside? And also – I am cognisant that there is going to be a debate in relation to this – what about the Tax Treaty? Does this Tax
435 Treaty, as I understand it to be, stand separate from the Withdrawal Agreement altogether?

Those are my questions. Thank you very much, Mr Speaker.

Hon. Chief Minister: Mr Speaker, I am grateful to the hon. Gentleman for having clarified what it is that he has said in the past. I am not grateful, therefore, for his support if he is saying
440 that he has not given it. I thought he had and I have been particularly gentle with him in the past year as a result. But of course I never take his word for what he says he has said, and I will go back and look at what it is that he has said that he has said because I think he may have said something that went a little further than what he has said that he said today.

445 It is absolutely true, though, that he said that we left no stone unturned in our lobbying. I think he has gone a little further also. And it is also true that he has said nothing in relation to the MoUs. I was not suggesting that he had. I was not suggesting that he said anything positive. I was talking about the negotiations there, not the MoUs. But let's be clear, Mr Speaker: he says in his analysis that we have made concessions in the context of the MoUs. I say we have not. But he says, 'Although you have, I am not saying that is wrong; I am saying "What is the calculation that we end up with when we put on the balance those concessions I say you have made versus what you have achieved?" and you have only achieved it for two years.' Therefore, he leads us to the conclusion that he thinks that we have made concessions which have been made for a not sufficient return. Well, of course, if he were making that argument – I see that he is shaking his head now, although that is what he said – he would be wrong even by his own incorrect logic because the concessions are contained only in the Memorandums of Understanding, by his understanding of concession, because we see none in them which are coterminous in time with the period of two years, which is what we have obtained. And so, although he is wrong in saying that we have conceded anything, if we have conceded anything we have only conceded it for the two-year period, which is the only thing, in his analysis, that we have obtained in return therefor. So, it would be, in effect, a balance of what he says are concessions, which I cannot for one moment see. I am quite happy to do the detailed analysis when the time comes by motion. The reason they are not before the House yet is because there is as yet nothing to kick in because there is no Withdrawal Agreement, but I am happy to do it, as I say, line by line, full stop by full stop, comma by comma, to show that there are no concessions but there are the two years. That is the first point, Mr Speaker.

465 He will forgive me if this far down the road in my political career I do not start taking his advice now, for a simple reason: first of all, he has never taken mine, which is probably why he is sitting over there and I am sitting over here; and second, because his advice is always contrary to the things that he does and the things that he proudly defends. For example, he says, 'In a moment of national crisis of this sort, you must involve the Opposition – that is what I would do.' He joined the GSD when the joint sovereignty issues were in play and we were excluded. (Hon. D A Feetham: No.) Sorry, just after. No? (Hon. D A Feetham: In 2005.) In 2005. Oh, right, okay, so he was not in the GSD at the time of joint sovereignty but he sits with the GSD – and in 2002-03... *es que como se te veia el plumero de ante*, pore so me [inaudible]. In 2002-03, the GSD, during the time of joint sovereignty did not involve the then GSLP-Liberal Opposition in any of the determinations that it made. It did not even extend confidential briefings of what was going on. It successfully dealt with the issue of joint sovereignty without involving the Opposition. The GSD now says, 'Oh, that is a long time ago and you are different to us.' Well, that may be the case but they are not different to what they were and they are telling us that we should do it in that way. If we had done it that way we would have been the different ones who did it in a different way, but they cannot tell us to do it a different way because they were the ones who did it in that way. (*Interjection*)

475 Mr Speaker, that GSD had a percentage advantage over the GSLP which was minuscule, not a 36% lead in the result of the election. The hon. Gentleman needs to understand we enjoyed more than the support of two thirds of the population at the last election and nobody knows what we will enjoy at the next election – and the hon. Lady might giggle but she does not know what support she will enjoy at the next election. None of us know. That is at large, but we are here on the basis of the result announced after the last election and we have more than two thirds of the support of Gibraltar in that sense, so we are legitimised in being able to take these decisions, but because we are a New Dawn and because we do not do things in the way that they did them at the time of joint sovereignty, we involve them in briefings so that they can know what is going on.

480 The Hon. the Deputy Chief Minister, who is a man of deep principle, in every meeting of the Brexit Select Committee has asked the Members attending, 'Is there anything you think we should be doing that we have not done? Is there anything you think that we should pursue,

anyone you think we should talk to who we have not spoken to?' And apart from the Hon. Mr Feetham, I think, who on one occasion made one or two sensible suggestions which we pursued, hon. Members did not say a peep.

500 So we did change the way we did things from the way that they did them in joint sovereignty times, because we are a New Dawn and we do things differently.

But given the dates the hon. Gentleman has reminded me of, it is also true that hon. Members, including him, who were members of the GSD executive at the time of the Cordoba Agreements – agreements of which we learnt when they were published in a local newspaper, or indeed, as is usually the case, on the website of a Spanish newspaper before they are
505 published in the context of a Spanish newspaper ... The Tax Treaty was first read in Gibraltar and it was first published in Gibraltar, the terms of the Tax Treaty. Let's be very clear about that. Mr Speaker, he cannot shirk off responsibility for what was happening in 2006 and the lack of our involvement, although those did involve concessions, especially at the Airport, and if we had been involved our views might not have been too welcome about them. And he particularly
510 cannot shirk responsibility in that respect because I have on my desk – because I was reading it for other purposes the other day – the staunch defence he made of the Cordoba Agreements, saying that the Opposition 'just want to criticise the agreements because they are opposing for the sake of opposing'. And of course one of the people that he says is doing that, and he names him, is the current leader of the party that he sits in. Not the Leader of the Opposition, the
515 current leader of the party that he sits in that was then criticising the party that he sits in, not for not having involved people in the context of those negotiations but for having done them.

Hon. D A Feetham: I can see you are preparing for the elections already.

520 **Hon. Chief Minister:** No, Mr Speaker, I am preparing to understand every aspect that is relevant, every full stop and every comma of what has been done, why it has been done, why it is properly done and why it is different to what was done before – although the hon. Members need read no more and no less than the magnificent interview that the knight the hon. Gentleman refers to as the greatest Gibraltarian of all time gave to *Viewpoint* some weeks ago
525 when he explains the difference between one and the other. I will leave it at that.

And then he says, Mr Speaker, that it is not in anybody's interest to have a party political exchange about these things, and quickly embarks on a party political exchange about these things. The hon. Gentleman is, even in the moment in which he is giving advice, giving it and doing the opposite. I do not have to go back five years or 10 years to demonstrate that – he is
530 the living embodiment of that contradiction of advice versus action.

He says that he wrote to *The Times*, Mr Speaker, because he believed that Mrs May's deal, which he attributes to her, thankfully, not to me – some suggest that it is mine; the Gibraltar parts are mine ... He says that he wrote in *The Times* because he believed a referendum was better than the Withdrawal Agreement. Well, I believe that remaining is better than leaving with
535 a Withdrawal Agreement or without it, but if we are leaving – and the United Kingdom government is even today, at this time, in the Commons saying that we are leaving – I believe it is better to leave with a Withdrawal Agreement.

A referendum is an opportunity to stay in but it is another roll of the dice, which could result in us leaving and potentially even without a deal. That is why, Mr Speaker, I prefer the idea of a revocation in some sense and not even having to have a second referendum and perhaps resolving this issue in another and remaining, full stop. Hon. Members must never try to caricature my support for the Withdrawal Agreement – if we are leaving – as my support for leaving versus remaining.
540

The only people in Gibraltar I have seen supporting leaving versus remaining are members of
545 the executive of hon. Members opposite, full stop, and they say it on their Twitter feed all the time. I suppose that is why the hon. Gentleman still has pinned to his Twitter feed, at the top, his

letter to *The Times*. I know it is, I think, the only one he has had published, Mr Speaker, (*Interjection by Hon. D A Feetham*) so perhaps that explains it.

550 The question then becomes, according to the hon. Gentleman, what is it that we should have been doing in the United Kingdom: should we be supporting the Withdrawal Agreement, given that the United Kingdom is leaving the European Union; or should we be arguing passionately for a referendum?

I think we all agree that the United Kingdom political debate at the moment is as convoluted and polluted as it ever has been in history. It is really toxic in a way that one could not imagine that the mother of all parliaments and the mother of democracies would end up seeing the political debate. It is really quite nasty. Members on both sides of the argument are having to have police protection, so it is very polluted. I do not worry about that; I already have police protection. I am not saying it for that reason – and very good police protection it is too, (*Laughter*) – but the reason I say that is this: that if Gibraltar had said then, in November, we must go for a referendum ... If that had been the position of the Government of Gibraltar, the government of the United Kingdom would likely have refused to engage with us. Even until two days ago, the United Kingdom government was taking the position that the Cameron government had taken – ‘We are not planning for anything other than to win the referendum’, and so therefore there was no planning for leaving – ‘We are not planning for an extension.’ You cannot engage at a government-to-government level politically on that. You can engage with officials, which we have been engaging with on all matters, even before the referendum.

560 So, if the hon. Gentlemen were to be saying to our community that the Government should have taken a position – which I was free to take as a citizen and as a Member of Parliament but not as an executive – of defending in public that there should be another referendum at that time, I tell him nobody would have listened to us. The debate in the United Kingdom then at an intergovernmental level between the government of the United Kingdom and the Government of Gibraltar, the government of the United Kingdom and the 27 governments of the remaining member states and the institutions of the EU, was about methodology for leaving only. There was a parliamentary debate in the United Kingdom at a different level and all parliamentarians in the United Kingdom who are members of the all-party group, and indeed those who are not but who have front-bench responsibility, were spoken to directly by me before and after we came out in support of the Withdrawal Agreement because of its Gibraltar provisions, saying, ‘We want to remain but if we are leaving, this is the position that protects us.’

575 He needs to understand that. Anything else is really best encapsulated in the response that the UK’s Attorney General gave to Jon Snow two days ago to allegations that Jon Snow put to him about how he was about to change his opinion. He might want to look up what it was that Mr Cox said to Jon Snow.

580 Finally, Mr Speaker, I will deal with the two questions that the hon. Gentleman has directly asked me.

585 The first is whether there is any indication that in the event of the United Kingdom seeking an extension, not a revocation, Spain might not seek to, he said, ‘kibosh’ any request for an extension by seeking its pound of flesh on Gibraltar, and would the United Kingdom resist that. Well, Mr Speaker, what Spain is going to do is not something I am going to crystal ball gaze. Spain is in the throes of a general election campaign. Spain has 50 years of form when it comes to Gibraltar. We might all wish to see Spain behaving in a particular way, but Spain habitually acts in a way that none of us are ever pleased with.

590 What I will tell him is that we have had the discussions and I am very clear that the United Kingdom should defend Gibraltar in the event that Spain were to take any such position, has assured us that it will defend Gibraltar in respect of Spain taking such position, and when Spain has taken similar positions this Prime Minister has defended Gibraltar. I sincerely hope that this will not come to pass, but in the event that it did the position will be that clear.

If there is the slightest hint that the United Kingdom government is going to cede anything sought by Spain in respect of Gibraltar which is detrimental to Gibraltar in the context of seeking

600 an extension, then the only thing that hon. Members will see on every channel on television in the United Kingdom is this Chief Minister of Gibraltar telling citizens of the United Kingdom and every parliamentarian and every member of the executive that the only satisfactory solution to that is for a revocation of Article 50, which can be unilateral and does not rely on any kibosh from Spain, and I would hope that all of us would agree that that is the right position to take.

605 Finally, Mr Speaker, he asked me whether the MoUs will fall by the wayside if there is no deal and was that also the position in respect of the Tax Treaty. The MoUs are connected to the protocol in the Withdrawal Agreement. The protocol in the Withdrawal Agreement is what connects us into all of the transitional periods and the continuation of rights for citizens etc., and the MoUs exist in that context. Without that context the MoUs cannot continue to exist.

610 There are ways of reaching political agreement so that if there is a car-crash Brexit – which none of us would like to see and hopefully the Commons will finally take off the table this evening – the parts of the MoUs which would benefit reciprocally Gibraltarians and other EU citizens, including Spaniards, might be able to continue to apply for a defined period, likely until December 2020, so that we could create a transitional period. That is not yet entirely finalised and I hope it is work which will no longer have to proceed because of the Commons taking the position that it has taken, although accidentally we could still find ourselves in that situation.

615 The Tax Treaty is different and I have expressed that already in the context of the public statements I have made in respect of the Tax Treaty. I am *very* pleased indeed with what we have achieved with the Tax Treaty. Hon. Members will have seen my public statements in that respect.

620 Spanish commentators are very displeased with what has been achieved by Gibraltar in the Tax Treaty. Indeed, some Spanish commentators are saying that Spain might want to consider now finally dropping its claim to Gibraltar as a result of what it has conceded in their interpretation in the Tax Treaty, and therefore it is not something that I want to see fall by the wayside; it is something that I hope will endure so that one of the most irritating myths that the Spanish have sold to their own people and then sought to ensure goes around the world, which is that we do not share information and we do not co-operate on tax matters, is completely busted by that Tax Treaty.

625 So that will endure, whatever the position in respect of the Withdrawal Agreement, or indeed even if there is no Brexit. A lot of the provisions in the Tax Treaty are already provided for in the context of the continued operation of EU law. They already apply. A lot of the exchange of information is already provided today to Spain and all other EU states under the existing EU provisions. And hon. Members might shake their heads but that is the provision: automatic exchanges of information between all member states.

630 So, hon. Members will, I think, if they do a genuine analysis... Whatever it is that they then say publicly is another matter and is a matter entirely for them and they will do their politics in the way they want to. I am very pleased that this Tax Treaty will endure, and if they do a genuine analysis they will see it is a good one for Gibraltar.

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

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

I have a couple of questions for the Chief Minister specifically in relation to the Tax Treaty, and I would like to start off by, in fact, agreeing with –

645 **Hon. Chief Minister:** Mr Speaker, a point of order.

Hon. R M Clinton: Yes, certainly.

Mr Speaker: The Hon. the Chief Minister.

650

Hon. Chief Minister: Mr Speaker, I am able to answer questions on the things I have said in my original Statement, not the things I have said afterwards. I am not able to answer detailed questions on the Tax Treaty; indeed, I do not think I am required to answer detailed questions on the Tax Treaty at this stage.

655 I will answer detailed questions on the Tax Treaty when we have the motion on the Tax Treaty. This Tax Treaty is a very technical treaty. The Financial Secretary is not with me this afternoon; he is the person whom I rely on for interpretation of sections of the Tax Treaty. So, if he is going to ask me detailed questions about the operation of the Tax Treaty, I invite him to do so in writing and I will endeavour to reply in detail. If he wants to ask me political questions
660 about the Tax Treaty I will try and deal with those, but the Tax Treaty is not before the House. My Statement about what happened in Parliament in the past 48 hours is before the House.

Mr Speaker: The Tax Treaty is not in the public domain because it has not yet been laid on the table. It is going to be laid. (*Interjection*) Well, it has not been laid on the table. The Chief
665 Minister is going to lay it on the table. He has already given notice of a motion, a motion which is couched in neutral terms and which will give the hon. Member every opportunity to raise whatever matter he wishes then. That will be the appropriate time and there is no need to anticipate the details of the Tax Treaty now.

Hon. R M Clinton: Mr Speaker, I am grateful for your guidance but I was not actually going to delve into the detail of the Tax Treaty; I was merely going to ask the Chief Minister two particular points in relation to the Statement he has already made about the Tax Treaty. I appreciate that there is a motion before the House, of which we have only got notice this afternoon, and I would of course put on the record that the Tax Treaty is, in fact, in the public
670 domain, having been published by the Government.
675

Mr Speaker: I apologise for my mistake. What I said was that it had not yet been laid on the table, even though I had noticed the fact that it was going to be laid.

Hon. R M Clinton: Thank you, Mr Speaker, we agree on that point.

What I was going to say to the Chief Minister was that I agree with him, in that the Tax Treaty is not, as he has corrected me in the past, a double tax treaty; it is a tax treaty but not a double tax treaty as people who work in the field of tax would call it.

My question to the Chief Minister is, in relation to the Tax Treaty, in a press release which he
685 issued saying he has obtained a commitment from the Spanish government that the effective implementation of this treaty will lead to Gibraltar being removed from the Spanish blacklist of tax haven jurisdictions in the future, I would like to know what form that commitment was in, especially given comments in *The New People* this week saying that if Spain does not remove us from the Tax Treaty then Gibraltar has reserved its position to exit this treaty. I would be
690 grateful for Chief Minister's thoughts on that particular matter, namely exactly what commitments have been received from the Spanish government; and what would he do if they do not remove us from the blacklist?

Mr Speaker, my second question is really about process, and that is: when does this treaty come into effect? My basic reading of it is that it is not in effect yet and there is a process to be
695 followed, and I would be grateful for the Chief Minister's thoughts as to what the process is and when he would expect this treaty to be in place. And, in terms of domestic legislation, does he intend to introduce that by regulation, or will there be primary legislation presented to this House?

Thank you, Mr Speaker.

700

Mr Speaker: The Hon. the Chief Minister.

Hon. Chief Minister: Mr Speaker, I am grateful for the hon. Gentleman understanding that I am not equipped to deal with detailed questions about the Tax Treaty, and I know that those
705 detailed questions – because I have had extensive discussions with the Finance Centre Council, the accountants and lawyers amongst others – go to every letter and every word in the treaty because that is how they will be interpreted and that is how the treaty has been negotiated, and I now know a lot about the difference between ‘spend’ and ‘spent’, which is as important in tax
710 matters as the difference between ‘issue’ and ‘issues’ when it comes to sovereignty. That comes from the hard work that has been done by the Financial Secretary, by the Commissioner of Income Tax, John Lester, and by Senior Crown Counsel Terence Rocca in respect of these negotiations, together with the rest of the negotiating team involving the Attorney General, the Deputy Chief Minister and me.

It is, therefore, exactly right to say that this is not a double taxation agreement, and when the
715 hon. Gentleman has tried to ask me whether it was a double taxation agreement I have told him that it was not a double taxation agreement. It is an agreement by which each of the taxing authorities commit themselves to give unilateral double taxation relief. So, instead of being a double taxation agreement where that is set out, both parties say, ‘I will unilaterally give relief.’ That is to set in treaty stone what is happening at the moment but which could stop at any time
720 that either of the taxing authorities were to decide not to continue to unilaterally give that relief.

That is not so relevant in the context of Gibraltar because we have a handful of people who live in Gibraltar and work in Spain and the tax rate which applies to them as individuals is higher
725 in Spain than it is here, so there would be no additional tax due in Gibraltar. But it is, of course, hugely important in respect of Frontier workers from Spain to Gibraltar, whatever EU nationality they may be, because they come to Gibraltar, they work and are taxed in Gibraltar because the Gibraltar system of taxation is like the UK system of taxation, it taxes income at source and therefore we tax the earnings here. When those Frontier workers go across to Spain, they are then taxed on the difference between the tax rate that they would be subjected to if they were
730 taxed only in Spain. To give a rough example, if a worker is subject to a rate of 25% tax in Gibraltar on his earnings – his or her earnings – he pays that tax, he goes to Spain, where he lives, and there, in Spain, he would have to pay 40% tax; he or she pays only 15% tax – that is to say the difference – because the Spanish authorities unilaterally give that relief. There is no right to that relief at the moment and the Spanish authorities could have said, ‘Well, you still have to
735 pay 40% here, in which case the rate payable is 65% – and there have been instances of attempts to do that around the world, and indeed in Spain, and that will be very negative indeed for those who come to Gibraltar to work, and working in Gibraltar would then not be attractive. This creates a right to that unilateral relief, therefore maintaining the attraction of Gibraltar as a place to work.

Mr Speaker, the second point that the hon. Gentleman makes is what commitment we have
740 from the Spanish government in respect of removal from blacklists, and he quotes there a weekly publication called *The New People*, which would make the former editor of *The New People*, Juan Carlos Perez – a close and loved friend of all of us on this side of the House – very pleased indeed, to hear that publication mentioned with such authority in this House by the
745 hon. Member, as if things mentioned in *The New People* are said by Caesar on the mount. Well, he is absolutely right and it is not just in *The New People*. I think *The New People* is reflecting what the Government has said, and I have said it in my statements and it is in the short video that I was asked to prepare for the Government website. The terms of that reference of removal from the blacklist should emerge in the process of ratification. We know the language that is
750 going to be used; we have agreed it. It should emerge in the process of ratification of the treaty in the Spanish parliament so that it is therefore reliable text and what it provides for will clearly be set out there.

I am quite happy to share with the hon. Gentleman the text of that commitment behind your Chair – I have it with me – but I do not think it is right that I should publish the text which we

755 have agreed should come from the Spanish authorities in that respect; they must be the ones to publish it and indeed it will not be effective until they use that terminology. For that reason, Mr Speaker, what I have reserved is the Government's right to terminate if they do not comply with the commitments that they have told us they are going to enter into.

760 Mr Speaker, the process of ratification of a treaty is a matter on which many dissertations could be written. In the United Kingdom there is one process; in Spain there is another process. In the United Kingdom an explanatory memorandum is prepared by the relevant Minister; in this case the Minister for Europe is laying the explanatory memorandum. The treaty is laid in the House. A period of time must pass – I think it is 14 days; I am not 100% clear whether it is 14 or 765 21 – after which effluxion of time the treaty is ratified subject to the ratification by the other state that is relevant. In Spain the parliamentary ratification process is not dissimilar. I think it is something that can be done after the election has been called, but it is not clear whether it can de facto happen, given the fractious nature of the majorities in the Spanish parliament that has been dissolved.

770 So, it is not clear whether we will have ratification pre 28th April or whether it will come after 28th April. In fact, it may not come if there is a different Spanish government that takes a different view. That is also possible, in which case you are not bound by it. And indeed, Mr Speaker, if a Spanish government goes around the world saying Gibraltar does not share tax information and they have got a treaty before their parliament to do so which they have not 775 ratified, it makes their to date foolish and unfair position in relation to the information exchange and tax co-operation from Gibraltar even more impossible to believe because it would not happen because they have not ratified the treaty.

This information must always flow through gateways and taxpayers are entitled to confidentiality. There are European gateways through which information is already moving and if they want other information – or at least they want the same information but after we have 780 left the European Union – then there needs to be a gateway for that, and that is what this treaty provides for.

I am sorry I cannot be more helpful on the process of ratification of a treaty under Spanish law, but it is not a subject I did a module on at university.

785 **Mr Speaker:** Any other questions? The Hon. Trevor Hammond.

Hon. T N Hammond: Mr Speaker, it is just for a couple of points of clarification on the Statement made by the Chief Minister.

790 I noted that the Chief Minister referenced the Tax Treaty as being between Gibraltar and Spain; however, the treaty itself says that it is an international agreement on taxation and protection of financial interests between the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland regarding Gibraltar. I would like to understand better why the Chief Minister... and I am not disagreeing that maybe with the assent of the Gibraltar Government the treaty itself is between the United Kingdom and the Kingdom of Spain.

795 The second point is that the Chief Minister referenced earlier on the fact that all of the Memorandums of Understanding and indeed the Tax Treaty do not relinquish any rights or change the position of any parties with respect to the positions on sovereignty, jurisdiction and control, and I am very glad that is the case. However, certainly in the case of the Tax Treaty, and I believe in the case of the Protocol to the Memorandums, the word 'control' is missing. They 800 refer to 'sovereignty' and 'jurisdiction' and omit 'control'. This was actually picked up by one of the local newspapers, edited by a member of a family of the Government. I would just like to understand again why the Chief Minister feels that he can insert 'control' at that point when 'control' is not actually specifically mentioned in either the Tax Treaty or, I believe, the Protocol to the Memorandums.

805 **Mr Speaker:** Chief Minister.

Hon. Chief Minister: Mr Speaker, the Prime Minister in the United Kingdom deals with as many points as are raised whenever she makes a statement, but I think she deals with a smaller percentage of Members opposite than I do. But it is a pleasure to have the opportunity to deal
810 with the points that the Hon. Mr Hammond has made.

On social media Mr Hammond has said that the Government has made a huge concession in respect of the Tax Treaty, more than just a grain of sand, and then promptly gone on not to identify any of what he says the concessions are. If somebody had made something as important as a concession on sovereignty, jurisdiction or control, one would have thought it was an
815 obvious thing that one would immediately have mentioned. But, of course, as there is no concession in respect to sovereignty, jurisdiction or control, I really welcome the opportunity that the hon. Member gives me to raise these issues in this House and address them – because there are no concessions whatsoever either in the Tax Treaty or anywhere else.

Let's be clear by starting with the title. This is an agreement between Gibraltar and Spain.
820 Gibraltar, under the Constitution that *they* recommended in the referendum of 2006, is not able to execute international tax treaties. We are able, under letters of entrustment, to execute agreements like, for example, tax information exchange agreements, but not treaties. A treaty in respect of taxation, under Spanish law, has to be approved by the Spanish parliament because it alters the rights and obligations of individuals. It has to be elevated to the equivalent of Spanish
825 law. This treaty, ratified, becomes Spanish law in respect of people who are subject to the Spanish tax net, and their rights in that respect and their obligations in that respect are governed by the treaty like their law. Their law is superior, but this is of the same standing as the law.

Under the Constitution that *they* recommended to us – they recall that the GSLP did not give a recommendation in respect of the Constitution and Mr Feetham is very proud of having been a
830 member of that negotiating team – external relations remain with the United Kingdom. The signing of international tax treaties is a matter of external relations, but that does not mean that the agreement is between Her Majesty's Treasury and the Spanish Hacienda, vide the fact that the agreement is signed not by a UK Treasury Minister or a Spanish Treasury Minister, and indeed the agreement says – (*Interjection*) Oh, apparently this is a ridiculous statement, the hon.
835 Gentleman says from a sedentary position, Mr Speaker. (*Interjection*) I know that they are sometimes shocked by the power of facts, but I will continue undeterred. And so this agreement is signed by the United Kingdom in that regard in respect of Gibraltar on behalf of Gibraltar, and it is exclusively in relation to the territory of Gibraltar, the tax authority of Gibraltar, and it creates a relationship between the tax authority of Gibraltar and the tax authority of Spain, the
840 competent authority of Gibraltar and the competent authority of Spain.

So, I do not know how it is, Mr Speaker, that the hon. Gentleman has got it into his head that it is anything other than an agreement between Gibraltar and Spain, signed for Gibraltar by the United Kingdom. (*Interjection*) The hon. Gentleman says that is what is says: well, that is what it
845 weirder – or, indeed, to quote Alice in Wonderland, curiouser, curiouser and curiouser – if it had been signed by a UK Minister, who is the only one who can sign an international treaty, and it said 'Government of Gibraltar', and would certainly have had huge constitutional objections to a document that said 'Government of Gibraltar' carrying a signature which is not the signature of an official of the Government of Gibraltar or a Minister of the Government of Gibraltar. It would
850 be nonsensical, and so the hon. Gentlemen have to test the propositions that they put before they put them. And so, the agreement is properly entered into as an agreement between Gibraltar and Spain.

Now, Mr Speaker, the hon. Gentleman then says, 'What is it that you have conceded in respect of control and why didn't you therefore have the word "control" in the treaty?' Well,
855 Mr Speaker, it is very simple to understand. 'Sovereignty, jurisdiction and control' is a political term of art. It is an attempt, using three words, to cover every iota of the territory and jurisdiction and sovereignty of Gibraltar and the control over it – coined, we on this side thought appropriately, by the former Chief Minister, dealing with Spanish incursions into our territorial

860 waters. Sovereignty, jurisdiction and control is relevant to everything, but it is more relevant in
places where others might seek to act in control because they are able to pretend to – like, for
example, in waters – than it is, in respect of, in the Upper Galleries, for example. So,
'sovereignty, jurisdiction and control' is a political term.

In a tax treaty, control is not in play in any way, and so what would you say if you put the
word 'control' in the Tax Treaty? You would not put it in the treaty, is what I am saying to him. It
865 is a political term of art and therefore it fits in a statement about the treaty but it does not fit in
the treaty. In other words, go to any other tax treaty and find the word 'control' when it comes
to sovereignty, jurisdiction or control in the context of sovereignty and see if you find it. You will
not find it. You will find the word 'control' in respect of control of companies – is an individual in
control of a company, or isn't he? – because that could determine whether a company is subject
870 to taxation or not.

But it is, for the hon. Gentleman to take the point, frankly, in my view, wrong. I can fully
understand why a newspaper reporting on it would take the point. A newspaper reporting on it
says, 'Look, the statement says one thing and the treaty doesn't contain the third word.' That is
fair enough. It is a newspaper reporting the facts. That is what newspapers do. They reflect the
875 facts for readers to make up their minds and that is why we have an objective, fair and free
press in Gibraltar to do that. Hon. Members point, out to the relationship between the editor of
that newspaper and the Deputy Chief Minister in a way that I hope denudes them now of the
opportunity of ever implying the opposite that the relationship affords us in the context of that
newspaper, because when they see things in that newspaper that they do not like they blame it
880 on the fact that somehow there is a relationship with the Deputy Chief Minister, and when they
see things in that newspaper that they like they giggle because they say there is a relationship
with the Deputy Chief Minister. Well, Mr Speaker, this is what a free and fair press does and it is
right that it should do it. But for the hon. Member, as a representative of the public representing
the Social Democrats in this House, to say, 'Aha! I've found a major point,' because the word
885 'control' is not there simply betrays the fact that he is, in some respects, simply more heat than
light, as he has been on Facebook by saying that there are concessions here and then not
identifying any one of them.

So the word 'control' in a tax treaty is used only in respect of whether a company is brought
into the tax net of a nation if it is or is not controlled by individuals in a particular place, if an
890 asset is controlled etc., in order to bring things into a tax net – not in the context of the political
aspects of one state taking control over the other state; none whatsoever.

But let me say one more thing, Mr Speaker. If he were right about his first point, his second
point would be even more ridiculous. In other words, if this was a treaty between the United
Kingdom and Spain, what logic is there to say that the United Kingdom has to protect itself from
895 a grab for control by Spain of its exchequer? Spain is not making any claims on the British
exchequer. So, either his first analysis is entirely flawed and then he can make a second analysis;
or his first analysis is right and his second analysis does not follow.

I know that is probably beyond them, because the Hon. Mr Phillips has started the process of
throwing toy out of pram, which I look forward to seeing the completion of live on television
900 tonight.

Mr Speaker: Is there any other question from Members of the Opposition?

Right, then, I will call upon the Chief Minister to move the suspension of Standing Orders.

Order of the Day

PAPERS TO BE LAID

905 **Chief Minister (Hon. F R Picardo):** (vi) Mr Speaker, I think what I need to do now is to lay on the table, so I will say that I have the honour to lay on the table the International Agreement on Taxation and the Protection of Financial Interests between the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland regarding Gibraltar.

910 **Mr Speaker:** Ordered to lie.

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

915 **Minister for the Environment, Energy, Climate Change and Education (Hon. Dr J E Cortes):** Mr Speaker, I have the honour to lay on the table a Command Paper on a draft Bill to make provision for the prohibition of dealing in ivory, save for in certain circumstances, and for connected purposes.

Mr Speaker: Ordered to lie.

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

920 **Clerk:** Suspension of Standing Orders. The Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Mr Speaker, one of the benefits of Brexit coming to an end is, I hope, fewer statements and fewer suspensions of Standing Orders.

I beg to move, under Standing order 7(3), to suspend Standing Order 7(1) in order to proceed with Government Bills.

925

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

BILLS

FIRST AND SECOND READING

Energy Drinks (Prohibition) Bill 2019 – First Reading approved

Clerk: (ix) Bills for First and Second Reading.

A Bill for an Act to make provision for offences relating to the sale of energy drinks, and to provide for the enforcement of those offences, and for connected purposes.

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

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 provision for offences relating to the sale of energy drinks,

935 and to provide for the enforcement of those offences, and for connected purposes be read a first time.

Mr Speaker: I now put the question, which is that a Bill for an Act to make provision for offences relating to the sale of energy drinks, and to provide for the enforcement of those offences, and for connected purposes be read a first time. Those in favour? (**Members:** Aye.)
940 Those against? Carried.

Clerk: The Energy Drinks (Prohibition) Act.

**Energy Drinks (Prohibition) Bill 2019 –
Second Reading approved**

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

945 My colleague the Hon. Dr John Cortes and I, on behalf of Government, presented a Command Paper to Parliament on 10th December 2018 on the prohibition of the sale of energy drinks to persons under 16 years of age.

The established health risks of energy drinks consumption are primarily due to the high caffeine and sugar content. A 250ml can of a popular brand of energy drink contains 80ml of caffeine and 27.5g, which is nearly seven teaspoons, of sugar, whilst a 500ml can of another popular brand contains 160ml of caffeine but 55g, or 13 teaspoons, of sugar.
950

The negative consequences of caffeine consumption among children and adolescents include effects on the neurological and cardiovascular systems. High consumption of caffeine reduces insulin sensitivity and may lead to the development of type 2 diabetes. Caffeine overdose can cause significant neuropsychiatric and cardiovascular effects such as palpitations, hypertension, uris, central nervous system stimulation, nausea, vomiting, marked hypocalcaemia, metabolic acidosis and convulsions. Despite their association with sport, high intake of energy drinks may cause obesity due to the high sugar content. Dental cavities and smear layer erosion causing dentine hypersensitivity can result from the acidic pH and high sugar content of energy drinks.
955 Energy drinks can also cause physical dependence and addiction and these clinical states will follow children and adolescents into adulthood. Other behavioural outcomes include sensation seeking and problems with behaviour modification and cognitive capabilities in adolescence.

Government values its worthy partnership with the local trailblazer child public health programme CHAMP, which has been championing healthy living courses for children and families since its inception in April 2018. CHAMP seeks to help make the right choices the easy choices for the local community and has advised the Government on this important issue of limiting the sale of energy drinks to the proposed cohorts of Gibraltar's population as set out in the Bill.
960

There has been a consistent call from the lead scientific and public health researchers in this field for restrictions to be put in place to limit sales of energy drinks and this House will demonstrate leadership, courage and foresight to implement, even ahead of the UK, internationally validated public health recommendations. The House once again, therefore, will clearly affirm a commitment to continue to lead the people of Gibraltar into a healthier future and healthier lifestyles.
970

The Bill introduces offences relating to the sale of energy drinks and provides for the enforcement of those offences.
975

Clause 4 defines 'energy drink' as any liquid intended for human consumption, other than tea or coffee, that contains over 150ml of caffeine per litre.

980 Clause 4(2) provides for the amendment of said definition in the event that the Minister for Health considers this necessary due, for example, to changes in scientific opinion on the said level.

Clause 5 creates the offence of selling energy drinks to persons under the age of 16, with any person guilty of doing so facing a fine at level 3, which is £1,000, on the standard scale.

985 Clause 5(2) provides a defence of reasonable belief in the buyer's age and 5(3) for persons charged as a result of acts of others should they demonstrate that they exercised due diligence to avoid committing the offence.

990 Clause 6 requires the display of a notice in premises where energy drinks are sold, specifying that it is illegal to sell energy drinks to anyone under the age of 16. Anyone, including a body corporate, not complying with this notice shall, pursuant to clause 7, be liable to a fine up to level 4 on the standard scale, which is £400.

Lastly, clause 8 prohibits the sale of energy drinks from vending machines and renders the owner of the machine, its operator, the owner of the relevant premises and its occupier, including bodies corporate, liable to a fine up to level 3 on the standard scale.

995 Mr Speaker, whereas I am not prone to single out any one individual in discussing the general merits and principles of a Bill, I feel I must publicly thank and highlight for commendation Dr Annie Dai, who is our lead paediatrician in our GHA. I have personally witnessed Annie's unstinting dedication, commitment and contagious zeal to improve the health and lives of the children and young people of Gibraltar. Annie has been, is and I suspect will always be a constant champion of children's best interests and I am sure the whole House will wish to join
1000 me in acknowledging and thanking Annie for her care of our children's health and well-being.

Mr Speaker, it is therefore with great personal pleasure and satisfaction that, on behalf of my colleague Dr John Cortes and I, I commend the Bill to the House. (*Banging on desks*)

1005 **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. Lawrence Llamas.

Hon. L F Llamas: Mr Speaker, on this side of the House we shall be supporting the Bill.

1010 I did bring this issue into the House back in September 2017 as a result of what I experienced and the representations I got from parents, in particular, who are noticing an increase in dependency, from young children and especially teenagers who are attending our schools, on energy drinks, and I appreciate that the Health Minister has taken this on board. I did discuss this with him back in June 2017 privately.

1015 No doubt this is a step in the right direction. As the Health Minister has already said, we are actually doing something sooner than what is being done in the UK, as it is still in debate stage in the UK as they do look to regulate between 16- and 18-year-olds.

Thank you, Mr Speaker.

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

1020 **Hon. P J Phillips:** Mr Speaker, just very shortly, can the Minister clarify one thing for me in relation to the definition of 'energy drink' and in relation to 'liquid' as well? The Hon. the Minister will obviously be aware of the term 'pre-workout drinks'. In fact, they come in very small packs. Some Members opposite may not be used to them but I am sure he and I are familiar with the term 'pre-workout drinks', which include very small capsules of highly ...
1025 contain caffeine. Would the law in this case apply to those types of drinks that are available in many health stores in Gibraltar? Also, would it apply to the gels that can be available, because they would not fall within the definition of 'liquid'? It just occurred to me now, by reading the contents of this Bill, that they may or may not be captured, depending on his answer.

1030 **Mr Speaker:** Is there any other contribution before I ask the Minister to reply? The Hon. Neil Costa.

1035 **Hon. N F Costa:** Mr Speaker, in the first place, to address the Hon. Mr Llamas – and of course, to thank the hon. Members of the Opposition for indicating their support for this Bill – he said that we have, as I noted in my speech, got to this stage even before the United Kingdom, but I think I would like to point out that this Government has been on the vanguard of changes to the legislation ahead of the United Kingdom not just in this respect but also in respect of revenge porn and upskirting, and in respect, of course, as well, of civil partnerships. So we do try as hard as we can to stay ahead of the curve where we think the matters are important.

1040 In response to the Hon. the Leader the Opposition's comments, if the pre workout were to fit the definition of the Bill then the answer is yes, of course, so long as it is the sale of such a product to somebody who is less than 16 years of age. If the content does fit the definition of the Bill, yes.

1045 **Mr Speaker:** I now put the question, which is that a Bill for an Act to make provision for offences relating to the sale of energy drinks, and to provide for the enforcement of those offences, and for connected purposes be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

1050 **Clerk:** The Energy Drinks (Prohibition) Act.

**Energy Drinks (Prohibition) Bill 2019 –
Committee Stage and Third Reading to be taken at this sitting**

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

1055 **Mr Speaker:** Do all hon. Members agree that the Committee Stage and Third Reading of this Bill be taken today? (**Members:** Aye.)

**Proceeds of Crime and Terrorism (Amendment) Bill 2019 –
First Reading approved**

Clerk: A Bill for an Act to amend the Proceeds of Crime Act 2015, the Terrorism Act 2018 and for connected purposes. The Hon. the Minister for Health, Care and Justice.

1060 **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 Proceeds of Crime Act 2015, the Terrorism Act 2018 and for connected purposes be read a first time.

1065 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Proceeds of Crime Act 2015, the Terrorism Act 2018 and for connected purposes be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Proceeds of Crime and Terrorism (Amendment) Act 2019.

**Proceeds of Crime and Terrorism (Amendment) Bill 2019 –
Second Reading approved**

Minister for Health, Care and Justice (Hon. N F Costa): Mr Speaker, I beg to give notice that the Bill for the Proceeds of Crime and Terrorism (Amendment) Act 2019 be read a second time.

1070 Even though it has not been my practice to speak on Bills which I present to this House on a provision by provision basis, I think that on this occasion such an approach is warranted.

The House will be aware that the Bill has been subject of a certification by the Hon. the Chief Minister pursuant to section 35(3) of the Constitution, such certification meaning that the Bill is too urgent to permit the usual delay required between publication and being proceeded with.

1075 The Bill is also unusual in that it contains a number of miscellaneous amendments to different pieces of legislation. It is for these reasons, Mr Speaker, that I am of the opinion that the Bill would benefit from a more detailed examination from me than would be usual in simply speaking to the merits of the Bill generally.

1080 First of all, some general background as to why the Bill is urgent and why it is needed. The Bill makes various amendments to our legislation, mainly in the areas of the proceeds of crime, terrorist financing and terrorism. Most of these amendments may be split into two main categories. The first category relates to amendments that correct mainly typographical errors that have been spotted in these pieces of legislation. The second category concerns amendments that clarify provisions of our legislation further to preparations that are being
1085 undertaken by stakeholders – which include the GCID, the Gibraltar Financial Intelligence Unit (GFIU), the Office of Advisory Counsel, the Gaming Commissioner, the Office of Criminal Prosecutions and Litigation, the Office of Parliamentary Counsel, the Office of Fair Trading and the Moneyval Co-ordinator, amongst others – for both Brexit and the visit next month by the Moneyval evaluation team.

1090 Moneyval is the committee of experts on the evaluation of anti-money laundering measures and the financing of terrorism and of the Council of Europe, with 47 member states reporting directly to its principal organ, the Committee of Ministers of the Council of Europe. The task of Moneyval is assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation, as well
1095 as making recommendations to national authorities in respect of necessary improvements to their systems.

Gibraltar has previously been evaluated against international standards in the field of money laundering and terrorist financing. This was back in 2006 and undertaken by the International Monetary Fund. Gibraltar did very well against the standards as they stood then, but standards
1100 have moved on considerably. When the IMF considered that Gibraltar did not, because of its size, present a systemic risk to the international financial system, we were left without a mechanism by which we could prove our adherence to international standards. After some 12 years of trying to join Moneyval in order to be peer reviewed, we finally managed to be admitted and this evaluation, using the fifth round evaluation methodology which is known as
1105 the toughest regional style body of the Financial Action Task Force, is a daunting one but not one from which Gibraltar may shy away from.

It is of vital importance that Gibraltar continues to be seen fully compliant with such international standards, not least because one of our biggest selling points is our reputation, a reputation we have worked hard to create and must maintain.

1110 Mr Speaker, moving onto the provisions of the Bill itself, the amendments contained in clauses 3(2) to (9) and (11) amend sections of the Proceeds of Crime Act 2015 which set out the manner in which the Gibraltar Financial Intelligence Unit, (GFIU), interacts with other financial intelligence units around the world. The current legislative provisions have to date focused specifically on such interactions where the other financial intelligence unit is based in a member
1115 state of the European Union or, in a few instances, a member of the Egmont Group. The Act has

been silent with respect to the manner in which interactions with other financial intelligence units are to be undertaken.

1120 Mr Speaker, I here make a small incision to note that the 'Egmont Group' refers to a united
body of 159 financial intelligence units. The Egmont Group provides a platform for the secure
exchange of expertise and financial intelligence to combat money laundering and terrorist
financing. The changes to the law now expressly set out the procedures to be followed by the
GFIU when it receives disclosures that concern states or territories outside Gibraltar. It also sets
out what criteria it should follow when (a) requesting further information on entities outside
1125 Gibraltar, or (b) it receives a request from a non-EU financial intelligence unit for the
dissemination of the information or document by that financial intelligence unit to a competent
authority, agency or department within the state or authority of the financial intelligence unit. In
such cases, the dissemination would be subject to such restrictions and conditions for the use of
that information or document as the GFIU deems appropriate and reasonable. This ensures that
1130 it is clear on the face of our legislation, as well as in practice, that the GFIU may not only share
intelligence it has with other financial intelligence units around the world so as to assist in
combating money laundering and terrorism, but also that should the intelligence be required by
a non-financial intelligence unit in that other jurisdiction, there is a procedure set out as to how
such requests should be handled.

1135 Mr Speaker, the amendment in clause 2(10) to section 1T of the Proceeds of Crime Act is one
where there is, as it says in the text to be inserted, merely 'for the avoidance of doubt' so
inserted. There has never been any doubt in the minds of the Government, law enforcement or
stakeholders that the words 'independent legal professional' include but are not limited to a
barrister, solicitor or other lawyer, and the legislation has always been construed and worked on
that basis. However, I am advised and accept that on a belt-and-braces approach it is best to
1140 spell this out on the face of the Act as there appears to be a contrary view, which we do not
accept, that this wording does not include lawyers but rather other professionals in the legal
sphere. It is for that reason alone, Mr Speaker, that the amendment is included.

The amendments in clause 3(12) correct erroneous cross references in the Act.

1145 The amendments in clause 3(13) are aimed at clarifying the situations in which relevant
persons subject to the Proceeds of Crime Act procedures enter into business relationships with
customers. In particular, the amendments make it clear that a relationship where the relevant
person is asked to form a company for its customer is to be treated as a business relationship for
the purposes of the Act, whether or not the formation of the company is the only transaction
carried out for that customer.

1150 Clause 3(13) also addresses when and with whom estate agents are to be treated as entering
into business relationships with persons.

The amendment to section 11 of the Proceeds of Crime Act contained in clause 3(14) again
arises from the stocktake of that Act undertaken by stakeholders in the run up to the Moneyval
evaluation.

1155 Section 13 of the Act deals with the application of due diligence measures and, in particular,
when relevant businesses need to apply them. The amendment is designed to clarify the section.
This again is a clarification of our legislation for the purposes of the Moneyval evaluation rather
than a change of substance.

1160 Clause 3(15) amends section 15 of the Proceeds of Crime Act so as to include financial
institutions within its remit with regard to the criteria regarding correspondent banking
relationships.

The amendment in clause 3(16) is to correct a cross reference in the Act.

1165 Clause 3(17) amends the list in section 33(1) of the Proceeds of Crime Act of sections which
include requirements whose breach is a criminal offence. The amended list reflects Moneyval
requirements.

The amendment in clause 3(18) adds a specific regulation-making power to the Proceeds of
Crime Act so as to allow the Minister with responsibility for Finance to make, amend or replace

1170 regulations made under this Act regarding a register of ultimate beneficial owners within Gibraltar. This power would allow for the Minister to make the register public in accordance with the relevant international standards or obligations and make further provision regarding how such public access is granted.

1175 Further powers to make subordinate legislation are included by means of the amendments included in clause 3(19), which inserts new sections 184A to 184D into the Proceeds of Crime Act. These powers will allow for subordinate legislation to be made so as to allow our authorities to deal with requests and court orders that are received from outside Gibraltar where such requests and orders are made in furtherance of investigations and proceedings regarding the proceeds of crime.

1180 Furthermore, Mr Speaker, there is also the power to make subordinate legislation allowing for assistance in external investigations into the proceeds of crime and money laundering. This is something that, to a certain extent, is possible under other legislation but not catered for specifically under the Proceeds of Crime Act.

1185 Mr Speaker, our authorities already have the power under section 179 of the Proceeds of Crime Act to make such requests for assistance in civil proceeds of crime investigations to overseas jurisdictions. They also have similar powers under other mutual legal assistance legislation to make requests relating to criminal investigations. These amendments therefore expand on the general power to make subordinate legislation and follow similar provision in the United Kingdom's Proceeds of Crime Act 2002. It is arguable that such a power is already a part of the general regulation-making power contained in section 184 of the Act; however, I am also advised that, rather than rely on such a general power, it would be preferable to have specific provisions included on the face of the Act in order to avoid all doubt.

1190 I am also advised that such provisions are expected by Moneyval and the Government's intention is, should this provision become law, to make subordinate legislation closely modelled on the United Kingdom's similar legislation in time for the Moneyval evaluation.

1195 Clause 3(20) sets out the jurisdiction of the Office of Fair Trading under the Proceeds of Crime Act by setting out on the face of the Act that they are the supervisory body for real estate agents and dealers in high-value goods. The amendment also corrects the manner in which the Office is referred to in the schedule.

1200 The final amendment in clause 3 amends regulation 11 of the Supervisory Bodies (Powers Etc.) Regulations 2017. This is another amendment which is included simply for the avoidance of all doubt and which sets in legislation the fact that a supervisory body may issue or promulgate such rules, codes or guidelines in respect of the laws concerning the prevention of the laundering of the proceeds of crime or terrorist financing as it considers relevant.

Mr Speaker, clause 4 contains amendments to the Terrorism Act.

1205 The amendments in clauses 4(2), (8) and (10) articulate typographical errors, including incorrect cross references.

The amendments in clauses 4(3) and (4)(b) reflect changes in the structure to the GFIU, allowing the head of the unit to authorise specialist staff, who may not be police officers or customs officers, to undertake specific duties under the Act in relation to the disclosure of information and the making of arrangements with prior consent.

1210 Clause 4(4)(a) amends the notice period in section 43(3) of the Terrorism Act from seven days to 14 days. This particular notice period is the amount of time that needs to elapse after a person makes a disclosure to an authorised officer of a suspicion or belief that the money or other property relating to a particular transaction or arrangement is terrorist property and is being treated as having the authorised officer's consent to proceed unless consent is refused by them. This amendment is made at the request of the GFIU and reflects similar provisions in section 4A of the Proceeds of Crime Act, thus providing clarity by having the same time limits for similar actions in both Acts.

1215

1220 The amendments in clauses 4, 5 and 6 are for future-proofing purposes. One adds the words
, the United Kingdom, and Gibraltar' after 'Member State' to ensure the provision will still work
in a post-Brexit landscape.

The other clause, 4(6), adds the usual form of words to the citation of a European instrument
to ensure the most up-to-date version of that instrument is referred to.

The amendment in clause 4(7) simply rewords subsection 96(1), as the current wording is not
entirely clear.

1225 The final amendment to the Terrorism Act 2018 is to Schedule 2 to the Act, where a new
definition of 'gambling services' is included and tied to the definition of the same in the
Proceeds of Crime Act.

The final two amendments, Mr Speaker, are to the Crimes Act 2011 and are again the result
of stakeholders comparing our legislation to the Moneyval requirements.

1230 The usual position in our criminal law under section 22 of the Crimes Act is that it is an
offence in most cases to attempt criminal behaviour and that this carries the same penalty as
committing the behaviour itself. However, there are exceptions to this. The current position is
that it is not an offence to attempt to commit an offence under sections 35 to 39 of
the Terrorism Act. It is also not currently an offence to attempt to aid, abet, counsel, procure or
1235 suborn the commission of an offence. The amendments to the Crimes Act exclude certain
offences under the Terrorism Act from the list in section 22 of offences the attempting of which
are not actionable. I am informed that Moneyval expects such behaviour to be a criminal
offence. It is on this basis that these amendments are proposed.

1240 Mr Speaker, I would like to thank the Hon. Mr Feetham, with whom I have spoken during the
course of this week, for indicating that the Opposition will be supporting this Bill.

Mr Speaker, I commend the Bill to the House.

Mr Speaker: I confirm that I have received notification from the Chief Minister regarding the
urgency of this Bill.

1245 Before I put the question, does any hon. Member wish to speak on the general principles and
merits of this Bill? Does any Minister wish to contribute?

I therefore put the question, which is that a Bill for an Act to amend the Proceeds of Crime
Act 2015, the Terrorism Act 2018 and for connected purposes be read a second time. Those in
favour? (**Members:** Aye.) Those against? Carried.

1250

Clerk: The Proceeds of Crime and Terrorism (Amendment) Act 2019.

**Proceeds of Crime and Terrorism (Amendment) Bill 2019 –
Committee Stage and Third Reading to be taken at this sitting**

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

1255 **Mr Speaker:** Do all hon. Members agree that the Committee Stage and Third Reading of this
Bill be taken today? (**Members:** Aye.)

COMMITTEE STAGE AND THIRD READING

1260 **Clerk:** Committee Stage and Third Reading. The Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move that the House should resolve itself into Committee to consider the following Bills clause by clause, namely the Energy Drinks (Prohibition) Bill and the Proceeds of Crime and Terrorism (Amendment) Bill 2019.

In Committee of the whole Parliament

**Energy Drinks (Prohibition) Bill 2019 –
Clauses considered and approved**

1265 **Clerk:** A Bill for an Act to make provision for offences relating to the sale of energy drinks, and to provide for the enforcement of those offences, and for connected purposes.
Clauses 1 to 8.

Mr Chairman: Stand part of the Bill.

1270

Hon. E J Reyes: Mr Chairman, can I ask perhaps a technical thing on clause 1? It says:

This Act may be cited as the Energy Drinks (Prohibition) Act.

In others, it actually lists the year. Should this one not have '2019' written on it?

Minister for Health, Care and Justice (Hon. N F Costa): Yes, Mr Chairman, I agree with Mr Reyes.

1275 **Clerk:** Clause 1 as amended.

Mr Chairman: Stands part of the Bill.

Clerk: Clauses 2 to 8.

1280

Mr Chairman: Stand part of the Bill.

Clerk: The long title.

1285

Mr Chairman: Stands part of the Bill.

**Proceeds of Crime and Terrorism (Amendment) Bill 2019 –
Clauses considered and approved**

Clerk: A Bill for an Act to amend the Proceeds of Crime Act 2015, the Terrorism Act 2018 and for connected purposes
Clauses 1 to 5.

1290

Mr Chairman: Stand part of the Bill.

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

**Energy Drinks (Prohibition) Bill 2019 –
Proceeds of Crime and Terrorism (Amendment) Bill 2019
Third Reading approved: Bills passed**

1295 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to report that the Energy Drinks (Prohibition) Bill 2019, and the Proceeds of Crime and Terrorism (Amendment) Bill 2019 have been considered in committee and agreed to without amendments, and I now move that they be read a third time and passed.

1300 **Mr Speaker:** I now put the question, which is that the Energy Drinks (Prohibition) Bill 2019 and the Proceeds of Crime and Terrorism (Amendment) Bill 2019 be read a third time and carried. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: We go back to Bills for First and Second Reading.

1305 **Hon. Chief Minister:** Mr Speaker, I move that the House should now adjourn until Thursday, 21st March at 3 p.m.

1310 Mr Speaker, hon. Members should know that I expect to potentially have to deal with other legislation on that day. I think we all understand that the events of tonight could determine what we also need to deal with on Thursday next week. Indeed, events before Wednesday of next week should at least give us an element of clarity, based on the motion that was put last night, which is being voted on in the Commons today subject to whatever amendment may prevail or not prevail, whether or not the person in whose name the motion is standing decides finally to vote in favour of it or not, depending on how it has been amended. All of that imbroglio we hope will have cleared a little by the time we meet again next Thursday.

1315 **Mr Speaker:** The House will now adjourn to next Thursday, 21st March at three in the afternoon.

The House adjourned at 5.09 p.m.