



PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

AFTERNOON SESSION: 3.06 p.m. – 4.31 p.m.

Gibraltar, Thursday, 31st January 2019

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The Gibraltar Parliament

The Parliament met at 3.06 p.m.

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

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

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

Clerk: Thursday, 31st January 2019, Meeting of Parliament.
Suspension of Standing Orders, the Hon. the Chief Minister.

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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.

European Union (Withdrawal) Bill 2018 – Statement by the Chief Minister

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Chief Minister (Hon. F R Picardo): Mr Speaker, yesterday you called the Committee Stage and Third Reading of the Bill on the EU withdrawal. In doing so, you asked whether all hon. Members agreed, which is the formulation required by the Rules. The Rules require unanimity for a Bill to go through all its stages on one day, but it has long been the practice of this House to take a Bill through all of its stages in one day. In fact, in the 16 years that I have been a Member of this House I have never seen any Member exercise his or her right to delay a Bill passing its stages by a day. In fact, the delay could even have been less than a whole day. It was open to the Government to have returned at one minute after midnight this morning. In fact, to use the device of the right to delay for a day is a futile exercise unless one needs to consider or check a point. Potentially, if the debate on the Second Reading has changed an understanding or interpretation, it might be necessary to delay the passage of the Bill to make those additional consultations.

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Yesterday, however, the Hon. the Leader of the Opposition simply decided to exercise his right to delay for a day without giving any explanation to the House. He did so, Mr Speaker, not just in relation to any Bill; he did so in respect of a Bill which I had certified as urgent under the Constitution. You reminded the House of that certification at the start of the debate on the Second Reading yesterday. The Deputy Chief Minister, in his excellent presentation of the Bill at the Second Reading, explained the need to have the Bill on the statute book expeditiously for a number of reasons which he detailed in his speech. He also explained that we had provided a Command Paper of the Bill as an opportunity for hon. Members and the rest of the community to comment and consider the issues that it gave rise to even before it became a Bill.

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The Bill has been published for almost six weeks. In fact, the Bill would have been published for six weeks by Friday. Yesterday, however, when the Leader of the Opposition decided to

exercise his right to delay the Bill he did not tell us why he had decided to be the first person in living memory to delay a Bill in that way. He also –

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Hon. R M Clinton: [Inaudible]

Hon. Chief Minister: I am going to make progress at this stage, Mr Speaker. If the hon. Member likes ... It is a Statement and Members are not interrupted when they are making a Statement.

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Hon. R M Clinton: [Inaudible]

Mr Speaker: I will give the hon. Member an opportunity when the Chief Minister finishes his Statement. I have no problem in calling him.

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Hon. Chief Minister: Mr Speaker, he also did not bother to ask, during the recess or otherwise in debate, why we had continued with the Bill as an urgent one and why we had not waited until Friday to proceed with it. Without notice he decided to use the unprecedented device of not agreeing to the Committee Stage and the Third Reading being taken on the same day. It is important that the House and the whole community should understand the consequences of the decision by the Leader of the Opposition to delay the passage of the Bill yesterday.

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First of all, as all hon. Members know, the Gazette issues every Thursday morning. This morning the Gazette has not issued as usual. It has now held back, pending passage of the Bill. That means that many tens or hundreds of legal notices etc. are delayed, thanks to the decision of the hon. Member to delay the passage of the Bill by one day. These notices are of the businesses of individuals and other businesses and companies throughout the land who are required by law to publish notices in the Gazette.

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Secondly – Oh, I see that the Hon. the Leader of the Opposition is laughing from a sedentary position, Mr Speaker, as if this were fun. Well, let me just tell him that I am building up to the most serious consequences and he might not feel like laughing at the end of it. Secondly, the Acting Governor is on standby to sign the passage of the Bill into law as soon as we end the Third Reading and the Clerk confirms that the law has been passed by the Parliament.

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Why the urgency, Mr Speaker? Because thirdly, and most importantly, a failure to have passed the Bill yesterday means that there is now a risk that the United Kingdom will not be able to extend to Gibraltar the provision on two of the Hague Conventions. The first is the Hague Convention on the Choice of Court Agreements 2005. The second is the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance 2007. These are multilateral international agreements to which the EU is a party. Both agreements have been implemented in Gibraltar through regulations made under section 23(g)(ii) of the Interpretation and General Clauses Act, which confers a power to make regulations in matters arising under the Treaties as defined by section 2 of the European Communities Act. The UK has committed to continuing its participation in both conventions after it leaves the EU. It deposited instruments of accession with the depository, which is the Dutch Ministry of Foreign Affairs, on 28th March 2018. In accordance with the procedures laid down in the conventions, the UK's accession will enter into force on 1st April 2019 – that is to say the first day of the month following the expiration of three months after the deposit of the UK's instruments of accession. That is in keeping with section 31(2)(a) of the 2005 Convention and section 60(2)(a) of the 2007 Convention. I repeat that for the record: it is section 60, subsection (2)(a).

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The UK will only become a party in its own right on 1st April 2019 if there is a no-deal Brexit. If there is a Withdrawal Agreement with a transition period agreed before 29th March 2019, the UK will withdraw its Instrument of Accession and the conventions will continue to apply to the

85 UK and Gibraltar during the transition period. After today, Mr Speaker, I imagine the Leader of the Opposition will be hankering for a Withdrawal Agreement and a transition period.

The UK has not yet made declarations extending the application of the conventions to Gibraltar. It was agreed with us that it is not possible to do so until the Withdrawal Bill before the House today becomes an Act, because until then there is no legislative basis for Gibraltar to be covered by the conventions in its own right and not via EU law.

90 Declarations by the United Kingdom post accession extending the application of the conventions to Gibraltar would also take effect on the first day of the month following the expiration of three months after the date on which of the notification is received by the depository. Section 32(4) of the 2005 Convention and section 63(4) of the 2007 Convention make that provision. Thus, if the United Kingdom Government decides to make the declarations
95 today, 31st January 2019, and these are received and deemed to have been validly made by the depository today, the conventions would enter into force in relation to Gibraltar on 1st May 2019. That is the first possible day on which they will enter into effect.

For the UK to be able to make the declarations today, therefore, the Bill has to pass expeditiously – as soon as possible. If the UK's declarations are made after 31st January 2019 –
100 that is to say today, which is what would happen if we delayed too much further today – my provisional view is that the earliest the conventions could enter into force in Gibraltar would be 30 days later, in keeping with the formulation, which would mean on 1st June 2019.

Such a delay would potentially be hugely damaging for individuals and businesses seeking to rely on the provisions of the Hague Conventions, as well as for Gibraltar as a jurisdiction more
105 generally. We would be the only jurisdiction on the European continent not to have that cover for those additional 30 days. Indeed, it remains unclear whether the United Kingdom is able to make a declaration extending the convention to Gibraltar before the UK's own accession enters into force on 1st April, but the Government's advisers are not aware of any state practice under either of the two relevant conventions on this point. FCO legal advisers have raised doubts about
110 the position but have not yet taken a view on it.

Secondly, it may be possible for the UK to rely on the fact that declarations made at the time of signature – that is to say ratification or accession – take effect simultaneously with the entry into force of the convention for the state concerned. If the depository could be persuaded that
115 declarations made by the UK on 1st April 2019 – the day of the UK succession entering into force – and that these were made at the time of accession despite the Instrument of Accession having been deposited on 28th December, it may be possible for the UK to extend the conventions to Gibraltar with effect from 1st April 2019. Again, there is no state practice under the Hague Conventions that I am aware of on the time of accession point. FCO lawyers told our
120 advisers at the last meeting that they were investigating this point.

Ultimately the UK may consider it tactically preferable to make the declarations on 1st April 2019 in the event of a no-deal Brexit rather than now have to rush to make them today –
125 assuming we can get the notification to London on time this afternoon – and run the risk of being rebuffed by the depository.

And that, Mr Speaker, is the consequence of Mr Phillips's decision yesterday to decide to
125 exercise the power to delay the passage of the Bill through all its stages in one day: in effect potentially delaying, or worse prejudicing, the ability of families enforcing judgments on child support and maintenance; potentially delaying, or worse prejudicing, the ability of litigants to choose jurisdictions of courts for disputes; in effect potentially delaying, or worse prejudicing,
130 the extension to Gibraltar of two important conventions which are a part of our law today but which we have to make separate provision for in the post-Brexit environment.

The House should proceed to Committee now, Mr Speaker, with the full knowledge of this potential delay, or worse prejudice, now being a real and present danger for Gibraltar families and for the jurisdiction, thanks to Mr Phillips.

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

Hon. E J Phillips: Mr Speaker, that Statement by the Chief Minister is, with the greatest respect, utter nonsense. It is a smokescreen for his incompetence and negligence in not bringing this Bill before. *(Banging on desks)*

140 **Mr Speaker:** On a point of order, in response to a ministerial Statement you can ask questions on points of clarification. I even tend to allow – and I have done so on very many occasions in the case of the Hon. Danny Feetham when he was Leader of the Opposition – a response. But what I cannot allow is that kind of language, because it is not called for. That kind of language just used is not called for in the circumstances of what happened yesterday or what

145 has happened today.

At an important moment in the life of this Parliament, with perhaps the most important piece of legislation that has come here in over 40 years, I am not, as Speaker, going to preside on the behaviour of Members as if they were schoolchildren. I expect you, as the elected Members of Parliament that you are, representing the people, to exercise discretion and to act as grown-ups and not as children, because if you act as children I will treat you as children.

150 I am sorry that I have to be so clear cut, but it is the first time in a long time that I have had to take this attitude, because it is not called for.

Now you may continue.

155 **Hon. E J Phillips:** Grateful, Mr Speaker.

The Chief Minister could have brought this Bill last week. He could have brought it the week before. He could have brought it on Monday of this week, Mr Speaker. Instead, he leaves it to the very last minute. He does not explain in any detail whatsoever in his contribution and intervention – indeed, the Deputy Chief Minister has not explained in his intervention – the urgency of this Bill.

160 When we, as the democratically elected Opposition of this House, deal with a Bill of this importance, we take a view, we consider the detail, we consider the responses of hon. Members opposite, and if we wish to delay the passage of this Bill by 24 hours, we will. We will do our job for the people of this community. We will do our job in analysing the legislation that is put forward by the Government.

165 It is the Chief Minister's fault. If he brings it at the latest possible minute without explaining in any way whatsoever the urgency of the Bill, blood is on his hands, no one else's.

Mr Speaker, we are here to do a job –

170 **Mr Speaker:** 'Blood is on his hands' is an unparliamentary statement. Please withdraw it. Measure your words, because we are in Parliament and there is language that is allowed and language that is not allowed. I rule that 'blood is on his hands' is an unparliamentary statement and I ask you to withdraw those words.

175 **Hon. E J Phillips:** For the sake of getting my message across, of course I will withdraw those words specifically –

Mr Speaker: For the sake of what?

180 **Hon. E J Phillips:** For the sake of continuing with this statement, I will withdraw that –

Mr Speaker: 'For the sake of complying with the direction that you have given me, Mr Speaker.'

185 **Hon. D A Feetham:** Mr Speaker –

Mr Speaker: No, I am not allowing you to intervene.

Hon. D A Feetham: Well, I am going to vacate the Parliament because the way that you are treating the Leader of the Opposition is, in my respectful view, absolutely outrageous.

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Mr Speaker: The language that he has used (*Interjections*) from the beginning has been unparliamentary, and now he has made it even more so.

I will not have that statement on the record. You withdraw that statement, because I, as Speaker, I am directing you that that is unparliamentary language!

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Hon. E J Phillips: Out of respect for the office, of course I shall withdraw that statement, Mr Speaker.

200 Whilst we have accepted that our community needs the legal certainty and stability of this piece of legislation in the context of our exit from the European Union, and whilst we have supported parts of this Bill which seek to do that, we cannot condone the operation of section 12 as read with section 3 with various other interactions of other sections that we can debate in committee. This Bill seeks to circumvent this House, seeks to circumvent democracy and seeks to circumvent this Opposition.

205 The Chief Minister and the Deputy Chief Minister come to this House with a Bill which effectively is undemocratic. It does not allow the people of our community to scrutinise the Withdrawal Agreement or the MoUs that underlie them. We demonstrated that in our contribution in relation to this Bill when I got up to speak about the operation of section 12, and not one answer from the hon. Gentleman.

210 Section 12 as read with section 3 allows the Government to implement the Withdrawal Agreement, the Protocol and the MoUs without further reference to this House. By contrast, section 9 of the equivalent UK Act provides the UK Parliament the opportunity to approve the final terms of the withdrawal of the UK from the EU. Why is it that we do not have that protection in this House?

215 The Chief Minister has not answered that point, and if you read, Mr Speaker, the interpretation of section 3 –

Hon. Chief Minister: That is arrived at, by the Statement on his delay.

220 **Hon. E J Phillips:** Mr Speaker, the Chief Minister is –

Mr Speaker: Given the circumstances, I am going to be very flexible and liberal in the application of the Rules, other than in the instances where I have already had to take issue with the Hon. the Leader of the Opposition.

225 **Hon. E J Phillips:** Mr Speaker, I will be short. Mr Speaker has allowed the Chief Minister to accuse me of threatening families, and you have not ruled that out but it is on the record. It is all about emotive language.

230 **Mr Speaker:** Again, please sit down. You are totally mistaken. When a Minister makes a statement, I do not know the contents of that statement. My job is to preside over the rules and not the politics; I do not know what an hon. Member is going to say. If what he is saying under the Rules you can take issue with, a point of order could have been raised, but it is not for me to control in any way a ministerial statement whose content I do not even know.

235 **Hon. E J Phillips:** Mr Speaker, just in relation to the contribution by the Chief Minister in relation to that particular comment, equally you could have ruled it as unparliamentary language, just as Mr Speaker has ruled against me in relation to the language that I used before – and I dare not repeat it, Mr Speaker.

240 What the Chief Minister and the Government are seeking here is a blank cheque, and we on this side of the House will not give him that blank cheque.

Hon. Chief Minister: Mr Speaker, I should deal with each speaker in turn.

245 I am very, very surprised indeed that the hon. Gentleman has failed to address the issue that I raised in my Statement in his response. I expected that there would be this reaction, that his nerves would jangle and that he would not be able to respond with poise and with calm to the issues that I raised.

250 Of course we could have brought this Bill earlier. We could have brought this Bill in December and abridged time the week that it was published. We could have brought this Bill last week. We were ready to abridge time then. But doesn't he understand that what we have tried to do is to allow the Bill to be published for as long as possible and as close as possible to the six weeks?

255 They have had a total of nine weeks to do all of the scrutiny that he said that he wanted to do overnight. So, either they have done none of their work in the past nine weeks or they were left with arguments yesterday which they had not understood before. I think, Mr Speaker, if I was being generous to them I would venture to suggest that actually it dawned on them yesterday that all of the things that the hon. Gentleman has today said were completely wrong and he is just repeating them because he has to.

260 This Bill is not a Bill to bring the Withdrawal Agreement into effect. There will be a separate Bill for that; the Hon. Deputy Prime Minister has already said so. This Bill includes a clause that will enable us to bring the Withdrawal Agreement into effect if there is no time to bring a Bill, but bring a Bill we shall anyway and he knows that because he was told that at the meeting of the Select Committee.

265 But most importantly, Mr Speaker, in the tripe that the hon. Gentleman has put before the Parliament today he has said that we are trying to stop scrutiny of the MoUs and of the Protocol. Well, where is the motion from them putting the MoUs before the House in order to debate them? Where is the motion from them saying that they do not like the MoUs?

270 The Government cannot stop a motion from the Opposition like in the United Kingdom. In the United Kingdom the Government has control of the Order Paper and an Opposition motion is given the time that is agreed at Business in the House and they can be shunted to one side; hence all of the need for a meaningful vote. Here, if they wanted to have the debate about the MoUs, which I would be delighted to have, with the text of the MoUs in the House, they can put the motion at any time.

275 It is utter nonsense to say that we are shutting them out from that debate. It is not worthy of the community having to hear it, because it is not true. If they want a debate on the MoUs, put a motion on the MoUs or wait until we have to have the debate on the Withdrawal Agreement Bill, if there is a Withdrawal Agreement, because then there will be a Bill. It is that simple, but there is absolutely no sense whatsoever – parliamentary sense, legal sense or common sense – in what the hon. Gentleman has said, absolutely no sense whatsoever.

280 If he is saying that we should no longer give them the benefit of as long as possible to consider a Bill before certifying it as urgent, we shall, Mr Speaker, certify Bills as urgent overnight and not give them six weeks to consider, or as close to six weeks to consider those Bills as necessary, because that is the natural consequence of what he has invited us to do today. But then for him to get up today as Leader of the Opposition in this community – as you rightly say, on probably one of the most important pieces of legislation that this community will have the misfortune of having to consider for many generations – having had pointed out to him what the natural consequences of his decision to throw his toys out of the pram with a knee-jerk-reaction decision, which probably they made on the hoof yesterday, and say, 'It's not my fault, it's the Chief Minister's fault,' he lets himself down so badly and he lets the community down so badly that he demonstrates that he really is not up to the job.

290 I am grateful that you ruled some of the things that he said out as unparliamentary language, because they were really not called for, Mr Speaker. Frankly, I think it will reflect very badly on

him as a professional, as a politician and as an individual that he has said to you that he is only withdrawing what he said out of respect for your office, as if he were trying to distinguish the office and you, Mr Speaker, because you are deserving of maximum respect, not just because of the chair in which you sit but because of the contribution you have made to public life in Gibraltar.

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Mr Speaker, it is not true for the hon. Gentleman to say that I have accused him of threatening families. My words, which are in a written Statement – that he will have the opportunity of poring over for many years to come when he realises that this was the moment when his political career crashed against the brick wall that he built for himself – just says that his actions potentially delay, or worse prejudice, the ability of families enforcing judgments on child support and maintenance. If he interprets that as threatening families, it is in his mind that the threat was made and became real, not in the words that I put before the Parliament.

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Mr Speaker, how can he say that although they support the Bill as a whole they are only concerned about parts of it? If that were the case – which is a little of what they said but not any of what they did – what they would have done would have been support the Bill at Second Reading having entered the caveats that they entered and then they would have asked, in the Committee Stage, to have section 12 put on its own. They would have voted against section 12, having supported the rest of the sections, and then they would have supported the Bill at Third Reading – I will give way to the hon. Gentleman before I sit down, when I finish this point. That would have been the way to deal with an issue relating to their concern about one section. They have instead voted down – although I told the hon. Lady yesterday that was not what they were going to achieve... They have attempted to vote down the whole of the Bill, not just the section.

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The hon. Gentleman has asked me to give way. I will, although –

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Mr Speaker: I agree that the Chief Minister should give way to him.

Hon. D A Feetham: May I thank Mr Speaker and also the Chief Minister for allowing me –

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Mr Speaker: It is in the Rules that it is for the Speaker [Inaudible].

Hon. D A Feetham: Thank you very much.

Mr Speaker, actually, the decision that was taken yesterday to object to the Committee Stage being taken yesterday was precisely to see whether we could support the Bill but just simply focus on some of the provisions within the Bill – that was the purpose of it – and indeed look candidly to Parliament. There are some of us who believe that actually this Bill is very complicated and you cannot simply home in on one or two provisions without safely not having a knock-on effect on other provisions. So, in fact, the decision was taken in good faith in order to see whether we could support the Government in this project to the maximum extent possible. That was the reason why it was taken.

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Of course, if the Opposition had known about all the urgency and all of the other matters the Hon. the Chief Minister has outlined in his contribution, we may have taken a different view, but I want the Parliament to understand – and indeed I want the community to understand, that is listening to this debate – that it was a decision that was taken in good faith by my hon. Friend the Leader of the Opposition.

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Hon. Chief Minister: Well, Mr Speaker, I must start by welcoming the hon. Gentleman back from the shortest parliamentary vacation in parliamentary history! (*Laughter*) He performed a Mrs Slocombe-style stunt when he got up and said that he was vacating the Parliament, which of course means that all of us would have to leave the Parliament at his direction. In fact, all he was doing was himself leaving the Parliament. I was reminded of that great character who used to stand up and say, ‘I am unanimous in this’, which is the stunt that the hon. Gentleman – (*Interjection*) too true – has performed today.

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Mr Speaker, he got up when I was dealing with a particular part of my Statement to make what I think was a general intervention. He could very easily have done that at another time. I will deal with what he has said and then move on to continue with what I was replying to the Hon. the Leader of the Opposition.

If it is true that they made the decision in the way that he suggests that he made it – and I will not say that what he has said is not true, but I will tell him that it stretches the bounds of credulity on this part of the House – they would have said to us, ‘You have said that this is urgent, you have certified it as urgent – we are thinking that we need 24 more hours: does that cause any problems?’

When he was Leader of the Opposition, he and I had probably the most fractious relationship that this Parliament has seen, but nonetheless, on issues which related to certifying Bills as urgent we were able to talk, and this is a Bill certified as urgent which they have made stay on the Order Paper for a day longer. I am very surprised that somebody would, in that vein, having heard also from the mover of the Bill that the Bill was urgent, that they make what they say is a conciliatory gesture to try and support the whole Bill without having that conversation.

So, he will forgive me for saying that I think he has, as usual, his political antennae rightly tuned in to what has happened, he has realised more quickly than perhaps the others how badly they have played it, he has tried to give the hon. Gentleman sitting next to him a little bit of cover insofar as he has cover to give. It is really stretching the bounds of credibility and certainly there might be people outside of this House who might take the view that he has had to get up and invent a way around this difficulty.

For the hon. Gentlemen to say that there are parts of this Bill which are not democratic, which they do not like, which give us the ability to pass things through with Henry VIII powers, which is what the Bill does in respect of some legislation – well, that is what they said yesterday, during the course of their statements, they agreed with. Those are the things they said they approved in the Bill. In the House of Commons the debate has been about having Henry VIII powers to change laws because it is necessary *in extremis* to do it in that way. That is the bit they said they did not object to, except for the nonsense that they carped on about, about the MoUs and the Withdrawal Agreement. That is one defined section, so it is frankly not believable that they should expect the community to think that we are looking for what they termed a ‘blank cheque’. There is no blank cheque here, Mr Speaker. There is, if necessary, the ability to implement the Withdrawal Agreement, if there is a Withdrawal Agreement, but already a commitment to bring a Withdrawal Agreement Bill anyway, if it is necessary.

Frankly, I think that if I say that the hon. Gentleman is stretching credulity – and I am now talking about the Leader of the Opposition – people might say, ‘Well, the Chief Minister is just doing battle with his opposite number,’ although I do not know who that is, frankly, ‘and it’s normal he should say that. But when I have given the explanations that I have given and I have said the things that I have said and I get the reaction that I get, it is obvious that they just did not think this through. It demonstrates a vertiginous irresponsibility of the sort that we are seeing played out today even after I have said that the Bill is urgent.

And you know what? I say these things, actually, with a heavy heart. I say them with a very heavy heart because this is a very serious moment in the affairs of our nation and to have to be having this debate when what we should be doing is getting down to deal with the Bill, to get it across the line, is frankly worse than remarkable.

Mr Speaker: The Hon. Roy Clinton.

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

First of all, I would invite the Chief Minister to withdraw a remark he made earlier – as I am sure he would not wish to mislead the House – in which he said in all his 16 years in Parliament he had never seen the mechanism whereby a delay to the Committee Stage had occurred. Certainly since I have been here it has been used once, and I know this because it was in fact

395 myself and my hon. colleague Mr Feetham who, if my memory serves me right, on the
Consultative Council Bill actually exercised that right. So I invite the Chief Minister to withdraw
that remark, or at least amend it, because certainly it has been used before and certainly in the
life of this Parliament, Mr Speaker, as I am sure you will recall.

Mr Speaker, that right is in Standing Orders. He may have certified the Bill as urgent. He gave
400 no reasons to us as to why it was urgent. He comes to us today saying, 'You did not know why it
was so urgent but you had to do this.' Well, Mr Speaker, we were not aware, and for him to
come today – and we have already wasted close to three quarters of an hour with his
Statement ... If it was that urgent, I invite him to let us move to Committee Stage and get on with
it.

405 Thank you, Mr Speaker.

Hon. Chief Minister: Mr Speaker, if I say I cannot remember something in living memory it is
because I cannot remember it, and therefore I am not going to withdraw it on the say-so of the
hon. Gentleman opposite. If it did happen ... Well, he can check the *Hansard* and send me a
410 copy, if he likes, and then he can invite me to correct the record if he likes, but I am certainly not
going to be getting down to check the *Hansard*, because I do not have time – like he does, given
that he is a retiree – to have coffee in the mornings and enjoy reading my *Hansards* leisurely just
because it is a hobby. That is the first point.

Second, of course they are entitled to delay the Committee Stage by a day. It is in the Rules. I
415 have not suggested that it is not his right to do so; of course he is entitled to do so. I am alluding
to him what the consequences of what they have done are, and what they have not got an
answer to, what they have not apologised for and what they are continuing to bark on about is
the consequences of what they have done.

Mr Speaker, it really seems to be that hon. Members opposite have such a casual relationship
420 with the reality of what politics is and the consequences it has on people's lives ... They just do it
because it is a hobby. When they were little boys they were told that they enjoyed politics and
they might make good in Parliament, and that is why they are here and that is what they are
doing. Politics has consequences for people's lives. Political actions have consequences for
people's lives, and the sooner they realise it the better. The sooner they realise it, the sooner
425 they will realise what it is that they should be doing to earn their £40,000 a year.

Mr Speaker: The Hon. Trevor Hammond.

Hon. T N Hammond: Mr Speaker, this is very much a point of clarification. In his Statement
430 the Chief Minister went to some length to describe the consequences of the delay to the Bill. We
were obviously, as we have said, not aware and neither were those consequences made clear at
any point. I do not think they would necessarily have changed the decision, because this is a very
important piece of legislation.

What I do not understand is that if the consequences or the risk of those consequences are
435 so grave in the Chief Minister's mind, why didn't he recall us at one minute past midnight last
night to get this Bill through? It was in his gift to do so. It would have meant that the Bill would
have been passed last night, or in the early hours of the morning, and ready to be sent to
London first thing this morning. Instead, we have this significant delay; a delay exacerbated by
the Chief Minister's own Statement this afternoon, which has caused a further 40- to 45-minute
440 delay to the passage of the Bill. I just do not understand that point. Why were we not recalled? I
– and, I am sure, all of my colleagues – would have happily returned at one minute past
midnight, would have spent the intervening period having that very important discussion that
we had this morning about certain measures and how we were going to approach the Bill in the
Committee Stage. That was very necessary for us to do. It is not only our democratic right but it
445 is a very important thing that we do that, to apply the proper scrutiny to the legislation, that we

are serving the people of Gibraltar in that respect. Why was the Bill not brought at one minute past midnight last night to the Committee Stage?

Hon. Chief Minister: Mr Speaker, does the hon. Gentleman think that it made sense to come back at one minute after midnight? It is possible to come back one minute after midnight, but if we come back one minute after midnight I have to keep all of the public officers of Gibraltar who keep this Parliament open, here unnecessarily because of their foibles, because of the cocktail of egotism and figurism and protagonism that they come up with in order to try and justify their positions: 'We didn't know it was urgent, we didn't know the reasons why it was urgent, we didn't ask why it was urgent.' Has that ever occurred to them: 'We didn't ask why it was urgent'?

Mr Speaker, it is, frankly, in my view, a cocktail of absinthian stupor that they drink themselves into with their politics, but this community needs an EU Withdrawal Bill, that none of us want, and it needs it sooner rather than later, and the judgement of the community on the way that its Opposition has behaved and the fall of the GSD from what it was to what it is today is still to come.

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

Mr Speaker: The Hon. the Chief Minister, will he now move the suspension of Standing Orders to go back into Committee?

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

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

Order of the Day

BILLS

COMMITTEE STAGE AND THIRD READING

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: the European Union (Withdrawal) Bill 2018 and the Parliament (Amendment) Act 2019.

In Committee of the whole Parliament

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

475 **Clerk:** A Bill for an Act to amend the provisions of the Parliament Act to provide for an open
register of electors.
Clauses 1 to 3.

480 **Mr Chairman:** Well, let us note that the short title is now the European Union (Withdrawal)
Act 2019.

Clerk: No, we have got the Parliament Act first.

485 **Mr Chairman:** Right. Clauses 1 to 3 stand part of the Bill.

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

**European Union Withdrawal Act 2018 –
Clauses considered and approved**

490 **Clerk:** A Bill for an Act to provide for the repeal of the European Communities Act, to repeal
section 23(g) of the Interpretation and General Clauses Act, to provide for the continuing validity
of legislation passed or made for the purposes of complying with any obligation arising out of
Gibraltar's membership of the European Union, to repeal the European Parliamentary Elections
495 Act; to provide for the continuation and validity of any administrative act or decision made
pursuant to such an obligation, and to provide, by way of subsidiary legislation, powers to
amend, repeal or replace any enactment which was made, whether primarily or otherwise for or
in connection with any such European Union obligations, to make such consequential
amendments relating to the membership of the European Economic Area; to provide such
transitional or other provisions as are deemed necessary, and for connected purposes.
500 Clause 1.

500 **Mr Chairman:** There is no need for a formal amendment: 2018 to be substituted by 2019.

Clerk: Clause 2.

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

Clerk: Clause 3.

510 **Hon. E J Phillips:** Mr Chairman, in relation to page 306 of the Bill, in relation to the definition
of 'Withdrawal Agreement', can the Deputy Chief Minister explain that interaction with
clause 12? We are seeking clarification as to whether or not to ratify those words in brackets.

515 **Deputy Chief Minister (Hon. Dr J J Garcia):** Mr Chairman, I explained yesterday to the House
that the Bill, which was based on the original UK Bill, was drafted before the Withdrawal
Agreement was concluded, so the provision was made. This defines *a* withdrawal agreement,
not necessarily *the* Withdrawal Agreement, and there will be a second Bill – or the Government
intends to bring a second Bill if we have the time to do that – which will be known as the

European Union (Withdrawal Agreement) Bill, which will be specifically on the agreement. So, as I explained and as I think the hon. Member understood yesterday, the Bill provides for the Government to adopt the Withdrawal Agreement by regulation if there is no parliamentary time. But that is not our intention. Our intention is to bring a separate Bill and have a separate discussion on the Withdrawal Agreement itself.

Hon. E J Phillips: Mr Chairman, therefore, by reason of that definition, the power does exist for a Minister or the Chief Minister to pass regulations implementing the Withdrawal Agreement.

Chief Minister (Hon. F R Picardo): Mr Chairman, we do not need to repeat ourselves, do we?

Hon. R M Clinton: Mr Chairman, just for the sake of clarity, if the Deputy Chief Minister could confirm – so that we understand without a shadow of a doubt what he is saying – that it is his preference to bring a specific Withdrawal Bill to this House, but if he cannot he would rely on the provisions under section 12 to pass whatever he thinks is necessary by way of regulation and therefore bypassing the ability of this Parliament to scrutinise whatever it is that he thinks is necessary. Is my understanding correct?

Hon. Deputy Chief Minister: Mr Chairman, in order to make sure that we all have the same understanding, I will repeat what I said yesterday about clause 12, for the benefit of the hon. Member. I said this:

Mr Speaker, clause 12 gives a Minister the power to make subsidiary legislation to implement a withdrawal agreement concluded between the UK and the EU. I should clarify that this provision is also present in the UK legislation. It serves purely and simply as a safety mechanism in case there is no time to introduce a separate Withdrawal Agreement Act, which remains the intention and the preferred option of the Government. Clearly, this provision would not apply in the event of a so-called no deal Brexit.

Mr Chairman: Clause 3 stands part of the Bill.

Clerk: Clause 4.

Mr Chairman: Stands part of the Bill.

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Clerk: Clause 5.

Mr Chairman: Stands part of the Bill.

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Clerk: Clause 6.

Mr Chairman: Stands part of the Bill.

Clerk: Clause 7.

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Mr Chairman: Stands part of the Bill.

Clerk: Clause 8.

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Mr Chairman: Stands part of the Bill.

Clerk: Clause 9.

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

Clerk: Clause 10.

Mr Chairman: Stands part of the Bill.

570 **Clerk:** Clause 11.

Mr Chairman: The Hon. Elliot Phillips. No?
Stands part of the Bill.

575 **Clerk:** Clause 12.

Hon. E J Phillips: Mr Chairman, can the Government confirm why it did not include the similar words, that appear in section 9 of the European Union (Withdrawal) Act of the United Kingdom, 'subject to the prior enactment of a statute by Parliament approving the final terms of the Withdrawal Agreement in the United Kingdom' – read, obviously, 'Gibraltar'? Can the Government confirm why there was no protection, as we see it, for Parliament to be reconvened on a separate Bill within that Act?

585 **Hon. Chief Minister:** Mr Chairman, Parliament can be reconvened at short notice under the existing Standing Orders and Rules; there is no need to have a provision to reconvene Parliament. In this Parliament it is possible for the Opposition to set down for debate in a motion matters which relate to the MoUs or the Withdrawal Agreement, something which they have not chosen to do. We have already indicated that we wish to have a Withdrawal Agreement Bill if there is to be a Withdrawal Agreement Bill.

590 Mr Chairman, finally, I am reminded of the only man who has been able to lead the GSD to victory in general elections in Gibraltar, who used to sit in the chair I now occupy, who used to say, 'Just because things are done in a particular way in the United Kingdom, it doesn't mean that they are the best way to do them for Gibraltar.'

595 **Hon. E J Phillips:** Mr Chairman, the point that I am trying to make and seek clarification on is why our section 12 allows a Minister by way of regulation to introduce and implement the Withdrawal Agreement, whilst in the United Kingdom they have the same provision but which allows Parliament to approve the final terms. We do not appear to have that part of that section in our law. Can they clarify the decision to leave that out, given the fact that 95% of this Bill replicates the UK Act?

600 **Hon. Chief Minister:** Mr Chairman, I really do despair. The hon. Gentleman appears not to understand the structure of what we are debating, let alone the politics of it.

605 Once the United Kingdom adopts a Withdrawal Agreement – let's assume for a moment that the United Kingdom adopts a Withdrawal Agreement – that Withdrawal Agreement will bite. That agreement will bite. It will bite in respect of Gibraltar. Even if there are no MoUs on Gibraltar, even if there is no Protocol on Gibraltar – let's, just for a moment, assume that there are none in their Withdrawal Agreement – it will bite. Therefore, whether or not this Parliament approves the Withdrawal Agreement, all 585 pages of it, the Withdrawal Agreement will be effective in withdrawing Gibraltar from the European Union. I do not think the hon. Members have understood that.

610 If there is a Withdrawal Agreement and if it includes parts about Gibraltar – as it does at the moment, if it is ratified – we have already indicated that we will bring a Withdrawal Agreement Act. I think this is the 10th time we have said that just this afternoon. It is in the printed text of what the Hon. the Deputy Chief Minister said yesterday. In fact, I think it is prominently

displayed in all the reports I have seen of what the Deputy Chief Minister said yesterday. Given they have had an extra 24 hours to consider what was said yesterday, I would have thought that would have been crystal clear by now.

620 In the event that there is a Withdrawal Agreement and it is at what one might call the last minute – 28th March, for example – that Withdrawal Agreement will bite on the morning of 29th March, or on the morning of 30th March. It may not be possible to have a Withdrawal Agreement Bill ready by then for the Parliament to debate, but we are saying we will have a Withdrawal Agreement Bill after that but we may need to implement parts of the Withdrawal Agreement, which they may not like and which we might not like, or bits which we like and they
625 do not like, or bits which they might like more than we like but we are forced to do because we are in Government. And that is why, for the umpteenth time, there is a provision to enable Ministers to give effect to a withdrawal agreement even though we are going to bring a Bill for them to debate on the issue of the Withdrawal Agreement.

630 If they feel so strongly about the MoUs and the Protocol, why haven't they brought a motion? I very much look forward to a motion where we can debate the MoUs and the Protocol, because I will be able to demonstrate to them – not that demonstrating things to them matters – why they are completely wrong in their interpretations that they have shared to date.

635 Now, Mr Chairman, if they want me to repeat that again or they want any other Member on these benches to repeat that again for a further time because they have not yet understood it ... It will only be when they read *Hansard* that they realise how many times they had to be told. Mr Clinton, in the mornings over a coffee, might enjoy this particular extract.

640 **Hon. D A Feetham:** Mr Chairman, may I? I understand the point that the Hon. the Chief Minister makes, which is essentially this: he says if the Withdrawal Agreement is approved by the UK Parliament, it becomes effective; it has been passed by the UK Parliament. It includes provisions in relation to Gibraltar and what he is saying is the reality is that it bites whether we bring a Withdrawal Agreement Act to this Parliament or not. That is how I have understood it. So, really, the purpose of bringing a separate Withdrawal Agreement to this Parliament is to allow the Parliament to debate it but from a legal standpoint it is not strictly necessary.

645 If that is the position – and forgive me if I have perhaps expressed it in an inelegant way – in order for there to be consensus and for us on this side of the House to be able to support the Bill, isn't the Government willing to consider some amendment to this particular section that includes the language that is used in the UK which says 'subject to prior enactment of a statute by Parliament approving the final terms of the Withdrawal Agreement'?

650 I understand that, strictly speaking, once it is approved in the UK it is done, it is dusted. This is an agreement between the United Kingdom and the EU; it is not an agreement between Gibraltar and the EU. I understand that. But at least it would allow the House to approach this from a unanimous point of view, and I wonder whether the Government is willing to consider that.

655

Hon. Chief Minister: Mr Chairman, the Government cannot consider that. Again, this goes to the structure of the whole thing, the structure of the debate.

660 Gibraltar is a part of the European Communities under Article 3(5)(5)(3) of the Treaty. When the United Kingdom withdraws its membership, we are no longer able to be part of the European Community under Article 3(5)(5)(3). People north of the Frontier and south of the Pyrenees have taken great relish in doing that analysis, which I know the hon. Gentleman does not need me to do for him.

665 The United Kingdom, in order to enter into the Withdrawal Agreement, has given the House of Commons a meaningful vote so that its Withdrawal Agreement – of which we are a part, but it is its Withdrawal Agreement, as the hon. Gentleman has pointed out, because it is between the United Kingdom and the European Union – is a treaty that the United Kingdom is going to enter into. Before the United Kingdom enters into the treaty, it has given the Commons the

670 ability to determine whether it should enter the treaty. Right? Once the Commons give that go ahead, the treaty goes. Once the treaty goes, how can we have a clause in our law saying that we will not implement the provisions of that treaty which relate to Gibraltar unless the Parliament has approved it?

675 There is a way of describing that, Mr Chairman, usually reflected in three letters, in international politics. The first one is U, the second one is D and the third one is I. Because that is what we would be saying. We would be saying that we would have an independent right to adopt the Withdrawal Agreement or not adopt the Withdrawal Agreement.

680 I am going to share with the hon. Gentleman something which I shared with him when he was Leader of the Opposition in this House. There may be parts of the Withdrawal Agreement that we are not prepared to accept for Gibraltar. Then, when we implement the Withdrawal Agreement, we may take the view that we will not implement those parts of the Withdrawal Agreement. They will continue to bite against the United Kingdom in public international law vis-à-vis the other party, the counterparty, which is the European Union. We would put the United Kingdom in default of its international legal obligations in respect of Gibraltar. Individuals would have claims against the signatory, which would be the United Kingdom, and the United Kingdom might have something to say to us. But the language that he is referring to is about prior approval for the entry of the treaty. In other words, the Commons, as he has been following on television, has to now give the Prime Minister the power to enter into the agreement. This is about what happens after there is an agreement internationally and how we give effect to it in this Parliament. That is why we cannot have that formulation of words. That is why this formula is to enable us to give effect in regulations, or via regulations, to the Withdrawal Agreement *in*
685 *extremis* but why we are committed to bringing back a Bill on the Withdrawal Agreement to this House, if there is a Withdrawal Agreement, to have the debate in this House.

690 So, they are going to have the debate if they want it, but I will not be persuaded that they want to have a debate, because they could have had the debate, they could have put the MoUs in a motion for debate in this House. If they wanted that debate, they should have had it in December, but it was very clear to me that there was one view in respect to the MoUs in the Brexit Select Committee and another one which has emerged thereafter, and we are not having the debate on the MoUs because nobody elected by the GSD to this House has put them to have the debate. But they could have had it. They could have put the motion for debate.

700 So, we will bring a Withdrawal Agreement Bill and we will do that even if it is after 29th March, but *in extremis* and in the interim period we need to have the power to give effect to the treaty that, prior consent of the Commons, the Government of the United Kingdom may have entered into.

I hope I have broken it down sufficiently there, Mr Chairman.

705 **Hon. D A Feetham:** Mr Chairman, I understand all that. I was addressing the point, in order to see whether there could be some unanimity, that of course by parity of reasoning of everything that the hon. Gentleman the Chief Minister has said, they do not need to bring a Withdrawal Agreement to this House. They do not need to. They are bringing a Withdrawal Agreement to this House in order to allow this House to have a debate on whatever issues relating to the Withdrawal Agreement this House wants to have a debate upon. That is how I have understood
710 it. They do not need to bring the Withdrawal Agreement.

If they do not need to bring a Withdrawal Agreement – (*Interjection*) Well, that is the way that I have understood it. If you do not need to, then of course you can introduce this clause, but the Government is not going to be moved anyway. But that is the point that I was making.

715 **Hon. Chief Minister:** Well, no, Mr Chairman, I do not agree. It is not that we need or do not need to bring a Withdrawal Agreement. It is very clear, in our view, that we need to bring a Bill to produce a Withdrawal Agreement Act, because there are some things that will require primary legislation.

720 What we are doing with clause 12 is giving ourselves an emergency power, in effect, in order
to be able to do things in respect of the Withdrawal Agreement where we may not have time,
not even with an abridgement of time, to bring a Withdrawal Agreement Bill to this House but
where we may need to start doing things – things related to Social Security, things which will
725 need to be done within a week. I am very conscious that March/April is the period of Easter as
well. We could find ourselves having to implement things during break time, so to speak.
Therefore, we believe that we do need to bring a Withdrawal Agreement Act, if there is a
Withdrawal Agreement, in order to do all the things that we will need to do through primary
legislation – which will not be all of them, will be some of them; and in order to be able to do
730 things quickly that we may have to do – if there was a Withdrawal Agreement – before we are
able to do that, we have this regulation-making power.

Hon. Deputy Chief Minister: So, it has nothing to do with –

Hon. Chief Minister: And, Mr Chairman, if the hon. Gentleman reads section 12(1), as the
735 Hon. the Deputy Chief Minister points out, we are specific in that because the power in 12(1) is if
a Minister considers that such provisions should be in force on or before exit day. This is not a
blanket power to bring about the effect of the Withdrawal Agreement at any time and going
forward; this is a limited power. But I think the hon. Gentlemen want to have the argument, they
want to pretend that they have an issue and they want to vote against the Bill, and if this is the
740 way that they are going to satisfy themselves to do so, so be it, but please do not make us
repeat ourselves anymore.

Hon. D A Feetham: What effectively the Government is saying is that when it refers to
‘Withdrawal Agreement’ it is not referring to effectively the Withdrawal Agreement as the man
745 in the street would understand the Withdrawal Agreement, which is the UK Withdrawal
Agreement Protocols, as we would then understand it, with the MoUs; it is the effect of the
Withdrawal Agreement. In other words, anything that the Government would need to do as a
consequence of the UK Parliament having agreed to the Withdrawal Agreement and the UK
having agreed with the EU Withdrawal Agreement – that is essentially what you are saying.
750

Hon. Chief Minister: That is exactly what we are saying, Mr Chairman, and that is why there
is a definition of ‘Withdrawal Agreement’. And that definition does not mean the Withdrawal
Agreement that Theresa May is fighting over in the Commons; it is a definition of what a
Withdrawal Agreement may be, which is not yet that – it may be that, but is not yet that.
755

But if the hon. Gentleman looks at the clause, Mr Chairman, not only is the power limited to
amendments which Ministers consider should be necessary because provision should be
enforced on or before exit day – that is the limit in 12(1); the limit in 12(2) is even tighter,
because we are not able to do those things unless a Minister, or the Minister, believes it is
urgent or necessary in the public interest. These are very tight restrictions.
760

And then 12(3), Mr Chairman – I do not know whether Mr Feetham has looked at 12(3),
because I think it informs what he is saying. Let me read out 12(3):

No regulations may be made under this section after exit day.

There could be no tighter control on the Government. Indeed, what the hon. Gentleman
should be saying to me is ‘Give yourself a little bit more power, because if the Withdrawal
Agreement is entered into at midnight on 29th March’ – which is the way that European
765 diplomacy has tended to work – ‘you can’t make the regulations, even in respect of a situation
as tight as the one that you would think you might be in, where you might need power because
of something that needs to be enforced by exit day, but exit day and conclusion of Withdrawal
Agreement might both be the same.’

770 Generations from now when this debate is looked at and everything they have said until now
is considered in the context of the limitation in 12(1), the limitation in 12(2) and the very tight
limitation in 12(3), people will realise, if they vote against again, that they were not genuine in
the things they said. So, I invite them to give value for the 24 hours that they have in my view
wasted, in their view needed, and demonstrate that they now realise that this is not a power to
circumvent this Parliament considering the potential Withdrawal Agreement and the parts that
775 they do not like, because it is so tightly drafted I should be taking it out of somebody's salary
how tightly drafted it is and the little power it gives – rightly so, if I may say so.

Hon. D A Feetham: Mr Chairman, everybody here on this side of the House taking a position
simply because we want to be difficult or we want to embarrass the Government ... We are
780 taking a position that is held in good faith because of genuine concerns in relation to this, and
we have attempted ... Indeed, I repeat what I said during the course of my own intervention,
that during the course of the Select Committee I invited the Government to consider hiving off
some of this so that we could avoid having this particular argument.

I understand and have some sympathy for some of the points that the Hon. the Chief
785 Minister has made, but the problem with this is, in my respectful view, the definition of
'Withdrawal Agreement' in the Bill and the way that the Withdrawal Agreement is defined in the
Bill. That is the difficulty and that is what causes us difficulty with the position that we have
taken, which is a political position, which the GSD obviously does not want that position to be
compromised by us voting in favour of the Bill, despite the fact that we have said that we agree
790 with 99% or 98% of it.

Hon. Chief Minister: Well, Mr Chairman, I do not think the hon. Gentleman has to explain
himself in the way that he has.

Let me just say to him that the definition of 'Withdrawal Agreement' is the only definition
795 there can be. If the United Kingdom and the European Union enter into a Withdrawal
Agreement, that is the Withdrawal Agreement that removes us from the European Union and
has to be given effect to. So, whether we like it or not, that is our advice. The advice that we
have is that, whether or not we like it, it will have consequences in public international law. The
United Kingdom remains responsible for Gibraltar's compliance with its international
800 obligations; therefore, we need to be able to implement the Withdrawal Agreement in Gibraltar
and we need this very limited power in order to be able to do so.

Mr Chairman, can I just take the last point that the hon. Gentleman has made, which I think is
an honest one, because I do not think we can hive it off. Whether he is making the arguments in
good faith or not, I think this is a problem with which he has found himself, not one of his
805 making – if it is helpful to him for me to say that very clearly. I do not think this is a problem of
his making; I think this is a problem with which he has found himself.

I do not think he can embarrass us, however much the Opposition might try, and in terms of
being difficult, a few hours here and there is not going to change the result. But let's be clear:
this is a Bill that has to pass, for all the reasons that we have debated. If they have the concern
810 that they have, I invite them – and now please let's put behind us all of the arguments that we
have had to have, and I will do so now – I invite them, when I call a division in respect of this
section, I invite them to vote against this section, which is the one that they said they have the
problem with because the definition of 'Withdrawal Agreement', which is the only way of
pretending that one has a problem with the rest of the Bill, is the definition there has to be,
815 which is the agreement done between the United Kingdom and the European Union. That is the
Withdrawal Agreement. Let them vote against this section and then let them support the Bill at
the Third Reading because when history comes to judge, this is now the moment when we
determine whether we leave the European Union together and whether we act together in
taking our nation out of this union, of which we wanted to continue as members, or whether we

820 act in a fractured manner even on something where the argument is esoteric and legal. That, Mr
Chairman, is an invitation I make in good faith.

Hon. D A Feetham: Mr Chairman, I am very grateful to the Hon. the Chief Minister and I think
the Leader of the Opposition is now going to identify the sections that we will be voting against,
825 which will allow us to set out our position on the record and then would allow us to vote in
favour – the Leader of the Opposition will correct me if I am wrong – of the Bill in general.

Hon. Chief Minister: Mr Chairman, I think that is a very constructive approach, if I may say so.
I think it is unfortunate that it has taken this far in the debate for them to reach that position,
830 but I think it is a much more constructive attitude than they have shown to date.

Mr Chairman: Does anybody else wish to raise any other point on clause 12? Yes, the Hon.
Roy Clinton.

835 **Hon. R M Clinton:** Yes, thank you, Mr Chairman.

On clause 12 there are two points. One is that – and I fully appreciate that there is a lot of
similar, not identical, language with the UK Withdrawal Act 2018, but the mirror-image clause 12
in the UK Act has four clauses and there is one which restricts the regulations that may be made
under that section and imposes five restrictions, (a) to (e), which no doubt the Government will
840 be familiar with:

- 8(7) But regulations under subsection (1) may not—
- (a) impose or increase taxation or fees,
- (b) make retrospective provision,
- (c) create a relevant criminal offence,
- (d) establish a public authority,
- (e) be made to implement the withdrawal agreement,
- (f) amend, repeal or revoke the Human Rights Act 1998

And maybe the Human Rights Act 1998 does not apply here, but it has some kind of restrictions
as to what may be done by regulation, and I would be interested to hear why we do not have
similar type restrictions in this section for our domestic legislation.

The second point I would like some clarification on is – again, I recognise that a lot of the
845 language has been lifted from the United Kingdom European Union (Withdrawal) Act, including
the definitions, and I just query whether using the same definition of ‘Withdrawal Act’ as the UK
is using is appropriate in our case because they use the same language. I think that the bit that is
problematical, I suppose, is where they say ‘whether ratified or not’ and whether in our case we
should say ‘as ratified’. Again, I am not a lawyer but it just seems more logical in our case that
850 we are only interested in an agreement that actually exists.

I would be grateful for the Government’s views.

Hon. Chief Minister: Mr Chairman, there are two points there. I will take the first one on
ratification first. A withdrawal agreement may have been entered into but it may not yet have
855 been ratified, because ratification may require a period of time and formal ratification
sometimes – as the hon. Members will now know, given what I have had to tell them about the
depository in the context of the Hague Convention – sometimes requires months to catch up
with itself, and it is just a technical process. Therefore, we may need to give effect to things
which have an effect on people’s lives on day one, although the ratification process is ongoing.
860 The Maastricht Treaty was signed up by all the parties. Ratification does not mean the moment
of signature in international treaty language. That is one part of ratification, but if all the parties
are agreed ratification can then take its course, and that is why the language has to be that
language.

865 Second, Mr Chairman, the reason why we agreed to take out the five criteria which are not
relevant to us ... The hon. Gentleman can rest assured we have absolutely no intention of raising
taxation, creating a public authority, creating criminal offences – other than that of being a very
difficult Member of the Opposition – etc. But the hon. Member has failed, in his analysis, to
870 point out to the House that actually our regulation 12(2) is much tighter than the United
Kingdom regulation. We have an additional very high threshold bar where the Deputy Chief
Minister insisted on adding that in order to exercise the power it not just be urgent but it be
necessary in the public interest. The public interest is the highest bar that the Government must
set for itself. The Government must say, ‘I need to do this in the public interest’; you never do
that lightly. That is an additional set of handcuffs that have been added by our draftsmen which
875 are not in the UK draft, which makes it even harder for us to use this power than it is for United
Kingdom ministers, where as long as they do not trip themselves up on the five key elements
that the hon. Gentleman has pointed out, then the only box they need to tick is the box of
urgency. We need to tick the box of urgency and the box of public interest.

880 **Mr Chairman:** Is there any other matter? Yes, the Hon. Leader of the Opposition.

Hon. E J Phillips: Mr Chairman, I am grateful for the intervention by Mr Feetham, and in fact
that is exactly the position that we attempted to reach last night and this morning with our own
team. It is unfortunate that blood had to be spilt, but we have now mopped it up and I think we
have come to a reasonable position.

885 I am grateful for the invitation extended by the Government to this side of the House and I
can indicate from this side of the House, insofar as the sections that we find objectionable, that
we will vote against 5, 7, 11 and 15 as well as, of course, the interpretation as it relates to
section 12, i.e. the part of section 3 that relates to section 12. The reason why we will vote
890 against in terms of 5, 7, 11 and 15 is because of the potential read-across with section 12 on the
implementation of the Gibraltar Protocol, the Withdrawal Agreement and the MoUs, which we
have said that we do not endorse. That is the reason why we will adopt that accommodation,
which will inevitably mean that we will vote in favour of the Bill at the Third Reading.

895 **Hon. Chief Minister:** Mr Chairman, in the collegiate spirit that we must all display at these
difficult moments for our community, I am delighted to hear that we have been able to reach
that accommodation.

I am sorry to tell the hon. Gentleman that clauses 5, 7 and 11 have already stood part of the
Bill and nobody has voted against them, but I am prepared, in the context of trying to achieve
something positive for the community, to ask you, Mr Chairman, as Leader of the House,
900 whether you will agree to put those sections again for the vote so that hon. Members can vote
against them, or whether we could simply record their view that they would have voted against
them if a division had been called in respect of those clauses; also, Mr Chairman, with the caveat
that when I am teaching the course on Gibraltar’s withdrawal from the European Union at
Gibraltar University, which will then be one of the most successful law courses available in
905 Europe, I will be pointing this out when I take people through the *Hansard*.

Hon. E J Phillips: Mr Chairman, I know we have not got there, so I am taking this out of order,
but in relation to 15 could the Deputy Chief Minister or the Chief Minister just clarify one thing
for me in relation to 15(1) and 15(4): does the Government feel slightly uncomfortable that this
910 may ‘loosen the handcuffs’, as the Chief Minister put it, in relation to the powers and the
restraints on the power under section 12(2) and (3) in terms of consequential and transitional
provisions, whether or not ... I am not sure, and that is why I am asking for clarification as to
whether there is a loosening of the handcuffs there.

915 **Hon. Chief Minister:** It is all because those are the transitional, transitory or saving provisions, but they still have to get over those hurdles. You are not able to do anything which might be in relation to the Withdrawal Agreement – because, remember, 12 is in relation to the Withdrawal Agreement. You are not able to exercise the 15(4) power in respect of a matter which arises in 12(1) or 12(2), or indeed after exit day at all in respect of the Withdrawal Agreement, in any way which is looser than that provided in clause 12. The read-across is obvious and if the hon. Gentleman needs the Government to say that we accept it, we definitely do; it is our thinking in drafting it.

925 **Mr Chairman:** Is there any other? Then, as I see it, it is the desire of hon. Members that we should go back to –

Hon. Chief Minister: I think we have agreed, Mr Chairman, that the Clerk will record that in respect of clauses 5, 7, 11 and 15 hon. Members enter a negative vote on a division.

930 **Mr Chairman:** That is the official Opposition.

Hon. Chief Minister: And 12.

935 **Mr Chairman:** The official Opposition –

Hon. Chief Minister: The official Opposition votes against those.

940 **Mr Chairman:** Government Ministers who are present here and the Hon. Marlene Hassan Nahon are voting in favour of those clauses.

Hon. Chief Minister: Yes.

945 **Mr Chairman:** Very good. That will make the politics overrule the Rules. Now, we are still on 12.

A Member: No, we have finished that.

Mr Chairman: Is there any other –?

950 **Hon. Deputy Chief Minister:** I think that is it.

955 **Mr Chairman:** The official Opposition are voting against clause 12 and therefore, of course, the hon. Members of the Government present and the hon. Marlene Hassan Nahon are voting in favour. Therefore, clause 12 stands part of the Bill.

Clerk: Clause 13.

Mr Chairman: Stands part of the Bill.

960 **Clerk:** Clause 14.

Mr Chairman: Stands part of the Bill.

Clerk: Clause 15.

965 **Hon. E J Phillips:** We vote against that clause on the basis of our [Inaudible].

Mr Chairman: You are voting against.

The Hon. Marlene Hassan Nahon – in favour?

970 Again, clause 15 stands part of the Bill with the Government Ministers and the hon. Lady voting in favour and the official Opposition against.

Clerk: Clause 16.

Mr Chairman: Stands part of the Bill.

975

Clerk: Schedule 1.

Mr Chairman: Stands part of the Bill.

980

Clerk: Schedule 2.

Mr Chairman: Stands part of the Bill.

Clerk: Schedule 3.

985

Mr Chairman: Stands part of the Bill.

Clerk: Schedule 4.

990

Mr Chairman: Stands part of the Bill.

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

995

Hon. E J Reyes: No – may I, Mr Chairman? Just for the record, I know when you have read it or when the Clerk has read it we have corrected the typographical error so that if there is any future reference we have noted the typographical error.

1000

Mr Chairman: Yes, 2019, purely typographical.

**Parliament (Amendment) Bill 2018 –
European Union (Withdrawal) Bill 2019 –
Third Readings approved: Bills passed**

Mr Speaker: The Hon. the Chief Minister.

1005 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to report that the Parliament (Amendment) Bill 2019 and the European Union (Withdrawal) Bill 2018 have been considered in Committee and agreed to without amendments and I now move that they be read a third time and passed.

1010 **Mr Speaker:** I now put the question, namely that the European Union (Withdrawal) Bill 2019 and the Parliament (Amendment) Bill 2019 be read a third time and carried. Those in favour? **(Members: Aye.)** Those against? Carried.

FIRST AND SECOND READING

**Medical and Health (Amendment) Bill 2018 –
First Reading approved**

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

A Bill for an Act to amend the Medical and Health Act 1997 so as to expand the power to make regulations under section 66.

1015 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 amend the Medical and Health Act 1997 so as to expand the power to make regulations under section 66 be read a first time.

1020

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Medical and Health Act 1997 so as to expand the power to make regulations under section 66 be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

1025 **Clerk:** The Medical and Health (Amendment) Act 2018.

**Procedural –
Guidance re neutral motions**

Chief Minister (Hon. F R Picardo): Mr Speaker, I move that the House should now adjourn to Thursday, 21st February at 3 p.m.

1030 **Mr Speaker:** Before I put the motion for the adjournment, there is a matter on which I think Members generally may find some guidance useful, and that is that motions brought to Parliament do not always have to be contentious or party political. There is the mechanism of a neutral motion. It is used in the House of Commons as well and it has been used here in this Parliament when consideration is given to the Report of the Principal Auditor. I indicated as much in conversation from some time ago to the Hon. Roy Clinton, who takes a very close
1035 interest, I am glad to say, in these matters, and I indicated that that was a possibility. What is the advantage? The advantage is that all hon. Members can speak to the motion, express their views and a vote does not have to be taken. Members can either vote ... It does not mean anything because all that Parliament is doing is noting the contents of the documents involved and they can express whatever view they want to express. I have mentioned that, given what the Chief
1040 Minister has said and the fact that we are recessing for about three weeks and that gives an opportunity for Members to think about that possibility, if they so wish.

I now put the question, which is that the House should adjourn to Thursday, 21st February at three in the afternoon. The House will now adjourn to Thursday, 21st February at three in the afternoon.

The House adjourned at 4.31 p.m.