



PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

AFTERNOON SESSION: 3.13 p.m. – 4.23 p.m.

Gibraltar, Tuesday, 2nd July 2019

Contents

Standing Order 7(1) suspended to proceed with laying of petition.....	2
Order of the Day	3
Papers to be laid.....	3
Standing Order 7(1) suspended to proceed with Government Bills	3
Bills	3
First and Second Reading	3
Private Sector Pensions Bill 2019 – First Reading approved	3
Private Sector Pensions Bill 2019 – Second Reading approved.....	4
Private Sector Pensions Bill 2019 – Committee Stage and Third Reading deferred to a future sitting	15
Public Services Ombudsman (Amendment) (University of Gibraltar) Bill 2019 – First Reading approved.....	17
Public Services Ombudsman (Amendment) (University of Gibraltar) Bill 2019 – Second Reading approved.....	18
<i>The House adjourned at 4.23 p.m.</i>	18

The Gibraltar Parliament

The Parliament met at 3.13 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 laying of petition

Clerk: Meeting of Parliament, Tuesday, 2nd July 2019.
Suspension of Standing Orders. The Hon. the Chief Minister.

5 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I beg to move, under Standing Order 7(3), to suspend Standing Order 7(1) in order to proceed with the laying of a Petition on the table.

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

10 **Minister for the Environment, Energy, Climate Change and Education (Hon. Dr J E Cortes):** Mr Speaker, I beg to move that the petition standing in my name and supported by the Hon. Trevor Hammond and the Hon. Marlene Hassan Nahon be laid on the table.

Mr Speaker: Ordered to lie.

15 **Hon. Dr J E Cortes:** Mr Speaker, I beg to move that the Petition standing in my name be read.

Mr Speaker: I now put the question, in the terms of the motion proposed by the Hon. Dr Cortes. Those in favour? (**Members:** Aye.) Those against? Carried.

20 The motion is therefore carried and I am now asking the Clerk to Actually read the Petition.

Clerk: The Petition is addressed to the Gibraltar Parliament and reads as follows:

Your petitioners request all Members of Parliament to support the creation of a totally independent and funded climate body with technical and dedicated personnel to progress an agreed climate change agenda, legally bound to operate within a strict timeframe, supported at cross-party level.

And there follow all the signatures.

Order of the Day

PAPERS TO BE LAID

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Clerk: (vi) The Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to lay on the table the Electors Registration (Amendment) Rules 2019 and the Integrated Tariff (Amendment) Regulations 2019.

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Mr Speaker: Ordered to lie.

Clerk: The Hon. the Deputy Chief Minister.

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Deputy Chief Minister (Hon. Dr J J Garcia): I have the honour to lay on the table a Command Paper on draft Regulations amending the Civil Aviation (Air Navigation) Regulations 2009 in order to regulate the use of small unmanned aircraft, including aircraft commonly known as small drones.

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Mr Speaker: Ordered to lie.

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

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

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 Government Bills.

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

BILLS

FIRST AND SECOND READING

Private Sector Pensions Bill 2019 – First Reading approved

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

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

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The Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move that a Bill for an Act to make provision with respect to the provision of pension plans to employees employed in

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the private sector, to establish a Pensions Commissioner, 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 with respect to the provision of pension plans to employees employed in the private sector, to establish a Pensions Commissioner, and for connected purposes, be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Private Sector Pensions Act 2019.

**Private Sector Pensions Bill 2019 –
Second Reading approved**

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

This Bill is for an Act which seeks to ensure that, for the first time in our history, private sector workers should be entitled to choose whether they wish to make a contribution to a pension plan. The choice and the decision is to be of the employee. Should that employee choose to participate in a pension plan, the Act then requires the employer to contribute towards that employee's pension plan. In such circumstances, employers in the private sector will therefore have an obligation to provide a pension to employees.

This Act sets out the minimum that will be required from employers in the private sector, and any employer wishing to do more can at any time increase their contributions. Indeed, Mr Speaker, I want to just reflect on the fact that a very large number of employers in our economy already provide such facilities for their employees and have not had to wait for a compulsion of law in order to provide such facilities. What Her Majesty's Government of Gibraltar is doing with this Bill, however, is ensuring that any member of the community has the option of being protected financially in their later years by opting, if they are in employment in the private sector, to contribute privately to a scheme.

This Act sets out a starting position. By ensuring that everyone has a pension plan, an individual can then contribute more to that pension plan if they so wish. Simultaneously, the Government wishes to assist businesses in the phasing in of such pension plans. The implementation of this Act is therefore phased so that smaller employers have more time to deal with the requirements and have a longer period to make the requisite adjustments. Large employers will be required to comply with the provisions of the Act by July 2021, medium-sized employers will be required to contribute by July 2022 and small employers by July 2025, with micro-employers not having to contribute until 2027. The definitions of whether the employer is small, medium, large or micro will follow the definitions in the Companies Act, with the requisite changes so that the definitions also apply to employers who are not companies.

More particularly, Mr Speaker, in order to assist hon. Members, I will now set out what the different parts of the Bill do.

Part 1 of the Act includes provision as to the scope of the Act, which will apply only to employers in the private sector.

Part 2 imposes obligations on employers to either continue with an existing pension plan available to their employees; or, if none are in place, to participate in a pension plan established by regulated pension providers. Low-income employers will be able to contribute to a pension plan established by the Government.

It is envisaged that employees who earn less than £18,500 will be able to contribute to the Provident Trust No. 3 Pension Scheme. This will be further set out by way of regulations.

Employees can also elect not to participate in a pension scheme, but there is a duty on the employer to notify the Pensions Commissioner if the employee would like to participate in the pension scheme or otherwise. If the employee chooses not to participate, there is a relevant form that the employee must fill in.

105 Under section 5, employers will be under a duty to register such participation with the Commissioner, who shall be the Commissioner of Income Tax, and care will have to be taken so that there is no excessive administrative burden on employers.

Whilst there is no exemption for start-ups, employees will have to have been working for the employer for a year before falling within the provisions of the Act, in effect meaning that start-ups have a year's grace before the application of the Act to them.

110 Section 6 requires the employer to provide the administrator of a plan with the relevant information pertaining to that employee.

Section 7 imposes a duty on administrators of pension funds to explain the terms to the employees upon joining a pension fund.

115 Sections 8 and 9 require information to be produced to members and access to documents by relevant third parties, with consent.

Section 10 specifies which employees qualify for benefit under the obligation and employers to participate in the pension plan. Employees must be 15 years of age or over, earn at least £10,000 per annum and must have been employed by that employer for a year, given what I mentioned before about the period of qualification.

120 Where a person is employed by more than one employer, he can be enrolled as a member of each pension plan for which he meets the relevant criteria.

Part 3 establishes the minimum contribution rate that employees and employers will make to the pension plan subject to the Act, being 2% of the employee's annual earnings, excluding bonus, each. The employer and the employee will each have to contribute 2% to the pension scheme, subject to the minimum earnings which I have already set out to the House. This percentage can be amended by a Minister by order in later years. The employers and employees may also choose to make higher contributions at any time and may each make different contributions, as long as the 2% minimum is met by each. This relevant part, Part 3, also allows for the Commissioner, the administrator or a member to recover any amounts withheld from an employee's salary as a debt due.

130 Part 4 details the types of advice and orders that may be given by the Pensions Commissioner.

Part 5 of the Act establishes the Pensions Commissioner itself. The Commissioner shall keep a register, which will list all employers and their employees' status under the Act.

135 Section 16 lists the functions of the Commissioner, which include promoting education on pension plans and their benefits, verifying payments made under the pension plans and the investigation of complaints relating to a pension plan.

The Commissioner is provided with powers of entry and search to facilitate the enforcement and monitoring of compliance with the Act as per the powers granted under the Income Tax Act 2010.

140 The Act will also create offences for contravention of any provision of the Act or orders or regulations made under the Act. The Act is therefore ensuring compliance by granting powers to be able to fine if anyone is found in breach of the Act.

145 Section 21 sets the fine payable for such offences at level 4 on the standard scale, which doubles in case of a second or subsequent offence.

The main purpose of this Act will be to remedy the discrepancy that exists between private sector workers and public sector workers to ensure that all workers in Gibraltar are now adequately protected for in their later years. We have already started to try to redress that, even in respect of those already retired and who have no provision made for them, by supporting the introduction by Community Care of the minimum income safety net of the

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statutory Minimum Wage for couples and two-thirds thereof for individuals. For future generations we are proposing the creation of these rights.

155 Mr Speaker, I know that this Bill enjoys the support of Unite the Union, with whom we have worked on these commitments. I also know that they might have wished to have seen us go even further in some aspects in respect to these measures. I must also acknowledge that the consultation process we went through included the Chamber and the Federation. Although they were not unsupportive of these measures, it is fair to reflect that they felt we have gone too far in some respects. I want to nonetheless thank both the Chamber and the Federation on the one
160 part and the Union on the other part for their constructive and positive engagement in the process of bringing this Bill forward.

This is a proposal that we bring from a commitment in our manifesto. It has been greatly delayed by Brexit and by the need to ensure that in making these changes to our laws we are not going to make Gibraltar any less competitive in any way with any of our rival jurisdictions.
165 We are confident that this Bill strikes the right balance and that the time is right now to make this legislation.

In this Bill we are legislating today to provide rights for workers tomorrow. It is right that we should. The benefits to the community as a whole and to working people in particular will not be felt for years, perhaps for generations, but when those benefits are felt I will be proud to have
170 been the person introducing this seminal piece of legislation for working people in the private sector. I urge all Members to join me in doing so and I therefore commend the Bill to the House.
(Banging on desks)

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

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

This is a particularly important piece of legislation that has come before the House and, as the Chief Minister correctly points out, it is something that is certainly desirable, that we have
180 pension provision in the private sector; certainly on this side of the House the Official Opposition in principle have no problem with that concept.

But this is, as I said, a complex piece of legislation, and I cannot help but notice that from the original Command Paper to the Bill that is before us today we have lost, from the Command Paper, not just a few words, sentences or paragraphs, but entire sections. Whereas the existing
185 Bill before us has six sections, the original Command Paper had 10. We seem to have lost Part 4 on vesting in retirement, Part 5 on locking in contributions and benefits, Part 6 on benefits and Part 7 on winding up. There seems to be a seismic shift in the way this Bill has been originally designed to what is before us today.

It is, of course, a question of balance and achieving the right balance for all the stakeholders concerned, but I am concerned that although Unite are happy with the Bill in its current form, I
190 am aware that certainly the Chamber and the Federation would like to have more input into this Bill, and I also understand that the Gibraltar Association of Pension Fund Administrators would also like to have some input and clarification as to the structure and design of this Bill.

As the Chief Minister has pointed out, a lot of these provisions do not kick in for a number of
195 years to come, and certainly for the larger employers not until 1st July 2021, so there is no urgency in putting this on to the statute book today. I would much rather that this legislation is given a thorough examination by this House and allow all stakeholders to ensure that their feedback is received by this House to make sure that we have the best possible legislation in achieving the balance required between the stakeholders.

200 There are, just from a cursory review of the legislation, some inconsistencies on which I would already be suggesting amendments. For example, under section 10, 'Eligibility for membership', (2)(a) 'must be 15 years old', but if the qualifying period is 12 months you would have to be employed at the age of 14, which is illegal. So there are quirks in the drafting that just

do not make sense. It is impossible for somebody to be eligible at the age of 15 because he
205 would not have qualified, he would have been working for one year, so that in itself is of
concern.

Furthermore, we just heard the Chief Minister say, in respect of the contributions under
section 11 – in fact 11(1)(c) over the page – that it will be ‘a sum equal to 2% per annum of the
210 employee’s earnings’, but the Chief Minister said ‘each’. He used the word ‘each’. That word is
not here. I read this in the original Command Paper and I have read this now and is not clear
from this wording who pays 2% and how it is split, whether it is 2% in total, split equally, or 2%
each, as the Chief Minister said. So, that in itself, in my view, would require some clarification,
and that was in fact a point raised by the Chamber itself in its submission to the Government, in
that that particular clause was not clear.

215 The Chamber has, and obviously all private sector employers have, a vested interest to come
up with the best possible result for themselves. I am not proposing that we on this side of the
House are necessarily supporting that view, but certainly when it comes to the question of
balance we need to take into account their comments, because at the end of the day we all want
their support in putting into place these measures which will benefit us all as a community.

220 So the rate of contribution is extremely important and it is extremely important to have
absolute certainty on that point. I am not entirely happy with the idea that the Minister may, by
regulation, change that percentage. If we were to look at the UK auto-enrolment legislation,
which has now, I think, finally reached its final level, in October 2018, they actually set out a
schedule in terms of when rates would change and what those new rates would be, so
225 businesses looking ahead would know in one year, two years or three years’ time what the cost
to them would be. And not only that, but ironically – and I am not suggesting we copy this – in
the UK the burden was shifted more towards the employee than the employer. So you got to the
position, I think only recently, where employees were finding that they had to contribute the
maximum amount towards the auto-enrolment scheme, which obviously meant less money in
230 the pocket for them.

As we know, pensions do not come cheap and it is a fact of life – unless you have a final
salary scheme, which these days is going the way of the dodo – that new employees, future
employees, will have to rely on what is called a defined contribution scheme, which is basically
what you put in and whatever its investment value is at the end of 20, 30 or 40 years is what you
235 get out. There are no guarantees, and of course as a Parliament we have a duty, I think, to make
sure, and educate our young people that the sooner they start a pension scheme the better off
they will be in old age. I know this is something that the Private Sector Pensioners Association
has been talking about, but of course for the majority of their members now it is unfortunately
too late – they will never be able to make up the level of contributions in 40 years, because
240 unfortunately their time has passed.

We have a duty today to make sure that the best possible legislation is put into place to
encourage our young people to save for their future, and in that respect of course we support
the principle, but the devil is in the detail.

I do not understand why so many sections have been cut out from the Command Paper.
245 There are elements, for example, where the staging dates have changed. In the Command
Paper, the staging date for a large employer was 1st July 2019; the staging date – I am using the
UK term, but basically the date of compliance – for a medium employer was 1st July 2021; small,
July 2025; and micro, July 2027. Obviously it makes no sense to make 1st July 2019 to be the
compliance date – that would have been yesterday – but they have been added on two years, to
250 2021, in the Bill. Medium gets an extra year to 2022. But then I just find it strange that the small
and micro have not had a year added on to their staging date. It is only the large and the
medium, not the small and the micro. Again, the Chamber and the Federation have a view
where: if you really are a micro, a micro employee, or even a start-up, should there or should
there not be a grace period before which you would not be obliged to start providing pensions?

255 That is a debate we can have. It may not be practical if you are in a start-up scenario. Again, this is a debate we can have.

Mr Speaker, as I have said, there are lots of questions that arise from a cursory view of this legislation. I have to say I have been chasing the Chamber and the Federation for feedback in terms of what their concerns are and I understand they are working on papers to submit to
260 Government as to what the concerns may be. Since there is no urgency for the introduction of this Bill, other than electoral cycles – and I think we still have some time, maybe not a lot but we still have some time left in the electoral cycle to get this in before the date of the General Election – I would ask this House to consider delaying the passage of this Bill for those reasons, to make sure we get this absolutely right and in the right balance and to make sure that all
265 stakeholders have their feedback incorporated to the extent possible.

So, Mr Speaker, what I would propose, if the House is amenable, is either we commit this Bill to a select committee at the end of the Second Reading or we delay the Committee Stage to a future date once we have had all the feedback in from the other stakeholders. That would be my view and, to put the House on notice, if we do not go for a select committee of the House I
270 certainly will be objecting to taking the Committee Stage today to at least give the other stakeholders an opportunity to get their feedback to the House in terms of any amendments they may wish to propose, to which we can then discuss amply in the House.

As I said, there is no urgency to this Bill other than the electoral cycle and I would urge the House to exercise some common sense in considering the passage of this Bill.

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

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

280 **Hon. Ms M D Hassan Nahon:** Mr Speaker, while the proposed Bill is sound and the subsequent legislative changes will go a long way to bridging the historical divide between private and public sector workers, it cannot be complete without the recognition of the unacceptable conditions that some current private sector pensioners are enduring now in one of the richest – in the words of this Government – economies of the world.

285 I have been working closely with the Private Sector Workers and Pensioners Association for a few years now to bring their concerns to Government, a collective that has been ignored, misled and on occasions outright lied to by successive Governments. The last attempt by Government to appease the Association, namely the Household Support Supplement, has not done much to appease the collective. It provides a lifeline to those living in sheer desperation but it continues
290 to tolerate that private sector pensioners with full old age pensions live on what is effectively a subsistence wage.

As a society, we simply cannot afford to have elderly people working well beyond retirement age in order to maintain dignified living conditions or living on meagre subsistence wages while politicians go around boasting a narrative of economic success. There can be no success if we
295 leave our most vulnerable behind, especially those who have worked hard to build our nation and our economy, who have contributed dutifully to the common pot and who today feel cast aside by their institutions.

I believe, therefore, that some form of retroactivity, which will have to fall under the responsibility of Government, must be ensured so that we do not subject the elders of today,
300 those currently retired without occupational pensions, to live in dire circumstances in the Gibraltar of luxury real estate development. By voting for this Bill we recognise that this collective has been under-protected and marginalised. If we do not do something to ameliorate the lives of those who have been and are being fully affected by this injustice, we will be condemning these people to a moral apartheid, caught in between the injustice of the past and
305 a better future that they will never take part in.

So, Mr Speaker, I will be supporting this Bill but I urge Government to remember and further engage with the current demographic of elderly private sector pensioners who await their well-deserved financial assistance. A rich society that does this to their elders is morally bankrupt.

310 **Mr Speaker:** Does any other Member wish to speak on the Second Reading before I call on the mover to reply? No.

Hon. Chief Minister: Mr Speaker, thank you for the opportunity to reply.

315 Let me just start by reminding the House when it was that the Command Paper for this Bill was first published: it was published in April 2018. In other words, the Command Paper was published a year and three months ago and the Bill was published in April of this year. In other words, the Bill has had many more than six weeks to come to fruition and debate in this Parliament. The constitutional period for a Bill to be published and to be before the community for all those who may have an interest in it to contribute in comment, either publicly in the media or directly in correspondence with Members of this House, or indeed the Government as the promulgator of a Government Bill, is not just passed, it is more than passed, it is double passed. Indeed, in the period since the Command Paper, the Hon. Mr Clinton in his address has identified changes from the Bill that was published.

325 Of course, I am starting to get used to dealing with the contributions of hon. Members now. I do not know whether they will be here after the election so that we will have to continue to be used to them or not, but whatever we might have done in the context of the Command Paper, whether we had published exactly the same piece of legislation as a Bill or whether we had made changes, we would have been open to criticism. If we had published the same Bill that was in the Command Paper, we would be told that we had not listened and that there was no point in publishing a Command Paper if we were going to publish as a Bill the same piece of legislation. Because we have made changes, we are told that we may have changed too much and 'why is it that we have done these things?'

330 I would have thought the whole structure of the way that we bring legislation to this House – a concept that we introduced, which is to publish what in the UK would have been known as, I think, a White Paper, to give the community additional time to respond and contribute with views as to proposed legislation – would have enabled hon. Members to understand that we have made changes because in that process we have had representations made by the self-same Chamber, Federation and unions that they have referred to, which have led us to make these changes in the year and three months since then.

340 The publication of the Command Paper, however, was not the first step in this process. We started to talk to the Chamber, to the Federation and to Unite the Union probably before the last election – I do not want to say it was before the last election, but I am darned sure it was – but certainly after the last election. The Command Paper is a product of those initial discussions and the Bill is a product of those discussions after publication of the Command Paper. We have had a lot of representations from the Chamber and the Federation, and indeed I have acknowledged that in my speech on the Second Reading because I am conscious of the fact that we have done a balancing act. We have not – and this is what I said at the end of my introduction to the Bill – done the Bill that the union would have liked to see; neither have we done the Bill that the Chamber or the Federation would have liked to see. Let's be very clear, Mr Speaker, the Chamber and the Federation do not want to see this Bill, even though – and I want to go out of my way to say that – most of the members of the Federation and the Chamber voluntarily include pension provision for their employees without having to be compelled to do so, but as a matter of legislative compulsion they are not attracted to there being such a statute on our statute book. What one cannot do is indefinitely delay the evil day when the legislation that one might not wish to see on the statute book actually becomes a reality, when it is in fact a commitment which a political party has taken to the people and the people have chosen. Therefore, we feel that we have an obligation to bring this particular Bill. This is not a Bill that

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arises from a case in respect of Northern Ireland. This is a Bill that arises in respect of a direct plebiscite in Gibraltar which requires us therefore to bring this Bill.

360 We think that we have already done the exercise that Mr Clinton sets himself up in his
speech as if he were the arbiter of. In other words, we think that in three and a half years of
discussions with the unions, the Chamber and the Federation, we have distilled the core
principles that are relevant and we have done the balancing act. We therefore, Mr Speaker, are
not going to agree to send the Bill into committee, because the hon. Member knows, that in
365 order to be able to take the Committee Stage and Third Reading today we require unanimity of
the House and he has already given notice that he is not going to allow that unanimity, which is,
I suppose, the power he has. Well, Mr Speaker, we shall take the Committee Stage and Third
Reading when the House resumes. If in that time hon. Members, or the Chamber or the
Federation, wish to feed anything in to the Government that has the majority in this Parliament
370 to be able to amend the Bill, they are very welcome to, as they would have been welcome to do
so up to today, and as they in fact have done in the period leading up to the end of the
consultation process under the Command Paper, the period before the publication of the
Command Paper etc.

So, Mr Speaker, with the very greatest of respect to hon. Members, I think it is just frankly a
375 misunderstanding of what the principle of legislation is all about and how the process of
legislation comes through to this House to suggest that we must now send the Bill to a
committee because hon. Members would like themselves to do the balancing act that the
Government believes that it has properly done.

In relation to some of the detail that the hon. Member raises, I am quite happy to deal with
380 those issues when we deal with the Committee Stage.

On the issue of the 15 years, there is no anomaly there. There is a very simple reasoning and
the simple reasoning is that if you do not put in the age of 15, you are creating a disconnect
between the Pensions Bill and the age at which the Social Insurance contributions start to count
for pensions purposes under our law. The reason we have done that is because we changed our
385 law in that respect very recently, in fact I think in the lifetime of this Parliament or late in the
lifetime of the last Parliament – (**Hon. Sir J J Bossano:** This Parliament.) in the lifetime of this
Parliament, I am reminded by the Hon. Mr Bossano – because we thought it was unfair that
there should be a different age applicable in Gibraltar to that in the United Kingdom and we
thought that if people were at work, their contributions should count. When those contributions
390 did not count it was a different world, young people's contributions were deemed not to have to
count, but we take a completely different view and therefore we think that the age from which
one should be entitled to have a pension vest is the age of 15. If we put 16 in, there might be
some who would argue that you would not vest until 17, after you had done the year, and so
what we want to be very clear about is that the period by which you start to accumulate rights –
395 and that includes the right to the effluxion of time against your work – is the age of 15.
Mr Speaker, I do not think that is an issue which arises as a mistake from a cursory review. I
think that is an issue that arises from unknowing pedantry which leads the Hon. Mr Clinton to
make a remark which is actually of little practical consequence. No doubt he will raise it again in
the Committee Stage and no doubt we will have to deal with it then.

400 Mr Speaker, on other points ... and some of these points are raised by the Chamber, he says.
Well, some of these have not been raised by the Chamber with us, which surprises me, but I am
very happy to receive these points from the Chamber.

In relation to the question of balance, I think I have already explained that we feel that we
have done that exercise already.

405 Then he raises that he has noted under the UK scheme – a scheme which I should just pause
to reflect was introduced by a Conservative government in the United Kingdom; this is not a
Labour Party or Labour government piece of legislation, it is a Conservative government piece of
legislation, and perhaps as a result of that, this is what occurs – the balance shifts towards
employees having to contribute larger amounts than employers. He says, 'I am not suggesting

410 that we should follow that, of course, Mr Speaker.' I do think that he doth protest too much
when he makes that point, because it does seem to me that he wants to come here to make the
points that the Chamber would like to hear him make, whilst at the same time trying to pretend,
to those who he might wish to dupe into thinking that he is a champion of the working classes,
that he is anything other than that. He will forgive me for seeing straight through him in that
415 respect.

The changes to the dates on which the obligation kicks in, in respect of large, medium, small
and micro businesses, has been changed from the Command Paper, of course, because the
Command Paper was published in 2018, we were not able to proceed with the publication of the
Bill in 2018, we published it in 2019 and therefore, if we proceeded immediately to keep the
420 same dates, of course it would have been immediately upon those in large companies to have an
incumbent obligation to have provision for private sector pensions. It made no sense to do that
and therefore the dates have been shifted forward in the way that he has accurately managed to
read out to the House. But the dates have not been shifted forward in the context of small and
medium-size or micro businesses because those dates were already sufficiently far forward in
425 time that we did not feel it was necessary in the balance that we did to continue to shift that
period forward.

It is true that there are no specific provisions in respect of start-ups, but as I told the House
when I made my contribution, if you have a start-up, then you do not have anybody who has
contributed or has been employed for more than a year. So a start-up has a grace period
430 equivalent to the period by which its employees must be employed by it before they are able to
have these rights, and so a start-up has a year's grace.

Yes, Mr Speaker, we could have a debate as to whether small and micro businesses should
make this provision. We could have a debate, but I think the hon. Gentleman sets the bar as if
we had not had that debate ourselves and as if we had not considered these issues ourselves.

435 Although I will deal with the hon. Lady's reference to apartheid a little later, what the hon.
Gentleman is telling us to do is to create an apartheid-style regime – in other words, to say, 'If
you, employee, are employed by a small or micro business, some think that you might be
required to fall out of this protection.' If we are saying that this is something that must attach to
every worker in our economy, then the size of the employer of the worker is something that
440 cannot come into the equation, because otherwise you are not covering every employee in the
economy. We have given this a lot of thought. You can have a cottage industry where there is
one person running a business and they are employing one person. Are we saying that that one
person, that one employee, should not have the same right to contribute to a pension scheme
that others do? Given the amounts that we are suggesting should be contributed, which are very
445 modest indeed, we have reached a determination, having had the debate, that everybody in our
economy should be able to be eligible to contribute to a scheme in that way.

They may wish to persuade the public and the electorate that actually there should be a
different regime applicable and they might garner the support of micro and small businesses.
They may do, but I really think that, given how this economy operates and the fact that most in
450 our economy are already seeking to provide benefits to their employees without the need for
compulsion of law, actually the moral compass of most in the business community is not, as the
hon. Gentleman's moral compass seems to suggest, taking them towards excluding people from
benefit, but in seeking voluntarily to include people in benefits. Therefore, I think we have done
the balance right in that respect and I think it is absolutely right that we should pursue it in this
455 way.

Mr Speaker, three years after we started this process, a year and three months after the
Command Paper was published, almost four months after the Bill was published, the hon.
Gentleman tells us that he is trying to get something from the Chamber and the Federation and
he tells us that the Chamber and the Federation are working on papers. Well, how long is a piece
460 of string and how long can this go on for?

The hon. Gentleman has told us that he is going to object to the Committee Stage and Third Reading being taken today. So be it. If he feels that he wants to have at least until the next adjourn date, so be it; he is entitled to that under the Rules of the House – he has potentially at least until tomorrow in order to be able to stop the Committee Stage and Third Reading. But the Chamber and the Federation have not asked us for more time, and given the strong working relationship that we have with them, a relationship of partnership, which is what delivers the strength of this economy, I am surprised that that should be the case. But if the Chamber and the Federation wish to bring us those views before the next adjourn date, so be it.

I do not think there is a need for delay to allow feedback by all stakeholders, I do not think there is anything to be gained by sending this Bill to a committee, I do not think there is anything to be gained for working people by delaying the passing of this Bill, but when a Member of this House gets up and says there is no urgency to this Bill other than electoral cycle, it is really a phrase spoken like a well-provided-for pensioner.

Mr Speaker, the hon. Lady raises a point that I think I have to deal with, because I do sincerely believe that it is a point that she makes and makes over again and that she is absolutely wrong about. I think she knows my views in respect of the position that she has taken in relation to existing pensioners from the private sector, because it is a point she has made before and it is a point that I have answered before, but it is important that I lay it on the record. It is not true that private sector pensioners have been ignored, misled or indeed lied to, certainly by this Government, far from it. Private sector pensioners have been listened to only ever by this administration, private sector pensioners have been met and we have worked through issues with them only ever by this administration, and this administration has not lied to anyone.

But it is true that we have not fulfilled the ambitions of some people in the private sector pensioners group. We have to be very clear in our community: there is a difference between poverty and wanting more, something which I fully respect, but let us not pretend that people have been ignored, misled or lied to, or that people are living in poverty, when what has happened – and it is important that I clarify what has happened and who has made it happen and the mechanisms by which it has happened – what has happened is that we have taken a process that was started by the former administration, which is to provide a minimum income guarantee, and supported the expansion of that principle outside of Government. Although the Private Sector Pensioners Association I think was not formed at the time and the former administration gave rise to this in a different way, the former administration – and I am not taken to speak kindly of them, as the hon. Lady knows – introduced something called the Minimum Income Guarantee as a Government safety net so that nobody in our economy over the age of 60 received less than a particular amount per annum. We thought that was a very low amount, but at least it was a recognition that there was to be an income which attached to people who had made no contributions, people who might find themselves just completely with nothing. There was a Government safety net added, the Minimum Income Guarantee.

When we engaged with the Private Sector Pensioners Association we realised that there were people who had not been able to make contributions to private sector pensions, because there was not a requirement in law that they should have those options, or because their employers did offer private sector pensions and they chose not to make those contributions, or because they had taken those contributions as a lump sum and had not necessarily spent them but had invested them and they might have been lost, or indeed people who have come from working outside Gibraltar and have worked in Gibraltar for a very short period of time and are not able to have a meaningful amount of money.

The language I am going to use now is important and the hon. Lady needs to be aware of why. We supported – we did not introduce, we supported – that the independent charity Community Care should pay them an amount which was equivalent not to a minimum income guarantee but to the minimum wage going into any household in Gibraltar, therefore going up every year as the Government has put up the Minimum Wage, calculated on the number of hours that an individual would work in our economy. So, 37½ hours by 52 weeks a year at £6.75

last year, £7 this year, £7.25 next year and £7.50 the following year. Remember that the Minimum Wage has gone up already 25% in the time since we have been in office. It will have gone up by a third, given the measures I have introduced already.

515 What we have supported – and hon. Members will understand why I am using that word and not the word ‘introduced’ – is that every pensioner couple in our economy has the same money coming into their household as any worker in our economy on the Minimum Wage. A worker in our economy on the Minimum Wage might be a working person with a spouse and children, and that might be their income – and we might all wish that the Minimum Wage was five times what it is today, but we are working in economic reality. Those young families and not so young families, those families where the breadwinner is earning the Minimum Wage and the other spouse is not at work and they have one, two, three or more children, manage their household with the Minimum Wage. We are saying a pensioner couple who have not got any private sector provision will have – of course means tested, because we could not have them with other means and yet also have an income of the Minimum Wage – at least the Minimum Wage coming into their household. That is at now approximately £12,000 a year, approximately £1,000 a month, approximately £250 a week. If the hon. Lady cares to look at what I am saying we have supported the introduction of through Community Care, that is extraordinarily generous. That is not generous; that is extraordinarily generous. (A Member: Hear, hear.)

520 If something has been introduced which is extraordinarily generous, that does not mean, of course, I accept that it is what people want or what people might expect, because some people have indicated, indeed have said in some of their public statements, that they believe that they too have built the Gibraltar economy – which in some instances is absolutely true – and that they too should be entitled to receive the same pension that a civil servant is taking because they have non-contributory final salary pensions. Well, Mr Speaker, I understand why people might wish that, but this Government, either as a political party or as a Government, has never said anything which can be suggested as being interpreted as a promise, commitment or otherwise that that is what we would provide. Far from it. What we said we would do is that we would provide something linked to average earnings, and in our view the Minimum Wage is linked to average earnings – indeed, it has gone up more than average earnings have gone up in our period – and we have provided that. If you are a single pensioner, what we have supported that Community Care have introduced is that you should receive not half of the Minimum Wage into your household but two thirds, because the two thirds for an individual is the calculation that is traditionally done in the context of Social Insurance payments and indeed other pension payments.

530 So, Mr Speaker, if the hon. Lady is saying that that is a subsistence wage, well, she is saying that the Minimum Wage is a subsistence wage. She can make that argument if she likes; we could all make the argument. I will tell her very frankly – let’s make no bones about it – I think the Minimum Wage is low. I sincerely wish we could raise it more in the future. I have an eye to some ideas; perhaps hon. Gentlemen opposite also. We would all wish to see those people who earn the lowest wages come up. They did not put it up as much as we did and in some years they did not put it up at all, but let’s wipe the slate clean. I am sure we would all – especially this year, Mr Speaker, what are they going to say? (Laughter) – wish to see the Minimum Wage go up more. Well, we have demonstrated by our actions every year that the Minimum Wage has gone up. (A Member: Hear, hear.)

545 If hon. Members make the argument that the Minimum Wage is a subsistence wage, they need to know that the Gibraltar Minimum Wage is in the G3 Group of the European Union. That means that we are in the third group of minimum wages in the European Union for those nations that enjoy the benefits of a Minimum Wage. The top third is the G3 – the top third. Two years ago, our Minimum Wage was almost double the Minimum Wage 500 yards across the Frontier. It is now not quite double because the election of a socialist government there gave that minimum wage a jump; we continued to grow and we suffered a reduction of the euro-pound by almost 20%-25%, so that is how there is an erosion between currencies.

565 But it is not legitimate, other than for the purposes of making an argument, wanting to be
heard and seeking to garner votes ... Jesus Christ is reputed to have said to St Peter, 'Come with
me and I will make you a fisher of men.' Well, Mr Speaker, arguments like that are designed to
be fishers of votes. But in order to be legitimate, those arguments have to be thought through
570 and in this instance, although she has made this argument before and I told her exactly the same
thing before, I cannot allow her to make the argument without challenging it on the basis that
actually this is an extraordinarily generous ... It is not an allowance, it is an extraordinarily
generous payment which the Government has supported that Community Care should introduce
in order to ensure that some of those who were genuinely in difficulty in that class of private
sector pensioners should have some support. Therefore, it is simply untrue to say that there are
575 people who are cast aside by institutions in our community. That is not the case.

Sometimes we have to have a bit of a reality check in Gibraltar. If you go to any European
economy and you say nobody in this economy, even if they have contributed not one penny to a
private pension scheme – *nobody* – is going to have less of an income than the Minimum Wage
as a couple in a household, and no individual less than two thirds of the Minimum Wage ... I
580 think that those are things that lead most, who are not making arguments seeking to garner
electoral support, to believe and then say that we are blessed to live in a place like Gibraltar, and
that I think is one of the blessings that we have supported the introduction of.

And so, therefore, when we talk about a moral apartheid, I think that we need to reserve
those arguments for the moments when they might be necessary. We have lots of things to
585 argue about which are going to engage us at a moral and human level and a level of conscience
in the remaining lifetime of this Parliament. This is not one of them in the context of what I have
told the House. I sincerely say – I am going to end with these remarks, and she knows that I say
these things to her with political combativeness but personal affection – it is unfair and it is
wrong to say that the Government has presided over anything that could be characterised as
590 moral apartheid when we have done quite the opposite and we have demonstrated a deep
commitment to wanting to assist those who came to us in the context of the arguments that
they put to us, although I do recognise that there are some in that collective who had an
expectation built upon themselves which was out of kilter with what is realistically possible.

For all of those reasons I am going to commend the Bill to the House in the knowledge that if
595 I move that the Committee Stage should be taken later today, because that requires only one
vote to stop it, we will not be able to progress and workers in our economy will not have the
benefit of this Bill as from tomorrow because one man is going to stand in the way.

Mr Speaker, when the time comes, our voting record will speak for itself on all matters, not
just those that appear to be most controversial.

600

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

Mr Speaker: I now put the question, (**Hon. R M Clinton:** Mr Speaker –) which is that a Bill for
an Act to make provision (**Hon. R M Clinton:** Mr Speaker –) with respect to the provision of
605 pension plans to employees employed in the private sector, to establish a Pensions
Commissioner, and for connected purposes, be read a second time. Those in favour? (**Members:**
Aye.) Those against? Carried.

Clerk: The Private Sector Pensions Act 2019.

610

**Private Sector Pensions Bill 2019 –
Committee Stage and Third Reading deferred to a future sitting**

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

Hon. R M Clinton: Mr Speaker, I would beg leave of the House ...

615

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

Some Members: Aye.

620

Some Members: No.

Hon. R M Clinton: Mr Speaker, I beg leave of the House to commit the Bill to a select committee of the House.

625

Mr Speaker: That must be dealt with by means of a motion.

Hon. R M Clinton: Yes, there is no notice required for the motion.

630

Mr Speaker: No, just put a motion down.

Hon. R M Clinton: Well, that is what I am doing, Mr Speaker.

Mr Speaker: In writing, please. I want to see the text of the motion.

635

Hon. R M Clinton: Well, just committing it –

Mr Speaker: It is a short motion. You should be able to draft it almost immediately: you ‘beg to move that the Bill be ...’ – that is all.

640

Hon. R M Clinton: Yes, okay. Will a Post-It do, Mr Speaker?

Mr Speaker: ‘I beg to move that the Bill be committed to a select committee’, or ‘that the Committee Stage be postponed’, whatever it is that you are seeking.

645

I draw attention to Rule 31(2): ‘The only amendment to the question permissible shall be one postponing the second reading to some subsequent date’, and that is to be done by means of a motion.

Hon. Chief Minister: What is it, the Second Reading, that the hon. Gentleman is trying to postpone? The Second Reading has passed and we have voted.

650

Mr Speaker: The Hon. Mr Clinton begs to move that the Bill be committed to a select committee of this House.

I now propose the question that the Bill be committed to a select committee of this House, and hon. Members may speak on that motion.

655

Hon. R M Clinton: Well, Mr Speaker, obviously I do not intend to say much, other than what I have already said and that the idea of committing the Bill to a select committee is that it can be given a lot more time and consideration by this House in terms of detail.

660 Failing the passing of that motion, Mr Speaker, as I have already given notice, I would be objecting to Committee Stage.

Mr Speaker: Does any hon. Member wish to speak on Mr Clinton's motion? The Hon. Chief Minister.

665 **Hon. Chief Minister:** Yes, Mr Speaker. This is a mechanism to seek to delay a Bill that is designed to create rights for working people in our economy. If the Government were to be susceptible to a criticism that we would accept with a heavy heart, it is that we have not moved quickly enough in respect of this provision, but what we are witnessing – and the Hon. Mr Isola
670 sometimes makes observations which manage to encapsulate in one word or phrase that which others of us may not have the ability to put so succinctly – is the attempt to con the House and to con working people into thinking that there is a good reason for delaying the consideration of the Committee Stage of the Third Reading of this Bill.

675 Mr Speaker, we have read the Bill already a second time, anyway, and we were about to vote the Committee Stage and Third Reading being taken today, yet the motion that the hon. Gentleman has moved I think is one that should be taken immediately after the Second Reading, not immediately when we are now –

Mr Speaker: Section 32.

680 **Hon. Chief Minister:** That is right, not now, where we were already voting going to the Committee Stage and Third Reading.

But that aside, Mr Speaker, the motion will not enjoy the support of the Government side of the House.

685 **Mr Speaker:** Okay. Does the hon. Lady wish to speak on the motion?

I now put the motion in the terms moved by the Hon. Roy Clinton. Those in favour? (**Some Members:** Aye.) Those against? (**Some Members:** No.) (*Interjections*)

690 Sorry, my apologies, I should have given you an opportunity to reply. The Hon. Roy Clinton.

Hon. R M Clinton: Thank you, Mr Speaker – I know this is not a mechanism that is used often enough in this place.

695 As I have said already, there is no great urgency to this Bill, in the sense that it does not start until 2021 at the earliest, and certainly, as I have already said, from this side of the House it will enjoy our support in principle but what we would like to do is make sure that the detail is there. As we all know, the devil is in the detail and we want to make sure that we get this absolutely right. Of course it is a matter of regret that the Government will not support the creation of a select committee to give such an important Bill due consideration.

Thank you, Mr Speaker.

700 **Mr Speaker:** I now put the motion in the terms moved by the Hon. Roy Clinton. Those in favour?

Hon. Chief Minister: I call a division, Mr Speaker.

705 **Mr Speaker:** You want a division, very well.

Clerk: P J Balban. (**Hon. P J Balban:** No.) J J Bossano. (**Hon. Sir J J Bossano:** No.) R M Clinton. (**Hon. R M Clinton:** Yes.) J E Cortes. (**Hon. Dr J E Cortes:** No.) N F Costa. (**Hon. N F Costa:** No.) D A Feetham. (**Hon. D A Feetham:** Yes.) J J Garcia. (**Hon. Dr J J Garcia:** No.) T N Hammond. (**Hon. T N Hammond:** Yes.) M D Hassan Nahon. (**Hon. Ms M D Hassan Nahon:** No.) A J Isola. (**Hon. A J**

Isola: No.) G H Licudi. (Hon. G H Licudi: No.) S E Linares. (Hon. S E Linares: No.) L F Llamas. (Hon. L F Llamas: Yes.) E J Phillips. (Hon. E J Phillips: Yes.) F R Picardo.

715 **Hon. Chief Minister:** In solidarity with working people, no.

Clerk: E J Reyes. (Hon. E J Reyes: Yes.) S J Sacramento. (Hon. Miss S J Sacramento: No.)

Voting resulted as follows:

FOR	AGAINST	ABSENT
Hon. R M Clinton	Hon. P J Balban	None
Hon. D A Feetham	Hon. Sir J J Bossano	
Hon. T N Hammond	Hon. Dr J E Cortes	
Hon. L F Llamas	Hon. N F Costa	
Hon. E J Phillips	Hon. Dr J J Garcia	
Hon. E J Reyes	Hon. Ms M D Hassan Nahon	
	Hon. A J Isola	
	Hon. G H Licudi	
	Hon. S E Linares	
	Hon. F R Picardo	
	Hon. Miss S J Sacramento	

720 **Mr Speaker:** There are 6 votes in favour of the motion and there are 11 against. The motion is defeated and therefore the position is that this Bill will now be committed to a Committee of the Whole House at a subsequent date to today, whenever that may be.

Public Services Ombudsman (Amendment) (University of Gibraltar) Bill 2019 – First Reading approved

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

The Hon. the Minister for Tourism, Employment, Commercial Aviation and the Port.

725

Minister for Tourism, Employment, Commercial Aviation and the Port (Hon. G H Licudi): Mr Speaker, I have the honour to move that a Bill for an Act to amend the Public Services Ombudsman Act 1998 to provide for the investigation of complaints by students about administrative acts and omissions of the University of Gibraltar, and for connected purposes, be read a first time.

730 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Public Services Ombudsman Act 1998 to provide for the investigation of complaints by students about administrative acts or omissions of the University of Gibraltar, and for connected purposes, be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Public Services Ombudsman (Amendment) (University of Gibraltar) Act 2019.

**Public Services Ombudsman (Amendment) (University of Gibraltar) Bill 2019 –
Second Reading approved**

Minister for Tourism, Employment, Commercial Aviation and the Port (Hon. G H Licudi):

735 Mr Speaker, I move that the Bill be read for a second time.

The purpose of this Bill is to extend the jurisdiction of the Ombudsman so as to enable him to investigate complaints by students regarding administrative actions taken by or on behalf of the University of Gibraltar. As with investigations with respect to other bodies, the Ombudsman will not be able, generally speaking, to conduct an investigation until an aggrieved person has exhausted the University's review and appeal process.

740 This initiative has come about as a result of a recommendation from the Gibraltar Regulatory Authority (GRA), which is the University's regulator, that the University have arrangements in place for an independent review of students' complaints. The GRA's recommendation, in turn, was based on the UK's Quality Assurance Agency standards for higher education providers. The recommendation was discussed and agreed with the University's Acting Vice-Chancellor and has been endorsed by me. I would add that the recommendation was also discussed with the Ombudsman, who agreed to the extension of this jurisdiction.

745 This is another example of the further maturing of the University of Gibraltar into an institution whose practices and procedures are up to the very highest international standards. It is, in fact, an institution that we can all be proud of.

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

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

755

Hon. E J Reyes: Mr Speaker, we thank the Minister for the explanation that he has just presented to this House, and certainly, in the spirit of wishing only but the best for the University of Gibraltar, we will be happy to support this Bill.

760 **Mr Speaker:** Does any other hon. Member wish to speak on the principles and merits? No.

Does the mover wish ...? No, no need to reply, so I will now put the question, which is that a Bill for an Act to amend the Public Services Ombudsman Act 1998 to provide for the investigation of complaints by students about administrative acts or omissions of the University of Gibraltar, and for connected purposes, be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

765

Clerk: The Public Services Ombudsman (Amendment) (University of Gibraltar) Act 2019.

Chief Minister (Hon. F R Picardo): Mr Speaker, I move that the House should now adjourn to Friday, 12th July at 11 o'clock in the morning.

770

Mr Speaker: The House will now adjourn to Friday, 12th July at eight in the morning. (**A Member:** No!) (*Laughter and interjections*) The Chair is slipping – I must chastise the Speaker! (*Laughter*) At 11 in the morning – I put it down in the diary and I do not know why I said eight! Very well.

775

The House adjourned at 4.23 p.m.