



PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

AFTERNOON SESSION: 3.35 p.m. – 8.03 p.m.

Gibraltar, Wednesday, 30th January 2019

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The Gibraltar Parliament

The Parliament met at 3.35 p.m.

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

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

PRAYER

Mr Speaker

CONFIRMATION OF MINUTES

Clerk: Meeting of Parliament, Wednesday, 30th January 2019.

Order of Proceedings: (i) Oath of Allegiance; (ii) Confirmation of Minutes – the Minutes of the last meeting of Parliament, which was held on 20th September, 18th October, 8th and 22nd November, and 6th, 14th, 20th and 21st December 2018.

Mr Speaker: May I sign the Minutes as correct? (**Members:** Aye.)

Mr Speaker signed the Minutes.

COMMUNICATION FROM THE CHAIR

Request re disclosure of financial information of wholly owned Government companies – Ruling by Mr Speaker

Clerk: (iii) Communications from the Chair.

Mr Speaker: On 13th September 2018 the Hon. Roy Clinton wrote to me requesting that I make a ruling to compel the Government to disclose financial information regarding wholly owned Government companies.

The nub of the argument put forward by Mr Clinton is that it is in the public interest for the financial information in question – in particular, full accounts – to be disclosed. There is another argument, which is that this financial information is received and held by the Government ‘in accordance with its constitutional and public duties and that they are answerable to Parliament in respect of that information’.

In my view, there is no clear basis for the Speaker to make the requested ruling. The underlying reason for my conclusion has to do with the Speaker’s role, which is to chair the proceedings of Parliament and to ensure that parliamentary procedure is followed in accordance with Standing Orders. Specifically, as regards the public interest, the question as to who decides what is in the public interest is a substantive one for politicians, particularly the Government of

25 the day, and not for the Speaker to decide. It is my considered view that the Speaker would be overreaching his position were he to make such a ruling, since the public interest is ultimately to be determined by the Crown on the advice of Ministers.

As regards the Government's accountability to Parliament, there can be no questions that Ministers are responsible to Parliament for the conduct of their Ministry and for the Government as a whole. Ministerial responsibility is central to the parliamentary system because it ensures the accountability of the Government to the legislature and thus ultimately to the people.

However true this may be as a general proposition, the accountability of companies with separate legal personality, boards of directors, accounts etc., is a distinct matter, except of course to the extent that a Minister may himself be a director of one of these companies or is responsible for its day-to-day operations. Even here, however, it is not clear that it is for the Speaker to compel disclosure of full financial information.

PETITIONS

Clerk: (iv) Petitions – the Hon. Dr J E Cortes.

40 **Minister for the Environment, Energy, Climate Change and Education (Hon. Dr J E Cortes):** Mr Speaker, on behalf of the Hon. A J Isola, I beg to move that the Petition standing in his name, signed by 102 persons, be laid on the table.

As I do so, Mr Speaker, in order to clarify, we were informed by the Clerk to the House that this Petition can only be submitted by one Member. It was the intention to have this presented jointly by Minister Isola and the Hon. Daniel Feetham. As this has not been possible, I am presenting it on behalf of Minister Isola but acknowledge the support for the filing of the Petition by the Hon. Mr Feetham.

Mr Speaker: Ordered to lie.

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

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

Chief Minister (Hon. F R Picardo): Mr Speaker, before I move the suspension of Standing Orders, may I thank all Members of the Parliament and you for the sensitive way in which you dealt with my failure to attend the last meeting of last year and the kindnesses and remarks which have been extended to me and my family by all Members of the House.

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

60 **Mr Speaker:** I now move the suspension of Standing Orders as explained by the Chief Minister. Those in favour? (**Members:** Aye.) Those against? Carried.

I also want to confirm that the two Bills which are on today's Agenda have both been certified as being urgent.

Order of the Day

BILLS

FIRST AND SECOND READING

Parliament (Amendment) Bill 2018 – First Reading approved

Clerk: Bills – First and Second Reading.

65 A Bill for an Act to amend the provisions of the Parliament Act to provide for an open register
of electors.

The Hon. the Deputy Chief Minister.

Deputy Chief Minister (Hon. Dr J J Garcia): I have the honour to move that a Bill for an Act to
70 amend the provisions of the Parliament Act to provide for an open register of electors be read a
first time.

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the provisions of
the Parliament Act to provide for an open register of electors be read a first time. Those in
75 favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Parliament (Amendment) Act 2019.

Parliament (Amendment) Bill 2018 – Second Reading – Debate commenced

Deputy Chief Minister (Hon. Dr J J Garcia): Mr Speaker, I have the honour to move that a Bill
to amend the provisions of the Parliament Act 1950 to provide for an open register of electors
be read a second time.

80 The Bill before the House today was first published as a Command Paper on 5th December
2018. This followed consultation between the Clerk of the Parliament, the Government, the
Opposition and the independent Member. I am moving the Bill today on behalf of the
Government but against the background that there is a consensus already across all sides in this
House.

85 There was, Mr Speaker, one response to the Command Paper.

The Chief Minister, as you say, has certified the Bill as urgent on the advice of the Clerk to the
Parliament, given that a canvass for a new register needs to happen soon.

The procedure for compiling a register of electors to the Gibraltar Parliament has been in
need of modernisation for a very long time. The House will have noticed that we are amending
90 an act that dates back to 1950. The problems that we seek to address are the complaints made
by people after a General Election that they were not on the register and were unable to
exercise their right to vote. It is true that every time the window is open for electoral
registration this process is given widespread publicity. The media, both traditional and
electronic, is used to make the point that the register is open and that people should check and
95 make sure that they are on it. A house-to-house canvass is also conducted and forms are sent to
all households in Gibraltar. This leads to the production of a draft register of electors. There is

then a narrow window of two weeks during which voters can check whether they are in the register or not. The register is then closed at the end of this period and nobody else may be added to it, even though the election could still be months away. Mr Speaker, despite the informational campaign that is conducted every time that a new register is in the pipeline, the problem continues of people who are entitled to be in it failing to include themselves in the register.

It was the inclusion of Gibraltar in the franchise for European elections that laid bare the sharp contrast between the compilation of this European register and the one for elections to the Gibraltar Parliament. The procedure for European elections is that the open or rolling register can be amended or updated at any time during its existence. The Government takes the view that the right of an eligible person to register to vote should be the paramount factor when the register of electors is being compiled and that this right should not be curtailed by administrative considerations.

The Bill before this House today provides for a canvass when you register to reproduce this year in 2019. This would have happened anyway under the existing system. However, when this new register is published in June it will continue to be open until five days before the date of a General Election. This is new. In the past, as I said, the register would be closed in June and if the election took place six months later and an eligible voter was not on the register, then they could not vote. The narrow two-week period for inclusion between the publication of the draft register and publication of the new register will be eliminated if the House approves the Bill. There will now be more time for voters to register or indeed to amend their details if, for example, they have changed their address or any other relevant circumstances.

The Bill also adopts the system of proxy voting which is used for European elections. In order to register as a proxy, a voter must be 18 years old or over and be included in the register. This means that voters will continue to be able to vote in person by proxy or by post. The roving ballot box will be maintained.

I will now move to explain the technical details of the legislation.

Clause 1 sets out the short title to the Bill.

Clause 2 states that the Act will commence on the date of publication.

Clause 3 amends the Parliament Act with the following new provisions.

It allows for a person who has not attained the age of 18 and/or not complied with the qualifying-period requirements at the time of registration to register and to be able to vote if those requirements are met before election day.

It empowers the registration officer to require the applicant applying for registration to provide documentation and proof to show that the applicant has lived in Gibraltar during the whole of the qualifying period.

It sets out that, to be included in the register, an applicant must have been continuously living in Gibraltar for a period of not less than six months prior to the date on which this application for registration in the register of electors is received by the registration officer.

Section 5(1) of the Act is amended so as to enable the registration officer to publish a register of electors by no later than 1st June 2019, which register shall come into force upon publication.

Section 5(1) is further amended by giving the registration officer, after the register has been published on 1st June, the power to register applicants who are entitled to be registered or change the particulars of those who are already in the register.

Section 5(2) provides for consequential amendments which permit the registration officer to canvass for the purposes of compiling the register of electors to be published in June 2019.

Section 5 is further amended by the insertion of a new section 5(3) that provides for the registration officer to prepare and publish on or before 1st June each year a register of electors. That register shall include all additions to and changes of particulars made to the register of electors during the period from and including the date on which the register was previously published to the date of the next publication of the register.

Section 6 of the Act is substituted by the new section 6 that provides for the maintenance of the register.

150 Section 19 provides for a consequential amendment as a result of having an open register.

Section 25 is amended by the insertion of a new subclause (ec) to enable persons wishing to vote by proxy to appoint a proxy and prescribing the forms and procedure for proxy voting.

Section 48 is amended so as to extend applicable criminal sanctions for individuals who interfere with voters to include proxy voters.

155 Mr Speaker, the proposed amendments to the Parliament Act take advantage of what we have learnt from holding European elections in Gibraltar. In this sense, it will be a lasting legacy of our participation in European elections as we now prepare to leave the European Union.

160 The Bill also furthers the democratic agenda by removing administrative burdens and providing safeguards to ensure that those people who are entitled to vote are able to register in order to exercise this fundamental right.

Mr Speaker, I close by thanking the Clerk of the House Paul Martinez, the Opposition and the independent Member for their constructive approach during the consultation process.

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

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

Hon. E J Phillips: Mr Speaker, this Bill will enjoy the support of Her Majesty's Opposition and is, in our view, a fine example of the Government and Opposition working together.

170 My thanks, of course, and I echo the thanks delivered by the Hon. Deputy Chief Minister in respect of the work done by the Clerk of the Parliament, Paul Martinez and his staff Frances, Kevin and Danny, who have co-ordinated the consultation process over these important changes in the way in which our people can register to vote. We are grateful for them organising such meetings. We have had about three in total, I believe, and I am grateful to the Parliament staff for organising those.

175 Mr Speaker, the introduction of a rolling register of electors was introduced by statute in the United Kingdom via the Representation of the Peoples Act 2000 and we are pleased to see a move towards modernising a process which will allow as many people who are entitled to vote to register themselves accordingly.

180 We note that this amendment in large measure adopts recommendation 21 of the Commission on Democratic and Political Reform, the report of which was published some six years ago now. I believe that it is right, Mr Speaker, to thank you, in your capacity of chairperson of the Commission, and other members of the commission for their considerations on this particular aspect which serves as an important record of the development of our electoral system. I am sure, Mr Speaker, there will be further opportunities to debate some of the other recommendations made in your report in due course.

I am grateful. (*Banging on desks*)

190 **Mr Speaker:** Does any other hon. Member wish to speak on the general principles and merits of this Bill? I call upon the mover to reply, then.

I now put the question, which is that a Bill for an Act to amend the provisions of the Parliament Act to provide for an open register of electors be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

195 **Clerk:** The Parliament (Amendment) Act 2019.

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

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

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

**European Union (Withdrawal) Bill 2018 –
First Reading approved**

205 **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 Act; to provide for the continuation and validity of any administrative act or decision made pursuant to such 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 membership of the European Economic Area; to provide such transitional or other provisions as are deemed necessary, and for connected purposes.

210 The Hon. the Deputy Chief Minister.

215 **Deputy Chief Minister (Hon. Dr J J Garcia):** Mr Speaker, I have the honour to move that a Bill for the purposes set out by the Clerk be read a first time. (*Laughter*)

Mr Speaker: I will read out the long title – I think the Hon. Sir Joe Bossano will agree with me it is probably the longest title since 1972!

220 I now put the question, which is that 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 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 membership of the European Economic Area; to provide such transitional or other provisions as are deemed necessary, and for connected purposes be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

230 **Clerk:** The European Union Withdrawal Act 2018.

**European Union (Withdrawal) Bill 2018 –
Second Reading –
Debate commenced**

Deputy Chief Minister (Hon. Dr J J Garcia): Mr Speaker, I have the honour to move that the Bill now be read a second time.

235 I want to start by placing on record the thanks of the Government to the Attorney General, Michael Llamas, and to the legal team headed by Paul Peralta – and the team behind me – for the huge amount of work that has gone into this Bill. I also want to thank them for the informative presentation that they delivered to the Brexit Select Committee of this Parliament on this subject on Monday.

240 The Bill before the House today was first published as a Command Paper on 27th November 2018. There were no comments received and no questions asked in response to this consultation. The Bill was then published on 20th December 2018.

245 The Chief Minister has certified the Bill as urgent. This shortens the period of time for consideration of the Bill before it can be taken by this House. However, in practice, this reduction has had little effect, given that the standard six weeks would have been up in a day or two anyway. The reality is that, from the publication of the Command Paper until today, the contents of the Bill have already been in the public domain for about nine weeks. This provides ample time in which to consider its terms, and in any case more time than the standard six weeks.

250 Mr Speaker, this Bill follows the approach of the United Kingdom's European Union (Withdrawal) Act. It repeals our European Communities Act on the day the United Kingdom and Gibraltar leave the European Union. It ends the supremacy of European Union (EU) law in Gibraltar. It converts EU law as it stands at the moment of exit into domestic Gibraltar legislation. It also creates the power to make subsidiary legislation to enable corrections to be made to those laws that would otherwise no longer operate appropriately once we leave the European Union. This will allow our domestic legal system to continue to function correctly outside the EU.

260 In presenting the Bill on behalf of the Government, I do so with mixed feelings. In the first instance, as an avowed pro-European, this is obviously the cause of considerable personal and political pain. I still recall when my hon. Friend the Chief Minister and I first travelled to Brussels to visit the European institutions together. This was at a time when he was still a student and when neither of us were in this House. That visit sowed the seeds for the policy of taking Gibraltar closer to Europe and bringing Europe closer to Gibraltar. Who would have said then that, following a well-known chain of events, we would now find ourselves in a position where we are taking Gibraltar out of the European Union instead?

265 Europe has had a profound effect on all our lives in one way or another. It has shaped the Gibraltar we know today. It has dominated the legislative agenda of this Parliament. It has placed the EU stamp on our passports, our identity cards, our health cards, our driving licences and other documents. Everyone in Gibraltar will have been impacted by the EU in one way or another. It is no surprise that the complexity of the process that we embark upon today has rightly been described as trying to remove the egg from a cake after baking it.

270 Part of that cake to be undone covers elections to the European Parliament. We legislated last year to remove the legal trigger which stipulated the commencement of a canvass for a register for European elections. Our departure from the EU at the end of March means that no more UK MEPs will be elected. We will lose an important voice in the European Parliament. Those six MEPs for the combined region of the South West and Gibraltar had helped to raise our profile.

Gibraltar has also raised its profile in Brussels over the years in other ways. The Government upgraded our representative office there. We engaged Sir Graham Watson to head it and transferred Daniel D'Amato there as Legal Officer. The role of the office has proved to be

280 invaluable almost from the moment it opened. It has assumed even greater importance in the
context of our planned departure from the EU. Meetings between Gibraltar Ministers and
European Commissioners, which were the exception, soon became the norm. We have engaged
with the top players from the different political groups in the European Parliament. We have
285 met countless committee chairs and addressed committees of the Parliament and its political
groups. Indeed, with the force of our arguments, we have been able to win votes in the
European Parliament and in its committees.

Mr Speaker, the House will recall the campaign that was organised to counter the Margallo
delays at the border. Together with the United Kingdom and on the back of hundreds of
complaints from EU nationals, we embarrassed the European Commission into making
290 inspection visits to the Gibraltar-Spain Frontier for the first time. After many years in this
business, my view is that Gibraltar had slowly started to turn the tide. Much of this work was
played out in public, but some of the work, a considerable part of it, has been conducted behind
the scenes and away from the glare of publicity.

In the wider scheme of things, it was all going in the right political direction, and then
295 17 million voters in the United Kingdom decided that their future, and ours, lay outside the
European Union.

I said in my opening remarks that I stand here today with mixed feelings. This is because the
European Union is far from perfect. There are well-known instances where the European
institutions have let Gibraltar down, all of them: the Court, the Commission, the Council and the
300 Parliament. This started when Spain joined the European Community in 1986. The Commission
often abandoned its role as the guardian of the Treaties when it came to considering Gibraltar.
They have looked the other way instead of applying EU law to a territory of the Union and to
citizens of the Union here. Our rights have had to be fought for every inch of the way, both at a
political level and even in court. More recently, the inclusion of clause 24 in the negotiating
305 guidelines of the Council came as an underhand blow to a country that had voted 96% to remain
in the EU. It was a slap in the face to thousands of enthusiastic Europeans in this small corner of
the EU. So, yes, the EU has let us down. They have allowed Spain to abuse its position as they
sought to advance their anachronistic claim to our sovereignty. Looking forward, the UK is a
member state that is leaving and Spain is a member state that remains. We all know what that
310 will mean.

In spite of all this, we also know where the best interests of Gibraltar would lie. The Chief
Minister has already said that the best outcome for us would have been for the UK to revoke
Article 50. The consequence of that would have been that the United Kingdom and Gibraltar
remain in the European Union with our existing terms of membership. Effectively, we would turn
315 the clock back to before the 2016 Referendum and continue from where we had left off, almost
as if we had woken up from a bad dream. But the vote was a vote to leave and we have to work
towards an orderly, sensible and well-managed Brexit.

It is impossible to say what will happen next. The votes in the House of Commons last night
have swung the pendulum back in the direction of the Withdrawal Agreement. However, the
320 United Kingdom political and parliamentary life has never been so unpredictable. We do know
that we have to prepare for every eventuality of Brexit. That is why this EU Withdrawal Bill
comes before Parliament today. This legislation will apply whether we leave the European Union
with a Withdrawal Agreement in place or whether there is a no-deal Brexit.

The main purpose of the Bill, as I said earlier, is to provide a functioning statute book on the
325 day the UK and Gibraltar leave the EU. As a general rule, the same legal framework will apply the
day after exit as applied the day before. This means, to recap, that the Bill performs three main
functions: it repeals the European Communities Act; it converts EU law as it stands at the
moment of exit into domestic law before the UK leaves the EU; and it creates powers to make
subsidiary legislation to enable corrections to be made to the laws that would otherwise no
330 longer operate appropriately once Gibraltar has left the EU.

Mr Speaker, I will now turn to a clause-by-clause analysis of the Bill, which will be helpful to hon. Members before we move on to the Committee Stage. I will be doing this in considerable detail in order to assist Members opposite and also to make clear the intention of the Government in relation to each particular clause, so I ask the House to bear with me.

335 Clause 2 sets out the provisions of the Bill that will commence on the day of publication. The remaining provisions will come into force on the day or days appointed by the Chief Minister by notice in the Gazette, and different days may be appointed for different provisions and for different purposes. The United Kingdom have already commenced certain sections of their Act by way of subsidiary legislation and so we have therefore added these to our own
340 commencement section.

Clause 3 defines certain terms used throughout the Bill and makes further provision about the meaning of references to exit day.

Subclauses (3) and (4) allow the Chief Minister by regulations to amend the definition of 'exit day' if the day or time at which the Treaties are to cease to apply to the UK and Gibraltar is
345 different from that specified in the definition of exit day in subclause (1).

Subclause (5) defines 'the Treaties'.

Subclause (6) provides that references to Gibraltar's membership of the EU are to be construed in the context of the UK's membership of the EU and Gibraltar's status as a European territory for whose external relations the UK is responsible.

350 Subclause (7) provides that references in the Bill to matters which continue to be domestic law include matters which would have continued to exist regardless of the saving in clause 5. This makes clear that it is not necessary to consider whether an enactment might have been subject to implied repeal as a result of the repeal of the European Communities Act in order to bring it within the ambit of clause 5 and therefore the definition of 'retained EU law'.

355 Subclause (8) provides that references to retained EU law brought in by clause 7 include any modifications which may be made to that law from time to time.

Subclause (9) provides that any reference in the Bill to the former Article 34(2)(c) of the TEU, which concerned decisions in the field of police and judicial co-operation in criminal matters, is a reference to that Article as it applied before the Lisbon Treaty. It is necessary to include these
360 references in the Bill to ensure that it accurately reflects the legal basis for these measures.

Subclause (10) provides that references in the Bill to certain provisions of the TEU and TFEU include references to those provisions as they apply to the Euratom Treaty.

Subclause (11) lists various expressions used throughout the Act and the corresponding provision at which their meaning is located.

365 Clause 4 repeals the European Communities Act and section 23(g) of the Interpretation and General Clauses Act on exit day. The House knows that the European Communities Act is the principal piece of domestic legislation which gives effect to EU law and which gives EU law supremacy over Gibraltar law. The main effects of repealing the Act are to reflect the end of the supremacy of EU law in our domestic legislation. We are also removing the mechanism which
370 enable the flow of new EU law into Gibraltar law. This clause also repeals section 23(g) as this is the section most relied on in Gibraltar to transpose EU directives and also to give effect to EU regulations and decisions.

Clause 5 provides that existing domestic legislation which implements EU law obligations – EU-derived domestic legislation – remains on the domestic statute book after Gibraltar leaves
375 the European Union. Generally, subsidiary legislation lapses automatically when the primary legislation under which it is made ceases to have effect, unless saved expressly. Although section 34 of our Interpretation and General Clauses Act saves any subsidiary legislation where the Act or part of an Act is repealed, this section only operates unless a contrary intention appears. It is arguable that repealing the European Communities Act demonstrates a contrary
380 intention – i.e. the intention of revoking all subsidiary laws made in pursuance of our obligations under the EU. It would therefore not be appropriate to rely on this section and is necessary to preserve the necessary legislation for the avoidance of doubt.

This clause is also necessary because there would be doubt as to whether legislation which presupposes membership of the EU would work if the UK is not a member of the EU. The same applies for legislation which relates or refers to the European Union itself.

This clause also makes it clear that those categories of legislation which fall within the category of retained EU law, so that the powers of the Bill can be used to ensure that they still function properly after EU exit.

Subclause (1) provides that EU-derived domestic legislation will remain in place and continue to have effect on and after exit day as it has effect before exit day.

Subclause (2) describes the type of legislation which forms part of this term 'EU-derived domestic legislation' or 'preserved legislation'.

Subclause (3) provides that the preservation of retained EU legislation is subject to the exceptions in clause 8 and Schedule 1.

Mr Speaker, I move on now to clause 6. Direct EU legislation does not form part of our legal system in the same way as domestic legislation. It is given legal effect by section 3(1) of the European Communities Act, which describes how such legislation is to have effect 'in accordance with the Treaties'. This legal order is possible because the UK and Gibraltar are a part of the EU and subject to those Treaties. Upon exit, we will no longer be bound by the Treaties and so EU legislation can no longer have effect in accordance with them.

Subclause (1) provides for the conversion into domestic law of direct EU legislation. The conversion is subject to the measure being operative immediately before exit day. Where legislation is converted under this clause, it is the text of the legislation itself which will form part of domestic legislation.

Subclause (2) describes the types of legislation which form part of this 'direct EU legislation'. These are essentially EU regulations, certain EU decisions and EU tertiary legislation. Under this clause, direct EU legislation is only converted and incorporated into domestic law 'so far as operative immediately before exit day'. It therefore does not include measures that did not apply to Gibraltar immediately before exit day.

Sub-clause (3) clarifies what 'operative' means.

Sub-clause (4) clarifies that this clause would only convert the English language version of existing direct EU legislation into domestic law.

Sub-clause (5) provides that the saving of direct EU legislation is subject to the exceptions contained in clause 8 and Schedule 1.

Clause 7 ensures that any remaining EU rights and obligations which do not fall within clauses 5 and 6 continue to be recognised and available in domestic law after exit. This includes, for example, directly effective rights contained within EU Treaties. Any directly effective rights converted into domestic law as a result of this clause would be subject to amendments or repeal via subsidiary legislation made under clause 11.

Subclause (2) sets out exceptions to the conversion under subclause (1). Firstly, it provides that the clause does not bring in any rights, powers etc. if they already form part of domestic law by virtue of clause 6. Secondly, the clause excludes directly effective rights arising under an EU directive that are not of a kind recognised by a court or tribunal before exit day.

Subclause (3) clarifies that this clause is also subject to the exceptions in clause 8 and Schedule 1.

Mr Speaker, clause 8 sets out two exceptions to the saving and incorporation of EU law provided in clauses 5, 6 and 7. The first exception is the principle of the supremacy of EU law. The principle of supremacy of EU law means that domestic law must give way if it is inconsistent with EU law. In the UK and in Gibraltar this can mean that a court must disapply an Act of Parliament, or a rule of common law, or strike down subsidiary legislation, even if the domestic law was made after the relevant EU law.

The effect of subclauses (1) and (2) is that this principle will not apply to legislation which is passed on, or made on or after exit day. So, for example, if an Act is passed on or after exit day

which is inconsistent with EU law which is preserved or converted by the Bill – for example, a retained EU regulation – that new Act of Parliament will take precedence.

Where, however, a conflict arises between pre-exit domestic legislation and retained EU law, subclause (2) provides that the principle of supremacy of EU law will, where relevant, continue to apply as it did before exit. So, for example, a retained EU regulation would take precedence over pre-exit domestic legislation that is inconsistent with it.

Subclause (3) sets out that the principle of supremacy can continue to apply to pre-exit law which is amended on or after exit day where that accords with the intention of the modifications.

The second exception is the Charter of Fundamental Rights. The Charter, according to the UK's own Explanatory Notes, did not create new rights, but rather codified rights and principles which already existed in EU law. Therefore, by converting the EU acquis into domestic law, those underlying rights and principles will also be converted into domestic law, as provided for in this Bill. References to the Charter in the domestic and CJEU case law, which is being retained, are to be read as if they referred to the corresponding fundamental rights.

Subclause (5) makes clear that whilst the Charter will not form part of domestic law after exit, this does not remove any underlying fundamental rights or principles which exist. EU law which is converted will continue to be interpreted in the light of those underlying rights and principles.

Subclause (6) provides that further limited exceptions to the preservation and conversion of EU law have effect as set out in Schedule 1.

Now clause 9, Mr Speaker. This sets out how retained EU law is to be read and interpreted on and after exit day.

Subclauses (1) and (2) set out the relationship between the CJEU and domestic courts and tribunals after exit. These subclauses provide that: (1) decisions of the CJEU made after exit day will not be binding on domestic courts and tribunals; (2) domestic courts cannot refer cases to the CJEU on or after exit day; and (3) domestic courts and tribunals are able to have regard to actions of the EU taken post-exit, including CJEU decisions, where they are relevant to any matter the court or tribunal is considering. This ability, however, is limited by the other provisions in this clause. So, for example, although a court may have regard to post-exit CJEU decisions, it cannot have regard to such an extent as it considers itself to be bound by them. This is ruled out in subclause (1).

Subclause (3) provides that any question as to the meaning of unmodified retained EU law will be determined in Gibraltar courts in accordance with the relevant pre-exit CJEU case law and general principles.

Clauses (4) and (5) set out that, unlike other courts, the Privy Council are not bound by either retained general principles or retained CJEU case law. After exit day, retained CJEU case law will have the same binding or precedent status in domestic law and tribunals as existing decisions of the Privy Council. This means that the Privy Council will be able to choose to depart from previous CJEU case law, if it so determines. In doing so, the Privy Council is required to apply the same tests as they would apply when considering whether to depart from their own previous decisions.

Subclause (6) sets out that retained EU law which has been amended on or after exit day can be determined in accordance with CJEU case law and the general principles where that accords with the intention of the amendments.

Subclause (7) provides definitions of the terminology relevant to this clause.

Mr Speaker, clause 10 makes provision about the status of retained EU law.

Subclause (1) clarifies that EU-derived domestic legislation which is saved by clause 5 will continue as legislation of the same type as it was before exit day.

Subclauses (2) to (4) restrict the way in which retained EU law brought in by clauses 6 and 7 can be amended by primary and subsidiary legislation. In summary, it broadly provides that such law can be amended by: Acts of Parliament; powers to make subsidiary legislation which explicitly or implicitly provide that they may amend such law, which includes the powers in

clauses 11, 12 and 15 of this Bill; and powers to make subsidiary legislation which may amend such law by virtue of the glosses in paragraphs 3 to 6 or 8 to 10 of Schedule 4.

Subclause (5) signposts provisions about the status of retained EU law in other provisions of the Act.

490 Subclause (6) provides the following definitions, which divide retained direct EU legislation brought in by clauses 6 and 7 into two categories for the purposes of amendability. This first is retained direct minor EU legislation, which broadly covers EU tertiary legislation and EU decisions. The second is retained direct principal EU legislation, which broadly covers EU regulations which are not also EU tertiary legislation.

495 Clause 11, Mr Speaker, gives a Minister the power to make regulations to deal with problems that would arise on exit in retained EU law. This includes the law that is preserved and converted by clauses 5 to 8. Those problems or deficiencies must arise from Gibraltar's withdrawal from the European Union.

Subclause (2) lists the sorts of deficiencies that the power can deal with. These include: 500 provisions that have no practical application after Gibraltar leaves the EU; provisions on functions that are currently being carried out in the EU on the UK and consequently on Gibraltar's behalf – for example, an EU Agency; provisions on reciprocal arrangements or rights between the UK and Gibraltar and other EU member states that are no longer in place or are no longer appropriate; any other arrangements or rights, including through EU treaties, that are no longer in place or no longer appropriate; and EU references that are no longer appropriate. 505

Subclause (3) also provides that deficiencies not on the list but which are of a similar kind to those on the list in subclause (2) are within the scope of the correcting power. Subclause (3) also contains a delegated power for the Minister to provide for additional sorts of deficiencies.

Subclause (4) provides that the retained EU law in Gibraltar is not deficient just because the 510 EU subsequently makes changes to that law after Gibraltar has left, or planned changes come into effect after our exit.

I repeat: the law is being preserved and converted as it was immediately before exit day. The EU might go on to make changes to its law but those subsequent changes and the consequent divergence between Gibraltar and EU law do not by themselves automatically make Gibraltar 515 law deficient.

Subclause (5) provides that subsidiary legislation made under the power in this clause can do anything an Act of Parliament might do to deal with deficiencies. This could include altering Acts of Parliament where appropriate.

Subclause (6) provides, non-exhaustively, for what the subsidiary legislation made under this 520 power can do. For example, it can transfer the functions of EU authorities to a public authority in Gibraltar. These functions might include the ability to set rules or create standards, which are currently made by the EU as non-legislative acts – delegated and implementing acts. The powers can be used to repeal, amend or replace Acts of the retained law.

Subclause (7) provides that the meaning of deficiency can cover a deficiency that arises out of 525 withdrawal taken together with the operation of, or integration between, provisions of the Bill or provisions made under the Bill.

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 530 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.

Subclause (1) provides a Minister with the power to make legislative changes for the purposes of implementing a withdrawal agreement. Regulations made using this power are 535 restricted to implementing only those measures that should be in place for exit day and this power is not intended to be used for post-exit modifications.

Subclause (2) provides that subsidiary legislation made under the power in this clause is capable of doing anything an Act of Parliament can do, including modifying the Bill itself, subject to the restrictions specified in subclause (3).

540 Clause 13 gives effect to Schedule 2 on rules of evidence for retained EU law and other relevant documents and instruments.

Clause 14 gives effect to Schedule 3 on how the powers to make regulations in the Bill are exercisable.

545 Clause 15 allows the Minister to make regulations which are appropriate as a consequence of the Bill.

Subclause (2) clarifies that consequential provision might include modifying – such as amending, repealing or revoking – both primary and secondary legislation.

Subclause (3) gives effect to Parts 1 and 2 of Schedule 4, which contain consequential provisions.

550 Subclause (4) contains a power to provide for transitional provisions by regulations.

Subclause (5) gives effect to Parts 3 and 4 of Schedule 4, which contain transitional, transitory and saving provisions.

555 Clause 16 makes clear that nothing in this Bill prevents Gibraltar from replicating in domestic law any EU law made on or after exit day, or continuing to participate in, or have a formal relationship with, the agencies of the EU after exit day.

The Bill does nothing to restrict Gibraltar in relation to its future relationship with EU law or with EU agencies. This means that this clause does not affect how this Act or any other law operates.

560 Mr Speaker, Schedule 1 sets out some further exceptions to the preservation and conservation of EU law provided for under clauses 5, 6 and 7. This Schedule should be read together with paragraphs 13 to 15 of Part 4 of Schedule 4.

Paragraph 1 provides that, post-exit, no challenge can be brought in the courts to retained EU law on the basis that immediately before exit day an EU instrument – for example, an EU regulation or decision – was invalid.

565 This restriction is, however, subject to the exceptions at subparagraphs (2) and (3). First, any decision of the CJEU which predates exit day about the validity of the instrument will not be affected. Secondly, the Government or a Minister has the power to describe in regulations types of challenge to validity which will be capable of being brought on or after exit day. Subparagraph (3) provides that any such regulations may enable challenges which, prior to exit, would have proceeded against an EU institution to proceed instead against a public authority following exit.

Paragraph 2 provides that only EU general principles which have been recognised in CJEU cases decided before exit will form part of domestic law after exit. These include, for example, fundamental rights, non-retroactivity, and proportionality.

575 Paragraph 3 provides that there is no right of action in domestic law post-exit based on failure to comply with EU general principles. Further, domestic courts will not be able to rule that a particular act was unlawful or quash any action taken on the basis that it was not compatible with the general principles. Courts will, however, be required under clause 9 to interpret retained EU law in accordance with retained general principles.

580 Paragraph 4 provides that the right to claim damages against the state for breaches of EU law, known as *Francovich* damages, will not be available after exit.

585 Paragraph 5 clarifies that references in clause 8 and this Schedule to the principle of supremacy of EU law, the Charter of Fundamental Rights, any general principle of EU law or the rule in *Francovich* are to be read as references to that principle, Charter or rule as they stand at exit day and not as they will operate in the EU in the future.

Mr Speaker, Schedule 2: generally, the meaning or effect of the law in other jurisdictions is treated as a question of fact to be proved in legal proceedings by evidence, rather than determined by a judge as a question of law. Section 6 of the European Communities Act clarified

that when Gibraltar joined the EU judges were to determine the meaning or effect of EU
 590 Treaties, or the validity, meaning or effect of any EU instrument, as a question of law, in
 accordance with the principles laid down by and relevant decisions of the CJEU. The EU law
 which is being retained by the Bill will become domestic law, and so fall to be interpreted by
 judges in this country. Some EU law will not become retained EU law but may still be relevant to
 the interpretation of the retained EU law. For example, a court may have to consider the
 595 meaning of an EU directive when interpreting domestic regulations made to implement that
 directive.

Schedule 2, paragraph 1 therefore provides that, to the extent that determining the meaning
 or effect of EU law is necessary for a court to interpret retained EU law, judges will continue to
 determine that meaning or effect themselves as a question of law, rather than treat it as a
 600 question of fact.

Currently, Acts of Parliament and the EU Treaties are judicially noted and so are deemed to
 be within the knowledge of the court and not required to be proved to the court. Paragraph 2
 provides that the Minister can make regulations which provide for judicial notice to be taken of
 a relevant matter and for the admissibility in legal proceedings of evidence of both a relevant
 605 matter and instruments and documents issued by or in the custody of an EU entity, to ensure
 that appropriate evidential rules can be put in place to reflect the new legal landscape after exit.

Subparagraph (2) of paragraph 2 provides that regulations made under subparagraph (1) may
 require that certain conditions must be fulfilled, such as conditions regarding certification,
 before any evidential rules are satisfied.

610 Subparagraph (3) enables regulations providing for evidential rules to modify legislation to
 ensure that any new rules can properly sit alongside existing evidential provisions in other
 enactments.

Subparagraph (4) provides that such regulation may not modify an Act passed or made after
 this Bill becomes an Act.

615 Subparagraph (5) defines what the 'relevant matters' are in respect of which regulations can
 be made under this paragraph, being retained EU law, EU law, the EEA Agreement, or anything
 specified in regulations which relates to those matters.

Mr Speaker, I move on now to Schedule 3. Paragraph 1 applies to all powers in the Bill. It
 provides that all powers in the Bill can be used to modify retained EU law and can make
 620 provisions in different ways for different cases or descriptions of case, in different circumstances
 or for different purposes, and that they include the power to make supplementary provision and
 to restate retained EU law.

Paragraph 2 provides that the powers in the Bill may overlap without that overlap impacting
 on the scope of each of the powers.

625 Paragraph 3(1) provides that the law preserved and converted by clauses 5 to 9 may be
 modified by the power to make consequential provision.

Subparagraph (2) therefore clarifies that the consequential power in the Bill can, for example,
 be used to modify retained EU law if the changes are consequential on repeal of the European
 Communities Act or section 23(g) of the Interpretation and General Clauses Act.

630 Subparagraph (3) clarifies that the power to make transitional, transitory and savings
 provisions can be used to do things in connection with the repeal of the European Communities
 Act or section 23(g) of the Interpretation and General Clauses Act and generally in connection
 with the withdrawal of Gibraltar from the European Union. The power can be used for these
 purposes in a way which is additional to the changes made by the clauses in the Bill that deal
 635 with the preservation, conservation and interpretation of EU law, or to produce different effects
 for particular cases.

Subparagraph (4) clarifies that the consequential power can do things in connection with
 repeals made by the Bill, or which are additional to the provisions covered in the clauses of the
 Bill that deal with the preservation, conversion and interpretation of EU law, including in a way

640 that might alter their effect for particular cases. Provisions of this kind can be treated as retained EU law, as subparagraph (5) provides.

Paragraph 4 allows for the anticipatory use of delegated powers in this Act in relation to retained EU law. This means that these powers can be exercised before exit day to amend retained EU law if they come into force on or after exit day.

645 Paragraph 5 provides that the Minister can specify the time of day when specifying a day under any of the powers in the Bill.

Paragraph 6 provides that the powers in the Bill may be used to make different provision, in particular cases, from the changes made by Part 1 of Schedule 4 and amendments to the Interpretation and General Clauses Act.

650 Mr Speaker, paragraphs 1 and 2 of Schedule 4 set out what happens to ambulatory cross-references to EU instruments. These are references to an EU instrument as amended from time to time in the future. There are many references in domestic legislation to an EU measure 'as amended from time to time'. The effect of this wording is that the references to the EU instruments will automatically update when that EU instrument is amended.

655 The effect of paragraph 1(1) is that existing ambulatory references to EU regulations, decisions, tertiary legislation or provisions of the EEA agreement which are to be incorporated into domestic law under clause 6 will, on exit day, become references to the retained versions of those instruments as they are modified from time to time by domestic law, unless the contrary intention appears. This approach ensures that modifications to EU law made by the EU on or after exit day do not form part of our domestic legislation.

660 Paragraphs 3 to 6 set out how existing powers, pre this Bill, to make, confirm or approve subsidiary legislation may operate on retained direct EU legislation and anything else which is retained EU law by virtue of clause 7.

665 Paragraph 3 provides that existing powers which can amend primary legislation, can amend retained direct principal EU legislation – which broadly covers EU regulations – retained direct minor EU legislation – which broadly covers EU tertiary legislation and EU decisions – and anything which is retained EU law by virtue of clause 7.

670 Paragraph 4(3) provides that such powers when amending retained direct minor EU legislation are capable of making supplementary, incidental or consequential amendments to any retained direct principal EU legislation and anything which is retained EU law by virtue of clause 7.

Paragraph 4(4) provides that powers to make transitional, transitory or savings provisions are capable of amending retained direct EU legislation or anything which is retained by virtue of clause 7.

675 Paragraph 5 lifts, on or after exit day, any implied EU law restriction which might otherwise attach to powers to make, confirm or approve subordinate legislation immediately before exit day.

680 Paragraph 6 provides a number of exceptions and clarifications to the existing powers and allows for anticipatory use of delegated powers in relation to retained EU law. This means that existing powers can be exercised before exit day to amend retained EU law if they come into force on or after exit day.

Paragraph 7 deals with duties to conduct post-implementation reviews of regulations made before exit. In conducting those reviews, a person is not required to have regard to how EU member states have implemented former EU obligations.

685 Paragraphs 8 and 9 provide glosses on how future – post passing of this Bill – powers to make, confirm or approve subsidiary legislation may operate on retained direct EU legislation and anything which is retained EU law by virtue of clause 7.

Paragraph 8(2) provides that future powers to amend subsidiary legislation can amend retained direct minor EU legislation.

690 Paragraph 8(3) also provides that future powers to amend subsidiary legislation can, context permitting, make modifications which are supplementary, incidental or consequential to the

modification of retained direct minor EU legislation, to retained direct principal EU legislation or anything which is retained law by virtue of clause 7.

695 Paragraph 8(4) operates on all future transitional, transitory or savings powers and provides that they may amend any retained direct EU legislation or anything which is retained EU law by virtue of clause 7.

Paragraph 9 provides that any future power which can amend retained direct principal EU legislation will be permitted to non-textually modify any retained direct EU legislation or anything which is retained EU law by virtue of clause 7.

700 Paragraph 10 provides a number of exceptions and clarifications to the future powers paragraphs and allows anticipatory use of future powers in relation to retained EU law. This means that such powers can be exercised before exit day to amend retained EU law if they come into force on or after exit day.

705 Paragraph 11(a) provides that the definition of subsidiary legislation contained in the Interpretation and General Clauses Act includes instruments of the same nature made on or after exit day under any retained direct EU legislation. This means that the provisions of the Interpretation and General Clauses Act will apply to instruments which are made under retained direct EU legislation – for example, under powers in a retained EU regulation which have been turned into domestic powers – as they apply to other subsidiary legislation. It also means that
710 where other legislation relies on the Interpretation and General Clauses Act definition of subsidiary legislation, it will include subsidiary legislation made under retained direct EU legislation.

Paragraph 11(b) amends section 2 of the Interpretation and General Clauses Act and inserts a number of definitions. The European Communities Act contains a number of important
715 definitions which apply to all legislation and not just to the European Communities Act. This is because section 5 of the Interpretation and General Clauses Act currently states that the definitions in section 2(1) and Schedule 1 of the European Communities Act apply to all Acts and public documents. This paragraph moves most of these definitions across to the Interpretation and General Clauses Act, as otherwise they would no longer exist as a result of repeal of the
720 European Communities Act.

There are also some changes to some definitions, and some new definitions, to reflect the new context post Brexit and the relationship between domestic and retained EU law.

Paragraph 11(c) amends the Interpretation and General Clauses Act to provide that certain provisions within it will apply, so far as applicable and unless contrary intention is made, to any
725 amendments which are made to converted direct EU legislation.

Paragraph 12 provides that anything done or in force before exit day, or in the process of being done, and which relates to any element of retained EU law is preserved. For example, licences lawfully issued before exit day would continue to have effect after exit day.

730 Paragraph 13 provides that rights which arise under EU directives and are recognised by courts or tribunals in cases which have begun before exit but are decided on or after exit day are preserved by clause 7 and are not excluded by subclause (2) of that clause.

Paragraph 14 makes further provision about the exceptions to the saving and incorporation of EU law set out in clause 8 and Schedule 1. The starting point is that these exceptions apply in relation to anything occurring before exit day as well as anything occurring after exit day.
735 However, this is subject to the following specific transitional and saving provision and any specific saving and transitional provision made in regulations under clause 15(4).

Firstly, the exceptions for the Charter of Fundamental Rights and for claims in respect of validity, general principles and *Francovich* do not apply in relation to cases which have already been decided before exit day – subparagraph (2).

740 Secondly, the exceptions to preserved and converted law set out in clause 8(4) for the Charter of Fundamental Rights, and paragraphs 3 and 4 of Schedule 1 for general principles and *Francovich* claims, will not apply in respect of proceedings which have begun before exit but are

not decided until after exit – subparagraph (3). So, for example, a *Francovich* claim commenced before exit can be decided by a court after exit.

745 Thirdly, the exceptions in paragraphs 1 to 4 of Schedule 1 for validity, general principles and *Francovich* claims, will not apply in relation to any criminal conduct which occurred prior to exit day – see subparagraph (4).

750 Fourthly, subparagraph (5) provides that the restriction on challenges based on incompatibility with any of the general principles of EU law set out in paragraph 3 of Schedule 1 does not apply in respect of certain proceedings begun within three years of exit day.

755 Subparagraph (6) provides that a court, tribunal or other public authority will, on or after exit day, still be able to disapply any enactment or rule of law, or quash any conduct on the basis of incompatibility with the general principles where it is a necessary consequence of a decision made by a court or tribunal before exit day or decisions in proceedings commenced during the three-year period after exit day provided for in paragraph 14(5).

Finally, subparagraph (7) delays the prohibition in the Bill on seeking *Francovich* damages in domestic law, set out in paragraph 4 of Schedule 1, for two years after exit day. This ensures that the Bill will not prevent individuals from continuing to seek such damages in domestic law where a breach of EU law occurred before exit day.

760 Paragraph 15 clarifies that although certain powers in the Bill expire, the regulations made under them do not expire.

765 Paragraphs 16 to 18 ensure that legislation that was in force prior to the entry into force of the EEA Agreement in 1993 is read consistently with the provisions of that Agreement, and that this legislation that pre-dates the EEA Agreement continues to operate appropriately after Gibraltar's exit from the EU and consequently from the EEA as well.

770 Mr Speaker, there is some urgency in putting in place the legal framework which will regulate Gibraltar's exit from the European Union. This is the third piece of legislation that we bring to the House in that regard. The House will recall that last year we amended our legislation for elections to the European Parliament on the basis that the United Kingdom and Gibraltar will no longer participate. Separately, we also had to change a number of references and definitions to the EU and its institutions. The legislation before the House today provides the basis for EU law to become domestic law. This will be the framework under which hundreds of pieces of legislation will have to be amended as we leave the European Union.

775 In a major exercise last year, Government departments were asked to list and to prioritise the areas of EU law that affected them in the context of an orderly departure from the European Union. This took into account the cushion provided by a transitional period. A second major exercise is also underway, this time in the context of a no-deal Brexit. Therefore, the European Union (Withdrawal) Bill before the House today provides the legal cover for our organised departure from the European Union. It will provide legal cover for a no-deal Brexit as well. This is an essential component of the legal framework that Gibraltar needs to put in place to provide for an orderly departure from the European Union.

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

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

Hon. E J Phillips: Mr Speaker, I thank the Deputy Chief Minister for setting out his analysis of the EU Withdrawal Bill before the House and his explanation of the technical aspects.

790 I would also like to thank Her Majesty's Attorney General, Mr Paul Peralta, Nadia Parody and Michelle Garcia and the Government legal officers generally for the work they do and continue to do in relation to the logistics of our exit from the European Union.

Mr Speaker, the main purpose of the Bill is to ensure certainty, stability and adaptability of our law and the integrity of our legal system in the context of our exit from the European Union. From this side of the House we support the desire to ensure that we put in place legislation

795 which provides legal certainty to our citizens and our businesses if it is inevitable that we leave
the European Union. I say 'if' because of course the Withdrawal Agreement has not made it
through the UK House of Commons yet and a further meaningful vote is not expected until late
February. There have been and may still be developments in this whole debate, and for our part
800 we still hope that circumstances may emerge that could deliver a better outcome to the United
Kingdom and Gibraltar than the inevitability of leaving the EU. If, however, leaving is inevitable,
we accept that there needs to be legislation providing clarity and certainty of the law that
applies after departure. To that extent we welcome this Bill. There are aspects of this Bill,
however – one in particular – that will not allow us to support the Bill itself, which I will explain.

On 23rd June 2016 Gibraltar voted, by 96% to 4%, to remain within the European Union.
805 There also remain majorities in Scotland and Northern Ireland. Much is said by Brexiteers about
democratic legitimacy and that it would not be right to have a second referendum because that
would not be to respect the will of the people. Nothing, however, is said about the democratic
illegitimacy of not respecting the clear will of the people of Gibraltar, Scotland and Northern
Ireland. We accept, of course, that taken as a whole a slim majority of the United Kingdom voted
810 to leave, but we are also conscious of all that has been said recently about how people were
given insufficient or plainly inaccurate information by some proponents of the Leave campaign
in the United Kingdom at the time and that there was simply insufficient reflection on the
consequences of voting to leave.

Mr Speaker, as democrats we have accepted the result but we should also be clear that the
815 mandate of the people of Gibraltar was to remain and seek more Europe, not less. It is clear, and
clearer now given the emerging debate in the United Kingdom, that our national objectives are
different to those mapped out by the United Kingdom, by Mrs May's government, who does not
seek freedom of movement or single market access. Therefore, it was a decision taken in the
main by members of the wider British family who had scant knowledge of the geopolitical
820 consequences of the UK's departure on Gibraltar's future in the EU context. Despite our best
attempts, the wider British family had little appreciation of the strong familial ties and
commercial relationships that exist across our land border with the EU and which will be
affected by the decision to leave. There is no greater signal of the low priority that Gibraltar has
had in the public mind in the current UK debate than to repeatedly hear the UK press describe
825 Northern Ireland as the only British land frontier with Europe.

Mr Speaker, for the people of our community this was never a question of taking back control
of our borders, money and laws. We were so far removed from those arguments and they never
entered the minds of the 96%, or 19,322 people, of our community who voted to remain. The
people of our community have never been divided on the question of Europe. We understand
830 and appreciate the consanguine relationship with Europe and the benefits of what that can
bring – and I believe the Deputy Chief Minister himself talked about the challenges that we have
faced in Europe over the many years of our relationship – but whilst we sit on the continent of
Europe, and despite our buttressing of the European project, we have found ourselves in the
middle of an argument which has divided the political classes of the United Kingdom for
835 generations. Moreover, given the unfortunate cheerleading by our Chief Minister of the UK
government's Withdrawal Agreement, we have found ourselves at the centre of the controversy
in Westminster itself.

On 23rd June 2016 we, the 96%, voted with our hearts and our heads. We voted to remain
because of the fact that we have a foreign power on our doorstep who has sought to claim our
840 land for over 300 years and who has demonstrated consistently, irrespective of the brand of
politics being peddled at the *Moncloa* that they always seek to assert their claim over our
homeland. We voted to remain because our businesses wanted to genuinely work with the EU,
despite the actions of the Spanish government, and we voted to remain because we have
friendships and families across the land border.

845 As I have said, we were not the only ones who declared a desire to remain within the European Union. Scotland, Northern Ireland, London and other English cities summarily expressed the democratic desire to remain. It was not enough.

Mr Speaker, whilst we in this House respect the decision of the UK to leave, none of us in this House wished to leave the Union, for the reasons I have set out and the arguments that have
850 been ventilated in every newspaper in and outside this House for the last two years.

It is also right to observe that none of us in this House wishes to debate this historic and complex piece of legislation. I am sure that many of us in this House would wish to see more debate about the issues that affect ordinary working families, such as skills training for our young people, housing for 1,200 people who need homes, agency workers and education. The
855 domestic agenda has been placed on the back burner whilst the Government conducts complex negotiations preparing for our withdrawal from the European Union. We have said before and we will say again that it was not in Gibraltar's interests to leave the EU, so any withdrawal agreement is worse than remaining in the EU.

Mr Speaker, the stated objective of the EU Withdrawal Bill is, on the day of exit and beyond,
860 to provide our legal system with operability, certainty and continuity. We will support the parts of the Bill which seek to provide our legal system with the maximum level of legal certainty in the context of our exit from the EU. The Bill as promoted is a momentous and historic piece of legislation which will repeal the European Communities Act and, as the Deputy Chief Minister said, section 23 (g) of the Interpretation and General Clauses Act and bring about an end, as he
865 also said, to the supremacy of EU law in Gibraltar. The Opposition also supports those parts of the Bill which ensure on the day we leave the EU that the same rules and laws that applied on the day of exit continue to apply when we wake up on that morning. Furthermore, the Opposition also supports those parts of the Bill which provide Ministers opposite with powers to correct deficiencies that will arise.

I do not believe that anyone in this House underestimates the task ahead and the impact that leaving the EU has on our laws. We understand that, so far, 1,600 pieces of domestic law have been identified which have been affected by this legislation – a relative feast for lawyers and a massive headache for litigants in the future, who will need to carefully navigate our sources of domestic law and, in some instances, at great expense.

Mr Speaker, whilst we support many parts of the Bill which seek to ensure legal certainty, there is, as I have indicated, one important aspect of this Bill which we do not support and which will drive the Opposition to vote against the Bill. It seems clear that this Bill will, in effect, by a side wind, introduce into Gibraltar law references to the Withdrawal Agreement and, by it, the Protocol on Gibraltar and contemplate mechanisms to implement the Memorandum of
880 Understanding. This House is well aware that our position in the GSD is that we think the Gibraltar Protocol and the MoUs seen as a whole are a bad set of arrangements for Gibraltar.

There is a definition of 'Withdrawal Agreement' in the Bill at page 306, referred to by the Deputy Chief Minister, which envisages that regulations could be introduced to implement it under section 12, whether ratified or not. I go on to explain why we say this is an issue. Seen as a whole, it seems to us that voting in favour of the Bill with the present section 12 and references
885 to the Withdrawal Agreement would amount to an endorsement of the Withdrawal Agreement and the MoUs which we have said we are against. As such, we cannot support the Bill as presently drafted. This need not have happened because the Opposition did, in the Brexit Select Committee, indicate to the Government that if it was prepared to hive off section 12 into separate legislation then it would consider a different position. As things stand, though, we cannot support the Bill, and I will seek to demonstrate why that is. Whilst logistic arrangements have our support, we will vote against it.

Mr Speaker, this House will recall that the Chief Minister stood shoulder to shoulder, side by side, with the British Prime Minister. The Chief Minister said that the deal, the Withdrawal Agreement, is good for the UK and is therefore good for Gibraltar. The Opposition has been clear
895 that the deal, the Withdrawal Agreement, the Protocol and the MoUs are not good for Gibraltar.

We cannot speak, of course, to the Tax Agreement because, despite assurances, the Hon. Chief Minister has not published it. The UK Prime Minister has failed to get the deal through her Parliament and it was the biggest political defeat since the 1930s. The Prime Minister has had one cheerleader and he sits opposite.

We have been clear there is nothing in the MoUs that secures enduring benefits for our people. The deal provides for Spain having a say in our affairs and it protects frontier workers permanently. For a number of months now the Opposition has raised serious concerns over the Government's lack of strategic direction and inconsistent approaches to Brexit. It was wrong for the Chief Minister of the day to align himself with a damaged, haemorrhaging Prime Minister, it was wrong for the Chief Minister of the day not to pursue a unique and differentiated position for the people of this community, and it was wrong for the Chief Minister to give away the biggest bargaining chip on frontier workers without obtaining anything permanent and enduring for Gibraltar.

The Chief Minister has been unclear in an important respect. On the one hand he has said the failure of the UK Parliament to ratify the Withdrawal Agreement will mean that the Protocol and MoUs will fall away, but on the other he has indicated in this House and outside it – which has been echoed in Madrid – that a failure to ratify will mean and could see the MoUs surviving.

We have said that the MoUs do very little to advance the interests of this community. The MoUs in substance allow encroachments into our domestic affairs by Spain in relation to matters concerning our waters, the environment, fishing and tobacco. The MoUs represent an abandonment of the significant gains achieved by Sir Peter Caruana and the GSD in government. Under the GSLP Government we have seen a return to bilateralism. Spain has secured full protection for their workers and we have achieved nothing permanent in exchange. The Chief Minister has also failed to answer the fact, although the MoUs were concluded by the UK and Spain, to seek to protect our well-stated position on sovereignty and jurisdiction. The MoUs do not include the word 'control' and by magic are spun into the Chief Minister's press release and explanatory note to the people. It is clear that an element of control now rests somewhere else.

The relevance of the MoUs is more important now, given the presence of section 12 of the Bill and the interpretation of the words 'Withdrawal Agreement' in the Bill. Section 12 provides for the implementation of the Withdrawal Agreement whether it is ratified by the UK Parliament or not. Ergo the power to implement the MoUs despite the Withdrawal Agreement not being ratified by the UK Parliament remains a very real possibility. In effect, this could lead to agreements being reached with Spain even in the event of a rejection of the Withdrawal Agreement and thereafter implementation by regulations made under this Bill.

We do not believe that the MoUs are in the long-term interest of this community and a provision that envisages regulations be made in the context of those MoUs cannot be supported by us.

We object to section 12 for two reasons: (1) because it allows for the implementation of the Withdrawal Agreement which we have said is a bad deal for Gibraltar and is tantamount to an endorsement of it if we were to vote in favour; and (2) because it envisages that regulations could be made for the implementation of the withdrawal agreement and underlying MoUs even if it does not get through the UK Parliament in circumstances where there could be side agreements with Spain which give a degree of control over matters of our domestic affairs to Spain. We cannot support this Bill, which would amount to an endorsement and allow the implementation of the Withdrawal Agreement on this basis.

Mr Speaker, on the careful basis that I have set out, the Bill does not enjoy the support of Her Majesty's loyal Opposition. *(Banging on desks)*

Mr Speaker: The Hon. Sir Joseph Bossano.

Minister for Economic Development, Telecommunications and the GSB (Hon. Sir J J Bossano): Mr Speaker, you and I were elected in 1972. I think one of the first pieces of

legislation we had to address in this Parliament – the House of Assembly, as it was then – was the Bill for the Ordinance to join the European Economic Community, and when we joined the European Economic Community we joined on terms that the United Kingdom secured for us, and which suited us and which recognised what Gibraltar needed. Of course, we were able to do that because the European Economic Community which we joined did not contain our enemy as one of its members. In 1986, when that enemy joined the European Union, the first thing they did in their first year was to blackmail all the other member states in order to deprive us of our right to freedom of travel by air in the European Union, which we had enjoyed until that point, and this wonderful Union, for which we voted by 96% with our hearts, suddenly was not one that I voted for with my heart; I voted with my head. I voted to stay in order not to be in a position where we were out and the UK was out and Spain would then have allies in the European Union – which is the position we are in now. So the vote to stay was not out of a love affair with the European Union but out of a legitimate concern and lack of faith that the European Union would be able to protect us in Spain, because it has never done from the day they came into membership of the European Union.

What the European Union did to Gibraltar immediately after Spain joined is unprecedented in terms of any concept of democracy or the rule of law, because legislation was introduced to repeal the conditions under which air travel was operating, which was restricted to aeroplanes of up to 70 seats and regional airports. And Spain, on the first occasion that it had, waited until the last minute, having participated in all the negotiations that had been taking place and at the very last minute said they would use their veto to prevent the liberalisation of air travel for the whole of the European Union unless we were excluded.

The member, the citizens, that had been there for 13 years, were sacrificed by the European Union because Spain blackmailed them and said, 'If you don't leave Gibraltar out, I will block this for the whole of Europe.' The result was that a piece of legislation was created, which for the lawyers in this room may sound normal but to me, as a non-lawyer seemed incomprehensible because the law of the European Union was repealed except in Gibraltar. Spain could not deprive us of the rights we had before they joined because of the *Acquis Communautaire*, and therefore that could not be taken away from us. So we had the same position that you were travelling in Gibraltar and you were in Europe if the plane had 69 seats, but you were outside Europe if the plane had 71. So, all you had to do in a 70-seater plane was to chuck one of the seats out of the window and then you were in the European Union, and that is the situation there has prevailed since.

In 1987 they had the audacity to try and get us to accept that, in order to have what we used to have and they took away, we should give them rights over our Airport – and if the GSLP had not won the election in 1988 that might have happened because the position of the AACR was not to take a decision on that because it was too near an election. We do not know what the decision would have been had the result been different. The GSLP that has opposed every agreement since Strasbourg, and Lisbon and Brussels and the Airport deal and fought every inch of the way all the time at every attempt that there was to give concessions to Spain is now the party of the doves and the doves on the other side have become the hawks. *(Laughter)* **(Hon. Chief Minister: No se lo creen ni ellos.)** That is the contribution that the hon. Member is trying to persuade us is the reason why they are not supporting the Bill: they are not supporting the Bill because they are the hardliners now in dealing with Spain. Well, we are going to have plenty of opportunities to demonstrate who the hardliners are after March. Of that we can have no doubt, and then we will see, when the chips are down, where the hardliners are.

The reality of the situation is that we need to be where the UK is. It is not a question of whether we are in the European Union or out of the European Union. It is that we cannot afford to be out if they are in or in if they are out, because the only protection – and it has not been a very strong one, but the only one that we have had in the EU – has been the UK's protection. The reality of it is that the UK has not been willing to go as far in blocking everything to protect us as Spain has been in blocking everything to get their hands on us. In the first instance, the real

1000 statement and the real challenge – and it should have happened the first time, in 1986 – is that
 when Spain said, ‘We will block it if Gibraltar is included,’ the UK should have said, ‘We will block
 it if Gibraltar is left out.’ (**Hon. Deputy Chief Minister:** Exactly.) If they had not conceded the
 ground then, if they had not backed off then, a lot of the other things that have happened since
 1005 in the European Union might not have happened. That is a real lesson. That is a lesson we have
 learned in this place, that if you do not stand up to them in the first instance, if you make
 concessions before you know what they are, if they take an inch – I can say an ‘inch’ now
 because we are not in the European Union anymore, so I do not have to say ‘centimetre’ – an
 inch of that Frontier, which is now the border between Gibraltar and Europe ... Europe starts at
 1010 the Frontier; it is not neutral ground anymore. If they take an inch there, before we know where
 we are they will be in the lighthouse. That has always been the view of the vast majority of us,
 having dealt with them for years, and therefore I can assure the hon. Member opposite that if
 his concern in not supporting this Bill is that we have gone soft on Spain, then he can go to bed
 and sleep tonight without any worries: that is not going to happen.

As far as we are concerned, the Withdrawal Bill in the United Kingdom, which has been
 1015 rejected, is now going to be taken back by Theresa May with a mandate that it should be
 amended, and she has been told even before she gets there that it is not going to be amended.
 With every passing day we are getting closer to the possibility that at 11 o’clock at night on the
 29th, one minute later we will be out of the European Union and nothing will be there. That
 becomes more and more likely. I think it is a very dangerous game that some people are playing
 1020 as to who blinks first, but we have got a long record of blinking last and therefore, if it comes to
 that, it is my professional not my political view that the economy that will least suffer of the
 three involved – the UK, the EU and Gibraltar – the one that will least suffer, will be ours. We will
 not come out unscratched but we will come out better than the other two.

Therefore, for the sake of the United Kingdom – not for the sake of the European Union but
 1025 for the sake of the United Kingdom – I hope that the European Union shows more generosity
 than they have shown so far in negotiating with the UK. The reality of it is that they said from
 day one in 2016 to the United Kingdom, when the United Kingdom said they were going,
 ‘There’s the door,’ and they have been saying the same thing ever since. The position that the
 UK has had is, of course, that the weakened and battered Prime Minister that the Hon. Leader of
 1030 the Opposition thinks we are supporting ... Look, I am not a supporter of the Conservative Party.
 I think that lady is not a very good negotiator. I do not think she would have done a very good
 job if she had been a shop steward in the TGWU, but she has got a lot of guts (**A Member:** Hear,
 hear.) and she is willing to defend what she believes is in the best interest of the country – and
 that, whether her judgement is right or wrong, that is the most that we can ask of any politician.
 1035 She has taken a lot of knocks and she is still there doing what she thinks is right. I think we have
 to respect her for that because that is, in my judgement, what is happening. I think she is going
 to have an impossible task in trying to come back with concessions from the European Union.
 We will have to wait and see, but it is quite obvious, from looking from the outside, that it
 appears that the strategy is that the European Union will be sufficiently scared the nearer they
 1040 get to the deadline to make some concessions. Until now, all the movements have been made
 by the UK, all the red lines have been given up by the UK. The other side has done nothing. It has
 not been a negotiation where two sides start with clear positions and then find common ground.
 It is that one side has said, ‘These are my red lines,’ and the other side has said, ‘These are my
 red lines,’ until there have been no red lines left. In that situation, if the UK is out with nothing,
 1045 we want to be out with nothing. We do not want to have a relationship without the UK.

With the UK in, it has been extremely difficult for us to protect our existing rights in the
 European Union because the reality is that the European Union, like the United Nations,
 preaches one thing and practices another. When I went to the European Union to complain
 about the situation that was happening with the airfares, the guy who was in charge of a special
 1050 committee dealing with aviation – he was a Dutch person; I cannot remember, it was a long time
 ago, but he said to me, ‘You are absolutely right, it is a disgrace what Spain is doing, but you

need to understand how this place works. We have taken a long time to get everybody to agree, and if we allow Spain to block this the whole thing will unravel because they are in a situation ...' And it is worse now than it was then. There were 12 members then; there are 27 now. Once you stop something happening there are two things: there are people who have changed their minds about what they agreed because they have had a lot of flak when they have got back home, saying, 'Why did you agree with that?' – like we are getting from the hon. Member over the MoUs. That happens. So, some people said, 'Well, I want to change my mind,' but you cannot because it is all agreed, which is what the European Union is saying. In other cases there have been governments that have changed while the negotiations were going on and the governments that have changed do not believe in what the other governments agreed to.

So there is an element of reality in the position of the European Union in saying if we touch anything in this agreement then a lot of other people are going to jump in. Certainly Spain will jump in and start demanding more of Gibraltar, and the French will jump in and start demanding more on fishing and somebody else will come in with something else. That is true because that is the weakness of the European Union. The weakness of the European Union is that it pretends to be a super state but it has never been a super state. They start off with something that may make sense and by the time they have pacified all 27, what they have cobbled together is full of inconsistencies. So the magnificent European Union is something that we might well be happy to be without in a few years' time when we have made Gibraltar stronger and more prosperous than it has ever been in the past.

I will be supporting the Bill. (**Hon. Chief Minister:** Hear, hear.) (*Banging on desks*)

Mr Speaker: The Hon. Daniel Feetham.

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

In order to avoid the clear political differences that have arisen as a consequence of this Bill, on Monday, having seen the references to the Withdrawal Agreement in the Bill, I invited the Government to attempt to hive off those provisions so that we could have a political debate on the Withdrawal Agreement and leave the rest of the Bill unaffected, because of course the Opposition supports 99% of the Bill. The Government decided not to do so. I do not criticise the Government for it, because I understand that in fact the Government wishes to proceed with the Bill on an urgent basis, politically it does not agree with us and in any event it no doubt feels that it is very late in the day to hive off these particular provisions from the Bill. But the Opposition has a position on the Withdrawal Agreement. The party has had a position and has a position in relation to the MoUs and also the Protocol, and therefore the position that it has taken is one based on principle and based on arguments that have been canvassed in communiques which no doubt the community is well familiar with.

What I wish to do in my own intervention, Mr Speaker, is outline why personally I am against the Withdrawal Agreement – and when I talk about the Withdrawal Agreement I do not talk about the Protocol, I do not talk about the MoUs; I talk about the UK Withdrawal Agreement and why actually I believe that is not in the best interests of Gibraltar and it is not in the best interests of the United Kingdom. Indeed, I actually approach this from a very similar perspective, although I come to a different conclusion, as the Father of the House in his own intervention has approached it when he said – and I hope I am not misquoting him – we need to do the same as the United Kingdom and that we cannot have it a differentiated position to the United Kingdom. I will come back to that in a moment, but there are three general observations that I wish to make before I make my substantive point.

The first is that the position of the opposition is not a reflection at all on the hard work that not only Her Majesty's Attorney General and the public servants who have drafted this Bill have put into this Bill but indeed the hard work that has been put into this Bill by the Hon. the Deputy the Chief Minister. We all recognise that on this side of the House. This is a complex, complicated, technical piece of legislation that was very much necessary in order to provide

certainty, as the Hon. the Leader of the Opposition has outlined in his own intervention, certainty to Gibraltar and to our legal system amongst other things post Brexit.

The second is this: I am a remainer and I think that even post Brexit, if it happens, the debate about whether to come back into the European Union – because that is what it would amount to then – will not be dead and buried. I stand by my belief that Brexit is not in the best interests of Gibraltar, it threatens the integrity of the United Kingdom and therefore is not in the best interests of the United Kingdom – and I am an avid unionist – and therefore, whilst there are alternatives to the Withdrawal Agreement, for example a people's vote, I cannot support the Withdrawal Agreement as a matter of principle. I cannot do so.

The third general observation, which provides the context, the real meat, the substance as to why I personally cannot support the Withdrawal Agreement, is that we all recognise – everybody on this side of the House recognises – the very difficult position that the Government was faced with as a consequence of this process, and the Government was undoubtedly caught on the horns of a dilemma. The absolute nightmare for Gibraltar, as the Hon. the Father of the House has outlined during the course of his intervention, would have been that the United Kingdom has an orderly withdrawal and Gibraltar just simply drops out, off a cliff edge, on 29th March. That was the absolute nightmare scenario for Gibraltar, and therefore we all understand that the Government faced that very difficult position and that that was of a paramount importance, at the forefront of the Government's mind when the Government has done what it has done. Indeed, I think everybody here recognises that in that kind of situation there is obviously an element of give and take, that the position that the party has adopted is we would not have given as much as has been given; but I do not want to ... That is not the purpose of my intervention, but obviously it involves an element of give and take.

You see, Mr Speaker, what the Withdrawal Agreement does is it maintains the status quo for the United Kingdom and indeed for Gibraltar – in particular I am talking about Gibraltar now – for a period of two years during which the United Kingdom will attempt to agree a permanent relationship with the European Union, and I am of the very firm view that what is going to happen over the next two years is that Spain is going to be demanding of the United Kingdom concessions that we will never be able to live with, and that when the realpolitik of the situation bites, the United Kingdom government ... The Hon. the Father of the House said, 'I've never been a Conservative.' Well, let me tell you that I would bank on a Conservative government every single day of the week on this issue in protecting Gibraltar's interests rather than the Labour Party any day, particularly one led by Mr Corbyn.

The problem is that the UK government is going to be faced with a situation where it has to make a choice whether to accept what it considers to be a good deal for 60 million people or saying no to that deal because it does not include Gibraltar, because the other 27 member states are going to be supporting Spain when Spain says, 'Don't include Gibraltar unless you make concessions on x, y and z,' and we will be left inevitably in a situation which we wanted to avoid when we endorsed the Withdrawal Agreement – the situation that the Hon. the Father of the House in his intervention, with whom I agree, said we have to be with the United Kingdom, either in or out, and we will inevitably be led into a situation, or a very likely situation, where the United Kingdom will have a permanent deal and Gibraltar will be out, and it will happen in two years' time, not now. That is the danger for ... The Hon. Father of the House wants to speak, and I give way.

Hon. Sir J J Bossano: Mr Speaker, if the United Kingdom is in, it will be a member of the European Union. If the United Kingdom is out, it may have a trade agreement with the European Union which we may not want to have, and therefore I do not accept that being a member of the European Union if the UK is, or not being a member if the UK is not, is the same thing as having to have the same trade relationship. The trade relationship that Gibraltar will want to have at the end of the transition period, if there is one, or from April onwards if there is not one, will have to reflect the nature of our economy and its structure, which is totally different from

the UK's. So, whatever is negotiated with the UK is not necessarily something we would want to be in, never mind Spain trying to stop us.

Hon. D A Feetham: And I recognise that those are factors, that in any permanent relationship Gibraltar may not want certain aspects of that permanent relationship that the UK negotiates for itself, and indeed there are some aspects of the permanent relationship which cannot or logically will not apply to Gibraltar. For example, we are not part of the Customs Union at present, so unless we wanted to take a step and be in the Customs Union, that is one of the issues that may arise. But it does not weaken the point that I am making, which is that I believe that the concessions that Spain is going to be demanding for us, taking advantage of what we deem to be positive from that UK-EU permanent relationship that we would wish to adopt here in Gibraltar, or indeed a differentiated deal that we may deem may be appropriate to Gibraltar, the odds are that Spain will demand too high a price for that.

In fact, there is an alternative analysis to all this, that when you analyse it in those terms, provided that Gibraltar leaves at the same time as the United Kingdom on the same terms as the United Kingdom, that, if the UK were out on 30th March, for example, there may be certain advantages that we could take advantage of – for example, our right to access financial services in the United Kingdom when the rest of Europe does not have that same right. That is why I say that I actually do not believe that this Withdrawal Agreement is in the interests of Gibraltar and is in the interests of the United Kingdom. In fairness to the Government as well, in relation to this I also say this: that I understand as well that it may buy us a couple of years, for example. I believe that we are out. That is my view, that we will not have the benefit of that permanent relationship because of the price that Spain will demand, but at least it buys us perhaps a couple of years where we could recalibrate our economy. I understand all that, but actually I do not believe on the whole that the Withdrawal Agreement is in the best interests of Gibraltar, is in the best interests of the United Kingdom.

Therefore, as a matter of principle, for all the reasons that I have outlined in my intervention, I personally cannot support the references to the Withdrawal Agreement and indeed wish to take the opportunity afforded by this Bill to record my own views, as indeed the party is, of the Withdrawal Agreement and why we are against it.

Mr Speaker, thank you very much for your indulgence. *(Banging on desks)*

Mr Speaker: The Hon. Marlene Hassan Nahon.

Hon. Ms M D Hassan Nahon: Mr Speaker, I would firstly like to thank the Chief Minister, the Deputy Chief Minister, the Attorney General Michael Llamas, Michelle Garcia, Nadia Sisarello and Paul Peralta for their tireless work in this EU Withdrawal Bill.

It is truly painful to accept that this is where we are today, but I am equally grateful for the hard work gone into this Bill and I shall be supporting it because I believe it is a solid and pragmatic, vital piece of legislation and because I think it is crucial for this Parliament to present a united front and support for this Bill at this important juncture in our history.

We can continue to nit-pick and remind the world about our stance, our position and our painful reality. At the same time, I do not believe that anyone in this Parliament has the right to hold the monopoly on who the hardliner party is on issues of sovereignty. I think we are all on the same page there; we just have different ways of putting it across. We are all hardliners here. When it comes to our sovereignty, jurisdiction and control it has to be said that we are always British to the core.

What we do not need to do, if we want to call ourselves a responsible Parliament, is to be cynical and opportunistic at this seminal moment in our political and democratic history, to score points while in the background aping to collaborate with Government at this time. This, unfortunately, is a trend that we are seeing even in Westminster, and I am not alone in my

assessment, considering that even Her Majesty the Queen is calling for less bickering and more unity among MPs at this crucial moment in time.

1210 So, Mr Speaker, because I do not want to bore this Parliament or indeed the public any further with what we are already painfully aware of, I once again use this moment to thank all those responsible for their work on this. However, I shall be keeping a close eye on developments in connection with practicalities on the ground, matters of contingency planning, how fast we are moving on logistics and future arrangements, because that is where we need to be robust and at the forefront at this moment, and in the weeks, months and years to come we
1215 need to ensure a smooth transition and reinvention of our economy. Picking on a well-researched and necessary Bill just because we are all remainers here is a nonsensical, unrealistic and immature position to take at this moment.

I also find it at odds for my hon. Friend Mr Daniel Feetham, to the right here, to say that he would effectively trust a Conservative government over and above a Corbyn Labour side while
1220 his own leader outside of Parliament criticises the Chief Minister for working alongside Theresa May. **(Several Members: Hear, hear.)** This further highlights the discrepancies and inconsistencies between the Opposition ranks, which really do not bode well for a united front right now. This is why there is so much cynicism regarding the voting down of this Bill by the Official Opposition here and why I reiterate my call here today for a united front and for the
1225 support of this Withdrawal Bill as a responsible, non-opportunistic and forward-thinking Parliament.

Thank you, Mr Speaker. **(A Member: Hear, hear.)** *(Banging on desks)*

Mr Speaker: The Hon. Roy Clinton.

1230 **Hon. R M Clinton:** Thank you, Mr Speaker.

It also gives me no great pleasure to stand and debate this Bill, and I echo the sentiments of my colleagues, and in fact obviously the sentiments of the Government, that this is not a position that we wished to find ourselves in.

1235 My contribution is perhaps, in a way, more technical or more focused than those of my colleagues, which I of course, as I have said, I endorse fully.

The Bill before us today makes cross-reference to the UK Withdrawal Bill and by extension indirectly thus references the MoUs and other agreements. But we in this Parliament have had no debate about the substance or even the content of those MoUs, which have been signed by
1240 the Government with the UK government under the Concordat, but to which this Parliament has had no input whatsoever. In the United Kingdom, if that had occurred, there would have been a riot. I accept the contribution from the Father of the House, Sir Joe Bossano, when he says we are living in a world of realpolitik and we have to understand that there are things we would like to have but we cannot always have what we would like. To an extent I understand what he is
1245 saying, and I agree in terms of negotiation I would much rather have had him negotiating with Brussels than the UK government – I am sure we would have got a lot further – but we are where we are.

I do not intend to look at the substance of the MoUs, which I think has already been ventilated, but there is language in the Protocol itself which I cannot for one minute believe that
1250 the Government of its own volition inserted or would have agreed, if it had a choice, that this language should remain.

I refer to page 497 of the Withdrawal Agreement. At the bottom, referring specifically to the section on the Gibraltar Protocols, it is emphasising also ‘the need to combat fraud and smuggling and to protect the financial interests of all the parties concerned’. That language is,
1255 frankly, insulting. I do not see that language being inserted in respect of Northern Ireland, Scotland, Wales, Cyprus or any other UK interest. What on earth are the EU implying? That, I take great exception to.

Then it carries on and it says:

Underlining that this Protocol is without prejudice to the respective legal positions ... with regard to sovereignty and jurisdiction

which is fine. But then it goes on:

Taking note of the Memoranda of Understanding concluded between the Kingdom of Spain and the United Kingdom on [xx] November 2018 in relation to citizens' rights, tobacco and other products, cooperation on environmental matters and cooperation in police and customs matters,

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Then it goes on, and this is where I want to focus my contribution:

as well as the agreement reached on [xx] November 2018 to conclude a treaty on taxation and the protection of financial interests,

Well, Mr Speaker, to date we have seen no such agreement and I would ask the Government to clarify what date is going to be inserted there. There was a report on 21st November – and I will quote from the report, if I may, Mr Speaker – from the *Gibraltar Chronicle*, which says:

The final details of the four memorandums of understanding and a tax agreement were hammered out during intense meetings between the three governments in Madrid on Tuesday.

1265 And then there is a quote:

After Tuesday's meetings in Madrid, the Gibraltar Government said the memorandums and the tax agreement are now complete 'subject only to text stabilisation, legal checks and minor clarifications'. These are expected to be finalised by the weekend.

We know that the memoranda were signed – we have the photographic evidence of it – and in fact on the UK website, where they actually published the full memoranda, they say quite clearly:

On 29 November 2018 the governments of the UK and Spain, together with the government of Gibraltar, concluded 4 Memoranda of Understanding on Gibraltar. These underpin the Gibraltar Protocol in the Withdrawal Agreement between the UK and the EU.

1270 So we now know that one of the dates on page 498 of the Withdrawal Agreement will be 29th November in relation to the MoUs. However, it is not exactly clear to me what dates will be inserted in respect of an agreement to conclude a treaty on taxation and the protection of financial interests. In fact, the same information that is given on the website by the United Kingdom goes on to say:

The 3 governments have also agreed to conclude a tax agreement covering tax transparency and cooperation.

1275 So, my question to the Government is: is there an agreement that was reached, presumably on the same date as the MoUs; and, if so, where is it? We have had no sight of it. This agreement – not being a lawyer – may be only an agreement to reach an agreement, which I would accept, but it would be nice to know whether something has been concluded, because indeed there is a gap for it in the Withdrawal Agreement that seems to be vacant at the moment. There is a date missing, so either there has been an agreement to conclude an agreement or there has not, but I would like to know.

1280 My final point, Mr Speaker, is that the Protocol says an agreement reached 'to conclude a treaty on taxation and protection of financial interests'. In the past the Chief Minister has spoken about the Tax Treaty. I said, 'Oh, great, a double tax treaty,' and he said, 'Oh, no, it's not a double tax treaty.' I said, 'Well, I don't know of many tax treaties that are not double tax treaties, but so be it – you can have a treaty on just about anything you want.' But perhaps we have forgotten there is also a question of protection of financial interests, and I really would like

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to know what is intended by that, because in fact in Article 3 of the Protocol it says, under the heading 'Fiscal matters and protection of financial interests':

Spain and the United Kingdom in respect of Gibraltar shall establish the forms of cooperation necessary to achieve full transparency in tax matters and in respect of the protection of financial interests of all the parties concerned,

Then it says:

in particular by establishing an enhanced system of administrative cooperation to fight against fraud,

1290 – again, Mr Speaker –

smuggling

– again, Mr Speaker –

and money laundering, and to resolve tax residence conflicts.

1295 Wherever this agreement is, there is obviously an implication that we are a den of thieves and money launderers, which I obviously reject outright. I would like to know what form of agreement the Government has agreed to with the United Kingdom and the European Union and whether such agreement has been signed or not.

1300 On the UK government website they talk not about the original language in the Protocol on page 498, where it talks about taxation and the protection of financial interests, but it actually says 'to include a tax agreement covering tax transparency and cooperation'. There seems to be a change in language. It may be the UK drafter or the person responsible for the UK website is not a lawyer and has not actually read the Protocol, but I would find it hard to believe that this sort of information does not go through the legal examination all these sorts of things do.

1305 And so, Mr Speaker, from a very narrow practical point of view in an area which is particularly important, in an area in which we are being accused of all sorts of misdemeanours it would appear, I would like some clarity from the Government as to what is the current position in respect of these agreements: have they been signed; and if so, on what dates and may we have sight of them?

Thank you, Mr Speaker.

1310 **Mr Speaker:** The Hon. the Chief Minister.

1315 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I rise with a *very* heavy heart to deal with a Bill that I never imagined, at the time that I embarked on my journey as Chief Minister and Leader of the House in 2011, I would be asking the House to support. Indeed, the Hon. Dr Garcia, the Deputy Chief Minister, referred to our visit to Brussels – *many* years ago, *many* kilos ago and *many* dreams ago – when we saw for Gibraltar a European future as an integral part of the European project. Little did I know that it would fall to us together to designate portfolios after the 2015 General Election, when the time came after the Referendum, which included a portfolio for him to take Gibraltar through the exit from the European Union.

1320 It had been such a pleasure, after the magnificent New Dawn of December 2011, to designate him Minister *for* Europe. What a pity, Mr Speaker, to have to ask His Excellency the Governor to designate him the Minister for our exit from Europe; but if we are to exit the European Union and if somebody was to shepherd our way through that difficult area, then he was of course exactly the right man to do so. And when, on the Government's side of this House, we banged our desks today when he sat down, we did so not in support of the principle of leaving the European Union but in support of the work that he has done with the team behind me in order to enable that to be done in the way it has been done. (*Banging on desks*)

1325

Mr Speaker, the Hon. the Attorney General and his team – Paul Peralta, Nadia Sisarello Parody and Michelle Garcia – who are with us in the House today, have framed the mechanisms for Gibraltar’s departure and that has required intellectually challenging work. Indeed, what will now follow is for many of us, especially for the lawyers amongst us, a change of chip in the way that we understand our interaction with the European Union with remaining European law, how that will operate in the future, the effect and weight of European law – and today, from a non-lawyer, we had our first tutorial on that, and indeed members of the Select Committee had the advantage of receiving a tutorial directly from the draftspeople behind us earlier in the week. But this is legislatively the saddest day for this Government and we will not shy away from saying that we are asking support for a Bill which we did not want to bring to the House.

I want to go through all of the reasons why it is important that the Bill have support in analysing some of the things that hon. Members opposite have said about the reasons why they will not be supporting the Bill. But before I do, I think it is clear that the mental gymnastics that one will have to do in the future in interpreting the *corpus juris* of Gibraltar will only benefit lawyers, who will have to take clients on a very difficult minefield, a very difficult maze of law. If anybody is saying *ker-ching* at the decision to leave the European Union, it is the legal profession. I do not want to do anything to bring them out of the opportunity to make as much as they can in the days after 29th March. I will do my best to ensure they can continue in practice.

Mr Speaker, for us on this side of the House – and I know this is an issue which we all agree on – there is no taking back control, there is no independence day to celebrate on 30th or 29th March when the United Kingdom leaves the European Union, if we leave on that date and we do not find that membership is extended because of the logistics of leaving, or indeed if it were still possible to see the United Kingdom not leave. But it seems very clear to me that one of the key things that we must do, indeed one of the key things that Sir Joe Bossano has done in his intervention today and has been doing in the two years since the result of the Referendum, is to see beyond the horizon, to look up and beyond into the future and to be very clear – and I think it is important to be clear before we get to disagreement – that we demonstrate to the world the agreement in this Parliament that before and after exit day, in the future, whatever price may be asked of us in the context of access to the European Union – which the Hon. Mr Feetham referred to and I will refer to in answering his speech more particularly – in all of those moments, if anybody thinks that they can put a price before this community that we will have to pay in order to survive, whoever thinks that, in particular north of the Frontier and south of the Pyrenees, is going to find every single generation of Gibraltarian going forward from this one demonstrating that they are wrong. This community will not atrophy outside of the European Union, we will not wither on the vine and we will not fall like a ripe fruit. Together we are going to grow and prosper as we have until now, if not more.

I will share with the House and with all of the community, Mr Speaker, that I had an entrepreneur come to see me in the past six months. When the result of the Referendum was announced, people might have thought that there might not be many entrepreneurs coming to Gibraltar anymore if we were leaving the European Union, that there might not be more insurance companies or gaming companies coming to Gibraltar because we were leaving the European Union. In fact, we have more gaming companies today and more insurance companies today. This entrepreneur said to me, sitting in the chair just next to me, ‘Gibraltar is going to do magnificently well, whether you’re in the European Union and you stay or you leave with the United Kingdom, and I want to be here when you do magnificently well.’ Well, Mr Speaker, north of the Frontier and south of the Pyrenees they need to understand that Gibraltar is going to do magnificently well, whatever happens after 29th March.

I also want to reflect on one particular part of the Bill which I think it is important to keep in mind, which is that the fundamental rights part of European law which will no longer be a part of Gibraltar law after we leave – it will not be retained law – is like our Constitution and it is like the European Convention on Human Rights. It contains, in terms almost identical to the European

Convention and almost identical to our Constitution, those fundamental human rights of the post-war era which are, ironically, really a British confection to ensure that the murder and mayhem that we saw on the continent of Europe during the Second World War cannot be perpetrated by one man against another, although unfortunately we have seen a lot of murder and mayhem on the continent of Europe after the Second World War and after the European Convention on Human Rights. But the important point is this: the United Kingdom is not leaving the Convention on Human Rights and the Commission on Human Rights. They will continue to form part of that, and so the Convention will continue to be accessible to Gibraltarians in and out of Gibraltar. And the Constitution of Gibraltar contains those exact rights. Sometimes there is a word of difference in the terms of our Constitution, in the terms of the Convention and in the terms of that part of the chapter on fundamental rights which we are losing from the European Union. The United Kingdom, of course, does not have a written constitution. It has today a Human Rights Act which imports the European Convention into UK law – very controversially, as far as some are concerned. This is not an area that should concern anyone in Gibraltar because we have, as our Magna Carta, a constitution with those fundamental rights.

Now I want to turn to some of the things that one has had to endure hearing from the Hon. the Leader of the Opposition. I say ‘endure hearing’, Mr Speaker, because another thing I never thought would happen when I became Chief Minister of this community having beaten the redoubtable Sir Peter Caruana, is that I would miss him, but having debated issues of substance with Sir Peter Caruana – not of economic substance, where I think the view on this side of the House is that he never had any expertise on that – but having debated other issues of substance with Sir Peter Caruana where you could have a meaningful debate, where you could have an argument about a particular detail and you could leave better informed although perhaps still in disagreement, it is really quite something to have had to endure what the current Leader of the Opposition has told this House as to the reasoning why they are not going to support this Withdrawal Bill.

It is really quite preposterous. Even in his analysis today of why the first Referendum – let’s call it that – of June 2016 might have been deficient in the arguments put before people, the hon. Member, in seeking to disagree with us, has adopted all of the arguments I used in July 2016: insufficient information was put before the general public in the United Kingdom in order to allow them to make up their minds. I recall what they said when I said that. I said, at a dinner organised by the Federation of Small Businesses just after the Referendum, in the Khaima at the Rock Hotel:

This referendum has been won by those who put a false prospectus before the United Kingdom public.

The hon. Gentleman opposite, then the Leader of the Opposition, for whom then I had very little regard, said I was wrong to say that and that I would be confronting the Brexiteers, who have to be our best friends going forward. Well, look, that was my position then; it remains my position now. It was not their position then; it has become their position now. So, even in dealing with issues like that, all that hon. Members opposite is to attempt ... become like chameleons (*Laughter*) – I cannot conject it – and morph into the arguments that we put then, which they said then were dangerous arguments for Gibraltar which we should not put. Now they put them. It is still our view: they have come round to our view. It took them two years. I think I will demonstrate today why two years from now they will be adopting the things I am saying today about this Withdrawal Bill if it becomes necessary to see it pass into effect.

One of the key things that they said that we needed for Gibraltar, that we wanted for Gibraltar, that had not been secured and that should have been our aim and that is not secured by the Withdrawal Agreement and that we have not delivered in our unambitious approach to the Gibraltar negotiation, is freedom of movement and single market access. Those should have been our aims, he said. Well, it really hurts me to say that today the GSD is led by a man who obviously does not understand what the Withdrawal Agreement does, because we could

disagree about aspects of the Withdrawal Agreement – of course we could, and in fact we could agree about the Withdrawal Agreement and whether we like it or not and whether we would like it to do some things or not, and I will turn to Mr Feetham in a moment because there was maybe large measure of agreement between what he has said and what I believe, which I will now deal with – but to say that hon. Members will be voting against the Bill because it does not deliver a deal on freedom of movement or freedom of access to the single market is such a failure of understanding that it leaves me unable to take seriously anything the hon. Gentleman ever says again, not just in relation to this subject – if he ever agrees with me in future I will go back and check my work. What the Withdrawal Agreement does in its Gibraltar Protocol and in its MoUs is apply the Withdrawal Agreement to Gibraltar in its entirety. That means the transitional period, which is what the Withdrawal Agreement delivers, which means that freedom of movement and access to the single market continue to be enjoyed by Gibraltar for as long as those freedoms are enjoyed by the United Kingdom.

So, what an own goal! What a lack of understanding to have allowed himself to become the finger puppet of those outside this House who have similarly failed to understand that those are the benefits that the Withdrawal Agreement, however imperfect it may be, delivers for Gibraltar, because he has specifically said that those are the things we *should have* sought to achieve for Gibraltar in the Withdrawal Agreement. They are achieved, and so the rug is pulled from the hon. Gentleman's argument in the first three minutes of his intervention. Everything else is like a house of cards that collapses upon itself, because of course we achieve that key aim. Of course we do. It continues to be a right of people from Gibraltar to enjoy freedom of movement and single market access from Gibraltar. That is what the Withdrawal Agreement does: it creates that transitional provision. That we do not enjoy those for the future beyond the Withdrawal Agreement, well, neither does the United Kingdom, Mr Speaker, because what this thing called Brexit is designed to do is to take us out of the principle of freedom of movement by dint of our nationality as British citizens and to prevent us from having access to the single market. I would have thought hon. Members would have worked that out simply from watching the rolling news.

Is it possible to agree a deal today about future access to the single market and future freedom of movement? Well, the answer is in the Treaties. Article 50, which is the article under which the negotiations for withdrawal are being carried out, does not allow the European community, the European Union, to engage in negotiations about the future relationship between an ex-member state and itself until after the withdrawal. Don't they understand that, Mr Speaker? Don't they understand that the issues relating to Northern Ireland are about an insurance against a hard border? These are matters of logic and treaty.

If the hon. Gentleman said to me – and I will deal with some of the things that have been said by others – 'I would have done this in a different way and I would have gone that way and I would have changed this word and I would have done that word,' I might have accepted it, I might have had to disagree with him, or I might have had to say to him – as I might in a moment in relation to other matters, to one of the other interveners – 'Well, look, he and I entirely agree but this is what it said before and this is what we negotiated.' But to say you must be judged, and your agreement, or those parts of it that relate to Gibraltar, and your Bill must be judged against a standard which would require you to bust the European Treaties for Gibraltar, to bust Article 50 and do for Gibraltar that which Article 50 specifically prohibits the Commission from doing, which is to negotiate for the future before you have left, is to so foolishly set a standard that it is impossible for anybody to achieve without bringing the other party into breach of the common agreement to which we are all parties now that it betrays a complete and utter lack of understanding of the Treaty. But that is what happens to people who read out speeches that have been written for them by other people. That is what happens when you are writing a speech for somebody else: you do not care if you get it wrong because it is the other fellow who is going to have to blush when he is demonstrated to have said something as foolish as the hon. Member has been put up to say here today.

1480 Mr Speaker, the hon. Gentleman laments and visits on the Government, I think, the fact that
media operators in the United Kingdom sometimes say that the only land border that the United
Kingdom has with Europe is in Northern Ireland. Well, he said British, not United Kingdom. I have
not heard any media say that the only *British* border is in Northern Ireland, but maybe my news
1485 sources are different to his. I know that my children watch on CBeebies a daily news roundup,
which might be the one that he is following, because in the ones I follow there is talk of the
United Kingdom's only land border being between Northern Ireland and the Republic of Ireland.
I would have thought that a lawyer would know that the definition of 'United Kingdom' in
English law is the United Kingdom of Great Britain and Northern Ireland, which does –
unfortunately, for the integrationists amongst those in Gibraltar – not include Gibraltar. The
1490 Hon. Mr Feetham I know is sometimes an integrationist, so I will give him the benefit today of
the cover of his sometimes ad hoc integrationism.

The reality is that in EU law the member state United Kingdom includes Gibraltar by dint of
operation of Article 3(5)(5)(3) of the Treaty establishing the functioning of the European Union
and the case law last year, or 2016, itself on the GBGA. But if you are in the United Kingdom
1495 talking about the United Kingdom, then the United Kingdom's only land border is with Northern
Ireland. That is a geopolitical legal reality. There is another British border here, but he should not
forget that there is another British border way down west between the sovereign base areas of
Cyprus and the Cypriot Republic, and there is a protocol on the Cypriot Republic also in the
Withdrawal Agreement.

1500 Is it surprising that the British media – because that is all we are debating in respect of this
part of what he was put up to say – is more concerned about what is happening in respect of
Northern Ireland, which has turned out to be the sticking point in respect of the agreement and
in respect of which there has long been violence and, thank God, now the Good Friday
Agreement, and not in respect of our border? Well, Mr Speaker, all our media write about our
1505 border every day. All the UK media – and that means the BBC, ITV, Sky News and all the others,
which are just intended to be watched in the United Kingdom, as we have all been reminded of
recently – write about their border. I do not see how that advances the hon. Gentleman's case
at all, but he felt – or someone felt – it was sufficiently important that in determining whether to
support this Bill he do an analysis of what he watches on television. Well, Mr Speaker, it does
1510 not advance his case at all.

But then he decides to say that the issue has been exacerbated by my being – and he
personalises it – the cheerleader of the British Prime Minister. Mr Speaker, I have not stood up
to call the British Prime Minister a great stateswoman – I have not – but she has stood up to say
things about me, all of which, when good, are thanks to the work that my team have done, and
1515 if ever there were anything bad to say about me I take full responsibility. But it is obvious to
everyone who sees this – because people stop me and tell me – that there is just such a huge
degree of jealousy operating on the Opposition benches that a British Prime Minister has been
favourable in her description of the work of the Gibraltar Government and personalised it on
me, because they never had that when they held government. They never had it and indeed,
1520 given their ability to analyse legal concepts in respect of the European Union, I doubt they ever
would. Every time that the British Prime Minister has said positive things about the Gibraltar
Chief Minister in my person they have been well deserved by the team that has supported me,
but all I have said is this agreement works for Gibraltar. I will deal with Mr Feetham's analysis of
the Withdrawal Agreement in a moment, because we might agree that there are things which
1525 are imperfect but indeed, in that, Mr Feetham agrees with the British Prime Minister herself
because the British Prime Minister has said, 'This is not a perfect Withdrawal Agreement, but
don't let the perfect become the enemy of the good.' If saying this Withdrawal Agreement
works for Gibraltar makes me a cheerleader for the British Prime Minister, well, I will be a
cheerleader of any British Prime Minister who does things which are good for Gibraltar – and if
1530 they do not like it, they had better stop watching now because I intend, in the rest of my political
career in whatever role I have, and indeed thereafter, to continue to be a cheerleader for any

British Prime Minister, any British Leader of the Opposition, any Gibraltarian Chief Minister, any Gibraltarian Leader of the Opposition, any Gibraltarian sitting in a rocket chair in this Parliament or anybody outside of this Parliament who supports Gibraltar in the work that they do, and I will do that incessantly whichever position they may be in.

So, they had better stop reading my press releases, stop reading my letters to the newspapers and stop watching my interviews, because all they are going to see is me, with a couple of pom-poms, cheering anyone who supports Gibraltar. That is what they should be doing, that is where their analysis should have led them, but that is because they call saying that this agreement is good for Gibraltar ‘cheerleading’. That is what they call cheerleading. When one does not strip out any aspect of the work of an individual to praise it but simply says ‘I support this’, they call that cheerleading. Well, Mr Speaker. On that basis they say that that has been bad for Gibraltar. Well, look, when I said the Brexiteers had sold the United Kingdom Brexit on a false prospectus, they said I should not be aligning myself against the Brexiteers. When I have said that the Withdrawal Agreement works for Gibraltar and that therefore we support it, they have said I should not be aligning myself with a remainder Prime Minister who is delivering Brexit. When they see us in photographs with Brexiteers, with remainers, with leaders of select committees, with Conservatives, with Liberals, with Labour Members, I suppose they have got nowhere left to accuse us of failing to have support. So, the point – the cheap, silly point – that he was put up to deliver today on cheerleading also avails him of no good reason not to support a piece of Gibraltar legislation needed to secure the integrity of our legal system.

Then he says that Gibraltar voted to remain and sets out all the reasons why Gibraltar wanted to remain, as if he were suddenly the champion of Remain. Doesn’t he know that the Government has always said, in all of our interventions, that our desired, preferred best option is to remain? We wanted that to be the result of the Referendum. We did not want Article 50 to be triggered. We would prefer to see Article 50 extended. We would prefer, most of all, to see Article 50 revoked, especially after the European Court of Justice said that that was a possibility. But this is a Government, Mr Speaker. We are not a dream society. We are not here to sit around doing blue-sky thinking about what we might like to see happen in the next 60 days. We are Government and we have a responsibility to ensure that Gibraltar is in the place it needs to be and protected as it needs to be when the United Kingdom leaves the European Union, as it appears it is going to do. If it does not leave the European Union, we can happily just throw all this work on the back of experience and continue as we are. But we have not changed our views about Remain. We are still remainers having to vote in favour of a Withdrawal Bill.

When they talk about our failure to look for a solution which is different, like the Scots have asked for etc., doesn’t he recall that ...? He is sitting with the party and he was a member of it when they said that our call for a differentiated Greenland-style solution should not have been pursued, and now they are saying the same thing. Mr Speaker, I so miss the logic and the rigour of Peter Caruana, even when he was wrong in my view, because at least he did not flip-flop from one position to another – other than in matters of economics, where he used to get his GDP and his GNP as confused (*Laughter*) as no doubt most of us do, except the Hon. Sir Joe Bossano.

Then he says – and I do not know what on earth this had to do with the magnificent work that the Hon. Deputy Chief Minister has done in presenting this Bill – that our domestic agenda has been on the backburner. But he is sitting next to the man who says that we are spending too much on our domestic agenda (*Laughter*), that we are building too many homes and do not know how we are going to pay for them, and we are building too many schools and do not know how we are going to pay for them. How can they reconcile one with the other? That lack of logic, unfortunately, is what is informing the decision-making of Members opposite on issues as clear and as important as this Withdrawal Bill, that lack of rigour and that lack of consistency.

I really do not know what it is they are going to accuse me of next. They said I have acted too quickly on agency workers and I should have stopped and consulted the unions, just today, but apparently my domestic agenda is on the backburner. Mr Speaker, this is like the time that the Hon. former Leader of the Opposition – former-former Leader of the Opposition – for whom I

have growing affection, used to say ... I am going to start missing even him, Mr Speaker; it has got that bad on the benches opposite! He used to say one day that the GSLP under Picardo was just the GSLP under Bossano and that Picardo was the front, and the next week in the same newspaper would say that Picardo had managed to, Machiavellian-style, get him out of the way five years ago and now Bossano and Juan Carlos out of the way too. The hon. Gentleman could not have it both ways and hon. Members cannot have it both ways: either my domestic agenda is on the backburner or it is moving too fast and it is out of control and the spending is crazy, one of the two. I ask them just, please, to stop being a moving target for my responses, because I quite happily respond to both arguments but at least to pause for a moment when it comes to issues as important as this Withdrawal Bill.

Mr Speaker, if there is no European Union Withdrawal Bill, there is no power to implement the Withdrawal Agreement. And they are going to vote against the European Union Withdrawal Bill. He came to the principal reason why they are going to do that. He did not address the fact that whether we like the Withdrawal Agreement, they like the Withdrawal Agreement or not, there *may* be a Withdrawal Agreement or there may be a withdrawal with or without an agreement. If there is a Withdrawal Agreement, then the provisions for implementation of withdrawal will have to provide for the Withdrawal Agreement, whether we like it or not. How do they justify that? This is ostrich politics: 'We don't like the Withdrawal Agreement, there may be a Withdrawal Agreement, there is very likely to be a withdrawal, we are just going to vote no – you pass this with a Government majority and call us when the bomb has gone off and all the trouble is over.' That is what they are doing. They are saying, 'We will not support this legislation, which is essential to secure the integrity of our legal system, because we don't like the fact that we are leaving the EU and indeed we don't like the fact that there may be an agreement on our leaving the EU which includes references to Gibraltar.'

First point: they do not deal with the fact that this may become a reality whether or not they like the Withdrawal Agreement.

Second point: they then go into the parts of the Withdrawal Agreement which relate to Gibraltar and they say, 'Ah, you see, these are so terribly negotiated, so badly structured and so bad for Gibraltar that we cannot support the Withdrawal Agreement.' Mr Feetham did a different analysis. This is the analysis done for the Opposition by the Hon. Leader of the Opposition.

Mr Speaker, I was reminded yesterday, or Monday, when I saw Mr Clinton and him sitting on the side, that they are not members of the Brexit Select Committee. They have not made representation to us since the leadership of the party changed that they might have wanted to have Mr Phillips in the Select Committee instead of Mr Hammond or instead of Mr Feetham, whatever. They have not made any such representation. We brought Ms Hassan Nahon in when she became independent. Then we brought Mr Llamas in when he became an independent – and then we let him go again when he was no longer independent, Mr Speaker! Nobody from the other side has said the Leader of the Opposition would like to be on the Brexit Select Committee. But I thought they spoke to each other on the benches opposite: I may have been wrong even in that basic assumption.

Doesn't he know that we have had – the Hon. the Deputy Chief Minister knows the number better than me – countless informal meetings of the Brexit Select Committee? (**Hon. Deputy Chief Minister:** Twenty-one.) Over 20 – 21 informal meetings of the Select Committee where we have been informing them and, as soon as we were able to, showing them drafts of the documentation. And indeed we were prepared, because of the importance to Gibraltar, to give a briefing also to the leader of the GSD, who is not in this House. In fact, that was not possible because he had other commitments – *other commitments* in respect of something as important as this! – when he was offered a briefing by the Chief Minister of Gibraltar when I was here for 24 hours or less and I did my best to brief him, and he had other commitments. But they were briefed, and when he was finally briefed he proposed that we should change three words in all the documentation – three words when he read all the documentation – and I said, 'Look, I can't

let you take it. It's my fault I can't let you take it because I don't have the consent of all the other parties who are negotiating this,' – we were all trying to keep it tight – 'but I will let you look at it as much as you like.' He proposed three words of change, and in all the 21 meetings, Mr Speaker, if I may say so, with respect to hon. Members opposite – to the hon. Lady, to Mr Feetham, to Mr Hammond – they have been constructive, positive and supportive. I am not disclosing anything, because the Hon. Mr Feetham has actually said so in his Budget speech this year and I think he has repeated it again in the context of his intervention today, but they proposed three words should be changed. None of the words that they proposed should be changed were in the Protocol or in the MoUs. The three words they wanted to change were in the Concordat.

If there are such obvious deficiencies in the MoUs that they cannot now vote for this Bill – or in the Protocol – why didn't they propose that we should change those obvious deficiencies? They did not. This is the creation of a nonsense argument in order to pretend that they are the hawks and we are the doves. This is an attempt to turn the GSD into the GSLP of 1984 when Joe Bossano spotted the problems with the Brussels – plural – issues of sovereignty and persuaded the public in Gibraltar of how dangerous it could be, and indeed his analysis of the Airport agreement. This is a clear attempt to do that with documents negotiated with all those concerns in mind and creating none of those issues, as I will deal with when I deal with the arguments – the paucity of argument – that they have put in support of their proposition.

These are the reasons why hon. Members say they will not vote for this Bill, although they recognise all of the need for it. Of course, what they are doing – and we are getting used to it – is relying on *our* responsibility as a party, or as parties, and as a Government to give effect to things that are required for this community. This is the Clinton doctrine – and as the New People would say, not Bill Clinton, the other one (*Laughter*) – the doctrine that although you know that there must be a Budget and that the spending must be made and that civil servants must be paid, and they would like to also, some days, pretend that they are the champions of civil servants whilst at the same time they vote not to pay them, and this is 'We know that there is a need for this Bill to guarantee the integrity of our law, but we are going to play a game on one clause in the Withdrawal Agreement, we are going to pretend that we don't like them, even though we said nothing about those agreements or MoUs when you showed them to us, and we are going to rely on *you* to pass it.'

I commend the hon. Lady for having the gumption to sit alone on that side of the House and demonstrate the same level of responsibility that we as a Government are having to show.

We will get this Bill through this House with the Government's majority and the vote of the hon. Lady, and the community will have its legal certainty and the ability to see a continuing functioning of our *corpus juris* after 29th March, whether or not they vote on the lacking-incogency principles that the hon. Member has put, or the more genuine views that Mr Feetham has put, which I will address in a minute.

Unfortunately, Mr Speaker, it is clear to us that the only person who should be described as a cheerleader is perhaps the hon. Gentleman opposite, who has come here to do the bidding of somebody else. If I felt I needed support for a proposition in respect of a matter of international relations, the first person I would turn to would be the founder of the GLSP, Sir Joe Bossano. He sits in the Cabinet in which I sit and the Cabinet have been fully briefed on the MoUs and the Protocols and he has explained today that he considers that there is no reason to vote against them and explained why.

So, the first and most difficult hurdle to pass for something that involves an agreement with Spain through the MoUs, signed by the United Kingdom and Spain: Joe Bossano. That is like going through a ring of fire. Second, the person who achieved trilateral agreements with Spain.

Well, I do not have to ask him what he thinks because the hon. Gentleman has said that we have squandered the significant gains of Peter Caruana. I suppose the hon. Gentleman was too busy setting up his office in France – where I assume he is going to be taxed on his earnings and for which I heartily congratulate him; I shall buy him a yellow vest for his weekends, Mr Speaker,

on the Champs-Élysées (*Laughter*) – because he obviously did not watch Sir Peter Caruana on *Viewpoint*. Sir Peter Caruana, on *Viewpoint*, did an analysis – the transcript of which I will send to him, Mr Speaker – which, unfortunately, is lacking in this House on those benches today. What he said was you cannot compare the trilateral agreements – which were not signed, which were political agreements – to this situation in the EU, where the member state United Kingdom has always represented Gibraltar. The hon. Gentleman says he saw that. Well, I wish, for what was left of my respect for him, that he had not said that, because if he did watch Sir Peter Caruana's analysis and he has said the things he has said today, he is even more of a fool than I thought, because if Sir Peter Caruana has said that it is completely different to negotiate political unsigned agreements, the value of which Sr Margallo showed us, versus signed Treaties, then, and in the particular context in which these agreements arise, the hon. Gentleman should not have allowed anyone to write for him the things that he has said today in this Parliament, especially if he had watched Sir Peter Caruana.

I will not burden the *Hansard* by reading out what Sir Peter said, today – I expect I will have another opportunity to do so – but his analysis was the right one, and the hon. Gentleman opposite's analysis is the wrong one. But his analysis is not just the wrong one on the MoUs and the Protocols; his analysis is the wrong one of the juxtaposition of the trilateral agreements under Cordoba and the bilateral element of the agreements which are contained in the MoU, even according to Sir Peter Caruana, who he is praying in aid for his analysis.

Mr Speaker, then the hon. Gentleman says under the MoUs Spain has achieved for its workers permanent rights and we have achieved nothing. It is boring in the extreme to have to go back again to basic principles. The MoUs are, like the Withdrawal Agreement, reciprocal in nature. We have achieved the same as Spain may have achieved. So if there are citizens' rights that are recognised as enduring, then they are recognised as enduring as much for Spanish workers as for British Gibraltarian workers or citizens, as are agreed in the Withdrawal Agreement. So that argument is completely flawed – not just lightly flawed, *completely* flawed. It is wrong. It is wrong in law because the Withdrawal Agreement is a legal document. And he is a lawyer, Mr Speaker – how can he say this? I wish he had given me a good argument to have to wrestle with, not a nonsense argument to wrestle with. Spain has not achieved anything permanent that we have not also achieved in a permanent way.

And indeed he and other members of his party say that we have ceded control. That is the next argument that he has put. I have said so already, so I am surprised that he is taking me to that argument again. Look, it is all right for somebody, who has no responsibility in this House and who does not draw a salary from the taxpayer, to write to the *Chronicle* and say 'nonsense' – of course it is; or to go on Facebook in your 60s and write long blogs which say 'nonsense' – of course it is fine. Freedom of speech. Enjoy your lack of professional responsibility these days and write all that. That enriches society, Mr Speaker, but it is nonsense. And it does not matter that it is nonsense, but if the hon. Gentleman says Spain has achieved control over Gibraltar and he has forgotten that the agreements are reciprocal, then what he is saying is that Gibraltar has achieved control over Spain. So, in those areas where he says Spain has achieved control over Gibraltar in respect of the MoUs, the geographic ambit of which is the geographic ambit of the municipalities that make up the Mancomunidad de Municipios, we have achieved *equal control*.

Does he know what he is saying? He is either lauding me as the Chief Minister who has achieved more than any other in history – which I do not believe I am, Mr Speaker – or he is demonstrating his facile lack of understanding of what it is that the MoUs contain. Is he saying that I have, somehow, some control over Tarifa and its municipality? If so, I shall ensure that I never want for a table at the Hurricane Hotel again! What utter tripe! Why does this community have to endure these arguments on something as important as this? But I have to address it in trenchant terms, because otherwise there might be some who might be persuaded that somehow the GSLP, with Joe Bossano in the Cabinet, has ceded control of the most slightest of issues over Gibraltar to Spain, when the obvious reality of the MoUs is that they are reciprocal. If that is what he is saying and we have ceded the slightest control, we have also gained control

over the geographic ambit of the application of the Withdrawal Agreement MoUs, which is all of the municipalities that make up the Mancomunidad de Municipios. Mr Speaker, I am neither a cheerleader nor a hero who has achieved that control over those municipalities, but I have to address these arguments because they are put seriously by the hon. Gentleman.

There is no question of any regulation being done by anyone in respect of Gibraltar under the MoUs and the Withdrawal Agreement. What there is is a continuation of the process under which we are subject to EU law, and what happens under the Withdrawal Agreement ... And he might benefit from writing this down for his legal analysis. Should he ever be involved in litigation in respect of this, he might be able to make a bob or two out of what I am about to tell him. All that happens is that the Commission, as the reporting agent through which 28 go, changes and morphs into the joint committee at the top with reporting through the committees. In the same way as today hon. Members could say – because it is a Brexiteer argument, the one that he is making – ‘Ah, well, we have lost sovereignty because the European Court of Justice can determine what happens in the United Kingdom,’ we have lost sovereignty because the Commission can determine what happens in the United Kingdom. Well, according to them, I have given up sovereignty of Gibraltar, and control, because the joint committee at the top can determine what happens in Gibraltar; the joint committee is there instead of the Commission.

Today we can be told what to do with our tax law by the Code Group of the European Commission. We have been told what to do with our tax law, at the instance of Spain – exactly the same analysis that he has made, except under the Withdrawal Agreement it lasts two years and there is an equal representation of Gibraltar and UK versus Spanish in one committee and, at the top, the UK versus the EU. And then it goes into international arbitration. So, if he was making that argument seriously – like a Brexiteer, and it appears that there is more than one of them loose in the GSD – then his analysis would be more dangerous about continued membership of the EU, which he professes to want because he says he is a remainer, than about the Withdrawal Agreement and its application. That is the level of lack of logic in what we are having to deal with today.

But let’s be very clear: the position of the GSD now seems to be that, they dislike, for all of the impossible-to-support reasons that they have put, they dislike the Withdrawal Agreement so much that they would rather see Gibraltar not part of it. But let me just make them imagine one thing. Let them go back to the first emanation of clause 24, which suggested that even the Withdrawal Agreement might not apply to Gibraltar. Their panic then was that there could be a Withdrawal Agreement that might apply to the United Kingdom and might not apply to Gibraltar. We did not panic; we just acted to ensure that if there was a Withdrawal Agreement it would apply to Gibraltar, because you see, Mr Speaker, therein lies the rub, as Sir Joe Bossano has said on a number of occasions. Perhaps they will have more regard to me referring to his explanations of this. If there were a continuation of membership of the EU transition for two years which applied to the UK but not to Gibraltar, that would put Gibraltar at a serious commercial disadvantage, and yet that is what they are saying they appear to prefer because they are not prepared to pay the price of this non-cession of control which they fail to be able to analyse. In effect, what they are arguing for, what the GSD is arguing for today, is a hard Brexit for Gibraltar on 29th March, whatever happens.

Mr Speaker, if the price of forming part of the transitional period was any concession of sovereignty, jurisdiction or control in respect of Gibraltar, neither Joe Bossano nor Joseph Garcia, nor Paul Balban, nor Neil Costa, nor Gilbert Licudi, nor Samantha Sacramento, nor Albert Isola, nor John Cortes, nor Steven Linares, nor Fabian Picardo would be prepared to pay for it.

We went through the ring of fire in the analysis, as I said before, of Joe Bossano, we went through the ring of butter of Sir Peter Caruana, but we would not have stepped through a ring that required us to concede any sovereignty, jurisdiction or control to achieve being part of the transition period. We would not have done it and I know that if we had had to take that position – which we have not had to take – the first people to blink in this House would be the hon. Members sitting opposite, not us, because as Sir Joe said, we do not do blink when it comes

to sovereignty, jurisdiction or control, Mr Speaker. We would rather, in the words of the redoubtable Arlene Foster, have our eyelids removed. *(Laughter)* They would have been the ones trembling in their boots. What we have achieved is access to the transition and not to have to make cession of sovereignty, jurisdiction or control.

But what is it that makes them think that anyone in this community will believe – and this is the point that they were getting to – that they could have done better? What makes them think that they could have achieved a better result? I am not going to say that they would have done worse than us. I am not going to make that argument – although I should make that argument, by doing a careful analysis of the GSD's position on historic issues like Brussels etc., but I am not going to do that argument. I am going to assume that they would not have done worse than us. But what makes them think that they would have done better, that Elliot Phillips and Roy Clinton would have done better than Joseph Garcia and Fabian Picardo, or any combination of them, perhaps even people who are not Members of this House, who might have magically been allowed into the room although they are not Members of Parliament, who might have then been allowed to become involved in the negotiations? What makes them legitimately say to the community 'We would have done better' with a leader who is not elected to this House, who has failed to persuade the public in Gibraltar in 2007 and 2011 to elect him, with members of the party opposite who had to abandon their parties in order to be able to get elected to this House?

What makes them think that, not having been able to persuade the electorate in Gibraltar to choose them, they would have been able to persuade the Commission and the United Kingdom and Spain to give them more than we were able to persuade them to give us? Their intellect? No doubt they are all cleverer than us, Mr Speaker. That is how they see themselves in the mirror every morning. No doubt, they are all cleverer than us. Their ability? Their hard work? They all, no doubt, work harder than us. They are all more able than us. Or their charisma? They are all known for their charisma. Maybe that is what has persuaded them all as they shave in the mornings. Some of them no longer shave in the mornings – and when you shave sometimes you make mistakes, like I did the other day. *(Laughter)* Is that what persuades them that they would have done better than us, Mr Speaker?

I really think that if you are going to put an argument that says that this is not good enough and that we should have done better because they would have done better, they have to be able to sustain it. We have heard not one argument to suggest that we failed to analyse in a particular way. All we have heard – and I thank him for it, Mr Speaker – is that the Hon. Mr Feetham has said repeatedly in his interventions, in particular at Budget time, and indeed when we asked in Brexit Select Committees 'Is there anything else you think we should be doing?' he always gave the same answer: 'You are doing the right thing, you are leaving no stone unturned.' And now the other half of the team says that they could have done better.

I am sure that it is the charisma element that they carry that would have enabled them to persuade everyone to do the deal their way and not our way. Look at the evidence, Mr Speaker. Without going back to Brussels, which Government was it – I am asking rhetorically, don't worry – that gave up on the Gibraltar ID card and agreed that it should carry 'UK' instead of just 'Gibraltar'? I am asking rhetorically, don't worry. Everybody knows it was not the GSLP. Which Government was it that agreed that the Gibraltar iteration of the driving licence should be changed to say 'UK' rather than 'Gibraltar', like the ID card? No, I am asking rhetorically, don't worry. Everybody knows it was not the GSLP. It was, after 1996, the GSD. Indeed, it was the GSD not of Mr Feetham; he was then a loyal member of the socialist family. It was the GSD – *(Interjections)* Sorry, you are right. I should not have said 'loyal' – a member of the socialist family! *(Laughter)* It was the GSD of Peter Caruana, Peter Montegriffo, great politicians of their time now gone, Keith Azopardi ... I can remember all the others but I do not think I have to. It was that Government of Gibraltar led by them that gave up on issues that some of us regarded as fundamental. But what is it that persuades them that they could have done a better job now?

They are going to rely on us and our sense of responsibility to pass this Bill. They are going to rely on our concern for this community and its continued functioning to pass this Bill. They are going to rely on us, like they rely in every Budget now, to pass the Bill that delivers for the whole community, and the whole community knows that, Mr Speaker, because the whole community relies on us because it knows it cannot rely on them.

They are going to do this from the comfort of minority, from the comfort of ineffectiveness and from the comfort of opposition. At least other Members opposite, like Mr Feetham in his analysis, which is a different one, and Ms Hassan Nahon, have understood the issues and analysed them in a different way. And Ms Nahon is going to be voting with the Government from the discomfort of a minority of one; from the discomfort of that minority because it is clear that when the chips are down, when it comes to this Government and that Opposition, it is only the GSLP-Liberal Government that is ready to be the one to stand and fight and to take our community through this difficult legislation and ensure that all of those who practise law and who need the law will have the tools that they need.

In that context, to have heard in the past two weeks a call for a General Election by a party that today is not even going to vote in favour of the Bill necessary to implement the Withdrawal Agreement – or rather the withdrawal from the European Union, perhaps not even the Withdrawal Agreement – is to understand the lack of responsibility.

So, the Chief Minister of Gibraltar goes on television, whether you like him or not, after the festive period to do a New Year's message, and says, 'Look, I know it's an election year, but the community should have the comfort' – and in that I include Members opposite – 'that, for the first three months, we are dealing with leaving the European Union. It is really difficult. There is not going to be a General Election because it would be irresponsible.' Then – in fact, just before – we are surprised by a *Panorama* poll that says that we would have a stonking majority if I called an election now. Mr Speaker, I never comment on polls, whether they are good or whether they are bad, but I wonder how somebody who sees his party go down in the polls lower than even when it was led by somebody who was not of GSD stock, according to some of the purists, calls for an election now. I am absolutely flummoxed. That level of irresponsibility with the party they can do if they like, but that level of irresponsibility with Gibraltar I will not tolerate without calling it out, and that is why I have dealt with the hon. Gentleman in the detail I have had to deal with him in the context of the foolishness of the positions that he has put in respect of the GSD.

Mr Speaker, Mr Feetham then did an analysis of the Withdrawal Agreement, much of which I might share. Even the Prime Minister, as I said before, has said that the Withdrawal Agreement is not perfect, and I said – when I was talking in this House, I think, on one of the Statements and the hon. Gentleman had made the intervention supporting a people's vote – that I saw why that was attractive and as an individual, as a Gibraltarian, I could see why he would take that position but the position of the Government had to be an intergovernmental negotiating position and the governments in the United Kingdom – and we negotiate with the government, not with the Parliament – is taking a position and that is all that they are offering us, Brussels and all the other European capitals, and indeed the Parliament. Last night the Prime Minister supported an amendment to the potential backstop, which she is going to now go with the support of the House of Commons to seek from Brussels, but the Withdrawal Agreement without modification is what is on the table. But the hon. Gentleman says, 'Look, I don't like it,' and he almost says, 'I don't have to support this because I'm not in government and therefore I want to tell the community what I feel, and I remain a remainer.' Mr Speaker, perhaps if I were sitting where he is sitting I would take that position from a point of principle, except I might say, 'But I am reluctantly going to hold my nose, lift my hand and support this Bill because I understand its importance in the context of the integrity of the laws of Gibraltar.'

There is one aspect of what he is saying, however, with which I cannot agree, because he rightly does the analysis that in the period of transition as the UK and Gibraltar are negotiating a future relationship with the European Union, Spain may put a price on aspects of that

1895 relationship applying to Gibraltar which we are not prepared to accept. But he has also, in rightly
doing that analysis, I think brought himself into flat contradiction with himself – something
which, when he was Leader of the Opposition, I always enjoyed pointing out, as he does it
often – because he said, ‘I will remain a remainer even after the United Kingdom has left the
European Union: I would like to see us going back in,’ except that of course we would then be
1900 joining a club of which Spain is a member, and in the same way that they will be putting a price
potentially on aspects of our involvement in future arrangements between the United Kingdom
and the European Union, the hon. Gentleman can imagine – and I know he needs no persuading
of this – that they would be putting a price on the United Kingdom coming back in, insofar as it
relates to Gibraltar.

1905 So he and I might agree, if he said to me that he remained a remainer, as I will, but that I
would be very cautious indeed if the United Kingdom ever wanted to go back into the European
Union and I might be a reluctant non-joiner at that time if the price put on the table by Spain
was a price too high. And I am sure that he would agree and that he will therefore see that his
analysis and the reasoning why he does not want to support the Withdrawal Agreement –
1910 because of the transition period giving rise to opportunities for Spain in that negotiation to
extract a price from Gibraltar – does not stand up to logical analysis. I am sorry to have to say
that, because I had wished to be able to agree with him in the context of what he was saying
today because he started off going down a road where he and I would have been in agreement.
But I respect the fact that he says that he just does not like the Withdrawal Agreement because
1915 he did not analyse it from the point of view of the Protocol and the Memorandums of
Understanding; he analysed it from another point of view, one which is generally one which all
of us who were remainers and are remainers would understand.

I think I have summarised all the things I needed to say about his intervention, Mr Speaker,
and I think he understands what I have said without me having to take him through each of the
1920 things that he said and why they led me to those specific conclusions.

Finally, Mr Speaker, the hon. Lady spoke about why she is going to constructively support the
Bill, and I want to thank her specifically for doing so because the one thing that she said which I
need to correct her on, if she will allow me, is that we do not need her vote to support this Bill.
We can get this Bill passed without her support. The hon. Lady is not going to stop the Bill being
1925 voted down with her support, because the hon. Members opposite have not got the numbers to
vote the Bill down, and therefore I think her support is even more important to us.

I want to specifically address that point because she does not need to support us. She could
have taken the comfortable position that hon. Members have been trying to take to
masquerade in front of the public of Gibraltar and do a pretend Dance of the Seven Veils where
1930 they are going to pretend to be hawks and not show us their dovish bellies until it is too late.

A Member: What a horrible thought, but okay!

Hon. Chief Minister: She could have done exactly that, Mr Speaker. She has chosen not to.
1935 Because we do not need her vote, she could have comfortably said, ‘These people are going to
pass this Bill. I am going to go down the pretence of being against it and I might catch a few
votes on the way.’ More power to her and greater respect that she has decided to support us
despite the fact that we do not need her vote and has been responsible in the analysis that she
has done. That might make hon. Members realise why they were so foolish in calling for an
1940 election now, or indeed it might give away why they are calling for an election now – it might
not be me that they are so afraid of. It may not be losing the election that worries them so
much; it may be completely losing their seats that worries them.

The Hon. Mr Clinton tried to find a way to squirrel out a technical point because he likes to
pretend to be a worm of technical points. Well, Mr Speaker, I hesitate to say that he
1945 overanalyses and tries to over argue his points to such an extent that it becomes blindingly
obvious that there was never there a point in the first place. Of course the Protocol is an

agreement to agree a taxation agreement – it specifically says so. The hon. Gentleman I think wanted to demonstrate that he had understood that to an extent because he wanted, I think, to demonstrate to us that he could read, because that is all that it takes. The part of the Protocol that deals with the tax agreement says this:

TAKING NOTE of the Memoranda of Understanding concluded between the Kingdom of Spain and the United Kingdom on [xx] November 2018 in relation to citizens' rights, tobacco and other products, cooperation on environmental matters and cooperation in police and customs matters,

And there is now a date that can be inserted there. And this is the operative bit –

as well as the agreement reached on [xx] November 2018 to conclude a treaty on taxation and the protection of financial interests,

Mr Speaker, there could be no clearer an agreement to agree. This is not a reflection of an agreement done; it is a reflection of an agreement to agree an agreement. Lawyers will tell him – well, some lawyers, junior lawyers, first-year law students, though perhaps the lawyers on his side have not told him – that an agreement to agree is not enforceable. But, of course, in matters of treaty an agreement to agree demonstrates goodwill. What there is is a desire to be able to finalise that agreement, but what there is not, is yet a settled text of that agreement, because legal scrub for the Treasury, for us and for Spain, in respect of a tax treaty means very detailed check and countercheck against other treaties to ensure territorial ambit etc. So there is not yet an agreement, the text of which is stable, which he can be shown. Text stabilisation has come in respect of the MoUs; it has not come in respect of the tax agreement. That is because we will have to be very careful indeed in respect of what final terms are included there, because there will be taxpayers' rights in play and therefore we need to know that what we agree is entirely in keeping with the provisions of what we expect to agree and not make any mistakes in an international treaty.

Mr Speaker, in respect of the Protocol, the hon. Gentleman also tells us that there is a reference which is dislikeable to him where the Protocol recitals talk about 'emphasising also the need to combat fraud and smuggling and to protect the financial interests of all the parties concerned'. He says he does not like that. Mr Clinton does not like that because he says that that paints us like pirates in a den of thieves. The hon. Gentleman has to be careful not to see himself reflected in those allegations, because this does not say Gibraltar. This does not say 'emphasising also the need to combat fraud and smuggling from Gibraltar and to protect the financial interests of the United Kingdom, the European Community and Spain from Gibraltar.' It does not say that. What this says, in a Protocol between the European Union and the United Kingdom ... It is a Protocol between the European Union and the United Kingdom about the need to combat fraud and smuggling to protect the financial interests of all the parties concerned. So, which could be the parties concerned? The parties to the Protocol are the United Kingdom and the European Union. The most interested parts of the United Kingdom and the European Union are Gibraltar and Spain. So, all those parties concerned imputing through the United Kingdom all the other member states, all the other 26, are the UK, the EU, Spain and Gibraltar.

I know that they have been chasing these unicorns that are often referred to in the context of the negotiating position of some Brexiteers in the United Kingdom, but I will let him into a secret which I am happy to share with the whole of the community: when that phrase first appeared it was not so obviously reciprocal and of all the parties concerned. When that phrase first appeared it was about combating fraud, smuggling and many other ills from Gibraltar doing damage to Spain, and that was not acceptable. That was not acceptable because the clause there now, the clause on the paper today – although I am reading it on an iPad – does not say that. It says 'all parties concerned'. Why? Because there is a lot of fraud perpetrated on Gibraltar by people living in Spain. The hon. Gentleman just has to ask the Chamber of Commerce and the

GFSB about people who come and trade in Gibraltar and do not pay tax in Gibraltar. The hon. Gentleman just needs to know that there are many Gibraltarians and people of other nationalities who come through the Frontier and do not declare goods that they buy in Spain and they want to smuggle into Gibraltar. The protection of the financial interests of all the parties concerned includes all that duty evaded and all that tax avoided in Gibraltar. Indeed, one of the points I am keen to make to anybody who might care to ask me, in respect of those people who think that there is Spanish money avoiding Spanish taxation invested in Gibraltar, is that actually it would be a very bad thing if that money was here, even if it was properly declared in Gibraltar, because a lot of the money in Spain originates from money laundering, fraud and corruption and I know that most financial institutions in Gibraltar do not touch moneys from Spain because it is almost impossible to demonstrate a clean trail of money. And so the way I read this is to combat those frauds and that smuggling which is perpetrated on Gibraltar and protecting the financial interests of our finance centre from that dirty money emanating in Spain. If he wants to persuade Gibraltarians that there is not a threat from that dirty money, from that smuggling and from that fraud, he had better go and persuade the Chamber of Commerce and the GFSB that what happens when people from Spain come and trade in Gibraltar without properly registering and without properly paying their taxes is not fraud, because I am very clear that it is.

And so, Mr Speaker, what emerges is a clause that is reciprocal to all the parties concerned, and if he had ever run a negotiation about anything he would know that there was a starting position from us which was also different to this, in the same way as there was a starting position for them which was different to this in respect of almost every clause, and what is settled is the anodyne meeting in the middle reciprocal obligation in respect of which he can look up the *Hansard* of the way that I have dissected some of the foolish arguments put by the Hon. the Leader of the Opposition.

So, has the tax agreement been signed? No. Is it therefore in a state in which he can see it? No. Is it a double taxation agreement? No. Is it in some respects akin to a double taxation agreement? In some respects, yes: it is a bespoke agreement designed to deal with the nuances of the relationship between a small territory like Gibraltar and a member state of the European Union like Spain, to work reciprocally for the benefit of Spain and Gibraltar tax authorities, which is the way that it should be. When it is signed it will be published and the hon. Gentleman will, that night, no doubt be settling down with a whisky or a coffee to enjoy going through it in detail, like no doubt will all other members of the community.

Mr Speaker, in 1984 this community had the benefit of a careful and detailed analysis of the Brussels Agreement that emerged between Sir Geoffrey Howe and his Spanish counterpart. In December 1987 it had the benefit of an Opposition led by Joe Bossano and the GSLP in a careful analysis of the potential implications of the Airport Agreement. That party is now the party in government. We do our analysis of what we sign Gibraltar up to before we sign Gibraltar up to those obligations, and we are sure that they are safe commitments for Gibraltar that can be commended to the whole community. Today, Gibraltar has a principal party of opposition that wants to ape Joe Bossano but is making monkeys of themselves in the process.

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

Mr Speaker: The Hon. Trevor Hammond.

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

I was not going to speak this afternoon. I thought it was going to be a relatively straightforward session, actually, in which the respective proposers put their positions forward, and it is a bit of a shame that we have come to this particular position, where a relatively small difference of opinion with respect to the vast majority of this piece of legislation ... because the differences, with respect to this specific piece of legislation, between the two parties, the GSLP and the GSD, are relatively small, between the Government and the Opposition. The Chief

Minister has, of course, in his inimitable way, managed to make that small difference ... He has managed to drive a huge wedge and make it appear like a huge difference in the most fundamental issues regarding the legislation, but on the whole the differences are not so great.

If I may just begin by going back to the Select Committee, which has been mentioned a number of times this afternoon – the fact that it has met on 21 occasions and all those occasions have been, indeed, very cordial. It has been an honour to serve on that Select Committee, in which we have been briefed, sometimes quite extensively but that is all. And those briefings have been in confidence, so obviously any information we received from those briefings received very limited circulation. Often those briefings were pretty much about meetings that took place, in terms of times and dates and who with, not necessarily ... although occasionally we were briefed of the substance of those meetings.

But I think an opportunity was missed with respect to the Select Committee. I think when we set out, the Select Committee – for instance, we asked for representations from the community to be heard by the Select Committee. In the 18 months or so that the Select Committee has been established – and I know representations were made by organisations from the community – not once have we sat to hear what the community or those organisations wished to tell the Select Committee, and that might have helped us and informed the direction that Government took with respect to these negotiations. Had we done so, had the Select Committee been used on a more formal basis, rather than the many informal occasions that it was used, perhaps the outcome of the current situation could have been more agreeable.

But we are where we are, and as I say, we are not so far apart. In terms of the legislation specifically, we are very close and indeed my hon. Friend Mr Feetham did offer us an opportunity when we met only on Monday – offered the Government an opportunity – whereby we may have actually been able to pass this legislation with the unanimity of the House if only some minor amendments were made which would at least separate the politics of this from the mechanics of the legislation itself.

It has been clear that the Government has known what the political position of the GSD is for some months with respect to the Memorandums and the Protocol, so it is not fair for the Government to suggest that somehow it has not been clear or it has not been made clear during Select Committees. It has been very clear and very publicly aired what the differences are and what are the disagreements that we have with respect to the Protocols themselves.

I have to very much agree with something the Chief Minister said, and that is that we do need to look forward as well, and the GSD will support Government's endeavours looking forward – of course, when they are in the public interest; and we all want Gibraltar, as the Chief Minister said, to do magnificently well.

'Public interest' is a phrase that has occurred on a number of occasions this afternoon and evening. Indeed, the Speaker referred to it in his ruling on Mr Clinton's question. It is also brought up in clause 12 of this particular legislation, where this legislation permits Ministers to make regulations when the Minister believes it is urgent or necessary in the public interest. That is quite a lot of power, bearing in mind the subjectivity that is attached to 'public interest' and what is specifically in the public interest. Therefore, there may be occasion, where we disagree in the future over particular legislation or regulation, that we may not have an opportunity to do so in this House, so it may have to happen outside of this House purely because a measure is introduced by a Minister which, whilst they may believe it is in the public interest, we may not believe is in the public interest. So that particular clause is probably the only aspect of this legislation, other than the references to the Withdrawal Agreement, that we struggle with on this side of the House.

The Chief Minister has spoken at great length regarding how good a deal the Memorandums of Understanding and the Protocol are for Gibraltar, or the best possible deal at least that could be achieved. Whether or not we could have got a better deal or would have got a worse deal is all, of course, hypothetical and frankly irrelevant. The fact is – and I believe this is unprecedented – within the structure of the MoUs what we have is a format in which

2095 committees are formed where the Spanish representation holds the majority insofar as there are seven Spanish representatives, six Gibraltar representatives and one representative from the UK, and of the Spanish representatives four of them are from Spanish central government, so it is not even as if we are speaking of representation on the Spanish side from the local area, where there may be particular local issues and particular interests. No, four of those
 2100 representatives ... So, even on the Spanish side it is very much going to be led by the nose by the Spanish central government, whose interests may not be the same – will not be the same – as those of Gibraltar and may not even be the same as those of the local community around Gibraltar. So, therein we have the first problem with the committees.

The second problem with the committee, of course, is that there are six Gibraltar
 2105 representatives and one UK representative. Can we rely on the UK representative to always be on the Gibraltar side? Well, perfidious Albion, no, of course we cannot always rely on the UK representative. That will very much depend on the outlook of the UK government. So, far from having even an equal stalemate on the committees, we actually have a position where Gibraltar is in a minority, very much as we are in this House.

And then, of course, should the committee be at loggerheads, we go to an arbitration which is between the EU and the UK, again to the exclusion of Gibraltar. I accept to some extent the Chief Minister's intervention with respect to that and how it already exists. However, the circumstances are somewhat different than they are with respect to the current relationship with the EU, and the influence of Spain will be much greater, I believe, in that arbitration
 2115 committee as opposed to the situation with the influence that Gibraltar has through the UK.

So, we are in effect, through these MoUs, giving Spain some control with respect to many aspects of the environment, and certainly with respect to gathering information we are allowing them, through these committees in which we do not have a majority or even a stalemate position, to send scientific vessels into our waters to do goodness knows what. You may argue
 2120 we can send scientific vessels into their waters. Well, I do not think we have any, to start with, but even if we did we probably could not because it would not be possible.

We are giving them information with respect to our bunkering activities, we are giving them information with respect to land reclamation, we are even allowing them to influence our tobacco pricing. (*Interjection*) and I note with respect to tobacco pricing that the differential that is quoted is between Spain and the Balearics but Ceuta, Melilla and the Canary Islands are excluded, so presumably they can carry on setting their low price regime whilst we are forced to maintain a differential between mainland Spain and ourselves, which may or may not have a direct impact on our economy but it is definitely a control on our ability to set our own pricing.

And then, of course, we come to the tax agreement, which the Chief Minister says we cannot see because it is still in the drafting stage. Well, I do not see why we cannot at least have confidential access to it in order to inform us as to what ... because at the moment we have no clue as to the content of the tax agreement. We know what is possibly not in the tax agreement, we do not know what is in the tax agreement, and we are expected to vote for a Bill, which presumably will ultimately include that tax agreement, without actually having sight of what we
 2135 are voting for with respect to that particular treaty. So, I do not see how we can be expected, or how anyone can be expected –whether it has gone through the ring of fire or the ring of butter, or whatever it has gone through – to take on trust that this legislation should be passed in this House on the basis of not having all the information available to us. So, I think an opportunity was offered by us to perhaps set aside some parts of this legislation –

2140 **Hon. Chief Minister:** Will you give way?

Hon. T N Hammond: I do not think I should, to be honest, because we may not be going home until 10 o'clock if I do!

2145 **Hon. Chief Minister:** I will answer it.

Hon. T N Hammond: Obviously the Hon. Joseph Garcia has the opportunity to reply and wrap everything up, so I am sure he will do so. And I have so nearly finished that I really would like to progress forward.

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Hon. Chief Minister: Do you want an answer to your question?

Hon. T N Hammond: I think we have had a good debate this afternoon. *(Interjection)*

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An opportunity was offered by this side of the House so that we could come to a unanimous agreement. *(Interjections)* That was not taken. I think we could have achieved that. The vast majority of this legislation and the hard work that has been put into it could have been put through the House unanimously. Unfortunately, because we could not come to terms on those relatively minor points, and in particular the political points which could have sat outside this agreement for the time being, we find ourselves in a position where we have to disagree. And although the Chief Minister may like to say that disagreeing with Government is the comfortable place to be, actually – and I am sure he knows from his days in opposition – disagreeing with the Government in this House is most certainly not the comfortable place to be, but if you have convictions about something it is the place where one has to be. Therefore, I agree with all other Members who have spoken, and who have not spoken, that for this particular piece of legislation we must vote against. *(Banging on desks)*

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Mr Speaker: We will now have a recess of 15 minutes.

The House recessed at 7.11 p.m. and resumed its sitting at 7.33 p.m.

**Parliament (Amendment) Bill 2018 –
Debate concluded –
Second Reading approved**

Mr Speaker: Does any other hon. Member wish to contribute to the debate? Otherwise, I will ask the hon. mover to reply.

2170

The Hon. Dr Joseph Garcia.

Deputy Chief Minister (Hon. Dr J J Garcia): Thank you, Mr Speaker.

The Hon. Mr Hammond made a point in relation to tobacco and the tobacco issues which are normally ... I do not know whether –

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Chief Minister (Hon. F R Picardo): Will you give way? Sorry.

Mr Speaker, I am grateful that, in keeping with the practice these days in the United Kingdom of the government Members giving way to each other, the hon. Gentleman has agreed to give way.

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I just want to reply in 30 seconds to two points that the hon. Gentleman Mr Hammond made in relation to tobacco and that Mr Hammond made in relation to taxation. *(Interjections)*

Mr Speaker: I am going to allow the Leader of the Opposition to raise a point of order.

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Hon. E J Phillips: Mr Speaker, the last time this happened in this House I believe that you suggested this should not happen again. Unfortunately, it is the second time that it has happened. The Deputy Chief Minister has given way to the Chief Minister after the Chief Minister has made his own intervention in respect of this Bill. He has sat down and the mover of the Bill has been asked to present his reply. There should be no reason whatsoever why the

2190 Chief Minister should get to his feet again – a second bite of the cherry – and we are treated to, well, he says 30 seconds but I anticipate it will be longer than that, in response to Mr Hammond's point on tobacco.

Mr Speaker: What is the point of order?

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Hon. E J Phillips: That is the point of order: it should not happen. *(Interjections and laughter)*

Hon. Chief Minister: Mr Speaker, replying to that point of order on behalf of the Government, you made a very clear ruling in respect of an intervention I was able to –

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Mr Speaker: Yes, and I will rule again.

Hon. Chief Minister: But before you do, let me just give the benefit of the Government's view in respect of what the hon. Gentleman has had to say.

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You made a very clear ruling about giving way in the context of the reply that was being made on another Bill, where I got up because the Hon. Deputy Chief Minister gave way and in effect I delivered what you termed was a reply and had that second bite at the cherry. That is not the situation that is availing here. I have said that the Hon. Mr Hammond said two things – and the Hon. Mr Hammond, in case Mr Phillips has forgotten, spoke after me, not before me – and raised two points, one of which related to the point that the Deputy Chief Minister was going to deal with, which I wanted to deal with, two new factual points, and I am going to give two facts to the House which I hope will enable the House to have a better determination of the facts when it makes a final decision as to how people are going to vote, which does not go to the reply that the Hon. the Deputy Chief Minister is going to make on all of the subjects which affect this Bill. I would have thought if they want information and I am offering it they would be happy to receive it.

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Mr Speaker: The Rules of Debate, 45(8):

A member who has spoken to a question proposed to the Parliament may again be heard, if the Speaker so permits, to explain some part of his speech which has been misunderstood; but when so speaking he shall not introduce any new matter.

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When I ruled against the Chief Minister during the Budget debate it was against the background of a speech of about four hours that he had made exercising his right to reply, and then, when a Member did give way and when he spoke again he made a rather lengthy speech on that occasion with, inevitably, bringing some new material into it, which he is not supposed to do.

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Other than that, the convention usually is that when a Member asks another Member to give way it is a matter of courtesy to do so, by and large, unless the debate gets very heated and then Members are annoyed with each other and they do not want to give way.

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The other thing is that if hon. Members now follow the debates in the House of Commons they will see how advantage is taken by hon. Members by asking a backbencher, or the other way round, to give way in order to make a point. That is happening in the House of Commons. It is not a practice that I particularly endorse as far as I personally am concerned, but it is a practice which that staunch defender of the rights of Parliament that is Mr John Bercow does allow.

So, look, I am going to make a decision. The rule says 'if the Speaker so permits'. I am going to allow the Chief Minister to make a short intervention, no doubt to clarify something that he has said or perhaps to clear up something on which he may think that he has been misunderstood.

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Hon. E J Phillips: Mr Speaker, a hypothetical position that could happen is that my hon. Friend Mr Reyes could turn around and say, 'Can I give way to Mr Phillips to make a further contribution to this House?' It could happen.

2240 **Mr Speaker:** It may be relevant that he should do so. The rule empowers me to exercise the judgement.

Hon. Chief Minister: Thank you very much, Mr Speaker, I appreciate your indulgence.

2245 I think the Hon. the Leader of the Opposition's last intervention smacks a little bit of 'Drat, I should have thought of that!' but anyway, never mind.

Mr Speaker, Mr Hammond said two things during the course of his intervention which I thought I could assist him with, in the context of the debate, but which he did not give way on – as he is perfectly entitled not to give way on. The first was in relation to tobacco, where he said that he was concerned about issues relating to competitiveness with Ceuta, Melilla and the
2250 Canary Islands. I just need to place on the record that he has been very carefully briefed on that. Indeed, when he was briefed on that as a member of the Select Committee, I asked that all phones be taken from the room because of the sensitivity of the way in which we had structured that particular part of the MoU with colleagues in the discussions for the MoUs etc. So, he knows that he need have no concerns whatsoever about that and the general public should not
2255 go away with any such concerns as a result of what he said today.

Second, he is the only one to have said – quite constructively, if I may say so – that he would like to have confidential sight, if possible, of the tax agreement. Despite all the remarks that they have made – indeed all the remarks that were made about the tax agreement – nobody thought of saying 'Could we have confidential sight of it?' In the context of the way that we have been
2260 trying to do things, although the text is not stable and is subject to change I am very happy to offer the hon. Members who are members of the Brexit Select Committee the opportunity to see the current draft of that at an informal session that the Deputy Chief Minister and I will ensure is as soon as we are able to fix their availability.

2265 If he had been a little more generous in the context of my request to give way, he might have found that it actually ploughed a furrow that leads towards greater agreement rather than disagreement.

Hon. E J Reyes: May I, Mr Speaker, ask for a clarification on that point? I understand –

2270 **Mr Speaker:** Just a moment. What is the nature of your intervention now?

2275 **Hon. E J Reyes:** I wish for a clarification on what the Chief Minister has just said. If I understood him correctly, the Chief Minister has said that he might be willing to give, on a confidential basis, sight to the members of the Select Committee, but as a Member of this House with equal voting rights I am equally entitled to see it, albeit with the same confidentiality clause. We are creating different tiers amongst different Members of this House, when we all have a vote, so I do not quite square that equation.

2280 **Hon. Chief Minister:** Mr Speaker, just dealing with that point – and I do not know on what basis the hon. Gentleman has got up to make the point because it is not a point of order, he was not the one speaking, and the Hon. Deputy Chief Minister having given way ... Mr Speaker, we will deal with this in the way that we have dealt with it in the past, which is namely to say that we offer that documentation, as we have in the past, to the members of the Brexit Select Committee so that they can see it. I am surprised that the hon. Gentleman thinks that this is an
2285 issue, given that it was mentioned in the last intervention made for the Opposition as one of the last points made by them and we have agreed it on the basis of the Select Committee having that information available, as has been the case throughout and nobody has ever complained.

Mr Speaker: Is there any other point any Member of the Opposition wishes to raise before I ask the mover to reply?

2290 The Hon. Roy Clinton. (*Interjections and laughter*)

Hon. R M Clinton: Mr Speaker, this is a very mundane question which I am sure the Chief Minister will not have any problem with. When I asked about the agreement to reach an agreement, can the Chief Minister say that that was actually signed on the same date as the MoUs? That is all I want to know.

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Hon. Chief Minister: Mr Speaker, that is a question of fact which requires me to look back at documentation to be able to give him an answer which is reliable. I cannot give him that answer today because there were so many days and there were dating days and there were non-dating days.

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He looks quizzically, Mr Speaker, but he might work out that I have been without my family and travelling around Europe with the Deputy Chief Minister the Attorney-General and the team on many different days doing many different things, so if there is provision for different dates it is because it may have been different dates – that is obvious.

2305 If he wants me to give him an answer which is reliable, he can ask me and then I can find it, but in this sort of intervention I am afraid I do not want to give information which might not be reliable because there are many different dates when dates were agreed to be the dates that will be included on documentation, because things were agreed on different dates.

2310 **Mr Speaker:** The Hon. Dr Joseph Garcia.

Hon. Deputy Chief Minister: Yes, thank you, Mr Speaker.

Having listened to the contributions by some of the hon. Members opposite, though not all of them, I think the overall impression I am left with is that they have either not read the legislation properly or not understood what the objective of the legislation is. We are not here to debate the UK-EU Withdrawal Agreement; we are simply discussing the legal framework for the departure of Gibraltar from the European Union and making sure that there is an orderly departure by providing a legal framework which works. That has absolutely nothing to do directly with the Withdrawal Agreement. There will be. I think the hon. Members have almost behaved as clairvoyants. They are debating a Bill we are going to discuss but have not even yet published or brought to this House – in fact, neither has the United Kingdom, if I am not mistaken.

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There are two Bills: one is the European Union Withdrawal Bill, which is this one; and the other one is the European Union Withdrawal Agreement Bill, which is the other one. That Bill has not been published yet. So, there are two separate pieces of legislation. I actually explained that in my contribution and I said there is this power in clause 12 but, in case there is no time, the Government nonetheless intends to bring a Withdrawal Agreement Bill to the House so that we can debate the Withdrawal Agreement in which you have the Protocol and from which hang the four Memoranda of Understanding – but they do not do that from this Bill. In fact, if you look at the definition of ‘Withdrawal Agreement’ on page 306 of this Bill, in the definitions section, it says:

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‘withdrawal agreement’ means an agreement

– *an agreement* –

(whether or not ratified) between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union which sets out the arrangements for the United Kingdom’s withdrawal from the EU.

It means *an* agreement. Why does it say that? Because this Bill and the UK's Bill were drafted before the Withdrawal Agreement was even concluded.

2335 What I am saying is that we are having a discussion on the wrong Bill, (*Laughter and banging on desks*) on a Bill that has not even been published yet and on a Bill that I am told not even Members of the United Kingdom government and Ministers have had sight of the UK version.

2340 Nothing they have said goes into the legal framework or the legal structure that we intend to set up internally in Gibraltar to provide for our departure from the European Union. I think that just symbolises the confused and jumbled logic which the Opposition apply to this and to many other issues, not to mention the number of contradictions which continue to exist.

A Member: I would not describe logic [Inaudible] as jumbled.

2345 **Hon. Deputy Chief Minister:** The Hon. Mr Phillips said that he supported the desire to put legislation in place to provide legal certainty – yes, that is what the Bill is doing – and that they supported most of the Bill. Other Members said they supported 99% of the Bill and they mentioned that they did not want to support the Bill or vote in favour because it would endorse the Withdrawal Agreement. Mr Speaker, it would do nothing of the kind.

2350 As I said earlier, I think they have either not read the Bill or they have not fully understood it. Certainly they did not listen to anything which I said. I think they came here with predetermined ideas about how they were going to come here and have a go at the Government about the Withdrawal Agreement – (**Hon. Chief Minister:** Written speeches.) with written speeches, without being open to the possibility of being persuaded by the Government that they were
2355 mistaken.

If they look at the definition of a withdrawal agreement, they will see that it is a neutral definition which speaks of *an* agreement, not *the* agreement, and as I said, there is a distinction between the European Union Withdrawal Bill and the European Union Withdrawal Agreement Bill, which are two things and which are completely different.

2360 Mr Speaker, clearly this is an important issue to them, because it was something which they mentioned the other day and it is something on which practically all of the Members who have spoken have centred their address. They have all centred their address on the protocols and the memoranda and the number of people on the committees and all the rest of it. If this was so important, why didn't they tell me nine weeks ago when we published a Command Paper?
2365 (*Banging on desks*) (**Two Members:** Hear, hear.) The whole purpose of a Command Paper, which is a practice that we instituted when we came into government in 2011, is to provide a draft Bill for discussion before it is actually published as a Bill and to allow for comments to be made by members of the public, or indeed any other interested parties. As I said, there was only one comment received to the Command Paper. It was not from the hon. Members opposite; it was
2370 from a member of the public. This issue, which is so important to them and so fundamental that it is going to cause them to vote against the Bill today, has clearly not been important or fundamental since 27th November when the Command Paper was published, or at least since 20th December when the Bill was published after that. Clearly, I think it suggests that nobody has looked at this in much detail. That is why I say there is a mistaken analysis which runs
2375 through the Bill.

Just to raise a few points in terms of the contribution made by the hon. Member, I think the Hon. Mr Phillips said that they have a mandate for more Europe, and it is true. The Chief Minister has answered some of his points already, but I will just add to what he said. Yes, the Government, Gibraltar, had a mandate for more Europe; and yes, we started to talk – this was
2380 said publicly – to those parts of the United Kingdom that had also voted to remain, to see whether it was possible to establish a degree of commonality of interests and to work together in advancing the cause of remaining.

We found it very easy to speak to the government of Scotland. We met with Nicola Sturgeon in London very soon after the Referendum. We have met her subsequently on a number of

2385 occasions to see whether we could advance that cause – the cause of Remain, which the hon. Member spoke about today – except that when we did that we were criticised by them for talking to those who wanted to break up the union. *(Laughter)* Mr Speaker, how can we have both?

2390 With Northern Ireland it was more difficult, because Northern Ireland has not had a government for many years, so we found it very difficult to find somebody to engage with. The DUP, the largest party, voted to leave and it was recommending departing from the European Union. Nonetheless, we engaged with all of the parties in Northern Ireland because there was no government and there is no government. As you know, the devolved administration has been suspended over there.

2395 We have also engaged, apart from that, with the Overseas Territories – in that there are councils set up where we can discuss the Brexit issues with all of the Overseas Territories – and with the Crown Dependencies, because let's not forget that although they are not in the European Union like we are and they are not leaving the European Union like we are, they nonetheless have commercial and other relationships with the European Union in financial
2400 services, in selling fish – for example, the Falkland Islands, Jersey and Guernsey sell agricultural products, so they too have different interests.

Certainly in terms of the different devolved governments that we spoke to, I think we did not leave anybody out. We spoke to Scotland, Wales, Northern Ireland, the Overseas Territories and the Crown Dependencies – there is nobody else – to advance that cause, but it was obvious that
2405 if we were advancing the cause of remaining in the European Union, having had it clear that the UK was leaving, it raises a very important question and that is that we are in the European Union by virtue of the UK being responsible for our external relations, so if the UK is not the member state responsible for our external relations, then I ask him: who is it going to be? So, there was a danger in pursuing that any further after the position had been made clear.

2410 I think my hon. Friend the Chief Minister is right – I think the nonsense that they sometimes speak in terms of the relationship we have with the government in the United Kingdom is driven by jealousy or by purely political motivation, trying to score political points. The reality is that I have never seen such a close working relationship between the UK and the Gibraltar Government. I have seen it from the inside and certainly my colleague the Chief Minister has
2415 done more than anybody else to foster that relationship, and I want to pay him the credit for having done that.

Somebody mentioned the question of bilateralism – I am not sure which hon. Member it was. I think what they have not understood is that the discussions which led to the Memoranda and to the Protocol were not bilateral in any way. They were driven and led by the Chief Minister of
2420 Gibraltar for the Government of Gibraltar and they were multilateral negotiations. It is possible to say, for example, that there were bilateral meetings between Gibraltar and Spain without the United Kingdom in the room. There were quadrilateral meetings between the UK, Spain, Gibraltar and the European Union. There were trilateral meetings between the UK, Gibraltar and Spain. So we have had every formula of lateralism that can possibly exist on the planet. **(Hon. Chief Minister: Variable geometry.)** Indeed, we referred to this as 'variable geometry'. *(Laughter and banging on desk)*

2425 I agree with the hon. Member my hon. Friend the Chief Minister – I think the contribution from the Hon. Mr Feetham was far more constructive than that of the other Members. I think it is reflected also in the work in the Select Committee and I want to also thank him for that and
2430 thank him for his kind words.

The hon. Member said that Brexit is not in the best interests of the United Kingdom and Gibraltar. We agree, it is not. That is why we voted to remain in the European Union. That is why we campaigned for people to vote to remain, but sadly we were part of a larger and wider Referendum and the vote in that wider, larger Referendum was to leave. So, discussion now is to
2435 make sure we have an orderly Brexit on our way out, which is what the Bill today was all about. **(Hon. Chief Minister: Exactly.)**

I am also grateful to my hon. Friend the hon. Lady opposite. I think she also made constructive comments, and several sharp observations as well amongst those comments. (**Hon. Chief Minister:** Where indicated.)

In terms of the Hon. Mr Hammond, again he spoke of a small difference of opinion with the Government, that the two views are actually very close. He mentioned that the Select Committee is sometimes briefed extensively and sometimes more limited in the information that is passed across, but I think I can say that we have been as transparent as we possibly can and have been giving you an up-to-date account of every single thing that is going on in the negotiations. In terms of content and in terms of substance, in terms of style or strategy of approach, I think we have been frank and we have been open and at least we are due the credit for that. I was in opposition for 15 years and I was never briefed by anybody on anything. (*Laughter*) (**Hon. N F Costa:** Nor were we spoken to!) Even, as I am reminded, at the time of joint sovereignty in 2001-02, when this Joint Action Committee was being set up with the then Opposition, neither my Friend the Hon. Sir Joe Bossano nor myself heard anything about it. I can only conclude that it never met. (*Laughter*)

The hon. Member did make one valid point, and that is that the Brexit Select Committee should have also taken soundings from the public, and I would agree with that. I think we did publish an advert, we called for people to make representations and we did receive written representations from members of the public who were interested in making them. We did not sit down and receive all representations, but I think the pace of Brexit has been such that the whole work of the Select Committee in a normal sense has been overtaken by events.

Just to conclude, Mr Speaker, as I said, the main thrust of my argument is that the Opposition are choosing to have a debate on a Bill that is not before the House, that has not even been drafted and that not even UK Ministers have seen, which is the United Kingdom and Gibraltar's European Union (Withdrawal Agreement) Bill, which is different to this Bill. But, bearing in mind how much has been said that they have been given 99% of what we have in the Bill, that they support an orderly Brexit and that they support legal certainty, that is not reflected in a vote against the Bill, and maybe they would need to rethink that. There are 44 pages and 47 clauses in this Bill. I do not know whether they are against one clause or one reference, but there is no withdrawal agreement in the Bill. That is the point: that is in a Bill which has not yet come before the House.

So, Mr Speaker, I would urge the hon. Member to reconsider voting against the Bill on that basis – on the basis of the Bill that is before us today – because voting against would mean that you are voting for a *disorderly* departure of Gibraltar from the European Union, (**A Member:** Hear, hear.) that you are voting for no legal framework or legal certainty (**A Member:** Hear, hear.) for businesses and for citizens in Gibraltar, (**Hon. Chief Minister:** Shame.) which is worse probably than having a no-deal Brexit. So I would urge the hon. Member to reconsider the way in which they are going to vote.

Hon. Chief Minister: All people ask him! (**Hon. N F Costa:** Hear, hear.) (*Banging on desks*)

Mr Speaker: I now put the question, which is that 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 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 membership of the European Economic Area; to provide such transitional or other provisions as are deemed necessary, and for connected purposes be read a second time.

2490 **Hon. Chief Minister:** Mr Speaker, especially given the last point made by the Hon. the Deputy Chief Minister, I call on the House to divide, so that history reflects who has voted for an orderly withdrawal and who has not.

A division was called for and voting resulted as follows:

| FOR | AGAINST | ABSENT |
|--------------------------|-------------------|----------------|
| Hon. P J Balban | Hon. R M Clinton | Hon. A J Isola |
| Hon. J J Bossano | Hon. D A Feetham | |
| Hon. Dr J E Cortes | Hon. T N Hammond | |
| Hon. N F Costa | Hon. L F Llamas | |
| Hon. Dr J J Garcia | Hon. E J Phillips | |
| Hon. Ms M D Hassan Nahon | Hon. E J Reyes | |
| Hon. G H Licudi | | |
| Hon. S E Linares | | |
| Hon. F R Picardo | | |
| Hon. Miss S J Sacramento | | |

Mr Speaker: There is one Member absent. Six Members voted against the Second Reading of the Bill and 10 have voted in favour. Therefore, the motion is carried. (**Several Members:** Hear, hear.) (*Banging on desks*)

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Clerk: The European Union (Withdrawal) Act 2018.

**Parliament (Amendment) Bill 2018 and European Union (Withdrawal) Bill 2018 –
Committee Stage and Third Readings deferred to tomorrow**

Deputy Chief Minister (Hon. Dr J J Garcia): I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

2500 **Mr Speaker:** Do all hon. Members agree that the Committee Stage and Third Reading of the Bill be taken today? (**Hon. E J Phillips:** No.) (**A Member:** Aye.) No? (**Hon. Chief Minister:** A disgrace!) You do not agree? Very well.

2505 **Chief Minister (Hon. F R Picardo):** Which means tomorrow we cannot do Questions we are going to have to do the next stage.

Mr Speaker: We are going to go into Committee, proceed with the other Bill in Committee, and then we will come back in respect of this.

2510 **Hon. Chief Minister:** Mr Speaker, I move that the House should now adjourn so that we can take all of the Committee Stage tomorrow, which I anticipate will be the only business the House will have to deal with for some time now.

I move that we come back tomorrow at three.

2515 **Mr Speaker:** The House will now adjourn to tomorrow afternoon at three.

The House adjourned at 8.03 p.m.