



PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

AFTERNOON SESSION: 3.35 p.m. – 7.53 p.m.

Gibraltar, Friday, 31st July 2020

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The Gibraltar Parliament

The Parliament met at 3.35 p.m.

[MR SPEAKER: Hon. M L Farrell BEM GMD RD JP *in the Chair*]

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

SUSPENSION OF STANDING ORDERS

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

Clerk: Meeting of Parliament, Friday, 31st July 2020.

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

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

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

Public Inquiry under the Commission of Inquiry Act in respect of retired Commissioner of Police, Mr Ian McGrail – Statement by the Chief Minister

- 10 **Chief Minister (Hon. F R Picardo):** Mr Speaker, the House will recall that Questions 450 to 469, which were asked and answered on Monday, related to the retirement of former Commissioner of Police Mr Ian McGrail.

- 15 The following day, on Tuesday, the lawyers representing Mr McGrail issued a statement on his behalf in relation to the exchanges in this House. In that statement Mr McGrail's lawyers said that he now firmly believes that the circumstances leading up to his early retirement require a definitive, well-informed and detailed assessment. Mr McGrail's lawyers said that without an independent judicial assessment there is a real risk to the reputation of Gibraltar as an advanced parliamentary democracy under the rule of law. He called for a judicial inquiry by a high court judge from the United Kingdom to be convened without delay. He added that they thought that there could be no reasonable or rational objection to this. He said that the standing and reputation of Gibraltar required it.

- 20 The Government does not consider that it is necessary to convene an inquiry into why Mr McGrail retired early. We do not agree at all with the statements made by those representing Mr McGrail, on his behalf, about the effect that his retirement and the circumstances of it might have for Gibraltar. In fact, we consider that the opposite is the case.
- 25 The Government is satisfied that all aspects of that matter, insofar as they relate to the actions and decisions of the Gibraltar Police Authority (GPA), the office of the Governor and my own involvement, have been entirely proper and based on the legal advice received. Indeed, the Government would not have said anything further than was set out in our statement of 9th June 2020 in which we wished Mr McGrail well in his retirement.

30 The only further statements made by the Government have arisen from the questions put by
the media and the questions in this House by the Leader of the Opposition. That is to say the
Government had no wish to expose that Mr McGrail's career ended as it did. Whilst
acknowledging that there may be public curiosity about the surrounding circumstances, even
rumour and tittle-tattle, we felt there was nothing to be gained by further exposing the facts and
35 matters that arose and led to the retirement of Mr McGrail; but neither would the Government
not answer questions put in this House on the subject other than truthfully in order to avoid the
reality of how Mr McGrail came to retire early.

What the Government is not able to do at this stage is say any more of what is related to the
detail of the information available to the Government behind the views and decisions of the
40 Gibraltar Police Authority, His Excellency the then Governor and, indeed, my own views in
respect of the exercise of my powers under the Police Act. And let us be clear, Mr Speaker, it is
not that we do not want to give every detail; it is that we are advised that to do so is contrary to
the public interest at this stage.

The reason we are unable to provide details at this stage relates principally to sensitive
45 criminal investigations which relate to the recent incident at sea resulting in the death of two
Spanish nationals. It is indisputably not in the public interest to prejudice that investigation as
much in the interests of the police officers who are being investigated as for the families of
those who died at sea as a result of the incident.

This issue obviously also has significant political and diplomatic connotations outside of
50 Gibraltar. No one can fail to see that or doubt that. Additionally, it is one thing for foreign
newspapers and commentators to ignore rules about potential prejudice to live criminal
proceedings or investigations; it would be quite another for us to do so directly or indirectly by
making public comments which tangentially might affect criminal investigations.

It would be particularly unfair for the Government to speak out in its own defence to quash
55 some of the totally unfounded rumours that may abound in this matter if in doing so – and in
that way fully exonerating ourselves of the more outlandish allegations that may have been
conjectured – we might create even the slightest prejudice to those of our police officers under
investigation, or indeed prejudice the rights of the families of the deceased whose interest is to
have an untarnished investigation and outcome thereof.

60 Mr Speaker, in order, however, to ensure that there can be no suggestion, however spurious
and ill-founded, that there is anything untoward about the exercise of powers under the Police
Act that culminated in the retirement of Mr McGrail, the Government is minded to convene an
inquiry under the Commissions of Inquiry Act.

This is an inquiry that is not necessary but that we will convene to ensure that it is not
65 suggested that anything is being covered up. It is an inquiry that has been made relevant only by
the call for it by Mr McGrail. In convening such an inquiry, the Government will seek to ensure
that all aspects of all matters that might be relevant to the formation of views of each of the
GPA, the office of the Governor, Mr McGrail and the Government are provided for. We will not
seek to exclude anything that Mr McGrail might wish the inquiry to review, but we will also not
70 agree to exclude anything that Mr McGrail might not wish the inquiry to review. We will not
seek to cover anything up. Neither will we tolerate any attempt by anyone else to cover
anything up.

We consider that our actions have been proper and that they will stand the test of scrutiny. I
hope all others who may come before the inquiry feel as confident. We shall therefore now
75 commence the process of formulating the relevant questions and parameters for the inquiry.

Mr Speaker, there will be considerable public cost as a result of the convening of this inquiry.
The cost will likely ascend to the millions. This is money that could definitely be spent in many
other – better – ways, but it is a price we are prepared to pay so that the truth, the whole truth
and nothing but the truth comes out. The Government and the office of the Governor will not
80 tolerate any suggestion from any quarter that there has been any impropriety in the manner
that we have acted in this matter. The cost will not stand in the way of this attempt to tarnish

Gibraltar's reputation. We will not tolerate any suggestion that in Gibraltar there is anything other than the highest regard for adherence to constitutional principles and observance of statutory rules and the rule of law in every single respect.

85 We are unable to say more at this stage, but our inability to say more is precisely because of our commitment to the rule of law. We do not want to prejudice the rights of police officers who are themselves the subject of a criminal investigation. We do not want to prejudice the rights of the deceased and their families in that case who await the fair and proper outcome of that criminal investigation, but an inquiry led by a senior judge from outside the jurisdiction, a high
90 court judge or higher, will properly be able to ensure the protection of those competing interests. A judge in an inquiry will be able to decide what can be said now, what can be said in camera and what can be stayed pending the outcome of other proceedings, but most importantly Mr Speaker an inquiry will reach conclusions that will quash the gossip, the rumour and the tittle-tattle. The conclusions of the inquiry will ensure that all the truth will out. For the
95 Government, there is no inconvenient truth here.

And so, in the circumstances, and despite it not being necessary, other than as a result of the call made by Mr McGrail himself which purports to establish that Gibraltar's reputation would be tarnished if it is not agreed to, the Government will convene an inquiry into his retirement and then the whole community will know all of what lay behind it.

100

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

Hon. K Azopardi: Mr Speaker, we welcome the announcement that there will be a public inquiry. Indeed, if the Chief Minister had not announced today that there would be such a public
105 inquiry we would have been minded ourselves to call for it, for the Government to have reflected on our call that there should be a public inquiry in the circumstances, because we feel strongly that indeed the circumstances are such that there should be such a public inquiry into the entire circumstances of what led to, and the reasons for, the retirement of the former Commissioner of Police.

110 There were indeed major questions that were left unanswered on Monday. At the close of Monday's session there was a lengthy session which dealt with a number of questions that I had tabled and significant supplementaries, but when we walked away from that session people who would have watched or listened to it may have been entitled to believe that there was an unwillingness of the Government, for whatever reason, to answer those questions. Indeed,
115 against the backdrop of what had happened up to that point and the bland statements that I alluded to on Monday from official circles – the Police Authority's lack of comment, the Governor's bland comments, the bland press releases issued by the Government – and silence from the former Commissioner of Police, we were left with a situation where it seemed, to us at least and many people who might view the issue, that there was a reluctance from all sides to be clear about the circumstances of what had transpired. Indeed, if I can loosely describe it, it
120 seemed to me as if there had been a pact of silence, for whatever reason, that had led to no statements other than the bland ones that we had seen.

That pact of silence was, of course, broken because some of the comments and answers given by the Chief Minister must have been a direct contributor to the former Commissioner of
125 Police issuing the statement on the following day as to the withdrawal of the request to retire issued by the Police Authority under section 34. And while the Chief Minister has made a lengthy statement – which he had said to the media, before this session of the House, he would make in response to Mr McGrail's statement – nowhere in today's Statement has he replied to the specific assertion by the former Commissioner of Police that the request to retire issued by the
130 Police Authority under section 34 of the Police Act with the approval of the –

Mr Speaker: Can I ask the Hon. Leader of the Opposition to resume his seat, please?

135 I need to say a few words about the way that we are conducting the response to the Chief Minister's Statement. I need to read this out to you because I have properly anticipated that this might well crop up.

140 It is a well-established practice when a ministerial statement is made that the hon. Members of the Opposition may ask questions for clarification purposes. In so doing, this should not be made a pretext for a debate. Furthermore, Members of the Opposition are not permitted to make political statements in the course of their questioning.

I am going to give a number of examples where my predecessor had to make clear what the position was. My ruling is in keeping with the position taken by the former Speaker, Adolfo Canepa, on numerous occasions in the past.

145 On 29th June 2016 he said:

I would invite Members of the Opposition, in particular the Leader of the Opposition and the hon. the independent Lady, to ask questions for clarification purposes.

On 20th October 2016, the Speaker said:

I explain for the benefit of the virtually new Members of the Opposition that it is the practice, when a ministerial statement is made in Parliament, to allow the Members of the Opposition to ask questions for clarification, if they so wish.

On 20th September 2018, the former Speaker said:

In keeping with established practice, when a ministerial statement is made hon. Members of the Opposition may ask questions for clarification purposes. They may ask questions but are not entitled to make a political statement.

On 31st January 2019, again on a point of order in response to a ministerial statement, he said:

You can ask a question on points of clarification.

150 By way of further explanation and in light of Standing Order 55(1), I shall quote from *Erskine May* and House of Commons procedure. *Erskine May*:

Questions may be asked and brief comments made upon ministerial statements, but they should not be made the occasion for immediate debate.

Again, on the matter of procedure, from the House of Commons, it says here:

What is a ministerial statement? Government Ministers may make oral statements to Parliament which usually address major incidents, government policies or actions. These take place after Oral Questions and any granted Urgent Questions.

The important thing here is that after making a statement the Minister responds to questions on its topic from MPs. That is the House of Commons.

155 Something quite interesting: I sought guidance from the Principal Clerk of the Table Office on 17th February 2020 and he says to me, in response to the email:

Whenever a Minister makes a statement, any Member of the House may ask questions afterwards. The Official Opposition and the second largest opposition party spokesman have reserved slots to do this. Others are called by the Speaker. The only limit is time. The current Speaker generally restricts the statement and questions afterwards to 45 minutes in total.

Those are statistics but the point I am trying to make here is that the Hon. Leader of the Opposition has the right to pose questions on the Statement for clarification purposes. He cannot go back and make a statement regarding what took place in a session on Monday about the answering of the questions by the Hon. the Chief Minister and the way that he did so. That is a question and answer session; this is a session where a statement is being made and I would urge the Leader of the Opposition, yes, to question the Chief Minister for clarification purposes on what he has said in the Statement. Beyond that, I have to rule that you cannot make a statement – that you have just made – covering all the ground that was covered for the time of the question and answer session. That is my ruling.

Hon. K Azopardi: Mr Speaker, the extracts that you have kindly reminded the House of in fact point to the ability to make comment and ask for clarification. So, in the context of a statement that we have heard it is entirely usual and within parliamentary practice to make comment.

I am leading up to clarification questions that I am going to ask the Chief Minister, but everything that I have said so far is merely comment on the Statement made by the Chief Minister, which is relevant to the Chief Minister's Statement because the Chief Minister's Statement has referred to Monday's question and answer session, so I am commenting on that and am entirely able to do so. He has also referred to the context – which he referred to as tittle-tattle – of the background and 'rumourology' that is out there, so again I am entirely able to comment on that.

I certainly respect Mr Speaker's ruling, but I am just simply trying to say that everything I have said so far – and Mr Speaker does not need to be concerned – is, I would say to you, within the parliamentary rules and entirely within what is the norm when commenting on a lengthy ministerial statement, in a lead up to normal questions for clarification that I will get to very quickly.

That is all I would say to Mr Speaker. If Mr Speaker is willing to indulge me on those issues then you will see that I am merely commenting on the substantive content of the Statement, together with relevant context which derives entirely from the Statement, and clarification questions which are derived entirely from that Statement.

Mr Speaker: I am happy to accept the Leader of the Opposition's response.

Hon. K Azopardi: Mr Speaker, I am grateful.

The point about the section 34 issue and why it arises is because in asking a question for clarification I would like clarification from the hon. Member as to purporting to reply to former Commissioner McGrail's statement, which is what he has said he is doing, he has not sought not to respond to that part of the statement which asserts very plainly that there was a withdrawal of the request to retire under section 34. Perhaps he would be kind enough to indicate to us whether in fact he is prepared to give an answer on that point because serious matters do arise for this House given what was said on Monday and the impression that Members of this House, and indeed the public out there, were left with, which is that we all walked away thinking that there had been a live and pending request to retire for the former Commissioner of Police that was extant, only to hear that it might be the case that it was in fact withdrawn. It would be serious if that fact had been withheld from the Parliament by the Member opposite on Monday.

We certainly welcome, as I have said, the Chief Minister's announcement on the public inquiry, and we agree, respectfully, that there are a number of questions that are outstanding. And we note that the hon. Member says that he feels that the Government in due course will be able to ventilate its position and indeed vindicate it and the reasons why he says they have not been more explicit so far.

The public inquiry is indeed important also, in making brief comment about the context of it, because despite everything that has been said before by people perhaps who have indicated otherwise, this is indeed a serious matter and unprecedented, at least in my knowledge, where a

Governor and Chief Minister have openly said that they have sought the retirement of a serving Commissioner of Police, who is central in the constitutional architecture of our community as the Chief Minister himself has recognised; and indeed the backdrop is serious where there has been quite a lot of chatter about the tensions and so-called obstructed investigations or not, and disagreement on the causes as to whether or not the request to retire was withdrawn or not, and indeed what I have described as the indecent haste of the apparent moving out of the Commissioner in the chronology that was described to us on Monday.

There are a number of questions that I would ask the hon. Member and perhaps he could assist this House. He has announced a public inquiry but it is not plain from the Statement that he has read what the timing of that inquiry will be. Perhaps he would assist us in our understanding as to the likely timing for the public inquiry. This is an issue that is important and the sooner a public inquiry is convened the better, but obviously we note what the hon. Member has said as to the particular timing that may affect and the circumstances that may affect the convening of the public inquiry.

He has also talked about the questions for the inquiry. The context is relevant here. There is significant inability to understand what really went on: whether the democratic institutions were undermined or not and why there was such an indecent haste before the new Governor arrived, and what were the definitively established reasons for the early departure of the former Commissioner of Police.

So, in scoping the inquiry, can the hon. Member assist the House in telling us how the questions for the inquiry will be scoped? Is it something that the Government intends to do on its own? Or is it going to open up that exercise to a wider process that involves more independent involvement of parties in that process of scoping the inquiry? This, I would say to the hon. Member, would be quite important in the context of convening a public inquiry. *(Interjection by Hon. Chief Minister)* The hon. Member needs to know that when he makes asides of that nature in this small House of ours we can perfectly hear it, and the answer to that is yes, that we would be quite happy –

Hon. Chief Minister: You are the only person who is [inaudible]

Hon. K Azopardi: – to go to Convent Place and assist the hon. Member, not because we are the only people who are independent but because we are not satisfied that the hon. Member is independent in this process. *(Banging on desks)*

Hon. Chief Minister: [inaudible] some people who are [inaudible]

Hon. K Azopardi: Yes, well, the hon. Member can continue to say that, Mr Speaker, from a sedentary position.

Hon. Chief Minister: For the next three years.

Hon. K Azopardi: He will continue to say it for the next three years but that will not be an answer; it will simply be a smokescreen to the concerns of the people of Gibraltar. *(Banging on desks)* **(A Member: Hear, hear.)** *(Interjection)*

I am trying to continue, Mr Speaker. If hon. Members, from a sedentary position, are going to respond, then –

Mr Speaker: I think the Hon. the Chief Minister cannot proceed along those lines, but allow the Leader of the Opposition to continue, please.

Hon. K Azopardi: I am grateful, Mr Speaker, for that.

Those are the issues that I think concern people when hearing the hon. Member make his Statement, which we welcome because we do welcome a public inquiry; we are just eager to ensure that in the process it is convened as soon as possible, as soon as practicable, and that the scope of the inquiry ensures that everything is put properly before it, so that matters are determined clearly, so that everyone can see what went on and how.

Mr Speaker, the final question of clarification I would have: the hon. Member has mentioned that it is important that ... I think he said a Supreme Court judge or a judge of a higher nature. I do not know if he could clarify whether he had anybody ... not a particular individual in mind but whether he is saying to the House that he agrees that there should be a judge drawn from outside Gibraltar for this purpose. I am grateful.

Mr Speaker: The Hon. the Chief Minister.

Hon. Chief Minister: Mr Speaker, the hon. Gentleman does seem to me sometimes to be playing an extraordinarily serious issue for the political benefit that it could bring to him in the way that he might misunderstand the circumstances and even misunderstand the situation after I answered his questions on Monday in this House.

The hon. Gentleman has referred to the Government having made bland statements. Well, I do not think by any stretch of the imagination anybody could describe the Statement I have made today as bland. I know that he was not referring to today's Statement, he was referring to the statement that we made at the time of Mr McGrail's retirement, but the hon. Gentleman knows that the Government has said already that it could not say much, and I have already indicated as much in the answers to questions in this House on Monday and in the course of my Statement today. I have indicated why we could not say much. I have indicated that the reasons why we could not say much are not political in the partisan sense but they relate to an ongoing investigation, and yet the hon. Gentleman wants to continue to play this issue for the purposes of seeking to make political capital.

It is perhaps not unusual that a Leader of the Opposition might seek to do that, except, of course, there are issues and there are issues, and when the issue has been expressed by the Chief Minister of Gibraltar to cut across the lines of an investigation which involves the death at sea of two foreign individuals and, in a criminal investigation, into the actions of police officers, the Government is not saying more for that reason. I think when people look at what happened in this case, historically, they will look at the fact that, despite that, the Leader of the Opposition wanted to continue to put his finger in the wound, so to speak – to bring a biblical reference to it – regardless of the facts that had been put to him in the context of the answers given to him.

I can hear him laughing from a sedentary position. Of course, Mr Speaker, he thinks it is wrong to make sounds from a sedentary position when it is anybody other than him making them, but given the seriousness that he says he attributes to this matter, to hear him giggle does his office absolutely nothing positive. It is less than edifying.

There is no pact of silence, which is what the hon. Gentleman has suggested there is, in circumstances where the Government believes that it is contrary to the principles of the rule of law to avoid the prejudice of an ongoing criminal investigation, for Government to say little or nothing. I actually specifically allude to that in my Statement to the House. I say that although a foreign newspaper might feel at liberty to say something which might be contrary to the way that we would report things in Gibraltar about a live criminal investigation, the Government is not going to make that mistake. If the hon. Gentleman elevates that proper regard for the rules to a pact of silence, then everything else that he has said is tainted and tarnished with that mistaken interpretation of an obvious reason why the Government does not want to say more.

And then the hon. Gentleman refers to a part of retired Commissioner McGrail's remarks on Tuesday about an aspect of this which goes to substance. It is about the interpretation of section 34 and about whether or not a live request to retire ... what happens when a Commissioner decides not to accept that invitation. That is one of the things that will have to be

looked into by a commission of inquiry and I am therefore not going to be drawn to, in this House, in answer to the Hon. the Leader of the Opposition – as if he were Mr McGrail’s counsel in this House, as if this were the place of inquiry ... I am not going to be descending to answer his questions.

But of course, Mr Speaker, I would answer questions in the inquiry. I fully expect that I shall be a witness before it, and all of these matters, and others, will be ventilated before the inquiry. It will be for the judge in that inquiry to determine all of these issues and to determine whether or not in fact what the hon. Gentleman has said today is correct, is it serious or not that there might or might not be an extant invitation under section 34 from the Gibraltar Police Authority for a Commissioner to retire – because it may have absolutely no effect whatsoever on any aspect of what happens next. Again, he might have an opinion and his opinion might be tainted by what he might wish politically were the case. We have advice, but I think that these matters are now matters for the inquiry.

I am sorry if to the hon. Gentleman and to others what the convening of the inquiry does is deprive them of another stick with which to beat the Government unfairly. Well, look, Mr Speaker, although I do not think it is necessary to convene an inquiry into the retirement of someone, because they are the ones who have retired, certainly it will have the use of depriving the hon. Gentleman of the stick with which to unfairly beat the Government on this subject. Or is it that in addition to inviting the Government again, despite what I have said already, not to respect the fact that there is an ongoing criminal investigation that we do not want to prejudice by saying anything more, he now wants to ignore the fact that we have said that we are convening a commission of inquiry and he wants to continue to have the debate and game as if that were not now and almost all of these matters were now not almost a *sub judice* matter, in the widest possible sense of that terminology, to be determined by the commission?

I do not know whether the grin on his face is a grimace because he notices that actually he is left without that stick because now that there is an inquiry, the inquiry will be the right place to determine whether something is serious or not, whether something has consequence or not, and all of the other innuendoes that he has sought to inject – all of which I have picked up – into the way that he has put his remarks will also be dealt with in that way.

Because Mr Speaker to refer to something as being done in indecent haste can only be to prejudge that it was done too quickly, but in the inquiry a different view may be taken by the decision makers, and indeed by the public. Mr Speaker, that is not a matter for us, but neither is it a matter for the hon. Gentleman, because he has already said that there is or was indecent haste, thereby prejudging (a) whether there was haste and (b) whether it was decent or not. There may neither have been haste; and, if there was, it may or may not have been decent.

So, Mr Speaker, the hon. Gentleman seems to not care about the consequence of what he has said in respect of Mr McGrail, the Government or any of the other entities involved. I say he does not care because of the respect I have for him. If I thought he did not realise that by using the terminology ‘indecent haste’ he was trying to put the imprimatur of impropriety on something that is going to be objectively determined to have been proper or improper ... I am sure it will be determined to be proper; of course I would say that, but it will be up to the Commission to decide. I respect his intellect too much to believe that he would not see that.

Mr Speaker, the issue of timing will be a matter for the inquiry. The Government expects to be able to set up the inquiry quickly. It may take some weeks. This is something that requires proper establishment. There is a Commissions of Inquiry Act which will have to be complied with. We have only had one inquiry in the time we have been in office. The person who represented the Government in that inquiry was the Hon. the Leader of the Opposition, so I will not be able to rely on his advice in the context of the setting up of this inquiry; we will have to seek other advice in that context and we will ensure that the Government acts in keeping with the provisions of the Act. But in doing so – now dealing just with the issue of the timing – the matter will be up to the person running the Commission of Inquiry, who will be the judge in the inquiry, and he or she will be able to determine whether proceeding at a particular pace will

create hostages to fortune, whether it would cut across other proceedings, whether it would offend *sub judice* rules in any other respect, and whether there are provisions that can be put in place to continue with the inquiry whilst protecting those aspects of other ongoing investigations.

So Mr Speaker, the short answer to the issue of timing is that the timing of the convening of the inquiry will not be too long: that will be done as quickly as possible by the Government. The timing of the running of the inquiry is a matter for the inquiry, and the Government will not seek to intervene or interfere in the context of the timing other than in the usual way of making representations as a party before the inquiry.

Mr Speaker I say that because the hon. Gentleman suggested that the Government was not able to set a question for the inquiry without being accused of somehow being not independent in the context of setting such a question. Well, Mr Speaker, if anybody looks at what I have said in the Parliament today, in my Statement about the convening of the inquiry, they will see that I have been at pains not to suggest that the inquiry is going to be narrowly focused in a way that somebody might suggest is pointing away from anything that might tangentially, because of the rumours and the tittle-tattle, affect the Government. No, Mr Speaker, I have not done that. I have said the inquiry will be as broad and as wide as possible. That is why I thought it particularly inappropriate of the hon. Gentleman to suggest that the Government would not be setting a question that is independent. But it is not the Government's intention to set the questions or question alone, because there are other parties to this inquiry, not least the person who has called for it, and the Government anticipates, through its representatives, being able to hear the views of them in the context of setting the question for the inquiry. That is why I have referred also to how the questions will be set – not by politicians on the other side but by those who do actually represent Mr McGrail with those in the Government who will be convening the inquiry.

Mr Speaker the hon. Gentleman then goes into a reference about whether the democratic institutions have been undermined – again, an attempt to taint what has happened by raising a question which, in the context of the things that are being said, is for the inquiry. But let us be clear, the democratic institutions are the Government, the Parliament and even the office of the Governor plays a role in the hierarchy of this Parliament and of our Government, just as Her Majesty the Queen herself is the head of government in the United Kingdom and her representative here is the head of Government here. None of those have been undermined.

Of course, the hon. Gentleman seems to take the view that his role is to undermine us, but we do not consider ourselves undermined by him in any way and neither do we think that the inquiry will be looking into whether we have been undermined. I have not called the inquiry because I think it would be a good idea to protect myself; I am going to call the inquiry because the person who retired said on Tuesday that he wanted the inquiry called. Given not the democratic institution that that person represented – because he does not represent a democratic institution; he represents an institution which is a law enforcement institution – but given the importance of it, that is why, as I have explained in terms, we have agreed to the inquiry being convened. But all of that will now be for the inquiry.

Mr Speaker, the undermining of democratic institutions can only happen when a Leader of the Opposition, eight months out from a General Election which he lost rather spectacularly, says that referring to the result of that General Election is a smokescreen. Well Mr Speaker look, I know that when one loses an election a reference to that election is always considered an attempt by your opponent to rub salt in the wound. I am not trying to do that, but it is a reality and it is what gives us not a smokescreen but a majority in this House, and that majority is the maximum representation of the democratic institutions of this nation, namely the Government and executive of this nation – as much as hon. Members are too, as being a part of the Parliament of this nation. So, when he says that he asks whether the democratic institutions have been undermined he should not be surprised to see a reference to the result of the General Election, the maximum expression of the democratic will of the people.

Hon. K Azopardi: On a point of order, which of the questions of clarification that I have asked is the hon. Member addressing when he makes that point?

420 **Hon. Chief Minister:** Yes, Mr Speaker, very simple: he said that one of the questions that the inquiry should deal with, and one of the things he was saying that we would not independently do, was whether the democratic institutions have been undermined. That is exactly what I am dealing with in replying to his point.

I know that he had not thought it through and that he did not realise that the democratic institutions of this nation are its Government, its Opposition, its Parliament and the head of its
425 executive, and therefore what I am dealing with now is to flesh out for him what it was that his remarks would have dealt with.

Now from a sedentary position he says that he did not ask a question about that. Well, if he did not ask a question about that, he should not have said it because, as you reminded him, Mr Speaker, he is entitled to ask questions to seek clarification of my Statement. From a
430 sedentary position he said this was not something he sought clarification on, so frankly it was something he should not have said in the context of the application of the rules. But, fine, Mr Speaker, I have already answered what I thought his question was and said that this was something for the inquiry, not for him.

He then asked me whether a Supreme Court judge or a higher judge would be appointed. I do
435 not think the hon. Gentleman understood what I said. I was very clear that it would be a judge from outside of Gibraltar, therefore it cannot be a Supreme Court judge. It will be a judge from outside Gibraltar who will be of the level of a high court judge in the United Kingdom or higher is what I have said. For that reason I am surprised that the hon. Gentleman has asked me that, because I thought it was clear in my Statement. I thought it was clear in particular because I was
440 answering that part of what had been said by the retired former Commissioner of Police through his lawyers on Tuesday, who in their statement called for a high court judge from outside of Gibraltar to be brought in. What we are saying is a high court judge or higher from outside of Gibraltar.

Mr Speaker, I think that deals with all of the issues that the hon. Gentleman raised, and in
445 fact it appears I have even dealt with some that he did not want me to deal with.

Mr Speaker: The Hon. Marlene Hassan Nahon.

Hon. Ms M D Hassan Nahon: Mr Speaker, the way that this saga has unfolded is truly
450 unfortunate. The management of what should be one of the most independent and secure posts in Gibraltar, and indeed a key figure in our often challenged separation of powers, has become a political, media and public opinion affair. There is speculation on the streets. There are theories and conspiracies on social media. Some political parties have even manoeuvred to fan the flames of controversy and score points on the issue. We have witnessed a comedy of errors and
455 miscommunication in the management of this very public fall-out, as well as an exchange of veiled accusations and criticism from both sides.

This situation has to end and it must do so in a way that sets speculation to rest once and for all. It is for this reason that I welcome the Chief Minister's announcement of this public inquiry in the hope that it will bring clarity and any damage done to our reputation mitigated, because it is
460 important that we realise that these events do real damage to our democracy. Every occasion on which one of the fundamental tenets of our system is questioned, such as the independence of law enforcement and the separation of powers, our people become a little bit more disgruntled and dissatisfied and this fuels the rumblings of extremists and conspiracy theorists.

465 **Mr Speaker:** May I just interject?

Hon. Ms M D Hassan Nahon: Mr Speaker, I am just getting –

470 **Mr Speaker:** Yes, you need to ask the questions. Thank you.

Hon. Ms M D Hassan Nahon: Yes. Thank you.

I also want to make clear that this inquiry will be as good as the autonomy of those executing it. Unless it is carried out with real rigour, independence and transparency, this will do nothing
475 to allay the concerns of our constituents.

So, Mr Speaker, on a point of clarity, I ask the Chief Minister if this inquiry will provide real answers to the fundamental questions posed so far, as it must. I ask if it will shed light on the reasons that led the Governor and the Chief Minister to lose confidence in the Commissioner and whether this amounted to a breach of his duties under the post. It must be made absolutely
480 certain that there is no political motivation between this seemingly forced resignation. I ask for clarification on whether there will be special emphasis on the unorthodoxy of this process, particularly into why a pretend retirement is considered a suitable way to deal with the avoidance, effectively, of a suspension and the reasons behind it in such a crucial post, instead of an investigation at the time followed by disciplinary action. Timing also, Mr Speaker, as the
485 Leader of the Opposition has said ... I echo his questions on timing of this inquiry because timing is of the essence and understanding issues related to COVID-19 and how that may affect when an inquiry is conducted, but some kind of ballpark date, all being well. The Chief Minister did say soon and promptly, but a timeframe would be appreciated.

So, Mr Speaker, all these questions must be thoroughly and transparently addressed because
490 we live in uncertain times and we must make sure that we protect both the actual integrity of our democracy and the public perception of it. In order for this to happen, all public figures must. So follow due process scrupulously and transparently, particularly those making the decisions that will often be very demanding of our electorate.

I hope that the Chief Minister clarifies all these questions and doubts about how this
495 investigation inquiry will be conducted.

Thank you.

Hon. Chief Minister: Mr Speaker, I thank the hon. Lady for the tenor of her remarks. I think she is absolutely right to point to political parties that might have been seeking to fan the flames
500 of this matter that might otherwise not have come to this.

The question of the autonomy of those carrying out the inquiry I think is not one that we need to concern ourselves with greatly, because if the inquiry is going to be carried out by a judge then autonomy is, in my view, entirely guaranteed. My view of the autonomy and independence of the British judiciary – the judiciary in the United Kingdom and the judiciary in
505 Gibraltar – is that they are entirely untarnished and therefore there would be no question of them being anything other than entirely autonomous.

In the context of the hon. Lady talking about the concerns of our constituents, I do not know that I entirely agree. I will conflate some of what I say to the hon. Lady in respect of some of the things that she has said about the integrity of our democracy and the public perception of it with
510 her earlier statements in that respect, because I do not think that there are concerns about the integrity of our democracy and I do not think there is a public perception of concern of the integrity of our democracy in any way, shape or form.

I think that there are high-profile references by some who are high profile on social media who might or might not be saying things about these issues, but the Gibraltarian, our
515 community, in my view, does not have these concerns about the integrity of our democracy. It is something, Mr Speaker, that I do think is extending itself. In the United Kingdom there is a reference to the Westminster ‘bubble’ and the things that people in Westminster think not necessarily being the things that concern people in Cumbria, in Cardiff or in Edinburgh. I think there is in Gibraltar also what you might call the ‘political class’. The political class extends into

520 social media and those who are very interested in politics and the commentary and non-commentary and views and non-views.

Does the ordinary Gibraltarian believe that there is a problem with the integrity of democracy in Gibraltar or the perception of integrity in Gibraltar? I generally think that is not the case. I certainly think it is not the case arising out of this particular matter. Neither do I think this
525 is a matter for the inquiry. This is perhaps for our continued concerns, for all Members of this House, about how our democracy works and how we understand how our people really believe our democracy works.

Certainly all of the issues that the hon. Lady raises about independence etc. I think are issues that can be dealt with by the inquiry also, but neither do I think there are other issues here
530 about unorthodoxy, pretend retirements etc. This is not a pretend retirement; this is a retirement. It is not a pretend retirement, but I do understand why the hon. Lady presents it in that way and I think that is one of the issues that the inquiry will be able to deal with.

In the context of the reference by the hon. Lady to timing, I have said what I have said already in answer to the Leader of the Opposition. We will convene the inquiry as quickly as possible. We will need to take advice, we will need to liaise with the lawyers representing
535 Mr McGrail, and then the inquiry will have a life of its own.

The inquiry will determine when it meets. The inquiry will determine what it could hear at what stage. It will determine what it cannot hear at what stage. It will determine whether or not it is possible to create a mechanism to hear things that might cut across other investigations' inquiries that may be going on, if that is possible, in order not to delay itself. All of those things
540 will be for the inquiry, and the autonomy that the hon. Lady refers to therefore means that I cannot give her a ballpark – because the inquiry is autonomous as to the establishment of its procedure and how it will deal with those issues.

The hon. Lady said that we live in uncertain times. *[A mobile telephone rang]* Well, there are some things, Mr Speaker, that always happen. Like, for example, the Hon. the Father of the House's phone going off, there are some things that you can take for granted.
545

Hon. Sir J J Bossano: The only reliable thing!

Hon. Chief Minister: The only reliable thing! But, Mr Speaker, the fact is – and I will take this point generally – you might think that we live in uncertain times when it comes to COVID and whether it is going to come back or not, or Brexit and how we may or may not be able to resolve those negotiations etc. There is a lot which people in Gibraltar today will be concerned about, there are things that people around the world will be concerned about, but let us not allow
550 ourselves to do one of two things: let us not allow ourselves to think that things are more uncertain than they are, nor talk ourselves into greater uncertainty. That is fundamental and I think it is the role of all parliamentarians both to exercise the scrutiny that we do of each other and discharge our separate functions but not to add to uncertainty.

Mr Speaker, I commend my Statement to the House and I look forward, in the terms I have set out in my Statement, to the convening of the Commission of Inquiry.
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Mr Speaker: One more, Chief Minister. There is a further ... The Hon. Daniel Feetham.

Hon. D A Feetham: Mr Speaker, I just have two questions; I think they arise from the Statement, if not from the underlying topic.
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We know, from statements that have been made in the public, that the Commissioner commissioned a report from the Met in London in relation to the incident that occurred at sea. Has that report been received by either the present Commissioner or alternatively the Attorney General?

Also, in the context of the inquiry, obviously we have officers ... Things may in the inquiry that may impact on them in a very real way because they are facing investigations elsewhere. Will
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they be represented at public expense so that they are properly represented and their interests are properly protected?

575 **Hon. Chief Minister:** Mr Speaker, the questions that the hon. Member raises are not about the inquiry; they are about the investigation and I have said the Government will not comment. I will not comment further on it.

I commend my Statement on the inquiry to the House.

580 **Mr Speaker:** Does any other hon. Member wish to question the Chief Minister?

Mr Speaker: The hon. Chief Minister.

Import duties – Statement by the Chief Minister

Chief Minister (Hon. F R Picardo): Mr Speaker, I will now make a Statement on import duties.

585 Today marks the end of the import duty waiver for motor vehicles. We have already started to see the fruits of this measure, with new, cleaner vehicles roaming our congested streets. As I have now mentioned on several occasions, this is a measure that has done more than simply put newer, cleaner petrol and diesel cars on our roads; it is a measure that has also encouraged the sale of hybrid vehicles.

590 There is also a positive business story to tell. As a measure, it has empowered the larger motor vehicle dealers in Gibraltar to fend for themselves without having to claim direct government support, the BEAT support that would have been available to them. This has allowed Government to focus its support on those businesses that really need it.

595 The new 10% duty on personal importations has also yielded positive results generally, as it appears to be encouraging local spending amongst our community. There are, however, two additional categories of goods that will be exempted from this duty.

600 The first is musical instruments. As a Government, we have always wanted to encourage budding musicians to explore as many instruments as they might wish. Given there is a limited offer for anyone wanting to buy a musical instrument in Gibraltar, any person importing a musical instrument into Gibraltar will not have to pay duty on that import as from midnight tonight. I should reflect that this measure comes as a result of representations made to the Government by the Musicians' Association of Gibraltar.

605 The second issue is bicycles. The Government considers that cycling is the cornerstone of any modern city's transport infrastructure; and, as we reposition our transport infrastructure to make it more bicycle friendly, we want to see more bicycle is on the road. The lockdown has served to reignite cycling passions and we have seen a large number of bicycles imported into Gibraltar – don't my legs know it, Mr Speaker! There are a number of retailers of bicycles in Gibraltar, but the Government is persuaded that members of the public wish to import some types of brands which are not available in Gibraltar, such as own-brand cycles from some sports shops and others outside of Gibraltar. This is a trend that we want to see continued for its positive impact on traffic, health and the environment. There will, therefore, be no import duty on the personal importation of bicycles into Gibraltar as from 1st August 2020. That is to say as from midnight tonight. And before anyone jumps, Mr Speaker, let me clarify that I bought my bicycle last month.

615 **Mr Speaker:** Does the hon. Member wish to respond?

Hon. K Azopardi: Mr Speaker, we welcome the Statement made by the Chief Minister on these issues.

620 There was one issue of clarification that I was going to ask him on in particular. Of course we agree that we want to encourage cycling as much as possible, but on the musical instruments I noticed that there was a date from which the importation of bicycles is exempt, which is 1st August, tomorrow, but in relation to musical instruments there does not appear to be a date, so perhaps he can clarify that for everyone.

625 I think my hon. colleague also had a question of clarification, so perhaps, in the interest of speed, if I pass on to him it might be just quicker.

Hon. E J Phillips: I am grateful and of course I would just repeat that we welcome the initiative by the Government insofar as bicycles. I think that the Hon. the Chief Minister will recall we had a short ding-dong on the question of value of bikes at the time, but it is a welcome measure. Of course, if we are going to see a deluge of bicycles on our streets, one of the points of clarification I would like to know more about is whether or not the Government is sufficiently advanced insofar as health and safety of our roads, particularly for children and adults in respect of riding these bicycles that will be now imported and sold to our community, because of course whilst the Government rightly introduces this measure one should have a very keen eye on the safety of our citizens when cycling on our roads.

Mr Speaker: The hon. Lady.

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

640 As is well known in this House from a few days ago, I myself quizzed the Chief Minister on the logic of removing duty on cars when he did and on the conflicting message, environmentally, in providing more cars bought, for people to buy gas-guzzling vehicles while at the same time we are announcing closures on roads to encourage fewer cars and banging that environmental drum. So, needless to say, I welcome this move and I would also welcome some clarification on statistics, whenever those are available, as soon as available, on exactly how many cars and polluting vehicles we have bought over this duty-free period, as well as the types of vehicles bought and how many of the old ones have been condemned, recycled, disposed of, so we can really get a picture of the effect that this policy has had.

650 I also welcome the duty slashed on cycles, for the obvious environmental benefits this incentive will bring, as well as slashing duty on instruments, given that we do not have any music stores, if I remember correctly, and the education that it brings to society in general.

I would ask the Chief Minister, for clarification, to give us some information on if he intends to implement any more categories eligible for import duty, given the current climate, in the next few months.

655 Thank you.

Hon. Chief Minister: Mr Speaker, may I thank hon. Members for those points to clarify. It is so much more edifying when hon. Members play the harp rather than the snare drum in the context of the clarifications that they seek.

660 On the issue of musical instruments – I know it is not in my written statement, which I let the hon. Gentleman have a copy of just before I sat down, and I noted that myself – I did say in my remarks to the House that the application of the personal import duty reduction for musical instruments would start as from midnight tonight. So also as, from 1st August, namely as from tomorrow, these new provisions would apply.

665 I do not think the Hon. Mr Phillips is right to say that we had a ding-dong on this issue. He might have had tried to have a ding-ding, but we did not go back with a dong because he is still here to tell the story politically. The fact is that the question he has asked today we already dealt

with in the context of Question Time. The Hon. the Minister for Transport, Mr Daryanani, already clarified where we were on cycling proficiency and the extrapolation of that going forward. We are very keen that people should not just cycle – they should cycle safely and in safety, which are two separate things. One thing is to cycle safely, the other thing is to provide a safe system for people to cycle in, and that is why we have two strands of this issue live. One is to provide the training for those who want to learn how to cycle safely – the cycling proficiency, so to speak. The other is the infrastructure of cycling, which are the cycling lanes. This is what people will see on Line Wall Road and Walk the Wall and the other places in Gibraltar.

The hon. Lady seeks to agree with us provocatively. This is, I think, different to violent agreement; this is provocative agreement. She agrees but says that we have allowed the importation of gas-guzzling vehicles to taint her agreement with provocation, if I may put it that way. We do not agree. What we do agree on is that the statistics will determine whether or not we have been successful. This is the point I put to her – and, I think, to the hon. Gentleman, Mr Phillips – during the course of Question Time, that we should not have an argument about whether the policy was right or not; we should all keep under review the statistics, so that the numbers determine empirically whether we were right or wrong. That is something I very much look forward to doing with them, but I have told them that the argument will not be settled in the first month that they have the statistics, that we need to look at this over a period of months and I would say 12 to 24 months is the correct period as you see the trickle-down of cars that have been ordered under the new regime on duty trickling through into second-hand replacing third-hand replacing fourth-hand and then some vehicles going out to scrap or recycle.

So, we passionately agree that there is a value in keeping these statistics under constant review and we passionately do believe that there will be less polluting vehicles on our roads or polluting vehicles that are less polluting than the ones that they have replaced on our roads. Indeed, one could make an argument even about an electric vehicle – that it pollutes when it is created and it pollutes when it is recycled and therefore it is still a polluting vehicle. If we are talking just about emissions, then the renewal of the fleet is always going to be a net positive thing in the context of reducing pollution, because the new – to take the hon. Lady's provocative remarks – 'gas-guzzling' cars are less-emissions-emitting gas-guzzling cars than the ones that they are likely to be replacing.

I do not believe that there are no music stores in Gibraltar. I do believe that there is a music store in Gibraltar. Very recently, Gibraltar rightly mourned the passing of Mr Valverde, who operated The Studio, but I believe that that particular music shop still operates. I think that all of us will want to send our best wishes to his family because of his recent passing. He was really a Gibraltarian talent. I understand that the shop continues to operate, but it is a very restricted offer there is in Gibraltar and there are therefore good reasons why the Musicians' Association has made these representations to Government. That is not the only store that sells some musical instruments. I understand there are others that sell some musical instruments as well. Some electronic musical instruments are provided by others, I think to order principally rather than available in Gibraltar. But anyway, I hope that answers the hon. Lady's points.

As to whether or not we will be reducing or otherwise calibrating other duties in the future, the Government continues to receive representations. In respect of these subjects, where the representations are considered to be meritorious on the advice of the Collector of Customs and the Financial Secretary, the Government will act to either reduce or increase import duties. If there are things which are being imported into Gibraltar which are a particular nuisance or cause a particular problem because the duty is at 10% rather than at a higher rate, we will increase the rate. If there are good reasons – like the ones we have evinced in the context of these decisions for bicycling and musical instruments – to lower the duty for personal importations, we will do so. I will, of course, come to the House and inform the House. We will do that, as is traditionally the case in the context of import duties, where that is possible and when there is a meeting of the House in the timing which is required.

Mr Speaker, I commend my Statement to the House.

PAPERS TO BE LAID

720 **Clerk:** Papers to be laid – the Hon. the Chief Minister.

Hon. Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to lay on the table a letter from myself of 31st July 2020 – that is to say today – recording in writing the agreement between me and the Hon. the Leader of the Opposition to extend the time provided for in section 8 of the Appropriation Act 2020 to the last day of September 2020.

725 Mr Speaker, if I may, just by way of shorthand, clarify for those who may be watching these proceedings or listening to these proceedings, that is the provision that allows me, in consultation with the Leader of the Opposition, to amend primary legislation for the purposes of dealing with the shorthand BEAT matters and we are extending the period from the end of July
730 by 62 days to the end of September.

Mr Speaker: Ordered to lie.

Order of the Day

BILLS

FIRST AND SECOND READING

**Smoke-Free Environment (Amendment) Bill 2020 –
First Reading approved**

Clerk: Bills – First and Second Reading.

735 A Bill for an Act to amend the Smoke-Free Environment Act 2012. The Hon. the Minister for Environment, Sustainability and Climate Change.

Minister for the Environment, Sustainability and Climate Change (Hon. Prof. J E Cortes): Mr Speaker, I have the honour to move that a Bill for an Act to amend the Smoke-Free Environment Act 2012 be read a first time.

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Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Smoke-Free Environment Act 2012 be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

745 **Clerk:** The Smoke-Free Environment (Amendment) Act 2020.

**Smoke-Free Environment (Amendment) Bill 2020 –
Second Reading approved**

Minister for the Environment, Sustainability and Climate Change (Hon. Prof. J E Cortes): Mr Speaker, I have the honour to move that the Bill now be read a second time.

This is a minor amendment in order to pass the responsibility for this Act from the Minister with responsibility for Health to the Minister with responsibility for the Environment. This was

750 always the intention when this Bill was passed. I held both portfolios. It had not been amended
and this is in order to rectify that, so it is a very simple amendment just to correct that.
I commend this Bill to the House.

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

Hon. E J Phillips: Mr Speaker, from this side of the House we will clearly support this
amendment. It does make sense, given the presence of section 11(6) of the 2012 Act, which of
course provides for the hon. Gentleman to consult with the Director of Public Health, for which
760 he is responsible; it therefore makes absolute sense for that transition of the two Ministers.

Just one thing I would mention: if the Minister, now in his new role, under this piece of
legislation would look into one aspect concerning Harbour Views Road. The Minister will recall
that regulations were made recently to ban smoking in that particular area, which I think led
from some exchanges in this House and remarks by members of the public as to smoking
765 immediately outside the Hospital. I visited that area yesterday to find quite significant volumes –
again – of tobacco butts all over the Harbour Views section, the gravelled area, which the
Minister is familiar with given that we have had this discussion in the House before. I actually did
not see anyone smoking – of course, that would be an offence – but I did see quite large
volumes of cigarette butts on that area and it would be helpful if the Minister could take this up
770 as to what can be done to prevent ... not only by enforcement but to monitor the situation,
because of course the regulations are there to prevent this type of activity in the first place, and
I just wanted to bring it to the hon. Gentleman's attention.

Mr Speaker: Does any other Member wish to speak?
775 Minister.

Hon. Prof. J E Cortes: Mr Speaker, I beg to give notice that the Committee Stage and Third
Reading of the Bill be taken today.

780 **Mr Speaker:** Do you –?

Hon. Prof. J E Cortes: No, I have no comment other than assuring the hon. Member that this
will be looked into.

785 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Smoke-Free
Environment Act 2012 be read a second time. Those in favour? (**Members:** Aye.) Those against?
Carried.

Clerk: The Smoke-Free Environment (Amendment) Act 2020.

**Smoke-Free Environment (Amendment) Bill 2020 –
Committee Stage and Third Reading to be taken at this sitting**

790 **Minister for the Environment, Sustainability and Climate Change (Hon. Prof. J E Cortes):**
Mr Speaker – as I was saying! – I beg to give notice that the Committee Stage and Third Reading
of the Bill be taken today, if all hon. Members agree.

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

Members: Aye.

**Animals (Amendment) Bill 2020 –
First Reading approved**

Clerk: A Bill for an Act to amend the Animals Act. The Hon. the Minister for Environment, Sustainability and Climate Change.

Minister for the Environment, Sustainability and Climate Change (Hon. Prof. J E Cortes): Mr Speaker, I have the honour to move that a Bill for an Act to amend the Animals Act be read a first time.

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Animals Act be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Animals (Amendment) Act 2020.

**Animals (Amendment) Bill 2020 –
Second Reading approved**

Minister for the Environment, Sustainability and Climate Change (Hon. Prof. J E Cortes): Mr Speaker, I have the honour to move that the Bill now be read a second time.

What this amendment to the Animals Act wishes to achieve is the forbidding of personal contact with a Barbary macaque. At the moment, feeding is prohibited, but touching in itself is not, and with the exceptions that are laid out in this amendment the intention is to prevent this. Not only does touching the animals interfere with their natural behaviour but it also is potentially dangerous for the transmission of disease. The Barbary macaques have been known to carry or to have suffered from human measles and human hepatitis A. Clearly, with the COVID pandemic, they are animals that are susceptible to this and we wish to avoid any kind of contact that could result in the animals being infected with COVID. Not only would this be a potential source of reinfection to human visitors but it also could lead to situations where consideration would have to be given to closing the Upper Rock or even to putting down potentially a large number of animals. We need to do whatever we can to prevent this happening, and therefore we wish to make direct interference and close contact with the macaques something that is prohibited.

I commend this Bill to the House.

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

Hon. E J Phillips: Mr Speaker, insofar as the general principle, course we would support a piece of legislation that would prevent the deliberate touching of any of our macaques.

The only issue that we have with some of the language of the Bill, which may well be able to be catered for in the context of the Committee Stage, is in relation to 'interfere' with the natural behaviour of a macaque. Many of us who have been on our magnificent Rock, running, walking or indeed cycling, as the Chief Minister frequently does, knows that on occasion – and I suspect it has not happened to him yet, given the speed that he travels up our glorious Rock – the macaques interfere with the humans, in terms of jumping on their heads and their shoulders. I was just wondering, insofar as the interference is concerned, if one would look at Charles V Wall. Many people continue to walk up that stretch of the Rock, and there are, of course, practical difficulties of stepping over a macaque, for example, in which there may well be interference.

840 I just want to understand the Government's thinking on that type of language in the Bill and the enforcement of this particular provision.

Chief Minister (Hon. F R Picardo): Before the hon. Gentleman gets up, Mr Speaker – on a point of clarification, my speed only happens on the way down, not on the way up, unfortunately.

Mr Speaker: Does any other Member of the House wish to speak on the Bill?

Hon. Prof. J E Cortes: Mr Speaker, I thank the hon. Member for his support.
850 This Bill does not bind the macaques, of course, if they choose to interfere with him or indeed the Chief Minister.

I do understand what the hon. Member says, but I think we have to understand that deliberately interfering presupposes an action which is intended to cause some kind of disturbance or harm to the macaque.

855 **Hon. E J Phillips:** One point – I can clarify exactly the point I was trying to make: insofar as to deliberately touch a macaque or in any way interfere, the word 'deliberate' does not necessarily link to that reference to 'interfere'. It is in 'any way interfere' with the natural behaviour of the macaque. That is the point I was making, because 'deliberate' is not linked.

860 **Hon. Prof. J E Cortes:** Mr Speaker, my interpretation is that deliberately qualifies the 'in any way'. You can interfere with a macaque in many ways; it has to be deliberate. This is my interpretation and that is why I am not minded to make any changes, and I think when it comes to enforcement, or even to prosecution, that would be borne in mind in a court of law.

865 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Animals Act be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Animals (Amendment) Act 2020.

**Animals (Amendment) Bill 2020 –
Committee Stage and Third Reading to be taken at this sitting**

870 **Minister for the Environment, Sustainability and Climate Change (Hon. Prof. J E Cortes):** Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

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

Members: Aye.

COMMITTEE STAGE AND THIRD READING

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move that the House should resolve itself into Committee to consider the following Bills clause by clause: the Smoke-Free Environment (Amendment) Bill 2020 and the Animals (Amendment) Bill 2020.

In Committee of the whole House

**Smoke-Free Environment (Amendment) Bill 2020 –
Clauses considered and approved**

Clerk: A Bill for an Act to amend the Smoke-Free Environment Act 2012.
Clauses 1 to 3.

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

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

**Animals (Amendment) Bill 2020 –
Clauses considered and approved**

Clerk: A Bill for an Act to amend the Animals Act.
Clauses 1 to 3.

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

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

**Smoke-Free Environment (Amendment) Bill 2020 –
Animals (Amendment) Bill 2020 –
Third Reading approved: Bills passed**

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to report that the Smoke-Free Environment (Amendment) Bill 2020 and the Animals (Amendment) Bill 2020 have been considered in Committee and agreed to without amendment, and I now move that they be read a third time and passed.

Mr Speaker: I now put the question, which is that the Smoke-Free Environment (Amendment) Bill 2020 and the Animals (Amendment) Bill 2020 be read a third time and passed.
Those in favour of the Smoke-Free Environment (Amendment) Bill 2020? **(Members: Aye.)**
Those against? Carried.

Those in favour of the Animals (Amendment) Bill 2020? (**Members:** Aye.) Those against? Carried.

910

PRIVATE MEMBERS' MOTION

**Disability benefit –
Debate commenced**

Clerk: Private Members' motion. The Hon. D A Feetham.

A Member: Hear, hear.

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Hon. D A Feetham: Yes ... (*Laughter*) Mr Speaker, I have the honour to move the motion standing in my name, which reads as follows:

This House welcomes the introduction of the Disability Act in 2017 as a significant breakthrough in enhancing the rights of disabled people and is committed to continuing to break down barriers by constantly striving to secure equal opportunities and equal rights for all people with disabilities in Gibraltar.

Consonant with that aim this House:

(a) welcomes the assurances of the Minister with responsibility for Social Security in answer to parliamentary questions from the GSD Opposition that he is prepared to consider placing on a statutory footing the qualifying test for the award of disability benefit;

(b) considers that a wider review of the law and administrative practice relating to the grant of disability benefit should take place.

RESOLVES that that review should be conducted by a Working Group set up by the Minister with responsibility for Social Security with cross party participation, to report to this House with recommendations within the next six months.

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Mr Speaker, it is sad, I have to say, and depressingly predictable that this motion is unlikely to prosper, not because the issues that form the subject matter of the motion and the sentiment it expresses are not, and indeed should not be, capable of unanimous support, but because the Government will not allow a motion from this side of the House to prosper unless agreed by them before the motion is filed.

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No self-respecting Opposition properly discharging its functions could, in our view, agree to a Government veto of that sort. I am not suggesting that in some cases attempting to agree a motion beforehand is not an appropriate way of proceeding, because of course it is, but people want to see the Opposition of the day raising the issues that affect them and are important to their families, and if it is voted down it is voted down.

I see the Hon. the Minister responsible for Social Security smiling and nodding away, saying no. Well, I hope that I am wrong and I would be very gladdened if I am wrong.

930

Chief Minister (Hon. F R Picardo): It wouldn't be the first time!

Hon. D A Feetham: Well, yes, indeed, it wouldn't be the first time. I will vocalise the joke by the Hon. the Chief Minister: it wouldn't be the first time that I am wrong.

935

But joking apart, Mr Speaker, it is an important motion that is positive, that is constructive, that attempts to vocalise – as we will see when I make my address and I go to the detail of my address – the difficulties experienced by some disabled people in respect of disability benefit, which has led, unfortunately, to some disabled people with very profound disabilities not

receiving disability benefit. Indeed, it is a motion in which I will attempt to suggest ways in which the administration of the benefit can be more open, can be more transparent and can be fair. When I say open and transparent, I do use the words in the sense that we use the words on this side of the House in order to criticise their handling of the public finances of Gibraltar. What I mean is clarity: clarity for panels that advise the Director of Social Security; clarity for the Director of Social Security; and, above all, clarity for those affected.

It is not surprising that there is a lack of clarity. This is not a statutory benefit with a clear statutory basis and a clear statutory test, so there is no law effectively underpinning the disability benefit. These are administrative arrangements where the benefit is in the discretion of the Director of Social Security on advice of a panel which is in itself a panel whose identity – the components of that panel – is confidential, it is said, because Gibraltar is a small community and there is a desire to protect the identity of those on the panel who provide that advice, and where the qualifying criteria are not actually published anywhere.

As we will see, there is a significant inconsistency in approach in relation to the test that is being applied, as the hon. Member told this House in December ... the test that he told Members ought to be applied. Indeed, it may be recalled that what the hon. Member, Minister Licudi, told this House in December was that there was one overarching test. There is one test, not a number of tests but one test, and the test, he said, was does the applicant's disability severely and adversely affect his or her daily life. That is the test. There may be different factors that are taken into account to determine the issue of whether someone is severely and adversely affected in his or her daily life – autism cases clearly cannot be dealt with in the same way as paraplegic cases – but the overarching test is exactly the same for everybody. That is the view that the Minister expressed.

Mr Speaker, I have seen sufficient evidence to suggest, as I will demonstrate during the course of my intervention, that the test that the Hon. Minister told this House was being applied is not being applied and that the answer the hon. Member gave me does not reflect the reality on the ground. This is not just a case of one overarching test and what varies is the application of the factors that are to be taken into account by the panels advising the Director of Social Security; in fact, different tests are being applied in relation to different cases.

The lack of published guidelines certainly does not help, but I have found it very surprising when people have come to my weekly surgeries – and indeed I think the experience from other Members of the Opposition is also similar – that their applications are being dealt with in such a different way and that we are seeing such disparity of applications in relation to applications that constituents are making. It is sad that genuine cases are being rejected because panels are misdirecting themselves as to the proper test to apply.

I would ask the Hon. the Minister when he replies ... One other reason, not the main one but one other reason why the answer that he gave this Parliament is not entirely reflective – it may be how he believes it ought to be done, it may be how the Director of Social Security believes it ought to be done, but it is not reflective of the reality on the ground; it is also causing confusion and animosity, it has to be said, amongst those who are being rejected – is that the test appears to have changed in 2015, as again I will demonstrate during the course of my intervention, to make it a more stringent test. So, there was a less stringent test before 2015, it became more stringent, and those who were previously on benefits prior to the change had been grandfathered but it leads to a situation ... For example, I will give you a very real situation of children who participate in sports as part of the Special Olympics: one of those children obtaining disability benefit, because they were assessed and they made the application prior to 2015, but another child, with very similar disabilities it has to be said, post-2015 not receiving disability benefit because the test had changed.

There are five propositions that I make to this House as part of this motion. The first is that we need to place the test for disability benefit on a statutory footing with published guidelines and criteria which will allow both panels and disabled people to know precisely what it is that they need to demonstrate to qualify. That is my first proposition.

Secondly, that the test should be one overarching test – I do think the Hon. Minister disagrees with me – for everyone, with different factors to be taken into account in relation to different disabilities, so that there is flexibility but there is also certainty.

995 The third proposition is that there ought to be a consultation process as part of placing the test on a statutory footing, and also the issuing of guidelines as to what factors panels ought to be taking into account when advising the Director of Social Security whether disability benefit ought to be paid out. Just to give hon. Members an idea of the paucity of guidelines here in Gibraltar – and I do not criticise the present Government in relation to this, because this is something that is historical, so it is not something that I lay the blame for at the door of the
1000 Government, because this is historical. This is the Disability Rights Handbook that is issued by UK authorities to UK disabled people in the UK, and it is phenomenally detailed in relation to their rights not only to benefit but in relation to other issues that affect disabled people. If I may pass that up to the Hon. the Minister. I have got the 2020-21 edition; this is the 2019-20. Perhaps this may also assist the Hon. Minister in anything that he may do with all this after this motion.

1005 The fourth proposition is that there is no reason why the test should depart from the definition of ‘disabled’ in the Disability Act, and indeed we will see that the definition of disabled in the Act mirrors very closely the test for qualifying for disability benefit that the Hon. Minister Licudi told this House in December is applied; and if that is so, then there is no basis, in my respectful view, for refusing disability benefit to anyone who is considered disabled for the
1010 purposes of the Disability Act. All the Government then needs to do is to publish regulations expanding upon the factors to be taken into account and to be considered by panels when they advise the Director of Social Security whether somebody qualifies for disability benefit – and I will come to the Act in a moment, Mr Speaker.

1015 The fifth proposition is that we ought to maintain a register of disabled people for the purposes of the Act and those on the register then qualify for disability benefit. In relation to the register, there is no composite disability register of disabled people in Gibraltar. There are different registers for different things – disability benefit, blue bay parking badges, learning disabilities. There are 10 departments from which a disabled person can avail themselves of different services. Certain individuals may deal with one department and certain disabled
1020 individuals may deal with different departments. That is understandable and understood by this side, but we certainly feel that there ought to be a central register. Everybody who qualifies under the Act as being disabled would go on that register and that is something that then would entitle that person to qualify for disability benefit.

1025 Mr Speaker, there were 388 people in receipt of disability benefit in Gibraltar in 2019. In the last five years, on average, 89 applications per year were successful. On average, 33 applications per year were rejected. These are not numbers that are going to bankrupt the Government, but they are important to those people who are affected.

1030 The culture of entitlement has become the byword, or the by-term, for the Government in relation to what they advocate, which should be a new approach going forwards, but we are not talking about the culture of entitlement here; we are talking about helping genuine cases and genuine people. As a society we have spent, over the last few years – if the House may permit me one small political point – millions of pounds on, for example, parties and the mega concert, and I think that we can spend a little bit more in ensuring that those genuine cases that I believe the net is missing come within that safety net (**Two Members:** Hear, hear.) (*Banging on desks*)
1035 and that they and their families have that peace of mind, and the starting point is the Disability Act.

1040 Mr Speaker, as I say in the motion, the Disability Act is a seminal piece of legislation. Our longstanding position is that it does not go far enough in terms of the implementation of the UN Convention on the rights of disabled people but nonetheless it is a quantum leap, and we accept that on this side of the House. But for the purpose of this debate I would draw the attention of the House to the definition – of disability for the purposes of the Act. ‘Disability’ is at section 4.

'Disability' means:

a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out day to day activities as further defined in Schedule 3.

1045 Pausing there, what is the difference between the test that the Hon. the Minister told us applied for disability benefit and the definition of disability for the purposes of the Act? The only distinguishing feature is that the test that the Hon. the Minister outlined before this House used the words 'severely' and 'adversely'. 'Severely' does not appear in the definition of disability; instead, there is the use of the word 'substantial'. But on the other hand, the test that the Hon. the Minister outlined before this House did not refer to any requirement for long-term impairment, and yet the definition of disability for the purposes of the Act does refer to long-term impairment.

1050 The point that I make, as we will see from further provisions in this Act, is that we believe that the definition of disability and the test that the Hon. the Minister outlined to this House are sufficiently close in proximity that in fact we could safely, without overtaxing the taxpayer and the public purse, simply rely on the definition of disability in the Act and say if anybody is disabled for the purpose of the Act, falls within this definition, they qualify for disability benefit.

If we then turn to Schedule 3, paragraph (2), Mr Speaker will see that 'long-term effect' is defined in paragraph 2:

The effect of an impairment is long-term effect if:

- (a) it has lasted at least 12 months;
- (b) the period for which it lasts is likely to be at least 12 months;
- (c) it is likely to last for the rest of the life of the person affected.

Where an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day to day activities, it is to be treated as continuing to have that effect if that effect is likely to reoccur.

1060 The Act also then makes provision for regulations to be introduced which in fact could also be regulations where the Minister, for example, could introduce regulations that deal with disability benefit and placing disability benefit on a proper statutory footing, so that everybody knows where they stand and there is legal certainty in relation to the issue.

1065 And then, in relation to normal day to day activities – and remember, Mr Speaker, that the test for disability benefit is 'severely and adversely affects' that person's daily life; that is the benefit – disability is defined also by reference to normal day to day activities, and in paragraph (4) of the Schedule it says:

An impairment is to be taken to affect the ability of the person concerned to carry out normal day to day activities only if it affects one of the following:

- (a) mobility;
- (b) manual dexterity;
- (c) physical co-ordination;
- (d) continence;
- (e) ability to lift, carry or otherwise move everyday objects;
- (f) speech, hearing or eyesight;
- (g) memory or ability to concentrate, learn or understand; or
- (h) perception of the risk of physical danger.

1070 Again, there are regulations that can add to those factors. So, you have the basis for making statutory benefit. The way that the test that the hon. Gentleman explained to this House adversely severely affects that person's daily life ... You have got the template already and the possible underpinning provided for in this Act. And again, there are also regulations. The Minister can also make regulations in relation to substantial adverse effect and what that means, and that is in regulation 5.

Having attempted to show this House that the test that the hon. Gentleman outlined in December is very similar to the definition of disabled for the purpose of the Disability Act, I am now going to go through a number of very real cases, on a no-names basis – either first name basis or anonymised. I have consent, of the cases that I am going to be referring to in this House, from the people who are affected, but the point of this exercise is to try and be the voice for these people in this Parliament so that hon. Members in this House can hear very directly from those people, because I am going to be reading letters and testimonies of those people in relation to their condition.

The first person I am going to refer to is somebody I will refer to as Lisa. Lisa is in her 30s. Her husband left her, so she is a single mother with two children. She used to run a café, so she was a businesswoman. She unfortunately contracted a tumour in her spine and as a consequence of this she could not work and she lost her business. She also contracted fibromyalgia and a herniated disc. She has got degenerative spine disease, arthritis in her neck and she suffers from depression. As a result of the above she suffers from back pain, loss of balance and, on occasion, requires assistance of a walking stick, as she finds her legs hard to manoeuvre. She relies on a mobility vehicle for transport, as she struggles to walk long distances or stand for a long period of time. I am just going to read to this House a letter that this this lady wrote. These are her own words.

First of all, she made a point which I would also like to make to the Hon. Minister: that the forms for the application for disability benefit do not actually provide sufficient space for many of these people to provide their full stories so that their full stories are taken into account by the panels. It is a point that has been made by her and it is a point that has been made by others who have come to see me as well. She said this, and I quote:

As for getting dressed and undressed, this proves to be a problem and I will give you an example. Last weekend my back went, just because I sneezed. The pain is similar to that of having sciatica, but more severe. My parents had to mind my children so I did not have to tend them, and on the Monday I tried to get an emergency appointment at the PCC, but I was unable to leave the house due to having 96 steps from the bottom of my block to my front door, thus resulting in me being housebound, and this is not the first time, nor is it the first time for my parents to look after my children, sometimes for a few days.

With me being able to have a little more rest than I normally would, I dosed up on medication and I made it to my GP on a Tuesday with thanks to my children coming back to help me pull my trousers up and put my socks and trainers on, because there was no way that I could manage it. My GP was sympathetic and I got an injection for the pain, but I was told it is a chronic problem and it won't go away. I will have good days and bad days. The best that I can do is manage my pain with medication, and I was told that when I have a flare-up and the tablets don't work, to call an ambulance, where the hospital can give me pain relief by injection.

With that mentioned above I consider myself to be unemployable. I was previously self-employed and I wouldn't employ anyone with my condition, not knowing if they were going to turn up for work from one day to the next or having to leave work mid-shift because of being in pain, let alone time off for my quarterly MRI scans – and there will be physiotherapy, but I have been waiting for almost a year because of the waiting list – as well as not being able to sit or stand for an extended period of time. What kind of work am I expected to do?

It is not nice being in discomfort and pain every day. Degenerative spine disease is usually associated with old age or having an accident or trauma, which heals quicker if dealt with the right way. I was informed that my tumour grew over many years, so a lot of the damage has already been done and I definitely feel a lot of discomfort, especially arthritis in my neck on the days we have a levanter.

She goes on and she also talks about the fact that, because she has found herself as a single mother in this kind of situation, she is now seeing a psychiatrist and that obviously adds to the general cloud hanging over her life.

Mr Speaker, on 1st July 2019 this lady applied for disability benefit and the response came back essentially saying:

Your condition does not currently impact severely on your activities of daily living.

That was the decision. She was also told, in a letter to her, that the test had changed in 2015, but focusing on the test, the test that she was told applied was the test that the Hon. Minister told this House applied. That is what she was told.

1105 I saw her in one of my surgeries. I then said to her, 'I am a lawyer. I am going to represent you. What we are going to do is apply for legal assistance so that you can get an expert to report on whether your condition adversely and severely affects your daily life.'

1110 This lady has asked me – I must not forget – to publicly thank the Hon. the Minister for Social Security, Mr Licudi, because I got in contact with Minister Licudi, I explained the situation and I said, 'Is it possible for us to obtain this report in the time that I need to file a claim for judicial review?' which is three months from when a decision is actually taken, and the Hon. Minister agreed to extend the time by another three months to allow me to instruct an expert and obtain this report.

1115 We went to an expert, and the expert in fact happens to sit on one of these panels, so sits on the panel advising the Director of Social Security. She wrote on 17th December 2019 and this is what she said:

I managed to speak, on a no-names basis, to Erica Felices of the DSS about Lisa, as I needed to understand exactly what we can achieve with this process.

That was not on instruction from us; she just took it on herself to make that approach.

I discussed disability benefit and it is clear that their definition

– in other words, the DSS definition –

and the definition that we have to work to when we make decisions on the DSS board that I currently sit on

1120 – she is one of the people who sits on this panel –

expects that the affected person is permanently incapable of work.

So she comes back to us and says the test is that somebody must be permanently incapable of work.

I would be able to write a report stating that Lisa has two medical conditions, but I am afraid – or should I really say I am delighted? – to report that neither of which is permanent. It is reasonable to expect, from a medical perspective, that she will recover sufficiently to be able to work again in the future.

1125 Mr Speaker, as a consequence I wrote to this lady and I said, 'That is not the test. I have been told by the Minister in Parliament that is not the test, and it is not the test.' She came back and said, 'That is the test. That is the test that I have been told by the DSSS should be applied and that is the one that we apply on panels. I know the hon. Gentleman – and he is not doing it with any malice – shakes his head, but I am telling him this is the email that we have received and I
1130 am going to further examples in a moment. This is a person who is sitting on these panels and she is telling a QC instructed to act for this lady, 'No, that is not the test because we have been told that this is the test.'

1135 And that is not an isolated incident; it is not an isolated example. Of course, that is wrong, they are misdirecting themselves, because the Hon. the Minister has told this Parliament what the test is, but there are panels that are advising the Director of Social Security in accordance with a test that does not apply, and the confusion, in my respectful view, is that because this is an administrative benefit that is not underpinned by any kind of statute, or there are no guidelines that have been issued by anybody in writing in relation to this, this unfortunately is not an isolated example.

1140 I turn to another example. I turn to the example of a seven-year-old boy. I will call him child 'R'. Child R has autism spectrum disorder. On 27th September 2018 the Department of Education wrote to his mother and said that the child had been assessed by a multi-disciplinary autism assessment panel and a fully extensive individual assessment by the professionals found that:

1145 The panel is in agreement that child R satisfies the criteria for autism spectrum disorder in that he presents persistent deficits in social communications and social interactions across multiple contexts. There is evidence of restricting and repetitive patterns of behaviour which may include unusual sensory processing.

Then he was also assessed by the educational psychologist on 22nd November 2019 and that assessment placed him as:

requiring substantial support, i.e. marked deficit in verbal and non-verbal social communication skills, social impairments apparent even with support in place, limited initiation of social interaction or reduced abnormal response to social overtures from others. Also, substantial support in relation to RRBs. These are restrictive repetitive behaviour and/or preoccupations and/or fixated interests appearing frequently enough to be obvious to the casual observer and interfere with functioning in a variety of contexts. Distress or frustration is apparent when RRBs are interrupted, difficult to redirect from fixated interests and severe, requiring very substantial support, very difficult to redirect from fixated interests or returns quickly to it.

1150 The mother of this child wrote and said, 'There are other children the same as my child and they receive the benefit, and you are rejecting me.' This is what the Department said to this lady on 9th July 2019:

Disability benefit is not awarded on the basis of having a particular illness or disability but takes into consideration the severity of the impact of the illness or disability on the applicant's everyday life.

Fine, but then it says:

Regarding the issue on other children in receipt of disability benefit, I would like to inform you that this panel was set up in July 2015 and that any person in receipt of the benefit previous to that date was approved following a different criteria.

So the criteria changed in 2015, according to the letter that I am reading from the Department of Social Security to the mother of this child.

1155 In the letter rejecting the disability benefit, these are the grounds. It is dated 2nd January 2020 and it says:

The panel acknowledges that [child R] has complex needs and requires additional support. However, the panel considers that your son's current level of functioning does not meet the threshold for a profound disability in that he does not (1) require round-the-clock medical support and care,

1160 Mr Speaker, what on earth does that have to do ...? And how is that placed in the context of the test that the hon. Gentleman said applied to disability benefit? (*Interjection*) No, I know it has nothing to do with that. I am not criticising him. I am not criticising the Government and I am not criticising the Minister. It is just that there is confusion in relation to this benefit and I am just –

Minister for Education, Employment, Utilities and the Port (Hon. G H Licudi): Will the hon. Member give way on one particular point?

1165 **Hon. D A Feetham:** Of course.

Hon. G H Licudi: I have made the point previously and I just raise it now so that the hon. Member is aware: there are two different tests, one for adults and one for children. What he cannot say is a particular test which is for adults was not applied for children. He knows it because I have given him details in his House on what the test for children is.

Hon. D A Feetham: Mr Speaker, to the extent that that is so, my understanding was there is one overarching test. What there cannot be is a test for children that is more stringent than for adults. That cannot be right. I am reading a letter that has gone to the mother of a seven-year-old child. If what the hon. Gentleman says is correct ... The test for adults is 'severely adversely affects that person's daily life' and the test for a child is 'requires round-the-clock medical support and care'. That *cannot* be right.

And then it says:

(2) or depends on others for all aspects of day-to-day life and (3) have extremely limited communication, mobility and independent skills.

Again, Mr Speaker, that is a more stringent test than the one that he outlined to this House, and to the extent that he says there is a different test for children, surely it cannot be right.

I am not blaming him. I emphasise again that I do not want this to turn into a party-political, partisan debate. I am not blaming him. What I am saying is I am bringing to the attention of this House what are inconsistencies in the way that this benefit is being administered.

I now turn to a different case, and this is a four-year old girl. I will call her child 'A'. The reason why I am dealing with different cases is just to give this House a flavour of different conditions. So, a four-year-old girl, child A, born with cerebral palsy. On 11th June 2019 the GHA wrote a letter to the mother recognising the condition, that it affects mainly her right side, hand and leg. She has difficulties walking and has some shortening and neurological problems with her right leg. This is a four-year-old child. The letter that comes back rejecting the application for disability benefit reads as follows, and I quote:

The panel acknowledges that [*child A*]

– it does not say 'child A', it says the name –

has complex needs and requires additional support. However, the panel considers that your daughter's current level of functioning does not meet the threshold for a profound disability in that she does not (1) require round-the-clock medical support and care, (2) depend on others for all aspects of daily life and (3) have extremely limited communication, mobility and independent skills.

That is the second example of where a letter rejecting disability benefit has gone out to the mother of a child, setting out a test which on any view is a more stringent test than the test that the Hon. the Minister, in good faith, outlined to this House applied to disability benefit. That, of course, begs the question ... This is happening. There are three cases – and there are more, but I am not going to be going through many more examples and taking more of the House's time when I have made my point. But when you consider these cases and the disparate ways in which this is being applied, in my view at least there ought to be a review of the issue, and the Minister ought to review it.

I have said that there ought to be across a cross-party review. I know that the Hon. Minister is never going to agree to that, but – (Interjection) No, I think that the hon. Gentleman would benefit from any input that I or some other Members on this side – and the hon. Lady no doubt will make a contribution in due course – can bring to the table in relation to this, and a working group is one way of dealing with it. But if that is not agreeable to the Government, at least they ought to take these points on board and perhaps we can have a meeting and I can go through it

with the Minister and assist the Minister in any way that he thinks that certainly on this side of the House we can assist, because this ought not to be a partisan political issue.

1210 Mr Speaker, this is on a different point. I turn to the case of Danny. Danny is a paraplegic. He suffered very severe injuries as a consequence of a motor vehicle accident. He is in a wheelchair – paralysis of one side. The complaint that he made to me – the hon. Gentleman knows, because we have had exchanges across the floor of the House – was, ‘When the GSLP got elected my disability benefit got reduced to 25%.’ The Hon. the Minister has explained, ‘Because we raised what trainees, cadets and others were being paid to the Minimum Wage, we then
1215 reduced...’ – that disabled person was in employment – ‘the disability benefit to 25% of what they were getting if they were doing more than 20 hours a week.’

The answer that I quote, the answer he gave me, was this:

Of the 70 persons employed who are in receipt of disability benefit, 42 are employed for over 20 hours a week and receive 25% of the benefit, 28 are employed for 20 hours or less a week and receive 62.5% of the benefit.

Danny is employed for more than 20 hours a week and therefore his benefit was reduced to 25%. I want to read to this House what Danny has told me by email. I just want it to be his words
1220 on what he feels about this – not my words, not the words of a politician, but the words of a person who is affected by this. He said:

Hi Danny

We need to make them understand what disability allowance means. They do not understand that point. Disability allowance is for your needs, disabled or with long-term health condition. I am spinal-cord injured with a high level of disability. Not every disabled person is the same as me. I have to pay for my wheelchair spares, medical equipment, electricity due to charging my wheelchair and hoist every day and my adapted van. The Government doesn’t pay for my equipment or spares. How can they say I earn a minimum wage and how can I have to work for my disability allowance? It doesn’t work like that. You work to have a life, not use me as cheap labour because I am earning a minimum wage and disability allowance together. How can you, in the UK, Germany, Spain, and the rest of Europe and even the world, have a quality of life with your wage and your disability allowance and in Gibraltar you can’t get your full disability allowance because you work over 20 hours? It’s ridiculous.

Mr Speaker, disability benefit is there to allow people to have an element of independent living, and what the policy of the Government fails to take into account is that these are people who are earning the minimum –

1225 If the hon. Gentleman wants me to sit down, I will and give way. No? Okay. I am very grateful, Mr Speaker.

What the Government is failing to realise with this policy is that if you have somebody like Danny, who is a paraplegic, is in a wheelchair, paralysed on one side, and he is earning the Minimum Wage, how far is that person going to go in his job, in terms of progression, in the
1230 same way as every able person can? His potential has been cut short, Mr Speaker. He is going to be on the Minimum Wage or above the Minimum Wage for most of his life. Not everybody is going to be like that, but unfortunately for somebody with that severity of disability the opportunities that ... What I am getting at, inelegantly, is that the opportunities that person gets in terms of employment are far less. In addition, he has more expenses than we would have
1235 because, as I read in that email, he has got other expenses in relation to his equipment, and to actually cut his disability benefit ... Mr Speaker, I know that they will say ‘his disability was not cut because we increased his wage – because cadets were earning £450 a month and now they are earning the Minimum Wage, which is substantially more than that’, but the reality is that yes, of course they increased the wage, but they cut the disability benefit, so you are giving with
1240 one hand and taking with the other.

Mr Speaker, I do not want this to be, again, party political and partisan, because of course ... Look, if they want me to make the concession that it was a jolly good thing to increase what these people were getting from £450 per month to I think it was £1,100, when they got in, per

month, I make the concession. I have no difficulty in making that concession, it was a great thing that they did, but what I am now suggesting is let's look at this again. The past was in the past, but let's now look at this again and let's not deduct 75% from the disability benefit of people like Danny, who have all these expenses and who really need the money. That is the only point that I am making.

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

Mr Speaker: I now propose the question in the terms of the motion moved by the Hon. Daniel Feetham.

Hon. G H Licudi: Mr Speaker, the hon. Member brings a motion which clearly raises important issues, and I am in fact grateful for the manner and tone in which the hon. Member has brought this motion. Although there are one or two political undertones in some of the comments that he has made, I will try and steer clear as much as possible. It is never impossible, but as much as possible I will try and steer clear of those political undertones.

The hon. Member started in a very bad way. The hon. Member says it is very sad and very depressing that this motion is not going to see the light of day, these people are never going to support this – and then he goes on to say, 'The reason they are never going to support it is because I am proposing a cross-party working group which is unachievable.' So he answers his own point. He says this is very sad, but if he had brought a motion ... If he brings a motion that he knows and admits from the outset is 'something that you can never agree, but it is very sad and depressing that we cannot get unanimous support for this motion' ... Also, having started in that vein, Mr Speaker, is it that he is so lacking in his own confidence to persuade the House to vote for his motion that he starts by saying 'This is very sad and depressing because I am never going to be able to persuade you'? That is what is sad and depressing: that somebody comes to this House and does not have the confidence in himself to say, 'I am going to persuade you because my arguments are correct.' (*Interjection*)

So, the hon. Member will see what we will be doing, but when the hon. Member says 'because they have a veto', it is not that we have a veto – it is that we have been voted into government. We have a majority and therefore we are able to vote in the manner that we consider appropriate. But the hon. Member should not confuse that with an ability by us as individuals, and indeed by any of them, including the hon. Lady, to propose any amendments to the motion. That is not to say that it is sad and depressing because the original motion does not get passed. We can propose amendments which actually – and I hope it may happen – improve the motion. That is a possibility. But at least the hon. Member should recognise as a possibility that amendments that are proposed by hon. Members, of whichever side of the House they may be, can possibly improve a motion that he or I or anybody else might bring to this House.

Mr Speaker, what I propose to do today in response to the hon. Member is to answer a lot of the points, or most of the points that he makes, but I believe that it would be useful to set the whole thing in the motion in a proper background and context. Therefore I believe it would be useful for all of us to understand, in terms of what we are talking about on disability benefit and the various changes, including some changes that the hon. Member has alluded to ...

The hon. Member talked about 2015 bringing about certain changes. It is important not to go back in history and tell a whole tale, but to go over the background to the award of disability benefit. Disability benefit used to be called disability allowance, and we have changed it to disability benefit so as not to create confusion between the allowance that is given for Income Tax purposes, which is the disability allowance. Some people were using the terms interchangeably. Therefore, we now refer to it as disability benefit.

This is in fact a benefit which was introduced many years ago. I have asked for the earliest records to be checked and the earliest records go back to something like 1978 when the disability benefit was given. At the time, it was created as a benefit to be given on an ad hoc basis for people who had permanent and severe disability by physical or mental reasons from

birth. It had to be permanent, severe physical or mental, and it had to be from birth. There was a residual discretion given to the Director of Social Security. My understanding, going back all those years, is that that discretion was hardly ever, if ever, used. The test that was applied was permanent and severe disability from birth. That excludes, of course, as an aside, anybody who has a motor vehicle accident and ends up paraplegic or disabled and needing support. That goes back to 1978.

It was the test that was applied throughout the 16 years of GSD administration. It is not a criticism because I know the hon. Member is entitled to say 'Well, that was wrong. That was then. That was a view that was taken then. What do we do now? Is the test that we apply now the right one, or should we change it going forward? Have we applied the right test since 2011 or changes made in 2012 and 2015, and is it right to review the position now?' But it must be said that when one understands everything that the hon. Member has said and some of the criticism that he has levelled – and he has made it clear it is not a criticism of me personally but generally of the circumstances of the scheme as to how this works – there used to be a very stringent test of permanent and severe disability from birth which did apply throughout the 16 years of the GSD administration.

Originally, throughout all this period, the benefit was part of the wider social assistance allowance. It came out of the Social Assistance Fund and subsequently it came to be paid out of something which I would say was inelegantly named the Gibraltar Handicapped Fund. Eventually, as happens now, it became part of the recurrent expenditure of the Department of Social Security, with its own subhead in the Estimates that we approve each year in this House.

As the hon. Member has indicated, it is not a statutory benefit, but it is also not a benefit which is means tested and it is not a benefit which is contributory. So, we do not have a statutory scheme whereby we get contributions from Social Insurance payments and apply that to a statutory scheme which includes entitlement in certain circumstances, whatever the criteria is, to disability benefit. It is non-contributory. That may have contributed – and I do not know whether this is correct or not – initially as to why it never became a statutory entitlement, but it is certainly not means tested and it is certainly non-contributory.

In 2006, before we came into government in 2011, two new clauses were introduced into the arrangements providing for social assistance in relation to disability benefit. I will read out the two clauses. This is a new provision in 2006:

The payment of this allowance shall be suspended if the disabled person is employed in full time employment.

In other words, in 2006 somebody decided that it was a good idea that if you became employed or were employed then 100% of the benefit would be gone. That was introduced in 2006.

The second provision was:

Notwithstanding the provisions of the paragraph above, any allowances paid under the Government Training Scheme shall be disregarded.

This is essentially what the hon. Member has addressed before, that where you had trainees under that Government Training Scheme who obtained and were being paid the disability benefit, notwithstanding that that may have been considered work or being in work for over 20 hours a week or full time employment, then ... It certainly was not employment; it was different. It was separate from employment, but notwithstanding the provision that if you were in employment, the whole of the allowance became suspended because if you then became unemployed or you left your job then it could be reactivated. That is the reason for the use of the term 'suspension', I expect, but notwithstanding that, any allowances, and to avoid confusion as to whether you were employed or not, it was clear that if you were paid under the Government Training Scheme those allowances were disregarded.

The effect of these clauses was that someone who had a permanent and severe disability from birth, who was in receipt of the benefit and became employed, lost 100% of the benefit. That was the effect of what was introduced in 2006.

1345 I know the hon. Member has mentioned a particular case. I really do not want to go into individual cases, and the hon. Member I hope will understand the reasons why, but the reality is that somebody at the time, as from 2006, who was on a Government Training Scheme and was paid ... the hon. Member has mentioned £450 a month, did not have disability benefit suspended. At the time that we came into office, in 2011, disability benefit was £304.50 per month – that was the full amount of the benefits – and that meant that if you were at that time, 1350 prior to us coming into office, on the Government Training Scheme and in receipt of the allowance you got for that plus the disability benefit, you would be getting something just over £700 per month. It also meant that if you were not in the scheme and you obtained full-time employment you lost the entirety of the £304.50 per month, notwithstanding that you had a permanent and severe disability from birth. You must have had that to have been in receipt of 1355 the £304.50, and notwithstanding that you had that disability from birth you still lost it if you went into full-time employment.

As we know, in 2011 we had a change in Government – something that some people have described as a new dawn, but I do not want to make political points this afternoon – and in 2012 the Government replaced the suspension of the benefit for persons who were in employment 1360 with a policy instead to reduce the benefit to 25%. So, the elimination to 0% was replaced with a policy of a gradual reduction over a period of three months – 25% each month reduction, getting to 25% at the end and then leaving it at 25% percent. That meant that those who were in receipt of disability benefit who found employment could nevertheless keep the disability benefit at 25% of the rate that applied, which contrasted to the reduction to 0% of the benefit prior to the 1365 introduction of that arrangement in 2012. That necessarily, by definition, is a good thing. It has to be a good thing, because if previously you lost 100% and then you lost a maximum of 75%, you were better off. If, on top of that, or separately from that, you are on a scheme getting £450 and suddenly you find yourself on the Minimum Wage at just over £1,000 a month, it means that notwithstanding the reduction to 25% of those persons who previously got 100% because 1370 they were on the scheme, a person who was on the scheme would then be on the Minimum Wage and would get 25% and would be better off by over £400 per month. That is the effect, the reality.

The hon. Member criticises the fact that there was a scheme to reduce to 25% the disability benefit if somebody found full-time employment, but what the hon. Member needs to 1375 understand is what is the overall effect of that. Previously, if you were not in the scheme it was reduced to 0%, so you were 25% better off. And if you were a trainee, you had the other amount increased and you were still better off by around £400. Whichever category you were in you were definitely better off by hundreds of pounds as a result of the changes that we made, so it is not something that should be seen as a negative thing or something which should be worthy of 1380 the criticism 'You reduced it to 25%'. No, we increased it from 0% to 25%.

Therefore, it is clear that everybody on disability benefit who was either employed or in the scheme was better off in 2012. But that is not all that happened in 2012. In 2012 the Government also extended the disabled individual's tax allowance to provide an allowance 1385 against earned income of an individual with disabilities. This allowance was on top of all other existing allowances and the effect was to bring an individual with disabilities, who was in receipt of the whole or part of disability benefit and was in employment, totally out of taxation – completely, entirely out of taxation. That, again, can only be a good thing for anybody with disabilities who was on disability benefit.

So, in 2012 we had the retention – not the removal, because the removal had happened 1390 previously to 0%; we had, in 2012, the retention – by those in employment of 25% of disability benefit, whereas previously the whole of the disability benefit was removed. We had an increase, effectively, of around £400 per month for those on disability benefit who previously

were on the Government Training Scheme. And we had the taking entirely out of taxation of those individuals in employment who were on disability benefit. That happened in 2012.

1395 As from 2012, as a result of a manifesto commitment that we had in 2011, we were looking at the arrangement whereby the test was permanent and severe disability from birth. We had committed ourselves within our first term of office to change that and remove the requirement that it should be from birth. As a result of a review undertaken in 2015 there were a number of changes made.

1400 The first change was that a distinction was drawn between those who were in full-time employment and those who were in part-time employment. Previously it was just if you were in employment you got 25% of the benefit. So, those in full-time employment would continue to receive the 25% of the benefit, but those in part-time employment, 20 hours or less, would now get 62.5% of the benefit. I am corrected by the Father of the House, who was involved at the
1405 time and says that this was in fact part of the arrangement that was made in 2012, the distinction between full-time employment and part-time employment, so I am very happy to correct that.

The other significant change that was made is that up until 2015 applications were considered on the strength of a medical letter or certificate for adults, and on the
1410 recommendation of the Special Education Needs Assessment Panel for children or persons under the age of 18 years. This is a panel that came and still comes under the Department of Education, made up of officers of the Department of Education and the Gibraltar Health Authority, for the purposes of assessing educational needs of children with learning difficulties, and that panel supported at the time the Department of Social Security on the award of
1415 disability benefit to children. But it was clear that that arrangement was not ideal, as that was not specifically the remit of the panel, which was to consider education needs of the children.

As a result of that review that was undertaken in 2015, it was highlighted that the requirement that the person had to be permanently and severely disabled from birth was very stringent and unfair, as many people who were applying for disability benefit and whose
1420 disability was severely impacting their daily lives were not severely disabled from birth but from something, a disease or an accident, that happened subsequently. As a result, it was decided that disability benefit would no longer be awarded on the basis of having a particular health condition or impairment but on the impact of the condition or impairment on a person's daily life activities. So, when the hon. Member in his speech says there was a change in test in 2015,
1425 yes, that is correct; it was not just permanent disability from birth, but the test became the severity of the impact of the condition or impairment on the person's daily life activities. That naturally opened up the availability of disability benefit to many people who would not previously have qualified – all those people who had a substantial disability or had a substantial impact as a result of his condition or impairment on the person's daily life activities – and since
1430 2015 that has been the criteria for the award of disability benefit in respect of adults, with the focus being on the outcome and the impact of the health condition or impairment on the individual's ability to carry out the range of activities which are fundamental to everyday living. The reality is that up to 2015 there had really been no formalised or consistent system to award this benefit and that was changed as a result of the review which was carried out in 2015.

1435 One of the aspects that was changed was that a multi-disciplinary assessment panel was introduced whereby qualified professionals would bring the necessary expertise and understanding on disability, the scope of disabilities and the ability to perform certain functional capacity evaluations which the panel was able to undertake and which was not the process that happened previously. As a result, essentially two panels were introduced from professionals in
1440 the relevant field, one to process applications for children and the other for adults. The role of the panels was, has been and continues to be to consider impact, not diagnosis. The panel does not make a medical diagnosis. It looks at the medical evidence and the condition that exists but it assesses the impact of that condition on the ability of the applicant to carry out normal functions in everyday life. These panels make recommendations to the Director of Social

1445 Security on whether disability benefit ought to be awarded to the applicant or not. That is the formal process. The panels consider the matter and make applications to the Director. I do not know of any case where the panel has said 'This person is severely impacted and the benefit should be paid' and the Director has said 'No, in the exercise of my discretion I am going to disregard your recommendation.' So, although technically the discretion is exercised by the
1450 Director of Social Security – he is the head of department – the Director essentially follows the recommendations made by the panels.

With regard to the adult applicants – and this is where the distinction is drawn – the criteria are focused on the outcome and the impact of the health condition on the ability of the individual to carry out a range of activities which are, as I have said, fundamental to everyday
1455 life. The activities which are looked at are preparing or eating food, washing, bathing, using the toilet, dressing and undressing, reading and communicating, managing medicines or treatments, making decisions about money, engaging with other people, planning and following journeys, and functional mobility both indoors and outdoors. So, there is a process, there is guidance, there is a test and then there are factors that are taken into account in deciding whether the test
1460 is met or not.

The process for children, as I indicated earlier, is slightly different. It is whether the attention, guidance and supervision required by a disabled child is substantially in excess of that usually required for a child of the same age, so their care needs with personal care – things like eating, washing, getting dressed, going to the toilet – must be substantially greater than the care and
1465 attention needed by a child of the same age.

Hon. Members will recall that in 2019 we had an exchange, and the Hon. Mr Feetham read something earlier which I had said in relation to the test previously. We had an exchange in this House and that particular question related to children with autism, the hon. Member will recall. This is what I told the House at the time. I am quoting from *Hansard*, Mr Speaker:

There is not a criteria for the granting of disability benefit with either autism spectrum disorder or speech impediment or visual impediment or any other kind of disability. What the assessment panel will look at in assessing the individual and making recommendations to the Director – and in particular when we talk of autism spectrum disorder we are primarily dealing with children – is whether the needs of the child are substantially in excess of that usually required by a child of the same age, and in considering whether the child will qualify for disability benefit the needs of that particular child are compared to those of a child of the same age or similar age with no disability. For example, if the child with disability needs substantially more attention because the care needed is different on issues of toileting, being able to eat on their own, dress themselves. Those are the sorts of issues that the assessment panel will consider and when you come to an assessment as to whether the impact is substantially different to that of a child of the same age without a disability, and based on that assessment the panel, which is made up of professionals, may then make an appropriate recommendation to the Director of Education.

1470 – *Hansard* says the Director of Education; it should be the Director of Social Security –

The same essentially applies for adults, where their criteria are not related to a specific ailment or disability but the criteria are simply the impact of the health condition or disability and the impairment of that individual's ability to carry out a range of activities which are fundamental in everyday life.

– in other words, whether there is a severe impact in everyday-life activities as a result of the disability, and that is essentially the broad criteria which the assessment panel considers.

So, Mr Speaker, the tests themselves are clear. The hon. Member says that one of the reasons why we should put this on a statutory footing is that then the tests will be clear. The
1475 tests are clear. The fact that you write it in a statute or give it as part of guidance in a leaflet to the Director of Social Security or the assessment panels does not provide for greater clarity. The tests themselves are clear, and when the hon. Member has read some of the letters that the hon. Member has read, essentially they reflect that those tests are being applied. What they also reflect are perhaps the reasons why the panel considers that the disability benefit ought or

1480 ought not to be given, but the reasons ought not to be confused with the test itself, as the hon. Member will know.

It is clear, in our view, that the reviews that were undertaken in 2012 and 2015 ... It is clear beyond peradventure and beyond argument that these reviews have provided support for the needs of a wider range of individuals with disabilities. In other words, more people benefit and there is more to benefit from by those people moving away from a very stringent, unfair and inconsistent system to a formalised and consistent system where the impact, not the diagnosis, of the disability is assessed by a panel of experts and qualified professionals and no longer on the basis of a medical letter or certificate alone, which was the process which was applied previously.

1490 The fact that these changes have benefitted a greater number of individuals with disabilities necessarily, and it follows from that, has had financial implications for the Government. The more people who benefit and the more they are able to keep, the greater the expense for the Government. It is interesting to see – looking at the approved Estimates for 2011-12, which are the Estimates that we inherited for that particular year when we came into government in
1495 December 2011 – the Estimates of Expenditure approved by this House in 2011-12 was £503,000 for disability benefit, half a million pounds. The amount approved by this House for disability benefit in the financial year that was supposed to expire on 31st March, taking the whole year 2019-20, was £1,675,000. That is an increase in the yearly amount that is paid of £1.2 million in eight years, so we are now spending £1.2 million more in each year than was being spent when
1500 we came into government in 2011. That represents a more than 200% increase in the overall budget for the benefit in eight years of government, and that is substantially in excess of inflation. It is not, clearly, linked to inflation, it is because of the changes and the wider net that is cast now than was previously the case, and it shows, in my view and I would suggest to this House, the Government's commitment to improve the system of disability benefit and to widen
1505 the range and the number of applicants who are now eligible and in receipt of disability benefit, many of whom could not even have applied prior to 2012. They could simply not have applied. They were excluded altogether, taken out of the system – many of those, including one of the examples that the hon. Member has given ... and I say that just to show that somebody who has an accident and becomes disabled is able to benefit from the payment of disability benefit.

1510 So what does all this mean, Mr Speaker? Does it mean that the system is perfect? Does it mean that it cannot be improved? Absolutely not. As with any system, you can always look at improvements and it is always desirable to review how things work in order to ascertain whether changes or improvements can be made.

The hon. Member has talked of issues which possibly touch ... I am not sure that he used the
1515 word 'transparency', but confidentiality issues or clarity. So there are certainly things that can be looked at and can be improved, and as a result of that, in December 2019, before the date of the motion by the hon. Member ... I just mention that in case the hon. Member does not look at the date of his motion and does not realise that this was before the date of his motion, (*Interjection by Hon. D A Feetham*) but in December 2019 I asked the Director of Social Security to carry out a review of the disability benefit system. Unfortunately the review had not been completed by the time we had locked down, by the time we had issues. The Department of Social Security was one of the ones that was clearly impacted in terms of workload, changes on payment of benefits and how all that was going to be done, with staff in lockdown and some shielding. So, as a result of that, we did not complete it but I did have, by that time, some preliminary comments by the
1525 Director of Social Security which we discussed and I asked for some further work and further research to be done which had not been completed at that time. What I can say is that – and I hope the hon. Member will be pleased to learn, given that he is calling for a review – there is a review which is ongoing and which will result in recommendations made to the Government and I expect will result in improvements to the system. I do not want to anticipate what the result of
1530 the review will be and say we will do A, B, C or D, or X or Y, but I do anticipate that there will be some changes and some improvements to the system.

Mr Speaker, the hon. Member has made a number of points, including in relation to the tests. I have set out our position in respect of what the test is and what that test should be or how that test should be applied, but it is a matter for professionals.

The hon. Member has mentioned a couple of individual cases and I hope that the hon. Member will understand why it is not considered, certainly on this side of the House, desirable to go into discussing the merits of individual cases or whether individuals have particular ailments, impairments or disabilities, or not, and how that should impact on an application for disability benefit. That is, quite simply, because it is not a matter for us, as politicians, to express an opinion on whether ... We can set out policy steers, we can set out parameters, we can set out tests and conditions which need to be satisfied, but whether a particular individual with particular impairments, disabilities or ailments qualifies or not is for professionals to assess, and although I do understand where the hon. Member is coming from in using some cases as illustrations of how he says the system should be improved, we have got to understand – everybody has to understand – that in respect of those cases, or any others that the hon. Member may raise, we do not have the medical evidence, we do not have the medical files, we are not medically qualified to assess the impact and how that has affected the particular individuals or other individuals in those same circumstances. We may have opinions, we may say ‘Well, this appears to be unfair’, but it cannot be right for us, as politicians, to make assessments on these things – and the hon. Member knows that because the hon. Member has mentioned a couple of cases on which he has corresponded. One was the extension of time for the judicial review, on which I happily agreed to the suggestion by the hon. Member, and there was another case that he wrote to me on and which he asked me to look at, and the hon. Member will recall, because he wrote to my colleague Mr Balban on this and the letter then came to me from Mr Balban’s office and I told him quite clearly that individual cases are not something I get involved in.

It cannot be right for politicians to start to look at individual cases and start to assess these things or express opinions when they are not medically qualified, when they do not have access to all the information, when they do not have the evidence that supports a particular recommendation, and least of all when they do not have the recommendation at all. It cannot be right. It cannot be right for politicians to get embroiled in the detail of who gets a benefit and who does not get a particular benefit. That is something that I explained to the hon. Member, and I wanted to repeat that today because I know – or I hope – that the hon. Member will understand that.

The hon. Member has referred to the Disability Act, which is an Act we introduced in 2012. He has referred to the test for disability, and the hon. Member quite rightly has remarked that the test is not very dissimilar from the test which I had indicated previously to this House was the one that was being applied, which was ‘substantial and long-term adverse effect on a person’s ability to carry out day-to-day activities’. In other words, it focuses on the impact of the impairment on the person’s day-to-day activities. It also talks of long-term effects. I have never talked of long-term effects in any of the tests that I have set out. So, if anything, our test, or the test that is being applied, is wider than the definition that the hon. Member has commended that we should adopt, because this restricts it to somebody who has a long-term (**Hon. D A Feetham:** Permanent.) effect. The hon. Member is right that ‘long term’ is defined in Schedule 3 as being at least 12 months. That restriction – and it is, of course, a restriction or a qualifying condition – does not apply to the tests which are applied for disability benefit. So, if anything, it is more restrictive under the Act than it is under the test that is being applied at the moment.

The hon. Member also talks of a register of disabled persons and anybody on that register should be entitled to disability benefit. If that were the case, then you would not need a statutory test and you would not need assessment. You would simply say ‘Is somebody on the register, or not?’ (*Interjection by Hon. D A Feetham*) Yes, but then who decides who goes on the register? And what do you go on the register for? Do you go on the register for a blue badge? And does that automatically entitle you because you then pass the test and –?

1585 **Hon. D A Feetham:** Will you give way?

Hon. G H Licudi: Yes, I am happy to give way.

1590 **Hon. D A Feetham:** Mr Speaker, that is not the point that I made. In fact, I recognised that there are different departments dealing with different things in relation to disabled people, and blue badges was an example that I cited.

What I said was that what you do not have is a central register of disabled people pegged to the Act. And of course if the Government follows my recommendation, which is that anybody who is disabled for the purpose of the Act ought to then qualify for disability benefit, then your register automatically is your register of people in receipt because I am linking one with the other, but it is different to the point the hon. Gentleman was making.

1600 **Hon. G H Licudi:** Mr Speaker, I understand that, but the Minister responsible under the Act and dealing with – I know that it has been raised previously – the issues of registers or disability is the Hon. Minister for Equality and I understand that she will make a contribution where she can address that particular issue. The bottom line is that there needs to be a test, there needs to be an assessment made. How it is made is another matter.

The hon. Member has included in the motion a provision which welcomes the fact that I did tell this House previously, in answer to a previous question, that we are prepared to consider placing this on a statutory footing.

I am grateful to the hon. Member for giving me the Disabled Rights Handbook, which applies in the UK. What we definitely have to do ... and I agree we need absolute clarity, we need a clear guidance and test which I suggest to the hon. Member applies as regards the Department of Social Security, but the perception might be that that is not what actually exists, because there is not a handbook, there is not a set of guidance notes, and we do need that.

1610 Part of the review that is being undertaken, or one of the things that I have asked for, is precisely what literature and what guidance note needs to be issued, so that people are clear as to what the test is, what the process is, what the form is, what you need to say, what you need to provide. So, we need absolutely clarity in respect of that, and that is something that is being considered. I have said the result of the review will be that some improvements will be made and I expect that one of the improvements will be that there will be that element of clarity from a wider public point of view rather than from what happens internally in the Department of Social Security, and that public information, whether it is in the form of a leaflet or a booklet, that certainly is something that is being not just looked at... What is being looked at is the detail as to what needs to be included.

1620 Mr Speaker, I go back to the original point made by the hon. Member, which was what will be the outcome of this particular motion, will it be success or not for the hon. Member, and I dare say, having regard to a lot of the things that I have said, there will be a large measure of success if the hon. Member accepts the amendments which I will propose –

1625 **Hon. Chief Minister:** Even if he doesn't.

1630 **Hon. G H Licudi:** – or perhaps, as I am reminded, even if he does not, because we do have a majority (*Interjection by Hon. D A Feetham*) except that I am still openminded enough to accept that when I propose amendments the hon. Member will be entitled to speak to the amendments, will be entitled to himself propose amendments and have the ability to persuade us that he is right. Whether he will do or not is another matter. I am prepared to make that concession an issue and not be as defeatist as the hon. Member started this afternoon. (*Interjection by Hon. D A Feetham*) We certainly will not gag the hon. Member. (*Interjection by Hon. Chief Minister*)

What I am proposing, Mr Speaker, is to amend the motion to keep the elements that he has included in his own motion: the reference to the Disability Act; the assurance that I gave to Parliament to consider placing this on a statutory footing – and it is an assurance to consider placing it on a statutory footing, it does not necessarily follow from this that it will be placed on a statutory footing but we will certainly consider; and there is a reference to the review – it cannot be a reference to a new review or a working group because a review is already ongoing.

But what I will propose in the amended motion is also to record the changes that have been made, which are simply factual statements, not political statements, in respect of the changes that were made in 2012, because if we are made to talk of a motion on disability benefit welcoming certain things and seeking a review or asking for the ongoing review to be completed, we also have to recognise that there have been some changes already and some changes and improvements which have been made, notably in 2012, also in 2015 and also the vast increase in the amount of expenditure that is now happening on disability benefit as a result of the amounts now voted in this House, which as I mentioned amount to £1.2 million per year more than what we inherited in 2012.

Therefore, Mr Speaker, I am proposing to amend the motion so that it says – and rather than say delete this or add that I am going to read the amended motion:

This House

(a) welcomes the introduction of the Disability Act in 2017 as a significant breakthrough in enhancing the rights of disabled people and is committed to continuing to break down barriers by constantly striving to secure equal opportunities and equal rights for all people in Gibraltar;

(b) welcomes the changes to the award of disability benefit made in 2012 as a result of which:

(i) those persons in receipt of disability benefit in full-time employment no longer had their disability benefit suspended but were able to receive 25% of the disability benefit

(ii) those persons in receipt of disability benefit who were in employment were taken entirely out of taxation in respect of their income;

(c) welcomes the further changes made in 2015 removing the requirement that only those persons with a permanent and severe disability from birth could claim disability benefit, resulting in many individuals with disabilities that arose subsequent to birth being able to claim and receive disability benefit;

(d) notes that in the financial year 2011-12 the sum of £503,000 was approved by this House for disability benefit, whereas the sum approved for the financial year 2019-20 was £1,675,000;

(e) welcomes the assurances of the Minister with responsibility for Social Security in answer to parliamentary questions from the GSD Opposition that he is prepared to consider placing on a statutory footing the qualifying test for the award of disability benefit;

(f) welcomes the announcement of the Minister with responsibility for Social Security that a review of the disability benefit system is already taking place;

RESOLVES that the Minister should report to this House within the next six months with the result of the consideration of placing on a statutory footing the qualifying test for the award of disability benefit and the review of the disability benefit system which is currently taking place.

Mr Speaker, I hope that the hon. Member accepts that I have kept the various elements which he had included in his own motion. I have added to that motion the factual scenario of what has happened since 2011 and naturally now record, rather than calling for a review, record that a review is already taking place.

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

1660 **Chief Minister (Hon. F R Picardo):** Mr Speaker, before we continue with the debate, I note it is already almost 20 to seven and you and others have been in the House without being able to move in and out, as Members can, for now three hours. I wonder whether this might be a convenient moment to break for 10 minutes as a short recess.

*The House recessed at 6.40 p.m.
and resumed its sitting at 6.50 p.m.*

1665

**Disability benefit –
Debate continued –
Amended motion carried**

Mr Speaker: I now propose the question in terms of the amendment moved by the Hon. Gilbert Licudi.

The Hon. Daniel Feetham.

1670 I beg your pardon, the hon. Lady. I must remind the hon. Lady that we are speaking to the amendment.

Mr Speaker: I should remind the hon Lady that we are speaking on the amendment.

1675 **Hon. Ms M D Hassan Nahon:** Mr Speaker, I welcome this motion as presented by my hon. Friend to my right and now the amendment as it stands for debate in this House.

I also welcome the assurances from the Minister with responsibility for Social Security confirming that he is prepared to consider placing on a statutory footing the qualifying test for the award of disability benefit and a wider review of the law and administrative practices relating to the award of disability benefit.

1680 Mr Speaker, these measures are imperative for an equal and transparent system where everyone who is entitled to the benefit knows exactly what they are entitled to and whether they qualify. This is particularly important for single, non-working parents and the elderly, for whom the current system of tax relief does not work.

1685 In Gibraltar, those living with a disability are disproportionately likely to be living in poverty. They are generally left without an income for the months at a time they wait for an assessment from a shadow committee which is not required to openly justify its decisions. As a society, we need to be able to trust that the assessments will be fair, consistent and considered and that claimants are not left not knowing why their claim has failed.

1690 The payments are designed to support the most vulnerable in society through tailored support and these vulnerable people should be assured when their payments will be provided and what they will earn. We recommend that target times are introduced so that individuals are not left without a vital income for a prolonged period.

1695 More important, I would like to see individuals who face disability being given dignity to be in supported employment based on individual needs. The local social model currently focuses on the ways in which the social and institutional barriers are organised and restrict those people with disabilities opportunities. Both physical and mental impairments can be a barrier to opportunity and both need to be accounted for in a transparent statutory capacity.

1700 We would like disabled individuals to be able to access the same opportunities as their able-bodied counterparts, without discrimination. In this we need to be able to provide vocational profiling tailored to the individual by supported employment based on individual needs and recognise the human right of the disabled person to live with dignity and respect.

We wish to see reasonable adjustments in healthcare and in the workplace and the right to request flexible working to fit around the individual's needs to further support them in

employment. The individual must be seen first and foremost not by their impairment. Every individual has a right to earn a dignified living, be it in limited capacity or in full employment, in every sector, supported by trained officers.

Eligibility should not be based on a person's condition rather than the way that that condition limits their ability to undertake daily activities. This needs to be actioned from the very first day of their sick note.

Government and employers must take steps to ensure that disabled people who want to work are able to do so and to address the pay gap for disabled workers.

Employers should record time off because of a disability separately from non-disability sick leave. This would recognise the fact that some disabled people may have different and higher forms of sickness absence, including no seen illness such as mental illness.

Statutory provisions also need to be introduced for families who support vulnerable children to enable them to work to their full capacity while still caring for their children at home.

We would like assurances that employees with hidden disabilities feel able to disclose their disability without fearing discrimination in the workplace.

Liveable allowances for the disabled who cannot work are also needed for a fully functional society.

Appropriate emergency provisions must be introduced for terminally ill individuals to support themselves and their families through the last stages of their lives.

St Martin's School capacity is increasing, but there is no current provision to increase capacity in St Bernadette's, for example. We want to see supported learning environments so education and life skills are available up until the age of 18. This will then lead on to a supported employment with mentorship programme and skills for life suited to the individual and taught in a suitable manner dependent on the individual.

Barriers can make it impossible or very difficult to access jobs, buildings or services, but the biggest barrier is people's attitudes to disabilities. Removing the barriers is the best way to include our disabled community in our society.

Mr Speaker, a constituent came to see me only a couple of days ago, coincidentally, who is an amputee, and she assures me that she does not get any benefits or disability provisions. This is just one example of the people slipping through the net who need it the most. On this subject I will be writing to the Chief Minister and the Minister for Social Services but I wanted to raise that there are people who are very needy, who still do not have rights pertaining to them.

We need to do more to recognise the human rights of the disabled person and the dignity and respect that they should be provided with. Reasonable adjustments in healthcare and in the workplace are important for this to be achieved, so I welcome the opportunity to work in a cross-party working group that reviews not only the provision of disability benefits but also to change the fundamental discrimination to access to everyday life and work that a disabled person and their family currently face in Gibraltar.

Mr Speaker, finally, I am pleased to note that my hon. Friend to my right the initial mover of this motion will, from what I can understand, come to some sort of consensus with the Minister for Social Services in his amendment in order to deliver a motion of unity to this House and to our community, particularly to those suffering with disabilities who will today no doubt take comfort from the willingness of this House to show, as a first step, that we here are willing to work together for their rights and their improved quality of life.

So, I will be happy to support the amended motion, Mr Speaker.

Mr Speaker: The Hon. Daniel Feetham.

Hon. D A Feetham: Mr Speaker, we will be supporting the amended motion. The amended motion effectively deletes my motion and replaces it with an entirely new motion. It really makes no difference to us on this side of the House. What we are interested in is to see some sort of progress for disabled people, and if that means that we have to agree to the list of

achievements of the Government, we have no problem in doing so. They can have their gold star. The hon. Gentleman can have his gold star, but really what is important is that the Hon. the Minister for Social Security with responsibility for Social Security is not only agreeing to consider whether the Government places the test for disability benefit on some statutory footing but that there is a review afoot and that he undertakes to report to this House. That is what is important. Our concern is just simply to see that there is substantial progress and I am glad that we have been able to agree a motion by both sides of the House. *(Banging on desks)*

Mr Speaker: The Hon. Sir Joe Bossano.

Hon. Sir J J Bossano: I do not want to break the agreement, *(Laughter)* but I have to put the record straight, Mr Speaker, given that in the past we have had this debate across the floor as to what happened in 2012 – and I happen to be the guy who was there in 2012. My memory is good enough to remember what happened in 1972, so I have no problem remembering what happened in 2012.

We had a manifesto that did not commit us to retain the disability allowance which was being removed on achieving employment. We had had representation from people before the 2011 election, which was reflected in the manifesto, which was about the fact that when somebody who was getting the disability allowance found a job – whether or not they were in the scheme, because there were people with disability and not in the scheme and people with disability allowance and in the so-called Vocational Training Scheme ...

When I took over I found that there were people there who had been eight, nine or 10 years ... and then I was told by members of the staff that it was not that they were caring for somebody ... that was so complex and sophisticated that 10 years was not enough, it was that in fact it was people who had problems in obtaining employment, some of them with the kind of disabilities that gave them the disability allowance and some with the type of problems that did not give them disability allowance. There would be problems related to perhaps some form of mental illness which was not then covered by disability allowance at all.

So, in that context and in the representations we had before the 2011 election that resulted in us becoming the Government, what we committed ourselves to in that manifesto was that we would not remove the disability allowance overnight. What was happening before 2011 was if somebody got a job, immediately after getting the job they went from disability allowance to zero immediately when they got their first pay packet. All that the people who were making representations were asking us was to have a transition where we would do it in stages, and what the manifesto said was that we would remove the disability allowance of people getting employment in four stages: 25%, then 50%, then 75% and then 0%.

Once I was in government I decided to not do the third stage – that is the movement from 25% to 0%. I decided that although we had that in the manifesto I would not go to the zero point and I would retain 25% for people in full-time employment, and for people in part-time employment the retention was going to be higher to make sure that they were better off, even in part-time employment, under the new Minimum Wage company that we had set up. The Member will remember that originally would put everybody into the Training Scheme and we kept them where they were.

So, the individual the hon. Member opposite mentions was doing the same thing for the £400 as he was doing for the Minimum Wage a month later. It is not that he actually went into full-time employment which was different from what it was doing before. He was doing exactly the same thing in exactly the same place, and at the end of the day he was earning more, which in the first stage was that he went from 100% to 75%, then from 75% to 50% and then from 50% to 25%, but he never went the whole way, as he would have done if I had not changed the system, and the system originally that we were keeping was the one that they had and only doing it in stages.

So, the idea that people were allowed to work and keep their disability allowance is simply not correct. It is not accurate and it is not true. We all are on the same side and wanting to help people, but if we are going to make an issue of what was happening in 2012, the record has to be put straight, and that was issue. We decided not to go the whole way and stopped there. I took the decision and I went back to the Cabinet and said 'I want to go further than we are committed to because I think that we are closing the gap too much between what people get in working and with a disability allowance.'

One of the issues at the time was before we put the Minimum Wage as the payment to all trainees there were people before who had been on disability allowance, lost 100% of it and then got into a job in the normal job market, and frankly the difference between the two was not worth the fact that people with disability allowance, for example, who were not in the scheme or people with disability allowance in the scheme were doing very little, and the gap between that and the Minimum Wage at the time was insignificant. There was no real incentive to move into real employment.

The concept in the UK and the concept here is that what we want to do is make it possible for people with disabilities to be integrated into the community, and that means also integrating them into jobs which they are able to do and, if necessary, encourage employers to create an environment which takes into account their disability so that within the limitations of their disability they can do a normal job and have the satisfaction of being in a normal job, being treated as a normal worker with normal employment rights.

We gave all those employment rights to people by simply shifting them into a company, SEC. There were 48 at the time I came in. There are something like 78 now, and even from those 78 occasionally we are able to have a situation where people apply ... There have been some people who have applied for public sector jobs that have come out and, in open competition with people from the rest of Gibraltar, have been successful and have been recruited into the Government.

Ideally we should not have a company that has to act as a safety net for people with disability. We should have a system that enables them to be fully integrated into the jobs market with the employers doing what is necessary to accommodate their difficulties in delivering work. A difficulty is not necessarily a limitation. In the UK, the safety net does not exist. There is no equivalent of SEC in the UK or anywhere else. Everywhere else, people are put into the jobs market and a lot of the support comes from private sector employers. I do not think enough of that is happening in Gibraltar and I think that is also an important message that should go from both sides of the House – that employers should have a social responsibility to take the opportunity, where it can be done, where it is safe for the individual because of his limitations or because of his health or whatever, but where the environment is adjusted. There are some people within SEC who are doing work in the private sector, who were doing it previously for the £400 a month and have continued doing it for the Minimum Wage, and not only have they benefitted from not having it reduced to zero but they have also benefitted from the fact that the Minimum Wage has gone up faster since 2011 than it did in the eight years before 2011.

Mr Speaker: The Hon. Gilbert Licudi. (*Interjection*)

Minister for Justice, Multiculturalism, Equality and Community Affairs: (Hon. Miss S J Sacramento): Mr Speaker, my intervention will be short because the main points have already been covered, but I wanted to address a small point that was ... Not a small point. Quickly, I want to address the point that the hon. Gentleman opposite made in relation to the Disability Act in the context of the disability benefit, because he does not seem to know the difference and I just wanted to clarify the position.

It seems that the hon. Gentleman has totally misunderstood what each represents and the connection between them both. Someone may meet the criteria in the Disability Act but this does not mean that they are automatically entitled to disability benefit because of their

disability, because it is a different test. Not everyone with a disability will qualify for disability benefit, and indeed there are people who have a disability as defined by the Disability Act and will not apply for it. Someone may, say, have a physical disability and they may qualify for a blue badge because of their mobility restrictions, but that person can work and therefore would not be eligible for disability benefit.

He speaks about the disability register. The point that the hon. Gentleman makes on the register has already been aired at length in this House in the context of parliamentary questions and I have already told him that this is a significant and complicated task where a lot of progress has already been made, but on the importance of a central disability register we are agreed and that is work in progress. What is not correct is for him to say that anyone on any disability register may automatically be entitled to the benefits – for the simple reason that I have just given, the example that I have used.

Mr Speaker, I reluctantly go down this route, and I did not want to, but when the hon. Gentleman opposite gets up and says that he is the voice for the people with disabilities in this House you would not expect me to accept that and say nothing. He seems to forget that he used to be on this side of the House and, significantly, that he was the Minister for Justice. So, all these things that he is saying about putting things on a statutory footing he could have done then but did not. When he had the chance to be the voice for the people with disabilities these issues do not seem to have been important.

Mr Speaker, finally, I am glad to see that he welcomes the introduction of the Disability Act, a Bill which we passed in 2017. I am glad to have led on this important piece of legislation and yet another example of something we have done in government and something which he could have done when he was Minister for Justice. But I do not want to make this party political. *(Interjections and laughter)*

Hon. D A Feetham: We'll be here until 12!

Mr Speaker: Let us listen to the hon. Lady.

Hon. Miss S J Sacramento: As someone who brought the Disability Act to this House, or someone who worked very hard on bringing this very important piece of legislation into the House, I am sure that no one would expect me to accept the fact that the voice for people with disabilities in this House is the hon. Gentleman, who could have done this himself when he was a Government Minister.

But I will continue because I do not want to make this party political. It is for all of us to want to improve the lives of people with disabilities and it is important that we do so in this House. Certainly that is what we on this side wanted to do.

But, Mr Speaker My hon. Friend the Minister with responsibility for Social Security has already taken us through the significant improvements that have been made in relation to the benefits, but as with everything that we do there is always room for improvement and that is why, notwithstanding that a review had taken place in 2015, the Hon. Minister asked for another review last year. My hon. Friend and I have discussed this already and we will continue to work together, as have our respective Departments. Obviously the Department of Social Security is leading on this and, as you would expect, they are working closely with the Ministry for Equality.

Mr Speaker, on that basis I support the hon. Gentleman's amendment to the motion.

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

Mr Speaker: The Hon. Gilbert Licudi.

Hon. K Azopardi: Just on the amendment if I may, very briefly because my hon. colleague to my left has already indicated our position on this.

I only rise because I do enjoy the Father of our House's historical interludes, as he often is keen to give us, because clearly, as Father of the House, he has been here a long time and indeed it is instructive to listen to him on things that happened after 2012 – which I entirely accept, by the way; I am not taking issue with the motivation or indeed the scheme as he explained it in 2012.

I only rise to make this point, which is not a combative point in relation to what the Father of the House said, but I think it is important in the context of what we are doing today, which is that the motion that was brought by the hon. Member to my left was intended to bring to public attention and for debate a need to have a review of the system of disability benefit because we are getting quite a lot of people coming to us who have hardship foisted on them by the current system – or at least that is what they tell us – through a variety of circumstances, and indeed the hon. Member has indicated very tellingly, with very poignant cases, how that happens.

We are not taking a partisan view of it. We are bringing it to the attention of the House, hoping for a review, and we are glad that we have reached a consensus position. In doing so, we note that the hon. Member, in moving his amendment, is putting forward amendments asking us to recognise things that were done in 2012 and in 2015. I rise to say that indeed I recognise the value of changes that were done in the last few years and the Disability Act I think was an important piece of legislation that has enhanced our statute book. But like everything in life, when hon. Members suggest that lots of things were done in 2012 to improve and that the GSD could have done things or not done things when in government, I think it is important, as someone who did history at university, not to take an arbitrary point of the commencement of history. History did not start in 2011, it did not start in 1996, it did not start in 1988 and it did not start in 1972. These are historic situations. (*Interjections*) The disability system, for the reasons that the Hon. Minister presented (*Interjections*) in his explanation of the system back to 1978, which I think is when he started his review ... There have been successive ways of dealing with it, with successive improvements on the way, and hopefully we will get to a stage where we will have a better system and that this review does that.

So, yes, we will accept these amendments – which are rather partisan in nature – to the motion. We do so because we are not going to take a partisan view of this matter, because we think that the system needs changing for the benefit of families and people who are disabled, who do need change. (*Banging on desks*)

A Member: Hear, hear.

Mr Speaker: The Hon. Gilbert Licudi.

Hon. G H Licudi: Mr Speaker, naturally we welcome the fact that there is consensus across the House on the motion as proposed to be amended, so I am grateful for the hon. Lady's confirmation that she supported the original motion and the motion as amended.

The hon. Lady has mentioned some matters relating to disabilities and rights and equality generally which go beyond the issue of disability benefit, and I can understand all that. She mentioned supported employment. There are so many things, not just the introduction of the Disability Act, which happened in 2017. There has been a lot that has been introduced in support of people with disabilities and not just in relation to the motion on disability benefit, which is what we have been debating this afternoon. Reasonable adjustments are made at work whenever you have people with disabilities, and that is a requirement.

There was one thing which caught my attention in the hon. Lady's intervention, which was that what was needed – or words to this effect – were assurances that those with disabilities are able to disclose them without having detrimental effect or without being discriminated against, as if people in some way in Gibraltar are afraid of showing their disabilities because they would be subject to discrimination. We do not agree at all. We do not perceive or believe there is any climate of fear of anybody being discriminated against on the basis of disability, whether at work

or otherwise, and if there are any specific examples that the hon. Lady is aware of relating to that fear of disclosing disabilities because of discrimination, or actual discrimination, that is something that we want to know about because we are ... and the hon. Lady, my colleague the Minister for Equality is really a champion of people with disabilities, not just because of the Disability Act but because of everything that she does on a day-to-day basis assisting people with disabilities and striving for equality across the board, not just in areas of disability but in all other areas.

Of course I welcome the statement by the Official Opposition – by Mr Feetham, who brought the motion originally – that the Official Opposition will support the amended motion, but he mentioned that I can have the gold star. The hon. Member knows that this is not about who takes the gold star and the hon. Member also needs to recognise that in the amended motion we have included all of the elements which were in the original motion – the reference to the Disability Act, the reference to consideration of placing this on a statutory footing and the reference to the review. That was what the original motion was about and all of that is recorded.

Now I turn to the Hon. Leader of the Opposition, who describes the further amendments that we have made as partisan. They are not intended to be partisan, but they are intended to reflect the reality of what has happened in relation to disability benefit since 2012, so that anybody who sees that does not just say Parliament has passed a motion to review something which did not work. It is something that was working. There were some improvements which were made which can be improved further, and that is why the review is ongoing.

Mr Speaker, finally, although we have had a long session this afternoon there is one small amendment that I would propose to my own motion. It is something that the Hon. Mr Feetham has brought to my attention in paragraph (c) where it says ‘welcomes the further changes made in 2015 removing the requirement’. I did mention in my earlier intervention that there was this requirement about disability from birth but that there was a residual discretion in the Director of Social Security, and therefore what the motion should say is ‘welcomes the further changes made in 2015 removing the general requirement that only persons’. That shows it is a general requirement that was not exclusive because there was a residual discretion left to the Director of Social Security.

With that, Mr Speaker, I can only say that the hon. Member should not have been so sad and depressed when he started the afternoon on this, should not have been so defeatist and should not have been so pessimistic, because essentially everything he wanted from the motion – and in fact more, as the amended motion shows – he has got. *(Banging on desks)*

Mr Speaker: I now put the question in the terms of the amendment proposed by the Hon. Gilbert Licudi. Those in favour? **(Members: Aye.)** Those against? Carried.

What is now before the House is the amended motion. Does any hon. Member wish to speak on the amended motion? The Hon. Daniel Feetham.

Hon. D A Feetham: Mr Speaker, I will be very brief.

The reason why the motion has prospered is because on this side of the House we really have just simply said have your gold stars, have your paragraphs on your achievements, because ultimately what we really want to do is to attempt to make some progress. The reality is that my motion has been deleted in its entirety and replaced by a new motion. It is not true to say that all that we sought in our motion has been included in the new motion, because we genuinely wanted to work with the Government in relation to this issue and we called for the establishment of a working group chaired by the Minister. That is not in there, and I note from the contribution made by the Hon. Minister that he has not taken me up on the invitation, perhaps because it has slipped his mind, of perhaps having a meeting where we can further discuss this, so that we can – Yes, of course.

Hon. G Licudi: Mr Speaker, the hon. Member gives way on that. I did not specifically address that, but naturally I will be happy to have a meeting with the hon. Member, and although this is not part of a formal consultation process I will be happy to receive any recommendations or suggestions that the hon. Member would like to make to us or would like us to take into account as part of the review that is ongoing. I am always amenable to have a meeting and hearing the suggestions of the hon. Member.

Hon. D A Feetham: Yes, and indeed it applies equally to the hon. Lady. I do not speak for her, but she does not have a right of reply.

Mr Speaker, very briefly – I do not want this to be over-controversial and I do not want to take advantage of my right of reply as I have on other occasions, and indeed as on that side of the House they do very often, but the hon. Gentleman during the course of his intervention has provided some clarity in his last intervention. Prior to 2011 it is not that anybody who was not born disabled did not get the benefit under the GSD Government or indeed any Government that came before the GSD Government. I hope I am not misleading the House, and indeed I will give way if the Father of the House's recollection is different. I think that the exceptions to the rule that only those who were born disabled obtained the benefit through this additional discretion the hon. Gentleman explains ... that discretion was exercised for the first time post-2000 in actual fact. I will sit down if anybody wants to correct me but I think that is the position, and in fact by 2015 the so-called general rule – it is called a general rule in the amended motion – that those who were born disabled got it, whereas there was a residual discretion, was no longer the general rule in practice because there were more people actually getting it who were not born disabled than the other way round. In actual fact, one of the examples that I cited during the course of my intervention, Danny, was in receipt of disability benefit in 2011 prior to a change of government. So, really the position was not in absolute terms, which I thought was the impression the hon. Gentleman gave during his first intervention, which he has corrected.

Coming to the contribution of the Hon. the Father of the House, I echo the words of the Leader of the Opposition that it does not matter what happened before. We are all here to attempt to improve the lives of Gibraltarians and the lives of vulnerable people in particular. That is what we are here for. It is not surprising that situations like this are an evolving situation. When they got into Government in 2011 they continued with the situation where those who were in employment did not get the benefit, except for the ... It was graduated – 25%, 50%, 75% – with the position now being that for those who are in employment for more than 20 hours a week it is 25%, for those who are in employment for less than 20 hours a week I think it works out at 62-point-something per cent of what they would get. When we were in government, trainees, for example, used to get their training allowance. It was less than when they got in because they increased it to the Minimum Wage. At the time, for cadets it was £450 but on top of that they got their disability benefit. They took the decision and said, 'We are classing everybody, even trainees, as employed, and hence, because they are all employed, we are going to treat everybody equally and we are going to essentially reduce their disability benefit.' But simply because that was a decision that was taken in 2011 it is not a decision that has to withstand the test of time and has to be in perpetuity the position.

In the United Kingdom disability benefit is paid irrespective of income and it can be paid to a stockbroker who is earning millions in employment because the decision... and indeed here it is also not means tested, as the hon. Gentleman said quite rightly, but the reason for that is because it is a benefit to help people live independently over and above what you earn in your employment. I have given the example of the way that it works detrimentally to somebody like Danny, who has to buy all that equipment and has that additional expenditure. Of course we cannot lose sight of the fact that for all the good intentions in the words of the Father of the House that yes, we ought to be moving towards a system where we integrate as much as possible the disabled into the mainstream, disabled people, particularly those like Danny with profound disabilities, who are paraplegics in wheelchairs, face a huge disadvantage in the labour

2065 market. And to then, on top of that, reduce their disability benefit, in my respectful view and the
view of everybody on this side – and I hope that I speak for the hon. Lady as well – is not right
and is something that ought to be considered in that review so that at least it is not a zero sum
game and at least we are looking at some disabled people. In other words, you look at the type
2070 of disability and you say – it an extreme example – for somebody who is a paraplegic, who is in a
wheelchair, who has these handicaps in the labour market and has these expenses with the
wheelchairs etc., we are not going to reduce it and we are going to give them the full disability
benefit. I hope that is something that the hon. Gentleman opposite, the Hon. Minister, takes on
board and it forms part of the review.

The hon. Gentleman also said, in relation to the test, that the test is applied correctly. He said
2075 the test, as in some of the correspondence that I read out during the course of my intervention,
is the test. It cannot possibly be so, taking into account what the hon. Gentleman has said to the
House today. It cannot be the test, in relation to children, that a child is only entitled to disability
benefit if they require round-the-clock medical support and care or depend on others for all
aspects of day-to-day life, or have extremely limited communication, mobility and independence
2080 skills. That letter, which in the same form has been sent to two constituents – and in fact has
been sent to more because I have got other examples, but to two that I have read in this in this
House – is not reflective of the test that the hon. Gentleman has outlined to this House in
relation to children, it is more stringent, and there is therefore a fundamental disconnect
between the test that the hon. Gentleman sets out before this House and what is being applied
2085 on the ground, and that again ought to form part of the review.

I am grateful to the hon. Gentleman for ... I am happy that he has said that he has accepted
that there needs to be more clarity and that at the very least there need to be guidelines so that
everybody knows where they stand – the disabled people, panels and everybody else – but I do
think ... and we still do stand upon the fact that it would be very beneficial if there was a
2090 statutory test that could easily be done by way of regulation under the Disability Act, and I will
explain some of these ideas when I meet up with the Hon. Minister.

Finally, with respect to the hon. Lady, I think the hon. Lady has been the one contributor who
has struck the wrong tone, completely out of sync with the contributions of everybody else, but I
am in this instance going to follow the advice of my mum. She is a great fan of the hon. Lady and
2095 she says to me, 'Please don't criticise Samantha,' so I am going to be restrained and I am not
going to do so on this occasion. *(Interjection by Hon. Miss S M Sacramento)*

Mr Speaker, those are my submissions. *(Banging on desks)*

A Member: Hear, hear.

2100

Mr Speaker: I now put the question in the terms of the motion proposed by the Hon. Daniel
Feetham, as amended by the Hon. Gilbert Licudi. Those in favour? **(Members: Aye.)** Those
against? Carried.

Tribute to Monsignor Coronato Grima

Chief Minister (Hon. F R Picardo): Mr Speaker, it is always a pleasure as we come towards
2105 the end of a period before a long vacation that the House is able to end on a concordant note
rather than a discordant note.

Before I move the adjournment, however, I would ask if the House would join me in
remembering Father Coronato Grima, who passed away last week in his beloved Gozo, in Malta.

He was much loved in Gibraltar. When he passed away, Father Grima was 70. I thought that
2110 Bishop Carmel Zammit very eloquently reminded us of him in his comments reported in the local
media upon Father Grima's passing, when he described Father Grima as a man who knew how

to look after his flock. He was certainly someone whose death will be greatly felt here. He arrived here in 1975 and by 1982 he was made parish priest at St Joseph's Church, where he remained for the time that he was in Gibraltar before returning to his beloved Malta.

2115 Many of us will have fond memories of Father – or as he used to say 'Fadder' – Grima. My own experience of him, as an ex-altar server with him, was always of a very generous and kind man. Later he would come home to give communion to my grandmother, my uncle and my mother, and I am sure that that is the sort of memory that so many people in Gibraltar have.

2120 I know that Coronato Grima was somebody who reached out across the cultural communities in Gibraltar, so he will not just be missed and loved by members of the Catholic community in Gibraltar; he was well known and much loved across the cultural communities in Gibraltar.

I would invite the House, perhaps after others have said a few words, to take a minute to just reflect and keep a moment's silence for Father Grima.

2125 **Hon. K Azopardi:** Mr Speaker, yes ... I did not know the hon. Member had been an altar boy, by the way. I will have that image stuck in my mind now for a while.

Hon. Chief Minister: I was the best.

2130 **Hon. K Azopardi:** I am sure.

Certainly for the Members I speak for on this side of the House I join the hon. Member in expressing our regrets on the passing of Father Coronato Grima. He was indeed quite a fixture of our community.

2135 As a proud Gozitan – someone from the island of Gozo, which has a population not dissimilar to Gibraltar – he understood the people of Gibraltar and its size and indeed its aspirations, and he made our home his home. He was here, as the Chief Minister says, since 1975 and was well loved not just by the Catholic community but known and loved by the entire people of Gibraltar. It was fitting that he was the parish priest for many years of the Church of St Joseph's, which had been built by Maltese immigrants originally, and was indeed acknowledged ... I do
2140 remember some years ago when we had a Malta-Gibraltar heritage conference and there was a plaque that was placed there, at St Joseph's, and he was very happy that that association with Malta and Gibraltar and St Joseph's had been acknowledged.

2145 He was someone who reached the hearts of many members of this community and I certainly join the Chief Minister in everything that he has said about the loss that many people in Gibraltar will feel on the passing of Father Grima. (*Banging on desks*)

Mr Speaker: The Hon. Damian Bossino.

2150 **Hon. D J Bossino:** Mr Speaker, as a parishioner of St Joseph's for pretty much all my life I feel dutybound to say a few words after the passing of Monsignor Grima. I am grateful to the Hon. the Chief Minister for making the *en passant* comment that he would be saying some words. It has given me some time to gather my thoughts as to what I want to say about him.

2155 He was a quintessential parish priest. He was a very kind, honest and loving individual. But perhaps, I think, one of the most important features of Monsignor Grima is how he was totally committed to his ministry as a Roman Catholic priest. He assiduously attended to the spiritual needs not just of his parishioners at St Joseph's but beyond by way of administration of the sacraments.

2160 Mr Speaker, I think at this moment I would like to read an excerpt of Mr Tony Lombard's obituary of Monsignor Grima in Monday's *Chronicle*, where he states as follows – it is under the subheading 'Wider Ministrations':

Throughout the years, Monsignor Grima's priestly ministrations extended throughout the diocese as a whole and were not solely limited to St Joseph's parish. For example, he was a constant and weekly visitor to the hospitals and the prison and would similarly and constantly come into town to visit numerous housebound individuals and administer the sacraments to all those requiring the same.

That was, I think, Monsignor Grima to a tee.

2165 Mr Speaker, one of the enduring memories that I have of him is how with so much respect and reverence he treated the Eucharist, which we Roman Catholics consider and believe is the body of Jesus Christ himself. I think it is absolutely crucial and important that in the way that a priest treats this is reflected in how he administers it and how he respects it, especially for those of us who consume it at least once a week – as I know the Speaker does, as a fellow parishioner of St Joseph's himself.

2170 I think it has been alluded to by my learned friend the Leader of the Opposition, and also by the Chief Minister and Leader of the House, that Monsignor Coronato Grima, although a Gozitan, became very much one of us and became very much a believer in Gibraltar and a Gibraltarian. As a result, and for all of these reasons, I join both gentlemen in giving my condolences to those members of his family who remain, and I know that he will be sorely and sadly missed by all of us here. *(Banging on desks)*

2175

Mr Speaker: As a lay reader at St Joseph's Church and a good friend of Coronato Grima, I should also like to associate myself with the sentiments expressed by Members of the House. *(Banging on desks)*

2180

Hon. Ms M D Hassan Nahon: Mr Speaker, unfortunately I never met the late Father Grima. Obviously, as people will know and expect, I have never been near any church altar or been an altar girl, whatever that entails, but I have always heard Monsignor Grima's name mentioned in the fondest and most respectful manner.

2185 I always think that spiritual leaders who work to mentor and inspire their community and their congregants spiritually, spreading values of love and tolerance, deserve the utmost respect, and I believe this man was all of those great things that we hope for from our spiritual leaders. I therefore take this opportunity to thank him for all his good work, albeit posthumously, here in Gibraltar, and I extend my condolences to his friends and family.

2190 Thank you. *(Banging on desks)*

Hon. Chief Minister: I now ask all hon. Members to take a minute's silence.

Members observed a minute's silence.

Adjournment

Chief Minister (Hon. F R Picardo): Thank you, Mr Speaker.

2195 I am sure that Father Grima would find it amusing to see this rabble silent in his memory. It is not lost on me, as I stand to move the adjournment, that the GSLP that I lead today has had two leaders of Genoese extraction and the GSD is on its second leader of Maltese extraction, so we should not be surprised that they know the terminology for people of Gozo and their population etc.

2200

Hon. D A Feetham: Mr Speaker, my Ancestry DNA test came back with 31% DNA for Malta, *(Interjections and laughter)* so I feel extremely offended that the hon. Gentleman has left me out.

Hon. Chief Minister: Mr Speaker, I, for once, will genuinely apologise to the hon. Gentleman. I had not realised to what extent his comeback campaign had gone ... that he had given blood to have his DNA tested in order to ensure that he could pave his way back. There you go: the lengths to which people will go!

Mr Speaker the first half of this year has been dreadful. It has been dreadful for the whole world and it has been dreadful for Gibraltar too. I think none of us could have imagined what 2020 was going to be like. I want to thank hon. Members on all sides of the House for the work that we have all done together. The hon. Lady in particular, as Minister for Civil Contingencies, has been working every hour that God sends on legislation and has been in the forefront of the major incident in this first half of the year. We, I think, have worked together. We have worked to keep each other in check, which is what people require us to do, and I think we have shown in that context, with our arguments and our ups and downs, the best of what a parliament should represent for its people. So I thank all hon. Members for their respective contributions during the course of the first half of this year.

Hon. Members will have heard me say today that we were not able to move to Unlock the Rock, we are staying in phase 6, and I explained why that was going to be the case, but I do hope that with caution and with hard work we will be able to return to a slightly easier autumn and an early winter towards the end of this year.

Perhaps we are hoping against hope. COVID is still there, Brexit is still there, the possibility of a hard Brexit is still there. All of these things will be conspiring against us as from today as we start our journey towards the end of the year, but I do hope that at least in the long vacation hon. Members will be able to get some time to relax with their families and will come back for all of us to contribute as we have in the early part of this year with our respective responsibilities and obligations in this House .

And so, Mr Speaker, without more I move that the House should now adjourn *sine die*.

Mr Speaker: I now propose the question, which is that this House do now adjourn *sine die*. I now put the question, which is that this House do now adjourn *sine die*. Those in favour? **(Members: Aye.)** Those against? Passed. The House will now adjourn *sine die*.

The House adjourned at 7.53 p.m.