P R O C E E D I N G S O F T H E

G I B R A L T A R P A R L I A M E N T

AFTERNOON SESSION: 3.08 p.m. – 6.43 p.m.

Gibraltar, Monday, 20th January 2020

Contents

The Gibraltar Parliament

The Parliament met at 3.08 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*]

PRAYER
Mr Speaker

CONFIRMATION OF MINUTES

Clerk: Meeting of Parliament, Monday, 20th January 2020.

Order of Proceedings: (ii) Confirmation of Minutes – the Minutes of the last meeting of Parliament, which was held on 16th, 18th, 19th and 20th December 2019.

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

Mr Speaker signed the Minutes.

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

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

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

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

Order of the Day

BILLS

FIRST AND SECOND READING

European Union (Withdrawal Agreement) Bill 2020 –
First Reading approved

Clerk: A Bill for an Act to implement, and make other provision in connection with, the agreement between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union which sets out the arrangements for Gibraltar's withdrawal from the EU, and for connected purposes.

The Hon. the Deputy Chief Minister.

Mr Speaker: Before the Hon. the Deputy Chief Minister moves the First Reading of the Bill, I wish to confirm that I have received a letter from the Hon. the Chief Minister certifying the urgency of the Bill.

Deputy Chief Minister (Hon. Dr J J Garcia): I have the honour to move that a Bill for an Act to implement, and make other provision in connection with, the agreement between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union which sets out the arrangements for Gibraltar's withdrawal from the EU, and for connected purposes be read a first time.

Mr Speaker: I now put the question, which is that a Bill for an Act to implement, and make other provision in connection with, the agreement between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union which sets out the arrangements for Gibraltar's withdrawal from the EU, and for connected purposes be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The European Union (Withdrawal Agreement) Act 2020.

European Union (Withdrawal Agreement) Bill 2020 –
Second Reading approved

Deputy Chief Minister (Hon. Dr J J Garcia): Mr Speaker, I have the honour to move that the European Union (Withdrawal Agreement) Bill 2020 be read a second time.

The House will know and the Hon. Mr Speaker has just said that this Bill has been certified urgent by the Chief Minister. The reason for that is obvious. At midnight of next week Gibraltar will leave the European Union together with the United Kingdom. The withdrawal agreement, the EEA EFTA separation agreement and the Swiss citizens' rights agreement will be provisionally applied as from that moment.

The United Kingdom needs to ensure that it is compliant with the obligations contained in those agreements at the moment of ratification. Therefore they will only ratify or provisionally apply once they are satisfied that all the implementing legislation has been put in place in the different territories to which the agreements extend. Those territories include Gibraltar.

The Government, through the Attorney General, is expected to provide a formal written assurance to the United Kingdom that this legislation is in place in Gibraltar. The timing of that assurance is the reason why we are taking this Bill today.

In introducing the Bill, I want to formally thank the Attorney General Michael Llamas, Parliamentary Counsel Paul Peralta, and their legal team Nadia Sisarello-Parody and Michelle Garcia.

I know the House will join me also in congratulating the Attorney General for the CMG he received from Her Majesty the Queen in the New Year's Honours List. *(Banging on desks)*

The Government's legal team have excelled in their dedication, their expertise and their skills in putting this legislation together, a task that was often complicated by unrealistic deadlines, an absence of information and a lack of clarity from elsewhere. They have done a magnificent job in a truly professional manner.

Mr Speaker, as I said, at the end of the month the UK and Gibraltar will leave the European Union. We will do so under the terms that were agreed to by former Prime Minister Theresa May in November 2018 as amended by the terms agreed by the current Prime Minister, Boris Johnson, in October 2019. This means that although the Bill was published on 13th January, the text of the withdrawal agreement that it seeks to implement has largely been in the public domain for some 14 months.

It is true that in that period there has been considerable uncertainty in the UK as to the direction that Brexit would take. Members will recall that there were several failed attempts to secure the approval of the Westminster Parliament to the withdrawal agreement. At one point this made the prospect of a no-deal Brexit a realistic outcome. The Government prepared Gibraltar for this eventuality as far as possible and within those areas that are in our control: a Brexit information office opened in Main Street last year; a detailed information booklet, entitled *Preparing for a no-deal Brexit,* was distributed all over Gibraltar; a Brexit command structure has been put in place in the public service. Mr Speaker, that structure will remain in existence. Indeed, the Brexit Strategic Group and the Brexit Executive Group both met on Friday. They are both on notice to continue with no-deal planning. There are a number of outcomes as they move forward and we have to be ready for all of them. We can only continue to prepare, obviously, in the areas that are within our power and within our responsibility.

Mr Speaker, hon. Members will know that Prime Minister Johnson secured a majority of 99 in the House of Commons for his version of the withdrawal agreement. This means we are now set to leave with a deal, and that deal includes Gibraltar. It does so by virtue of Article 3 on the territorial scope of the agreement. Here the term 'United Kingdom' is understood as referring to Gibraltar to the extent that Union law was applicable before the entry into force of the agreement. It does so also through a specific Gibraltar Protocol.

The inclusion of Gibraltar was a considerable achievement. The difficult path towards this outcome and the intensity of the negotiations should not be underestimated. This positive outcome was a product of many months of negotiations, many hundreds of meetings and many thousands of hours of sheer hard work; and it is important to make the point also that the negotiations for Gibraltar were conducted by Gibraltar. The signature of the United Kingdom represents its position as a member state departing the European Union and as a state responsible for our international relations. This was made clear at the time and spelt out in the concordat between the two governments.

Mr Speaker, those Members of the House who served on the Brexit Select Committee during the last Parliament were made aware of the ups and downs of those negotiations. In over 20 briefings the Opposition were given the detail of the wider UK-EU negotiating picture. The Opposition were informed of the state of play of the negotiations as they referred specifically to Gibraltar. They were told about the strategy of the Government in relation to unfolding events and also in relation to the longer term. They were given both a flavour of the personalities involved and a chronological rundown of our meetings with the UK, with the EU, and importantly also of our contact with Spain. Indeed, the Opposition were sometimes briefed

before the Cabinet itself. They were shown confidential plans and designs of the Airport area in relation to Cordoba and an enhanced Cordoba proposal at the time that this was on the agenda. They were shown the confidential text of the agreements and the MoUs as soon as it became possible to do so. In relation to no-deal planning alone, Opposition Members were given a briefing, which lasted for nearly two hours, in great detail. An additional lengthy and detailed briefing was also given to the then Leader of the Opposition; and the then leader of the GSD, now the Leader of the Opposition, was also himself briefed at least two times. And above all, the Opposition MPs on the Committee were always, in every meeting, asked to provide their own views and to provide any input or suggestions as the negotiations progressed, and indeed sometimes they did so.

It is important to bear in mind that some of the information imparted to them by the Government during this process was confidential or even secret at the time, and I am pleased to say that this confidentiality was fully respected by all concerned. I therefore want to thank both the Hon. Daniel Feetham and the Hon. Marlene Hassan Nahon, who are the only two Members here present who actually attended those meetings, for their constructive and positive approach.

Our policy, Mr Speaker, is that these intergovernmental negotiations are conducted by the Government. This is what happens all over Europe. The Opposition may have a different view – they are entitled to it; however, to belittle the volume and quality of information that has been shared with the Opposition Members on the Committee is ungenerous to say the least.

I do not need to remind anyone here that there were those who wanted to exclude Gibraltar from the withdrawal agreement and whose mission in life it became to ensure that its transitional provisions did not apply to us. There were those who made shared sovereignty the price for a deal, those who threatened with closing the border the very moment of our EU exit, and those who made the presence of civil guards in our Airport a precondition for progress. It is easy to forget that the exit process started when Mr Margallo was still the Foreign Minister of Spain and it continued with the Partido Popular in office. That was the degree of the challenge that we faced.

It would have been very dangerous for Gibraltar to have crashed out of the European Union alone on 31st March 2019 before the United Kingdom itself. That was a real danger that we successfully averted, and we did so thanks to the strong working relationship between the UK and Gibraltar governments, in particular the relationship with our core Brexit team, a team ably led from the front by my hon. Friend the Chief Minister and a team which included, and indeed still includes, the Attorney General, the Financial Secretary and myself. The Government is grateful also to the dedicated officials here in Gibraltar led by the Chief Secretary and to our colleagues in Gibraltar House in London and in Brussels, who have all been instrumental in their support of the different parts of this process.

Therefore the point, Mr Speaker, is that we joined the European Economic Community together with the United Kingdom on 1st January 1973 and we will leave the European Union together with the United Kingdom on 31st January 2020, and Gibraltar will enjoy an orderly departure. That orderly departure was secured precisely as a result of the Gibraltar Protocol to the Withdrawal agreement and with the framework of the four Memoranda of Understanding which hang from it. The alternative would have been a disorderly, disruptive exit without the benefit of a transitional period. That outcome would not have been in the best interests of Gibraltar.

Mr Speaker, the transition phase is also referred to as the implementation period (IP). It expires on what is described as the IP completion day. As matters stand today, IP completion is 31st December 2020. There is provision for the extension of this period on a single occasion by either one or two years. The Prime Minister has said that he will not seek such an extension. Indeed, the UK government intends to legislate to expressly prohibit their Ministers from agreeing to it. This provision is made in clause 33 of the UK Bill. We have not reproduced that

here, but I have to say that in general terms the Bill before the House follows the pattern of the Bill in the United Kingdom.

There are nonetheless some areas of difference. These can be grouped in the following way: the first is where the subject matter in the UK is not relevant to Gibraltar; the second, where the difference reflects our constitutional position; the third, where we have decided to proceed differently as a matter of policy; the fourth, that we have followed the practice set by our own European Union (Withdrawal) Act; and the fifth, and importantly, where the Government has taken the approach of maximum flexibility in the light of what may come our way coupled with the need to move quickly. In that respect it should be noted that there are some matters that may be superseded by a future relationship and there could be a need to ensure that we provide for these properly within an already tight timetable.

Members will know that the UK and the EU will seek to arrive at agreements that govern the future relationship during the implementation period. I want to make clear that any agreements that are reached during the implementation period are obviously not covered by the scope of this Bill. Indeed, there may well be no agreements. There are those who say that a future relationship cannot be negotiated in 11 months and there are those who say that it can. However, in the event that such agreements are reached, and depending on their content, consideration will be given to what further legislation would be required.

Mr Speaker, as I said, what this Bill does is to give effect in Gibraltar to the withdrawal agreement as concluded between the UK and the European Union on 17th October 2019. It also gives effect to the EEA EFTA separation agreement between the UK and Norway, Iceland and Liechtenstein; and finally, to the Swiss citizens' rights agreement between the UK and Switzerland.

I want to clarify that this Bill does not deal with the International Tax Treaty that was negotiated between Gibraltar and Spain at the same time as our exit package. The plan is for the Tax Treaty to be implemented through a separate piece of legislation that will be brought to this House in due course. It will therefore be the subject of a separate debate.

Mr Speaker, the Bill before the House today is therefore a key piece of legislation in the withdrawal process. It sits alongside a number of other measures that comprise the legislative work undertaken to date for the purposes of Brexit.

The House will recall that the first legislative item arose in the context of European parliamentary elections. We were originally looking at an exit date of 31st March 2019, with elections due in May – after we had left. As it then stood, our enabling legislation required preparatory work and consequently expenditure to be undertaken for elections that were not actually going to take place. Given that situation, in August 2018 this Parliament passed the European Parliamentary Elections (Amendment) Act. Brexit was then delayed and that delay in turn required further legislation. In effect, we had to put back what we had taken away. The European Parliamentary Elections (Amendment) Act 2019 and also the European Parliamentary Elections Act 2004 (Amendment) Regulations 2019 were adopted to deal with that change. This legal framework provided for our subsequent participation in European elections on 23rd May 2019. On that date we chose our MEPs for the last time. However, one lesson learned from all this was the importance of flexibility and speed in the legislative process when it comes to Brexit, because things change very quickly and we need to react to those changes.

Mr Speaker, a year ago this House also considered and passed the European (Withdrawal) Act 2019. This was and remains another piece of key Brexit legislation. It repealed the European Communities Act and created a new body of law known as 'retained EU law'. It has provided the vires for the making of subsidiary legislation to adjust Gibraltar's body of laws to provide for the proper functioning of the statute book after exit. These powers have been exercised already on a number of occasions. This legislation has covered areas such as data protection, transport, intellectual property, broadcasting, social security, aviation, healthcare, waste shipments and merchant shipping to name but a few. Most of that legislation was drafted to meet the

challenges posed by a no-deal Brexit. It will need to be revisited, depending on what any future agreement might bring.

In addition to this, the House has also considered and passed other Brexit-related measures. The Healthcare (International Agreements) and Social Security Co-ordination Act 2019 followed similar legislative procedures in the UK on these matters. Unique to Gibraltar are the European Union Withdrawal (Application of International Agreements) Act 2019 and the European Union Laws (Voluntary Implementation) Act 2019. The former provides for the implementation in Gibraltar of agreements that the EU entered into with third countries and for which the UK has negotiated a post-Brexit rollover. The latter Act provides a mechanism whereby Gibraltar can implement any EU laws that it considers appropriate after exit, even though we would no longer have an obligation to do so.

Mr Speaker, the Government has also worked to provide an alternative legal framework in different areas to replace our existing EU legal framework. A number of pieces of primary and secondary legislation reflect this objective and are now in the statute books. Gibraltar's participation in these international treaties will provide an alternative approach to EU mechanisms and a buffer to the effects of our departure from the European Union. By way of example, the following fall under the stream of Brexit-inspired work: the Extradition Act 2018; the Transfrontier Television (Council of Europe) Act 2019; the Swiss Carriage of Passengers and Goods by Road Act 2019; and the Imports and Exports (Amendment) Bill 2019. We will continue to do everything in our control to mitigate the effects of our departure from the European Union.

Mr Speaker, I will now focus on the actual Bill itself. The Bill follows the approach taken by the UK European Union (Withdrawal Agreement) Bill that was introduced as a new Bill following the results of the General Election which returned Boris Johnson as Prime Minister. As such, the Bill implements the agreements primarily in three ways; first, it provides for the direct application of the agreements in Gibraltar law; second, it amends the European Union (Withdrawal) Act 2019 in order to make it consistent with the various agreements; third, the Bill contains powers to allow more technical aspects of the agreements to be complied with through secondary legislation.

Mr Speaker, I will now move to a clause by clause explanation of the Bill, which I trust hon. Members will find useful. This will help to clarify any points or answer any questions that they may have. I ask the House to bear with me.

Part 1 of the Bill contains three clauses, which are of an introductory nature.

Clause 1 contains the short title.

Clause 2 sets out the provisions of the Bill that will commence on the day of publication. The remaining provisions will come into force on the day or days appointed by the Chief Minister by notice in the Gazette, and different days may be appointed for different purposes and for different provisions.

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

Subclauses (3) and (4) allow the Chief Minister to amend the definition of IP completion day by regulation. This power may be used in accordance with the withdrawal agreement or to take account of any changes to EU summertime arrangements.

Subclause (5) defines EU summertime arrangements.

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

Subclause (7) clarifies that references to articles of the Treaty on European Union also include references to those articles as applied by the Euratom Treaty.

Part 2 comprises clauses 4 to 6 and relates to the implementation period.

Clause 4 inserts a new section 4A into the European Union (Withdrawal) Act 2019. The new section 4A saves and amends the European Communities Act (ECA) and section 23(g) of the

Interpretation and General Clauses Act (IGCA) for the purposes of giving effect to Part 4 of the withdrawal agreement. The newly inserted subsections are as follows.

Subsection (1) makes clear that the provisions in sections (2) to (5) will have effect despite the repeal of the ECA and section 23(g) of the IGCA on exit day.

Subsection (2) provides for section 23(g) of the IGCA to continue to have effect in Gibraltar law to the extent provided in subsections (3) to (6).

Subsection (3) confirms that any reference to the Treaties in section 23(g) of the Implementation and General Clauses Act is to be read as a reference to those Treaties as defined in the ECA as it has effect under the section.

Subsection (4) provides for the ECA to continue to have effect in Gibraltar law subject to the modifications set out in subsection (5).

Subsection (5) modifies the saved ECA to ensure that it gives effect to EU law in Gibraltar for the purposes of the implementation period at Part 4 of the withdrawal agreement. These modifications are as follows.

Paragraph (a) incorporates Part 4 of the withdrawal agreement into the definition of 'the Treaties' and 'the EU Treaties' in section 2 of the ECA. A Minister is given the power to limit this definition, if necessary.

Paragraphs (b), (c) and (e) remove the provisions of the ECA that ensure EU law predating the EEA agreement is read consistently with that agreement. This is because after the repeal of the ECA these interpretive provisions are provided for by the European Union (Withdrawal) Act 2019.

Paragraph (d) amends section 4(1) of the ECA so that references in that section to the objects of the EU are references to those objects so far as they are applicable to and in Gibraltar by virtue of Part 4 of the withdrawal agreement.

Paragraph (f) removes section 5 of the ECA, which concerns the payment of amounts required to meet EU obligations.

Paragraph (g) modifies section 6 of the ECA so that references to the Treaties in those sections will be deemed to include references to the withdrawal agreement.

Paragraphs (h) and (i) modify terms used in the schedules to the ECA so that they may apply during the implementation period.

Subsection (6) will implement subsections (1) to (5) at the end of the implementation period.

Subsection (7) defines various terms used in this section, specifically 'the implementation period', 'IP completion day' and 'withdrawal agreement'.

Subsection (8) clarifies that references to the ECA are to be read as references to the ECA as saved by this section, and references to any part of an agreement that includes references to any other part of that agreement so far as it is relevant to the referred part.

Clause 5 inserts a new section 4B into the European Union (Withdrawal) Act 2019. Section 4B saves existing EU-derived Gibraltar law and ensures that EU-related references continue to operate properly during the implementation period. The newly inserted subsections are as follows.

Subsection (1) makes clear that subsections (2) to (5) have effect despite the repeal of both the ECA and section 23(g) of the IGCA on exit day.

Subsection (2) provides that EU-derived domestic legislation continues to have effect in Gibraltar law on and after exit day as it had effect immediately before exit day.

Subsection (3) sets out glosses – that is non-textual amendments – that are to be applied to EU-derived domestic legislation to ensure the proper meaning and functioning of the statute book after Brexit.

Subsection (4) applies the glosses in subsection (3) to EU-derived domestic legislation that is made or passed on or after exit day and before IP completion day. It further disapplies the glosses when legislation is made during the implementation period but is subject to the contrary intent.

Subsection (5) makes the saving of EU-derived domestic legislation and its modification by the glosses subject to regulations made under this Bill or the proposed section 11A and section 15 of the European Union (Withdrawal) Act 2019.

Subsection (6) repeals subsections (1) to (5) on IP completion day.

Subsection (7) defines 'EU-derived domestic legislation'.

Clause 6 inserts a new section 11A into the European Union (Withdrawal) Act 2019. This new section provides Ministers with a supplementary power in connection with the implementation period.

The new section 11A(1) will allow Ministers to make regulations to add, disapply or modify glosses in EU-derived domestic legislation to ensure the proper functioning of the statute book. This new section also allows different provision to be made in a particular case or descriptions of case and for an enactment to be modified in consequence of the repeals in the new sections 4A and 4B. The Minister may also make such other provision as is considered appropriate in connection with Part 4 of the withdrawal agreement.

The new section 11A(2) provides a power to make regulations under new subsection (1) and includes a power to modify a provision made by or under an enactment.

Part 3 contains two clauses that relate to the general implementation of the withdrawal agreement with the EU and also agreements reached with the EEA EFTA states and Switzerland.

Clause 7 gives effect to Article 4 of the withdrawal agreement by inserting a new section 10A into the European Union (Withdrawal) Act 2019. To give effect to Article 4 the new section makes rights and obligations in the withdrawal agreement available in domestic law.

The new section 10A(1) provides for the rights, powers, liabilities, obligations, restrictions, remedies or procedures that are created or arise under the withdrawal agreement to apply directly in Gibraltar law in accordance with the agreement.

The new section 10A(2) makes clear that the rights and obligations arising from the withdrawal agreement and which apply directly in Gibraltar law by subsection (1) are to be recognised in Gibraltar law and enforced, allowed and followed accordingly.

The new section 10A(3) confirms that all enactments are subject to subsection (2).

The new section 10A(4) makes clear that this section will not apply in relation to Part 4 of the withdrawal agreement so far as section 3(1) of the European Communities Act applies in relation to that Part.

The new section 10A(5) directs the reader to other provisions of the Bill giving effect to the withdrawal agreement.

Clause 8 inserts a new section 10B in the European Union (Withdrawal) Act 2019. The new section concerns a general implementation of the EEA EFTA separation agreement and the Swiss citizens' rights agreement and follows the same approach to implementation as set out in clause 7 to ensure consistency of implementation.

Section 10B(1) provides for the rights, powers, liabilities, obligations, restrictions, remedies or procedures that are created or arise under the EEA EFTA separation agreement or the Swiss citizens' rights agreement to be given legal effect in Gibraltar without the need for further enactment. This will apply to Gibraltar as if Article 4(1) of the withdrawal agreement applied to them and those agreements were part of EU law and the relevant states were member states.

Section 10B(2) makes clear that the rights, powers, liabilities etc. applied by subsection (1) are to be recognised in domestic law and enforced, allowed and followed accordingly.

Section 10B(3) confirms that all enactments except the new section 10A are subject to subsection (2).

Section 10B(4) directs the reader to see specific parts of the Bill that give further legislative effect to other relevant parts of the EEA EFTA separation agreement and the Swiss citizens' rights agreement.

Section 10B(5) defines 'the relevant EEA states' as Norway, Iceland and Liechtenstein.

Section 10B(6) signposts definitions of 'EEA separation agreement' and 'Swiss citizens' rights agreement'.

Part 4 contains clauses 9 to 16 and provides for the recognition and monitoring of the rights that have accrued and will continue to accrue during the implementation period to citizens who are covered by the agreements. This applies to the relevant EU, EEA, EFTA and Swiss nationals in the United Kingdom and in Gibraltar. It is relevant to point out that the exit treaty also protects the United Kingdom, including Gibraltar, citizens in the European Union, EEA EFTA countries and in Switzerland. The recognition of rights is therefore reciprocal.

Clause 9 provides a Minister with a power to make regulations implementing provisions of the agreements conferring residence rights. It also enables regulations to be made that ensure that protected persons continue to enjoy residence rights in Gibraltar pending conferral of the new immigration status.

Subclause (1) allows regulations to be made in order to implement Article 18 of the withdrawal agreement, Article 17 of the EEA EFTA separation agreement and Article 16 of the Swiss citizens' rights agreement.

Subclause (2) enables regulations under subclause (1) to apply both to the persons to whom the agreements apply and to any other person prescribed in the regulations. This will enable provision to be made, for example, to protect the position of citizens who currently derive their residence rights from EU law but who are not covered by the agreements.

Subsection (3) states that regulations made under this power may modify any provision made by or under an enactment.

Clause 10 allows a Minister to make regulations to put in place protections to the rights of EU, EEA, EFTA and Swiss frontier workers in Gibraltar at the end of the implementation period. United Kingdom, including Gibraltarian, frontier workers are similarly protected in a reciprocal manner in Switzerland, the EU, EEA and EFTA countries.

Subclause (1) provides a Minister with a power to make regulations for the purposes of implementing Articles 24(3) and 25(3) of the withdrawal agreement, Articles 23(3) and 24(3) of the EEA EFTA separation agreement and Article 22 of the Swiss citizens' rights agreement.

Subclause (2) allows a Minister to make regulations for the purpose of implementing Article 26 of the withdrawal agreement, Article 25 of the EEA EFTA separation agreement and Articles 21(1)(a) and 21(2) of the Swiss citizens' rights agreement.

Subclause (3) confirms that the power to make regulations in this clause may be exercised by modifying any provision made by or under primary legislation.

Clause 11 allows a Minister to make regulations to implement articles of the agreements that relate to restrictions on rights of entry and residence.

Subclause (1) provides a regulation-making power to implement Articles 21(3) and (4) of the withdrawal agreement and the corresponding Article 19(1), (3) and (4) of the EEA EFTA separation agreement and Article 17(1), (3) and (23) of the Swiss citizens' rights agreement. These Articles provide rules on the restriction to a person to a protected person's entry or residence rights on the grounds of conduct and the power to remove protected persons because of fraud or abuse of rights.

Subclause (2) provides that regulations under subclause (1) can be applied both to persons to whom the agreements apply and persons to whom they do not apply but who are prescribed under the regulations.

Subclause (3) states that the power to make regulations under this clause may be made by modifying any provision made under primary legislation.

Clause 12 provides a Minister with a power to make regulations to implement parts of the agreement as it relates to recognition of professional qualifications. The provisions of the agreement ensure that professional qualifications held by EU citizens and EEA, EFTA or Swiss nationals who are resident or frontier workers in Gibraltar by the end of the implementation period and whose professional qualifications are recognised before the end of the implementation period will continue to be so recognised. The same applies to United Kingdom and Gibraltar nationals in the European Union, in the EEA EFTA area or in Switzerland.

Subclause (1) empowers a Minister to make regulations in order to implement Chapter 3 of Title I of Part 2 of the withdrawal agreement to supplement the effect of section 10A of the European Union (Withdrawal) Act 2019 in relation to that Chapter and deal with matters arising out of or relating to that Chapter.

Subclauses (2) and (3) allow regulations to be made to implement Chapter 3 of Title II of Part 2 of the EEA EFTA separation agreement to implement the professional qualification provisions of the Swiss citizens' rights agreement, to supplement the effect of 10B in relation to the relevant provisions of those agreements and deal with matters arising out of or relating to those provisions.

Subclause (4) outlines that the professional qualification provisions of the Swiss citizens' rights agreements are Part 4 and Article 23(4) so far as it relates to the recognition of professional qualifications.

Subclause (5) confirms that, where the Minister considers appropriate, regulations made under this clause may apply not only to persons within the scope of the withdrawal agreement or EEA EFTA separation agreement, but also to other persons prescribed in the regulations.

Subclause (6) provides that powers in subclauses (1), (2) or (3) may be used to modify any provision made by or under an enactment.

Clause 13 empowers a Minister to make regulations to implement the articles of the agreement that protect the entitlement of EU, EEA, EFTA and Swiss citizens to social security benefits. I should add that United Kingdom and Gibraltar citizens are similarly protected in the EU, EEA EFTA area and in Switzerland. This entitlement is protected under Title III of Part 2 of the withdrawal agreement and the EEA EFTA separation agreement as well as Article 23(4) and Part 3 of the Swiss citizens' rights agreement.

Subclauses (1), (2) and (3) also allow the Minister to make regulations to supplement the effect of sections 10A or 10B of the European Union (Withdrawal) Act 2019 in relation to the relevant Titles or Parts. Regulations under this clause may also deal with matters arising out of those Titles or Parts.

Subclause (4) defines the 'social security coordination provisions' of the Swiss citizens' rights agreement.

Subclause (5) states that the power to make regulations may be used to modify any provision made by or under an enactment.

Clause 14 allows a Minister to make regulations to implement the provisions in the agreements as they relate to the protection of the rights to equal treatment and non-discrimination for EU, EEA, EFTA and Swiss citizens falling within the scope of the agreements.

Subclause (1) empowers a Minister to make regulations to implement Articles 12, 23, 24(1), 25(1), 24(3) and 25(3) of the withdrawal agreement.

Subclause (2) provides that regulations may be made to implement Articles 11, 22, 23(1), 24(1), 23(3) and 24(3) of the EEA EFTA separation agreement.

Subclause (3) provides that regulations may be made to implement Articles 7, 18, 19, 20(1) and 23(1) in the Swiss citizens' rights agreement.

Subclause (4) provides that regulations made under this clause may be made so as to apply both to the persons who are covered by the relevant Articles as well as other persons prescribed by the Minister under regulations.

Subclause (5) states that the power to make regulations may be used to modify any provision made by or under an enactment.

Clause 15 confirms that the Independent Monitoring Authority (IMA) is to be established by the United Kingdom's EU withdrawal agreement legislation.

Subclause (2) allows a Minister to make regulations to prescribe the functions of the IMA in Gibraltar, provide powers incidental to those functions and provide for related matters. The Minister may also make regulations in consequence of regulations made under Schedule 2 to the UK legislation.

Subclause (3) allows a power under subclause (2) to be used in respect of a body to whom the UK Secretary of State has transferred the IMA's functions.

Subclause (4) confirms that the power to make regulations may modify any provision made by or under an enactment.

Clause 16 provides interpretive provisions for Part 3 of the Bill.

Subclause (1) states that a reference to a Chapter, Title, Part or other provision of the withdrawal agreement, of the EEA EFTA separation agreement or the Swiss citizens' rights agreement in Part 3 of the Bill includes a reference to any other provision of those agreements or EU law that is applied by or referred to in that Chapter, Title, Part or other provision.

Subclause (2) provides that in clauses 9, 10, 11 and 14 a power to make provision to implement an Article or Chapter or Part of the withdrawal agreement, the EEA EFTA separation agreement or the Swiss citizens' rights agreement includes a power to make provision to supplement the effects of sections 10A or 10B of the Act in relation to that Article, Chapter or Part.

Part 5 contains clauses 17 to 23 and provides a power in connection with other separation issues and with the Gibraltar Protocol. It also contains clauses on the relationship of the Bill to the European Union (Withdrawal) Act 2019 and on other matters.

Clause 17 inserts a new section 11B into the European Union (Withdrawal) Agreement Act 2019. This new section provides a Minister with a power to implement the separation issues which form Part 3 of the withdrawal agreement and Part 3 of the EEA EFTA separation agreement.

Section 11B(1) allows a Minister to make legislative changes considered appropriate for the purposes of implementing Part 3 of the withdrawal agreement. This includes supplementing the effect of the new section 10A of the Act or dealing with matters arising out of or related to Part 3.

Section 11B(2) gives equivalent powers to make legislative changes in relation to Part 3 of the EEA EFTA separation agreement.

Section 11B(3) provides that secondary legislation made under this power is capable of doing anything an Act of Parliament can do.

Section 11B(4) clarifies that regulations under subsection (1) may be used to restate elements of Part 3 of the withdrawal agreement and the EEA EFTA separation agreement that automatically become Gibraltar law under sections 10A and 10B of the Act.

Section 11B(5) defines references to Part 3 of the withdrawal agreement and of the EEA EFTA separation agreement.

Clause 18 inserts a new section 11C into the European Union (Withdrawal) Act 2019. This new section confers a power on a Minister to make the regulations considered appropriate for the purposes of implementing the Protocol on Gibraltar in the withdrawal agreement. This includes supplementing the effect of the new section 10A of the European Union (Withdrawal) Act 2019 in relation to the Protocol or dealing with matters arising out of or related to the Protocol.

Sections 11C(2) and (3) confirm that regulations made under the section may make any provision that could be made by an Act of Parliament and may restate anything that forms part of domestic law by virtue of the new section 10A and the Protocol.

Section 11C(4) defines 'the Protocol' for the purposes of the section.

Clause 19 amends the European Union (Withdrawal) Act 2019 so that the conversion of EU law into retained EU law and the domestication of CJEU case law does not take place until the end of the implementation period.

Subclause (1) amends section 5 so that the preservation of EU-derived domestic legislation takes effect on IP completion day rather than on exit day. It deletes a definition of 'EU-derived domestic legislation' from section 5(2). It also inserts further words into section 5(3) providing that the preservation of EU-derived legislation is subject to the new section 8A.

Subclause (2) amends section 6 so that the incorporation of direct EU legislation into domestic law takes effect on IP completion day instead of on exit day. It inserts two conditions into the definition of 'direct EU legislation'. The first condition states that to be retained, EU law or relevant parts of the EEA agreement must have been applicable to Gibraltar by virtue of Part 4 of the withdrawal agreement, which relates to the implementation period. The second condition excludes any EU law so far as it has effect or is to have effect by virtue of the new section 10A or 10B. These amendments also make clear that section 5 of the European Union (Withdrawal) Act 2019 is subject to the new section 8A as well as section 8 of the Act.

Subclause (3) amends section 7 of the European Union (Withdrawal) Act 2019 so that remaining EU rights and obligations are preserved as they had effect immediately before IP completion day rather than exit day.

A new paragraph (aa) is inserted in section 7(2) so as to make an exception to the saving of the remaining rights and obligations where they will continue to be recognised and available under sections 10A or 10B of the Act.

Section 7(2)(b) is amended so that remaining EU rights and obligations are not preserved so far as they arise under an EU directive and are not recognised by the CJEU or any court or tribunal in Gibraltar in a case decided before IP completion day. It is further made clear that section 7 is subject to the new section 8A.

Subclause (4) amends section 8 so that the exceptions to savings and incorporation operate on IP completion day rather than on exit day. A new subsection (7) is inserted to ensure that exceptions to the savings and incorporation do not apply in relation to relevant separation agreement law.

Subclause (5) inserts a new section 8A into the European Union (Withdrawal) Act 2019. This new section makes clear that where retained EU law converted on IP completion day is limited by reference to the implementation period it may continue to have effect after IP completion day as domestic law.

Subclause (6) amends Schedule 1 to the European Union (Withdrawal) Act 2019 so that the exceptions to the preservation of retained EU law take effect on IP completion day rather than on exit day. The amendment made by subclause (6)(b) further ensures that references to the principle of the supremacy of EU law, the Charter of Fundamental Rights, any general principle of EU law or the rule in *Francovich* are to be read as references to that principle, charter or rule so far as it forms part of Gibraltar law on or after IP completion day.

Clause 20 defines the term 'relevant separation agreement law' and provides for rules of interpretation to ensure that this body of law is interpreted in accordance with the withdrawal agreement, the EEA EFTA separation agreement and the Swiss citizens' rights agreement.

Subclause (1) amends section 9 of the European Union (Withdrawal) Act 2019. These amendments substitute references to 'exit day' to 'IP completion day', so that rules of interpretation on retained EU law come into force on IP completion day.

A new paragraph (aa) is inserted into section 9(4) confirming that a relevant court or tribunal is only bound by retained EU law to the extent that this is provided for in regulations made under the new subsection (5A).

New subsections (5A) to (5C) are inserted into section 9.

Subsection (5A) gives a Minister the power to make regulations to set out the extent to which a particular court or tribunal is not to be bound by retained EU law, to set out the test that the court or tribunal must apply when deciding to depart from retained EU case law and provide for any considerations which are relevant to the tests applied by the courts under section 9 of the European Union (Withdrawal) Act 2019.

Subsection (5B) provides a non-exhaustive list of what those regulations may include.

Subsection (5C) places an obligation on a Minister, when making regulations, to consult with the Chief Justice and any other such persons as the Minister considers appropriate.

A new subsection (6A) is also inserted into the European Union (Withdrawal) Act 2019. This new subsection provides that the rules on interpretation set out in sections 9(1) to (6) of the European Union (Withdrawal) Act 2019 are subject to relevant separation agreement law.

Subclause (2) inserts a new section 10C into the European Union (Withdrawal) Act 2019.

Section 10C(1) states that any question concerning the validity, meaning or effect of relevant separation agreement law is to be decided in accordance with the withdrawal agreement, the EEA EFTA separation agreement and the Swiss citizens' rights agreement. Regard should be had to the desirability of ensuring that the agreements are interpreted consistently with each other.

Section 10C(2) is a signpost to the relevant provisions of each of the agreements regarding the interpretation of relevant separation agreement law.

Section 10C(3) defines 'relevant separation agreement law'.

Clause 21 amends the power at section 11 of the European Union (Withdrawal) Act 2019 to extend it so it can operate on deficiencies that result from Part 4 of the withdrawal agreement or the end of the implementation period.

Subclause (1) establishes that this clause amends section 11 of the European Union (Withdrawal) Act 2019.

Subclause (2) amends section 11(2) of the European Union (Withdrawal) Act 2019 so that the power is available to correct deficiencies arising from withdrawal and the end of the implementation period. The powers as amended may be used to correct deficiencies that arise from arrangements dependent on Part 4 of the withdrawal agreement that no longer exist at the end of the implementation period, or where retained EU law is no longer clear, or where elements of directives have not been implemented into Gibraltar law but which should nonetheless be retained.

Subclause (3) amends section 11(4) of the European Union (Withdrawal) Act 2019 to substitute the reference 'exit day' to 'IP completion day'.

Subclause (4) provides that the meaning of 'deficiency' can cover a deficiency that arises out of withdrawal taken together with the operation of or interaction between provisions of the European Union (Withdrawal) Act 2019.

Clause 22 inserts a new section 12A into the European Union (Withdrawal) Act 2019. This new section requires that a Minister provide Parliament with a statement where a request has been made under Article 170 of the withdrawal agreement. This Article provides for international arbitration in the event that a dispute between the European Union and the United Kingdom cannot be resolved by consensus in the joint committee. The Minister must also make such a statement if the European Court has given a ruling which relates to Gibraltar. The statement must be made as soon as practicable after the Government has been informed of the request or of the ruling.

Clause 23 provides for the repeal of unnecessary enactments under the European Union (Withdrawal) Act 2019.

Paragraph (a) repeals section 12 of the European Union (Withdrawal) Act 2019, which gives Ministers a power to make secondary legislation to implement the withdrawal agreement. This power is no longer necessary in the light of this Bill. Hon. Members who were here will recall the assurances given by the Government at this time last year that these were only emergency powers. The preference of the Government, the House was told last year, was to introduce a Bill for that purpose, to give effect to the withdrawal agreement. This, Mr Speaker, is what we are doing today.

Paragraph (b) repeals section 16 of the European Union (Withdrawal) Act 2019. This section makes clear that nothing in that Act prevents Gibraltar from replicating EU law made on or after exit day or continuing to participate in or having a formal relationship with the agencies of the European Union. The Government has been advised that this section has no legal effect in practice and is therefore unnecessary.

Part 6 contains two clauses that provide regulation-making powers and for consequential and transitional provision.

Clause 24 gives effect to Schedule 1 on how powers to make regulations in the Bill are exercisable.

Clause 25 Subclause (1) allows a Minister to make regulations that are appropriate as a consequence of the Bill.

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

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

Subclause (4) contains a power to provide for transitional, transitory or saving provisions by regulation.

Subclause (5) gives effect to Part 3 of Schedule 2, which contains transitional, transitory and savings provisions.

Schedule 1 makes general provision in respect of the scope and nature of regulation-making powers in the Bill.

Paragraph 1 clarifies the scope of the powers in the Bill by providing that all the powers in the Bill can be used to make different provisions for different cases or different descriptions of case, in different areas or for different circumstances and include the power to make supplementary provision.

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

Paragraph 3 provides that powers in the Bill regarding the agreement can be exercised before the agreements are ratified so that the regulations can come into force on or after … or the day after the agreement is ratified.

Paragraph 4 clarifies that the power of the Chief Minister to commence certain parts of the Bill as provided for by section 2(2) includes a power to specify the time of day these parts of the Bill come into force.

Schedule 2 makes general and specific consequential and transitional provisions.

Paragraph 1(1) provides a gloss to the commencement dates for subsidiary legislation made before exit day under the European Union (Withdrawal) Act 2019 or any other enactment. That gloss applies to subsidiary legislation that commences by reference to exit day. The subsidiary legislation will instead come into force by reference to IP completion day.

Paragraph 1(2) allows subsidiary legislation to expressly disapply this gloss where required.

Paragraph 1(3) contains a power for a Minister to make exceptions to the mass deferral provided in subparagraph (1). These regulations may disapply or make different provision from the mass deferral in particular cases.

Paragraph 2(1) clarifies that the consequential power in section 15(1) of the European Union (Withdrawal) Act 2019 is capable of making consequential provision on the Act as amended by or under the Bill.

Subparagraph (2) clarifies that subparagraph (1) does not limit the scope of the consequential power in clause 25(1) of this Bill.

Subparagraph (3) makes clear that this paragraph applies to amendments to the European Union (Withdrawal) Act 2019 that further amend other legislation.

Subparagraphs (3) to (7) make specific amendments to the Interpretation and General Clauses Act.

Paragraph 3 confirms that the amendments are made to the Interpretation and General Clauses Act.

Paragraph 4 amends the definition of ‘subsidiary legislation’ and ‘rules’. The European Union (Withdrawal) Act 2019 amended this definition to include instruments made under retained direct EU legislation after exit day. Given that direct EU legislation will be retained on IP completion day, the reference to ‘exit day’ in this definition has been changed to ‘IP completion day’.

Paragraph 5 inserts definitions for 'the EU withdrawal agreement' and 'IP completion day' into section 2. It further amends the definitions for 'EU exit day', 'retained EU law', 'retained direct minor EU legislation', 'retained direct principal EU legislation', 'retained direct EU legislation' and 'retained EU obligation'. It also amends the definition of 'EU Treaties' or of 'the EU Treaties' so that it refers to the Treaties which apply under the saved ECA immediately before IP completion day.

Paragraph 6 amends section 17(2), which will be inserted by the European Union (Withdrawal) Act 2019 (Consequential Modifications) (EU Exit) Regulations 2020. This action will also make interpretive provision for reference to EU instruments 'on or after exit day'. The amendment changes this to references 'on or after IP completion day'.

Paragraph 7 makes consequential amendments to section 23(h) and (i) in light of the saving of the European Communities Act.

Paragraphs 8 to 17 make specific amendments to the European Union (Withdrawal) Act 2019.

Paragraph 8 confirms that the amendments are made to the European Union (Withdrawal) Act 2019.

Paragraph 9(1) introduces the amendments to section 3.

Paragraph 9(2) amends definitions in section 3 to account for the application of EU law until IP completion day. This paragraph also deletes the definition of 'withdrawal agreement'.

Paragraph 9(3) inserts a new subsection (6)(a) into section 3. This new subsection makes clear that any references to anything that continues to be law by virtue of section 4B(2) includes modifications to that legislation, including where the saved legislation may survive the repeal of the European Communities Act in any event. This subsection also provides that references in the Bill to things that continue to be domestic law include things that continue to exist regardless of the saving in new section 4B(2). This makes clear that it is not necessary to consider whether an enactment might have been subject to implied repeal or revocation on exit day.

Paragraph 9(4) amends section 3(7) so as to amend the reference to 'exit day' to read 'IP completion day'. This confirms that it is not necessary to consider whether an enactment might be subject to implied repeal on IP completion day when bringing it within the ambit of the defined term 'retained EU law'.

Paragraph 9(5) amends the index of defined terms in section 3(11) to update and incorporate pointers to various definitions used throughout the European Union (Withdrawal) Act 2019.

Paragraph 10 amends the heading above section 5 of the European Union (Withdrawal) Act 2019 from existing EU law to saved EU law at the end of the implementation period.

Paragraph 11 amends section 10 of that Act with the amendments being introduced by subparagraph (1).

Subparagraph (2) amends section 10(1)(b) of the Act so that it refers to the savings made on exit day by sections 4A(2) or 4B(2) of the amended Act.

Section 7(1) thereby clarifies that the ECA- and EU-derived domestic legislation continues as legislation of the same type as they were before exit day.

Subparagraph (3) inserts a new section 10A(1), which clarifies that EU-derived domestic legislation that is saved by section 5 of the Act will continue as legislation of the same type as it was before IP completion day.

Subparagraph (4) amends section 10(5) to reflect other amendments to the Act. This subsection signposts provisions about the status of retained EU law.

Subparagraph (5) amends references to 'exit day' to 'IP completion day' to reflect the direct retained EU legislation will be retained on IP completion day instead of on exit day.

Paragraph 12 amends section 15(4) so that the transitional, transitory and saving power can make provision in connection with the coming into force of any provision of the Act, including its operation in connection with IP completion day.

Paragraph 13 amends Schedule 2 as introduced by paragraph 13(1).

Paragraph 13(2) amends paragraph 1 of Schedule 2 so that judges may determine the meaning or effect of EU law in legal proceedings as questions of law rather than as questions of fact, and so the definition of 'interpreting retained EU law' is deleted.

Paragraph 13(3) amends paragraph 2 of Schedule 2 so that regulations providing for evidential rules may modify legislation which is passed or made before IP completion day. The amendments under paragraph 13(3) also ensure that the agreements and anything in regulations relating to the agreements are included in the definition of 'relevant matter'.

Paragraph 14 amends Schedule 3 as introduced by paragraph 14(1).

Paragraph 14(2) amends paragraph 1 so that powers to make regulations under the European Union (Withdrawal) Act 2019 can be used to modify or restate anything which continues to be domestic law by virtue of the saving of EU-derived domestic legislation under section 4B(2).

Paragraph 14(3) amends paragraph 3 to clarify how the consequential, transitional and transitory and saving powers in the European Union (Withdrawal) Act 2019 may be used in light of the amendments made in this Bill and in particular the savings in the new sections 4A and 4B.

Paragraph 14(4) inserts a new paragraph 3A into Schedule 3. This new paragraph allows for the anticipatory use of delegated powers in the Act in relation to anything which continues to be domestic law by virtue of the saving of EU-derived domestic legislation for the implementation period.

Paragraph 14(5) amends references to 'exit day' in paragraph 4 to 'IP completion day'. This means that the power to make regulations may be exercised before IP completion day to modify retained EU law.

Paragraph 14(6) inserts a new paragraph 4A into Schedule 3. This new paragraph allows for the anticipatory use of regulation-making powers in relation to the withdrawal agreement.

Paragraph 15 amends Part 1 of Schedule 4 as introduced in paragraph 15(1).

Paragraphs 15(2) and (3) substitute references to 'exit day' in paragraphs 1 and 2 of Schedule 4 to the European Union (Withdrawal) Act 2019. This ensures that existing ambulatory references continue to update until IP completion day. This will not apply to references to relevant separation agreement law.

Paragraph 15(4) replaces paragraph 5 of Schedule 4. The new paragraph 5 lifts any implied restriction to act compatibly with EU law on exit day and IP completion day so far as that restriction does not continue to apply under the withdrawal agreement. Any implied EU law restriction that continues by virtue of Part 4 of the withdrawal agreement will not be lifted until IP completion day. Any restriction that arises by virtue of parts of the withdrawal agreement will remain after IP completion day.

Paragraph 15(5) amends paragraph 6 to allow powers in Acts before the end of the implementation period to be used to modify retained EU law before IP completion day if they come into force after IP completion day.

Paragraph 15(6) amends paragraph 7 so that persons will not be required to have regard to former EU obligations implemented outside Gibraltar when reviewing subsidiary legislation after IP completion day.

Paragraph 15(7) amends paragraph 10(3) to allow anticipatory use of future powers so that they may be exercised before IP completion day to amend retained EU law if they come into force on or after IP completion day.

Paragraph 16 amends Part 3 of Schedule 4 as introduced by paragraph 16(1).

Paragraph 16(2) inserts a new paragraph 11A into Schedule 4. This new paragraph preserves anything done, in the process of being done, or in force before exit day which relates to the saving of the European Communities Act or EU-derived domestic legislation. This provision is subject to the withdrawal of Gibraltar from the EU and any savings under section 4A and 4B and any implementing or consequential regulations.

Paragraph 16(3) amends paragraph 12 so that it provides for the continuation of existing Acts in relation to retained EU law on IP completion day and incorporates other related amendments to the European Union (Withdrawal) Act 2019.

Paragraph 17 amends Part 4 of Schedule 4 as introduced by paragraph 17(1).

Paragraph 17(2) substitutes a new paragraph 12A and 13 for the existing paragraph 13 of schedule 4.

The new paragraph 12A makes clear that the automatic repeal in sections 4A and 4B on IP completion day will not prevent the glosses applied by section 4B from applying to the legislation as saved by section 5.

Subparagraph 13 as substituted confirms that rights which arise under EU directives are recognised by courts or tribunals in Gibraltar in cases begun before IP completion day but decided on after IP completion day are preserved by section 7 of the European Union (Withdrawal) Act 2019.

Paragraph 17(3) amends references to 'exit day' to 'IP completion day' in paragraph 14. Further amendments are made to confirm that transitional and savings provisions for exceptions to the preservation of EU law take effect from IP completion day.

Paragraph 17(4) deletes a reference to section 11 in paragraph 15.

Paragraphs 17(5), (6) and (7) amend paragraphs 16, 17 and 18 of the European Union (Withdrawal) Act 2019. These amendments ensure that domestic law in force prior to the entry into force of the EEA agreement in 1993 continues to be read consistently with the provisions of that agreement and in light of the implementation period.

Paragraph 18(1) provides that powers inserted into the European Union (Withdrawal) Act 2019 by this Bill do not affect the scope and powers in the other Acts.

Paragraph 18(2) makes clear that modifications made by the Bill to regulation-making powers under the European Union (Withdrawal) Act 2019 do not affect the validity of regulations made under those powers before the coming into force of those modifications.

Paragraph 18(3) makes clear that this is subject to transitional, transitory or savings provisions made under clause 25 of this Act or section 15 of the European Union (Withdrawal) Act 2019.

Paragraph 19(1) provides the power to make transitional, transitory or saving provision under section 15(4) of the European Union (Withdrawal) Act 2019 includes the power to make provision as a Minister considers appropriate in connection with the coming into force of any provision of that Act as modified by this Bill. This includes modifications to provisions of the Act which make amendments to other legislation.

Paragraph 19(2) clarifies that subparagraph (1) does not limit the power to make transitional, transitory or savings provisions under clause 25 of this Bill and that the power of the Chief Minister under section 2(2) of the European Union (Withdrawal) Act 2019 does not apply to modifications made to that Act by this Bill.

Mr Speaker, this Bill gives effect to the withdrawal agreement in Gibraltar law. It provides for our orderly, safe and secure departure from the European Union and Gibraltar will benefit from the transition until the implementation period comes to an end.

The lowering of the EU flag on 31st January will be an emotional moment for many of us, a painful moment too, and that moment draws closer now. This time it is all happening for real, the end of an era.

But we must draw a line under the past and look forward to the future. As we leave the European Union we must look to those new doors that will open, to new possibilities and new opportunities, to the wider world beyond. We must look also to our continued partnership with the United Kingdom, to developing closer links with different parts of the Commonwealth family, to trading relationships in new markets and with new countries, including our neighbour to the south. The Government will encourage and support this work.

On 1st February, formal negotiations will open to carve out the future relationship between the United Kingdom and the European Union. The United Kingdom has made it clear that it will

negotiate for the entire British family of nations, including Gibraltar. This was the position also for withdrawal. But we know that there are several possible outcomes. The Chief Minister has made it clear that no deal would be better than a bad deal; that we must be prepared to walk away from those negotiations if we have to. But we will face those decisions with Gibraltar safely a part of the withdrawal agreement and safely with the benefit of the period of transition.

Therefore, Mr Speaker, the Bill before the House today provides the architecture to give effect to our orderly departure from the European Union. I commend the Bill to the House. *(Banging on desks)*

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

Hon. K Azopardi: Mr Speaker, first of all, I am grateful for the hon. Member's long explanation on the detail of the clauses. When he asked the House to bear with him he was not joking, it was long; but we understand that in respect of this Bill there is an element of detail that needs to be gone into – technical detail in many respects – so we certainly are appreciative of his long explanation in respect of that.

When I come to the tail end of what I intend to say, there are certain issues which he did not really answer, which are at the heart of some of our concerns and perhaps he could consider the points that I am about to make when it comes to making his reply – and some of the points might be also relevant in terms of the Committee Stage itself. I am not sure when the hon. Member or the Government intend to take the Committee Stage. I imagine they want to do so soon – if not today, very quickly. We are happy for that to be the case, but perhaps he can take on board some of the points that I make when he hears them.

I say at the outset, of course, before I dive into all of this, that the Opposition – certainly the Members on this side that I speak for – join him in congratulating the Attorney General on his well-deserved CMG in the New Year's Honours list. *(Banging on desks)*

We understand on this side of the House why this Bill needs to be taken in the way that it does, with the speed that it must be taken. It is a complex piece of legislation. Just picking it up, it is hardly a page turner when it comes to trying to digest its contents because of the sheer number of cross references it makes to Article numbers of the withdrawal agreement, or indeed to the Withdrawal Act or indeed to the EFTA provisions or the Swiss provisions and so on and so forth, so it is not an easy Bill to read.

I just make these procedural observations which struck me when I first read this – first of all, and he should understand that when I make these observations I do so in the context of hoping that this Parliament of ours can work better in the future; and they are not intended to be criticisms of the way this is taken today but to be taken on board by the drafts people, because at the end of the day the hon. Member made the point that, in his view, there has been a magnificent effort conducted by those drafting it. I am sure that they have worked under difficult constraints, and we understand that, but I would say that when you put our Bill side by side with the English legislation, the one thing that strikes me when you go through it is that when there are cross references in the English legislation to different Articles, actually in brackets the English legislation tells you what those Articles say in paraphrase, and I think that makes it easier for the reader. At the end of the day, this is not a symposium for lawyers. This law has to be digested by the wider public and it would make it easier for the wider public to understand broadly speaking, without getting into the technicalities, if future legislation, when it comes to something similar to this, were to take on board the fact that they are dealing with a difficult subject matter.

Secondly, we understand the timing and of course the certification of urgency of the Chief Minister, which I was informed about on Friday. We have no issues with that, but in the context of the timing issues and the need of this House to act quickly, and that very long explanation that the hon. Member has given of a very technical nature, perhaps it could have been that

some of that could have found its way to the explanatory memorandum, which was relatively brief in the context of things.

I do not know whether that was because there was a rush to legislate; this Bill was published last Monday. The English Bill, I believe, was published on 19th December. I understand that there has been an intervening Christmas and New Year period, but to a very large extent a lot of the provisions in our Bill follow the format – although there are differences, as the hon. Member has said in his contribution, which I will address. There are differences but the general format is similar, so again perhaps things could have been done slightly differently.

I am going to speak to the general principles of this Bill, of course, and in doing so there will be one issue that the hon. Member will see does concern us on this side of the House, which is that under the guise of the category of differences that the hon. Member has pointed to, the effect and consequence of the Act in many respects is to give very huge powers to Ministers to make regulations to bypass the functions of Parliament. The fact that Ministers can make regulations is not uncommon, but what is uncommon is that Ministers may make regulations to amend primary pieces of legislation. We understand that we are in different territory and I will speak to that in a bit more detail, but we are concerned about the way that is being done because it is being done in a way different to that of the English Act. I will explain a bit later why I say that that is and why I would ask the hon. Member to reflect on that when he comes to his reply, and indeed as we go forward, perhaps even at Committee Stage.

I also do say that I share the hon. Member's sentiments towards the end – perhaps not shared by everyone in this House – that it will be a moment at least to reflect on when we leave the EU. For those of us who are political anoraks enough to have read the *Hansard*, not recently but some time ago, of the contributions made by Members of our predecessor Parliament in 1972 when they came to contemplate accession to the EU, certainly the hopes of previous generations were placed in a different direction and it strikes me that it is certainly a moment for reflection, the moment that we leave the EU.

But I do share the hon. Member's statement towards the end and I am sure other Members of the Opposition that I speak for also share it. When he says that the time has come to look forward and that there is a necessity, now that we know that as a result of the UK General Election there has been a return of the Conservatives with a sizable majority, there is a need for this community, for this country of ours, to now grapple with the basic political reality that the UK is going to leave the EU; that there are, to put it in Mr Johnson's words, no ifs or buts; that there is that basic reality to work with; that there is not going to be a second referendum or any type of derailment of the policy of the UK government. In those circumstances it is necessary to look forward and I agree with the hon. Member that in doing so we must look to new markets and to old friendships and to foster those in different ways.

So, certainly from this side of the House we share the understanding of the new reality, the desire that Gibraltar should reposition itself, should do so confidently and should not do so looking back on what might have been but simply accept what is and make the best of our future relationship with the EU and indeed the future development of different markets and old friendships.

Having said all that, Mr Speaker, I will say also that in reflecting on the moment, the moment that we are engaged in, it seems to me … again it takes me back to the understanding that … The hon. Member and I, I think, share the same year of birthday, which is different to that of the Chief Minister, but the hon. Member and I, and the Chief Minister, were all born in two significant years for Gibraltar: 1967, a date when we were given the right to choose – qualified self-determination as it was, but an important year when we were given the right to choose; and 1972, when not the people but certainly this Parliament was given the right to choose whether to accede into the EU or not.

I reflect that yes, we participated in the Brexit referendum, but our country has not really been given the right to choose in terms of there being basic recognition of the desire of our people to remain in the EU, as indeed has been the case with Scotland and other parts of the

wider British family. But that does give rise to the concern that I have voiced before, and it is not a new concern and it is not a concern that I voice on my own but rather a concern that other people in other parts of the British family have voiced, that the voices of those peoples in Scotland or indeed in Gibraltar have not been properly taken into account in terms of the shaping of their own respective futures. But I do understand again the basic political reality of being submerged into a referendum where we could do little to influence the outcome. I regret that the outcome was what it was and that we were unable thereafter to address issues of our unique circumstances in a better way.

Mr Speaker, indeed, I have said before, certainly before re-entering this Parliament, that it was a source of regret, certainly for me and for Members on this side, that our unique arrangements have not been as protected, in our view on this side of the House, as they have been for the people of Northern Ireland. Indeed, the withdrawal agreement that was entered into with the EU contains, of the nearly 600 pages, over 150 pages are all about Northern Ireland, whereas a mere six refer to Gibraltar. I know we have got the MoUs, which I will turn to, but it has been our view that our unique features have not been as protected as they have been in the case of Northern Ireland and indeed that we have not been seen by the wider British people to be as high on the list of things to protect, as has been the issue over Northern Ireland. That is clear for everyone to see, or everyone who sees the British media, when there are constant references to the border between Northern Ireland and Ireland as being the only British border with an EU territory. It seems to us that from time to time we have been forgotten in this place of ours and that it is important to remind those who negotiate on our behalf to do so without forgetting our priorities.

But this Bill, of course, Mr Speaker, is not about the withdrawal from the EU itself, it is about the withdrawal agreement, and in setting out the position that the Opposition take in respect of these general principles I want to take a step to one side and analyse that precisely and our differences in respect of the withdrawal agreement, only very briefly, so that we all understand each other as we look forward in respect of this particular Bill.

I want to make clear, and I do so immediately, that we will support this Bill at general principles on the Second Reading and I hope to persuade the hon. Member to take into account some of the points that we intend to raise at Committee Stage – there is one very fundamental one and I hope that I will have his support in that on proper reflection.

I want to explain why we will support this Bill. In doing so, let me say that we do not resile at any moment from the disagreement with the Members opposite about the deficiencies of the MoUs that they negotiated. We do not resile from the view that we take on this side of the House that the Tax Treaty is harmful and intrusive. We do not resile from the view that we take on this side of the House that the MoUs and the package in the withdrawal agreement were a lost opportunity for Gibraltar because we could have got a better deal. We do not resile from those points. We do not resile from the observations we have made that we regret the contents of the MoUs and their constant references to fraud and smuggling which were accepted by the Members opposite. We do not resile from the fact that we have said that the MoUs have the effect of giving frontier workers enduring rights and we have not obtained anything permanent in return. We do not resile from our disagreement with the Members opposite as to what we view would have been a better way forward which could have been delivered if the Members opposite had negotiated better deals for Gibraltar.

Having said all that, Mr Speaker, I have also said on a number of occasions … I was asked the question during the election campaign as to what we would do if we were in government, and I said that despite the deficiencies it was clear to me that if we were to have found ourselves in government after the last election it was important to accept the MoUs despite the deficiencies and then we would have a period of 11 months to negotiate a beneficial permanent arrangement with the EU because some access to a transitional period, even on the back of a defective set of MoUs, was better than no deal. That is our position and that is why we are going to support this Bill at Second Reading on the general principles.

I should say on an aside, Mr Speaker, that I was surprised to see comments from the Governor this morning in the press expressing views on the MoUs and on whether the agreement was good or bad for Gibraltar. The Governor is, of course, a representative of the Crown – he is the Queen in Gibraltar – and he has been a good Governor. He is a popular and good Governor, but he should not be immersing himself in matters of local political controversy. It would have been as strange as if Her Majesty had expressed a view at the height of the differences between the Labour Party and the Conservative Party as to whether the withdrawal agreement negotiated by Theresa May was good for the UK. It was inappropriate for His Excellency to express views on matters of local political controversy. He is the Crown in Gibraltar, he fulfils a ceremonial function, he is the Queen in Gibraltar and on the eve of his departure expressing views on issues of controversy such as the MoUs and the Tax Treaty crossed the customary line and was a matter of dismay for all of us on this side of this House I speak for, at least the GSD.

Mr Speaker, as I say, we are going to support this Bill in its general principles although we have some concerns. Before I get to those concerns, I have also said – and I note what the hon. Member says about, that they intend to negotiate this in the way that … It is their prerogative, of course, to negotiate this on an intergovernmental basis without involving the Opposition. He expresses his views of the briefings and we take a different view as to the selective nature of those briefings and as to whether the negotiations should be handled in that way or not. It is a matter, of course, for the Government how it handles it, but it is not always the case, of course that matters are handled intergovernmentally only.

The hon. Member was on this side of the House when I was on that side of the House and we involved the Opposition in the negotiations on the Constitution. That issue, in my view at least, was not as dramatic a moment for Gibraltar as this issue, where we are negotiating a possible permanent future arrangement and relationship with the EU. We may disagree. They were both important moments for Gibraltar. We were trying to get as much as we could from the British government in constitutional negotiations, but this is also an important moment. A lot of people in Gibraltar would expect the Government and Opposition to work together in the public interest.

It is, of course, as I repeatedly say, a matter for the Members opposite and the Chief Minister in particular. It is his prerogative – he has been re-elected – to go about it as he wishes. All I can do as Leader of the Opposition is to tell the hon. Members that the offer to assist is there. It is a matter for them if they wish to access that or not, but we are willing to participate in a joint negotiating team at least for the next 11 months if at any moment they reflect on it further and they consider that that is in the interests of Gibraltar, or if indeed they wish to follow a hybrid course, which is not the briefings that they followed but perhaps give us a better awareness of the documents and share the documents that they are considering on a private basis if they wish us to have a bit more influence or wish us to assist in any observations we may make.

Of course I accept that the Members on this side do not have a monopoly on good ideas, but I hope that the Members opposite also accept that they do not have a monopoly on good ideas either.

Mr Speaker, the next 11 months is an important moment for Gibraltar which we must use in a twofold way. We must negotiate – or try to negotiate – a beneficial permanent deal, but we must also make Gibraltar ready for the possibility that we might either not have a deal or not be included in a deal. I know the hon. Members will have that foremost in their minds when considering the next 11 months and the twin track that they must skilfully glide over while they try to prepare Gibraltar for all of that.

Mr Speaker, if I may – and not in the detail of the hon. Member, of course, but if I may just go through some of the issues on the parts of the Bill that he went through to see if there are answers which in his reply he could give us. The first point that I make in terms of general principles … Through the Clerk hon. Members will have seen that we have given notice of a letter on amendments that I will deal with at Committee Stage. I am not going to talk to those

amendments at this stage, but I do want to just explain the context of the general principle of the last one, and it was a question that I had which turned into a possible amendment that I put before the hon. Members.

In the English Act there are numerous references to this regulation-making power. They are very wide, they are as wide as they are in the Gibraltar Bill, but the big difference between the UK Act and the Gibraltar Bill is that there are also a number of references in the UK legislation which say that regulations do not take effect unless they have first been tabled in Parliament and approved by resolution of Parliament. That allows the United Kingdom Parliament – or, as the case may be, the devolved legislatures – to have advanced sight of regulations and to comment on them.

We are, of course, cognisant of the fact that in this Parliament we have an inbuilt governmental majority, but that should not be a reason to circumvent any discussion in this House. We perfectly understand that if the hon. Members wish to introduce regulations of a particular type they are likely to do so if it is subjected to a motion or resolution of this House because they have an inbuilt majority, but it should not be the case that we should bypass that mechanism at all, in our view.

We understand the need for, as the hon. Member put it in one of his categories for differences, maximum flexibility. We understand that and we understand the need for speed, but the need for speed and maximum flexibility has not prevented the UK structure being constructed in a way that subjects regulations to approval by resolution of the various parliaments. So why is it that we in Gibraltar need to be special and have a system which circumvents the powers and scrutiny of this House, limited as they may be?

Indeed, this is new in that sense because the European Union (Withdrawal) Act which was passed last year, in section 12 actually implies the opposite. Section 12 says 'provides for a Minister to make regulations to implement the withdrawal agreement', but it goes on to say that 'regulations under this section may make any provision that could be made by an Act of Parliament except that regulations may not amend primary legislation unless the Minister believes it is urgent or necessary in the public interest, and no regulations may be made under this section after exit day'. So the power to make regulations to implement the withdrawal agreement under the Withdrawal Act was specifically more limited and qualified to urgency and necessity in the public interest if you wanted to amend primary legislation.

The effect of this Bill now repeals this section; and not only repeals it, substitutes it for a system that allows the Members opposite to enact regulations to make laws bypassing this Parliament that could amend and alter Acts passed by this Parliament without further reference to this Parliament without the need to certify urgency or that it is in the public interest and without the mechanism, which is the safeguard used in the United Kingdom, that if they wanted to do it, in the UK system you have got to introduce a resolution, you have got to introduce the regulations, and have it approved by resolution of the Parliament.

It is a big concern of the Members opposite and I hope that the hon. Member can reflect further that, given that this Parliament now, as the Chief Minister has explained, is going to revert – hopefully, and not be derailed because of Government business – will revert back to meeting on a monthly basis, there is no reason why the regulations that are made under this important piece of legislation cannot be tabled in this House and there cannot be a motion or resolution of this House approving the regulations where we are given the opportunity.

Why do I say it is important? For a variety of reasons: because we are given the opportunity to see the regulations in draft, to give you our views and it just may be that we may have a point on any of the specifics of the regulations. And if we do not, we do not, but at least we have fulfilled the proper function of this Parliament and it has not been bypassed. It is important to respect our institutions if we want other people to respect our own institutions. I ask the hon. Member to reflect deeply on the explanation I have given. I am sure that the hon. Member, from a position of good faith, thinks and puts forward this Bill in this respect, but I ask him to review

and consider it in greater detail, at least in relation to the regulations, and to consider the amendment that I have raised in that respect.

Mr Speaker, I would also say to the hon. Member that there is provision in the UK legislation for regulations to be time limited, i.e. there are provisions in the specific Act in the UK that the regulation-making power cannot be exercised in some respects beyond the IP completion dates. There is no such provision that I have seen in this Act. I have not put forward an amendment in this respect, but I ask the hon. Member to consider whether there should be a time limit, because otherwise, in theory, the regulations could be made at any point. There is good reason why they should be time limited, but I am not privy to the Government's thinking so I ask the hon. Member to perhaps consider that issue and indeed respond in due course when it comes to his reply.

Mr Speaker, I will speak to the other amendments that I have tabled when I get to Committee Stage, but I do want to make some observations in respect of the Independent Monitoring Authority, if I may.

Clause 15 of the Bill recognises the interface with the Independent Monitoring Authority, which is the body corporate established under the UK's legislation, and indeed enables a Minister to make regulations to prescribe the functions of the IMA in Gibraltar. I did notice in the UK Act that under Schedule 2 of the UK Act – in particular, I think it was section 4(3) – there is a need to consult the Gibraltar Government in respect of the appointment of someone on to the IMA, of a person who 'knows about conditions in Gibraltar'. I express simply a desire that the Government – which I am sure is uppermost in their minds – will proceed cautiously in the design of the architecture of the interface between the IMA, a body created under UK legislation, and the encroachment into our affairs by the IMA because of regulations that will need to be constructed to allow the IMA to have certain functions and so on in Gibraltar. We, I am sure, will proceed cautiously. I would be concerned that we do so and I simply flag the issue for the hon. Member, which he may already have thought about in his detailed consideration of the Bill, but it is important that we are careful about how the IMA powers are exercised in relation to Gibraltar.

Mr Speaker, I have indicated to the hon. Members that they have our support on the Second Reading of this Bill. I know that I have said things that also set out issues of disagreement between us – we cannot be singing from exactly the same hymn sheet on every single issue – but I hope they see that our support for the general principles of this Bill, on the basis that I have indicated and no other, is intended also to assist us giving a clear message today that, to the extent that we can, we are united in seeking to go forward with the spirit that the hon. Member closed with, which I also wish to close on: that the next 11 months are indeed important for Gibraltar; that in, whatever role, we are happy to assist, whether it is in a consultative or more direct role; that if the Government were to choose to continue as it has we will of course, as we are not direct participants, need to scrutinise arrangements from the outside; and we will fulfil our constitutional duty.

I sincerely hope, as I said in a recent interview, that at the close of this year we can all in Gibraltar celebrate our inclusion into a permanent and beneficial agreement and new relationship for Gibraltar with the EU, and that we do not need to rely on the fact that no deal is better than a bad deal and walk away from a bad deal, but that of course if that juncture arrives we will support the Government if it walks away from a bad deal.

Mr Speaker, those are the observations that I had on the Bill, and with that I sit down with that support of the Opposition on the basis I have indicated. *(Banging on desks)*

Mr Speaker: The Hon. Marlene Hassan Nahon.

Hon. Ms M D Hassan Nahon: Mr Speaker, I take this opportunity also, firstly, to congratulate the Attorney General, Michael Llamas, on his much deserved honour of CMG. Michael Llamas has worked diligently and he has had a never-ending task for the people of Gibraltar with the

Brexit challenges in the last few years; but not only that, from Brexit to football I believe we all owe a huge debt of gratitude to Michael Llamas and I am proud to be able to take this opportunity today to say so. *(Banging on desks)*

I will not bore the House with a long address, and as I say this I also take this opportunity to thank the Deputy Chief Minister for his very expansive address and detailed explanation on what is a very technical Bill.

We have finally arrived at the moment, for all of us in this Chamber, which we hoped would never happen. Fifty years ago, fascism and intolerance closed down our border, severing ties of civility and affection between two closely intertwined communities. Since then, Gibraltar has endured, overcome and improved, establishing an identity that represents the polar opposite to the fascist spirit that wished to isolate it from the world. We are an open community, profoundly proud of our diversity and rich culture, but also an open economy, always ready to embrace new markets and opportunities. Today, other forms of intolerance, more nuanced but not too dissimilar to those of yesteryear, threaten to bring us apart again.

I therefore approve of the practical application of this Bill and will of course vote in favour of it, despite the fact, of course, that I profoundly disapprove of its underlying substance. I hope that we can and will all work together to achieve the best possible outcome from this calamity that has been imposed on us and that we may never let ourselves be dragged into the mire of small mindedness and isolation.

I take this opportunity, lastly, Mr Speaker, to remind Government that I stand ready to support them in the next 11 months in any way I can.

Thank you. *(Banging on desks)*

Mr Speaker: The Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Well, Mr Speaker, it is indeed with a heavy heart that I rise to address the Parliament on this Bill that has been expertly presented by the Deputy Chief Minister in great detail, setting out to all of us all of the highways and byways of what it is that this Bill achieves. I think it achieves something that none of us had wanted to see achieved, which is the effective withdrawal of Gibraltar from the European Union in supporting the European Union (Withdrawal) Bill that we have already voted, but in bringing about in that process an orderly exit from the European Union rather than allowing a disorderly Brexit from the European Union, which would have happened if all that the United Kingdom and Gibraltar did was sever the ties between us and the EU by in effect repealing the Acts that are already in place to give effect to the Union without putting anything in its place.

So I want to thank the Deputy Chief Minister for the way that he is taking us all through it in that detail and I want to thank also the team behind the work that has been done. Very often when we come here to the Parliament and we look at things in detail for a couple of hours, we are unable to appreciate the amount of work that goes into being able to produce even what we might term not a short Bill but not a long Bill either. That team has been led by the Attorney General and also by the Senior Drafting Counsel, Paul Peralta, who I think have really done an incredible job of ensuring that we were able to publish as soon as last Monday, which was almost immediately after the United Kingdom had finished going through the Bill in its Committee Stage. I will come to the timetable later, but this was really working to a fixed timetable in order to ensure that we were not considering an earlier iteration of a UK Bill when we would have to have almost all of the aspects of the UK Bill in Gibraltar, and that could have changed after the process in the House of Commons.

I also want to reflect on the work that we have done in the past four years almost now since the result of the referendum on Brexit. This is the last legislative instrument that will come to this House. We started with the Bill to allow the referendum and now we are here with the Bill to give effect to the deal to leave the European Union.

In that time I have also had an opportunity not just of working with my team, with the Deputy Chief Minister, the Attorney General – whom I will say more about in a moment – and the Financial Secretary; it is also true that in the Brexit Select Committee I have had the opportunity of working with the Hon. Mr Feetham – he was the Leader of the Opposition at the time of the referendum – and with the hon. Lady – I think she had just become an independent member at that time – and, if I may say so, Mr Phillips is not here but he also was a part of that process, and Mr Hammond.

We worked well in the Brexit Select Committee, we had an opportunity of exchanging views and we listened carefully to the things that they had to say. They listened carefully and, if I may say so, diligently, also keeping the confidences that we shared with them at the time of the negotiations, and I want to thank them sincerely for their honest and diligent work with us in that time. It is also true that we shared with them texts as soon as we were able in the context of that work, a point which I think is going to be relevant to some of the things that I will say later.

Mr Speaker, there are sometimes happy events that occur during difficult and sad times, also, and one of the happy events that Gibraltar will have seen recorded in this year's New Year's Honours list, which hon. Members in this House have already had an opportunity to refer to, was the conferment on the Attorney General of the grade of CMG, Companion of the Order of St Michael and St George. I think this is one of the most richly deserved honours ever bestowed in Gibraltar's history. Because of the nature of our parliamentary debating style, he is sitting behind me and I am giving him my back whilst I say these things about him, but he knows that I hold him in the very highest regard and the whole of this community does too. I think not only was this a richly deserved recognition of the work that Michael Llamas has done and does for Gibraltar; it was also one that was almost universally warmly received by the community that appreciates the work done by Michael Llamas. A lot of that work I think has been seen by those outside of Gibraltar also in the sweep of the work that Michael Llamas has done in the past 25 years, but perhaps more so in the past three years when he has been a stalwart pivot between Gibraltar and the United Kingdom of the technical work that needed to be done to bring us unfortunately also to this sad legislative moment.

Mr Speaker, there are four of us in this Parliament who started in politics together, and the first time that we went to a General Election, three of them – not me – stood for election with a manifesto I staunchly supported, although not a candidate. The cover of that manifesto was the Union flag and we proposed a royal city status for Gibraltar within the European Union. That is the depth of feeling that I think on both sides of the House there has long been for seeing the European Union as a potential, dare I say, 'solution' to many of the issues that Gibraltar has faced historically.

The Hon. the Deputy Chief Minister and I continued down that route in politics together. We never split from the original position and ideas. We went to Europe, we made the arguments, we lobbied, and I have said before but I must say today for the purposes of the historical record that one of my proudest moments in politics was when, having won the General Election in 2011, we agreed that the portfolio responsibility for Europe should be that of the Deputy Chief Minister; but one of the saddest moments I had in politics was to agree with him that I should designate him the Minister for Leaving the European Union as well. I think in the time that he has done both of those jobs he has done them expertly, but unfortunately in this process we are both undertaking an exercise that I think the four of us who stood under that initial manifesto if not every other Member of this House does not believe it was right that we should be pursuing but for reasons that I have set out before and during the referendum campaign, and after, and indeed which the hon. Lady in quite Churchillian tones now referred us to as she set out her support for the European Union, a project which Winston Churchill kick-started after the Second World War, and I congratulate her for having so powerfully set out the case for Europe a moment ago.

Mr Speaker, what we are doing today, even though we do not want to do it for all the reasons I have set out, is to bring about that orderly withdrawal from the European Union. There is only one thing, in my view, which is worse than an orderly withdrawal from the European Union – because I would have wished us to remain – and that is a disorderly withdrawal from the European Union. That is what would have happened if the United Kingdom and the European Union had not come to terms in a withdrawal agreement fashioned as it was under Theresa May as Prime Minister and then subsequently with the changes that were agreed by the new negotiating team in London, brought to a head by Mr Johnson as Prime Minister. That would have all of the dangers that we have already set out.

But let's be very clear: we are not out of the woods yet. What would have been a disorderly exit at the end of March last year, or at the end of October last year, or indeed at the end of January this year if those terms had not been agreed, could yet be a disorderly exit at the end of December this year if there are not new terms for an agreement between the United Kingdom and the European Union. What will have happened is that we will have had almost 24 more months to prepare for that disorderly exit and we will have cushioned the moment of withdrawal with this transition period.

So, Mr Speaker, in the context of the dates that I have set out already, hon. Members cannot have been surprised – especially given that we have said repeatedly that we were going to wait for the United Kingdom to have taken the legislation through its stages so that we had as near as dammit a final UK Bill or Act – that we would have published on 13th January this year. Indeed, in the United Kingdom, the Hon. Leader of the Opposition has just reminded us that their Bill was published on 19th December. They will have known that that was the Bill almost that they would have been speaking to when it was brought to this Parliament, and they will have known not just because that is the nature of the work that we are engaged upon but because we said that we would not publish here earlier because all we would have to do would be amend the Bill by the time that it came to this Parliament if it had been amended in the United Kingdom.

And so, Mr Speaker, I want to put to the hon. Gentleman opposite, to whom I am grateful for the attitude that he has taken in saying that he will support this Bill, that actually there is nothing to be seen in the context of the certification of urgency – there is obviously a certification of urgency because the six weeks would have been up after publication beyond 31st January and therefore time had to be abridged perforce; but that he could have been, and I am sure he was, reading the UK provisions and knowing what was coming and needed the time only to see the differences between the Gibraltar provisions and the UK provisions. And so, Mr Speaker, in that context I am sure that there has been no loss to the Opposition in having the Bill certified necessarily as urgent.

Mr Speaker, I am grateful on behalf of the Government for the support which they have said they will give at Second Reading. I do not know whether, by telling us that he is going to support at Second Reading, he is setting out that he might be withholding support at Third Reading depending on the outcome of his proposed amendments at Committee Stage, but I express gratitude to him at least for support at Second Reading because not supporting this Bill at Second Reading would in effect be to vote for a disorderly Brexit, at least for Gibraltar. And indeed it would be to vote for a disorderly Brexit even if one had a technical reason why one did not like the Bill. I have made no secret of the fact that neither the Deputy Chief Minister nor I like the Bill and what it does, because we politically – indeed, as I have said before, many of us in this House, at least the four of us – would certainly not have wanted to see this Bill come at all. So, whatever technical reason one might find to vote against the Bill, my view is that this is one on which we have to hold our noses and vote for an orderly Brexit because the alternative is not a good thing to go down in history as having supported.

Mr Speaker, the Bill does allow powers to amend primary legislation by secondary legislation. That is not unusual in the context of Gibraltar. That power has existed in Gibraltar in relation to European matters since the late 1980s in the Interpretation and General Clauses Act without having to lay anything on the table in this House, and indeed hon. Members will know that

because there are regulations signed by him when he was a Minister which gave effect to those sorts of provisions. This is something that unfortunately we have all grown used to in order to give business efficacy to Gibraltar's obligations under the Treaties to transpose legislation within a particular timeframe.

That does not mean that we should not seek to using those powers when we can avoid using those powers, and being granted a power under an Act to do something like amend primary legislation by secondary legislation is not something that any Minister is going to do lightly if it is possible to bring primary legislation to amend primary legislation, but the power exists. It is at section 23 of the Interpretation and General Clauses Act, subsection (g), if hon. Members are looking it up. But let's be clear: we may need to use the power, as we have needed to use it in the past, because of the need to do things on particularly tight timeframes or to do very wide things very quickly because of the particularly tight timeframes.

The hon. Gentleman has given notice, just at the beginning of the session, of the amendments that he is going to move and he is going to speak to them at Committee Stage. I will not therefore labour them for now, but none of the things that he is going to propose are not things that the Government itself did not consider at the time of the publication of the Bill and things which we determined we could not pursue.

The first that he is going to move is, in effect, an amendment to protect acquired rights. The Government would not want to trample over anyone's acquired rights, but there are ways that, if we do trample over anyone's acquired rights, such individuals are able to take action without the need to make specific statutory provision for appeals, if we do.

In the context of the other proposed amendments that he is making, first of all we cannot curtail the power to make secondary legislation in a way that it is not already curtailed, and indeed he should know that we have absolutely no intention whatsoever of bringing, by regulation, changes to primary legislation that would impose or increase taxation or fees, make retrospective provision, create criminal offences, establish a public authority – indeed, we would rather not have to establish any more public authorities, Mr Speaker – or indeed affect any rights under the Gibraltar Constitution. But if we did any of those things and any of those things were wrong, there is already a provision to curtail our powers in that respect.

In particular, Mr Speaker, I want to just address, as a matter of principle at this stage, the final clause of six in his proposed amendment to section 17, which is 'not to affect any rights under provisions or effects of the Gibraltar Constitution'. I am going to put it to him, when the time comes, that if we were to be persuaded by him to include that clause now, then we should always include it because none of us should ever ministerially have a power to do by regulation anything which affects any rights under, or provisions or effect of the Gibraltar Constitution. But the fact is we do not, because the Constitution is a superior enactment even to primary legislation, let alone to secondary legislation, and there is no need to save the Constitution in any provision granting a power. We cannot give ourselves a power to do anything that derogates from the Constitution and so therefore I will put it to him when the time comes that that is an unnecessary provision.

Finally, Mr Speaker, on this question of having to lay in Parliament or not, the fact is already in Gibraltar we have, under the Interpretation and General Clauses Act, the power to make amendments to primary legislation by way of secondary legislation. The provision he is referring to in the European Union (Withdrawal) Act comes to an end when we leave the EU on 31st January *de jure*. This is the power that takes over thereafter and it endures for as long as it has to. He is right that in the United Kingdom there is a time limit and we have not provided for that time limit here, but the only power that we are taking is for the purpose set out, and as the need to amend legislation by dint of our departure from the European Union becomes extinguished de facto, the power is therefore extinguished *de jure*. But we can come to those points in greater detail when we get to the Committee Stage.

Mr Speaker, 1972 was indeed a great year, and the hon. Gentleman has referred to our accession to the European Union and the accident of birth that might have placed some of us

within it but he has failed to alight on the most important thing that happened that year, which was of course the election of Joe Bossano to this Parliament for the first time. When he talks about opening new markets and taking new opportunities, if there was something that happened in 1972 which enables us to do that now, it is the presence still in this Parliament of the man then elected, who was the person who identified those new markets when the MoD withdrew from Gibraltar etc. and who started to describe us as the 13th jurisdiction in the European Union – the 13th member state, for shorthand – for a while. So I think when he talks about us being alive to new markets etc., I have living proof to my left, of course, that we are indeed very much alive to that.

But when he says that we had a limited influence in the referendum and that our voting in it did not change how the outcome of our departure or remaining in the European Union might have been affected, much like Scotland and other parts of the United Kingdom that voted to remain but are leaving, he has to recognise that we were part of the European Union as part of the member state United Kingdom, and although our Constitution of 2006 changed our relationship with the United Kingdom, and in particular section 47 changed how EU matters were dealt with between us, it did not change our EU-facing relationship under the Treaties. And so the reality is that with the member state United Kingdom as a whole voting to leave the European Union, there was little wriggle room in that respect for us.

Mr Speaker, there is an important point here on which I need to reflect and go back to the first points I was making. If there is one thing that changed the dynamic between the United Kingdom and Gibraltar at a political level, I put it to hon. Members that it was Gibraltar's ability to vote in European parliamentary elections. British political parties from the United Kingdom suddenly took an interest in campaigning in Gibraltar because we became part of the South West region, and in doing so the argument that the Hon. the Deputy Chief Minister and I put to then Prime Minister David Cameron when the referendum franchise was being determined was an unanswerable one, because the European Court having determined that the European Parliament was a legislature for Gibraltar, there could be no question of us being excluded from the franchise of the Brexit referendum. For that, Gibraltar also has Michael Llamas to thank.

The hon. Gentleman then took a turn in his intervention which I have to take issue with, which is the idea that Northern Ireland is somehow more protected in the European withdrawal agreement than Gibraltar. First of all, Northern Ireland is larger than Gibraltar and it does things which Gibraltar does not do and which therefore would not need to be provided for. For example, it exports milk and meat and potatoes etc., and so there is a whole agricultural element and a farming element to what is provided for in the withdrawal agreement in relation to Northern Ireland that with our most optimistic hat on we could not pretend was necessary to replicate in relation to Gibraltar.

There is a list of European provisions that apply to Northern Ireland, which are replicated because of the nature of the relationship between Ireland and Northern Ireland, which are irrelevant to us. And – something which will bring me later to the apposite issues that we have been debating on Friday and Saturday and today – there is a Common Travel Area between the United Kingdom and Ireland. There is a UK IIA Schengen, so to speak. We do not have such a Common Travel Area with the European Union.

All of those things are the things that are, to take the hon. Gentleman's phrase, 'protected' for Northern Ireland in the context of the withdrawal agreement – except, of course, if you ask the people of Northern Ireland, because some of the people in Northern Ireland might take the view that this is not protection for them. Indeed – the hon. Gentleman will have followed the debate – the DUP do not feel that the withdrawal agreement is something that they should support, and indeed at Westminster they did not lend their support in the vote on the withdrawal agreement at different times in the debate. He will know that.

So it is very easy to try and get up and pretend to somehow blunt the great effectiveness of the Government strategy by saying there are more pages in the agreement in relation to Northern Ireland than there are to Gibraltar, but that argument is not an argument that holds

water in any material respect. Indeed, there is also a great difference between Northern Ireland and Gibraltar. Northern Ireland is a part of the United Kingdom. The powers that Stormont has devolved are nowhere near the powers that Gibraltar has under its Constitution of 2006, because Northern Ireland is not part of the member state United Kingdom under Article 355(3). Northern Ireland *is* the United Kingdom, Mr Speaker, and so therefore there is a great difference between one and the other. We have to understand those things, and I know the hon. Gentleman fully understands them, but when we confect an argument we have to, of course, factor those in and not try and add so much salt to the argument's ingredients that somehow we make it taste different to what it actually is.

We have not been forgotten in this place, Mr Speaker, as the hon. Gentleman suggested – hardly forgotten just because we might not have been mentioned in as many news bulletins in the United Kingdom as Northern Ireland has been mentioned in. I put it to the hon. Gentleman that that argument, as he knows, is a total fallacy. It is as if the people of Northern Ireland made the argument that they have been forgotten because they have not been mentioned on GBC's *Newswatch* as often as Gibraltar has been mentioned on GBC *Newswatch*. In the United Kingdom, the news bulletins have related to one part of the United Kingdom more often than they have to Gibraltar, but they have related to Gibraltar when they had to, Mr Speaker. Indeed, I sometimes do not know whether I am going to be accused of doing too much media or not doing enough, but when Gibraltar has needed international media attention it has had it. You do not measure the effectiveness of a negotiation based on the number of news headlines that there may or may not have been on a particular subject; you measure the effectiveness of the negotiation based on the outcome of the negotiations.

On that, although they will preserve their position in respect of what they term as deficiencies in the MoUs, I will tell them that the MoUs that underpin the Gibraltar Protocol are an *excellent* deal for Gibraltar, with none of the alleged deficiencies that the hon. Gentleman has put and with the great advantage that they include Gibraltar in the transitional period and without which we would not be a part of that transitional period.

The hon. Gentleman says, in effect, that they could have done better – because they are saying we failed to take the opportunities, we failed to negotiate, therefore, as well as he could. Well, Mr Speaker, perhaps it is because we spent so much of our time negotiating and investing in these MoUs to make sure that they had no deficiencies and to make sure that they were good for Gibraltar. But I have to put it to him that there is nothing to suggest that he is a better negotiator than me, or indeed that they are better at persuading people than we are. If we use the most recent measure of our ability to persuade, where I persuade 52 he persuades 25. It is the only measure in politics, Mr Speaker. It does not seem to me that Gibraltar does not have the best of the negotiating teams available already.

And so, Mr Speaker, when the hon. Gentleman says the MoUs give frontier workers enduring rights that our people do not have, I know that he is too able intellectually and academically to know that that statement is untrue. All of the rights that frontier workers coming into Gibraltar have obtained are mirrored exactly in favour of Gibraltarians and indeed British citizens resident in Gibraltar who exercise rights in the European Union going forward. So, for example, a British Gibraltarian who lives in Spain under the arrangements we have negotiated is able to have those rights recognised in an enduring fashion, and he knows it – or at least I have sufficient intellectual respect for him to believe that he knows it. So it is not right to say that the MoUs give frontier workers enduring rights that we do not have. The withdrawal agreement specifically provides that British Gibraltarians have those enduring rights also.

I think he has worked out that without these MoUs there would be no transition. The line of the bargain is set where it was set. I think we have achieved more than they would ever have achieved – I think we have certainly achieved more than they might even have set out to achieve – but there is where the line is now.

At least they, I think, have now appreciated that without the MoUs that underpin the Protocol there would be no withdrawal agreement applicable to Gibraltar and therefore no

Withdrawal Agreement Bill, and indeed there would be no transition, and that is what explained – I was going to say a U-turn, Mr Speaker, but it was such a pirouette that it deserves to be described in that way – the pirouette that they did 48 hours before the last General Election when they realised that – it obviously dawned on them, like a new dawn, Mr Speaker – that if they took Gibraltar into a General Election argument where there was one party saying we are for the MoUs and them saying they are against the MoUs, people would go into the voting booths with the clear choice of GSLP-Liberals – and Ms Hassan Nahon I think also made the point with us – supporting the MoUs and therefore in the transition, and GSD hard Brexit, for Gibraltar only, even if there is a Brexit deal for the UK. That is why they changed their position, something which he presents in a much more flowery and buttered up way today, but that was the reality. They were heading for a brick-wall crash and at the last minute they realised that they needed to avert it. And I was pleased that they did, Mr Speaker; I was pleased that at the last minute they saw the error of their ways and they agreed with us on these issues.

I have been surprised twice by his approach to the comments by His Excellency the Governor. I say twice, Mr Speaker, because he seems to have developed such a thin skin these days that he believes that a Governor having his picture taken in a school and saying 'This is a fantastic investment for our future' is something that he needs to remark on outside of this place, as if it were an interference in politics; and a goodbye interview by a Governor saying 'I think these things are good and I think they work for Gibraltar; these are my personal views' – because he is not talking for the Foreign Office – somehow is something that he needs to remark upon also as a gross interference in our party political fray, as if anybody in Gibraltar were going to make up their minds based on what a Governor says.

But I will tell him something, Mr Speaker. For a Governor to say what his impressions are when he is leaving is, in my view, unremarkable. What is, in my view, entirely wrong is for a Governor to take a partisan position on his arrival, and that is what happened at the time of the arrival of another Royal Marine as Governor when they were in government and when views were expressed as to trilaterals and as to Cordoba Agreements, views which would not have chimed with him and they certainly did not chime with me or those of us who were Members of the Opposition then. But very different to say something on the way out in a personal capacity and say something on the way in, in the same rank as representative of Her Majesty the Queen, which represents the position of the then Government of the day.

So, Mr Speaker, I think those things have to be set in their proper context, and I am surprised that he has wanted to raise those issues in the context of this Bill, but given that he has raised them I think it is absolutely right and proper that I should respond. And I want to just reflect on the fact – and I think we will have a chance to say more on this – that Edward Davis has been a *magnificent* Governor, but he has been a better friend and supporter of Gibraltar than even he has been a Governor.

Then the hon. Gentleman wanted to talk about the joint negotiating team. Well, Mr Speaker, there is not going to be a joint negotiating team, because negotiating a constitution on behalf of a Parliament with a colonising power, or administering power, is different to negotiating business. In the context of the Constitution there was a Select Committee that made a determination – over five years, I think – of what the Parliament wanted negotiated, and then that Select Committee went on to become the negotiating team, with others included who were not in the Select Committee for reasons that were politically transparent at the time. And that is how you negotiate a constitution, okay. That is not how you negotiate a trade deal, and that is what we are talking about. We are talking about negotiating a trade deal. There is a difference between negotiating a trade deal and negotiating a constitution.

I know that as a device the hon. Gentleman wants to talk about unity, wants to talk about maturity and wants to talk about doing things together as much as he can, but when he does it is important that people look at what he says versus what he does.

He says, 'We need to work together, I am not a tribal politician, let's do as much as we can together.' Okay. We take him at his word. I issue a New Year's message where I attack no one,

except people beyond our shores – certainly no one on that side of the House. And what do I get back from those who are not tribal, who want to work together, who want to ensure that unity prevails? A blistering, reportedly, attack on all issues unrelated to the many that I had mentioned. Mr Speaker, he says one thing and he does another. Fair enough.

He says that they were given superficial access and superficial briefings. Perhaps they were superficial because he was not there. The others, who were – in my view, and I do not want to pit them against each other, perish the thought – did not consider for one moment that the briefings that they were getting from us were in any way superficial.

He says that we showed them documents just before they were published, but he seems to forget that I offered him the opportunity to meet a week before and he told me he was not available.

Mr Speaker, the Hon. the Deputy Chief Minister is absolutely right. In some instances, because of timings and Ministers being elsewhere and not being able to get to No. 6 at particular times, the Opposition were briefed on matters before Ministers were briefed on matters, and in most instances I have to tell them they received the same briefings that Ministers received. Ministers did not feel that they were being treated superficially. This was a negotiation that was moving apace. We were out of Gibraltar for most weekends. The Deputy Chief Minister was going to London and I was going to London and then to Brussels, and then he was joining us in Brussels. This was happening. Things happen. Decisions have to be made when the time comes and you cannot just simply put it off.

For that reason, Mr Speaker, I think it is important that we understand the differences between negotiating a constitution and negotiating a trade deal. Indeed, these things are going to start moving very quickly. I just remind them: the most important thing happening on 31st January is not the closure of nominations in a particular local race; it is our departure from the European Union. I wonder whether they gave any thought to the fact that there were other things happening that day. Anyway …

Mr Speaker, I hope I have dealt with all of the issues the hon. Gentleman raised which are my area of responsibility. I know the Deputy Chief Minister will now deal with a lot of the others.

There is one issue that I think it is important that we reflect on, in an area where I think there is a measure of agreement. As he was telling one of the local newspapers on Friday, I was telling the international press something almost identical and both of us were reported on Saturday. He was talking about freedom of movement and I was talking about border fluidity and the opportunities for a common travel area with Schengen. I was repeating something I have been saying since 2014, but of course these things were put off as future issues were not to be dealt with in the context of negotiations etc. until now. I think this is an area where there is a large measure of agreement between us.

I just want to say that it is important that we distinguish between joining Schengen and a common travel area agreement with Schengen, or an agreement with Schengen for access to Schengen. Those two are different. I also think it is important because the term 'freedom of movement' has taken on a meaning under the European Treaties that we understand, and that although the terminology of 'freedom of movement' flows off the tongue, 'freedom of movement' means something under the Treaty. In effect now it means freedom of establishment, whilst I think that we are all talking about border fluidity – so the ability to, yes, move fluidly between Gibraltar and the Schengen Area but not necessarily implying the technical definition of 'freedom of movement' as now provided for in the Treaties. I am grateful, Mr Speaker, that I think there is a measure of agreement between us in that respect.

Today, the BBC has suggested that a line issued by No. 10, on which we were consulted and we were joint authors of, somehow contradicted the position that we had set out since 2014 with the support of the then Minister for Europe who became Deputy Prime Minister, Sir David Lidington, about differentiated relationships between Gibraltar and Schengen. The phrase that No. 10 put out to the BBC said this:

> After we leave, the UK will be negotiating the future relationship with the EU on behalf of the whole UK family, including Gibraltar. Working closely together, the UK and Gibraltar Governments have always supported arrangements at the border with Spain which promote fluidity and shared prosperity in the region. The UK, including Gibraltar, is not [presently] part of the borderless Schengen zone.

That was somehow interpreted by the BBC as suggesting that we could not have a different arrangement with Schengen. In fact, I am very pleased to tell the House that the BBC headline, which at 12.30 today was 'UK rules out Gibraltar EU travel deal', has now changed to 'UK to decide on Gibraltar EU travel deal' and the first line of that report, which was also, in our view, wrong, has also I think been changed on reflection, having seen that the No. 10 statement did not do any of the ruling out that their original headline had suggested – an area which I am sure hon. Members will welcome, because on this I think we are *ad idem*.

Mr Speaker, finally, a week on Friday, on 31st January at midnight we will be lowering the European flag. One second after midnight we will raise the Commonwealth flag. We will not be celebrating Brexit on this side of the House, but we will be accelerating through Brexit. We will open new markets, we will take new opportunities and we will ensure that everything we do is designed to make the people of Gibraltar prosper in the future as much as we have in the past. But make no mistake: the United Kingdom is not leaving Europe. The United Kingdom will always be in Europe because a part of Europe will forever be British: this Rock on which we stand.

Thank you very much. *(Banging on desks)*

Mr Speaker: The Hon. Daniel Feetham.

Hon. D A Feetham: Mr Speaker, thank you very much. If I drift towards the hon. Lady, it is not because I am going to be defecting politically but because she has a fire under the table and it is terribly cold in the Chamber today. *(Interjection)* Well, I do not know – but she is performing a public service, I can tell the hon. Gentleman that.

Mr Speaker, I am going to be very brief. One of the functions of the Bill, amongst other things, is to maintain regulatory and legal equivalence with the EU, certainly for a period of time and certainly for this transitional period for the next year. My contribution today is going to be limited to that.

What I want to talk about is regulatory legal equivalence, our approach to regulatory legal equivalence in the future and why in the context of that I think it is very important that the hon. Gentlemen opposite accept the offer that has been made by the Hon. the Leader of the Opposition and why it is important we work very closely together in the future.

Mr Speaker, it has been clear to me certainly, for a considerable period of time, that we were going to be out of Europe, Gibraltar. The reason for that was this. It did not matter whether the UK reached an agreement, a permanent agreement with the European Union or a permanent relationship; I think the price – and I think I have said this before in this Chamber – the price that the Spanish government, of whatever persuasion, would have placed before Gibraltar and the United Kingdom for Gibraltar's inclusion within that permanent deal would have been so high politically that Gibraltar would have said no and would have walked away from it.

In saying that, I do not detract, despite all the criticisms that we have made on this side of the House of the MoUs, from the importance of the Government, which has been recognised by the Leader of the Opposition, reaching an agreement including Gibraltar within the transitional arrangement, because of course the reality would have been – and that is the position that we were faced with during the General Election – that if we had not agreed it, we would have effectively been falling off a cliff when the United Kingdom would have had an extra year, and that would have been a disaster for Gibraltar.

So, certainly from this side of the House we have taken the view that there are areas of the MoUs that we do not like, we think we could have done a better job, but the reality of the situation is that what we are not going to do is walk away from a withdrawal agreement that

would have meant that we would have fallen off a cliff whilst the UK would have had the benefit of the transitional period for the next year. That would have been a disaster.

But the reality, in my respectful view, is that the price for a permanent deal that would have been waved in front of Gibraltar would have been so high – because the temptation would have been too great for the Spanish government – that Gibraltar would not have paid that price and we would have walked away. In fact, I believe that what has happened in the UK, in terms of the political situation and the win for the Conservative Government in the United Kingdom, has meant that we are odds on coming out of the European Union anyway without a permanent deal simply because the price for a permanent deal from a UK point of view – leaving aside Gibraltar, from a UK point of view – is some regulatory or legal equivalence in key areas, which is the price that the EU is going to demand of the United Kingdom if the United Kingdom wants a permanent relationship with the European Union.

Of course that goes against what, in my respectful view, Boris Johnson and the Conservative Party want to achieve for the United Kingdom, which is regulatory 'disequivalence', because it appears to me that what the United Kingdom are going to be attempting to do over the next few years is deregulate in the United Kingdom and move away from Key EU rules in key areas that will deregulate the United Kingdom, allowing outside investment to then flow into the United Kingdom, and that is how they propose to get the economy motoring in the United Kingdom.

If that is right, and I believe that that analysis is correct, then it is likely there is not going to be an agreement between the EU and the United Kingdom, and in those circumstances of course Gibraltar is also out because if the UK is out, Gibraltar is also out.

In that context, what we have is an economic situation in Gibraltar where key economic sectors like gaming and financial services are almost wholly dependent on access to the UK markets.

I was very surprised, I have to say, when, having argued at the referendum that coming out of Europe was an existential threat to our economic model, we then had the statistics – I do not doubt them – emerging from the Government, that said that in terms of financial services, for example, I think it was 94% of our business was done with the UK, so it is almost entirely UK facing.

In terms of the gaming industry, which accounts for a huge bulk of employment here in Gibraltar and economic activity here in Gibraltar, that is almost exclusively UK facing. Those that will depend on the EU for their markets may in fact opt to leave and go to other jurisdictions where they can continue to offer their services in a much easier way into the European Union.

What are the implications of that? Well, the implications of that are that if we are dependent on markets in the UK and the UK is moving towards or may move towards a situation of deregulation and 'disequivalence' with the EU, it may well be in our interest – indeed, I can see that there are cogent arguments for saying that it is in our interest that we too ought to look at this issue of regulatory equivalence and legal equivalence and there may be no point in shadowing the European Union in the future. Indeed, it could well work against us to do so.

Therefore, there has to be an element of profound reflection from the Gibraltar side as to where we want to go and where we want to be in the future, bearing in mind where our markets are likely to be. We all have a desire in Gibraltar to open new markets and I know that the Government is not sitting on its hands in terms of looking for new markets. I can see the Father of the House nodding and I know and I acknowledge the work that the Father of the House has done in the Far East, but the reality is that certainly in the short to medium term our main markets are going to be in the United Kingdom. We have got to watch very carefully what happens in the United Kingdom and there has got to be a debate here in Gibraltar as to whether that is where we want to go, as well as whether we ought to go as well.

Indeed, in that context I also make this observation. The Government is talking about Schengen and perhaps how we might maintain some form of free movement in Schengen, that we might be able to negotiate some special deal in that respect in relation to Gibraltar, but of course if that, or anything else that may be attainable – and I foresee all sorts of difficulties with

the European side, which has to be read mainly 'the Spanish side' – will come at a price of maintaining regulatory and legal equivalence here in Gibraltar and thereby essentially not being in lockstep with the United Kingdom, then that is something that we have got to think about *very* carefully.

I can see that the Hon. the Chief Minister is being impatient with me. Look, I am making –

Hon. Chief Minister: You are making arguments for the Spanish. You are helping them to join up the dots. It does not make any sense.

Hon. D A Feetham: I am not helping anybody to join up the dots. I am making an observation in the context of this Bill as to what are the likely issues facing this community in the future and what are the issues that I feel are important that we ought to focus on.

Therefore, in that context, Mr Speaker, I do think it is very important that the Government and the Opposition work *very* closely together on these issues, together with other stakeholders in business, in the union sectors and elsewhere, to effectively set out a roadmap as to where we want to be and indeed where it is most beneficial for us to be. Everybody in this House has always, as far as I can see, been of the view that we have valued our membership of the EU, that we prided ourselves in complying with EU regulations, with EU standards, with EU laws, all that sort of thing. But I think that in the future there needs to be a profound debate about where we want to go and where it is most beneficial for us to go, and where the UK is going to be going in the next four years. Bearing in mind where our markets lie, that is going to be absolutely critical to Gibraltar's economic future.

Mr Speaker, that is my contribution. Thank you very much. *(Banging on desk)*

Mr Speaker: Does anybody on the Government side wish to make a contribution?

Does the mover of the Bill wish to reply?

Hon. Deputy Chief Minister: Mr Speaker, I want to thank all the hon. Members who have contributed to the debate on the Bill today.

I will just go through the different points which I think require an answer or clarification, bearing in mind my hon. Friend the Chief Minister has already clarified and given a view on those points.

The first one was the timing for the Bill, which was mentioned by the Leader the Opposition. My hon. Friend the Chief Minister has already explained that the UK Bill was liable to amendment and we needed to wait for that process to finish before we introduced our own. I mentioned also, separately, in my introduction to the Bill when presenting it to the House, that there was this additional request from the United Kingdom, that they needed to ensure that all the different territories that had to legislate to give effect to the withdrawal agreement in different parts and in different ways, that all those are in place before they ratify and they can tell the European Union we have now done our part. So, in a sense, that is the timetable that has driven our own timing.

In terms of the point of no recognition of our desire to remain, I think the hon. Member understands that obviously the 96% vote for Remain made a considerable impact in the United Kingdom and also in the European Union. But the situation in the UK kept on evolving to such a degree that we found it was far more prudent to have friends on both sides of the argument. We ended up going to the Conservative party conference, the Labour, the Liberal Democrat the DUP and the SNP party conferences, and in all of them seeking support from people who were on the Remain side of the argument and also on the Leave side of the argument, which explains why we received standing ovations from the SNP and from the DUP within two weeks of each other, parties which are diametrically opposed on other issues.

The other point I think that needs to be made is that we voted in this referendum in 2016. The previous one took place on 5th June 1975. Within two years of joining the European Union

they held a referendum on possibly leaving the European Union, and Gibraltar did not participate or vote or was involved in that in any particular way. I think my hon. Friend was instrumental in getting David Cameron to agree to include Gibraltar in the franchise this time round and I think that gave the people of Gibraltar a democratic say in the outcome, even though it was an outcome that we did not share and an outcome that we did not like.

In terms of Northern Ireland also my hon. Friend has addressed this, but I think there is one more point to be made. First of all, I do not think you measure it in the number of pages. In the Irish one, as has already been indicated to the hon. Member, most of it is a list of EU measures which will continue to apply in different ways. Also, the Anglo-Irish Agreement is an international treaty, the Agreement of 1985, registered in the United Nations, so the processes and procedures to change that international treaty are obviously very different. Cordoba was, for example, a political agreement which gave Spain and the Partido Popular when they came in, in 2011, the opportunity to change it unilaterally. The Anglo-Irish Agreement is an international treaty registered in the United Nations and the processes and procedures are obviously very different.

In terms of the MoU and the enduring rights to frontier workers, I think the point which I made in my introduction is that the MoU does not give any enduring rights to frontier workers, as those are in the withdrawal treaty itself. And also I should add the rights given in the withdrawal treaty are reciprocal. They are given by the European Union, the EEA EFTA countries and Switzerland to United Kingdom nationals, including Gibraltarians, in the same way as they are given by the United Kingdom and Gibraltar to European Union EEA EFTA nationals and also Swiss citizens. So they are reciprocal, but they are in the withdrawal agreement, not in the MoU. The only new thing that the MoU does is set up the Committee for Co-operation. The actual rights are enduring because they are in the agreement, not because they are in the MoU, and they apply to Europeans and they apply to British citizens in the same way.

In terms of intergovernmental negotiations, again I think I referred to that in my address, as did the Hon. Chief Minister in his. The hon. Member mentioned we were involved in the constitutional negotiations; that is true. As my hon. Friend has said, that emerged from a Select Committee of Parliament. Where there was no involvement with the Opposition whatsoever was, for example, in the shared sovereignty discussions, where – the hon. Member was in government at the time – there was a statement made by the then Chief Minister that a joint commission would be set up with the Opposition to work on lobbying in the United Kingdom and elsewhere. That never happened and we were never involved.

Indeed, there was also no involvement whatsoever in Cordoba – not that he would have wanted to be involved, but there was no involvement at all. The Opposition was not involved or consulted or informed. And indeed in the 16-odd years that I served in the House I do not think I was consulted or involved by the then Chief Minister and the Government in absolutely anything – or even briefed, I should add – (**Hon. Chief Minister:** However brief.) but we have indicated there will be an opportunity for the Opposition to provide an input in the process in the same way as they have had an opportunity to provide an input in the exit process.

The hon. Member referred to the regulation-making powers. My hon. Friend has answered that very well and also given me the time to look up the Interpretation and General Clauses Act, and it is very clear that the power to make regulations which may even amend primary legislation relating to international treaties, particularly relating to Europe and to the European Community, is in the Interpretation and General Clauses Act. That is there already. For example, I will just quote briefly, as it is referred to in that subparagraph:

> (ii) … that Act may be amended, varied or added to by regulation made by the Government for the purpose of–
> (aa) implementing such obligation or of enabling any rights enjoyed or to be enjoyed by Gibraltar under or by virtue of the Treaties to be exercised; or
> (bb) dealing with any matter arising out of or related to any such obligation or rights or the coming into force or the operation from time to time of matters falling within the Treaties, and such amendment or variation may include such repeal of the provisions of that Act as is necessary to give such effect.

So this is something which, in EU terms and in Treaty terms, has already existed, Mr Speaker.

The other point was the IMA. We are conscious of his advice to the Government to be cautious about it. We have been. That is why the way it is drafted … and the powers which will be bestowed on the IMA will be powers which the Government of Gibraltar will do.

There is also this reference which the hon. Member made, which is in the UK legislation that will appoint people who need to know about the conditions on Gibraltar. Similarly, there is also the same phrase used in relation to Scotland, to Wales and Northern Ireland, to the devolved administrations which will also be affected by the IMA.

Those are, I think, the only questions or points of clarification which were asked, Mr Speaker, so I once again commend the Bill to the House. *(Banging on desks)*

Mr Speaker: I now put the question, which is that a Bill for an Act to implement, and make other provision in connection with, the agreement between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union which sets out the arrangements for Gibraltar's withdrawal from the EU, and for connected purposes be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The European Union (Withdrawal Agreement) Act 2020.

COMMITTEE STAGE AND THIRD READING

European Union (Withdrawal Agreement) Bill 2020 – Committee Stage and Third Reading to be taken at this sitting

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

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

In Committee of the whole Parliament

European Union (Withdrawal Agreement) Bill 2020 – Clauses considered and approved

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

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to move that the House should resolve itself into Committee to consider the following Bill clause by clause, namely the European Union (Withdrawal Agreement) Bill 2020.

Clerk: A Bill for an Act to implement, and make other provision in connection with, the agreement between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union which sets out the arrangements for Gibraltar's withdrawal from the EU, and for connected purposes.

Part 1, clauses 1 to 3.

Mr Chairman: Part 1, clauses 1 to 3, stand part of the Bill.

Clerk: Part 2, clauses 4 to 6.

Mr Chairman: Part 2, clauses 4 to 6, stand part of the Bill.

Clerk: Part 3, clauses 7 and 8.

Mr Chairman: Part 3, clauses 7 and 8, stand part of the Bill.

Clerk: Part 4, clauses 9 and 10.

Mr Chairman: Part 4, clauses 9 and 10, stand part of the Bill.

Clerk: Clause 11.

Hon. K Azopardi: I gave notice, Mr Chairman, that I was moving an amendment by introducing a new subclause (4), in the letter that I circulated earlier today. I will just read it, for the record:

To the extent that any power to make regulations under this section may be exercised in a manner to allow the making of decisions which would deprive or limit any person's rights such as these existed prior to the commencement of those regulations, the said regulations shall contain provisions for or in connection with appeals against or reviews of decisions of the kind described in the regulations.

Mr Chairman, I just explain that this clause can impact on the accrued rights of people in terms of their status of entry and residence into Gibraltar and there is a comparable provision in the UK legislation, not exactly the same but that implies that regulations will be made that provide for rights of appeal of people, and this is an attempt to ensure that there is an element of due process and people have rights that they can trigger if indeed their rights are affected.

Hon. Chief Minister: Well, Mr Speaker, the Government has already indicated on a number of occasions, indeed since the first moment that the results of the referendum came in, that we have absolutely no intention of affecting individuals' accrued rights. Indeed, even when this was a live issue in debate in the United Kingdom, the Government of Gibraltar was saying in Gibraltar we will not affect the accrued rights of individuals.

The position broadly is there are those who have already acquired rights before the departure of the United Kingdom from the European Union and those, under the withdrawal agreement, now have those rights recognised going forward under the agreement.

Our view was – and I think hon. Gentlemen would agree with us – that even absent the withdrawal agreement there were rights which individuals had acquired, those which we call the accrued rights, which could not be then stripped from them by one government or another. And our attitude is going to be that – namely that we are not going to do anything to strip people, who will have acquired these rights before our legal departure from the European Union, of those rights.

If we were to do so even inadvertently, because it is not our intention to do so or to use any such power in that respect, then our view is that there are already mechanisms which provide for appeals both under the provisions of the agreement itself – remember that there are committees and there are appeals through committees which eventually get through dispute resolution procedures under the committees – and indeed even in our courts people could challenge the Government if we were to affect their accrued rights, without our having to create new specific avenues of appeal.

Therefore, although we are not with the hon. Gentleman on his amendment, we are not with him because we believe that these avenues already exist, not because we think that there is a need to save the Government from challenge in respect of denial of accrued rights, because it is the Government's stated intention inside and outside of this House that we should not affect the rights of those who have accrued or acquired such rights before our departure from the European Union.

Broadly, Mr Speaker, those are what are known as the stock of individuals, those who have acquired those rights before, and, for all the reasons that we have set out our desire that we were not leaving the European Union, we think those individuals should not have their rights affected and therefore we agree with the sentiment but not with the mechanism that the hon. Gentleman is proposing.

Mr Chairman: The Hon. the Leader of the Opposition?

Then the House should vote on the amendment. Those in favour?

Hon. Chief Minister: If it helps the hon. Gentleman, Mr Chairman, what we are saying is, apart from our good intentions, they are protected by the Treaty. The withdrawal agreement is a Treaty, it is a new Treaty, and it provides for the preservation of these accrued rights.

The hon. Gentleman knows I made the point earlier … He said that some things had been achieved for frontier workers which had not been achieved for British Gibraltarians. Well, those things have been achieved for Gibraltarians. The withdrawal agreement is entirely reciprocal; whether he accepts that or not, the mechanisms for enforcement of those protections are provided for in the Treaty. There is the international right in treaty; there are the existing rights under our laws if somebody wanted to take a national legal measure.

So I think we are all agreed as to the sentiment of not wishing to deprive anyone of their accrued or acquired rights; we are just not agreeing that this mechanism is required for that purpose because there is a higher protection in treaty law and there is already existing protection in national law.

Hon. K Azopardi: Mr Chairman, I am not withdrawing the amendment.

I hear what the Hon. the Chief Minister says as to their sentiments and their good intentions, but I reiterate there is a similar, although not same, provision in the UK Act and we think it would be better practice not just to rely on good intentions but simply to record in legislation what it should say. That is the reason we are putting it, and obviously we understand his stance.

Hon. Chief Minister: Mr Speaker, we are not saying that people should rely on good intentions. We are saying that our good intentions are an indication of what our actions are going to be, that there is treaty law protection and that there is existing national law protection and that this is simply not necessary. For that reason, we will not be supporting the amendment if it moves.

Mr Chairman: The House will vote on the proposed amendment. Those in favour? (**Several Members:** Aye.) *(Interjections and laughter)* Those against? (**Several Members:** No.) Is the hon Lady voting in favour or against? (Hon. M Hassan Nahon: Against.) Against.

Clerk: Original clause 11.

Mr Chairman: Clause 11 stands part of the Bill.

Clerk: Clauses 12 to 16.

Mr Chairman: Clauses 12 to 16 stand part of the Bill.

Clerk: Part 5, clause 17.

Hon. K Azopardi: Mr Chairman, I have put forward an amendment here to introduce a new subclause (6), as follows, to add to this clause:

but regulations under this section may not impose or increase taxation or fees, make retrospective provision, create a relevant criminal offence establish a public authority or affect any rights under or provisions or effect of the Gibraltar Constitution.

Mr Chairman, in putting this forward I repeat, as I did in my original contribution, that some of this exercise is because we have on this side also analysed the differences with the UK legislation, and when you get to the English equivalent of this legislation, which is at section 18 of the UK Act, it is very clear that there is a comparable provision.

I heard the Chief Minister's contribution to the main Second Reading, where he said they have no intention of introducing regulations – I think that is what I heard, that they have no intention to introduce legislation – to increase taxation or fees or make retrospective provision or create a relevant criminal offence or establish a public authority. Well, let me say that clauses draft amendment 6(a) to (d), which precisely does all that, is word for word the terms of the English legislation.

Just to explain because he addressed specifically subclause draft 6(e) about affecting the rights and provisions or the effect of the Gibraltar Constitution, let me say that as a constitutionalist I would tend to agree with him that of course this is possibly an unnecessary provision, but the reason I drafted it that way is that the English equivalent of this provision at (e) then makes reference to the Human Rights Act. That is the reason, although I appreciate that the Human Rights Act does not have the same standing as the Constitution. But I would say that in terms of (a) to (d) it is carbon copy what is provided by the UK legislation, and given that the Government has stated that they do not intend to do that, we would commend the amendments on the basis that the statutory protections should be there, at least insofar as (a) to (d) are concerned.

Hon. Chief Minister: Mr Chairman, for the reasons that have already been set out by me at Second Reading, we are not going to accept this amendment. We have absolutely no intention of doing these things, but the Gibraltar context is different to the United Kingdom context and we are advised that we should have this power. In other words …

The hon. Gentleman should know this is not a ministerial desire not to have our power curtailed in this way; this is the advice that we have received in the context of potential that there may be a need to move quickly to deal with issues, for example, that relate to state aid and which might be interpreted as having those effects. But there is absolutely no intention whatsoever. We will resist doing any of these things by regulation, and if we have to do them we will seek to do them by primary legislation. The House has my undertaking in that respect because I would be very uncomfortable unless it were absolutely necessary to do any of these things by way of primary legislation.

Mr Chairman, if moving his amendment has achieved anything, it has achieved that we have given the House that undertaking that we will be very careful to act in a way that is contrary to that undertaking.

I cannot see us creating a public authority or indeed a criminal offence by regulation. None of our Ministers would see that and think we need retrospective actions as something that should happen by way of regulation. Taxation and fees are issues which are often dealt with by way of regulation, but if they are related to the EU they tend to be issues relating to state aid, so we would want, probably, if at all possible, to do them by way of primary legislation. The House has my undertaking in that respect.

He is right, Mr Speaker, that he is wrong in his 6(e), because it is possible, if you take a power to amend a primary Act by secondary legislation, to amend something like the Human Rights Act, but it is not possible by secondary legislation to amend or affect a Constitutional right. Therefore, 6(e), in my view, does not make any sense in the context of a constitution, although it does make sense in the context of an Act.

And so, Mr Speaker, for those reasons I think the House now, thanks to his amendment, understands the intention of the Government very clearly and has the benefit of the undertaking I have given, but also should know that we will not be supporting the amendment if he moves it.

Hon. K Azopardi: Mr Chairman, I am going to move the amendment.

In terms of (a) to (d), could the Chief Minister enlighten the House as to who gave the advice that we should not have the protections in relation to (a) to (d), which would be a different statutory position than they do have in the United Kingdom?

Hon. Chief Minister: Mr Chairman, the advice, which therefore becomes a policy decision, comes from those drafting the legislation, on the basis that, for example, the Interpretation and General Clauses Act power that we have today – which we have had to use and hon. Members opposite have used when they are in government – has not been curtailed in this way.

The United Kingdom does not have that power, and so when they have created the power, because of the debate on the Henry VIII powers that they have had, they have curtailed it in this way. We have not had to be curtailed in the past in the exercise of the power and successive Governments have not fallen into these traps, although I do recall, I think, on one occasion there was a regulation to introduce a tax, which I spoke against from the Opposition, and all of the arguments about why I was wrong and the GSD were right are set out, Mr Chairman, in a speech by the then Chief Minister, Sir Peter Caruana.

But I can repeat again, Mr Chairman, that it is not our intention to do any of this, but the power that we have taken forward is the power that has been exercised scrupulously and carefully by successive administrations in Gibraltar since the late 1980s and which the United Kingdom did not have.

Mr Chairman: The House will now vote on the proposed amendment by the Leader of the Opposition. Those in favour? (**Several Members:** Aye.) Those against? (**Several Members:** No.)

Clause 17 stands part of the Bill.

Clerk: Clauses 18 to 23.

Mr Chairman: Clauses 18 to 23 stand part of the Bill.

Clerk: Part 6, clauses 24 and 25.

Mr Chairman: Part 6, clauses 24 and 25, stand part of the Bill.

Clerk: Schedule 1.

Mr Chairman: Schedule 1.

Hon. K Azopardi: Mr Chairman, I have given notice that in Schedule 1, which is headed 'Regulations under this Act, we seek the insertion of a new clause to 2(a) as follows:

The regulations made under this Act shall not be brought into effect unless they have first been laid in draft in Parliament and been approved by resolution or motion of Parliament before their coming into effect.

Mr Chairman, I explained in my original contribution to the Bill why we say this is important. I do not intend to repeat that ground in any length.

The only answer that has been attempted to be given by Government is this reference to the provision existing in the Interpretation and General Clauses Act at section 23, which provides for that. I would say, though, that of course that historic power does exist of a very wide nature, but in drafting this legislation – which the Government has itself remarked on – based on the UK legislation, it remains the case that in not having a provision that subjects the regulations to be submitted in draft to this Parliament for approval, that we are out of step with a more modern practice, which is to recognise the parliamentary importance of the institutions, as they do in the UK, where the House of Commons must first receive regulations and approve them, and so must the devolved parliaments in Scotland and Wales and indeed now Northern Ireland.

We would suggest when we put forward this amendment that, despite the provision in section 23 of the Interpretation and General Clause Act, it is important in the context of the very wide powers that are being given to Ministers – because they are very wide indeed – that this more modern version adopted in the UK, which will not make the institution of government grind to a halt but merely respect a separation of powers between the legislature and the executive – is adopted in Gibraltar as part of the statute as well.

Hon. Chief Minister: Well, Mr Chairman, for the reasons that we have given – not that we have attempted to give, but the ones that we have given – we are not going to support the amendment.

The reason is that this power is much less wide than the power that they exercised for 16 years under the Interpretation and General Clauses Act and indeed that has been there since the late 1980s. That was a power in effect at large because we were becoming members of the European Union. Anything could come from the European Union and the decision as to whether to make the change by primary legislation or by secondary legislation was a matter for a policy decision of the Government at the time.

This is a much narrower power. This is a power only to do things necessary and exigent on departure, and so therefore it is narrow as to timescale because as we leave, there will be fewer and fewer things which are relevant, whilst the other power was much wider. All of the matters that were coming to Gibraltar from the EU were dependent on whether or not they might be implemented by regulation.

Mr Chairman, I am a little surprised to hear the hon. Gentleman refer to the 'much more modern' practice that is being adopted in the United Kingdom. In the United Kingdom, as I told him before and he will know, these powers have been referred to as Henry VIII powers. In other words, they are not being referred to as modern – they are being referred to as medieval by those who are having the debates. So I put it to him that he is wrong in seeing these powers as modern. They are actually not modern, but in modern times they have been exercised carefully and with care generally by all administrations that have had the benefit of them in Gibraltar under the Interpretation and General Clauses Act there is no reason to think that this administration, reluctant as it is to leave the European Union, will therefore implement the necessary instruments for departure in any way which offends any of the other legal provisions that hon. Members might spot, or other sensitivities they might spot if we let them have these regulations in draft – something that they never let us have when they were in government or indeed we never let them have when we were in government, exercising the Interpretation and General Clauses Act power.

But there is also an important logistical difference. The United Kingdom Parliament is in permanent session, so you can lay something overnight in the Parliament and you can then take 72 hours for people to comment and you can then proceed to make it a statutory instrument, which is the equivalent in the United Kingdom which takes effect. We are not in permanent session, so something has to be done in the three weeks, for example, in any month, and we

tend not to be in session. Then this power would mean that we would not be able to do things for another 21 days, for example.

So there are very good logistical reasons as well as legal reasons why we should not agree to the proposal that the hon. Gentleman is making, although I insist that we have no intention of using the powers provided for to do anything other than is absolutely, unfortunately, necessary to give effect to those parts of our obligations as require legislation to ensure that we leave the European Union in an orderly manner.

Hon. K Azopardi: Mr Chairman, what I meant by modern, by the way, is not that… I understand that they are referring to the debates on Henry VIII powers, but sometimes old things do not go out of fashion, they become retro and once again in fashion, and it just responds to.... What I meant by 'modern' was that it responds to the more modern grappling of the need to ensure the proper separation of institutions and that the institutions function in a good way.

We are going to, in a different place and at a different time, have a debate on that in Gibraltar – at some point soon, hopefully – in respect of how we improve and modernise this Parliament. In the context of that, it struck me and strikes Members on this side that it is important for there to be a curtailment of the wide powers of regulations so that this House can fulfil a better role of scrutiny by contributing any concerns it may have on draft regulations before they are brought into effect.

I hear what the Chief Minister says about the Parliament not being in permanent session, which is something that maybe at some point we also change, but that aside, there are mechanisms in the UK legislation that went through, as part of the Withdrawal Agreement Act, in respect of the regulations, of two types. So there are provisions in respect of the regulations that say that regulation should not take effect unless it is approved by Parliament, and that is generally the provision that is preferred in the UK legislation. There are also provisions, more rare ones, in the same Act which say that there can be regulations that are brought into effect but then they cease to have effect if they have not subsequently been tabled and approved by a resolution. That would meet the Chief Minister's concern if that was his preference. It is not our preference. Our preference is that we adopt a more liberal view of the curtailment of powers of the executive and that is the reason that we put it forward, because we think that it would be better practice for it to be introduced.

Hon. Chief Minister: Mr Chairman, unfortunately a lot of the things that the hon. Gentleman is talking about with which I agree are not for this debate; they are for the debate on parliamentary reform, a debate that, as he says, I hope we will be having soon. But we cannot make legislation assuming that we will agree that the Parliament will be in permanent session and that that will happen at any time soon. So we cannot hypothecate this Bill to what we might agree in future and how we might then implement it, and as for a different permutation of a clause, Mr Chairman. I think it is too late in the day for us now to consider that.

I think that the important thing they need to do is to exercise their role to scrutinise legislation and regulations as they emerge, and if they feel that there is a reason to move a motion to amend a piece of regulation they should move those motions whether or not they talk to us about whether they are going to have support for those motions – as is their wont, although they know that if they do not we will not support their motions.

So, Mr Chairman, we will not be supporting this amendment. We do not think that, having explained how we intend to exercise the power, there is any reason to be concerned about how the Government will be regulating to amend primary legislation for the purposes of our departure from the European Union. There is nothing to be concerned about there.

Mr Chairman: The House will now vote on the proposed amendment. Those in favour? (**Several Members:** Aye.) Those against? (**Several Members:** No.) Carried.

Schedule 1 stands part of the Bill.

Clerk: Schedule 2.

Mr Chairman: Schedule 2 stands part of the Bill.

Clerk: The long title.

Mr Chairman: The long title stands part of the Bill.

European Union (Withdrawal Agreement) Bill 2020 –
Third Reading approved: Bill passed

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to report that the European Union (Withdrawal Agreement) Bill 2020 has been considered in Committee and agreed to without amendments, and I now move that it be read a third time and passed.

Mr Speaker: I now put the question, that the European Union (Withdrawal Agreement) Bill 2020 be read a third time and passed. Those in favour of the European Union (Withdrawal Agreement) Bill 2020? (**Members:** Aye.) Those against? Carried.

Adjournment

Chief Minister (Hon. F R Picardo): Mr Speaker, I note the hour and I would now invite the House to adjourn to Wednesday the 22nd at 3 p.m., when we shall continue with Government questions.

I would simply say that we should all, I think, now be in time to make our next appointment before '*La Lola se vaya pa Londre*', which is where I think we are all going. So I move that the House should now adjourn until Wednesday at 3 p.m.

Mr Speaker: I now propose the question, which is that this House do now adjourn to Wednesday, 22nd January at 3 p.m.

I now put the question, which is that this House do now adjourn to Wednesday, 22nd January at 3 p.m. Those in favour? (**Members:** Aye.) Those against? Passed.

The House will now adjourn until Wednesday, 22nd January at 3 p.m.

The House adjourned at 6.43 p.m.