



# PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

**AFTERNOON SESSION: 3.30 p.m. – 8.02 p.m.**

**Gibraltar, Thursday, 10th December 2020**

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# The Gibraltar Parliament

*The Parliament met at 3.30 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*

## SUSPENSION OF STANDING ORDERS

### Standing Order 7(1) suspended to proceed with laying of papers

**Clerk:** Thursday, 10th December 2020. Meeting of Parliament.  
Suspension of Standing Orders – the Hon. the Chief Minister.

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

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

## PAPERS TO BE LAID

**Clerk:** (vi) Papers to be laid – the Hon. the Chief Minister.

5 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to lay on the table: pursuant  
to section 12 of the Public Finance (Borrowing Powers) Act, the revolving facility agreement for  
£500 million sterling for Her Majesty's Government of Gibraltar, as borrower, arranged by  
National Westminster Bank PLC and the Royal Bank of Scotland International Ltd, trading as  
10 NatWest International, with National Westminster Bank PLC acting as agent, dated 3rd December  
2020; the Income Tax (Allowances, Deductions and Exemptions) (Amendment No. 2) Rules 2018,  
published as Legal Notice 282/2018; and the Electric Vehicle Charger (Deductions) Rules 2018,  
which was published as Legal Notice 283/2018.

15 **Mr Speaker:** Ordered to lie.

**Clerk:** The Hon. the Minister for the Health Authority, Justice, Multiculturalism, Equality and  
Community Affairs.

20 **Minister for the Health Authority, Justice, Multiculturalism, Equality and Community Affairs  
(Hon. Miss S J Sacramento):** Mr Speaker, I have the honour to lay on the table a Command Paper

on a draft Bill for an Act to make provision in relation to domestic abuse and for connected purposes.

**Mr Speaker:** Ordered to lie.

### SUSPENSION OF STANDING ORDERS

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

25 **Clerk:** Suspension of Standing Orders – the Hon. the Chief Minister.

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

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

#### Ongoing negotiations for a future relationship with the EU – Statement by the Chief Minister

30 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I want to thank you and the House for its indulgence in recent months as we have conducted the detailed and intensive negotiations on our future relationship with the European Union. We have asked colleagues, on a number of occasions, to adjourn the House without dealing with business. We have been unable to deal with ordinary business on the ordinary timetable that we would wish to be adhering to and to the rhythm that we introduced after our first election nine years ago. The work of Select Committees  
35 has not been able to get underway in earnest, either. This is obviously something that we very much regret on this side of the House. Members are aware of the reasons for the need for such unusual and repeated adjournments. I am grateful to Members on both sides of the House for the latitude that they have shown us in that respect.

All hon. Members and all citizens will, no doubt, have been following the rolling news channels  
40 reporting on the state of the current negotiations between the United Kingdom and the European Union on ‘the future relationship’, as it is known. Given that we have always been clear in our views in this House – and the overwhelming result of the referendum in 2016 was certainly, if nothing else, very clear – I think it is equally clear that Gibraltar and its people would consider a no-deal outcome for the United Kingdom, and for Gibraltar, to be sub-optimal.

45 For Gibraltar, we are continuing to negotiate. The issues we are dealing with are as important as they are sensitive. I want to be clear that we have approached this from the point of view of not ceding on sovereignty, jurisdiction or control. We will not do so. It is also important that I should highlight that there is great complexity in the issues that arise, and that the complexity reaches beyond the issues that I have just referred to, of sovereignty, jurisdiction and control.

50 There are issues of great complexity in respect of matters of the future immigration relationship we will enjoy with the EU. Schengen is not a binary choice when you get into the details and weeds of it. There are issues of great complexity in respect of matters related to the future economic relationship we will enjoy with the EU. The Customs Union or a customs union, or a bespoke free trade agreement that suppresses or minimises the need for customs friction, is  
55 an extraordinarily complex set of issues. These are the things that relate to the potential for maximum fluidity and the things that we have to work on, as are matters relating to the level

playing field and non-regression in certain respects, and there is a balance of benefits and responsibilities that we have to undertake in respect analysing every step of these negotiations.

60 The reality, however, is that we are still talking. We will continue to do so, in order to reach an agreement, if an agreement is possible, until the last moment. We are optimistic that we will be able to reach an agreement, and we are optimistic that our negotiating partners desire the same outcome.

65 All of us are, of course, hostages of the history that has brought us to this moment. As is true in so many areas of international diplomacy, the past has long defined options for the future. But we are – at least on the Gibraltar side, which I speak for – inspired by the possibility that we may be able to deliver a result that itself delivers a better future: a future that does not condemn us to a worse relationship with our neighbours; a future that provides for the protection of mutual rights of enhanced mobility of persons and potentially also of goods.

70 We continue our exhausting work and we refuse to give up – there is too much at stake – because we have a stake and an obligation in respect of the development of this part of the world for our children and the generations to come. That means that we must be ready to seize the opportunities that this moment brings and to see beyond the past in order to stake a claim to that better future. In the event that we were not to reach agreement, we will have done as much as it is reasonably possible to do, and we will be ready for that undesirable eventuality too.

75 But let us be very clear that the very best contingency measures which we have in place will not equate to no change. Those contingency measures will also have to have a European dimension, despite our exclusion today from those measures announced by the European Commission, most of which are not relevant to Gibraltar. EU contingency measures will have to be bespoke for Gibraltar. We are discussing those issues also in the course of our negotiations.

80 Mitigation or no mitigation, there will be many and negative changes the day after we leave the EU with a deal, if we are able to do a deal. There will be many more, and more negative changes the day after we have left the EU if we do so without a deal, and they will affect us and those who come in to work here also. We will all suffer the consequences of leaving the European Union with no deal, if we are unable to find an agreement that sets out to mitigate those consequences.

85 The Deputy Chief Minister has made and issued a number of excellent Technical Notices which address these issues in a very clear and easily understood manner, for which I know the House will want to commend him. I know that he wishes, as I do, and no doubt all Members do, that his work in respect of the worst possible outcomes will all be wasted time.

90 To achieve that, we continue, in lock step with the United Kingdom, our positive engagement in the negotiations which relate to Gibraltar. We continue to plan for the worst outcome and we continue to negotiate for the best possible outcome. Remarkably, such is the politics of Brexit at the end of the second decade of the 21st century.

95 Additionally, in our bilateral relationship with the United Kingdom we have already announced the steps taken to preserve the market access between us and the United Kingdom and the arrangements in relation to health, education etc., which are so important to us. On those, we really have demonstrated the strength of the bilateral relationship between us in a way that many naysayers doubted when we initially announced how we saw the post-EU bilateral relationship developing. Her Majesty's Government of Gibraltar is indeed pleased with the manner in which those aspects of the relationship, post Brexit, with the United Kingdom have developed. The naysayers will be as disappointed as ever, but they will, no doubt, have moved on to naysaying pastures new, as ever.

100 Finally, Mr Speaker, the Deputy Chief Minister and I have been briefing Cabinet colleagues, the Leader of the Opposition and the hon. Lady throughout this process as often as we have been able to. I expect we will be asking to brief them again tomorrow on latest developments, which we expect and anticipate overnight.

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

**Hon. K Azopardi:** Mr Speaker, I am grateful for that Statement from the Chief Minister. Indeed  
110 he has been briefing us from time to time on matters, and the last time we spoke was about three  
weeks ago, so a new briefing would certainly be welcome in terms of us being updated on matters  
where we have given the Government space but are somewhat disconnected from recent  
developments. I am sure that if a week is a long time in politics, three weeks in the context of a  
post-Brexit negotiation on a future relationship will have seen plenty of toing and froing and  
115 plenty of developments that the Chief Minister will, I am sure, share with us in the detail that he  
can when we discuss it.

He has made a public Statement, which I welcome, and I want to ask some questions – mindful,  
of course, of the fact that there are sensitive negotiations happening.

He knows that he does have the support of the Opposition for a safe and beneficial deal for  
120 Gibraltar. Indeed, the desire for a new relationship with the EU is largely supported in Gibraltar,  
cognisant and consistent with the outcomes of the various votes that we have participated in. We  
will – and I have said so publicly as well – judge any deal that emerges on its merits. When and if  
a final agreement is reached and is put in front of us, then of course we will make a judgement as  
to whether, in our view, it is beneficial and safe for Gibraltar, but he knows that he does have –  
125 and we have said so publicly often enough – our support in obtaining a safe and beneficial  
arrangement for Gibraltar, a new relationship with the EU that does not involve any concessions  
on sovereignty, jurisdiction and control.

The hon. Member has spoken about the intricacies which are well beyond sovereignty,  
jurisdiction and control and in respect of immigration relationships and economic relationships,  
130 and I wonder whether he would be prepared, at least in public, to explain a bit more what he  
meant by those various intricacies that, at the moment, face Gibraltar in the various dimensions.

I wonder also whether he would clarify, in the context of an economic relationship and various  
options that might be available to Gibraltar in the context of this deal, or proposals that might be  
being discussed, whether he is consulting with the private sector and unions, in particular in  
135 relation to things like options in relation to the future trade agreement or a customs union option  
or a tailor-made customs union.

The hon. Member also says that he will negotiate until the last moment, and of course we  
support him in talking to the very last moment and exploring the possibilities of a safe and  
beneficial deal until the very last moment. I do not know, and perhaps the hon. Member would  
140 be prepared to say what the last moment is – whether he means the very last moment on  
31st December – but I suspect that is not the last moment, because everything that I have read  
suggests that the last possible moment to reach an agreement is somewhat removed from  
31st December because of the various ratification processes that need to be followed. I wonder  
whether he would indicate whether he has any visibility of what the last possible date for reaching  
145 an agreement is. I know that the UK has just gone back into talks with a tentative limit of Sunday,  
although I suppose that may be extended if everyone agrees, but it would be helpful to  
understand. We, on this side of the House, understand that often European negotiations go down  
to the wire. We would have preferred, of course – everyone – that we would have had clarity and  
a safe and beneficial deal by now, but in Europe often that is not the case.

150 But the Government can rest assured it has our support and the space that we have been giving  
them to try to secure the best deal possible for Gibraltar without our abandonment of the position  
that we will separately evaluate whatever emerges and that we have privately also communicated  
to him what we think the red lines are.

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

**Hon. Chief Minister:** Mr Speaker, I am grateful for the hon. Gentleman's remarks. He knows  
that we have tried to be in contact as often as is possible and relevant. One man's 'from time to  
time' is another man's 'as often as possible', and we do need to keep that in mind. If I may say so,

160 it is a better comparison than one man's terrorist is another man's freedom fighter. It shows that the relationship across the floor of this House is better than it might be in other places.

The fact is that he is right that a week is usually a long time in politics, but that it would appear that the Brexit negotiations are defying all the logic of politics, even that simple logic. When I see him – I hope tomorrow, because I have said that I expect developments overnight, and therefore  
165 expect to be briefing Cabinet colleagues and the hon. Gentleman and the hon. Lady tomorrow – a lot of what we will tell him he will not be surprised by, because it has been the same issue that we have been dealing with, and unfortunately we have not yet been able to make any progress that I have been able to report either to Cabinet colleagues or to the hon. Gentleman and the hon. Lady, to take their views on what the next iteration of the proposal might be. I very much regret  
170 that and I do wish that we had been able to move quicker, but the best negotiation for Gibraltar is not ever going to be the quickest negotiation for Gibraltar or the easiest negotiation for Gibraltar. For that reason, it is not that we have not wished to see him – and the hon. Lady – to give him a flavour of what is happening, it is that there has not been anything in detail to take his views on and to brief him on, and I would not want him to think anything else.

175 The hon. Gentleman has asked that I try and give him the details that we can. He should rest assured – and I will say here publicly, as I have told him privately – that we give them all of the details that we have. There is nothing that we are not telling – obviously – our Cabinet colleagues, and nothing that we are not telling hon. Members. Of course, the telling of what may be 30 hours of negotiation in 30 minutes of explanation and then a discussion cannot be the same as being in  
180 the room and cannot be that level of detail, and it is true that therefore hon. Members have an overview of the negotiations as much as Cabinet colleagues have an overview of the negotiations, but he should rest assured, as I am sure the hon. Lady will too, that we are not trying to in any way withhold detail in respect of what is happening in those negotiations, and indeed they are seeing the output – where there is output – of those negotiations and we are taking their views  
185 on that.

He tells us that he is giving us support for a safe and beneficial deal for Gibraltar. I would not seek his support for anything other than a deal that is safe or beneficial for Gibraltar, because obviously the opposite of that would be a deal that is unsafe and unbeneficial for Gibraltar, and on the many things on which we may be divided on the detail or on policy approach etc., if there  
190 is one thing that I am very clear on it is that the hon. Gentleman, the hon. Lady and the Hon. Deputy Chief Minister – each of them the leaders of the other political parties, apart from the Socialist Labour Party, which I lead myself – all of us, are interested in the protection and security of Gibraltar and the benefit of the people of Gibraltar, even though we might have different views, which is what a pluralistic democracy is all about. Therefore, I am grateful that he expresses the support that he is giving us in this way, and he would not expect me to seek his support for an  
195 arrangement that was not safe or beneficial for Gibraltar, because I would not recommend an arrangement that was not, in my judgement and in the judgement of my Cabinet colleagues, safe and secure and beneficial for Gibraltar.

The important thing here is that this should not just radiate around the principle of  
200 sovereignty, jurisdiction and control. That is one of the principles that we need to judge the element against, but the arrangements that we are making – and this is why I said to the hon. Gentleman and to the House that there are issues of immigration and there are issues of customs relationship ... Those issues are the live issues, because on sovereignty, jurisdiction and control we are all very clear what our positions are, but this is also a future trade relationship and therefore  
205 the complexity comes from the assessment of the immigration issues that arise and the customs issues that arise. Interestingly for Gibraltar, in photographic terms, what is being proposed – and this is not in any way a secret; this is to reflect the things that have been said publicly throughout this process – is almost a negative image of the relationship as it has been until now. Gibraltar has not been in the Schengen area in the period of membership of the European Union and since the  
210 Schengen area arose in the late 1990s, Gibraltar has not been in the Common Customs Union since 1972 when we joined the European Economic Community as it then was, and what is being

proposed is a relationship in relation to goods, because those are the two key things. Those are the physical manifestations of mobility, and what we are looking to ensure is provided for is mobility.

215 I know this is not a surprise. I am not saying anything new about the negotiation. I am just explaining that the negotiation's complexity arises not in relation to the issue of sovereignty, jurisdiction and control, the complexity of which is clear beyond peradventure and understood in our community; it is the complexity that arises in matters relating to the commerciality of the arrangements and the immigration circumstances which we are seeking to ensure apply in a way  
220 that delivers the maximum possible benefit, and in understanding the responsibilities that will come with it. All of these things can also have an angle which touches and concerns sovereignty, jurisdiction and control. So, all of that is connected, and that is the complexity.

The hon. Gentleman knows that we are in contact with the private sector in the context of discussions about the aspects of this which are commercial, and also with the unions, and indeed  
225 also with the cross-Frontier group that represents all of those entities.

The negotiation will be, as far as the Government of Gibraltar, not over until there is not a negotiating table to sit at. As far as the Government of Gibraltar is concerned, this is something that we want to get right, and there is no deadline to which we believe we must be made beholden. It is true that we will be leaving the European Union by 31st December *de facto*. We  
230 left *de jure* at the end of January.

The consequences of departure for Gibraltar are different to the consequences of departure for the United Kingdom, because of the example I gave earlier. The United Kingdom is in the Common Customs Union today. There will therefore be a physical manifestation of the end of the transition period in a way that there would not be for Gibraltar. So, just to put it into terms that  
235 people who may be watching on television may have heard other politicians in other jurisdictions say, we already trade on Australia terms with the European Union when it comes to goods. We are already in a WTO, almost, type relationship with the European Union when it comes to goods. It is our physical interaction in immigration that will change – because of the Schengen Border Code applying in respect of a third country rather than in respect of another Member State, where  
240 the Schengen Border Code still applies but applies in a different way – and in a metaphysical way because of the market in services, but we all know that the market in services is principally, for us, the market in services in the United Kingdom, and we are not seeking access to the market in services *simpliciter* in these arrangements that we are negotiating, as we have repeatedly announced.

245 So, for us, what we want to achieve – what we have always wanted to achieve – is to resolve these issues, at least in principle, with text stabilization of treaty text to follow as soon as possible thereafter, by 31st December, which is the date that is set in transition stone. But that is no reason why we should consider that there is not the space to negotiate thereafter, although that would be suboptimal because we want to achieve this in time, and I think all our negotiating partners  
250 want to achieve it in that time also.

Just in terms of where we are, today I suppose is D minus 21, and tomorrow, the 11th, will be D minus 20 – departure minus 20. What the United Kingdom has announced with the European Union is that by Sunday they will make an assessment of the negotiations – not that that is the day by which an agreement must be done, and not that that is the day by which the negotiations  
255 will end, but that they will make an assessment of the state of the negotiations on Sunday. If the negotiations are advanced or advancing, they may decide to continue negotiating. If the negotiations are not advancing, the parties may decide, in the context of what I might call the main UK-EU negotiation, not to continue negotiating. We will have to make a similar assessment, but we will continue to make those assessments always with a view that the glass is half full, to  
260 try to achieve a successful outcome to the negotiations before 31st December, if that is at all possible.

Mr Speaker, just as the hon. Gentleman reflected, I do think he knows, in the way that he expressed it, and I think demonstrated that we would all have wished to have been able to



265 conclude this negotiation favourably earlier. But, as I have said, I think it is clear that the best negotiation and the safest negotiation for Gibraltar is obviously not going to be the quickest or the easiest negotiation for Gibraltar, and that is why we continue at the table, optimistic, ready to continue the work to deliver a deal that works for Gibraltar.

**Mr Speaker:** The Hon. Marlene Hassan Nahon.

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**Hon. Ms M D Hassan Nahon:** Mr Speaker, on a point of clarification, I would like to enquire to the Chief Minister about the status of the ongoing negotiations regarding the Frontier between Gibraltar and Spain, and the status of preparations in the case of a no-deal Brexit scenario unfolding on 1st January.

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I would also like to take this opportunity to convey the electorate's strong desire for an agreement that will allow fluid Frontier flow, and that will allow good neighbourly relations and prosperity to come about in the new post-Brexit scenario that none of us desired. With this desire, I do wish to encourage the Chief Minister and his team, so that they may be bold, unerring and eventually successful in this existential moment for Gibraltar.

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Regarding the status of post-Brexit arrangements, we just found out in the last few days, via the press stories, that arrangements for a ferry to bring goods to Gibraltar in the event of a no-deal Brexit were near conclusion. I must say that this announcement caught me and many others off guard, as I, and I am sure most Gibraltarians, would have expected these arrangements to have been in place a long time ago, particularly when no deal was a real threat before the last extension of the negotiations. That is why we were led to believe, before the last election, that all preparations were in place for us to have a smooth transition into a hard Brexit scenario, which we have since found out was not exactly so.

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The business community continues to have great concerns regarding the flow of goods and the operational impact this will have on their businesses, concerns that they convey to me, and, I am sure, to most other Members of Parliament on this side of the House, and which I believe Government would do well to allay as soon as possible.

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Effectively, we are 72 hours away from the final deadline of final deadlines, or at least that is what we are being told to believe, despite the Chief Minister just saying that the consequences of us not being bound, perhaps, to this general deadline, but still I think we are all still asking ourselves, in the wise words of Winston Churchill, will this be the beginning of the end or the end of the beginning.

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In any case, Mr Speaker, we sincerely hope and wish all the best to the Government, so that we may secure the chance of a promising future for this community in the coming years.

Thank you.

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

**Hon. Chief Minister:** Mr Speaker, it was Churchill who dreamt of a united Europe to prevent the sort of difficulties that we saw in the 1940s, and that the hon. Lady should quote him is therefore apposite to all those of us who, like me at least, continue to be remainers in our hearts. But I want to deal with the substance of what the hon. Lady has said in relation to a number of the issues that she has raised, before I come to the issue of the deadline in respect of the negotiations.

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The first issue is that the issues that relate to Frontier flow are the issues that most concern us, and I am sure most concern businesses and individuals who live in this part of the world or do business in this part of the world, and they are what are spurring us on. So, I am honestly, genuinely and sincerely grateful to the hon. Lady for her words of encouragement in the context of the negotiation. She should have absolutely no concerns that we will be bold and [inaudible] and, I sincerely believe and I sincerely hope, eventually successful. It is my most ardent hope to

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315 be able to deliver a successful outcome to the negotiations that produces a safe and beneficial  
deal for Gibraltar, and that is what the Hon. the Deputy Chief Minister, myself and other members  
of the negotiating team, in particular the Attorney General and the Financial Secretary, and all  
Cabinet colleagues will want to see.

On the issue of the press statement on arrangements for the ferry, I must say I am surprised  
320 that the hon. Lady was caught off guard. There have been similar arrangements made before and  
there have been similar press statements made before. The deadlines have changed. We were  
ready for a departure from the European Union on 31st October, without a deal and without a  
withdrawal agreement, last year. We moved forward to a departure from the European Union not  
on 31st December by the end of the year, but 31st January this year – but by then we had a deal.  
325 So, the arrangements in respect of a ferry cannot have been ... and I am sure the hon. Lady did not  
pretend to suggest this, that we should have had a ferry chartered before the date when it was  
going to be necessary, because the chartering of a vessel is an extraordinarily expensive concern,  
especially if we were to charter it exclusively for Gibraltar, and we would have been accused of  
not employing taxpayers' money in the best possible way if we had done that.

330 The next deadline for which a ferry has to be available is the end of this year. That is the next  
opportunity for a, what you might call, 'cliff-edge' Brexit without mitigating arrangements or  
contingencies put in place, which might require, because of some aspects of some foods from the  
United Kingdom arriving in Gibraltar, that there should be different routes into Gibraltar as  
alternatives, and for them the ferry will be in place, if it is necessary, but it would not make sense  
335 to have arrangements in place.

So, when the hon. Lady says that we should have had those arrangements in place long, long  
ago, we did have them in place long, long ago when the cliff edge was last potentially going to  
affect us, and we would have had them in place if the cliff edge had come forward. But I am sure  
that what she wanted to ensure had been the case is that, in the event of the cliff edge happening  
340 on 31st December, even though we might continue negotiating etc., we will have in place those  
arrangements and that ferry will be in place. That is what we have told the public: that they will  
be in place for that date. I think that is the only sensible way to deal with this issue to ensure that  
we make the best possible use of the public finances of Gibraltar, so that we are not chartering a  
ferry before we need it and we are not entering into arrangements short of charter in relation to  
345 a ferry before we need to have those arrangements in place.

The hon. Lady tells us that she is contacted by many businesses and the Government would do  
well to allay their fears. I can assure the hon. Lady that we are contacted either by the same  
businesses or by the same and more businesses, who are raising with us, and in particular with  
the Deputy Chief Minister, detailed concerns and general concerns, and that we are allaying their  
350 fears where it is possible to allay their fears. But the one thing that we will not do is to veneer over  
what Brexit means. There are some things that it is simply impossible to provide against. You  
cannot contingency plan for some of the things that will be lost as a result of a deal Brexit or a no-  
deal Brexit. There are some things it is just absolutely impossible to replace, other than through  
membership of the European Union. Most businesses that have been in touch with us I think have  
355 understood what we are doing in respect of their particular areas of concern, or, where it is  
impossible for the Government of Gibraltar unilaterally, or, together with the United Kingdom,  
bilaterally to be able to provide for them.

The hon. Lady says we are 72 hours away from the final deadline. I think she has heard me say  
that the wording of what the Rt Hon. the Prime Minister and the President of the European  
360 Commission said yesterday, about Sunday, was about the negotiation; so it is about an assessment  
of the state of the negotiations on Sunday, not that the negotiation must end on Sunday, although  
I think there are circumstances in which the negotiation between the UK and the EU may end on  
Sunday, but it may continue if progress has been made.

Mr Speaker, I hope that that has dealt with the issues the hon. Lady has raised. Of course, she  
365 knows that if she has any other concerns she can raise them with me privately.

I hope to have developments to report to Cabinet colleagues and to the hon. Gentleman and to the hon. Lady tomorrow.

**Mr Speaker:** Does any other hon. Member wish to ask a question?

**New £500 million facility with NatWest –  
Statement by the Chief Minister**

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

**Chief Minister (Hon. F R Picardo):** Mr Speaker, I do feel I am putting on and taking off my mask more than the Phantom of the Opera in the play that is, unfortunately, not running at the moment.

375 I have, today, laid before Parliament a copy of a new £500 million credit facility agreement with NatWest International Gibraltar. NatWest UK, who were brought into the transaction by the local NatWest team, is also a party to the agreement. The facility is split equally between these two lenders. As I make this address, we have published a joint press release with NatWest, where I have recorded my gratitude for their continued support.

380 As hon. Members will know, I have written to Mr Speaker to explain that, at NatWest's request, the agreement that I have laid before Parliament has had the lender's signatures and personal details redacted.

385 This facility is the fruit of our strong and ever-growing relationship with NatWest, one that has been nurtured by Government and the bank over recent years. It is rewarding to see that a bank that has stuck with us continues to demonstrate its commitment to our community at a time when, undoubtedly, we need it the most, as do most communities around the world. This is not a bank that has been ready to lend us an umbrella in the blazing sun, only to take it away in the rain; it is a bank that has been there when the hail has started and the rain has fallen. The cold November rain has not broken our relationship; it has sealed it.

390 I would like to take the opportunity to thank Andrew McLaughlin, Gordon Paterson, Kim Slater and Mark Stevens, all of whom have made an invaluable contribution towards closing this deal. Through this facility, NatWest have cemented and reaffirmed their commitment to the local community.

395 As I say in our joint press release, this facility marks the turning of a new leaf. We hope that, as we see mass vaccination in 2021 raise the prospect of an imminent economic and health recovery, we can use this facility to kick start our economy back to normality.

400 This facility is backed by the UK government's £500 million guarantee that was announced on 19th November. It is clear now, I hope, to all, that we have built an exceptional relationship with the United Kingdom since we took office, and it is at times like these when we can leverage on our relationship to obtain a timely facility on better terms than we would have obtained had we gone to the market without the backing of a guarantee from Her Majesty's Government of the United Kingdom.

405 The market conditions are right for public borrowing, for the right purposes, with interest rates at a record low 0.1% and with central banks seriously contemplating negative interest rates – I should pause there, simply to reflect that today, for the first time in 10 years, Spain has issued a bond at negative interest rates – and this makes our borrowing cheaper and more affordable than ever.

410 The guarantee is a show of support from Her Majesty's Government, and they have assessed the risk of the guarantee being triggered as very low indeed. I think it is important for the House to just pause and reflect on that. The guarantee is clearly a show of support from Her Majesty's Government of the United Kingdom, and they, in the United Kingdom, have assessed the risk of the guarantee being triggered as very low. That is exactly what they have said in the statements

they have made in Parliament in the United Kingdom. That is a demonstration that when we have been considered and X-rayed as a covenant by the United Kingdom and by Her Majesty's Treasury in the UK, they have decided that they are confident in our ability to bounce back after this pandemic and deliver on all our repayment commitments.

That is a hugely important note for this House. Too often, we hear about the ability of the Government to sustain its borrowing. Very often, the statements we hear are based on party political considerations, no doubt. But this statement, the statement by Her Majesty's Government of the United Kingdom, is not infected with party politics, and neither could anyone suggest that we might have knobbled Her Majesty's Treasury to get them to say what we might want them to say. And despite that, they are making a clear statement of confidence in our public finances. I think that is extraordinarily valuable for Gibraltar PLC. It is extraordinarily valuable for our community. It is extraordinarily valuable for us as a nation, genuinely hugely valuable for the whole community, putting aside party politics because these moments through which we are living are too important for party political games.

Therefore, I want to thank hon. Members opposite for having suspended what I have previously called 'politics as usual' as we have dealt with these extraordinary times, because our common interest as a people is to have got this right now. Arguments can come later, but right now, to have this facility on the back of the guarantee that we have secured is exactly what we needed and exactly the confidence that our economy needed, at exactly the right time, and it is objectively ascribed confidence.

Mr Speaker, due to our size and our talent pool, our economy is one that is agile and innovative. We can channel our productivity and reinvigorate, so that we see the levels of economic activity and consequent revenue that we saw before the pandemic come back as soon as possible. I am confident that we will be able to do so and that our economic actors will achieve that. The timeline of that return of activity, productivity and profitability will become clearer as the timeline for the full vaccination of our community and the rest of Europe and the world also becomes clearer.

It is important to note that this credit facility agreement has been entered into by Her Majesty's Government of Gibraltar. It is direct borrowing and it is in full compliance with our statutory borrowing limits, as I explained during the Emergency Budget session in March, where I set down our calculations and that we had the ability to borrow a further £½ billion. The Hon. Roy Clinton, the Opposition spokesperson for public finances, commented at the time that he was in agreement with these calculations. It is not often that I quote Mr Clinton with approval, but I will do so today. In the relevant extract of *Hansard*, Mr Clinton can be read to have said, that in terms of numbers and this is a direct quote:

in terms of numbers, the Chief Minister's calculations are correct in terms of his headroom. On a number of £2.4 billion or £2.5 billion of GDP he can indeed borrow 40% of that, which would give him £940 million. He says he has headroom of £500 million and I would agree with that calculation and can assure the House that that is correct.

Hon. Members will note, for the record, I was quoting Mr Clinton with approval because he was actually confirming I was right and quoting me with approval – but at least it is an opportunity to see the suspension of party politics actually in action and set out in our *Hansard*. Given the state of international politics today, we should perhaps permit ourselves a momentary slap on the collective political back of this place for having had the ability and foresight to permit agreement to break out when our nation most needed it. That is not to suggest that there are not some who might have wished it to be otherwise, Mr Speaker.

In relation to the facility itself, whilst the borrowing under this facility will be within our current statutory borrowing limits, the effect of this pandemic on the economy remains unknown and it may be that we have to adjust our borrowing limits or metrics at a future date. This is also something we highlighted at the time of the Emergency Budget. However, for the time being, I can categorically confirm that our intention is to stay within the borrowing limits. I am sure hon. Members will agree that that should be our aim.

460 Indeed, we can already see some signs of recovery as our income receipts move in the right direction, but there is still some way to go. With some sectors, such as tourism, heavily reliant on a return to normality, there continues to be a need for some Government intervention – and I will say something about that in a few minutes, Mr Speaker, in a further Statement. We are committed to supporting viable businesses that we expect to be able to hit the ground running as and when the crisis recedes.

465 Perhaps it might also be useful for me to explain, for the record and in *Hansard* – I am sure that hon. Members do not need me to do this for their benefit, but for *Hansard* and for the rest of the community – the difference between a credit facility agreement and a loan agreement. In a loan agreement, the lender requires that the full amount of the loan is drawn down and paid for, in interest terms, upon the signing of the agreement. A credit facility – which is what we have here –  
470 on the other hand, gives the borrower the ability to draw down on the facility in various tranches. That is to say the borrower only borrows the part of the facility that they need to use when they need to use it.

One of our first drawdowns against this £500 million facility will be used to repay our £150 million facility with the Gibraltar International Bank. As I announced in September, this has  
475 now been drawn down in full. As a short-term facility, its expiry falls in April 2021, and I can confirm that we will repay this facility in full before its expiry. But before we repay the £150 million facility with the Gibraltar International Bank, we will need to draw down to cover other expenses and a loss of revenue arising, because the costs of responding to this pandemic have now exceeded £150 million.

480 I have to reiterate that this is not a debt that can be stained with politics or partisanship; it is not a debt of anyone's making. I note the Official Opposition's concerns with the purposes to which the facility will be applied, in Statements that hon. Members made I think at the last session when we considered these matters. I want to make clear that we are fully committed to using the facility towards financially stimulating our economy, but we will do so when the conditions are  
485 right, so that the stimulation can have its maximum and most efficient impact.

We have recently published the second set of accounts for the COVID-19 Response Fund, up to 30th September 2020, which showed the cost of this pandemic running at £110 million, with BEAT running at a cost of £18 million. This has increased further since then, and it will continue to increase due to the other business support measures that I will announce later today. The COVID-  
490 19 Response Fund covers all costs of the pandemic, including recurrent costs such as PPE, additional staff costs such as the costs of taking on additional healthcare workers and nurses, and spending on furlough costs. It also covers capital costs, such as setting up the Nightingale facilities or spending on ventilators. The COVID-19 Response Fund is ultimately, of course, funded by borrowing specifically for the purpose of supplementing revenue that is lost or deferred to allow  
495 Government to continue to function and meet its recurrent and committed costs, and in great measure that will be the first utilisation of this money in replacing the borrowing from the Gibraltar International Bank by April. Additionally, we expect that we will be able to discern the right spending to target with these available funds in coming months.

I commend this Statement to the House, Mr Speaker.

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

**Hon. K Azopardi:** Mr Speaker, the Chief Minister has already remarked on the fact that we supported the economic measures that had to be taken at the time of the COVID emergency, and supported the Emergency Budget and the various steps that had to be taken at the height of the  
505 grappling by this community with the pandemic. In doing so, we also made very clear, in all our contributions, from the outset, back in March 2020, that we did not abandon our traditional positions and concerns in respect of the economy, borrowing or public finances, and we always reserved our position to revert to those and indeed to observe, as we have observed, in respect

510 of where the economy and public finances were when we arrived at the time of the COVID-19 emergency.

Having said all that, we did set aside those issues and recognise that there was a need to come together as a community, and supported the Emergency Budget and took a number of steps, together with the Government – less so now, but then, certainly at the height of the emergency  
515 between the period March and June, took quite a number of steps, not just economic ones but in respect of the COVID-19 public health aspects, together and hand in hand with Government – in acknowledgement of the need that there was to face down that challenge to the community together. I think we did that successfully, following, as we did, the policy that I have always set out that we would be robust but also constructive when we deal with issues of public interest.

520 In saying all that, of course we have also said that we support the fact that the UK government has provided a guarantee to enable the Government, if necessary, to borrow money on sovereign terms because it is economically in our interests for that to be the case. While we welcome that, and we welcome that it is possible so that we can all save money and the taxpayer can save money, it does not mean that we become cheerleaders for borrowing, because we have the opposite  
525 policy. We are cautious on the issue of borrowing and extending any pressure on public finances. That continues to be our view. We understand that it may be necessary, however, to continue funding the financial difficulties that are faced by Gibraltar, as indeed is the case with other governments around the world because of the COVID-19 emergency.

The Chief Minister says, and I noted from the purpose of the loan document, that the purpose  
530 is twofold, and I wanted to ask him a couple of questions in relation to that. I notice from clause 3 of the loan agreement that the purpose of the loan is twofold. One is to direct financing for the management and assistance of the COVID-19 emergency, but the other is to support any other capital expenditure, investments, public services or economic policy of the Government.

The two questions are these. He indicated to the House that the costs of the COVID-19 Fund  
535 have now exceeded, I believe, £150 million. Can he give us a more specific figure of where things lie now, a more public figure? And what is the date of the figure that he has, where the costs are now in excess of £150 million? Secondly, can he explain in greater detail the kind of purpose, what kind of projects they are envisaging directing the funding for? It is quite a wide clause under the purpose clause.

540 The hon. Member mentions that he might, at some point in the future, come to the House and seek an adjustment, may have to contemplate an adjustment to the borrowing limits, although he quickly then said that as a matter of policy he would like to keep to the borrowing limits, which we welcome, obviously. We would reserve our position in respect of any attempt to extend by resolution or by legislation the borrowing limits, and that is something we would have concerns  
545 about, given our traditional concerns that we have voiced about the extent of direct and indirect borrowing of the Government.

We make the point, as we have always made, that the money that is being borrowed now is hugely significant – (*Interjection*) Yes. We make the point – as we have always made, and certainly we have made recently, and the hon. Member Mr Clinton has made – that this kind of borrowing  
550 is very significant. It will be partly used to refinance the £150 million – that is clear from the Chief Minister’s Statement – but of course it adds another layer, £350 million, which provides the Government some degree of leeway, but combined with indirect borrowing makes the position rise significantly. We have always made this point, and we continue to make it, that this is not a licence now for reckless spending. The Chief Minister can take that point as he wishes. It is not a  
555 party political point. He might think it is a party political point, but it is a point made by someone who believes that prudence and caution in the context of the management of the public finances of a small community is what is desirable most of the time.

560 Lastly, Mr Speaker, can I ask the hon. Member to clarify one thing that, on a quick review of the loan agreement, struck us on this side of the House, which is that the termination date is defined to be three years. What is that intended to mean? That there will be a new financing package put in place at the end of that period, or that the Government intends ...? I suspect the

Government is not intending to repay these sums within three years – or is it that that is the intention, that this is a short-term facility because the Government does not envisage using the bulk of these funds and that these are emergency funds? Perhaps it would be useful to get some clarity from the hon. Member as to how he envisages that is all going to dovetail at the expiry of three years.

**Hon. Chief Minister:** Mr Speaker, I am grateful to the hon. Gentleman for his remarks, and in particular the tone of them.

The hon. Gentleman started by referring to the way that they had supported this society's response to the pandemic and the fact that the money that we are now seeing by this facility is available to this community, with the guarantee of the United Kingdom, is to be used for this society's response. I entirely accept the point that he is making, except that I would ask him also to take a step back and see how every society around the world is being afflicted by the same need to deal with the economic consequences of the pandemic. This is not an issue that is in any way exclusive to Gibraltar or is in any way something that arises from any aspect of the management of Gibraltar, what the hon. Gentleman calls the point of arrival at this crisis.

The United Kingdom is finding itself with, I think, its highest debt since the Second World War, or even higher, the most meaningful recession since figures were kept in the past 320 years. It is a salutary but important point to make that every society in the world is being afflicted in almost exactly the same way by the pandemic in the consequences that the pandemic is having on the economic activity of each of those nations. It may be that we have become almost inured to the meaning of what we are hearing, but the largest debt since the Second World War, the worst recession in 310 years – these things have a meaning, and not just in economic terms. There is a meaning here in human terms because the consequence is that many societies will have to suffer once again, perhaps in a worse way, the sorts of austerity that we have seen have a severe effect in nations around us. I think it is hugely important that we bear that in mind. The human consequences of the figures that we are hearing bandied about, particularly in international news broadcasts, are important to remember, and to understand, Mr Speaker that it is not just this society's response that we need to keep in mind; we need to look at how the whole of the world is responding to this issue.

I do appreciate that the hon. Gentleman has said throughout this debate – if I can go back to March when we had our first Emergency Budget – that the support that they were giving the Government was not in any way an abandonment of the position that they had taken in respect of the finances of Gibraltar. Neither has the Government asked them to abandon that position.

Mr Speaker, we have to argue over something at some stage. I do not think he was in this House, but as I analysed in the context of my Budget contribution, I think in 2019 before the General Election – or 2018 – the debate on the Estimates has radiated around the unaffordability of Gibraltar's debt since 1972. I was able to trace – and I commend to the hon. Gentleman if he did not follow it – how the debate has, unfortunately, become a little stale when all that you see is the same argument being put year after year, and all you need to do is change the names of the persons making the submissions against the persons in Government receiving the submissions, some of whom had been making their submissions on the opposite side before.

I would not, for one moment, want us to break the habit of a parliamentary lifetime by asking the hon. Member to abandon that point, but I think it is important that we do reflect that the hon. Gentleman's support is given with that caveat. I have absolutely no difficulty with that, in the same way as he knows that I am going to defend the position of the Government in the way that I have done, until that time also with the additional reflection that when the perfect storm has come we have been able to demonstrate our ability to deal with the financial consequences of the perfect storm with none of the wreckage to our collective ship, *HMS Gibraltar*, that some had predicted would afflict us in the perfect storm, that some people say they predicted. It would have been helpful if they had been in touch with the World Health Organization and warned them that this

was coming, but anyway – there are some people who believe that they are prophets in their own Twitter feed.

615 The important thing, in my view, is that when you look at the consequences of what the debate has been, when the issues in debate have manifested themselves in reality, Gibraltar has been able to respond even in the context of the worst perfect storm than we might have imagined. That is certainly the case in particular because of the guarantee that has been provided by the United Kingdom, because that brings the cost of borrowing down in the way that the hon. Gentleman has understood and reflected in his response to me, but also because the cost of borrowing is down generally. That is to say the cost of borrowing is down to a low which made borrowing affordable, even in the absence of a sovereign guarantee from the United Kingdom that made the borrowing even cheaper and more affordable, and I think that is important to reflect on also.

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625 But Mr Speaker, What I will say is that he is absolutely right to say that he supported us in a number of steps, not just in relation to the Budget but also in respect of the issues which related to the health crisis that we were facing, even in respect of the issues that related to the unfortunate need to affect people's civil liberties, in a way that I know he and I agonised over with my fellow Cabinet colleagues, at a time when national unity was essential. As I said in this House, and I have seen already reflected in the *Hansard*, I was ready to extend to him the possibility of joining us in Government as a Minister and I had cleared with the then Governor, Nick Pyle, that it was possible under purposive interpretation of the Constitution to have a Chief Minister and 10 Ministers, which would have enabled him to become a Minister without any Minister having to step down for the period that the Leader of the Opposition would become a member of the executive.

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635 Mr Speaker, if I may say so for a moment – because I think it is apposite that I should, given the reference he has made to those times – although he was criticised for that, he was absolutely right to take that stance. When he and I are retired from this place, and probably not retired from our other profession and we are still crossing friendly swords, and, I hope, enjoying the odd cup of coffee or tea, we will reflect that his actions at that time were absolutely the right response that Gibraltar needed and something for which I certainly will always be grateful, although no doubt we will go brickbats at each other at different times and on other issues.

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645 Mr Speaker, obviously the support from the United Kingdom government is important, not just for the reasons of the lower costs of borrowing, as the hon. Gentleman has said, but also because, as I said to him also – not trying to make a party political point, and I hope he does not take it that way – because of the demonstration of the confidence in our economy and our public finances and our ability to repay the amounts that may be taken pursuant to that guarantee. Absolutely I accept that he therefore should not be seen by anyone, because of that support, to become a cheerleader for borrowing, and we would insist that neither are we, however much they might like to characterise us in that way, because the one thing that is clear, if I may say so – again, I hope he does not take it as a partisan point – is that we believe that this is a demonstration of the fact that we have been right in the way that we structure Gibraltar's borrowing, because when the time came we have been able to take this additional borrowing in the name of the Government, supported by the United Kingdom government. The United Kingdom government would not have supported borrowing of a Government-owned company ... when the United Kingdom government is giving a sovereign guarantee in respect of a government, like the Government of Gibraltar. So, if I may simply gently say that I think this is a demonstration that we were right to have the headroom available on the Government's balance sheet, and not have all the borrowing that may have been taken for projects, which can live in the Government companies, as it does, in a way that gives the headroom available for the purpose of public borrowing.

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660 I think this dovetails also towards the important point of the borrowing limit. We certainly do not want to exceed the borrowing limit. We would only come here to exceed the borrowing limit with a resolution or a change in the Public Finance (Control and Audit) Act if it became absolutely necessary – and absolutely necessary, as far as we are concerned on this side of the House, can



665 only mean life and death. In other words – and the hon. Gentleman and I had this discussion I  
think in March, and I think we reflected here – if we are unable to finance the healthcare of our  
community in a way that can put lives at risk because we have a rule that says we cannot borrow  
more than 40% of GDP – which is a positive rule and was a rule that we made based on advice  
670 from the Foreign Office, which gave the same advice to all the Overseas Territories – and we  
cannot borrow an extra £10 million at that stage, at a time when it will come to life and death,  
then I think we would all agree that we should simply have a resolution of the House or amend  
our law. We will *not* come to this House to change the borrowing limits unless it is a question of  
life and death, and I think it is important that we should express that again. I have expressed it  
675 before, but I think it is important that we should express it in that way. But if it comes to life and  
death, I think every person in this community would expect us to come here and change the  
borrowing limit.

If I did come to change the borrowing limit or seek a resolution, it would not be the first time  
that it was countenanced. It would be the first time it was countenanced by us, but it would not  
be the first time that it was countenanced, because as I sat here, almost nine years ago to the day,  
680 after we were elected on the glorious dawn of 9th December 2011, the former Chief Minister, my  
predecessor and his former leader, in his response to my Statement at the Ceremonial Opening,  
told us – in a way that left us rather flabbergasted – that if they had been returned to office in  
December 2011, they were going to come to the House with a resolution to change the borrowing  
limits – it is all there in *Hansard*, Mr Speaker – not for reasons of life and death.

685 And so, Mr Speaker, I give him an undertaking and I give this community an undertaking not to  
pursue the course of action which the GSD – on the lips of its former leader it lies – was considering  
taking in December 2011. We will only come here to change the borrowing limits, in the context  
of this pandemic, if it is necessary as a matter of life and death, which is where I expect that they  
will give me their support, and indeed the whole of this community would give us their support.  
690 But that is not countenanced. Neither do I think it has to be countenanced. I think we will be able  
to continue with the course that we have charted out of the perfect storm once again into the  
sunny uplands of normality without having to change to the borrowing limits, as was expressed  
to have been countenanced by the GSD in 2011.

The hon. Gentleman asked me about the purpose, so before I move on to that point ... and  
695 when it comes to the point of arrival in the debate that the hon. Gentleman gently says he would  
want to have then, I will very much look forward to hearing from them, Mr Speaker – and I tell  
them so that they can prepare, because I think it is intellectually important that they should  
prepare. I very much look forward to hearing what it is that they would not have spent on: which  
of the homes they would not have built; which of the refurbishments they would not have carried  
700 out of the housing estates, which they sometimes tell us we have taken too long to do and  
sometimes tell us have been too expensive; which of the schools they would not have built; which  
of the health facilities they would not have developed. Those Mr Speaker are really the key factors.  
And who in the public service they would dismiss, or who in the public service should see their  
salaries decreased. Those are the key issues that, if we are going to have a serious debate about  
705 the point of arrival, we will no doubt, at that point, be dealing with.

In relation to the borrowing, the hon. Gentleman said to me, ‘You have got the direct financial  
costs of COVID-19 and you have got the other potential needs of the community,’ and as I said to  
him during the course of my introduction, we will be discerning where we think it is necessary to  
spend this money and we will be making statements and coming to this House for the purposes  
710 of the spending of that money.

The hon. Gentleman asked me what the specific figure was today, in respect of spending. The  
hon. Gentleman knows that the last published figure in the Gazette for the fund is £110 million.  
The last up-to-date figure that we have, that we would want to rely on, is £143 million as at the  
end of October, which I understand is the figure that we have already shared with them, and that  
715 therefore indicates to us, on our estimate, that when we do have the figures for the end of  
November it will be in excess, therefore, of £150 million. As he knows, we will be sharing those

figures, and I read into *Hansard*, I think in March, that we would be sharing those figures as we have them.

720 Mr Speaker, this is very significant borrowing if we draw it down, and we will be *very* careful with how we draw this money down. This money must be used very carefully. This must represent not just a turning of a new leaf in the context of the opportunity to see the back of the pandemic, as we hope we will, probably in tandem with the end of the financial year. I imagine that the first quarter of next year is the quarter when we expect to see vaccinations widely available in Gibraltar, and around Europe and most of the world, and therefore a return to activity; also, I think – we hope – the end of pandemic cost and therefore an opportunity to see the economy  
725 revitalise itself and therefore minimising any amounts that we would have to draw down, other than potentially to draw down to refinance where we are advised by the Financial Secretary that that is the prudent course to take.

Of course, therefore, we will not consider this credit facility a licence for reckless spending, because we have never done reckless spending and we would not want a licence for reckless  
730 spending. The hon. Gentleman knows that our view is that, in particular, the key factor in ensuring the security of our community is ensuring the affordability of our community, and with the United Kingdom's backing and support as the sovereign guarantee I think we do have an opportunity to put on an even firmer footing our public finances going forward. He is right to see that the term  
735 of the facility is three years, and indeed I think he will not be surprised to see that we would want to ensure that we are able to control the capital that we take under the credit facility so that we control how long we need to have that facility, and we would want to see it for as short as possible. These facilities are not usually granted for longer, they would require renegotiation in about that time, and that is another reason to be very cautious on how we draw down in respect of that  
740 money. He can be assured that the Government's efforts will be to reduce the amounts drawn down, and indeed to reduce the amounts taken in respect of the credit facilities as much as possible in the period in question.

**Mr Speaker:** The Hon. Marlene Hassan Nahon.

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**Hon. Ms M D Hassan Nahon:** Mr Speaker, my party and I welcome the news of the £500 million loan guarantee provided by the UK government last month, and there can be no doubt that the ability to borrow with favourable conditions at this time of international crisis is a positive step. Bringing down Gibraltar's cost of borrowing will benefit our economy and our finances, as well as  
750 provide us with a measure of financial security during the ongoing pandemic. I do sincerely hope that this Government does not see this as an excuse to borrow more and continue to spend on unnecessary vanity projects and costly maladministration. If it is to be believed that the state of our public finances was healthy and robust before the last election, with the much trumpeted rainy day fund in place, then it should not be necessary to borrow further at this time.

755 So I must say that I am very pleased to see that, as suggested by my party in a recent press statement, £150 million of the new borrowing is being put towards refinancing existing debt with the Gibraltar International Bank, but we would like to know if any other moneys will be destined to refinancing loans, and the exact details of those transactions. This I think would surely ease some of the pressure on the coffers that our children and our grandchildren will inevitably inherit  
760 in the future, and it is a smart financial move for Gibraltar.

The question is what will be happening with the £350 million, which will only be used in exceptional circumstances, as has been said. Considering vaccinations are already starting, what exactly would constitute exceptional circumstances in the eyes of this administration?

I also believe that it is great news for the electorate that this new borrowing will actually appear  
765 on the Government books, rather than obscured through a web of Government-owned companies, as is the case with other Government debt, and I would like to take this opportunity to, yet again, ask the Government to address the lack of transparency that surrounds parts of our public finances. This does not constitute playing political games, as the Chief Minister just advised

770 us not to do, especially if the Government does not believe that it, itself, was not playing political games when it made its own electoral campaign in 2011 out of scaring the community on the level of net debt accrued by the GSD at the time. The opacity of Government finances is one of the most significant failings of our democracy presently, and one that does need to be immediately corrected if this administration is to have any credibility on this matter.

775 It is important to be extremely responsible with our borrowing, at this juncture, for the welfare and the health of our citizens today and the ability of future generations to respond to crises like we have with the necessary resources.

Thank you.

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

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**Hon. Chief Minister:** Mr Speaker, so fair and foul a speech I have not heard. It started so well with the hon. Lady commending us, and then I am afraid that part of what she said almost reminded me of her as a candidate for the GSD, so I will try and take those things in turn.

785 Of course it is remarkably positive that we have the ability to borrow on these terms when these conditions have manifest themselves, but we only have the ability to borrow on these terms when these conditions have manifest themselves because we have not been spending on vanity projects, there is no costly maladministration, and we have rainy day funds. In other words, the analysis that is done of our ability to repay is an analysis of our public finances done by the professionals at the Treasury and done by the professionals who are lending the money, which leads to a conclusion that is different to the party political analysis that has been done by her – and that is obvious.

790 What are the other vanity projects? One has got to really try and break down some of the statements that hon. Members are making, because if the vanity projects are the homes that we built at Mons Calpe Mews, at Beach View Terraces, or that we are building elsewhere, the homes that we built at Charles Bruzon House or at Sea Master Lodge, we should tell those residents of those homes that hon. Members opposite consider them vanity projects and we consider them essential projects in the development of our community. If we consider the children's PCC or the new PCC to be vanity projects, we should tell the patients that the hon. Lady, or Members opposite – whoever; I do not want to ascribe it to them, if it is just her – consider those to be vanity projects and that the hon. Lady believes we should not have built them. If the hon. Lady thinks that the vanity projects are the new schools, the hon. Lady should tell the children who are going to go to those schools – instead of the schools that we inherited when we were elected, including Bayside, which she was constantly telling us we had to rebuild – that they were vanity projects and that we should not have spent on them, because it was just vanity to spend on them.

800 Which are the vanity projects, Mr Speaker? Hon. Members need to understand that the statements that they make are going to be analysed. Frankly, I think it is impossible to point to a vanity project. The hon. Lady has made the statement and she is responsible for it.

805 I genuinely do think that, in the approach she was taking when she started her statement, she had understood the importance of the availability of these funds demonstrating the opposite of what it is that she went on to analyse and what I have seen other Members and individuals say. I am almost put in mind of the rediscovery of Dr Livingston – or was it ...? I am getting the wrong literary reference ... *The Return of Sherlock Holmes*: 'Reports of my bankruptcy were greatly exaggerated.' The idea that we are somehow in a situation which is economically akin to bankruptcy when, in fact, there is no costly maladministration, the rainy day funds are still intact, there are no vanity projects and the external assessment of our public finances is that we can borrow £½ billion and not be at risk of being unable to repay that amount, I think speaks volumes. It speaks volumes because it is a little like a general election all over again – whatever is said in the campaign, there is a guillotine moment. Dominique Searle, when he was the editor of the *Gibraltar Chronicle*, called it the cold steel of election night, in 2003. There is that guillotine moment when an external assessment – in the context of an election, the electorate – is made,

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which delivers a result which is unquestionable. Here, the external assessment is by Her Majesty's Treasury and by a commercial lender who say yes, you can have this money, because I do not doubt that you will be able to repay it. Of course, the hon. Members have the difficulty that there is after a general election when you have lost – and I have lost plenty, Mr Speaker. There is no  
825 shame in losing a general election, because that is what democracy is about, but when you have lost, all of your arguments really need to be reconsidered, because the arbiter of argument, which is the electorate, has taken the view that you were wrong. And here, in the context of the things that the hon. Lady is saying, and others have said, the external assessment demonstrates that they were wrong.

830 Anyway, I am very pleased that at least we have a meeting of minds in respect of using part of the credit facility for the repayment of the £150 million that we have taken from the Gibraltar International Bank – not because the hon. Lady said it in a press release, unless she is suggesting that we are going to do it because she had a great idea that she put in a press release. I do not think that she believes that we make our financial planning decisions based on what is contained  
835 in the Together Gibraltar press releases. In fact, it would be remarkable if she thought that, because I should refer her to the statement I made in March in this place, when I had spoken to the Financial Secretary to the Treasury the night before I came to this place, and I said, 'We are taking the £150 million short term from GIB, but we expect to be able to repay it with the credit facility we will obtain, which will be supported by what we hope will be a UK sovereign guarantee.'  
840 So, perhaps I can put it to her that I am very pleased that she reflected in her press release the things that I had said in this House some months before. But I am sure that in the same way as we do not take our cues from her press releases, she will say that she did not take her cue from the things that we had said and that I have said in this House. Therefore, I am very pleased that she sees that this is a smart financial move, planning positively for the future of this community.

845 When she has asked me what it is that we would consider to be exceptional, given that vaccinations are starting etc., I am going to make a different Statement now that will deal with some of the measures that we will be providing going forward, because this crisis is not yet over and there are many businesses badly affected, and we have said that this money will also be used to provide fiscal, or rather financial or economic stimulus for Gibraltar as we go forward.

850 Certainly I will not accept the point – and this is where I think she also strayed back into the positions that she used to take when she was a candidate for the party of hon. Members opposite – that we have obscured borrowing through Government-owned companies, in particular when we have spent time with her and hon. Members opposite taking them through the structure of that borrowing, in my office, with flow charts, so that they understand it before  
855 we have drawn it down.

So, the hon. Lady will forgive me for saying that hon. Members in this House have had more transparency than has ever been the case in history, although they love the shorthand of saying that we are not transparent. I was never called, when I was a Member of Parliament, by the former administration ... Indeed, I do not think any Government, including the GSLP Government of 1988-  
860 96, ever called Members of the Opposition into the Chief Minister's office to give them a detailed breakdown, with flow charts, of how money was going to be borrowed in the corporate structure – yes, in the corporate structure, but not in a way that is not transparent. It is just not fair to say that. It is not fair. There are basic rules of fairness, and when you take somebody – the hon. Lady and Members – into your confidence, in your office, and you say, 'This is the structure  
865 of this borrowing,' it is not fair for them to then turn around and say, 'This is obscured and lacking in transparency,' because they have had more transparency than has ever been given before.

That they might have structured in a different way, I fully accept, that they say they would have structured in a different way, because it is not as if we invented borrowing through companies. Borrowing through companies was something that we found when we were elected. It was  
870 already in place, and we have continued it, yes, because we have taken the view that what was good for the goose is good for the gander, unless the goose can convince the gander that, either because one is a goose or one is a gander, one is better able to do borrowing through companies.

Mr Speaker, I am almost yearning for the opportunity for a normal debate in the old style in this House, because I think we can demonstrate that there is no obscured Government debt through companies – unless she is referring to the debt that related to the car parks company, for example, just to name one, which was the funding that we found in companies when we were elected; or the funding for the new power station in companies, which we found when we were elected. All of this in the party that she defended when she stood for election for the first time in 2015 – in 2013, sorry, because the hon. Lady stood in the by-election. So, I do not accept those points, and I do fear that it is just falling into the shorthand of politics, and that is not edifying.

Yes, the question of the debt level in 2011 was an issue in that General Election. It was an issue in the early days of social media. I said things which have been described as ‘grubby’ in this House by the former Chief Minister in respect of the Government debt. Let’s be very clear: the size of the economy in 2011 was very different to the size of the economy as we went into this pandemic, hugely different. We have grown this economy in the past nine years in a way that speaks for itself – almost, on average, 10% a year. You would not seriously expect the size of the debt to be the same in an economy at £2.4 billion, £2.5 billion, to an economy at £1.4 billion, so I think the hon. Lady needs to re-evaluate that argument in this respect, because of the questions which relate to borrowing through companies etc., all of the myriad questions that have been raised.

The hon. Lady has been here now for a number of years, but she needs to remind herself of the things that are said in the context of the Budget debate, because those are the defining moments of the debate when it comes to the economy and the public finances. I think it is important that she should refresh her mind in respect of some of the things that were said, in particular in March of this year, because, as we move forward, it is important for the purposes of the debate that we all have those issues fresh in our minds and we are not re-litigating the same points in the context of those discussions. My contributions to the Budget debate will hardly be described as being akin to *The Wealth of Nations* when it comes to being authoritative, at least by Members opposite, but if nothing else, the hon. Lady should read the Father of the House’s contributions, because those, I think, will demonstrate to her what I am saying is right.

**Mr Speaker:** The Hon. Roy Clinton

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

The Chief Minister will forgive me – I guess he suspects that I will ask for more technical points of clarification. I will try to go slowly, so as to make the experiences as painless as possible.

Starting at a macro level, I of course fully recognise the comments which the Chief Minister read back to me as to what I said was the Government’s available headroom in March, in terms of borrowing capacity based on 40% of GDP, as we knew it at that point in time, without the need to come back to this Parliament for a resolution. In that respect, I would like to make two points to the Chief Minister.

First of all, he really needs to keep an eye on GDP, because, of course, we had a level, I think, in 2019, of about £2.3 million or £2.4 million. That number, as we have heard, in the United Kingdom, in terms of their GDP, is probably going to suffer a reduction. So, in that respect, I would urge the Chief Minister to consider ... or I will perhaps ask him whether he has considered building in a margin of error in terms of GDP for the next couple of years, in that it may actually reduce; and if it reduces, proportionately, therefore, our headroom is going to reduce.

Of course, whereas I confirmed he had £500 million of capacity, it is not to say I suggested he go out and borrow it in full. I am conscious of the words I used at the time, which were ‘we need to do what is necessary’, and in that respect I would again urge the Chief Minister to consider what is necessary. Obviously what is necessary is, as he has already said, what we have spent to cover the necessary expenses of the COVID crisis and, of course, the shortfalls in Government revenue. I am sad to hear that we are already at a level, in October, of £143 million, whereas in the Emergency Budget, or the second Budget we had this year, it was projected to be at a level of £150 million estimated to 31st March next year. So, by his assessment it sounds like – and we will

925 hear, no doubt, shortly, about the BEAT 4.0 measures – we are likely to exceed £150 million and therefore will need to draw down additional borrowing to cover shortfalls.

In that respect, I am reminded of Sir Joe Bossano’s golden rule, which is not to borrow to meet recurrent expenditure – which he has accepted and we hear that, in this particular case, it has  
930 the same view that it is unwise to do that, and therefore the shortest possible time for which we have to borrow to meet recurrent expenditure would be best. In other words, we need to plug that hole first, before we consider doing anything else.

In that respect, Mr Speaker – as an aside, if I may – the Chief Minister made great reference to the position in December 2011. I would gently remind him that the limits he was referring to then  
935 were abolished by him in 2016, and those limits, again approved by the Foreign Office, were 80% of recurrent revenue from the previous years. It was two tests, and we are now left with 40% of GDP, which is obviously a much higher number. I think the Chief Minister has to accept that he is comparing apples and pears if he goes back to 2011, because we are talking about two different limits. In any case, in 2011 the gross debt level was £530 million, and the net debt was  
940 £290 million. I think you will find, Mr Speaker, from the official numbers now, that number is much higher, but we do not have that lower limit of 80% on recurrent revenue. And so, on a macro level we need to be conscious of the legal limit. Of course, there is provision in the Borrowing Powers Act for this House to exceed the limits by way of a House resolution, but the limit is now 40% of GDP, whereas before the limit that had been set was a much lower amount.

945 Going on to the the loan itself, it is important to get into the technical details of the loan. The first question I would ask the Chief Minister is ... He claims that the three-year period is actually desirable because he wants to use as short a period as possible and reduce the amounts taken, but I would suggest to him that perhaps it is the opposite view that would be preferable, that the Government should have the use of the facility for as long as possible rather than as short as  
950 possible. I would remind the Chief Minister that certainly as recently as last year the loan facility with NatWest for £75 million was for five years. Indeed, the facility with GIB was, yes, for one year. But now we have a three-year facility. In days of old, and perhaps in better days, the facilities we had with Barclays were certainly longer than five years and, by memory, I would say at least 10 years. So, to say that three years is a term we should be happy or comfortable with ... I would  
955 suggest that perhaps we would need, ideally, more time to consider what needs to be done, because on a three-year term, just on the £150 million which he proposes to use to refinance the GIB, we have to set aside £50 million a year to repay it. That is a lot of money per year to repay it. So I have to ask him again, is three years the term that he sought, or is that all that we could get? Ideally, in this position, we would have wanted anything between 10 and 20 years in a facility.

960 On the back of that, I must ask whether the UK sovereign guarantee is only for three years. Is it that the UK has given us a sovereign guarantee to match this facility agreement, which expires at the same time as this facility agreement, i.e. is only for three years? Or is it that the United Kingdom has generously given us, for example, a 10-year guarantee for any type of borrowing, of which this is the first type? It is very important that we understand that point, because it has very  
965 great significance for our public finances going ahead. I would ask the Chief Minister if he can tell the House whether the UK’s sovereign guarantee is only for three years, and that is it – i.e. that is all we are going to get from the UK, a three-year sovereign guarantee. I think that point is critical.

Also, I would like to know whether there are – and again, he may not have the information with him – any covenants attached to that UK guarantee of which this House should be aware.  
970 Again, that will have significance on our public finances going forward.

At the risk of being accused of doing the Chief Minister’s job for him, the one elephant in the room which nobody has mentioned so far is the rate. It has been said that it is a great deal, but we have not heard what the rate on this deal is. I am sure the Chief Minister will be able to give that information, because if he is talking of a loan which is backed by a UK government guarantee,  
975 you expect it to be a very fine rate. The rate that was obtained from NatWest last year was 0.875%, and that is just the margin over base. So, if base is 0.1%, the total interest cost is 0.975% per

annum. In the loan agreement which has been tabled today, the margin is worded: “Margin” means 0.35 per cent, per annum.’ That could mean there is a typo in here and it actually means 0.35%, or it is what we call, in banking terms, three and a half basis points, which is like 0.035%, which is then added to base, so on a base rate of 0.1% you would have a total cost of 0.135%. It is critically important to understand that, and I say that because you need to compare it to our existing borrowing.

The Gibraltar International Bank, who lent us the £150 million, their margin was 0.15% plus base, so the borrowing cost was 0.25%, or ¼% for the one-year facility. The NatWest facility at 0.875% plus the base for five years is 0.975%, and of course the NatWest facility of £500 million – you either read it as 0.35% plus 0.1%, i.e. 0.45%, or 0.135%. It makes a huge difference in terms of comparability. Obviously, if you are talking about three and a half basis points, then that is a very fine rate indeed over the market, and obviously then it makes sense to repay not just the Gibraltar International Bank, but the Chief Minister might even consider repaying the NatWest facility of £75 million. Again, it may be a bit rich to use money that we are borrowing from NatWest to repay NatWest, but they signed the loan agreements, and it would appear, on the face of it, that they are lending money to us at a much cheaper rate than we are borrowing from them, so I would encourage the Chief Minister to consider whether he would want to look at that. It is a five-year facility on a revolving basis, so in the same way as you do not have to draw down all of it in this facility, you can repay part of the £75 million facility and draw down indeed, after three years, if needs be, on the old rate. As I said, that is the elephant in the room and we need to understand and have clarity on what the cost of this facility is.

Talking about the cost, I did ask earlier this year about the £75 million facility. The Father of the House, in answer to Question 96/2020, when I asked him what the arrangement fee was for the £75 million facility with NatWest that is not in the agreement, told the House that the arrangement fee was £637,500. If NatWest are using the same formula or rate, on that basis £500 million would mean there would be an arrangement fee of £4¼ million. I would be grateful if the Chief Minister could advise whether that is or is not the case. Again, it goes towards the affordability of this loan. I must remind the House that the £150 million which is being repaid to GIB ... Obviously all we are doing is substituting one bank for another, and it will have to be repaid – not at the end of the year now, but perhaps at the end of three years – and therefore we need to find £50 million a year, based on these numbers, to repay that amount, and this is not a small amount.

Mr Speaker, those are the more technical questions that I have for the Chief Minister, and I think he will appreciate that they are important.

In terms of the use and refinancing, I have heard that he says, ‘I have to repay the International Bank,’ but again, depending on what the margin actually is, he may want to consider holding on to it, because it might be cheaper, and no doubt the Financial Secretary will advise the Chief Minister in that respect. The one thing, however, that, in terms of refinancing, the Chief Minister may or may not be able to do – and he has made a great play of the use of borrowing through Government companies – is refinance the £300 million mortgage, which is costing us 8.5% per annum. Ideally, of course, if that were on our books ... we refinanced it, but that cost will be with us for the duration.

I am heartened to hear him say that this is company borrowing, because he will remember how he tried to convince the community that this was an investment, whereas, as he said quite clearly minutes ago, this is borrowing. Everything that is borrowed through the company is borrowing. We can call it indirect borrowing, we can call it anything he wants, but it is borrowing nevertheless. And based on what he calls the company borrowing, there are at least the £300 million mortgages and the £165 million that has been raised recently – that is *at least* – plus, of course, financing the power station, about another £70 million, plus other bits and pieces. So, there is at least another £500 million, minimum, that has gone through a corporate vehicle, not to mention Credit Finance – another £400 million.

1030 We cannot just wash away the company borrowings: they are there. What we are looking at now is on-balance-sheet borrowing of the Government and its capacity to borrow more and at what rate. It is evident that although the Chief Minister will describe this as a great show of confidence in Her Majesty's Treasury in Gibraltar, the mere fact that he has had to go to the UK government to ask for this sovereign guarantee is in itself an indication that the Government does not have the ability to go to the market and borrow in its own name without the support of the United Kingdom.

1035 I think that covers all the points that I wanted to raise, and I look forward to the Chief Minister's answers in due course.

Thank you, Mr Speaker.

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

1040 **Hon. Chief Minister:** Mr Speaker, I thank the hon. Gentleman for his contribution. He is right that he has raised many more technical points than he has raised political points. He really, I think, does not want to take my job; I think he wants to take the Financial Secretary's job, to tell the truth, given the technical detail that he likes to get into. But it is absolutely right that we should focus the debate in respect of answering his questions from the points of view that he raises.

1045 He is absolutely right that we need to keep an eye on GDP, not just in relation to this borrowing but generally. In fact, in my prepared remarks, I said that one of the key things for us is to ensure that we are keeping an eye on GDP. In answering generally the points that he has made, I would refer him to the statement I made about this not being a £500 million *loan* agreement. In other words, I think we have agreed that we do not think it is prudent to go and get ourselves £500 million. What we have got ourselves is the ability to borrow up to £500 million, and that is based not on where we are today. It is based on where we were when this started and the work that we started, the guarantee that we sought and obtained – even though it has only been signed recently – and the negotiations we entered into in the context of a credit facility. But it would not be our preference to have to draw down £500 million in respect of this credit facility, not least because of the connection to GDP and wanting to keep headroom in that respect, but also because we would obviously wish to see this economy firing as soon as possible on all cylinders, people being able to stand on their own two feet producing revenue and income for the Government, and the Government not needing to subsidise them. On that, I know that he and I, and indeed the Leader of the Opposition, are on the same page.

1050 The question is what that margin of error has to be, and what we have done is ensure that we have the widest possible margin for error, should it become necessary. It is very difficult to put ourselves in the situation that we were in, in March, but it is not often that governments and oppositions, especially in Gibraltar, decide that they need to work together. Those were very trying days. Indeed, who would have imagined that, thank goodness, by now there is a vaccine that is being rolled out and hopefully will be administered to as many as want it in the first quarter and second quarter of next year, not just here but around the world? It was not possible to discern when the end would come, although all of us hoped that the end would come; indeed, now it appears that we know when the end will come, but I think we have all learnt enough in the past nine months to forget predicting anything with any certainty – except for those who think they predicted everything with great certainty.

1065 So, the hon. Gentleman knows that he is pushing at an open door when he is saying to us that he is not encouraging us to take this amount of £500 million in full, although he rightly says, as I think I have also indicated is our position, that it may be that we take down moneys in respect of this facility where we are replacing borrowing in respect of other facilities.

1070 The hon. Gentleman should not be concerned too greatly about the fact that we have reached the £150 million, because if he looks back at what I said, I said that the anticipated borrowing would be in the region of £150 million, so that is more or less where we think we end up, although we may need to take short-term provision for a little more, and then what we do is not just related



1080 to the drawdown that we have had to make to pay for the COVID-related fund, but also the lack of revenue that has arisen.

I think we all agree that golden rules are there to be maintained – that is why they are expressed to be golden – but they are golden rules in the context of what is the predictable reality in which they operate. I do not think anybody, other than [Inaudible], would pretend to have been able to foresee circumstances such as these. Certainly no economist in the world says that they knew and were planning for a pandemic and the economic effects of a pandemic. You might find people who are in epidemiology who were warning about pandemics and the health effects of pandemics, but there was not any economist worth his salt standing up and saying, ‘There is a pandemic potentially coming and we have to plan for the economic effects of pandemic,’ which is, in effect, to plan for the sort of situation that has afflicted the world today and for which there is no planning to be done. So, I think he agrees, in the way he expressed the wholesale agreement that the golden rule had to be broken in this context, that this was what is in the law referred to as a *novus actus interveniens*, as a new act which interferes and cuts across the logic either of liability in the context of analysing an incident in law, or in the context of analysing the economics of the situation that we were dealing with.

When I turn to deal, therefore, with the point that he makes in respect of the December 2011 rule, he is absolutely right, we did change the borrowing rules under the Public Finance (Control and Audit) Act. There is the record in *Hansard* of why we raised it. But the reason why I maintain the point I was making in respect of the GSD’s position in 2009 is very simple. What we were told by them in 2011 was that the rule they were going to breach is the rule we have maintained, namely the rule of 40% of GDP. There were two rules then: 80% of recurrent revenues or 40% of GDP. What we were told by the former Chief Minister in the Ceremonial Opening – if he looks back, he will see – was that the rule that was going to be broken was the rule that we have maintained. So, he will forgive me for saying that I was actually comparing apples with apples, although I take the point from him that I might have been comparing Granny Smiths with Red Delicious, because the rules have changed, but we were still comparing the issue of the 40% of GDP. If we can park it at pears, I think he and I can, once again, as we have been doing for most of this year, snatch agreement out of the jaws of dispute.

Why is there a three-year term here? There is a three-year term because that is – he is right – the limit of the sovereign guarantee from the United Kingdom. Again, one would not expect that this would be a sovereign guarantee that would not be reviewed. It may be that in three years’ time we ask the United Kingdom to renew that sovereign guarantee, and the best way to make the argument in that respect would be to demonstrate that we have not seen them called upon in any way to make any payment in respect of that guarantee, and that we are no doubt then still dealing with the problems that have arisen in the context of COVID and trading out of something which was not of our own choosing, called Brexit. But in my view, there should be nothing read into the fact that it is a three-year guarantee, other than that the period of a guarantee of that sort for the purpose that it was sought – which was the COVID-19 pandemic, not Brexit – would be something that we would have a clearer view on by then. Why? Because the hon. Gentleman is right to say this sort of money is money that you would want for 10 years or 20 years, but you would not then be asking for a credit facility for that period. You would very likely be asking for a loan for that period. I refer him to the analysis that I did. You would not say I want a floating capability to up and down the amount that I am borrowing; you would say, very likely, at the end of this exceptional period I now know what this has cost, and I want to crystallise it.

Let me just take a simple figure – which I will not be held by, because there is too much at large, but let me just take a figure in the middle. It is £150 million now, and there is £500 million headroom. Let’s say that we want to find ourselves, at the end of this exercise, having borrowed £250 million. Again, it may be £500 million or £450 million that we may have to borrow, or it may be £150 million that we may have to borrow, but let’s just, for the purposes of the argument, hypothetically take the figure of £250 million. You reach the end of the three-year period saying COVID cost us £250 million. You then say let’s now crystallise that over a period of 10 years, or

20 years, or a longer period. You then know what the amount is and it is crystallised. You are not seeking a facility for that period, you are seeking a loan for that period, where you have a definite interest rate payable over a definite period and you have crystallised the cost. I think that is the difference, Mr Speaker.

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On the issue of the covenants, the hon. Gentleman will see the covenants in respect of the loan agreement, because the loan agreement is now a document that is before the House. There are no covenants to speak of in the context of the loan guarantee; simply, obviously, the main covenant, which a guarantor always requires of the person they are guaranteeing, that you should pay the loan. The main covenant that is sought from you is that you should do everything you can to ensure that the guarantee is not called upon. Other than that, the hon. Gentleman should not believe that there are any strings attached, which is what 'a covenant' I interpret to mean in layman's language from him.

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The rate, Mr Speaker, I am asked by the Financial Secretary to express in this particular way, so that it is in keeping with the exercise the hon. Gentleman sought, so I am going to read it out exactly: it is 0.35%. And the arrangement fee is £1.125 million, not the order of £4 million that the hon. Gentleman would have referred to.

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In the context of the GIB borrowing, if I may say so to the hon. Gentleman, I think he does need to understand that what we did with GIB at the time is not something we would have been able to persuade GIB to do if we had asked them to do it for three, five or 10 years. We were able to persuade them to give us that rate for that period, and I doubt we would be able to persuade them to give us that rate for a longer period.

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In the context of company borrowing, he needs to understand I was not making a point, I was replying to the point that others were referring to that borrowing as company borrowing. I think what he will accept from me is that – and this is not to make a partisan point at this stage, although so many of us have spent time saying we are not doing that, that we might end up being interpreted as having done it – if all of those borrowings which are in the corporate entities which he refers to as borrowing were not in the corporate entities, then it would not have been possible to have the extra headroom now. So, if the theory of public finance which had been adopted had been successfully that of hon. Members opposite, if their interpretation of what is investment or borrowing were to have prevailed, and if their interpretation of what is investment or borrowing were to have prevailed, and if their interpretation of that all being borrowing and all of it coming on to the Government's balance sheet had prevailed because they had won the General Election, then, by their own definitions, they would not have had the headroom on the Government balance sheet to seek the extra borrowing when it was necessary. The hon. Gentleman, I assume, intellectually will accept that and will not shy away from that.

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Mr Speaker, it is not for one moment that we had to go to the UK to have the ability to deal with these additional and exceptional costs. The hon. Gentleman ended on what I can only interpret as a party political point, but he has not made many of them and I will not hold it against him that he has made at least this one. He made the point that we could not have had the ability to have the additional borrowing that we have needed, now, if it was not because we had not gone to the United Kingdom for the sovereign guarantee. That is plainly wrong. It is plainly wrong. We have gone for the sovereign guarantee to try and make the borrowing cheaper in the medium term, not because we needed to go to the United Kingdom for the borrowing. The reason that is plainly wrong is self-evident, because there is a facility from GIB that we took before we had the guarantee from the United Kingdom, and we could have had a facility from NatWest also, even without, no doubt, the guarantee, but the rates might have been different. This is not about ability to borrow, which is the point he made in his last intervention; it is about cost of borrowing. So, he will forgive me for respectfully disagreeing with him in the way that he made his last point.

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And, indeed, this is not a question of rainy day funds, which the hon. Lady was referring to before. The rainy day funds are there. We have our definitions of rainy day funds and, for us, the success here is that we have not touched them. In other words, I have not done what the former Chief Minister did in the context of the Savings Bank fund. The Savings Bank fund is intact. Good

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1185 luck to me if I tried, Mr Speaker, and rightly so, because we are protecting the rainy day funds  
even on rainy days, and when the assessment is made and the judgement of history delivered as  
to the management of our public finances, in particular the long-held argument about the rainy  
day funds, I think one of the ways that we will rightly have been shown to have pursued the right  
course is that not only did we have the ability, without even the United Kingdom, to have sourced  
more lending at the time when it was necessary, but we have done so without touching the rainy  
1190 day funds, which means that as we sail out of this and we repay that borrowing, we do so intact  
as to the rainy day funds. I am reminded of the fact that even the Chancellor of the United  
Kingdom has had to go to the Bank of England. These are extraordinary times. If we sail out of this,  
as I sincerely hope, and I am sure all Members hope we will without having to dip into the rainy  
day funds, repaying this facility with the confidence of Her Majesty's Treasury and the United  
1195 Kingdom government, then I respectfully submit that we will have done a darn sight better than  
anybody ever expected, and I do believe ... because, in the work that we have done together in  
the past nine months, more in the earlier part of those nine months ... but I do believe that hon.  
Members, in their heart of hearts, and indeed perhaps in some of what they would say, would be  
very pleased indeed – as pleased as we will be, as pleased as all citizens should be – because then  
1200 we will have navigated together this perfect storm in a way that is enduring and allowing us to  
have as many arguments as we might wish to in the future, having left the worst behind us and  
having left to future generations of Gibraltarians not an unpayable debt but actually a very healthy  
set of public finances.

Thank you very much.

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**Mr Speaker:** Does any other hon. Member wish to raise a question?

**BEAT 4.0 –  
Statement by the Chief Minister**

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

1210 **Chief Minister (Hon. F R Picardo):** We really are making up, Mr Speaker, for all the months  
when we have not been here.

The long-term economic consequences of the COVID-19 pandemic to our community are highly  
uncertain, and so I rise now to make a Statement on what we will call the BEAT 4.0 measures.

1215 This is a unique crisis where our health and economy are under serious strain, for all the  
reasons we have already debated. Indeed, it is as uncertain for Government as it is for our crucially  
important business community, but against this backdrop of extreme uncertainty the package of  
direct financial support I am announcing today provides a degree of certainty, and strikes, in our  
view, the right balance in protecting jobs and our economy as best we can.

1220 We had originally hoped to allow our businesses to gradually work themselves out of this  
financial assistance, as we anticipated seeing the return of some normality in August – no doubt  
something all Members will also have wished to see. That was clearly, unfortunately, wishful  
thinking on our part, and no doubt on the part of everyone in our community and indeed the  
world, as we hoped against hope that the worst effects of the pandemic might have been  
mitigated by science, medicine or divine intervention – depending on our respective creeds – by  
then.

1225 As hon. Members and all our citizens now know, that has not been possible. We therefore now  
need to look at our economy in the whole, and balance what some of our business community  
needs to survive against what we consider we are able to sensibly and prudently do until we  
commence our economic recovery in earnest. It is truly a challenging time, but we hope that this  
latest round of BEAT measures will go some way to easing that burden and enabling our firms to

1230 work through this pandemic with us. Most importantly, we hope that this ‘leg up’ that we are  
announcing today will mean the difference for many businesses and will help them continue to  
survive as employers in coming months.

1235 I am therefore pleased to announce the outline of the new business support measures that  
will apply from 1st December 2020 to 31st March 2021. These measures are timed to assist  
business through what we hope will be the last period of serious disruption as we turn a new leaf  
and emerge from the pandemic-induced slump. The main staple of the new measures will be  
BEAT 4.0. This is a scheme that has been developed organically following the three preceding BEAT  
schemes that Government implemented, starting on 1st April 2020. I will broadly summarise the  
various stages for the House, as follows.

1240 The original BEAT 1.0 was a scheme for employers to assist inactive employees, where we  
targeted the financial support directly at the employees. We practically eliminated wage costs for  
businesses, which are normally the highest direct cost facing a business. BEAT 1.0 was a three-  
way collaboration, an alliance between Government, employers and employees: Government  
paid employees their new wages; inactive employees sacrificed their contracted wages through  
1245 their employer; and businesses paid their reduced business expenditure, despite the hit to their  
revenue. Government also sought to mitigate these business expenses through various other  
measures, from PAYE and Social Insurance waivers and deferrals schemes, to rental discount  
schemes and rates waivers and the various Import Duty mechanisms we introduced to support  
businesses.

1250 Throughout, the Government has done as much as we possibly could in a small economy such  
as ours. The total cost of the BEAT 1.0 scheme saw Government pay out around £14 million  
directly to businesses and their employees over the second quarter of this year. Money well spent.  
This lifeline meant that businesses were able to retain their employees and have them firing on  
all cylinders as soon as they tentatively reopened after lockdown.

1255 Once employees were allowed to return to work, we redesigned the BEAT scheme. Instead of  
a contribution strictly for employees, the subsequent BEAT schemes, BEAT 2.0 and BEAT 3.0, were  
paid out as a grant to the businesses themselves. This was an amount of money that was paid to  
businesses to support them in meeting their business costs. They were not directed to use this  
grant to pay employee salaries. They could use it for any purpose the entrepreneur considered  
1260 appropriate. The BEAT 2.0 and 3.0 schemes have been simple and effective. Businesses have  
welcomed the support to help them through these very difficult months.

Both the BEAT 1.0 and BEAT 2.0 schemes were designed in close consultation with CELAC, who  
have provided constructive and practical feedback throughout the entire process, and also hon.  
Members of the Official Opposition, who have also contributed greatly to the discussions. The  
1265 BEAT 3.0 scheme that we rolled out for October and November was simply an extension of  
BEAT 2.0. It simply repeated the grant payments that we had made during the month of  
September 2020.

We have recognised the simplicity of this grant scheme, but we also recognise that businesses  
will need more assistance as we close the year and begin what are traditionally very quiet months  
1270 in the first quarter of each year. May I just record, Mr Speaker, for the purposes of *Hansard*, that  
the references I am making to ‘year’ are to calendar year and not financial year. There will be no  
bumper Christmas for anyone, this year. That is a painful reality that we must, unfortunately, all  
accept. Strong Christmas takings normally help our businesses, and businesses around the world,  
navigate the first months of the next year. This year, the takings will, no doubt, not be so strong  
1275 in the hospitality industry. There will be fewer tourists coming to visit, to eat, or to shop. Our  
retailers will likely be less active, despite the local captive audience – although, as a father, I can  
tell the House that any retailer who has PlayStation 5s available will do a roaring trade! Consumer  
confidence will, no doubt, not be what it was last year.

Our new scheme, BEAT 4.0, will continue to be paid as a grant. It will be just the same as BEAT  
1280 2.0 and BEAT 3.0, but the amount of that grant is now increased from 20% to 30%. Why? Because  
we recognise that the longer the pandemic goes on, the harder trading has become for those of

our businesses that are in the scope. Additionally, the life of BEAT 4.0 will be to the end of the current – 24-month – financial year. That is to say BEAT 4.0 will be paid up to 31st March 2021. What we are doing now is essentially giving businesses further certainty in terms of the guaranteed cashflow that they can rely on up to 31st March 2021.

1285 The amount of the grant will continue to be based on the average payment that the business received under BEAT 1.0, from April to June – *[Interruption by mobile telephone.]* No prizes for guessing whose phone that is, Mr Speaker, as assiduous followers of our parliamentary sessions will know! Businesses will therefore be able to calculate the amount that they will be receiving over the coming months, and they can plan accordingly.

1290 Businesses that were able to participate in previous BEAT schemes will be receiving emails as I speak, or during the course of this afternoon, so that they can confirm their participation for BEAT 4.0. These businesses will have until midnight on Friday, 18th December to confirm their participation in the scheme, and we expect the first round of BEAT 4.0 payments to be made to businesses in the week commencing 21st December. Save for the December payment, all remaining payments will be made at the end of each relevant calendar month, as was the case with previous BEAT payments.

1295 We are well aware that this increased grant is being paid during December whilst most businesses will see an increase in trade activity – and indeed it is being paid early in December, because all Treasury payments are made early in December – but we hope that these businesses will use this grant conservatively and prudently, so that they are as prepared as they can be to weather the first quarter of 2021. We anticipate that the first quarter in 2021 will be slow, as has traditionally been the case in previous years, and this slowdown is likely to be compounded by the effects of the pandemic.

1300 We are well aware that this increased grant is being paid during December whilst most businesses will see an increase in trade activity – and indeed it is being paid early in December, because all Treasury payments are made early in December – but we hope that these businesses will use this grant conservatively and prudently, so that they are as prepared as they can be to weather the first quarter of 2021. We anticipate that the first quarter in 2021 will be slow, as has traditionally been the case in previous years, and this slowdown is likely to be compounded by the effects of the pandemic.

1305 Businesses in receipt of BEAT grants are required to keep any terminations within a fixed threshold, to avoid any BEAT grant payments being converted into interest-bearing loans. That is a characteristic of the existing system. The employee termination threshold that was previously 30% is now being increased to 50% for the wholesale, retail, hotel, bar and restaurant sectors only. This is in response to the feedback that Government has received from business representative groups within these sectors. These representations have explained that these sectors traditionally experience a high turnover of employees, and they have sought an increase in the threshold to give them greater flexibility with the management of their staff in a way that does not penalise them from converting their grant into an interest-bearing loan. We recognise that no business wants to make its staff redundant, but we are acutely aware that, in some circumstances, redundancy may be inevitable, and we do not want to strip the financial aid from those businesses at this challenging and difficult time.

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1315 Mr Speaker, I will pause from my prepared remarks to also say that in these particular sectors we have found, traditionally – and I know hon. Members who have been in Government will also have found – that there is, unfortunately, a lot of illegal labour. The thing we have found is problematic is that, in these sectors in particular, those who do not engage in the employment of illegal labour, those who act properly and have everyone on their books, are actually more at risk of breaking the 30% threshold than those who unscrupulously take on illegal labour. Just to give hon. Members an example, if an individual had 100 employees, under the existing BEAT rules they can make 30 redundant before their grant becomes a loan, but if they make 31 redundant, then the amounts they had taken as grant are automatically converted to a loan. Hon. Members need to bear in mind that the scrupulous and proper businessman is registering his 100 employees. He can make only 30 redundant under the scheme. The unscrupulous businessman may have only 50 people on his books, but may have another 50 people who are not on his books. These numbers are just being used for ease of understanding. That individual would be able to make the 50 who are not on his books redundant and 15 of those who are on his books redundant. He could get rid of 65 people. It would be grossly unfair to those who are acting properly, in particular in those industries where we have seen the feature of illegal labour in the past. It is for that reason that we have, in those industries, in order to protect the scrupulous and proper entrepreneur,

increased the number to 50%, also conscious of the fact that there is a high turnover also, even of properly registered staff.

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I should inform the House, however, that the quarterly average of the number of resident persons seeking employment in Gibraltar – that is to say those registered as unemployed – is currently likely to end the quarter – that is to say the calendar year – at about 25. I am using the figures at the close of business yesterday and the figure from the other two months in the quarter to calculate what it is likely to be, which is 25. When we designed BEAT – and we designed it together – we designed it to protect jobs, and we have. This Parliament should really reflect on the actions we have taken since March and recognise that the work that we have done together as a Parliament has delivered against that central overriding objective of protecting employment.

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We have also adapted and tweaked some of the existing measures, following requests from these sectors that are in touch with us. Whilst Government will continue to apply an additional 25% early rates payment discount to all businesses that pay rates on time, we will, in addition, also apply a rates waiver for the period from 1st January 2021 to 31st March 2021 for all businesses in the wholesale, retail, hotel, bar and restaurant sectors only. The additional rates discount and waiver does not apply to supermarkets and pharmacies, as was previously the case. This waiver will, of course, only apply to businesses that are up to date with their rates payments.

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Government will continue also to waive work permit and registration and administrative fees throughout the first quarter of 2021.

The commercial rent discount scheme will also be extended to 31st March 2021, with Government providing a discount of 50% on all rent and licence fees, and private landlords encouraged to provide a rental discount of 25%. As before, private landlords who do not extend this discount to their tenants for quarter one of 2021 will face a tax penalty, and their tenants will receive a tax credit. Our private sector landlords have supported this scheme, and we are grateful to them for this support. I must tell them that we intend this to be the last quarter for which we will introduce this rental discount scheme for private landlords. We recognise that landlords are businesses too and that they need to see light at the end of the tunnel also.

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Restrictions on rental increases, the waiver of tables and chairs licence fees and the Import Duty Waiver Scheme will all continue, as I have previously announced, up to 31st March 2021.

The total cost of this package is approximately £1 million per month.

I am grateful to the Ministers for Business and Financial Services and Gaming, the Hon. Vijay Daryanani and the Hon. Albert Isola, for having worked with CELAC members, with the Catering Association and with Financial Secretary Albert Mena on the development of these measures, together with Income Tax Commissioner John Lester and his team, and Director of Employment Debbie Garcia and her team. I have been unable to involve myself in detail on these matters, as I have been involved in the detail of the BREXIT negotiations with the Deputy Chief Minister. It is for that reason that it has not been practicable for me to consult with the Leader of the Opposition on BEAT 4.0. I know that the relevant sectors need this clarity now and I do not think we could therefore delay this announcement any further. I would have wished to have been able to consult the hon. Gentleman more fully, if possible. I do hope we will be able to consult him on future stimulus measures as we move into that next phase of our economic development.

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Our amendments to the Insolvency Act that introduced a moratorium period were due to expire on 31st December 2020. In line with the extension of the other measures that I have announced, this moratorium period will be extended to 31st March 2021.

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Government has also sought to remind businesses that if they are in distress solely as a result of the pandemic, they may be able to take advantage of the Business Disruption Loan Guarantee Scheme, which I explained to Parliament on 26th June 2020 and 25th September 2020 and which I seem to recall was warmly received by hon. Members opposite. This scheme was contracted to continue to receive applications up to 31st December 2020, but I am pleased to announce that Government will extend this deadline to 31st March 2021, in line with the other measures that I have just mentioned.

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1385 With the New Year comes new hope that the mass vaccination scheme will lead to economic recovery in Gibraltar, in Europe and the world, and we hope to see that transition occur economically from April 2021. We are starting to consider measures that we will be rolling out as from April next year, as we seek to kick-start our economic recovery. The Government is committed to assisting the business community until that recovery process commences.

1390 We will face a different problem if we allow this pandemic to scar our economy and reduce our tax and other revenues. It is by keeping our economy on this life-support system that we can avoid a longer-term increase in our welfare spending. We will continue to work together to support our business community in a prudent and responsible manner. We have many challenges to navigate, each with their own difficult consequences, and we will measure our response appropriately.

1395 Governing is never easy, but in these times it is especially difficult. But we have not faltered and we shall not falter, and together I have every confidence that we will all see much better times to come.

I commend this Statement to the House.

1400

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

**Hon. K Azopardi:** Mr Speaker, I think one of the first things that we said when we were discussing the Emergency Budget, back in March 2020, was that, apart from dealing with the public health issues, we needed to turn our minds very quickly to the economic issues, hence our support for the Emergency Budget, but we also said then that it was not just about funding the paralysis that was necessary during the lockdown, it was also necessary to fund regeneration and the kick-starting of the economy. So, we broadly supported the BEAT 1.0 measures; we had some misgivings about the BEAT 2.0 measures, which we set out in detail.

1410 We had an exchange of correspondence, the Chief Minister and I, on various principles, where we exchanged views. When the BEAT 2.0 measures were presented in this House, I spoke at length about a difference of opinion on issues underpinning the BEAT 2.0 measures. As the Chief Minister has indicated, the BEAT 1.0 measure was targeted at securing employment and the employee. It was then transformed into a grant. We had concerns about a level playing field and also about employees losing jobs. We also had concerns about whether they were targeted enough, in terms of what the economy needed and what businesses needed.

1415 Our position remains unchanged, because we do not have a clear statistical picture about what is happening behind the scenes, but we certainly welcome, broadly, the fact that there is going to be further assistance given to the business sector. It is obvious that, as months have gone by ... We had that period during the summer when our active COVID cases were at zero for quite a long time, when we lived a summer where we thought that perhaps we would be emerging, and yet a lot of European countries were plunged back into lockdowns. We have been, gracefully, spared the worst effects, and however much there have been effects on our civil liberties, they have not been as bad as in other countries. That is also important to reflect, however many nuances we then draw on the issue of civil liberties.

1425 In that context, clearly the effect of COVID is longer felt. The information that we have received from the Government – in accordance with the arrangements that we entered into, so that we would give support to the Emergency Budget – clearly tell us, on this side of the House, that the effect of COVID will be long, much longer than perhaps we had wished for and certainly into next year, maybe even the next financial year after that, but we will have to wait and see.

1430 We also take account of the fact that it is correct that lots of businesses do like to have an impetus to sales in the run-up to Christmas, and then everyone has what loosely, in Spanish, would be termed 'the January hill' – and it is not just a health hill, but an economic one for a lot of businesses – and so that needs to be protected, I suppose insulated, by these measures.

1435 So, broadly speaking, we may have differences of opinion as to the specifics and whether these are targeted enough or whether they provide the right kind of measures, but of course we

recognise that there needs to be financial assistance, especially to some sectors. We have said so in the past, in communiques that we have issued, and indeed identified the sectors that the Chief Minister has talked about, in the context of the directed measures of today, before.

1440 I want to ask him a few questions, for clarification. He has mentioned the scheme, broadly speaking. Can he confirm that the scheme will, once again, be open to businesses that did not participate in previous schemes but in fact may now require assistance?

1445 Secondly, he has mentioned a deadline of 18th December. Does that deadline also apply for businesses that did not participate in the former scheme but now wish to do so because of their economic circumstances; or is this a rolling period, and businesses that did not participate and may need assistance in February, but not in January, may be able to apply?

1450 Are the details of the scheme itself going to be, in effect, based on the rules that have already been published for BEAT 2.0 and BEAT 3.0? Is this really an extension? And can we take it – can businesses take it, or anyone listening to this debate; can business owners assume – that they can just read the rules that have been published already and that those are the rules that are going to apply because, in terms of clarity, that is just easier for business?

1455 The hon. Member has indicated ... I think he mentioned that there were a number of people actively looking for employment and that it was low. Does he have statistics on the number of redundancies in the last few months? I do not know if he has that to hand – he may not; if so, it would be helpful to understand.

1460 And then, finally, he mentioned a figure of what the cost of the package would be, which is £1 million a month: is he saying that it is £1 million a month in the context of the whole package, or is he saying that it is £1 million a month in respect of rates and rent waivers only? It would be helpful to understand, in terms of our own assessment of what the package will cost. Given that BEAT 1.0 loosely cost about £18 million, is he saying that this is £1 million a month going forward for the whole package, or is it parts of it; and, if so, which parts?

1465 As I say, we are broadly supportive of the concept of targeted financial assistance that secures jobs and that secures assistance for business at this very difficult time. If this package has the support of the business community and unions, then that is a good thing. Of course, no scheme is perfect, and I imagine that there is disagreement on aspects of it, or not everyone will have the same view on different aspects of it.

1470 While we reserve our position on the detail of it and everything that I said before in respect of concepts, we certainly recognise that going forward, given that the effect of COVID on the economy will be long, and despite the vaccination programme that we will no doubt debate in the House in coming months, the return of tourism will be slow and may require further tranches of targeted assistance to particular sectors more than others in coming months.

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

1475 **Hon. Chief Minister:** Mr Speaker, I am very grateful to the hon. Gentleman for his contribution, and, as has been the case in the context of BEAT measures, the tenor of it. I think we have had one row about BEAT – which, in politics these days, is not bad.

1480 The reality of the economic consequences of the pandemic I think becomes starker every day, because it is a cumulative effect, and I think this is the point I was trying to make and the reason why I am grateful for the hon. Gentleman's qualified support for these measures.

1485 The important point – as I said during the course of my prepared Statement, but as I want to reflect in the context of the remarks of the hon. Gentleman – is that when we were here, and indeed when we were, later, in my office, working together on the proposal for BEAT, the key issue was to protect employment. In answering his point on the numbers of people made redundant in the period, which I do not have to hand in order to give him an accurate number, I think the important number to look at is the number I shared with the House today, which is the number of people registered as unemployed and seeking employment. That is very low indeed,



and perhaps surprisingly low, but of course this is a year when we have intervened in the market, and BEAT is nothing other than a direct intervention in the market.

1490 The hon. Member might want to reflect that BEAT is the positive intervention in the market that we have made this year. The negative intervention in the market that we made, all of us together, was to close the market. We decided that businesses had to be closed in the spring, so did that negative thing; and we did the positive thing, which was to intervene to say, 'but we will pay the salaries in that period'. And then we did the thing of saying, 'Now we will stop paying the salaries, but we will give you money as a business, as long as you do not make people unemployed beyond a particular amount, in which case you can keep the money but it has to be repaid as a loan.' So, the fact that we have 25 people, hopefully, by the end of this month, on average, registered as seeking employment/unemployed I think is a demonstration that we have collectively been right in the way that we have calibrated the support that we have provided to businesses with the objective of protecting jobs, therefore having greatly been provided for.

1500 The other criterion that we established for ourselves, which was articulated first by the Hon. Mr Clinton in this House and was a matter that he saw us see through, was that the measures that we implemented should be simple, they should be un-bureaucratic and there should be as little red tape as possible, and I think that that is what these BEAT measures actually do. And, if I may say so, the fact that we have slight disagreement on detail is not bad, given that I am one who does not believe in drafting by committee. I think it is impossible to draft one paragraph of a letter by committee, because different people achieving the same objective would use different words every time, in particular if those people are two lawyers. So, I do not think it is bad that we have conceptual agreement and support from the hon. Gentleman and the Members of the House he represents, even though we might have done the detail slightly differently. I think that is the most that this community could reasonably ask of us, even in these difficult matters.

1505 I do think it is helpful for him to have reflected, as he has, on how we have dealt with the pandemic in the context of the civil liberties aspects. This was a point that was important to him, was important to me and was important to the Attorney General and to the Minister for Justice when we were dealing with these points in March, during the course of the initial lockdown. And indeed it was hugely important to Members of the Cabinet who were not lawyers but who have long striven to protect liberty and personal freedoms.

1515 I think it is important, given the sometimes hysterical level of debate that some people wind themselves up into on social media, that we do reflect that the restrictions in Gibraltar are probably as light touch as they can be, and much lighter than they have been in other advanced and developed economies – indeed, in our neighbouring economy and in the United Kingdom. We have been able to do that, not because there is a witch doctor in our midst or we are somehow better or magical in the way that we deal with things, but because the size of the place enables us to put into effect measures which have epidemiological effect, in a way that is less of a sledgehammer than when you are dealing with a huge nation and you have to have one clear set of rules, which may be what needs to be relevant in the most populous areas and is utterly absurd in less populous areas. So, without claiming to have done things better than anyone, I think we have done them, insofar as possible, with the lightest touch that has been necessary in order to have effect, and I am grateful for his reflections on that because I think we have been approaching this from the same point of view, of trying to not restrict people's civil liberties any more than we absolutely have to, and constantly reviewing them.

1520 I think it is important, given the sometimes hysterical level of debate that some people wind themselves up into on social media, that we do reflect that the restrictions in Gibraltar are probably as light touch as they can be, and much lighter than they have been in other advanced and developed economies – indeed, in our neighbouring economy and in the United Kingdom. We have been able to do that, not because there is a witch doctor in our midst or we are somehow better or magical in the way that we deal with things, but because the size of the place enables us to put into effect measures which have epidemiological effect, in a way that is less of a sledgehammer than when you are dealing with a huge nation and you have to have one clear set of rules, which may be what needs to be relevant in the most populous areas and is utterly absurd in less populous areas. So, without claiming to have done things better than anyone, I think we have done them, insofar as possible, with the lightest touch that has been necessary in order to have effect, and I am grateful for his reflections on that because I think we have been approaching this from the same point of view, of trying to not restrict people's civil liberties any more than we absolutely have to, and constantly reviewing them.

1530 The points that the hon. Gentleman made, that he wanted answers to... I will go through each of the questions in turn. The first one related to whether individuals who had not participated before would be able to participate now in respect of BEAT, and the answer to that would be yes, we will have the same rules, as a threshold to permit new claimants, as we had in the past. We have always wanted to ensure that we have not penalised people for wanting to carry the burden themselves without relying on the taxpayer for longer, and therefore, when those people who are in scope of the rules say 'I did not claim before, but now I do need to claim', we will deal with

1540 applications for BEAT 4.0 in the same way as we dealt with applications for BEAT 2.0 and 3.0 in respect of those who had not made the claim in respect of BEAT 1.0.

1545 The 18th December is a date which must be set in stone for payments to be received in the following week, but if an individual entity wants to continue to try and deal with this themselves without claiming, and they want to claim later because they find themselves having to claim later, of course we will be able to entertain that and exercise discretion in the right circumstances – always, however, insisting that that latitude should not result in laziness in submission of applications by 18th December, in particular by those who have already submitted and want to re-register.

1550 Will the new BEAT be based on the rules that the old BEAT was based on? Yes is the answer. You can read the existing rules and that will determine eligibility, but with the tweaks that I have announced today, and the rules will be published to convey those additional areas of benefit and the extended period of waiver, deferral or benefit which is provided for, and the new sector that we are providing specific provisions for, which, as the hon. Gentleman knows, is the wholesale, hotel, catering, etc. sector that I referred to a moment ago.

1555 The cost of £1 million a month is the cost of the BEAT payment, not the cost of the additional parts of the package, like the discount on rates etc. That, we will see better calculated in the numbers as they come out, because those will be against claim.

1560 I agree with him that as the programme of vaccination advances across the world, we will not see the end of the economic effect of COVID. Indeed, when it comes to, for example, corporate tax, those hits on the balance sheet of profit will manifest themselves in less tax paid in the next financial year. So, there is a trickledown consequence of COVID, the economic effect it will have, which is not immediate, although the support we have to give is certainly immediate, but we may need to think of how we deal with future arrangements, and there, probably, we will be dealing more with stimulus than anything else. But I do hope that the vaccination programme will at least be the beginning of the end of the worst of this pandemic and the end of the health aspects of the pandemic.

1565 There is also some thinking that there will be pent-up demand, and so there may be an element of balance, and the way that I understand some travel companies have dealt with COVID has meant that they have permitted people to take vouchers against cancelled travel, but those vouchers will have to be cashed in for travel in a fairly short period. And so, although my instinct, like his, is that people will not come back to tourism and travelling immediately, until they are entirely secure – not just that they are inoculated, but also that the place to which they are going is safe because there has been a programme of inoculation – there is also the possibility that we will see the cruising industry return quickly because they have given vouchers to people which need to be taken quickly.

1575 In that respect, Mr Speaker, if I may say so, I think one of the key things is for us to quickly be able to say that Gibraltar is COVID safe because we have had a programme of vaccination which has covered all those in our community who want to have the job, and all cross-frontier workers who want to have the job, and need to have it for the work that they do, inoculated; and Gibraltar is therefore a safe place to come. That will be a hugely important part of the marketing of the future.

1580 If I may, Mr Speaker, I think we have done exceedingly well, and the Minister for Tourism is to be congratulated in particular for the work that he has done, not just meeting local hoteliers but also spreading the message of Gibraltar beyond Gibraltar. We have seen magnificent spreads in UK newspapers, of the sort that we might not have dreamt of before. We are one of, still, the very few European destinations to which people from the United Kingdom can come without having to go into quarantine in the future, and I think that will create a bank of goodwill and knowledge and information about Gibraltar that I hope will reflect in bookings going forward – and, indeed, the one thing that we might not have expected, but that Gibraltar may have become, once again, well known for its weddings and as the European capital of love and marriage, rather than being

1590 known for other purposes, and we have seen a great increase in the numbers of people considering Gibraltar as a wedding destination.

So, all of that, I hope, will help us to come back, in particular in the hotel, catering and travel industry, which is the one which has been so severely afflicted at this stage, as we have both identified and spoken to.

1595

**Mr Speaker:** Does any other hon. Member wish to raise a question?

### SUSPENSION OF STANDING ORDERS

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

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

1600 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I beg to move, under Standing Order 7(3), to suspend Standing Order 7(1) in order to proceed with Government Bills.

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

1605 **Hon. Chief Minister:** With your indulgence, Mr Speaker, can I suggest, given that the House has endured my three Statements and the other contributions, and that you have not been able to shift from your chair in that time, that this might be a convenient moment to take a short break before we embark on the legislative work that we have to do this afternoon – maybe for 10 minutes, and return at half past six?

1610 **Mr Speaker:** The House will recess for 10 minutes.

*The House recessed at 6.20 p.m. and resumed its sitting at 6.35 p.m.*

## Order of the Day

### BILLS

#### FIRST AND SECOND READING

#### Nature Protection (Amendment) Bill 2020 – First Reading approved

**Mr Speaker:** Before we go on to Bills, I wish to confirm that I have been notified by the Hon. the Chief Minister of the urgency of taking three Bills, namely the Nature Protection (Amendment) Bill 2020, the Trademarks and Patents (Miscellaneous Amendments) Bill 2020 and the Competition Bill 2020.

1615

**Clerk:** Bills – First and Second Reading.

A Bill for an Act to amend the Nature Protection Act 1991.

The Hon. the Minister for the Environment, Sustainability, Climate Change and Education.

1620 **Minister for the Environment, Sustainability, Climate Change and Education (Hon. Prof. J E Cortes):** Thank you, Mr Speaker. I have the honour to move that a Bill for an Act to amend the Nature Protection Act 1991 be read a first time.

1625 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Nature Protection Act 1991 be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

**Clerk:** The Nature Protection (Amendment) Act 2020.

**Nature Protection (Amendment) Bill 2020 –  
Second Reading approved**

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

1630 This Bill has been, as we know, certified as urgent by the Chief Minister, and I would like to explain the context in which this is required.

1635 As part of the work undertaken in connection with Brexit and the end of the transition period on 31st December, officials have been working closely with counterparts in the United Kingdom to mitigate the effects of Brexit. This Bill provides for one such mitigation in an area of the environment which has an importance that transcends the environment. The Bill represents the fruits of months of engagement on the requirements for Gibraltar to participate in the Bern Convention – the official title being the Council of Europe Convention on the Conservation of European Wildlife and Natural Habitats – signed in Bern in September 1979.

1640 In addition to the Bill, officials have been working on the administrative requirements for implementation. That work concluded only yesterday. As part of that work, a number of additional provisions and amendments were agreed and these were contained in my two letters dated 7th December and 9th December, which include amendments that we will be considering at the Committee Stage. I apologise for the late submission, but, as I say, the discussions only concluded yesterday between the Department of the Environment, the Gibraltar Law Officers and Defra in the UK.

1650 The significance of the Bern Convention is that it provides a regime for the protection of habitats and species which is parallel to the EU's Birds Directive and Habitats Directive, which form the basis for protection. Mr Speaker will be aware that under that regime Gibraltar was able to designate two sites as Special Areas of Conservation (SAC). Those sites joined part of a network known as the Natura 2000 Network. The Bern Convention provides a parallel to the Natura 2000 Network, known as the Emerald Conservation Network. In Bern Convention language, SACs are termed Network of Areas of Special Conservation Interest (ASCI). In terms of process, this also means that our SACs will roll over into the ASCIs and continue to benefit from international status.

1655 Mr Speaker, I will now turn to the Bill itself. Clause 3 contains all the provisions that are required and all the provisions therein to amend the Nature Protection Act.

Subclause (2) substitutes the long title to reflect the change in emphasis of the Act and provides the necessary *vires* to implement, in particular, international obligations. This includes the Bern Convention.

1660 Subclause (4) deletes section 2A. The section sought to disapply Part II to animals and plants of European species and no longer has a purpose.

Subclause (8) inserts a new section 8ZA. This section places a responsibility on the Minister to establish the conservation status of all wild animal species – in particular those specified in the appendices to the Bern Convention – on land, air or sea, which are either resident in, migrating

1665 through, or visitors to Gibraltar, British Gibraltar Territorial Waters, or to both. It also provides the Minister with the power to treat an area of land or sea as if it were a European site or European marine site as already defined in our legislation, should the need arise, and places an obligation on the Minister to consider doing this if such treatment is required pursuant to the Bern Convention.

1670 Subclause (12) inserts a new section 11ZA. This section places the same obligations on the Minister and provides the same powers, although this time in relation to all wild plant species. While these obligations and powers were largely already in our legislation in relation to birds in particular, these now extend to include wild animals and plants in accordance with the Bern Convention, and, in addition, create prohibitions on the indiscriminate means of disturbance, capture or killing of any wild birds or animals, including destroying or taking their eggs.

1675 Subclause (9) creates a prohibition for the killing of certain species specified in the Bern Convention.

1680 Subclause (15) inserts a new section 18ZB. This section provides the Minister with a power to make an order to provide for measures to be taken as necessary to prevent pollution or deterioration of the conservation status of species of any wild animal or plant that suffers or is likely to suffer from pollution or deterioration. It applies equally to the land as well as marine environments.

Subclause (17) extends the regulation-making powers to make provision for implementing, complying or abiding by international agreements, treaties or conventions.

1685 The other provisions all seek to amend language in the Act to enable the provisions to be read in the light of the Convention's requirements.

I would like to take this opportunity to thank the officials in the Department of the Environment, the Gibraltar Law Officers and indeed Defra for the hard work that they have been doing, taking it almost to the wire but completing it yesterday.

1690 Mr Speaker, I am pleased to report that I have discussed the urgency of this Bill with the Hon. Elliott Phillips and the Hon. Marlene Hassan Nahon, who have concurred with the urgency of it.

I commend this Bill to the House.

1695 **Mr Speaker:** Before I put the question, does any hon. Member wish to speak on the general principles and merits of the Bill? Mr Phillips.

1700 **Hon. E J Phillips:** Mr Speaker, I am grateful to the Hon. Minister for setting out the context of the amendments to the Nature Protection Act. I am grateful also for the explanation that he gave on the telephone to me last week, in which he explained not only the context but also the wider issue that he alluded to in this House – which is fairly sensitive, so I will not repeat that matter in the House, save to say that we understand the level of urgency and we are grateful for that explanation to the House. Therefore, we will be supporting the Bill.

1705 I only had one question when I was doing my homework, as it were, given to me by the Minister himself last week, which was that although the United Kingdom, I believe, signed up to the Bern Convention in 1979 and ratified it in 1982, and also extended it to Jersey and the Isle of Man in the same year, perhaps the Minister could confirm why there was no extension sought or made by the United Kingdom to Gibraltar at that time – just out of interest, to clarify why the Bern Convention was not directly extended by the United Kingdom.

1710 **Mr Speaker:** Does any other hon. Member wish to speak? The Hon. Marlene Hassan Nahon.

**Hon. Ms M D Hassan Nahon:** Mr Speaker, like my hon. Friend to my right, I am also grateful to the Hon. Minister for the reasons he has stated leading to the presenting of this Bill in an urgent fashion.

1715 This Bill enshrines the principles of the Bern Convention, the first international treaty to protect both species and habitats, and does so by creating an international commitment and perspective

on the issue. The Council of Europe's Convention on the Conservation of European Wildlife and Natural Habitats, approved in 1979, was actually the first to bring countries together to decide how to act on nature conservation.

1720 As a party with a strong environmental agenda – and I believe strongly in the European project and European collaboration – we are very pleased with this amendment and the values that stem from it.

1725 In a post-Brexit world, we must not be tempted into discarding all those elements from our European Union past that have brought all this positive change to legislation that we have put forward. We must continue to embrace that which is good from our past and build upon it to reach new heights. We must continue to uphold the highest standards and protections to our environment, our health and our safety, and this appears to be a step in that precise direction, a step that we welcome and approve.

Thank you, Mr Speaker.

1730 **Mr Speaker:** The Hon. Minister.

**Hon. Prof. J E Cortes:** Thank you, Mr Speaker.

I am grateful for the support from the hon. Members as expressed. I agree that it is an important step.

1735 In relation to why the UK did not extend it at the time, there are a number of conventions that have not been; they are not automatically extended to Gibraltar. I worked, at the time from outside this House, to try and achieve that, and subsequently from within my ministerial responsibility, but the reasons I am not certain of. It was not that vital, because as part of the European Union most of the requirements of the Bern Convention were covered by the Birds and Habitats Directives, but now, obviously, in leaving the European Union it is important that we should have this international backing for our laws.

1740 Mr Speaker, I repeat my gratitude to the Members opposite and I once again commend the Bill.

1745 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Nature Protection Act 1991 be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

**Clerk:** The Nature Protection (Amendment) Act 2020.

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

1750 **Minister for the Environment, Sustainability, Climate Change and Education (Hon. Prof. J E Cortes):** Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

1755 **Mr Speaker:** Do all hon. Members agree that the Committee Stage and Third Reading of the Bill be taken today? (**Members:** Aye.)

**Intellectual Property (Copyright and Related Rights) (Amendment) Bill 2020 –  
First Reading approved**

**Clerk:** A Bill for an Act to amend the Intellectual Property (Copyright and Related Rights) Act 2005.

The Hon. the Minister for Digital, Financial Services and Public Utilities.

1760 **Minister for Digital, Financial Services and Public Utilities (Hon. A J Isola):** Mr Speaker, I have the honour to move that a Bill for an Act to amend the Intellectual Property (Copyright and Related Rights) Act 2005 be read a first time.

1765 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Intellectual Property (Copyright and Related Rights) Act 2005 be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

**Clerk:** The Intellectual Property (Copyright and Related Rights) (Amendment) Act 2020.

**Intellectual Property (Copyright and Related Rights) (Amendment) Bill 2020 –  
Second Reading approved**

1770 **Minister for Digital, Financial Services and Public Utilities (Hon. A J Isola):** Mr Speaker, I have the honour to move that the Bill now be read a second time.

1775 The Intellectual Property (Copyright and Related Rights) (Amendment) Act 2020 amends certain sections of the Intellectual Property (Copyright and Related Rights) Act 2005 to implement, in part, specific provisions in both (a) the Berne Convention – which we have just heard of – for the Protection of Literary and Artistic Works, as revised in Paris on 24th July 1971, and (b) the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled, signed at Marrakesh on 27th June 2013, which are not currently provided for in our laws. These international measures will be extended to Gibraltar with effect from 1st January 2021.

1780 The Berne Convention already applies to Gibraltar and is given effect in our Intellectual Property (Copyright and Related Rights) Act 2005. The Bill tweaks the Act so as to implement a revised version of that same Convention.

1785 The Marrakesh Treaty facilitates access to published works for persons who are blind, visually impaired or otherwise print disabled, without infringing the rules on copyright. There are already provisions in the IP 2005 Act for Marrakesh beneficiaries, but some of them need to be revised.

1785 In addition to the much-welcomed benefits that the extension of these Conventions bring about to disabled persons, these Conventions are important as post-transitional arrangements following Brexit and for future free trade agreements which we will hope to be a part of.

Mr Speaker, I commend the Bill to the House.

1790 **Mr Speaker:** Before I put the question, does any hon. Member wish to speak on the general principles and merits of the Bill? The Hon. Damon Bossino.

1795 **Hon. D J Bossino:** I am grateful, Mr Speaker – simply to acknowledge, initially, the Hon. Minister's assistance. He kindly provided me with a copy of his speaking notes, so I had advance notice of what he was going to say.

We have managed to agree a position, and that is that the Opposition will most definitely be supporting the Government in relation to this particular legislative initiative. As I understand it, what we are doing here is aligning ourselves to the UK as a result of the post-Brexit reality that we

1800 are going to be facing in the not-too-distant future. So, the Opposition, I can confirm, Mr Speaker, will be supporting this Bill.

**Mr Speaker:** The Hon. Albert Isola.

1805 **Hon. A J Isola:** Mr Speaker, I beg to give notice that the Committee Stage ... Sorry, no, there is nothing further to add. My apologies.

**Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Intellectual Property (Copyright and Related Rights) Act 2005 be read a second time. Those in favour? (Members: Aye.) Those against? Carried.

1810

**Clerk:** The Intellectual Property (Copyright and Related Rights) (Amendment) Act 2020.

**Intellectual Property (Copyright and Related Rights) (Amendment) Bill 2020 –  
Committee Stage and Third Reading to be taken at this sitting**

**Minister for Digital, Financial Services and Public Utilities (Hon. A J Isola):** Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

1815

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

**Trade Marks and Patents (Miscellaneous Amendments) Bill 2020 –  
First Reading approved**

**Clerk:** A Bill for an Act to amend the Trade Marks Act and Patents Act.  
The Hon. the Minister for Digital, Financial Services and Public Utilities.

1820

**Minister for Digital, Financial Services and Public Utilities (Hon. A J Isola):** Mr Speaker, I have the honour to move that a Bill for an Act to amend the Trade Marks Act and Patents Act be read a first time.

1825 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Trade Marks Act and Patents Act be read a first time. Those in favour? (Members: Aye.) Those against? Carried.

**Clerk:** The Trade Marks and Patents (Miscellaneous Amendments) Act 2020.

**Trade Marks and Patents (Miscellaneous Amendments) Bill 2020 –  
Second Reading approved**

1830 **Minister for Digital, Financial Services and Public Utilities (Hon. A J Isola):** Mr Speaker, I have the honour to move that the Bill for the Trade Marks and Patents (Miscellaneous Amendments) Act 2020 be read a second time.

This Bill implements, in part, specific provisions of the protocol relating to the Madrid Agreement concerning the International Registration of Marks adopted at Madrid on 27th June



1835 1989, otherwise known as the Madrid Protocol, and specific provisions of the Patent Cooperation Treaty signed in Washington on 19th June 1970. Both of these conventions are currently not provided for in Gibraltar law and they are important as post-transitional arrangements following Brexit and for free trade agreements.

1840 This Bill is too urgent to allow for the usual publication period of six weeks, and therefore the Chief Minister has issued a Certificate of Urgency. These measures go hand in hand with the Bill for the Intellectual Property (Copyright and Related Rights) Act 2005, which has just gone through its various stages.

This Bill amends both the Trade Marks Act and the Patents Act, and I will take the relevant amendments as they appear on the Bill.

1845 Clause 3 implements, in part, specific provisions from the Madrid Protocol. The Madrid Protocol will be extended to Gibraltar with effect from 1st January, and it is a system that makes it possible to protect a mark in a large number of countries by obtaining an international registration that has effect in each of the designated contracting states. When you apply for international registration, you must designate one or more of the contracting states in which protection is sought. As a friendly extension of the protocol to Gibraltar, any trade mark designated in the UK will include Gibraltar, and so the Bill provides that, with effect from 1850 1st January 2021, any trade mark which results from an international application made on or after 1st January which designates the UK would automatically be recognised in Gibraltar.

1855 Subclause (6) amends section 3 of the Trade Marks Act by making the right to re-register a UK trade mark in Gibraltar subject to Part 3, which contains the automatic recognition in Gibraltar of international trade marks under the Madrid Protocol, as well as the UK comparable trade marks explained in more detail below. It also makes consequential amendments as a result of the insertion of the definition of the UK Trade Marks Act, which we now need to have.

1860 Subclause (8) introduces a new Part 3 to the Trade Marks Act. The effect of the new section 17 is that the rights and privileges of the registered proprietor of an international trade mark in the UK are automatically recognised in Gibraltar for as long as the registration of the trade mark remains in force in the United Kingdom.

1865 The new section 18 provides for the treatment and protection of any EU trade marks (EUTM) and international trade marks with a new designation that exists on 31st December 2020. These are rights that exist and are currently protected under EU Regulation 2017/1001. Once the UK and Gibraltar leave the EU, any such existing EUTMs or international marks will only cover the remaining EU member states and will not provide protection in the UK or Gibraltar. In order to ensure that these proprietors do not lose their rights on 1st January, and in order to give effect to the provisions of the Withdrawal Agreement, the UK has created a new EU/UK trade mark right for EUTMs, called a comparable trade mark, and for international marks with a new designation 1870 called a comparable trade mark 'IR' as opposed to 'EU' for the European ones.

Clause 18 provides that the rights of British providers of the UK comparable marks are automatically recognised here in Gibraltar. This protection will subsist until the date of expiry of the mark and for as long as registration in the UK remains in force.

1875 Clause 4 implements, in part, specific provisions of the Patent Cooperation Treaty. This Treaty – PCT, as it is sometimes referred to – makes it possible to seek patent protection for invention simultaneously in each of a large number of contracting states by filing an international patent application. Filing that international patent application has the effect of automatically designating all contracting states bound by the PCT of the international filing date.

In the circumstances, Mr Speaker, I commend the Bill to the House.

1880

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

1885 **Hon. D J Bossino:** Once again, Mr Speaker, I thank the Hon. Minister for his assistance earlier in sharing his ideas and the rationale as to why this was required; also to confirm, for the same reasons I referred to, that the Opposition will be supporting this Bill.

**Mr Speaker:** Does any other hon. Member wish to speak on the general principles and merits of the Bill? Does the mover wish to ...?

1890 I now put the question, which is that a Bill for an Act to amend the Trade Marks Act and Patents Act be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

**Clerk:** The Trade Marks and Patents (Miscellaneous Amendments) Act 2020.

**Trade Marks and Patents (Miscellaneous Amendments) Bill 2020 –  
Committee Stage and Third Reading to be taken at this sitting**

1895 **Minister for Digital, Financial Services and Public Utilities (Hon. A J Isola):** Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

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

**Competition Bill 2020 –  
First Reading approved**

1900 **Clerk:** A Bill for an Act to make provision about competition and the abuse of a dominant position, and to make provision in relation to mergers to establish the Gibraltar Competition and Markets Authority and to provide it with powers of investigation and other functions.

The Hon. the Minister for Business, Tourism, Transport and the Port.

1905 **Minister for Business, Tourism, Transport and the Port (Hon. V Daryanani):** I have the honour to move that a Bill for an Act to make provision about competition and the abuse of a dominant position, and to make provision in relation to mergers to establish the Gibraltar Competition and Markets Authority and to provide it with powers of investigation and other functions be read a first time.

1910 **Mr Speaker:** I now put the question, which is that a Bill for an Act to make provision about competition and the abuse of a dominant position, and to make provision in relation to mergers to establish the Gibraltar Competition and Markets Authority and to provide it with powers of investigation and other functions be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

1915

**Clerk:** The Competition Act 2020.

**Competition Bill 2020 –  
Second Reading approved**

**Minister for Business, Tourism, Transport and the Port (Hon. V Daryanani):** I have the honour to move that the Bill be now read a second time.

1920 Mr Speaker, this Bill has been certified as urgent by the Chief Minister and comes before Parliament in the context of our Brexit preparations. The reason for this Bill is that Gibraltar's participation in a UK-EU free trade agreement will only be permitted if Gibraltar has a legislative framework to promote open and fair competition. This may also be a fundamental requirement of some free trade agreements the UK may be negotiating with the rest of the world. In the circumstances, without the legislative framework, Her Majesty's Government will not negotiate for Gibraltar's inclusion in fair trade agreements.

1925 The Bill consciously attempts to mimic the UK's competition regime, which is set out in the Competition Act 1998 and the Enterprise Act 2002 as adapted by the UK's EU exit legislation. As this Bill purports to be new law, Gibraltar has been the subject of EU rules on competition. That regime has been administered by the European Commission and enforced with a wide suite of powers, which has included dawn raids. The UK is repatriating these powers and conferring them on their Competition and Markets Authority, and this Bill achieves the same aim.

1930 Mr Speaker, at a very high level, the UK regime provides: (a) a ban on anti-competitive conduct; (b) a ban on abuse of dominant position; (c) the criminalisation of cartels; (d) merger control. Merger controls do not need to be notified unless certain thresholds are met. However, the effect of not notifying may lead to action that can unwind the merger, proving costly and time consuming.

1935 The Bill is divided into 10 Parts. Some Parts are further subdivided into Chapters. Parts I and II are derived from the UK's Competition Act 1998, whereas Parts III to VIII are derived from the Enterprise Act 2002.

1940 Part I, Competition. The Bill contains two prohibitions which are closely based on the corresponding prohibitions under Articles 101 and 102 of the Treaty on the Functioning of the European Union: (1) the Chapter 1 prohibition, which prohibits agreements between undertakings, decisions by associations of undertakings, or concerted practices which may affect trade in Gibraltar and have as their object or effect the prevention, restriction or distortion of competition in Gibraltar; and (2) the Chapter 2 prohibition, which prohibits the abuse of a dominant market position which has or is capable of having an effect on trade in Gibraltar.

1945 Clauses 3 to 9. There are three elements to a breach of Chapter 1 prohibition. There must be some form of agreement, decision or concerted practice between undertakings, which may affect trade in Gibraltar and which has its object to affect the restriction, prevention or distortion of competition in Gibraltar. In addition, the effect on competition and trade in Gibraltar must be appreciable. There must be an agreement, decision or concerted practice between two or more independent undertakings. Intra-group arrangements – that is between a parent and subsidiary or between two sister companies – will generally fall outside the scope of Chapter 1 prohibition, as long as the companies concerned form a single economic unit.

1950 An agreement need not be in writing or be intended to be legally binding to fall within the Chapter 1 prohibition. A concerted practice consisting of direct or indirect contact between competitors, the object or effect of which is to influence a competitor's conduct in the market, will also be caught. The effect on trade in Gibraltar may be actual or potential.

1955 There is limited immunity from fines for any small agreements, which are defined as agreements between two parties whose combined group turnover in the last financial year preceding the infringement does not exceed a specified threshold. Officials here have consulted their counterparts with respect to the various threshold values in the Bill. I have accepted the advice I have received regarding these thresholds and will keep an open mind as to whether to review them in the future. The threshold will be provided for in regulations that will be published in the New Year, if Parliament approves this Bill.

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Supplementary Information 0.1. It should be noted that the immunity is limited because it does not apply to price-fixing agreements and because the Gibraltar Competition and Markets Authority, hereinafter referred to as the GCMA, may withdraw the immunity following an investigation. Although small agreements have limited immunity from fines, they are not exempt  
1970 from Chapter 1 prohibition itself and may still be the subject of investigation by the GCMA and civil actions by third parties.

Exclusions. Certain types of agreements are excluded from Chapter 1 prohibition, notably mergers. There are circumstances in which they may cease to apply or be withdrawn. Exemption from the Chapter 1 prohibition is also possible.

1975 Exemption. An agreement that infringes the Chapter 1 prohibition may nonetheless benefit from an exemption if, broadly speaking, the benefits to which it gives rise outweigh anti-competitive effects. For this purpose, the criteria that must be satisfied are that (1) the agreement contributes to improving production or distribution, or to promoting technical or economic progress; (2) it allows the consumer a fair share of the resulting benefit; (3) it only imposes  
1980 restrictions which are indispensable to the achievement of those objectives; and (4) it does not allow the parties the possibility of eliminating competition in respect of a substantial part of the products in question.

Block exemptions. The Minister may, by order, make block exemptions for categories of agreements that are likely to be exempt agreements. The GCMA would recommend that the block  
1985 exemption be made. Retained exemptions apply to agreements that fall within an EU block exemption regulation or are covered by a Commission decision stating that Article 101.1 does not apply to the agreement or that the conditions of Article 101.3 are satisfied. Agreements covered by retained exemptions are automatically exempt from Chapter 1 prohibition, but exemption is not absolute. This may be an academic exercise, as we are not aware of any retained exceptions  
1990 that have affected Gibraltar.

The Chapter 2 prohibition, clauses 10 and 11. Clause 10 contains the Chapter 2 prohibition, which is, in effect, abuse of dominant position. This can be defined as a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being  
1995 maintained in the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of consumers. The abuse may arise from a single undertaking, but in addition there are circumstances where the conduct of two or more undertakings acting together can amount to a breach of this prohibition. The abuse may arise in circumstances such as (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions; (b) limiting production, markets or technical development to  
2000 the prejudice of consumers; (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.

2005 Clause 11 refers to Schedules 1 and 2, which provide the detail of certain exemptions: (1) mergers or joint ventures within the meaning of Part IV of the Bill; (2) an undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly insofar as the prohibition would obstruct the performance of the particular tasks assigned to that undertaking's services of general economic interest and tending to include,  
2010 for example, postal services; (3) conduct engaged in to comply with a legal requirement; (4) conduct specified in an order made by the Minister to avoid a conflict with international obligations; (5) conduct specified in an order made by the Minister where there are exceptional and compelling reasons of public policy why Chapter 2 provision ought not to apply.

As with Chapter 1 prohibition, there is also a limited immunity in relation to a breach of  
2015 Chapter 2 prohibition. This arises in the context of conduct which is deemed to be of minor significance. The threshold will again be set out in regulations that will be made under the Act.

Chapter 3, Investigation and Enforcement. Enforcement powers are set out in clauses 29 to 27.

2020 In a case where the GCMA has made a decision, the GCMA may issue directions to rectify the infringement. Directions may be in respect of an agreement that infringes Chapter 1 prohibition, clause 29, or conduct that infringes the Chapter 2 prohibition, clause 30. Failure to abide by the provisions of such directions may lead to the GCMA making a court order. A penalty may be imposed by the GCMA. The amount may not exceed 10% of the turnover of the undertaking and is therefore potentially very significant. Any sum received is payable to the Consolidated Fund. An unpaid penalty is recoverable as a civil debt due to the GCMA.

2025 Clauses 36 and 37 provide for limited immunity for small agreements other than price-fixing agreements and conduct of minor significance.

2030 Chapter 4, Appeals and Proceedings and Settlements relating to Infringements of Competition Law. With respect to the appeals, the Bill differs from the UK in that appeals are to the Competition Appeals Tribunal. Given the anticipated volume of activity, the creation of the tribunal does not seem justified. Officials have discussed this with their UK counterparts, and they agree that this is not justified for Gibraltar. Appeals may be lodged by the party to an agreement in respect of which the GCMA has made a decision and by a third party that satisfies the court that it has sufficient interest in the decision. Regulations will prescribe appealable decisions.

2035 Clause 49 creates a right to claim damages from infringers of Chapter 1 or Chapter 2 prohibitions. Such proceedings may be brought on a collective basis in respect of two or more section 49 claims.

Clauses 51 and 52 and Schedule 5 make further provisions as regards claims for loss and damage.

2040 Clause 53 provides for appeals to the Court of Appeal arising from decisions made by the Supreme Court.

Clauses 56 to 58 concern redress schemes whereby infringers offer compensation in a structured manner. The terms of a scheme that has been approved may be enforced by legal proceedings.

Chapter 5 provides for miscellanea.

2045 Clause 60, as read with Schedule 6, provides for procedural rules for the GCMA. The rules need to be consulted on, and therefore, as an interim measure, subclause (11) applies the UK's Competition Market Authority rules until such time as Gibraltar's rules are published.

Clause 61 requires the publication of advice and information about the application of the prohibitions and their enforcement.

2050 Clause 62 is a regulation-making power that may be used to co-ordinate the functions of regulators.

Part II, Supplemental and Transitional, contains two clauses. The first deals with corporate liability, whereas the second relates to the application to the Crown.

2055 Clause 68(6) permits the Minister to certify that certain powers are not exercisable Crown property in the interests of the security of Gibraltar. Given that the Governor retains responsibility for security, the power is to be exercised with the Governor's approval.

Part III, Information and Super Complaints, contains a number of clauses that relate to information and which direct the GCMA to provide certain information to the public and Ministers. This Part also includes clause 73, which relates to super complaints.

2060 Part IV makes provisions with respect to mergers.

Chapter 1, Duty to Make References. The basic premise is that mergers that have the effect of substantially lessening competition are not in consumers' interests. The regime created provided for the possibility of seeking advanced clearance of the mergers permissible. The GCMA has a duty to refer mergers for an investigation where it believes it has seen a substantial lessening of competition. The reference will be internally to the Chair of the GCMA for the constitution of a group under Schedule 11.

2065 Clause 75 defines 'relevant merger'. A relevant merger arises when two or more enterprises have ceased to be distinct enterprises at a time or in circumstances described in clause 77 and the value of the turnover in Gibraltar of the enterprise being taken over exceeds £1 million, or

2070 £25 million, as the case may. The £1 million threshold applies if, in the course of the enterprises ceasing to be distinct, a person or group of persons has brought a relevant enterprise under the ownership or control of the person or group.

Clause 76 defines 'relevant enterprise'. The £25 million applies to a merger that does not involve a relevant enterprise. A relevant merger also arises if it meets the share of supply test. 2075 Perhaps more than the monetary threshold, the share of supply test is likely to bite. The threshold is at least two-thirds of any goods or services supplied by or to a person.

Chapter 2, Public Interest Cases. A key feature of the merger provisions of the Bill is that Ministers are not involved in individual cases. Instead, the GCMA takes the necessary decisions. There are, however, instances where an investigation on a merger may be justifiable on grounds 2080 of a wider public interest than its detrimental effect on competition. In such cases, clauses 100 to 117 allow for ministerial intervention. At the present time, only mergers that concern the security of Gibraltar fall within the ambit of the public interest provisions, although this may be changed by ministerial order.

Chapter 3, Other Special Cases. An exceptional category of mergers may be referred for investigation on public interest grounds, even though they do not meet the turnover or the share 2085 of supply threshold for reference. These are special public interest cases. In the UK, mergers that fall under this Chapter include government contractors or subcontractors who may hold or receive confidential material relating to defence, amongst others. The Bill follows the UK only to the extent of Government's contractors. Mergers in these cases are not investigated on competition 2090 grounds, rather in the public interest.

Chapter 4, Enforcement. Clause 127 applies where the GCMA is considering whether to make a reference under clauses 74 or 85 and it knows or suspects that a merger has resulted. Where the GCMA has reasonable grounds for suspecting that pre-emptive action has or may have been 2095 taken, the GCMA has a power to make an order to take action to restore the position to what it would have been had the pre-emptive action not been taken, or otherwise for the purpose of mitigating its effects.

The provisions that cater for understandings in lieu are set out in clauses 128 to 133. If the GCMA has identified possible competition or other public interest concern which would normally warrant a reference, it may accept undertakings in lieu of a merger reference to remedy those 2100 concerns. The GCMA may accept any undertakings that it considers appropriate to remedy, mitigate or prevent the substantial lessening of competition or any adverse effects resulting from it. Undertakings in lieu of merger reference may be structural – for example, the divestment of a particular part of business where the merged entity would acquire an excessively strong market position or behavioral regulating the terms on which the merged entity carries on business, such 2105 as the prices it may charge. If, after accepting the undertakings in lieu, it becomes apparent that the undertakings are not being or will not be fulfilled, the GCMA has a power to issue an order against the parties to ensure fulfilment of the undertakings in lieu.

Part V, Market Studies and Market Investigations. Chapter 1, Market Studies and Market Investigation References. Clause 190 requires the GCMA to publish a market study notice where 2110 it is proposing to carry out its functions under clause 69. Market studies are examinations of the causes of why particular markets may not be working well, taking an overview of regulatory and other economic drivers and patterns of consumer and business behaviour.

Clause 191 confers a power on the GCMA to make reference to the Chair of the GCMA for the constitution of a group under Schedule 11, where there are reasonable grounds for suspecting 2115 that any feature or combination of features of a market in Gibraltar for goods or services prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in Gibraltar.

Clauses 192 to 196 make further provision in relation to such references.

Clause 197 relates to GCMA groups and sets out the functions of the GCMA that may be carried 2120 out by the group. The GCMA group is selected from a panel of experts.

2125 Where reference has been made, clause 198 provides that the GCMA will consider what market or markets exists in connection with the supply or acquisition of the goods or services described in the reference 'the relevant markets' and then determine whether any feature or combination of features of the relevant markets prevents, restricts or distorts competition in connection with the supply or acquisition of goods or services in Gibraltar. Where this is the case, there is an adverse effect on competition.

Depending on the circumstances, more than one adverse effect on competition may be found. Clauses 199 to 204 make further provisions in relation to such references.

2130 Chapter 2, Public Interest Cases. Clauses 205 to 227 establish a mechanism that allows the Minister to intervene in cases where intervention is justified by the wider public interest considerations.

Where an intervention notice is in force, the Minister's approval is required before the acceptance of undertakings in lieu of a reference, and the Minister, rather than the GCMA, becomes the decision taker on remedies after the GCMA investigation.

2135 Following a decision on public interest grounds, the Minister will be able to make one of two references to the GCMA: a restricted public interest reference or a full public interest reference. Under the restricted public interest reference, the GCMA must simply investigate the competition issues referred. The Minister will consider the public interest issue under the full public interest reference. The GCMA must, alongside the competition issues, investigate and report on the public interest issues.

2140 Chapter 3, Enforcement. This Chapter, in clauses 228 to 241, sets out the enforcement provisions.

2145 Part VI, Cartel Offence. By virtue of clause 261, an individual is guilty of an offence if he agrees with one or more other persons to make or implement, or to cause to be made or implemented, arrangements whereby at least two undertakings will engage in one or more prohibited cartel activity, namely: (1) direct or indirect price fixing; (2) limitation of production or supply; (3) sharing customers or markets; (4) bid-rigging. The activities must relate to the supply or production of a product or service in Gibraltar.

2150 The cartel offence only applies to horizontal agreements, agreements between undertakings operating at the same level of the supply production chain. In addition, arrangements fixing prices, limiting supplies or limiting production must be reciprocal. The last two undertakings must each be bound to fix prices, limit supplies or limit production. The offence may be committed even if the agreement is not implemented or the individuals involved do not have authority to act on behalf of their companies.

2155 Clause 262 sets out the circumstances in which the cartel offence is not committed. It provides that a person does not commit the cartel offence if, in the case of arrangements affecting the supply of a product or service, the customers would be given relevant information before supply is agreed, or, in the case of bid-rigging, the person requesting bids would be given relevant information before the time when a bid was made, or in any case relevant information about the arrangements would be published before the arrangements were implemented in the manner specified in an order made by the Minister. It would be for the prosecution to prove that the circumstances do not apply in relation to the arrangements.

2165 Subclause (2) defines 'relevant information'. It is the names of the undertakings to which the arrangements relate, a description of the nature of the arrangements, the products or services to which they relate, and such other information as may be specified in an order made by the Minister.

An offence is also not committed when the agreement is made in order to comply with a legal requirement. A legal requirement in this context means one imposed by or under an enactment in force in Gibraltar or under retained direct European Union legislation.

2170 Proceedings may only be instituted with the consent of the Attorney General, and, if successful, a person is liable on indictment to imprisonment for a maximum of five years and unlimited fine.

Conviction on a summary basis carries a maximum term of imprisonment of six months and a fine of the statutory maximum.

2175 Subclause (4) provides for a leniency process. It provides the GCMA with the power to issue an applicant for leniency with a written notice that the applicant will not be prosecuted for the particular matter under investigation provided certain contractual conditions set out in the notice are met. The GCA must adapt guidance in this regard, which, if similar to the UK guidance, would be likely to include that the applicant makes an admission of guilt, must not be the lead cartel member, must cease all involvement in the cartel, must co-operate fully with the investigation and must make a full disclosure. The notice is intended to encourage informants to come forward by providing them with sufficient comfort that they will not be prosecuted.

2180 Clauses 267 to 274 provide further details as to the legislative powers conferred under the GCMA.

2185 Part VII, Miscellaneous. Clause 275 may extend the application of clause 73 to specified regulators pursuant to an order.

Clause 276 allows a Minister to amend or add to the list of remedies that can be used in fine orders set out in Schedule 8.

Part VIII, Information, creates a new gateway and sets out general instructions and conditions for the disclosure of specified information held by public authorities.

2190 Clause 277 provides for a general restriction about specified information that must not be disclosed.

Clause 278 sets out the parameters of specified information.

2195 The provisions in this Part will enable a public authority to disclose information to facilitate the exercise of its own statutory functions and certain statutory functions of other persons and for the purposes of any criminal investigations or proceedings.

With regard to overseas public authorities, it will be possible to disclose information to an overseas authority if it falls within subclauses (2) or (3).

Subclause (2) describes the functions of the overseas public authorities exercising.

2200 Subclause (3) permits disclosure if it is required by or under an international agreement or if there is any arrangement with public authorities that has been entered into by the Minister or by Gibraltar authorities.

Clause 285 creates offences for disclosures that breach confidentiality provisions in this Part.

2205 Part IV, the GCMA. Clause 286, together with Schedule 11, provide for the GCMA to be constituted with the Gibraltar Regulatory Authority. The Chair of the GCMA will be the Chair of the GCMA board and will have the duties under the Act.

Part IX, supplementary – clause 287 makes references to ‘Minister’ in the Act to be read as references to the Chief Minister.

2210 Clause 289 has been included because there is a need to align this Bill with the Fair Trading Bill, if passed by the Parliament. Mr Speaker, that Bill is on the Order Paper. It repeals and replaces the Fair Trading Act 2015. The intention there is to give the OFT jurisdiction in cases where the sums do not exceed thresholds for small agreements or conduct of minor significance. The regulation-making power, once exercised, requires that they be laid in Parliament after they have been made.

2215 Clause 290 repeals the Fair Trading (Damages for Infringement of Competition) Rules 2016 that transposed Directive 2014/104/EU.

I commend the Bill to the House.

2220 **Mr Speaker:** Before I put the question, does any 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, this Bill is 350 pages long. It was published on 2nd December, last Wednesday. Ordinarily, the law – the Constitution – would require it not to be taken before 14th January next year. We were not notified that there was going to be a certification of urgency



2225 or the grounds of the certification of urgency. We were informed this morning, at 11 a.m., that the Bill was going to be taken today.

2230 This is a Bill that is extremely complex in nature. I am not going to even pretend to summarise the hon. Member's long intervention on the nooks and crannies of this legislation, which deals with highly complex provisions to prevent and restrict or distort any competition in Gibraltar, to prohibit that, to require investigative powers, to create a Competition and Markets Authority. This is a highly complex piece of legislation that requires big parliamentary scrutiny and attention to detail. We have been, on this side, deprived of that ability to scrutinise an important piece of legislation that comes before the House, and for those reasons we are going to abstain on this piece of legislation.

2235 We hear that the hon. Member says it is an integral part of the arrangements which Gibraltar and the UK have reached on free trade. Presumably, the decision that led to this Bill being drafted must have been taken some time ago. It is not possible, in my experience, to draft a complex piece – 350 pages – of legislation in a weekend, and therefore we assume, on this side of the House, that Members opposite must have been aware that this either was a requirement or that it was appropriate – and, if so, when? – and, irrespective of when, could have given notice to  
2240 Members on this side of the House that this was going to be a requirement; and, if it was going to be a requirement, that it was something that was going to come to the House urgently and have to be taken on this basis.

2245 Again, indeed, while the hon. Member has gone through the legislation in this form, as it was published last Wednesday, in great detail – for which, of course, we are thankful – it is complex detail that we hear for the first time and we assume that not just the hon. Member but draftsmen from the Legislation Unit of the Government must have worked with counterparts in the UK to produce something as complex as this. We are told that this is, in effect, an encapsulation in Gibraltar form of UK legislation. We question the appropriateness of carbon copying English legislation to the unique circumstances of Gibraltar and the business and competition aspects of  
2250 it. We do not know, because of course there has not been sufficient opportunity for there to be parliamentary scrutiny.

2255 At the risk of sounding a note of discord today, where we have agreed on many things, I have to say that of course we have given the Government space in relation to COVID and so on, but in this instance of presenting this Bill of 350 pages today, being told this morning that it was going to be taken today, this is precisely a good example of why the procedures of this House do not work. They do not work because a parliament needs to give serious scrutiny when it is legislating. If we are going to do our respective jobs properly and look at laws and the effect they have on our citizens, we cannot simply be presented with a Bill that ordinarily would be taken in mid-January – so you would have a suitable or relevant period of time to look at the impact – and suddenly be  
2260 told that it is going to be taken that afternoon and that the matter was going to be certified urgent simply through the mouth of the Speaker. One would have thought that, for certifications of urgency, at least the Opposition would be informed of it.

2265 Mr Speaker, the hon. Members opposite know of my personal commitment to the process of parliamentary reform and governance and the willingness that we have indicated to Members opposite to participate in a constructive process leading to a reform of this House to ensure that it works better, but when you have examples of this, it rather magnifies the fact that, in some respects, it simply does not work.

2270 That does not mean that we do not understand that the hon. Members are under pressure on a variety of things. We accept that. This is a small administration and a small Parliament, and we perfectly understand that there are pressures, but what we cannot understand is that a Bill like this is a sudden revelation. We assume that this must have been part of discussions with someone down the road and that, at some point, even if it is in the recent past, someone has said you must have legislation or it is appropriate that you have legislation, or indeed it is a requirement that you should have legislation. In any of those scenarios there must have been an intervening period  
2275 between the decision, the drafting and the publication. I find it hard to believe that a 350-page

Bill is suddenly produced as if we were frying an egg. I do not believe that that can be the case; and if that is the case, then it would be even worse because that would mean that the Government itself has not had time to examine every detail of this Bill.

2280 Mr Speaker, for those reasons, and because this is an extremely complex piece of legislation ... I have to say the other thing that has not been entirely clear from the hon. Member's contribution is why it needs to be taken precisely before 31st December – if there is any degree of urgency now, why it cannot wait until January. I certainly did not get, from his explanation, clarity on that. Is it the intention of the hon. Members opposite that the Committee Stage be taken today, or is it that they are going to at least give us time for an intervening period for the Committee Stage?

2285 On a macro basis, and apart from saying that we will abstain on this Bill, I rather think that it does magnify the fact that Members on both sides of this House need to get on with a proper discussion on the reform of the procedures of this House, and, ahead of that, need to work together in a better way to ensure that we are not landed in a situation where complex pieces of legislation are simply published and Members on this side of the House are given, in effect, four  
2290 hours' notice that a 350-page Bill is going to be taken today.

**Mr Speaker:** Does any other Member wish to speak? The Hon. Marlene Hassan Nahon.

2295 **Hon. Ms M D Hassan Nahon:** Mr Speaker, as much as I am grateful to my good friend the Hon. Minister across the way, I have to say that I absolutely agree with the Leader of the Opposition's comments on this. It is a Bill which is hundreds of pages long. We have had hours to look at it. I think the fair thing and the democratic thing would be to have days, if not weeks, to evaluate something like this very complex piece of legislation. I will not repeat all the points that the Leader of the Opposition has made, but just say that I absolutely concur with my colleagues on their rights  
2300 and therefore will be abstaining from voting on the Bill.

**Mr Speaker:** The Hon. Roy Clinton.

2305 **Hon. R M Clinton:** Thank you, Mr Speaker. I obviously concur with everything the Leader of the Opposition and the hon. Lady have said, in terms of the time we have been given to consider this Bill today.

Mr Speaker, I would point out to you the Fair Trading Bill, which is on the Agenda Paper, and the Competition Bill. The Fair Trading Bill has, to my understanding, at least had some consultation with the business community and they have had some input into it. I would like to know from the  
2310 Minister what consultation he has had with the business community in Gibraltar, the various chambers and the Federation, and are they happy with this Bill? It is not just us in this Chamber that we are legislating for, but for the whole of Gibraltar. Therefore, I think it is critical that the Government should at least have consulted interested stakeholders before bringing this Bill to the House, unless it is, as he suggests, merely a matter of expediency and he has no choice, and  
2315 therefore we have no choice. But then, as the Leader of the Oppositions says, it does put us in a rather invidious position as a Parliament. Either we legislate for ourselves or we do not, and we cannot be presented with a piece of legislation that we are meant to pass without having had due consideration. It does raise important issues for this House in terms of how legislation is originated and comes to this place. At the end of the day, we are here to legislate for the people of Gibraltar,  
2320 not to impose legislation on them which may or may not make any sense because we just do not know or we have been told to do it, whereas it may be a question of expediency, and, as the Leader of the Opposition has said, we will abstain and let the Government make the decision because we are not in a position to make a decision on this 350-page piece of legislation today.

2325 From the very little I have been able, in the time I have had, to peruse this legislation, I would ask the Minister two more things. Why is the Gibraltar Competition and Markets Authority not a body corporate, as you might expect? And why has he chosen the Gibraltar Regulatory Authority to exercise its functions, whereas in the Bill before the House we already have a fair trading

authority? Could not Fair Trading have undertaken these responsibilities? Would it not fit better for Fair Trading than the Gibraltar Regulatory Authority? I just ask him that question.

2330 Thank you, Mr Speaker.

**Mr Speaker:** The Hon. Daniel Feetham.

2335 **Hon. D A Feetham:** I just want the Hon. Minister, if he could, to clarify this. I am not clear in my own mind. He said that this Bill has to be read in conjunction with the Fair Trading Bill. As I understand it, that Bill is not going to be taken this evening – unless I am wrong. Can you therefore commence the Competition Bill in the absence of Parliament essentially passing the Fair Trading Bill? And if that is so, then how can he justify the taking of the Competition Bill as urgently as the Government is taking it?

2340

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

2345 **Chief Minister (Hon. F R Picardo):** Mr Speaker, the Hon. the Leader of the Opposition has been very helpful, as I have said in the context of the earlier interventions I have made, in the matters which have related to COVID and, indeed, matters which have related to Brexit, and I am very grateful indeed for the attitude that he has shown in respect of some aspects of the way we have dealt together with those issues. But, frankly, Mr Speaker, that does not give him a licence to get up and pretend to chastise the Government because the Government is doing something which the hon. Member who has moved the Bill has said we need to do and explained why we need to do it.

2350

Does the hon. Gentleman think that the Government wishes to bring a 350-page Bill late in the evening, when we were involved in the detail of Brexit negotiations, in order to surprise them with something which is not a policy issue on which there is likely to be any difference between us?

2355 Does the hon. Gentleman think that he is somehow appealing to a constituency in Gibraltar by pretending that the Government is usurping the legislative function of this Parliament by forcing through a 350-page Bill if we were not advised it was necessary for the purposes of the business community in Gibraltar because, by extension, as the hon. Gentleman has explained to the House, it is a necessary way for us to ensure that we are in compliance with international legal obligations acquired in the context of continuity free trade agreements (FTAs)?

2360 Mr Speaker, there is no desire on the part of the Government to push through a Competition Bill late on a Thursday evening in December, no desire whatsoever, and so none of what the hon. Gentleman has said should be considered to be having unearthed on the part of the Government a desire to do so. Far from it, because, as has been explained, this is a necessary part of the jigsaw of ensuring that Gibraltar is compliant with all of the obligations that we need to be compliant with in order to emerge into the new trading world into which we are going to emerge, through no fault of our own, in the context of those continuity FTAs and the new FTAs that the United Kingdom has negotiated for Gibraltar and which hon. Members opposite say that we should form part of. They want us to form part of those new FTAs the UK is doing, but when we put in place a piece of the architecture that we have to put in place they complain that they have not had enough time to look at it. Well, Mr Speaker, the Bill was published on 2nd December, eight days ago. I am not suggesting that they should have dropped everything and read the Bill – I am not suggesting that – but the hon. Gentleman should know that the Government received the Bill on 2365 1st December and that, therefore, it was published at the first available opportunity after the draftsman had provided it to the Government in final form. So, it is not that we have kept it under our pillows in order not to give them an opportunity to review it. The Government is moving with all due and available expedition of the size of a small administration in order to be able to provide the standard that we need to provide so we are in the larger trading deals that are being done.

2375

It is fine if hon. Members are going to abstain for all of the reasons that they have told us that they are going to abstain, because they would have wanted further time to scrutinise. Mr Speaker,

2380 we would have wanted further time to scrutinise. We may need to come back and amend this Bill if errors have crept into it, although I have confidence in the draftsmen to have done it in the time available.

2385 Is it that hon. Members suddenly believe that we want to pass Bills under cover of Brexit and that we are the only Parliament that finds itself in this predicament? Or is it that, despite what I told the House earlier, hon. Members are actually not listening to the rolling news cycle? Haven't they heard that there is already a 600-page treaty – the total number of pages of which ascend to 1,800 pages with annexes – that is likely to be published at the earliest opportunity on Monday, and which the Westminster Parliament will pass, before the 20th, into law, and the European Parliament will adopt, having translated it into a number of languages, at the very latest on 2390 28th December? Some of those days are holidays, as people will know.

Mr Speaker, it is tough all over and hon. Members have to realise that it is particularly tough on this side of the House in order to be able to comply with the rules that we need to have in place by the time we need to have them in place not through any choice of our own. I would happily give hon. Members as long as they need to read a 350-page text, of course.

2395 The Government, if anything, might be accused of not having pursued Bills which we could have pursued. There are Bills on the Order Paper that have been published for more than six weeks, but the priority is Brexit and getting it right in time for 31st December.

The hon. Member can pretend to chastise who he wishes, but the Government will continue to do the work that we have to do to ensure that we are in compliance with our international legal obligations, which international legal obligations are being acquired on our behalf *at our request*, because it is not being imposed on us. We all say that we want the United Kingdom to negotiate for us to form part of these new international trade arrangements. Hon. Members have even brought out press statements when they have thought that we were not moving with due alacrity in respect of that in the past. And yet now, when *they* are called upon to act and all they have to do is raise their hands or their voices to vote in support of the passing of the Bill, they decide to opt to chastise instead of support. Well, Mr Speaker, let that be the case. Let that be the attitude that hon. Members take. We will know that we have done everything that we possibly can in order to ensure compliance with Gibraltar's international legal obligations in the time available.

2400 I have shared with the Hon. Leader of the Opposition that, as Leader of the House, I intend to adjourn the House again to December because we may have to come back with other provisions that we may have to deal with. If it were possible, we would happily adjourn the Committee Stage to that date, but given the attitude that they have displayed, and given the fact that we do not know whether we will be able to be, all of us, here with our majority, it will not be possible for us to adjourn the Committee Stage until then. I will, of course, happily received from the hon. 2405 Member any suggestions they may have to amend the Bill in the future, and if we agree with those proposed amendments, we will move a Government Bill for those amendments to be passed, because what we need to do is to ensure that our *corpus juris* – that is to say our body of laws – is in fit shape to deal with these issues that may arise in competition in the future if we are going to form part of this brave new world in respect of international trade through the United Kingdom. 2410 But unfortunately, given that I do not know that I will have a majority in this House next week when we come back, because some of us may have to travel in order to continue the negotiations, I am afraid we will try and deal with the Committee Stage today.

Hon. Members know that they can stop the Committee Stage for a day, so they can stop it until tomorrow, if they like – and we can come back tomorrow – and pull us away from the negotiations which we expect will be going on tomorrow, and pull us away from the briefing that I expect to be able to give them tomorrow, if that is the attitude that they want to take. These are the mechanisms that parliamentary democracy provides to them, in the same way as it will provide a mechanism to a Member of the European Parliament on 28th December to delay a treaty if he has to, or she has to, and in the same way as it will provide for Members of the Westminster 2425 Parliament to delay approval of a treaty, if there is one before Christmas, to be passed in time for there not to be a cliff edge on 31st December. But, Mr Speaker, there are many different types of 2430

parliamentarian, and in this case what we are seeing is, uncharacteristically, the Leader of the Opposition choosing to go down the route of chastising and taking with him even the hon. independent Member and taking with him Mr Clinton, all of whom I would have thought would be wanting us to ensure that we have done what we need to do to, first of all, ensure that we are part of these new trade agreements, and, second, to ensure that we are not putting the United Kingdom in breach of its international legal obligations because of something that we have done.

I think the points have been made by the hon. Gentleman for the reasons that they have been made. Perhaps he will have an opportunity to reflect, now that I have given him the date on which we had the Bill available, and understand that this is not the Government failing to publish with all due alacrity or failing to give them the opportunity that we might have been able to give them to consider the Bill, but actually moving as quickly as we can in order to ensure that we do what we need to do in time for 31st December.

**Mr Speaker:** Does the mover of the Bill wish to respond? (*Interjections*) All right, settle down.

I now put the question, which is that a Bill for an Act to make provision about competition and the abuse of a dominant position, and to make provision in relation to mergers to establish the Gibraltar Competition and Markets Authority and to provide it with powers of investigation and other functions be read a second time. Those in favour? (**Several Members:** Aye.) Those against? The Opposition and the lady Member are abstaining.

**Clerk:** The Competition Act 2020.

#### **Competition Bill 2020 – Committee Stage and Third Reading to be taken at this sitting**

**Minister for Business, Tourism, Transport and the Port (Hon. V Daryanani):** I beg to give notice that the Committee Stage and Third Reading of the Bill will be taken 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 today? (**Several Members:** Aye.) The Opposition and the lady Member have abstained.

#### **COMMITTEE STAGE AND THIRD READING**

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

**Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to move that the House should now resolve itself into Committee to consider the following Bills clause by clause: the Nature Protection (Amendment) Bill 2020, the Intellectual Property (Copyright and Related Rights) (Amendment) Bill 2020, the Trade Marks and Patents (Miscellaneous Amendments) Bill 2020 and the Competition Bill 2020.

*In Committee of the whole House*

**Nature Protection (Amendment) Bill 2020 –  
Clauses considered and approved**

**Clerk:** A Bill for an Act to amend the Nature Protection Act 1991.  
Clauses 1 and 2.

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**Mr Chairman:** Clauses 1 and 2 stand part of the Bill.

**Clerk:** Clause 3, as amended.

2475

**Mr Chairman:** Are all Members content with the amendments previously circulated by the Hon. Minister in the letters dated 7th and 9th December 2020? (**Several Members:** Aye.)  
Clause 3, as amended, stands part of the Bill.

**Clerk:** The long title.

2480

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

**Hon. R M Clinton:** Mr Chairman, have we done clause 8 of this Bill?

2485

**Chief Minister (Hon. F R Picardo):** It has three clauses.

**A Member:** Subclauses.

2490

**Hon. R M Clinton:** Oh, right. Maybe just for the Minister's information, there is a typographical error in (8)8Z(3)(b) – Bern Convention is misspelled, that is all.

**Minister for the Environment, Sustainability, Climate Change and Education (Hon. Prof. J E Cortes):** 8Z ...?

2495

**Hon. R M Clinton:** 8ZA(3)(b), where it says 'Bern Convetion' – just a small typographical error. Have I got that right?

**Hon. Chief Minister:** Yes, that is fine, a missing 'n'.

2500

**Hon. R M Clinton:** Have you got it?

**Hon. Prof. J E Cortes:** Which is the typographical error?

**Hon. R M Clinton:** Just 'Convention' misspelled.

2505

**Hon. Prof. J E Cortes:** We have to insert an 'n'.

**Hon. R M Clinton:** Yes, that is all.

2510

**Hon. Prof. J E Cortes:** I move that we insert an 'n'.

**Mr Chairman:** All Members agree, then, yes?

**Intellectual Property (Copyright and Related Rights) (Amendment) Bill 2020 –  
Clauses considered and approved**

**Clerk:** A Bill for an Act to amend the Intellectual Property (Copyright and Related Rights) Act 2005.

2515      **Clauses 1 to 3.**

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

**Clerk:** The long title.

2520

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

**Trade Marks and Patents (Miscellaneous Amendments) Bill 2020 –  
Clauses considered and approved**

**Clerk:** A Bill for an Act to amend the Trade Marks Act and Patents Act.  
Clauses 1 to 3.

2525      **Mr Chairman:** Clauses 1 and 2 stand part of the Bill.  
Clause 3 has an amendment, I believe.

**Clerk:** Clause 3, as amended.

2530      **Mr Chairman:** Are all Members content with the amendment to clause 3? Clause 3, as  
amended, stands part of the Bill.

**Clerk:** Clause 4.

2535      **Mr Chairman:** Clause 4 stands part of the Bill.

**Clerk:** The long title.

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

**Competition Bill 2020 –  
Clauses considered and approved**

2540      **Clerk:** A Bill for an Act to make provision about competition and the abuse of a dominant  
position, and to make provision in relation to mergers to establish the Gibraltar Competition and  
Markets Authority and to provide it with powers of investigation and other functions.  
Clause 1.

2545      **Mr Chairman:** Clause 1 stands part of the Bill.

**Clerk:** Part I, Chapter 1, clauses 2 to 9.

**Mr Chairman:** Part I, Chapter 1, clauses 2 to 9 stand part of the Bill.

- 2550 **Clerk:** Chapter 2, clauses 10 and 11.
- Mr Chairman:** Chapter 2, clauses 10 and 11 stand part of the Bill.
- Clerk:** Chapter 3, clauses 12 to 46.
- 2555 **Mr Chairman:** Chapter 3, clauses 12 to 46 stand part of the Bill.
- Clerk:** Chapter 4, clauses 47 to 58.
- 2560 **Mr Chairman:** Chapter 4, clauses 47 to 58 stand part of the Bill.
- Clerk:** Chapter 5, clauses 59 to 66.
- Mr Chairman:** Chapter 5, clauses 59 to 66 stand part of the Bill.
- 2565 **Clerk:** Part II, clauses 67 and 68.
- Mr Chairman:** Part II, clauses 67 and 68 stand part of the Bill.
- 2570 **Clerk:** Part III, clauses 69 to 73.
- Mr Chairman:** Part III, clauses 69 to 73 stand part of the Bill.
- Clerk:** Part IV, Chapter 1, clauses 74 to 99.
- 2575 **Mr Chairman:** Part IV, Chapter 1, clauses 74 to 99 stand part of the Bill.
- Clerk:** Chapter 2, clauses 100 to 117.
- 2580 **Mr Chairman:** Chapter 2, clauses 100 to 117 stand part of the Bill.
- Clerk:** Chapter 3, clauses 118 to 126.
- Mr Chairman:** Chapter 3, clauses 118 to 126 stand part of the Bill.
- 2585 **Clerk:** Chapter 4, clauses 127 to 156.
- Mr Chairman:** Chapter 4, clauses 127 to 156 stand part of the Bill.
- 2590 **Clerk:** Chapter 5, clauses 157 to 189.
- Mr Chairman:** Chapter 5, clauses 157 to 189 stand part of the Bill.
- Clerk:** Part V, Chapter 1, clauses 190 to 204.
- 2595 **Mr Chairman:** Part V, Chapter 1, clauses 190 to 204 stand part of the Bill.
- Clerk:** Chapter 2, clauses 205 to 227.
- 2600 **Mr Chairman:** Chapter 2, clauses 205 to 227 stand part of the Bill.



**Clerk:** Chapter 3, clauses 228 to 241.

**Mr Chairman:** Chapter 3, clauses 228 to 241 stand part of the Bill.

2605

**Clerk:** Chapter 4, clauses 242 to 260.

**Mr Chairman:** Chapter 4, clauses 242 to 260 stand part of the Bill.

2610

**Clerk:** Part VI, clauses 261 to 274.

**Mr Chairman:** Part VI, clauses 261 to 274 stand part of the Bill.

**Clerk:** Part VII, clauses 275 and 276.

2615

**Mr Chairman:** Part VII, clauses 275 and 276 stand part of the Bill.

**Clerk:** Part VIII, clauses 277 to 285.

2620

**Mr Chairman:** Part VIII, clauses 277 to 285 stand part of the Bill.

**Clerk:** Part IX, clause 286.

**Mr Chairman:** Part IX, clause 286 stands part of the Bill.

2625

**Clerk:** Part X, clauses 287 to 290.

**Mr Chairman:** Part X, clauses 287 to 290 stand part of the Bill.

2630

**Clerk:** Schedules 1 to 11.

**Mr Chairman:** Schedules 1 to 11 stand part of the Bill.

**Clerk:** The long title.

2635

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

**Nature Protection (Amendment) Bill 2020 –  
Intellectual Property (Copyright and Related Rights) (Amendment) Bill 2020 –  
Trade Marks and Patents (Miscellaneous Amendments) Bill 2020 –  
Competition Bill 2020 –  
Third Reading approved: Bills passed**

**Clerk:** The Hon. the Chief Minister.

**Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to report that the Nature Protection (Amendment) Bill 2020, the Intellectual Property (Copyright and Related Rights) (Amendment) Bill 2020, the Trade Marks and Patents (Miscellaneous Amendments) Bill 2020 and the Competition Bill 2020 have been considered in Committee and agreed to, with some amendments in respect of the first two, and I now move that they be read a third time and passed.

2640

2645 **Mr Speaker:** I now put the question, which is that the Nature Protection (Amendment) Bill 2020 as amended, the Intellectual Property (Copyright and Related Rights) (Amendment) Bill 2020, the Trade Marks and Patents (Miscellaneous Amendments) Bill 2020 as amended, and the Competition Bill 2020 be read a third time and passed.

Those in favour of the Nature Protection (Amendment) Bill 2020, as amended? (**Members:** Aye.) Those against? Carried.

2650 Those in favour of the Intellectual Property (Copyright and Related Rights) (Amendment) Bill 2020? (**Members:** Aye.) Those against? Carried.

Those in favour of the Trade Marks and Patents (Miscellaneous Amendments) Bill 2020, as amended? (**Members:** Aye.) Those against? Carried.

2655 Those in favour of the Competition Bill 2020? (**Members:** Aye.) Those against? Abstentions: the Opposition and the lady Member abstained.

### ADJOURNMENT

**Chief Minister (Hon. F R Picardo):** Mr Speaker, I move now to adjourn the House.

2660 I congratulate the Hon. Mr Daryanani on having moved his first Bill in this Parliament, bringing to us a frisson of excitement in an otherwise cordial afternoon and his own baptism of fire in respect of the subject of it.

I am conscious that we start, today, the Jewish festival of Hanukkah, and I wish our magnificent Jewish community all the very best for this feast. The hon. Lady who is a Member of this House will, I hope, forgive us for having kept her for so long, in particular to get her to approve a 350-page Bill published only last week, and I do hope that it will be a happy Hanukkah, despite the very difficult times in which we all live.

2670 Mr Speaker, I move that the House should now adjourn to next Friday, 18th December at 3.30. I should give hon. Members an indication that I do not expect to take questions on that day. I am adjourning the House to then in case we need to return once again to pass any legislation – which may or may not have been published yet – which may be necessary before the end of the year, depending on whether or not there is an agreement between the United Kingdom and the European Union and whether or not that agreement also is an agreement in relation to Gibraltar.

2675 I have discussed with the Leader of the Opposition that a lot of the questions that have been filed may have become rather otiose in the time since they were filed. I am likely to be able to return to the House for the House to deal with questions in the New Year, and there will be an opportunity, I hope, for hon. Members to then rationalise which questions they want to continue with, because some of them may have been overtaken by events, and what new questions they may wish to file.

I move now formally that the House should adjourn to next Friday at 3.30 in the afternoon.

2680 **Mr Speaker:** I now propose the question, which is that this House do now adjourn to Friday, 18th December at 3.30 p.m.

I now put the question, which is that this House do now adjourn to Friday, 18th December at 3.30 p.m. Those in favour? (**Members:** Aye.) Those against? Passed.

This House will now adjourn to Friday, 18th December at 3.30 p.m.

2685

*The House adjourned at 8.02 p.m.*