



PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

AFTERNOON SESSION: 3.39 p.m. – 4.11 p.m.

Gibraltar, Monday, 24th October 2022

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The Gibraltar Parliament

The Parliament met at 3.39 p.m.

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

[CLERK TO THE PARLIAMENT: S Galliano Esq *in attendance*]

New leader of UK Conservative Party elected – Statement by the Chief Minister

Clerk: Meeting of Parliament, Monday, 24th October 2022.

Mr Speaker: The Hon. the Chief Minister.

5

Chief Minister (Hon. F R Picardo): Mr Speaker, events in London, which all hon. Members will be aware of, have transpired to produce a new leader of the Conservative Party just before the House sits. In fact, whilst we are sitting, the new leader of the Conservative Party is addressing all elected Members of Parliament for the Conservative Party in the 1922 Committee.

10

Mr Sunak has been Chancellor of the Exchequer. He knows Gibraltar well from his time there and the work we did with him to secure the £500 million guarantee from the Treasury at that time, and therefore I am very confident that we will be able to work with him, as Prime Minister of the United Kingdom, as well as we have been able to work with successive Prime Ministers since we were elected – Mr Cameron, Mrs May, Mr Johnson and, most, recently Ms Truss.

15

I have written to Ms Truss on behalf of the people and Government of Gibraltar to thank her for the work that she did with us at the time when she was Secretary of State for International Trade, Foreign Secretary and, most recently, Prime Minister, and I have written to Rishi Sunak to congratulate him on becoming the leader of the Conservative Party and in anticipation of him being appointed by the King as Prime Minister. I very much look forward to working with the Sunak-led government to ensure the best possible outcome for Gibraltar in the context of the negotiations of the UK-EU treaty and all other matters, bilateral and multilateral, between Gibraltar and the United Kingdom.

20

Order of the Day

BILLS

FIRST AND SECOND READING

Pensions (Amendment) Bill 2022 – First Reading approved

Clerk: Order of business: (ix) Bills – First and Second Readings.

25

A Bill for an Act to amend the Pensions Act. The Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): I have the honour to move that the Bill for an Act to amend the Pensions Act be read a first time.

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

Clerk: The Pensions (Amendment) Act 2022.

**Pensions (Amendment) Bill 2022 –
Second Reading approved**

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

35 Mr Speaker, section 6(1)(a) to (f) of the Pensions Act already sets out the criteria for the
entitlement to a pension, gratuity or other allowance of officers retiring from public service under
the Government and those public officers who have transferred to other public services. This
subsection of the Act does not provide for the situation, however, where a public officer under
40 government service and entitled to a pension under this Act transfers to a government-owned
company or corporation and then transfers again to another wholly owned company or
corporation – what you might call a double bounce. Clause 3(a) of the Bill makes provision for
section 6(1) of the Pensions Act to be amended after section 1(e), so that this situation can be
provided for in legislation as transfers from the public service to government-owned companies
45 or corporations and a further transfer to government-owned companies or corporations have
occurred within the public service. It also provides for the legislation to be given retrospective
effect to 2nd December 2019 for the purposes of including those public officers entitled to a
pension who have already retired under these circumstances.

Clause 3(b) of the Bill amends section 17(7) of the Pensions Act, which sets out the criteria
50 when an officer who dies in the service of an authority, a statutory authority or an agency or
wholly owned company or corporation is deemed to have died whilst in the public service under
the Government. The amendment has the effect of including the public officers who have
transferred to government-owned companies or corporations and then transferred again to
another wholly owned company or corporation – again, that double balance – so that they are
covered by the same provision.

55 Mr Speaker, I commend the Bill to the House.

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

60 **Hon. K Azopardi:** Mr Speaker, yes, and can I just say, before I launch into my points of
clarification, that we are rather depleted, as you will see, on this side of the House. Unfortunately,
the Members we had down with COVID have still tested positive for it. We thought that they might
be free today.

This was a Bill that was going to be taken by my colleague Mr Clinton, but on his behalf, and
65 having discussed the matter with him, can I just seek some clarification on it? In going through the
purpose of the amendment and comparing the Bill with the original Act, which goes back, of
course, to 1961, we did note that at some point – perhaps not now, but certainly ... I just flag that
this impacts on the public service in terms of pensionability, but the definition of ‘public service’
is rather antiquated and the Government may want to flag that for their own legal draftsmen, if
70 not now, for another occasion. The definition of public service, for example, still makes reference
to the East African Railways and so on and so forth, but that is an issue of detail.

On the principle of the Bill itself, can I ask the Chief Minister to perhaps give us a bit more detail on the implication of the changes? He has explained, I think in his original remarks, that the reason for the date of December 2019 was because you are bringing within scope people who retired at that date who may have fallen within the scope of this proposed amendment. Does he have details of how many, loosely speaking, public officers – if I can use that phrase – would come within the scope of this legislation? And, to the extent that he may have those statistics, how many public officers are we talking about who may have gone not just from the Government to a government-owned company, but have bounced a second or third time into another company? I was assuming, when I was going through this, that it probably is not a big number of people, but it would be helpful to understand how many people we are talking about, so that we can form our own view of the implications of the changes. I do not know whether he has any comments to add as to the financial implications of the changes, not just in terms of the number of people affected but in terms of what the financial implications of those changes are.

In terms of fixing the date at 1st December 2019, is there magic to that date, or would someone then say they have been left out because of that date? Does the Chief Minister have that information?

Mr Speaker: The Hon. the Chief Minister.

Hon. Chief Minister: Mr Speaker, thank you.

The definition of the public service, as the hon. Gentleman says, is now one which is, apparently, of a different age. I do not disagree with him. It is one that I look at sometimes and I do wonder how it is that we have not yet amended it. There are instances when one looks at these things and wonders whether perhaps in future we might have businesses that stretch out as far as they used to in the past, but it is very unlikely that those businesses will be public businesses and therefore I think we are overdue a change of those definitions – and not just the one that the hon. Gentleman points to.

Mr Speaker, the number of people affected by this change is, in fact, as the Hon. the Leader of the Opposition has suggested, a handful. There are no more than that, but they are a handful that have to be provided for. From memory, I believe that this is an issue that was raised by the Principal Auditor in order to ensure that the payment of pensions is properly provided for, and, as a result, the issue of the date, I think, is related also to an officer who was identified as not being covered by the rules as they are presently drafted and who transferred on that date. Since then, there may have been one or others.

The reason we have not been able to do this Bill sooner is that shortly after December 2019 – and that is when the transfer happened, not when the problem was identified – most of our draftsmen became occupied with the drafting of the coronavirus legislation and regulations etc. That became very difficult, but we are now bringing the matter to the House in order to tidy up and provide clarity in respect of individuals who are caught in this instance.

I do not have a number that I can give him, Mr Speaker. It may be an issue that he wants to put a formal question on next time in the House, so that those who compile answers can check, but I think there is literally also just a handful of people who would be affected by moving from the government service to an agency or authority and then moving again to another agency or authority or another company. Those who do move should have the protection that this Bill provides for, so that thereafter, when their pensions are paid, they have the correct and full legal cover that there needs to be for the payment of those pensions. I hope that is helpful, Mr Speaker.

If I can just add – sorry – that, therefore, in terms of the financial implications, which was the Leader of the Opposition's other question, in my understanding there will be no financial implications as a result of this legislation, because if people felt that if they were to move they would lose their pensions, they would not move and the liability would be to pay the pensions. They have moved on the understanding that they will not lose their pension entitlement, and therefore this is exactly the same liability to the Government as there would be otherwise.

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

Clerk: The Pensions (Amendment) Act 2022.

**Pensions (Amendment) Bill 2022 –
Committee Stage and Third Reading to be taken at this sitting**

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

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

**Crimes (Amendment) Bill 2022 –
First Reading approved**

Clerk: A Bill for an Act to amend the Crimes Act 2011. The Hon. the Chief Minister.

135 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to move that a Bill for an Act to amend the Crimes Act 2011 and for connected purposes be read a first time.

140 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Crimes Act 2011 and for connected purposes be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Crimes (Amendment) Act 2022.

**Crimes (Amendment) Bill 2022 –
Second Reading approved**

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

The Crimes Act provides, rightly, that offenders who are convicted of particular offences – in particular, sexual offences – should comply with notification requirements under our law. That means that they are on something loosely called the sex offenders register and, as a result, they have to notify their movements in a particular way.

150 It was brought to my attention by the former Leader of the House and my predecessor, Sir Peter Caruana, that the Act did not provide any discretion to the courts, to judges in particular, to shorten the period when an individual has to be on the register of sexual offenders in appropriate circumstances. In other words, there would be no discretion allowed as to the period for which a person should be on the register of sexual offenders, whether that person was guilty of the most heinous of sexual offences or whether that person had been found to be in breach of certain rules
155 but the moral opprobrium that the court might consider should be visited upon the particular crime in question should be lesser than another type of similar offence.

160 Mr Speaker, in our law we are always very careful not to tie the hands of judges. We tend to permit judges to have the ability to determine every aspect of a sentence based on their determination of the culpability affecting an individual who has been found, or has pleaded, guilty of an offence. I think perhaps through inadvertence we had not provided that element of flexibility to permit the judge to be the party that determines whether the period should be shortened or should not be shortened in any particular instance, and so I asked my predecessor, when he brought this to my attention, to draft the piece of legislation that would be necessary to remedy that situation, to ensure that the courts did have the discretion to make those determinations having heard the details of a particular offence in question.

165 In a nutshell, that is what this Bill does. It provides the power to the judge who has heard the case or who has an application brought to him, to permit an offender who has applied to the Magistrates Court to have his or her application removed from the register or have the period when they are going to be on the register, subject to the onerous notification requirements, shortened from the otherwise statutorily provided period.

I commend the Bill to the House.

175 **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, again, for the same reasons, I rise instead of Mr Feetham to speak on these principles.

180 We will support the Bill. As the Chief Minister says, it is right that the courts that deal with offenders should have the discretion to then determine the appropriate sentences and how long those should be carried for, so we will support the principle of the Bill.

185 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Crimes Act 2011 and for connected purposes be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Crimes (Amendment) Act 2022.

**Crimes (Amendment) Bill 2022 –
Committee Stage and Third Reading to be taken at this sitting**

Chief Minister (Hon. F R Picardo): 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.

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

195 **Hon. K Azopardi:** Mr Speaker, may I just highlight to the hon. Members opposite that we are supporting the principles of the Bill, but when it comes to the Committee Stage ... We are not putting forward an amendment, but personally I found section 315I(2) a difficult read because of the double negative, so I just put it to the hon. Members – if they are satisfied with the drafting, that is fine, but I found it a hard read.

200 **Hon. Chief Minister:** Mr Speaker, it is really for the Committee Stage, rather than now. I do not know on what basis we are saying anything about this now, but I hear what the hon. Gentleman says and I am happy to have a look at it together, so that if there is a better sort of language we can come up with it.

Hon. K Azopardi: I appreciate it.

Mr Speaker: I would tend to agree with the Chief Minister. It was not the point at which you should have raised this matter. You should have raised it when you were talking about –

Hon. K Azopardi: I was trying to be helpful.

Mr Speaker: – general principles, but you need to raise it now at Committee Stage.

**Civil Aviation (Amendment) Bill 2022 –
First Reading approved**

Clerk: A Bill for an Act to amend the Civil Aviation Act 2009. The Hon. the Deputy Chief Minister.

Deputy Chief Minister (Hon. Dr J J Garcia): Mr Speaker, I have the honour to move that a Bill for an Act to amend the Civil Aviation Act 2009 be read a first time.

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Civil Aviation Act 2009 be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Civil Aviation (Amendment) Act 2022.

**Civil Aviation (Amendment) Bill 2022 –
Second Reading approved**

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

Mr Speaker, this short Bill introduces new powers to make subsidiary legislation for the purposes of regulating vehicular, pedestrian and other traffic on Winston Churchill Avenue. The regulations shall only apply in the area prescribed and will be limited to the part of Winston Churchill Avenue which intersects Gibraltar Airport, including cycle lanes and footpaths.

The need for new legislation in this area became apparent after discussions with the Royal Gibraltar Police, the Ministry of Defence and the Gibraltar Defence Police. This revealed challenges in policing this area when people are invited on to the runway and behave in an irresponsible manner or do not listen to instructions given by the Police, police officers or airport officials. A specific incident last year saw a person enter via the south barrier of Winston Churchill Avenue and refuse to exit in a timely fashion. Such behaviour can cause delays in clearing the runway and risks endangering an aircraft attempting to land.

Although offences preventing trespass on to Gibraltar Airport or entering restricted areas can be found in our Civil Aviation Act and Crimes Act respectively, such offences would not apply to persons who are invited on to the runway and remain within the confines of the road, cycle lanes and footpaths. Therefore, the proposed regulations will create specific offences which will help the authorities to deal with such incidents effectively. Enforcement will also be aided by the ability of police officers to issue fixed penalty notices.

Mr Speaker, I commend the Bill to the House.

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

245 **Hon. E J Phillips:** Mr Speaker, the Opposition will support this Bill, but just by way of clarification, was a view taken as to whether the definition of 'Gibraltar Airport', which is referred to in the interpretation section of the primary Civil Aviation Act as including 'Civil Airport and RAF Gibraltar' ... to extend that part of Winston Churchill Avenue? I just want to ask that point of clarification because of the powers it seeks to exercise on that segment of Winston Churchill Avenue, which I assume just leads on to the runway. Apart from that, we will, of course, support this Bill.

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

Hon. Deputy Chief Minister: Thank you, Mr Speaker.

255 This arises precisely when the function of the road changes from being a road to being part of the runway. That is why it was felt that the loophole that exists because of that change in function needed to be closed.

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Civil Aviation Act 2009 be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

260 **Clerk:** The Civil Aviation (Amendment) Act 2022.

**Civil Aviation (Amendment) Bill 2022 –
Committee Stage and Third Reading to be taken at this sitting**

Deputy Chief Minister (Hon. Dr J J 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.

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

Mr Speaker: Is the Government going to be dealing with any further Bills?

COMMITTEE STAGE AND THIRD READING

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

270 **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 Pensions (Amendment) Bill 2022, the Crimes (Amendment) Bill 2022 and the Civil Aviation (Amendment) Bill 2022.

In Committee of the whole House

**Pensions (Amendment) Bill 2022 –
Clauses considered and approved**

275 **Clerk:** A Bill for an Act to amend the Pensions Act.
Clauses 1 to 3.

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

Clerk: The long title.

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

**Crimes (Amendment) Bill 2022 –
Clauses considered and approved**

Clerk: A Bill for an Act to amend the Crimes Act 2011.
Clause 1.

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Mr Chairman: Clause 1 stands part of the Bill.

Clerk: Clause 2.

Mr Chairman: Clause 2 stands part of the Bill.

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Clerk: Clause 3.

Hon. K Azopardi: Mr Chairman, if I may, the Chief Minister has my point, which I made earlier, on the wording. I will not repeat it because he heard it earlier. If they are satisfied about the wording, then that is fine. If they want to reflect further, again we leave it with them. We found subsection 315I(2), as I said before, a hard read because of the double negative.

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Chief Minister (Hon. F R Picardo): Yes, Mr Chairman, I am looking at it. The hon. Gentleman, I think, has expressed it in a way that is exactly right: it is a hard read. It is a hard read that reads right. In other words, it does what it needs to do, but it is a hard read because of the double negative. I am loathe, as a result, to change that wording, which is complex, and think that we are going to be able to make it easier to read if the draftsman, who has a lot of legislative experience, has considered that that is the best way to do it in these circumstances. Not all of our legislation is easy to read – hard reads are what make lawyers necessary in the end – but I do take the hon. Gentleman's point. I do not think that the text leads us to a double negative which makes the sentence nonsensical, I think it does what it needs to do, and therefore I am minded not to make any changes on the hoof, so to speak.

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Clerk: Clause 3.

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Mr Chairman: Clause 3 stands part of the Bill.

Clerk: The long title.

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

**Civil Aviation (Amendment) Bill 2022 –
Clauses considered and approved**

315 **Clerk:** A Bill for an Act to amend the Civil Aviation Act.
Clauses 1 to 3.

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

320 **Clerk:** The long title.

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

**Pensions (Amendment) Bill 2022 –
Crimes (Amendment) Bill 2022 –
Civil Aviation (Amendment) Bill 2022 –
Third Readings approved: Bills passed**

325 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to report that the Pensions (Amendment) Bill 2022, the Crimes (Amendment) Bill 2022 and the Civil Aviation (Amendment) Bill 2022 have been considered in Committee and agreed to without amendments and I now move that they be read a third time and passed.

330 **Mr Speaker:** I now put the question, which is that the Pensions (Amendment) Bill 2022, the Crimes (Amendment) Bill 2022 and the Civil Aviation (Amendment) Bill 2022 be read a third time and passed.

Those in favour of the Pensions (Amendment) Bill 2022? (**Members:** Aye.) Those against? Carried.

Those in favour of the Crimes (Amendment) Bill 2022? (**Members:** Aye.) Those against? Carried.

335 Those in favour of the Civil Aviation (Amendment) Bill 2022? (**Members:** Aye.) Those against? Carried.

Adjournment

Mr Speaker: The Hon. the Chief Minister.

340 **Chief Minister (Hon. F R Picardo):** Mr Speaker, just before I move the adjournment, I am sure all hon. Members have heard that one of our number, in the course of exerting herself in pursuing the GHA's advice that we should remain active, has done herself an unfortunate injury. The whole House will want to join me in wishing Ms Marlene Hassan Nahon a speedy recovery from that injury. I know that she will miss being with us today and I hope that, despite the injury, she will be well enough to be able to join us for the House's next session, which I am happy to inform the

345 House I anticipate will be in November. I think we have agreed the 23rd is likely to be the date
when we will come back.

I move that the House should now adjourn *sine die*.

350 **Hon. K Azopardi:** Would the hon. Member give way?

Hon. Chief Minister: Of course, yes.

355 **Hon. K Azopardi:** First of all, I join him in those remarks, but because I thought we were going
to get on to that part of the Agenda, I just wanted to record my agreement with the Hon. Minister
for Health. I have a motion standing in my name, but we have agreed between us to kick that
forward while we have discussions on issues of mental health.

I certainly join the Chief Minister in the remarks about the hon. Lady.

360 **Mr Speaker:** I now propose the question, which is that this House adjourn *sine die*.

I now put the question, which is that this House do now adjourn *sine die*. Those in favour?

(Members: Aye.) Those against? Passed.

The House will now adjourn *sine die*.

The House adjourned at 4.11 p.m.