



PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

AFTERNOON SESSION: 5.31 p.m. – 6.46 p.m.

Gibraltar, Wednesday, 15th February 2023

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The Gibraltar Parliament

The Parliament met at 5.31 p.m.

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

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

Order of the Day

BILLS

FIRST AND SECOND READING

Medical (Group Practice Scheme) (Amendment) Bill 2022 – First Reading approved

Clerk: Meeting of Parliament, Wednesday, 15th February 2023.

(ix) Bills – First and Second Reading.

5 A Bill for an Act to amend the Medical (Group Practice Scheme) Act to ensure that the dependants of persons registered on the Group Practice Medical Scheme by virtue of undertaking a full-time academic course at the University of Gibraltar will not be considered dependants under the Medical (Group Practice Scheme) Act.

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

10 **Minister for Digital, Financial Services, Health Authority and Public Utilities (Hon. A J Isola):**
Mr Speaker, I have the honour to move that a Bill for an Act to amend the Medical (Group Practice Scheme) Act to ensure that the dependants of persons registered on the Group Practice Medical Scheme by virtue of undertaking a full-time academic course at the University of Gibraltar will not be considered dependants under the Medical (Group Practice Scheme) Act be read a first time.

15 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Medical (Group Practice Scheme) Act to ensure that the dependants of persons registered on the Group Practice Medical Scheme by virtue of undertaking a full-time academic course at the University of Gibraltar will not be considered dependants under the Medical (Group Practice Scheme) Act be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

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Clerk: The Medical (Group Practice Scheme) (Amendment) Act 2022.

Medical (Group Practice Scheme) (Amendment) Bill 2022 – Second Reading approved

25 **Minister for Digital, Financial Services, Health Authority and Public Utilities (Hon. A J Isola):**
Mr Speaker, I beg to move that the Bill for the Medical Group Practice Scheme (Amendment) Act 2022 be read a second time.

This short Bill introduces a change that is required in order to establish that a person will not be able to register on a medical group practice scheme established under the Medical Group Scheme Act by virtue of being the dependent of a student enrolled on a full-time academic course at the University of Gibraltar.

30 The Bill, in conjunction with supporting amendments to its subsidiary legislation, as well as the Bill for an Immigration, Asylum and Refugee (Amendment) Act 2022, will put the University of Gibraltar on a competitive financial footing with its counterparts in the UK by offering those on a full-time academic course at the University who also require private medical insurance the option to pay for access to our own medical scheme.

35 These changes are beneficial to all parties involved and are a clear sign of Government's continued commitment to Gibraltar and its educational institutions.

Mr Speaker, I commend this Bill to the House.

40 **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. Elliott Phillips.

Hon. E J Phillips: Mr Speaker, I thank the Hon. Minister in relation to his explanation. He did kindly explain the rationale yesterday and this Bill will enjoy the support of the Opposition.

45 **Mr Speaker:** Does any other hon. Member wish to speak on the general principles and merits of the Bill? The Hon. Daniel Feetham.

Hon. D A Feetham: Mr Speaker, I have not understood this and I would appreciate it if the Hon. the Minister might explain by reference to an example that I am just going to put to him. Honestly, I just have not understood the purpose of the Bill. For example, if one of our children at university, God forbid, contracts cancer or something like that, would they be able to be treated through the GHA in the normal way – in other words, at public expense in Gibraltar – or would they, because they are in full-time education at university, have to go through the NHS in the UK, which, God forbid, is in a worse state than the GHA here in Gibraltar?

55 **Mr Speaker:** The Hon. Gilbert Licudi.

Hon. G H Licudi: Mr Speaker, thank you.

The explanatory memorandum talks of somebody not being a dependent for the purposes of the Medical Group Practice Scheme Act by virtue of being a dependent of a person enrolled at the University of Gibraltar on a full-time academic course. The actual amendment that is being made refers to someone who is enrolled at the University of Gibraltar on a full-time academic course who has been charged and paid the student health surcharge to the University of Gibraltar. Could I ask the Minister simply to confirm that the reference to persons on a full-time academic course in Gibraltar does not include those Gibraltar residents who are already part of the scheme, notwithstanding that they are enjoying a full-time academic course at the University? In other words, there may be circumstances where there may be foreign students who come and undertake a full-time academic course at the University of Gibraltar. They are charged the student health surcharge and therefore their dependents are not entitled to be treated as dependents for the purposes of the scheme. So it is not the case – and I would just ask the Minister to clarify that it is not the case – that this applies to any person carrying out a full-time academic course, for example the children of Mr Feetham or anybody else who is enrolled under the scheme, but only those who come from abroad and are charged this particular surcharge.

75 **Mr Speaker:** Does the mover of the Bill wish to respond?

80 **Hon. A J Isola:** Yes, Mr Speaker, I will respond. I will confirm to my hon. Friend and colleague Mr Licudi that that is indeed the case. The Bill solely strikes at those who are not already members of the GPMS scheme and who come from outside, and therefore are not otherwise eligible for membership of the scheme, to become members of the scheme if they make the contribution and if they are in full-time education at the University of Gibraltar. That is the sole purpose of the Bill and those are the only people affected by it.

I am not sure I quite understood the hon. Member's question. This has no impact on any of our students outside. It is simply –

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Hon. A J Isola: Yes, it simply applies here in Gibraltar in respect of those coming into the jurisdiction, not members of the scheme who wish to be members of the scheme. They will have to pay both full-time education and the contribution. I hope that –

90 **Hon. A J Isola:** Thank you.

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Medical (Group Practice Scheme) Act to ensure that the dependants of persons registered on the Group Practice Medical Scheme by virtue of undertaking a full-time academic course at the University of Gibraltar will not be considered dependants under the Medical (Group Practice Scheme) Act be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

95

Clerk: The Medical (Group Practice Scheme) (Amendment) Act 2022.

**Medical (Group Practice Scheme) (Amendment) Bill 2022 –
Committee Stage and Third Reading to be taken at this sitting**

100 **Minister for Digital, Financial Services, Health Authority 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.)

**Gibraltar Merchant Shipping (Safety, etc.) (Amendment) Bill 2020 –
First Reading approved**

105 **Clerk:** A Bill for an Act to amend the Gibraltar Merchant Shipping (Safety, etc.) Act 1995 in order to extend the functions of the Maritime Administrator for the purposes of compliance with instruments of the International Maritime Organisation, and in particular, the IMO Instrument Implementation Code (III Code, Resolution A.1070(28)).

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

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Minister for Business, Tourism and the Port (Hon. V Daryanani): I have the honour to move that a Bill for an Act to amend the Gibraltar Merchant Shipping (Safety, etc.) Act 1995 in order to extend the functions of the Maritime Administrator for the purposes of compliance with instruments of the International Maritime Organisation, and in particular, the IMO Instrument Implementation Code (III Code, Resolution A.1070(28)) be read a first time.

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Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Gibraltar Merchant Shipping (Safety, etc.) Act 1995 in order to extend the functions of the Maritime Administrator for the purposes of compliance with instruments of the International Maritime Organisation, and in particular, the IMO Instrument Implementation Code (III Code, Resolution A.1070(28)) be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Gibraltar Merchant Shipping (Safety, etc.) (Amendment) Act 2020.

**Gibraltar Merchant Shipping (Safety, etc.) (Amendment) Bill 2020 –
Second Reading approved**

Minister for Business, Tourism and the Port (Hon. V Daryanani): Mr Speaker, I have the honour to move that a Bill for an Act to amend the Gibraltar Merchant Shipping Act 1995 be read a second time.

The Bill, together with the next Bill on the Order Paper to amend the Gibraltar Port Authority Act 2005, introduces obligations on the Gibraltar Maritime Administrator and Gibraltar Port Authority respectively to (a) assign responsibilities to monitor, update and revise policy in order to comply with International Maritime Organisation obligations and (b) to advise the Government on the legislation, guidance and procedures required to ensure the consistent implementation and verification of the IMO obligations.

In short, this Bill and the Bill to amend the Gibraltar Port Authority Act 2005 impose duties on the Gibraltar Maritime Administrator and Gibraltar Port Authority to ensure that laws and policies are implemented as required by the IMO. The reason why the amendment is required in both Acts is because each Act deals with different areas of responsibility which broadly align with the different responsibilities held by the Gibraltar Maritime Administrator and the Gibraltar Port Authority.

The Gibraltar Merchant Shipping (Safety, etc.) Act imposes obligations on the Maritime Administrator, a statutory post which heads the Gibraltar Maritime Administration. The GMA is responsible for what are described in the maritime industry as flag state and port state matters. The term 'flag state' refers to matters of vessel registration and compliance with standards required in order to be registered under the Gibraltar flag and to maintain that flag. The term 'port state' addresses the responsibility to exercise prospective enforcement action over foreign vessels within the Gibraltar port. The amendment to the Gibraltar Merchant Shipping (Safety, etc.) Act therefore imposes on the GMA the obligation to ensure the implementation of laws and policies in relation to flag state and port state matters.

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. Elliott Phillips.

Hon. E J Phillips: Mr Speaker, again, in relation to this Bill the Hon. the Minister has consulted with us on a number of occasions now, given the certain complexities in relation to this Bill, and I am happy that the Opposition will support the Bill.

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

I call on the mover to respond.

Hon. V Daryanani: Mr Speaker, I would like to thank the Hon. Mr Phillips, who has been very helpful. We spoke a couple of times and I am happy for the support of the Opposition.

Thank you.

165 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Gibraltar Merchant Shipping (Safety, etc.) Act 1995 in order to extend the functions of the Maritime Administrator for the purposes of compliance with instruments of the International Maritime Organisation, and in particular, the IMO Instrument Implementation Code (III Code, Resolution A.1070(28)) be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

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Clerk: The Gibraltar Merchant Shipping (Safety, etc.) (Amendment) Act 2020.

**Gibraltar Merchant Shipping (Safety, etc.) (Amendment) Bill 2020 –
Committee Stage and Third Reading to be taken at this sitting**

Minister for Business, Tourism and the Port (Hon. V Daryanani): I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

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

**Gibraltar Port Authority (Amendment) Bill 2020 –
First Reading approved**

Clerk: A Bill for an Act to amend the Gibraltar Port Authority Act 2005 in order to extend the functions of the Gibraltar Port Authority for the purposes of compliance with instruments of the International Maritime Organisation, and in particular, the IMO Instrument Implementation Code (III Code, Resolution A.1070(28)).

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

Minister for Business, Tourism and the Port (Hon. V Daryanani): I have the honour to move that a Bill for an Act to amend the Gibraltar Port Authority Act 2005 in order to extend the functions of the Gibraltar Port Authority for the purposes of compliance with instruments of the International Maritime Organisation, and in particular, the IMO Instrument Implementation Code (III Code, Resolution A.1070(28)) be read a first time.

185

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Gibraltar Port Authority Act 2005 in order to extend the functions of the Gibraltar Port Authority for the purposes of compliance with instruments of the International Maritime Organisation, and in particular, the IMO Instrument Implementation Code (III Code, Resolution A.1070(28)) be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

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195 **Clerk:** The Gibraltar Port Authority (Amendment) Act 2020.

**Gibraltar Port Authority (Amendment) Bill 2020 –
Second Reading approved**

Minister for Business, Tourism and the Port (Hon. V Daryanani): Mr Speaker, I have the honour to move that a Bill for an Act to amend the Gibraltar Port Authority Act 2005 be read a second time.

200 The Gibraltar Port Authority Act 2005 establishes the Gibraltar Port Authority and details the duties and responsibilities to be undertaken by it. The nature of the responsibilities carried out by the Gibraltar Port Authority are described in the maritime industry as coastal state matters. This term incorporates areas such as ensuring the safety of navigation to protect the environment, guarding against maritime pollution, and protection of the security of coastal populations. The amendment to the Gibraltar Port Authority Act 2005 therefore imposes on the GPA the obligation
205 to ensure the implementation of laws and policies in relation to coastal state matters.

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. Elliott Phillips.

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Hon. E J Phillips: Mr Speaker, briefly, the Opposition will support the Bill.

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

215 **Hon. V Daryanani:** Mr Speaker, once again, I am grateful to the Hon. Mr Phillips. We discussed this yesterday and on a few occasions before that.

Thank you very much.

220 **Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Gibraltar Port Authority Act 2005 in order to extend the functions of the Gibraltar Port Authority for the purposes of compliance with instruments of the International Maritime Organisation, and in particular, the IMO Instrument Implementation Code (III Code, Resolution A.1070(28)) be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

225 **Clerk:** The Gibraltar Port Authority (Amendment) Act 2020.

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

Minister for Business, Tourism and the Port (Hon. V Daryanani): I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

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

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 resolve itself into Committee to consider the following Bills clause by clause: the Medical (Group Practice Scheme) (Amendment) Bill 2022, the Gibraltar Merchant Shipping (Safety, etc.) (Amendment) Bill 2020 and the Gibraltar Port Authority (Amendment) Bill 2020.

In Committee of the whole House

**Medical (Group Practice Scheme) (Amendment) Bill 2022 –
Clauses considered and approved**

Clerk: A Bill for an Act to amend the Medical (Group Practice Scheme) Act to ensure that the dependants of persons registered on the Group Practice Medical Scheme by virtue of undertaking a full-time academic course at the University of Gibraltar will not be considered dependants under the Medical (Group Practice Scheme) Act.

240 Clauses 1 to 3.

Hon. E J Phillips: Mr Chairman, I assume they get picked up in 2023 and I have no need to make reference to them.

245 **Mr Chairman:** I am grateful that you have brought it up. The title of the Act is shown as 2022 and the hon. Gentleman is saying that that should be amended to read 2023.

Chief Minister (Hon. F R Picardo): Mr Speaker, we have this discussion on a number of occasions. The Bill has the date of publication. The Act, when it is passed, is published with the date of publication of passing of the Act. It is not a point that we need to make. I am grateful that it is made, but we do not need to make it.

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

255 **Clerk:** The long title.

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

**Gibraltar Merchant Shipping (Safety, etc.) (Amendment) Bill 2020 –
Clauses considered and approved**

Clerk: A Bill for an Act to amend the Merchant Shipping Act and the Gibraltar Merchant Shipping (Safety, etc.) Act 1993.

260 Clauses 1 to 4.

Mr Chairman: Clauses 1 to 4 stand part of the Bill.

265 **Hon. G H Licudi:** Mr Chairman, are we dealing with the Gibraltar Merchant Shipping (Safety, etc.) Act?

Mr Chairman: Yes.

270 **Hon. G H Licudi:** Just one point. In relation to clause 4, I would propose a very minor amendment. At the very end it says:

for the purposes of this sub-section, the Maritime Administrator may arrange for the discharge of any of its functions ...

and it seems to me that it should say 'any of his functions'. The Maritime Administrator is an individual. In fact, the Gibraltar Merchant Shipping Registration Act provides that the Minister 'shall appoint and may remove an officer to be styled the Maritime Administrator and confer upon him powers', and therefore this should say any of 'his' functions' rather than 'its' functions.

275 **Mr Chairman:** The hon. Lady.

Hon. Ms M D Hassan Nahon: Instead of 'his' ... It could well be a female or a male.

280 **Hon. G H Licudi:** Mr Chairman, as I understand it, the Interpretation and General Clauses Act deals with that, and in fact the legislation that we have in relation to the Maritime Administrator deals with 'his' functions and anything that is conferred upon 'him'. Clearly, when we say 'he' in legislation, 'he' includes 'she' or 'them'.

285 **Mr Chairman:** Hon. Elliott Phillips, do you have a ...? No. Clause 4, as amended, stands part of the Bill.

Clerk: The long title.

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

**Gibraltar Port Authority (Amendment) Bill 2020 –
Clauses considered and approved**

Clerk: A Bill for an Act to amend the Gibraltar Port Authority Act 2005 in order to extend the functions of the Gibraltar Port Authority for the purposes of compliance with instruments of the International Maritime Organisation, and in particular, the IMO Instrument Implementation Code (III Code, Resolution A.1070(28)).
295 Clauses 1 to 4.

Mr Chairman: Clauses 1 to 4 stand part of the Bill.

Clerk: The long title.

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

**Medical (Group Practice Scheme) (Amendment) Bill 2022 –
Gibraltar Merchant Shipping (Safety, etc.) (Amendment) Bill 2020 –
Gibraltar Port Authority (Amendment) Bill 2020 –
Third Reading approved: Bill passed**

Clerk: The Hon. the Chief Minister.

305 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to report that the Medical (Group Practice Scheme) (Amendment) Bill 2022, the Gibraltar Merchant Shipping (Safety, etc.) (Amendment) Bill 2020 and the Gibraltar Port Authority (Amendment) Bill 2020 have been considered in Committee and agreed to with some amendments, and I now move that they be read a third time and passed.

310 **Mr Speaker:** I now put the question, which is that the Medical (Group Practice Scheme) (Amendment) Bill 2022, the Gibraltar Merchant Shipping (Safety, etc.) (Amendment) Bill 2020 as amended, and the Gibraltar Port Authority (Amendment) Bill 2020 be read a third time and passed.

Those in favour of the Medical (Group Practice Scheme) (Amendment) Bill 2022? (**Members:** Aye.) Those against? Carried.

315 Those in favour of the Gibraltar Merchant Shipping (Safety, etc.) (Amendment) Bill 2020? (**Members:** Aye.) Those against? Carried.

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

PRIVATE MEMBER'S MOTION

Miscarriage, ectopic and molar pregnancies – Amended motion carried

320 **Clerk:** Private Member's motion. The Hon. E J Phillips.

Hon. E J Phillips: Mr Speaker, I have the honour to move the motion standing in my name, which reads as follows:

THIS HOUSE:

NOTES that Gibraltar legislation does not currently provide for a legal right to paid leave for parents who are grieving the loss of a pregnancy before 24 weeks.

NOTES that His Majesty's Government previously introduced a legal entitlement to two weeks paid leave for working parents in respect to the loss of a child of any age or those who suffer a stillbirth from 24 weeks of pregnancy commonly referred as 'Jack's Law'.

NOTES the introduction of groundbreaking legislation in New Zealand to provide workers with three days' paid leave in the event of miscarriage.

NOTES that a Bill for the provision of miscarriage leave has been presented by Angela Crawley Member of Parliament for Lanark and Hamilton East before the British Parliament.

NOTES that the loss of a baby by miscarriage is a devastating experience for families and for some in our community miscarriage is tragically not a singular event.

NOTES that whilst employers and organisations in Gibraltar are sensitive to the grief and loss associated with miscarriage and may have made provision in the context of their employment policies and practices, it is important that support by way of paid leave be enshrined in Gibraltar law for those persons who have suffered the devastating loss of a pregnancy before 24 weeks.

AND CALLS on His Majesty's Government to present either: (1) a Bill before the House to make provision by way of: (i) the introduction of new legislation; or (ii) amendment to employment and/or benefits legislation for paid leave for people who have experienced miscarriage, ectopic pregnancy or molar pregnancy; or in the alternative (2) to amend secondary legislation such as for example, the Employment (Maternity and Parental Leave and Health & Safety) Regulations 1996, amongst others, pursuant to powers provided to the Minister responsible under any

Act(s) to widen the scope of the same to make provision for paid miscarriage leave.

Mr Speaker: At this stage, you simply speak on the motion.

325 **Hon. E J Phillips:** I know, Mr Speaker. [*Inaudible*] motion, of course, because obviously I filed
an amendment to the motion to extend miscarriage leave insofar as those pregnancies where it
was recognised by a medical practitioner and advised by a medical practitioner that they were not
viable. I have spoken with the learned Leader of the Opposition and he will introduce that
amendment at the relevant time, but I certainly can make my main contribution now.

330

Mr Speaker: Please proceed.

Hon. E J Phillips: It is important for us to reflect on the route that this motion has taken. On
Monday, 6th February 2023, some 10 days ago, I filed a motion in the terms I have set out and I
emailed both the Chief Minister and the hon. Lady, copying in the Leader of the Opposition, to
ensure that we secure cross-party agreement to the motion standing in my name. I remain
confident that the motion can and indeed should enjoy cross-party support because it ensures
that those who suffer the devastating effects of pregnancy loss up to 24 weeks can be provided
with support in the form of paid bereavement leave. There can, in my view, be no justification, on
335 any objective analysis, for the Government not joining with the Opposition and the hon. Lady on
this issue, and any disagreement on the principle is simply playing party politics.

340

Mr Speaker, by way of background, I filed a motion on this subject because it is the right thing
to do and I have been previously encouraged by the Chief Minister himself to use this
parliamentary process as a more efficient way than utilising a Private Member's Bill. In the past,
345 the Chief Minister has attempted to dissuade me from using a Private Member's Bill given the
Opposition do not have at their disposal a drafting team, which is of course readily available to
the Government. On that occasion I agreed and proceeded by way of motion. I have sought to
repeat the same process, allowing the Government to lead on the legislative process. It now seems
likely that I am about to be criticised for introducing a motion and doing my job for my community.

350

It was suggested by the Hon. the Chief Minister yesterday that he was not happy that I did not
obtain his consent to file a motion. That comment yesterday from him, the Chief Minister, was
disappointing and I expected better, particularly given that we were talking about bereavement
loss. It has never, thankfully, been the custom or practice of this House for a Member of this House
to seek the Chief Minister's consent to file a motion, and therefore the Chief Minister's emotional
355 response from a sedentary position should be of deep regret to anyone who purports to have the
democratic interests of this community at their core. Whilst I do not seek the Chief Minister's
consent, which I am in any event not required to do, I did extend him the courtesy of now 10 days
to reflect on the Government's position and provide the hon. Members opposite the opportunity
to support my motion, which, in light of yesterday's skirmishes in this House on timetabling, is, as
360 I am sure Mr Speaker will agree, more than reasonable.

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I am pleased to report to this House that my motion enjoys the support of the hon. Lady, who
has constructively engaged with me on this subject. I thank her for her collaboration and look
forward to her contribution this evening. I also look forward to further collaborating with the hon.
Lady on areas which are of collective good for our community.

370

Pregnancy loss at any stage of a pregnancy can have a devastating effect on any couple
expecting the birth of a child. Statistically, one in eight pregnancies result in miscarriage, one in
90 are ectopic and one in every 20 is a stillbirth. Tragically, some people have experienced all
three. For a number of families, pregnancy loss or miscarriage before 24 weeks is sadly not a one-
off occurrence, doubling the pain and suffering for those who have gone through that experience.
It is right that we, as a community, recognise that parents in these circumstances may need
370 additional support, and I have no doubt that workplaces and organisations around Gibraltar

understand the trauma and the need to allow parents the time and space to grieve the loss of a pregnancy.

375 As this House has recognised previously, the Government committed to the introduction of bereavement loss for pregnancies beyond 24 weeks. The Government went beyond that provision that was provided for in the United Kingdom and they recognised that bereavement should apply irrespective of the age of the child, be it 25 weeks, 18 years or 37 months, and I congratulate the hon. Members opposite for extending that beyond the 24-week period.

380 As the law currently stands, there is no legal entitlement to any leave or pay in circumstances where the pregnancy loss occurs before 24 weeks. What my motion seeks to do today is simply to encourage the Government to recognise that the trauma associated with pregnancy loss can happen at any stage of pregnancy and therefore it is right that this House promotes primary or secondary legislation that introduces an entitlement to paid bereavement leave before 24 weeks. What I am essentially asking is for the Government to close the gap. As the position currently
385 stands, we are leaving employers and organisations to add pregnancy loss to their policies and to make reasonable adjustments where necessary.

As a community we have not tackled this question, but it has been and is being addressed in other countries, including the United Kingdom, where the Bill is going through the various stages in the Westminster Parliament. Thus far, those countries that have not introduced a provision for
390 statutory paid bereavement leave have, as I have just said, left the matter to individual companies to extend pregnancy loss bereavement as an employee benefit. In my view, providing employers with the choice or discretion as to whether they wish to create or extend their own benefit schemes and employment policies to make provision for bereavement leave before 24 weeks can create a two-tier system where larger and more competitive industries are likely to offer more
395 enhanced benefits as opposed to smaller employers, who may wish, for whatever reason, not to make the provision. We cannot allow for a two-tier system to be created and we must make provision for a level playing field in respect of this. We cannot leave it to the discretion of employers as to whether they will support working parents who suffer loss in this way, and it is right that statute and/or regulation intervene in this way, as I have suggested.

400 Lastly, I would like to publicly acknowledge the hard work of Baby Steps Gibraltar, who have campaigned on this issue in the past, and to express my deep sympathy to all parents who have suffered and are suffering the loss of pregnancy in our community. It is hoped that this small but very important provision will go some way in supporting grieving parents in the workplace.

I commend my motion to the House, Mr Speaker.

405

Mr Speaker: I now propose the question in the terms of the motion moved by the Hon. E J Phillips.

The Hon. the Leader of the Opposition. We are going to deal with the amendment first.

410 **Hon. K Azopardi:** Mr Speaker, as my hon. colleague to my right indicated, after further reflection – and I believe a draft of this has been circulated to hon. Members in the House with the tracked change – we are moving an amendment to the motion that stands in my colleague's name:

To add the words 'or where a pregnancy is determined by a medical practitioner to be unviable before 24 weeks'

in the last paragraph and striking out the 'or' before 'molar'.

415 I think the hon. Members have a copy of this letter dated 14th February in front of them – they should have a copy of it – and the reasons are as explained by my hon. colleague.

Mr Speaker: I now propose the question in terms of the amendment moved by the Leader of the Opposition.

420 I put the question in terms of the amendment moved by the Leader of the Opposition. Those in favour? (**Members:** Aye.) Those against? Carried.

What the House now has before it is the original motion as amended. Does any hon. Member wish to speak on the motion – the original and the amendment? The Hon. the Chief Minister.

425 **Chief Minister (Hon. F R Picardo):** Mr Speaker, this motion comes before the House with the Government having been given notice of it but not having been consulted on whether or not we would support it if it was brought. I think it is important that I deal with that issue because I have never asked any Member of this House – indeed, even on this side of the House – that they should seek my consent before they do any of the things that they are empowered and indeed required
430 to do by their membership of the House. There is a difference between seeking consent for something and seeking support for something.

When a Member of the Government wants to move a Bill, they come to the Cabinet and discuss with others whether or not it is in keeping with the policies that we believe in. We have a good feel for what we are defending and we are usually on the same page on these subjects, and if we
435 are not, we consider them and find a consensus position. When Members are on the opposite side of the House and they represent – or should represent – different principles and ideologies to us, if they want to come to the House with a measure, be it legislative or a motion, they know that it will prosper and succeed only if there is support from the Government benches. Indeed, that support does not have to be from us as a Government, it can be from individual Members on
440 issues where Members may be free to vote as they wish, as they always are.

So I have never suggested that the Hon. Mr Phillips or anyone else should seek my consent before they move a motion. I have asked that they should consider seeking the Government's support before moving a motion, because it may be possible that a motion moved with some amendment that does not affect the underlying substrata of principle may move with full support
445 of the Government – that is to say the nine votes on this side and, indeed, potentially the vote of the hon. the backbencher also – if it is something that we have discussed and our support has been sought for. If our support is not forthcoming, hon. Members can still put the motion and we will have a debate on the floor of the House on why we do not support it or seek to amend it in a way that it is supportable. That is not consent. It is erroneous entirely for the hon. Member to
450 have suggested to this House that I have sought that he seek my consent for anything. I would ask him to reflect on that and to withdraw that when the time comes, because nothing that I have said in this House – and we have had this debate on a number of occasions – and nothing I have said outside of the House can ever be interpreted as me saying that my consent is necessary for a motion to be moved. If the hon. Member does not want to withdraw that, I have no difficulty with
455 him not doing so because the record shows what I have said.

Mr Speaker, this motion, which deals with an issue on which there can be support from this side of the House, was moved by the hon. Member giving me notice that he had moved it but not asking me whether we would support it. Indeed, he did not ask the Minister for Justice whether it was a measure that would enjoy her support or the Minister for Industrial Relations and
460 Employment whether it is a measure that would enjoy our support in respect of an area of his policy, but that is a matter entirely for him. I therefore do not believe it is fair either to suggest that I had an emotional response or reaction to the hon. Gentleman's reference across the floor of the House yesterday, with microphones off, as to whether or not I would be supporting the motion. Indeed, my support is not relevant. The support that is relevant is the support of my hon.
465 colleagues and the Government. I was not in tears, I did not show any other emotional affliction, and so I put it to the hon. Gentleman that it is unfair for him to refer to what he says was my factual reaction as an emotional one, when it was not. For all of those reasons, the part of the hon. Gentleman's speech which he has devoted to denigrating my approach to this particular parliamentary procedure I think is not just unfair, I think it is factually entirely wrong and I do hope
470 that we do not have to spend more of this debate dealing with that issue.

I am delighted to hear that the hon. Lady is going to be constructively involved in this debate and that she is going to be supporting this motion. I am also hoping to demonstrate that the Government would have given support, if the hon. Gentleman had called me before he had put the motion, to a motion that I would have asked him to amend in some ways, which would have
475 been then a motion, given his track record in other matters in this House, that we could have moved with full Government support.

In any event, I do believe that the hon. Gentleman has said something which is absolutely true, important, relevant, and of which we must take notice: that there is a gap in our law for those who lose a child before 24 weeks of gestation. It is true that other countries are now turning their
480 attention to that and we have not yet done so because we have an eye to what is happening in the United Kingdom and has not yet happened. It is also true that we have done very positive work with those who run Baby Steps, and the fruit of that work is already in our legislation and in the approach that we take within the government service to those who may find themselves losing a child before 24 weeks' gestation and after 24 weeks' gestation.

485 So the position of the Government is going to be to propose to amend the motion in a way that I hope hon. Members will see is not designed to do anything other than address the issue that the Hon. Mr Phillips has himself referred to, which is to close the gap, but to close the gap fully, not to close the gap and leave another gaping hole.

490 First of all, in the second paragraph – and I will give hon. Members written notice of this in a minute – I will propose that the second 'NOTES' should say 'NOTES AND WELCOMES that His Majesty's Government', and not 'previously' but 'in 2022', to set that in its proper chronological context.

In respect of that amendment that I am going to propose, I refer the House to Press Releases 44/2020 and 75/2020. Press Release 44/2020, issued by the Government, was headed
495 'Bereaved parents to be entitled to two weeks of paid leave from work' and said this:

Her Majesty's Government of Gibraltar

– as we then happily were –

is set to introduce 'Jack's Law,' under which bereaved parents will be entitled to two weeks of paid leave from work. In the UK, this initiative became known as 'Jack's Law' in memory of Jack Herd whose mother, Lucy Herd, campaigned relentlessly on the issue.

Under 'Jack's law,' working parents who suffer the devastating loss of a child under the age of 18, or who suffer a stillbirth from 24 weeks of pregnancy, will be entitled to two weeks statutory leave.

Parents will be able to take the leave as either a single block of 2 weeks, or as 2 separate blocks of one week each taken at different times across the first year after their child's death. This means they can match their leave to the times they need it most, which could be in the early days or over the first anniversary.

This proposed initiative follows the UK's Parental Bereavement Leave and Pay Regulations which are planned to come into effect on 6 April 2020. However, the implementation date for Gibraltar is 1 February 2020.

And then I said something in that press release.

On 11th February, we had considered the matter further and we said as follows in Press Release 75:

'Jack's Law' To Apply To All 'Children,' Regardless Of Age.

500 So this is going in the other direction, not under 24 months:

Last month, Her Majesty's Government of Gibraltar announced that it was set to introduce 'Jack's Law' under which bereaved parents would be entitled to two weeks of paid leave from work. This legislation had become known as 'Jack's Law' in UK, in memory of Jack Herd.

In its original announcement, the Government of Gibraltar specified that, under 'Jack's law,' working parents who suffered the devastating loss of a child under the age of 18, or who suffered a stillbirth from 24 weeks of pregnancy, would be entitled to two weeks statutory leave. Parents would be able to take the leave as either a single block of

2 weeks or as 2 separate blocks of one week each which could be taken at different times across the first year after their child's death. This meant that parents could match their leave to the times they needed it most, which might be in the early days or around the first anniversary.

However, the Government feels that the parents' pain and suffering are the same whether the 'child' is 17 or 37 and so it has now decided to remove the threshold of 18 years of age. 'Jack's Law' will apply, no matter what the age of the 'child' and, as a result, bereaved parents of adult children will also be entitled to the two weeks of statutory leave.

The amended regulations will take effect from April.

So, in 2020 we moved to change our law so that anybody who lost a child over 24 weeks' gestation, whatever the age of that child, 18, 38 or 68 – at 68 the person probably would not be working, but it is possible – would be entitled to leave. The period in question, therefore, is the period now, below 24 weeks. But it is important that when we are welcoming that change in respect of the period over 24 weeks, we reflect in the motion when it was done, in 2020.

505

Then I would propose after the second paragraph to introduce a new paragraph:

NOTES that His Majesty's Government of Gibraltar had provided for this to be the case in the public sector from 2016 as a matter of policy.

In that respect, I refer the House to a circular to all heads of department which was circulated by the Human Resources Department on 27th July 2016. That dealt with issues relating to maternity and adoption leave and sickness absence during pregnancy. In relation to maternity and adoption leave, the reference that this note to all heads of department includes is as follows, under the heading 'Definition of confinement':

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The definition of confinement under General Order 4.1.11 is amended to reflect the birth of a living child or the birth of a child, whether living or not, after 24 weeks of pregnancy. Heads of department must ensure that all these provisions are applied to employees who commence their leave on or after 1st April 2016.

So that which we made law for all employers in Gibraltar in 2020 we had made a provision internally for us in 2016. I think it is important that that is reflected in the motion. I am sure it will not be controversial that that should be the case.

515

The next paragraph, on the introduction of groundbreaking legislation in New Zealand should remain as it is.

Then I propose a further new paragraph, which will say as follows:

FURTHER NOTES that His Majesty's Government of Gibraltar already provides for paid leave in the event of miscarriage for its public sector workers

because that is the position generally in the public sector. That does not affect the position that the motion is seeking to address, but I think it does put in context that the Government is applying to itself that which it is seeking to apply to third parties. It is important that the Government has taken this step already, although not in respect of the period below 24 weeks.

520

The next three paragraphs remain the same, Mr Speaker.

I then propose that we do the thing that Mr Phillips has said he seeks to do but I believe his motion as drafted does not do, and we then introduce a further paragraph that says this ... So after the paragraph that says, 'NOTES that whilst employers and organisations ...' a new penultimate paragraph which would read as follows:

525

FURTHER DEFINES the 'devastating loss of a pregnancy before 24 weeks' as being inclusive of any pregnancy loss as a result of an abortion, as provided by Gibraltar law.

Mr Speaker, this House debated how we should take to our people the vote on the amendment to section 163A of the Crimes Act and that that should be put to a referendum. That law was

530 passed by this House and its implementation was a matter the commencement of which was put
in the hands of the people of Gibraltar. A referendum was held, delayed as it was by the pandemic,
and the result of that referendum was that what I can only describe as by an overwhelming
majority the people of Gibraltar chose that that law should come into effect, and therefore now
535 section 163A of the Crimes Act is the Law of Gibraltar and a pregnancy may be terminated under
our law in the period below 24 weeks. In that instance I am sure that no one in this House will
argue that the loss of that pregnancy is not potentially as devastating as a loss that occurs by other
means.

Mr Speaker, therefore as a result of those amendments I would also move that after the
amendment that the Hon. the Leader of the Opposition has moved for Mr Phillips we should add
540 a further limb, obviously deleting the 'or' and putting a comma, that would say, at the end of
'unviable before 24 weeks', which the Hon. the Leader of the Opposition has just moved, 'or have
undergone a medical termination'. I think that 'before 24 weeks' can stay where the Hon. the
Leader of the Opposition has put it, or it can move to the end of this part of the sentence.

And then, at the end of the whole of the motion as it stands, I would add the words:

For all of the abovementioned instances of the loss of a child or for any of the above reasons.

545 I will circulate to hon. Members now a notice in writing of those amendments.

Mr Speaker, I am moving that amendment. I think perhaps before I do, it would be helpful to
say that in relation to the words 'a Bill' in paragraph (i) of the final paragraph of the motion, we
may have to consider whether that Bill is attached to a Command Paper initially to give the
Chamber of Commerce and the Federation of Small Businesses and others the opportunity to
550 engage in consultation constructively with the Government. That is a comment which is general.

I would now move that the amendment I have spoken to is put to hon. Members and I would
circulate to them this, which does not contain the words which were moved by the Leader of the
Opposition, so that will have to be read into this. There is one for this side as well.

Mr Speaker, I therefore now formally move that amendment and await discussion of it.

555

Mr Speaker: I now propose the question in terms of the amendments moved by the Hon. the
Chief Minister. The amendments are going to be circulated and I will give all Members an
opportunity to read through them, digest and then come back. We will be considering right now
the amendments. If anybody wishes to speak, it will be on the amendments at this stage.

560 Does any hon. Member wish to speak on the amendments as proposed by the Chief Minister?
The hon. Lady.

Hon. Ms M D Hassan Nahon: Mr Speaker, this is why I am glad that the Chief Minister indulged
me in going before I did, because I really did want to understand where the Government was going
565 with their response to this motion, so I thank him.

In the main address of my motion I was going to suggest that although the motion and the
amendment to the motion as set by Mr Phillips did encompass all medically induced terminations
or miscarriages, active consideration should also be given to the type of doctor-certified severe
psychological distress or related or medically recommended terminations, because this is a
570 relevant demographic of sufferers that should have recourse to similar benefits that serious
support intends to provide.

As long as abortions in Gibraltar continue to be allowed in cases outside the physically medical,
as stated in the motion, we cannot ignore the plight and aftereffects on women who terminate
their pregnancies. Some of these women terminate not because of a simple desire not to be
575 pregnant, but because their socio-economic situation does not allow for more children, or
because that future child would be born into a life of uncertainty, scarcity and strife. Some
pregnancies are a result of sexual violence and are born out of toxic, abusive relationships. Some
women become pregnant through rape. Doctors often recommend abortions based on these

580 circumstances of severe psychological distress, and these women deserve no less time off than those who end their pregnancies or have their pregnancies ended for physical or foetal non-viable reasons.

585 I do understand that some may take issue with the fact that the choice of having an abortion is different to the serendipitous loss that happens in the event of a miscarriage, and it is a point I have thought about deeply, but as long as we, as a society, require that women suffer from severe psychological distress to be granted permission to have a termination, then we have the responsibility to respond to that severe psychological distress humanely. I am pleased that the Chief Minister has recognised this and incorporated it in the motion; I think it is in the last paragraph. Obviously, needless to say, I am grateful for this and will be supporting it.

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

Hon. K Azopardi: Mr Speaker, speaking as someone who has been in the regrettable position of having lost several children before 24 weeks, I am very happy that in this House we are able to coalesce around a motion that will deliver a recognition of the devastating consequences of the loss of pregnancy, which are devastating, of course, under any circumstance. I am happy to confirm the Opposition's support for these amendments for that reason.

Mr Speaker: I call on the Hon. the Chief Minister, as the mover of the amendments, to reply.

600 **Hon. Chief Minister:** Mr Speaker, I am very grateful that hon. Members have indicated so fulsomely their support for the Government's amendments. I think it is demonstration that the Government would have engaged positively if it had been communicated to us what the terms of the motion were before it was published and that we might have been able to see the Hon. Mr Phillips publish the motion from the word go in a way that enjoyed the benefit of these changes and could have been expressed to have been moved with the support of the Government.

605 I think it is hugely important that when we are making provision in our law for something as life changing and devastating as the loss of a child we should be one of the first places in the world that, given the changes I have reflected in the amendments to the first paragraphs, which were implemented by us in 2020 and in the Government from 2016, and the changes that we will make now, we will be one of the few places in the world that will have in our law provision for consideration to be given to those who suffer such loss, whatever the age of their child. As I have said, we uncapped it already – it does not matter whether you are 17, 18 or any age – and now we are opening also the bottom age range, not just to those lost to miscarriage in 24 weeks, but those lost below 24 weeks, even where the termination occurs under the provisions of section 163 of the Crimes Act.

610 The hon. Lady, in her intervention, has referred to pregnancies that might arise out of violence and might therefore have to be ended, and other circumstances in which terminations may occur. I think it is beholden upon all of us not to seek to set out exhaustively the circumstances that can give rise to a termination under section 163 of our law and not to prejudge the devastating effect that that can have on the parent who suffers that termination. I think, therefore, it is fundamental that we have all been able to agree that terminations under section 163 of our Crimes Act should also be within the scope of this provision and I am very grateful to the House for that.

615 And so now, Mr Speaker, speaking to the motion as amended ... Well, I think we have to take a vote.

625 **Mr Speaker:** I now put the question in terms of the amendments moved by the Hon. the Chief Minister. Those in favour?

630 **Hon. Chief Minister:** Mr Speaker, I call a division.

A Member: *[Inaudible]*

Hon. Chief Minister: I do not need to seek anyone's consent to seek a division. The Rules say any Member can seek a division at any time before a vote is taken.

635

Mr Speaker: The Hon. the Chief Minister has called for a division.

Voting resulted as follows:

FOR

Hon. K Azopardi
Hon. P J Balban
Hon. D J Bossino
Hon. R M Clinton
Hon. Prof. J E Cortes
Hon. V Daryanani
Hon. D A Feetham
Hon. Dr J J Garcia
Hon. Ms M D Hassan Nahon
Hon. G H Licudi
Hon. S E Linares
Hon. E J Phillips
Hon. F R Picardo
Hon. E J Reyes
Hon. Miss S J Sacramento

AGAINST

None

ABSENT

Hon. Sir J J Bossano
Hon. A J Isola

Mr Speaker: The result of the division is as follows. There are 15 Members in favour of the motion and there are two Members absent, in which case the motion is carried. The motion containing the amendments ... We are talking about the amendments, not the motion. We are talking about the amendments which have been moved by the Hon. the Chief Minister. Those have been carried.

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Hon. Chief Minister: Thank you, Mr Speaker. I am –

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Hon. K Azopardi: *[Inaudible]* in the form of how the Chief Minister has ... But he also asked for the wording that I had moved to be written in, so as long as that is reflected, because it is not in the –

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Mr Speaker: It will be reflected at the next stage. What we have before us in the House is the original motion as amended initially by the Leader of the Opposition, followed by the amendments moved by the Hon. Chief Minister.

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Hon. Chief Minister: So now, Mr Speaker, the motion has been put to a vote. I have replied on it and the motion I am speaking to now is the motion as amended. I am not going to say very much. I have moved the amendment.

Mr Speaker: I know, but I do not think you are –

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Hon. Chief Minister: Can I just ...?

Mr Speaker: Yes, go on.

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Hon. Chief Minister: I think this will be common ground between us. When I stand up, the motion is as it was. I then say I want to amend the motion before I carry on speaking to it. The amendment is put and it is replied to, and then the motion is amended. So I am still speaking now

with the motion as amended, and that is how I have always understood it and how it has always been. *(Interjections)* In other words, now it is passed like this, and having moved that amendment, I am still speaking to the motion as amended.

670 All I would wish to say – and just to develop, so the hon. Members know what my thinking is – is that in respect of this part, which says ‘a Bill before the House to make provision of’ ... I think that this is a relatively easy Bill to draft, or indeed that we can do it in another way. It may not be, because sometimes when we look at these things, parliamentary counsel find that there are many other references in our law than just the ones that we think there are. That can have other consequential amendments, and therefore the Bill may first appear as a Command Paper. I want
675 to make that clear, so that it is understood that there may have to be an element of consultation on this in order to get it right and to ensure that it does what we want it to do and we do not cause other difficulties.

680 Other than that, Mr Speaker, I am very pleased that we have now before the House a motion which includes all the elements that I have put and for all the reasons that I have put them and the House will be able to find itself unanimously supporting the motion as amended.

Mr Speaker: As the original mover of the motion, the Hon. Elliott Phillips has a right of reply. The Hon. Elliott Phillips.

685 **Hon. E J Phillips:** Mr Speaker, I am grateful and I thank all hon. Members who have contributed to the debate on this motion. I am very grateful for those contributions, that they have ended in a motion that enjoys the unanimous support of everyone in this House.

Just to address a couple of the points that have been made by the Chief Minister in his contribution about consultation, I think it ultimately comes down to this. It is bereavement loss. I
690 take the view that I have, by emailing him directly and asking him the question ‘Would this enjoy Government support?’ ... That, for me, should be sufficient insofar as the consultation. I am sure he will take it to his Cabinet and take a view thereafter. Insofar as whether it should prosper and succeed, I think it is, as the Chief Minister alluded to, a plain and simple but important amendment to our law, which might have some nuances or some wrinkles that might need to be ironed out
695 with the drafts people tasked with this.

Mr Speaker, the amendments that have been proposed by the Leader of the Opposition and the Chief Minister are ones that enjoy my fullest support and I am grateful that that we have managed to coalesce, as the Leader of the Opposition has said, around this particular issue so those affected by tragic pregnancy loss can at least have recourse to a provision in the law which
700 allows them at least two or three days – that is reference to other jurisdictions; it may be more, depending on what the Bill looks like as it comes before this House – and I am very grateful to all hon. Members who have managed to support this Bill today.

705 **A Member:** *[Inaudible]*

Mr Speaker: Yes, you would have had the right to speak, but because the mover of the motion has already responded, I am afraid, with regret, you are unable to speak.

I now put the question in terms of the motion proposed by the Hon. E J Phillips, as amended initially by the Leader of the Opposition, followed by the amendments moved by the Hon. the
710 Chief Minister. Those in favour? (**Members:** Aye.) Those against? Carried.

Adjournment

Mr Speaker: The Hon. the Chief Minister.

Hon. Chief Minister: Mr Speaker, I move that the House should now adjourn *sine die*.

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

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

(Members: Aye.) Those against? Passed.

This House will now adjourn *sine die*.

The House adjourned at 6.46 p.m.