



PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

MORNING SESSION: 10.37 a.m. – 3.00 p.m.

Gibraltar, Monday, 30th March 2026

Contents

Order of the Day	2
BILLS.....	2
FIRST AND SECOND READING.....	2
The Treaty on Gibraltar and the European Union Act 2026 - First Reading Approved	2
The Treaty on Gibraltar and the European Union Act 2026 - Second Reading Approved	3
Adjournment.....	52
<i>The House adjourned at 3.00 p.m.</i>	52

The Gibraltar Parliament

The Parliament met at 10.37 a.m.

[MADAM SPEAKER: Hon. Judge K Ramagge GMH *in the Chair*]

[CLERK TO THE PARLIAMENT: P A Borge McCarthy *in attendance*]

Order of the Day

5 **Clerk:** Meeting of Parliament, Monday 30th March 2026. The Order of the Day.

BILLS

FIRST AND SECOND READING

The Treaty on Gibraltar and the European Union Act 2026 - First Reading Approved

10

Clerk: Bills First and Second Reading. A Bill for an Act to make provision for and in connection with the implementation of the Agreement in respect of Gibraltar between the European Union and the European Atomic Energy Community of the one part and the United Kingdom of Great Britain and Northern Ireland in respect of Gibraltar, of the other part and for connected purposes.

15

The Hon. Chief Minister.

20

Chief Minister (Hon. F R Picardo): Madam Speaker, I have the honour to move that a Bill for an Act to make provision for and in connection with the implementation of the Agreement in respect of Gibraltar between the European Union and the European Atomic Energy Community of the one part and the United Kingdom of Great Britain and Northern Ireland in respect of Gibraltar, of the other part and for connected purposes, be read a first time.

25

Madam Speaker: I now put the question, which is that a Bill for an Act to make provision for and in connection with the implementation of the Agreement in respect of Gibraltar between the European Union and the European Atomic Energy Community of the one part and the United Kingdom of Great Britain and Northern Ireland in respect of Gibraltar, of the other part and for connected purposes, be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

30

Clerk: The Treaty on Gibraltar and the European Union Act 2026.

The Treaty on Gibraltar and the European Union Act 2026 -
Second Reading Approved

Chief Minister (Hon. F R Picardo): Madam Speaker, I have the honour to move that the Bill
35 now be read a second time. Madam Speaker, this Bill has been certified by me as urgent. I will
deal with why I have given that certification in a moment. First of all, I want to thank the Attorney
General, Michael Llamas KC, Mr Daniel Greenberg CB, and Ms Nadia Sisarello-Parody and the
Parliamentary Drafting Team at the Gibraltar Law Offices for the excellent work they have done
in production of this hugely important Bill in such a short time. Their exhaustive transposition
40 work is robust and delivers what we need for implementation of the UK–EU Treaty in relation to
Gibraltar. Not Mr. Greenberg, Madam Speaker, but Mr. Llamas and Ms. Nadia Sisarello-Parody
join me in Parliament today as we intend to take the Committee Stage on the Third Reading today
also.

This has not been, Madam Speaker, an easy task, especially one delivered in this short time.
45 The instructions to draft could not be formalised until we had a stable Treaty text. That meant,
Madam Speaker, that work on this Bill could not start until 1st February this year when Mr
Greenberg was instructed by the Attorney General, together with Ms Nadia Sisarello-Parody, to
begin the drafting process. The Hon. Leader of the Opposition will know that Mr Greenberg was
in Gibraltar at that time carrying out a sector-by-sector consultation on another draft Bill which is
50 now out as a Command Paper. I know he met with him in consultation on that matter at that time.
I have no doubt, Madam Speaker, that the work that the drafting team has done in the short time
available is remarkable.

I commend all those involved for their diligence and their delivery on such a demanding
timescale. Having set out that timeline, and before I continue with my speech on the second
55 reading, Madam Speaker, it is important that I should explain why I have certified this Bill under
section 35(3) of the Constitution as being too urgent to await six weeks of publication before it is
considered by the Parliament. Indeed, I think just under one week has expired of publication.

I wrote to you, Madam Speaker, last week on Wednesday, making the necessary certification
under my hand. I copied my letters to you, to the Hon. Leader of the Opposition. The reason I gave
60 is this.

As all hon. Members are aware, the current position as of today, and it is important that I
emphasise that that is the position today, is that the European Union Entry and Exit System (EES)
will be in effect without exception as at today, as from 10th April. As the principal purpose of
entering into the Treaty is to avoid Frontier checks causing inordinate delays for residents, workers
65 and travellers crossing the Frontier, we want to have done everything necessary in Gibraltar in
order to avoid the worst effects of EES in time for its current expected date of application, which
is 10th April. That would mean, Madam Speaker, that Gibraltar and the UK sides would be ready
for signature and provisional application in time for 10th April, insofar as possible.

That is why this Bill is so urgent. Having said that, Madam Speaker, we are aware of the fact
70 that the date of 10th April may likely be delayed. However, we have to be ready.

We will be ready. We will be ready legally by the passing of this Bill into law and having
subsidiary legislation ready. We will be ready physically by the temporary works being undertaken
at the airport under the auspices of the Chief Technical Officer, Hector Montado, and being carried
out by CASAIS, to allow for temporary Schengen check facilities and temporary EES facilities for
75 arriving air and sea passengers who would do all that at the airport.

We will be ready, Madam Speaker, because if we are not ready, then it would be easy to blame
us for delays in implementation of the new agreement. That, Madam Speaker, would potentially
make it easy for the European Union or for Spain to impose on Gibraltar residents the effects of
EES. We will not even risk putting Gibraltar in such a situation.

80 That is despite the fact that we do now reasonably believe that it is likely that there will be a
delay beyond 10th April. A delay will arise from both the legal and physical aspects of
implementation on the EU side. The first, Madam Speaker, the legal delays that relate to the

procedures of the Union and the translation of the Treaty text into all of the languages of the Union. That will mean that signature may now not happen before 10th April. That means you could not have provisional application before 10th April. All of that, Madam Speaker, will be determined at COREPA this week.

For the uninitiated, Madam Speaker, COREPA is the *EU Comité des Représentants Permanents*, my French is always a source of mirth for the Attorney General, Madam Speaker. It is also known in the King's English as the Committee of Permanent Representatives of the European Union.

It is comprised of the Heads or Deputy Heads of Mission from the EU Member States in Brussels, established under Article 240, paragraph 1 of the Treaty on the Functioning of the European Union, or the TFEU. As an aside, Madam Speaker, it is ironic that the Bill, when it becomes an Act, will likely be known in future shorthand as the TGEU. The work of COREPA is to prepare the work of the Council, Madam Speaker. It is what you might call the final filter through which almost all EU legislation and new treaties must pass before they reach the political level of Ministers. COREPA is due to report on Wednesday, Madam Speaker. It is likely that we will then receive a clearer statement of when the EU believes that the Treaty can be signed by the EU side and what that means in terms of provisional implementation dates, which could still be before the 10th or in time for the 10th of April, although that appears very, very unlikely.

Indeed, that could mean a delay of weeks or months, subject to the relevant procedures on the EU side. All Hon. Members will have seen reports and are no doubt assured by the reports that the delay will not lead to residents being subject to EES — Gibraltar residents not being subject to EES. But for us, Madam Speaker, it is too risky to leave anything to chance.

We do not do Government based on risk. We do not gamble when it comes to the chance that things could go wrong. If we get a longer time before provisional application without the application of EES to Gibraltar residents, that will no doubt be welcomed by those in our community who are having to work at breakneck speed to get the Treaty implemented by 10th April.

Indeed, Madam Speaker, if I may say so, we have heard very few — and indeed no reasonable voices raised against the Treaty. We have heard some raise legitimate concerns about the speed of implementation of the Treaty because of the need to be ready by 10th April. So those few critics of the timetabling will no doubt be assuaged by the opportunities that appear to present themselves for a little delay as a result of the EU legal and the Spanish physical delays that we may see.

Madam Speaker, again, any delay may be a matter of days, weeks, or a couple of months. The clear intention, however, is for the signature to happen on both sides as soon as possible when all formalities have been complied with on each of the High Contracting Parties' side. But it is hugely important, Madam Speaker, that Gibraltar and the UK side will nonetheless be ready on time.

We will be ready for provisional implementation — provisional application — on 10th April. And we await the outcome of the EU deliberations in this respect, as these matters relate exclusively to the EU's own processes of ratification, which we, of course, respect and await the conclusions of. But I want to emphasise to this House and to the community and to those outside Gibraltar that the Gibraltar and UK side will be ready whenever the EU and the Spanish side are ready.

In that respect, Madam Speaker, I have read what the Hon. Leader of the Opposition has said about the publication of the Bill. I do not want to misquote him, so I will quote him as I understand verbatim from the report of what he said. He reportedly said, and this is a quote:

The Government has had these drafts in advanced production for months, yet they choose to drop over 110 pages of complex, life-changing legislation on the Opposition and the public with only days to spare before the Easter break. To certify this as urgent under section 35(3) of the Constitution is a recurring failure of transparency. You cannot kick open opportunities if you are tripping over the very laws you are rushing through.

So, I understand that this was a quote from the Leader of the Opposition. If he did not say that
 130 Madam Speaker, then I am heartened by that. But I thought this was what he had said in the
Chronicle. (Interjection: inaudible) I am very pleased if that is not the case, Madam Speaker.

But I want to do the Hon. Leader of the Opposition the courtesy of addressing those issues so
 that he understands the timeline that the Government has been dealing with before I get into the
 general principles and merits of the Bill. Because Madam Speaker, those things which it is reported
 135 he said do not appear to me to have any semblance of reality about them. Because, as I told the
 House, the drafting of the Bill started in the first week of February.

It could not have started before. We had no stable Treaty text to transpose before then. So,
 the Government has not had these drafts in advanced production for months.

Directly contrary to what it is reported — or was reported to me — that the Hon. Leader of the
 140 Opposition had said. Indeed, Madam Speaker, it would be misleading to suggest that that has
 been the case, especially having heard what I have said about what the drafting timetable of the
 Bill has been. I sent the Leader of the Opposition the Bill literally moments after I received it
 myself.

I received the final version on Tuesday at 6.57 p.m. I sent it to the Hon. Leader of the Opposition
 145 on Tuesday at 7.04 p.m., seven minutes later. I had not checked it as a final version. In fact, the
 first time I saw the Bill was just 96 hours before, on Friday 20th March at 7 p.m., in its first draft.

The Deputy Chief Minister and I worked on the Bill over the weekend, which was Saturday 21st
 and Sunday 22nd. On Monday 23rd, we adjourned the Cabinet early in order to have a conference
 call with Mr Greenberg, Ms Nadia Sisarello-Parody and the Attorney General. After that
 150 conference call, Madam Speaker, the Bill was amended in keeping with our instructions on policy
 choices.

And when I next saw it, which was at 6.57 p.m. on Tuesday, I sent it immediately to the Hon.
 Mr. Azopardi at 7.04 p.m. So, when the House proceeds upon this Bill today, it can do so assured
 that there was not more time available to consider this Bill. The vice of time was moving from one
 155 side in the form of the date of the end of the negotiation and the stabilisation of the legal text,
 and the vice of time was moving from the other side in the form of the date of implementation of
 EES. That is the reality.

So, certifying this Bill as urgent is not a failure of transparency by any stretch of the imagination.
 Indeed, it would be unfair to suggest that that is the case. I am heartened by the fact that the
 160 Leader of the Opposition says he has not asserted that.

In fact, certifying this Bill as urgent is the fruit of necessity, to ensure that we avoid Gibraltar
 being caught in that vice of time to which I have referred. I trust that the Hon. Leader of the
 Opposition, now that he has this information, will either confirm that he did not say those things,
 or accept that they were not appropriate if they were said. We are doing, Madam Speaker, what
 165 we have to do here: ensuring that this legislative process is designed to defend the interests of
 every single Gibraltarian and resident of Gibraltar.

We are working every hour that is available, and we are leaving no stone unturned in order to
 be ready by 10th April, even if eventually it becomes likely that our Treaty partners will not be
 ready. We are exhausting ourselves, as people would expect us to do, in the defence and
 170 representation of Gibraltar and its people. But in doing so, Madam Speaker, we are not forgoing
 excellence.

Our drafters have produced an excellent Bill. Of course, a more considered, stately process
 would be preferable; but it would also be preferable that the world should live in peace.
 Unfortunately, we do not inhabit otherworldly perfection.

We inhabit earthly imperfection, and that requires us to move at double speed to protect
 175 Gibraltar, Gibraltarians and Gibraltar residents. So, I will say that, like the Treaty, it may be that
 this Bill is not perfect. We may have to amend it in future, but it is the Bill that will enable us to be
 ready to avoid the worst effects of the introduction of EES at the Frontier.

It is robust and it is effective, and it does what it says on the tin of the explanatory
 180 memorandum. Given the challenges that we are facing, Madam Speaker, I will settle for that —

as would most of the people of Gibraltar, I am sure. We will leave perfection to be the enemy of progress on other occasions and not on something as important as this Bill.

Let me now deal, Madam Speaker, with the general principles and merits of the Bill. Madam Speaker, as hon. Members will recall, on 26th February I laid in this House the text of the draft agreement in respect of Gibraltar between the United Kingdom and the European Union. Today we turn from the draft Treaty text that this House unanimously agreed by motion on 3rd March to the domestic legislation which will give it effect.

I therefore now have the honour of presenting to this House this seminal piece of legislation, the Treaty on Gibraltar and the European Union Bill 2026 — the TGEU. This is the legal mechanism by which we convert a diplomatic achievement into a functioning legal reality for Gibraltar. The Bill will give legal effect to the Treaty in the domestic law of Gibraltar.

Madam Speaker, in moving to this part of the second reading of the Bill, it might be helpful to hon. Members without legal training, and for those watching or listening to these proceedings, or indeed in future when reading the Hansard of these proceedings, if I reflect a little on the legal philosophy that necessitates this House's deliberation today. We have already had the Treaty text laid in the House, and we have had a debate on the text of the Treaty. So why is the House now having to deal with this law to implement the Treaty?

This is a question, Madam Speaker, about the issue in international law that I have referred to before, which is either the system of implementation of treaties in monist states or the system for implementation of treaties in dualist states. In monist states like France, the Netherlands or Spain, international law and domestic law are viewed as one single unified legal system. The Napoleonic Code does that.

In those jurisdictions, once a treaty is ratified at the international level between states, it automatically becomes the law of the land and can even suspend domestic statutes without further intervention. So, a little like the principle that we apply under the common law, if we pass an Act today that is contrary to an earlier Act, the later Act prevails. In monist states, that applies even in the context of international agreements.

So, if a monist state enters into an international agreement that goes contrary to the domestic law of that state, then the treaty is like a later Act of their Parliament that supersedes that piece of domestic legislation. That is not the case in our law. So, we have a piece of legislation which is an Act of Parliament, and we enter into an international legal obligation which is contrary to that Act of Parliament.

The Act of Parliament continues in effect because of the concept of Parliamentary supremacy, despite the contrary international legal obligation having been acquired state-to-state. The state is, if it were to be, immediately in breach of the international legal obligation without a transposition period. But in the dualist state, the supremacy of Parliament prevails, and the Act of Parliament continues.

So, Madam Speaker, in those monist states, they might still need to do some administrative work, but the treaty obligations bite all the way down to the territory of that monist state. In the context of our Treaty, that is why with Spain we will be doing administrative agreements which are necessary for them; but their international legal obligation is acquired in a slightly more complex way because, of course, this is not Spain entering into the Treaty, this is not France or the Netherlands entering into the Treaty. This is the EU entering into the Treaty, and the effect of the Treaty flowing into those legal systems through the Treaty and the functioning of the European Union to add a layer of complexity. Gibraltar, however, Madam Speaker, follows what we call the dualist tradition of the common law. So, under that dualist tradition, international law and domestic law exist in two entirely separate spheres.

A treaty signed by the state on the international stage is a binding promise between nations, but it does not on its own alter the rights or duties of our citizens here on Main Street, in Irish Town or, perhaps more importantly, on Winston Churchill Avenue. To bring that treaty home, to make it Gibraltar law, it must be translated, incorporated and given life to by this Parliament. That

is why the Treaty on Gibraltar and European Union Bill is so vital because without this Act of Parliament, the Treaty would remain a distant international inter-state diplomatic instrument.

235 It is this Bill, Madam Speaker, that acts as the constitutional bridge, carrying the international obligations across the jurisdictional threshold and weaving them into the fabric of our *corpus iuris*, our body of law, which is the domestic legal order of Gibraltar. It is the mechanism by which we ensure that the rule of law in Gibraltar remains firmly under the democratic oversight of this Parliament. And it is hugely important that we understand, Madam Speaker, that that is why it is worth the public understanding what a dualist state does.

240 Because what that does, Madam Speaker, in the end, is give the elected representatives of the people the right to give effect to what the state, in this context via its Executive, has agreed in international law. I hope that makes it easier, Madam Speaker, for members of the public and Members of the House to understand how it is that what this Bill does is ensure that the Treaty has the force of law in Gibraltar, that Gibraltar can uphold the commitments we have undertaken
245 in respect of the circulation of persons, Customs arrangements, the level playing field, aviation and Frontier workers, and police cooperation; that EU law provisions which the Treaty requires us to apply are appropriately recognised and domestically operational; and that the mechanisms created by the Treaty, such as the Cooperation Council, the specialised committees and the procedures for dispute resolution, can function effectively. Put simply, this Bill turns an
250 international treaty into a working legal, administrative and operational reality for our people and it is one that will take us back, given the structure of how the Bill allows for European law to become Gibraltar law, to the famous words of Lord Denning in *Bulmer v. Bollinger*.

Madam Speaker, you do not need me to remind you that he is one of the United Kingdom's most famous Law Lords. Many judges made many laws when they sat on benches, Madam
255 Speaker, and said things which had effect even beyond the ratio of the cases that they decided. Lord Denning famously described European law, Madam Speaker, not as a distant ripple in the ocean — in the English Channel — but as an incoming tide. Lawyers amongst us will, or should, remember that he said that European law flows into the estuaries and up the rivers. It cannot be held back.

260 Madam Speaker, for decades — for five decades — although we have no rivers, we lived with that *levante* tide whilst we were members of the European Union, and we applied those laws throughout. This Bill is the mechanism that reopens the lock gates. It allows the beneficial waters of the Treaty to flow once again into our domestic tributaries on immigration, customs and aviation; into the lake that there is under St Michael's Cave, Madam Speaker; on environmental
265 protection, on standards of goods, on the market and on mobility; ensuring that while we remain a separate dualist jurisdiction, we are no longer a legally isolated one on the European continent.

Let me now move, Madam Speaker, on to the substance of the Bill. On the most important issue of substance, Madam Speaker, in respect of sovereignty, nothing in this Bill, nor in the Treaty it implements, alters or diminishes Gibraltar's sovereignty. If it did, Madam Speaker, this House
270 would not have supported the Treaty unanimously. If it did, the Cabinet would not have agreed to the Treaty. All cooperation mechanisms respect our constitutional position, the sovereignty clause in Article 2 of the Treaty, and the undertakings given by the United Kingdom.

There is no jurisdiction given over Gibraltar. Indeed, I would go further and add that the very essence of these arrangements' rests on the opposite of a sovereignty concession. In fact, it rests
275 on the exercise of British sovereignty through the instrument of the very legislation that this Parliament is considering now, because it is this Bill that makes the discharge of the international legal obligations, we have acquired possible on the ground.

All operations which are provided for are, moreover, strictly governed by administrative arrangements approved by Gibraltar and are in line with identical police cooperation in the
280 Schengen Acquis, which applies between all Member States of Schengen. The Bill provides the foundation for prosperity, jobs and investment in the future. It avoids barriers that would otherwise harm businesses and families. Indeed, the Bill provides for the removal of all physical

barriers at the land Frontier. The fence that Spain never recognised but that Franco closed. The removal of those immigration checks at the land border is the central effect of this Bill.

285 Those are the checks, Madam Speaker, which have historically been used as a stranglehold on our economy. The abuse of those checks has been the experience of our almost 30 years of common membership of the EU with Spain; checks not carried out as required but abused to try to mature that fruit that would stubbornly not fall as predicted.

290 Checks, Madam Speaker, that cause stress to the people of Gibraltar and to those who live around us. Stress in the form of major traffic issues, the delays in reaching work or medical appointments, or even the damage to our tourism product because the queues made coming to our beautiful home unappealing. And, principally, Madam Speaker, stress to human relations — to family relationships.

295 Politics using immigration checks to get in the way of people's lives instead of making them easier and safer. Those days can be a thing of the past now. This Bill is the mechanism to deliver that from the Gibraltar side of the isthmus but given the sensitivity of the subject matter, it will not do so without providing lasting and ongoing transparency and accountability to this House. In fact, the Bill mandates annual implementation reports to Parliament. Additionally, the Bill will require the laying in this House also of some secondary legislation done in pursuance of its objectives. This House therefore retains full democratic oversight in a number of ways: First, in 300 the very passing of this Bill; Second, in the annual reporting; Third, in the obligation to lay secondary legislation which is done under its enabling powers; and fourthly, of course — and supremely — in the fact that the House can undo this Act at any time it should consider necessary, with all of the international legal consequences that could have. But that, Madam Speaker, is 305 Parliamentary supremacy in action.

Madam Speaker, before I summarise each part of the Bill, I would like to say something also about the style of the Bill, which may seem repetitive as it continually refers to each section which is being applied for the purposes of a particular part or Article of the Treaty. It has been drafted this way purposely to ensure clarity and consistency and aids the reader to follow each of the 310 relevant Articles of the Bill which have given effect to the relevant Article of the Treaty. That is an important device, Madam Speaker, and I commend it to the House, given that the hope is, of course, that the Act that will emerge from this debate — and the Treaty itself — should endure and operate for many generations to come.

315 Today, as the matter is topical, we are all familiar with these instruments that we have dealt with in the past eight weeks. In future, when the Act is being interpreted, it should be easy to correlate it to the Treaty and what it is intending to do. Additionally, the effect of reciting the relevant parts of the Treaty delivers what is known as Miller Compliance.

320 I confess, Madam Speaker, I had to be educated on what Miller Compliance is, and I think it is important that the House should be aware of why things are being done now in a slightly different way to the way that they were done under the European Communities Act of 1972, indeed, the Miller challenge relates to the undoing of that.

325 The reference to Miller I is a reference to *The Crown on the application of Gina Miller v. The Secretary of State for Exiting the European Union* in 2017. That was the first case that Gina Miller famously took about the use of the Royal Prerogative to give the Article 50 notification. Gina Miller challenged that, arguing that because the 1972 European Communities Act had granted rights to citizens, the Government could not take away those rights by using the Royal Prerogative without a new Act of Parliament. It is quite an established principle, Madam Speaker, that once the prerogative is codified into statute, it cannot once again be taken back by the Sovereign.

330 So, in that first case that Ms Miller took, the Supreme Court made it clear that in our dualist system — back to that difference between monist and dualist states — the Executive cannot simply sign and slide international obligations into our domestic legal order. We must be meticulous in the adoption of those obligations and Article 50 continued to live in the Treaty of Rome, and not in the European Communities Act.

335 Because Madam Speaker, our treaty — the Treaty between the United Kingdom and the
European Union on Gibraltar — changes the rights of our citizens and the rules for our business
community, the Miller finding requires that this Parliament, and not just the Executive, should
build the necessary statutory legal framework. So, this Bill is also our Miller Compliance in action,
and therefore it does things that the European Communities Act did not do. The European
340 Communities Act did not say that Article 2274 of the Treaty of Rome shall have effect in Gibraltar,
and Gibraltar shall therefore be a part of the European Union for all of the purposes set out in the
annex to the United Kingdom's Accession treaty.

It did not need to do that. It just did a very direct dualist implementation without setting out
the legal obligations in the Treaty. Hon. Members will see that this Bill goes further than that. That
is why this is a longer Bill than the European Communities Act was. Hon. Members will be able to
345 look, and will have seen, that there are many sections that recite the application of the relevant
part of an Article. For example, Article 45 on page 37 of the Bill — just one example of many, this
section at paragraph 1.

This section applies for the purposes of the implementation of Article 47, short-stay visas in respect of Gibraltar.
350

That tells you the purpose of the section, and then it goes on and tells you what the section
does. 46:

This section applies for the purposes of implementation of Article 48, exceptional external border visas in respect
355 of Gibraltar.

And then the rest of the section tells you what is done by the Treaty.

So, Madam Speaker, after Miller, when the TCA was being transposed into UK legislation, the
advice was that this is what Miller required. Miller 2, by way of interest, Madam Speaker, the
360 reason why this case is known as Miller 1, Miller 2 was the case that Gina Miller took in respect of
the, as it was then found by the Supreme Court, illegal prorogation of Parliament by the Johnson
Government to avoid a vote on the Withdrawal Agreement, and therefore Brexit happening. So
that is the Miller litigation, and how the Miller litigation has shaped the Bill that is before the
House today.

365 So let me now, Madam Speaker, take the House through each Part. I am not going to take the
House through each section, but just through each Part.

Part 1 establishes the foundation and the Bill's purpose. It sets the tone for the entire legislative
framework by requiring implementation in accordance with the Treaty's core principles of
sovereignty, good faith, respect for human rights, commitment to the rule of law, and the
370 cooperative spirit underpinning the new relationship between the United Kingdom and the
European Union in relation to Gibraltar.

Part 2 sets out the structural architecture necessary to give the Treaty operational life in
domestic law, and is, in essence, the instruction manual for how the Treaty and its supporting
documents interact with Gibraltar's legal order. It ensures that Gibraltar's system can
375 accommodate the Treaty as a living instrument, and not merely as a one-off static text. Indeed,
Part 2 then also provides for the implementation, as well as defining the implementation purpose,
to enable us to give effect to the Treaty obligations. That is very important, Madam Speaker,
because the powers taken and the whole of the legislative scheme that is before the House today
is for a defined and clear purpose that circumscribes action that can be taken and undertaken in
380 reliance on its powers. Part 2 also sets out rules for handling sensitive information and for
Gibraltar's participation in joint reviews.

Part 3 is what you might call the engine room of the entire Bill, Madam Speaker. It gives legal
effect to the Treaty. It gives legal effect to the required EU instrument where the Treaty mandates
it, and it gives the Government the power to make implementation regulations in order to give
385 further effect to the Treaty and to make consequential amendments to existing legislation. The

so-called Henry VIII powers, Madam Speaker, that in the context of European legislation in the United Kingdom and Gibraltar should be no surprise. The European Communities Act of 1972 already contained those powers to amend primary legislation by subsidiary regulations where necessary in order to give effect to the international legal obligations acquired by the United Kingdom then under the Treaty of Rome. So, there is nothing new there, and the Parliament under the Gibraltar House of Assembly and the Gibraltar Parliament under successive administrations has known how to use that power sparingly from 1972 to 2020 when we left the European Union. Again, Madam Speaker, that is why the circumscription of the purpose of the legislation is so important, because you would not be able, if you were in the executive, to use the power to amend primary legislation if you were doing something that was not exactly as required to be — that is to say, coming from the international legal obligations acquired under the Treaty.

We will be publishing a series of implementation regulations, Madam Speaker, to give effect to the following parts and chapters of the Treaty, including, but in particular, Title 5 of Part 2 of the Treaty which deals with cooperation with Europol, cooperation with Eurojust, Exchange of Criminal Records Information, Surrender, Mutual Assistance, and Freezing and Confiscation. We will also be introducing legislation to give effect to Title 6 on anti-money laundering and counter-terrorist financing measures as provided for in Annex 17 of the Treaty.

Additionally, Madam Speaker, we will make provision by implementation regulations to give effect to the road transport provisions of the Treaty which deal with road transport services between Gibraltar and the European Union. The provisions on tobacco in the Treaty will also require a number of implementation regulations to be made, in particular, to establish a track-and-trace system equivalent to that in the European Union. So far, there are at least 20 pieces of subsidiary legislation that are being drafted to give effect to the provisions of the Treaty, without counting all the environmental measures that we have published and are in the process of publication.

This Part also gives domestic recognition to the Cooperation Council, to the specialised committees, and it allows for consistent interpretation rules, the annual reporting, and for guidance to be issued. There are also powers for pre-implementation and post-implementation arrangements to ensure operational continuity. This is the Part that transforms the Treaty from a diplomatic document into a workable set of rules enforced by Gibraltar's own authorities and court. I should say — and courts. It is Gibraltar's legal and jurisdictional sovereignty in action.

Madam Speaker, Part 4 is one of the most transformative aspects of the Bill. It gives effect to the Treaty's arrangements for the circulation of persons, including the removal of physical barriers, the creation and operation of border crossing points at the airport and port — the latter of which, as I have said, we hope never to be needed — the sequencing of Gibraltar's checks first on entry and Schengen checks only after, and the reverse on exit, and the use of automated systems. The significance of this Part should not be understated. The Treaty explicitly provides for the removal of immigration checks on Gibraltarians at the land border and confirms our right to travel between the EU Member States. Naturally, Madam Speaker, this is still subject to the 90-day rule, which will also apply in Gibraltar to EU citizens.

Because we have been clear, Madam Speaker, that the Treaty does not provide for the freedom of establishment. We did not want it. The EU did not want it, and it would have been wrong to seek it, Madam Speaker.

This Part, Madam Speaker, also further covers future residence permits in respect of which we retain our rights to determine conditions; visa-free travel for Gibraltarians within the EU; short-stay visas; our ability to issue exceptional visas at our external border; enhanced notification mechanisms; and international protection applications.

Part 4 also includes substantial law enforcement cooperation arrangements, which are akin to those enjoyed between the Member States of the European Union. These ensure Gibraltar's security is enhanced, Madam Speaker, not diluted.

Part 5 is about the economic parts of the Treaty. It gives effect to the Treaty's commitments to fair competition, sustainable development and regulatory cooperation. It does so in a uniquely

Gibraltar-appropriate way, recognising Gibraltar's right to regulate its market, requiring high standards in labour, environmental and climate areas — which we already comply with — creating the domestic framework for state aid control through an independent State Aid Authority. And it is hugely important that the House reflects on the fact that all state-aid considerations will be subject to Gibraltar-based decisions being applicable. It establishes transparency obligations and it provides mechanisms for cooperation and, where needed, consultations or remedial measures to be applied. In my statement to the House, Madam Speaker, on 26th February, I emphasised that this Treaty is not perfect. But it is the viable, negotiable and deliverable alternative that presents us with an opportunity to move from a position of risk to one of stability and growth. Part 5 of this Bill operationalises that by giving Gibraltar a clear, fair and sovereign framework for economic competition.

Part 6 establishes the Customs Union between Gibraltar and the European Union. As I said when I was explaining outside this House what the Treaty does, that is not the application of the EU Customs Union in Gibraltar. That is — a little bit more complex than that — the creation of the Customs Union between the Customs Union of the European Union and Gibraltar. It removes tariffs and quantitative restrictions and sets up the regime for movement of goods. The Bill introduces the transaction tax, EU-aligned excise duties, the abolition of import duties, rules on sanctions, safeguards and exemptions, and administrative cooperation in customs and taxation.

Crucially, it maintains Gibraltar's status as entirely VAT-free, as I stressed on 26th February. There is to be no sales tax in Gibraltar, Madam Speaker. The transaction tax will be levied on the declared import value by a trader of the goods in question.

It is for that reason, Madam Speaker, that it would be fraudulent — and no less than that description is appropriate — fraudulent for any trader to pretend that the price of goods is going to now increase by the percentage of the relevant transaction tax, whether it is the standard rate of 15% from day one or the reduced rate of 5%. It is therefore clearly a fraud on consumers to pretend that prices will go up by 15% because of the transaction tax. And it would be remarkable, Madam Speaker — it would be remarkable — if the Government, having explained this now *ad nauseam*, if there was any defence in this House of the contrary suggestion.

Madam Speaker, Part 6 also sets out the rules for compliance, monitoring, market surveillance and tobacco controls on the movement of sensitive goods such as military and dual-use items. Part 6 is therefore the legislative backbone enabling frictionless trade in goods while maintaining economic integrity and law-enforcement capability.

Part 7 implements the provisions of the Treaty relating to aviation, including safety, security, operational standards and the cooperative governance structure for Gibraltar Airport. This Part is where the power to grant the tender for the running of Gibraltar Airport will emanate from. Section 1532 is worth specifically reading out, Madam Speaker. It provides as follows. 1352.

The Government shall have the power, by notice in the Gazette, to grant to a joint venture company constituted in accordance with Article 274 the right to select, through regular public tender, the commercial company that should be in charge of the day-to-day management of Gibraltar Airport, and to supervise the provision of the services provided by the company in accordance with Annex 25.

This is the grant of the tender to do in future, Madam Speaker, what Gibraltar Air Terminal Management Limited does today and which the Government of Gibraltar would like to see Gibraltar Air Terminal Management Limited continuing to do in future, subject, of course, to it being the successful tenderer. As I noted on 26th February, Madam Speaker, the Treaty will enable the resumption of EU–Gibraltar air routes without affecting RAF control or military use, although we are now outside the European Union and would otherwise have no right to access that airspace. Contrary to the position when we were in the European Union, we had those rights and our rights were improperly, unfairly and illegally suspended. Part 7 also ensures, Madam Speaker, that Gibraltar can apply EU-equivalent rules to aviation while preserving the airport's constitutional and operational autonomy.

Part 8 protects the rights of Frontier workers and their family members, ensuring stability for thousands of workers who support Gibraltar's economy and our public services. It provides certainty in respect of employment status, residence documentation and access to benefits. It protects not just workers who work in Gibraltar, but also Gibraltarians and British residents of Gibraltar who work in Spain. Importantly, as hon. Members will have seen, the Bill provides for social-security coordination but not aggregation. That is what is going to give us the clarity we need to deliver equalisation of the pensionable age between men and women at age 60 during the course of the next appropriation debate in this House before the summer recess.

Part 9 provides the framework for future cooperation on nuclear safety, security, emergency response and material control, ensuring Gibraltar's preparedness and alignment with international standards should such activities ever become relevant. Madam Speaker, the Government — I want to be clear about this — does not envisage such circumstances becoming relevant, but it is a requirement of the EU that we should have in place a legal infrastructure should such an eventuality arise. That could relate to the use of particular components in machinery, etc.

Part 10, Madam Speaker, implements the Treaty's mechanism for consultation, arbitration, compliance and remedies. This is the dispute resolution and final provisions chapter. It ensures that disagreements under the Treaty are resolved lawfully and predictably without encroaching on the fundamental constitutional position of Gibraltar.

Madam Speaker, Gibraltar's strength has always come from its unity — unity of purpose, unity of community and unity in defence of our common interests. The TGEU represents our collective commitment to stability for our people. It represents our shared determination to secure opportunity for future generations and our belief in cooperation, fairness and the rule of law. It is not a Bill of any particular ideology. It is a Bill to deliver practical benefit, a Bill of responsibility and of delivering on the commitment we made to negotiate a safe, secure and beneficial way to make Brexit bearable. It is a Bill that allows Gibraltar to move forward confidently, maintaining our identity while strengthening our place in the region and the European neighbourhood in particular, as well as in the wider world. Madam Speaker, the Bill before the House today does not simply implement a Treaty. It gives Gibraltar and the Gibraltarians legal certainty, economic opportunity, mobility without barriers, enhanced security cooperation, strong protection on sovereignty, and a stable, modern platform on which to build our future. Gibraltar was forced out of the European Union despite our desire to remain. Brexit left us exposed to a significant and detrimental change to our daily lives and to our future. Madam Speaker, this is the Bill that tames Brexit. This is the Bill that tears down the Frontier. This is the Bill that secures our British way of life for generations to come and this will be the law that lights the fuse on a new era of opportunity for generations of Gibraltarians to come. The law that saves us from all the worst effects of the hard Brexit we did not choose. The law that restores our relationship with the European Union, consistent with our vote to remain and that, Madam Speaker, is why this Bill is entitled as it is, the Treaty on Gibraltar with the European Union Bill 2026 — the TGEU.

We did not choose the events that led to the Treaty and this Bill. But we have had — and we have taken — the opportunity to have the leading voice in the shaping of our future and now this Parliament will exercise its power to give effect to that Treaty when signed. For all of those reasons, Madam Speaker, this is truly a seminal legislative moment. It is a moment of generational significance, and it is one to cherish. And so, Madam Speaker, I ask all Members to join us in crossing the Rubicon and supporting the Bill together. And with that, Madam Speaker, it is with pride that I commend the Treaty on Gibraltar and the European Union Bill 2026 to the House, and I ask that the Members opposite join us in that pride and without prejudice in supporting this, Bill. I commend the Bill to the House. *(Banging on desks)*

Madam Speaker: Does any hon. Member wish to speak on the general principles or merits of the Bill? The Hon. Leader of the Opposition.

Hon. Dr K Azopardi: Yes, Madam Speaker. I do want to speak on this Bill. I mean, the hon. Member knows that I join him in pride every year.

So, we do join him in the pride of the moment, for sure, in the sense that we have at least got a deal that fills a gap which we would have had had we had no deal. But, you know, I think we come at it from a slightly different perspective in the sense that the Hon. Chief Minister has spoken at length — and did so as well on 26th February — about their Government's own perspective on the agreement and we spoke about our perspective on the agreement. And the perspectives are different and that gap has not been narrowed through the passage of a month. The reality is that, as he knows, we joined the Government in supporting a motion on ratification subject to the conditions that we indicated at the last meeting of the House for the reasons that I gave at that stage and the reasons are different. We do not consider that the agreement itself met our test of it being safe and beneficial — certainly not on our assessment of what that means. Because, as I said then, and I will restate because it is important to understand the context of our approach as we look at today, the basis of the motion vote remains the same.

In other words, we did not consider it was safe and beneficial in the way that we had hoped. Because “safe”, in terms of the issue of boots on the ground, was debated at length in this House on the last occasion. I am not going to get into the detail of that, safe to say that clearly those are issues that gave us significant concern on the day and I set out at length why that was the case and “not beneficial” in the sense that we were concerned about the intrusive controls that there were, and that there are, in the agreement and there I mean things like short-stay visas, residence permits, market surveillance — all these issues that are, in effect, powers handed over to Spain with the fragility of the information flows leaving our jurisdiction, the handle on controls that are economic in nature that can alter — and in fact influence — what inward investment we get and combined with the fragility of the termination clauses that I indicated last time, which allow suspension for non-compliance, but also, worse still, the real issue on termination is the very short nature of a 12-month break clause of a termination provision that allows a no-cause termination. All of that means that you continue as a community to plan for the future on a twin-track basis, in the hope that you have a deal that works for the future despite the misgivings that we have on it and despite the concerns that have been expressed, not just in this House but outside this House by other people in this community and the sectors that are affected. We hope for the future, but we fear for the fact that we might be left at some point facing a completely different scenario where we have to recalibrate the economy if there is a termination, having bedded in changes that are difficult to row back from if the economic model that we have been following for many, many decades changes radically. Are these things that can be rowed back from if we are five or six years hence from implementation and suddenly, we find that these things are terminated in circumstances where we are not the authors of the trigger of termination?

That is the issue, really, for our community: that we continue to have to plan on a twin-track basis. Whatever we say, that is the reality of the termination clauses. So, while of course I will join the hon. Member in the pride of the moment, in saying at least we have an agreement and let us open a new chapter in hope — and I will join him in that hope — I will carry my misgivings with me because that has not left, and that is baggage that I hope only to have with me, that can dissipate, and I hope not materialise because if those misgivings materialise, then it is baggage that will be acquired by the whole community.

Madam Speaker, consonant with what I said at the time of the motion, I made it very clear in the motion that I set out at length what were our concerns on the Treaty. But I did say that while this was not the deal that we wanted, the deal that we would have hoped for — even the deal that we thought the hon. Members did not want, only eight or nine or ten months before they brought it back because they spoke about not having a deal that had boots on the ground, and it had it — it is the only deal that is on the table. And faced with the choice of this — the only deal — and no deal, without the economic information and analysis that the hon. Members have at their disposal that has not been shared with us, we at least take that leap of faith that instinctively we believe no deal is not a good thing for Gibraltar and therefore, instinctively, we will take the

leap of faith towards the agreement and for those reasons, despite our misgivings, we said that we would vote in favour of the motion for ratification *as long as* — because this is our big *as long as* — as long as the powers and the decision-making powers as to the future rested with Gibraltar. Because one of the things that immediately we realised when we picked up the agreement that had been shared with us confidentially 16 days before it had been published, is that clearly this is not an agreement that stays static in time. This is an agreement that has a set of the Cooperation Council and the specialised committees that will roll forward, that can influence, that there will be things that could emerge from these committees and the Cooperation Council that will affect our laws, that will affect what we do, that will affect our rights.

And therefore, we need to be involved in all these committees and councils; and indeed, not just involved, but have the triggers — the decision-making triggers — and the triggers on termination and so on. So, what we said very clearly when we came to consider this matter at the motion stage is that as long as those powers are with Gibraltar, then we would support the motion.

It is on the same basis — it is on the same basis — that we approach this debate on the Bill, but with an added layer, if I may. Because, of course, I indicated that we would support the motion subject to what became that amendment that I took in this House, which was adjusted after discussions with the Chief Minister, that subjected the ratification — the call for ratification — on the basis that the Concordat, the United Kingdom–Gibraltar arrangements that would make clear that we had the decision-making powers, would be in place, and that the termination of the agreement was subject to the people of Gibraltar in a referendum should the people of Gibraltar decide to do that. That remains our position. On that basis, we were able to support the motion for ratification despite our misgivings but expressing a balanced view of the difficulties that we were facing — the abyss of no deal, and so on.

Madam Speaker, that position has not changed. And therefore, we will support this Bill, but we will support it with misgivings also, because of things that I am going to talk about as I go along in my contribution on this Bill. So, we will support it, but we are concerned about aspects of this Bill. I put it no higher than that.

The Hon. Chief Minister is having an aside with the Attorney General — so I will wait for him to consider what I am about to say. Because Madam Speaker, the issue that we have on this Bill I will set out in some detail as I go along, but I am going to pick on issues that are set out in the Bill. But the broad point of principle that I wanted to make before I jump into those issues is that I am going to talk about and pick out points of detail that I hope the hon. Member takes on board.

I appreciate the timescales, by the way, and I will talk about that in a bit more detail. But I would hope that even if — and I appreciate the timelines — but I would hope that even if it is at least a 24-hour period that they want to take, they may want to consider some of the points that we raise in terms of detail so that this Bill can be improved before the Committee Stage in this House. But I just put that on one side. I intend to raise these issues in a constructive spirit for them to take on board, and for them to choose to do so or not to do so. But I would hope that they would choose to reflect on some of these issues which we think are quite important. Some of them — some of the issues that we raise — are going to be issues of clarification that I am going to ask the hon. Member to take on board and clarify in his reply.

Can I, though, first say to this House, Madam Speaker, that one of the important aspects that was the subjecting to the condition that we had on allowing the motion to be supported by us was the state of the Concordat. The Hon. Chief Minister knows I have been privately in touch with him on the progress of that matter, and he may wish to update us further on that. Because, of course, the Concordat was going to be — I understand from the discussions we had last time in this House — at some point published, as indeed the last Concordat was. But we are not sighted on the state of play on the Concordat, and it would be helpful to have an update of where we are on the Concordat because everything that we said in the debate on the motion holds true today, which is that the decision-making powers need to be in the hands of Gibraltar — and so do the

termination powers. But it is not about termination; it is well before that. All the decision-making powers need to be with us, and that depends on the state of the Concordat.

And the ratification vote required the Concordat to be in place. We are rushing towards implementation — provisional implementation — although at least the possibility of provisional implementation, for good reasons, because we want to be ready before the EES is introduced. There may be slippage, but we want to be ready; we understand that. But the Concordat needs to be ready also — needs to be in place. So, we would like an update on that, because here we are on 30th March, barely 11 days from 10th April, and we are not aware that the Concordat is in place yet. And indeed, the motion required a process of consultation with me on that Concordat so, we await.

Madam Speaker, on timing — certainly I understand the timing. And, I mean, the Hon. Chief Minister started rattling off what I was supposed to have said to the *Chronicle*. I have to say that the reason I interjected when I was sitting down here and he was quoting me is because I could not recognise those words. And indeed, that is absolutely right because I have the *Chronicle* in front of me. I mean, I did not even recognise the turn of phrase — not the kind of phrase that I would have used. Maybe he needs to consult the *Chronicle* itself and not ask *ChatGPT* what I said in the *Chronicle*. Because what I said in the *Chronicle* is actually almost the reverse of what he said.

Because he said that I questioned — that I said it should not be certified as urgent. In fact, what I said to the *Chronicle* is that I received a copy of the Bill on Tuesday evening shortly after it had been published in the Gazette. That is absolutely right, because in the Gazette it was published — I think it was at 7.55 p.m. — and I got it at 8.00 p.m., whatever it was, from the Chief Minister by WhatsApp and I said we would now consider its detail in the short time available. Indeed, that is correct — that is correct; we have considered it in the short time available. And I said, quote:

We understand the urgency and are sympathetic on timelines, but of course it is a shame we have not been given more time with this draft or other urgent legislation under the Treaty.

And the Hon. Professor Cortes has consulted us on aspects of the environmental legislation and I welcome that, but we had not seen this particular legislation.

And I carried on, and I said — this again, quote:

We assume that some of the drafts must have been in advanced production for some time; and given the knowledge Government would have had that it wanted to meet urgent legislative timescales by the end of March, drafts could have been provided to us much earlier to assist the review and scrutiny processes that then contribute to better lawmaking.

Close quote.

And then another quote:

We will now consider this Bill, which is in part highly technical, against the backdrop of the stance on principle of the Treaty that we took when Parliament debated the motion a few weeks ago. Beyond our position on principle, it is important for the laws that give effect to individual aspects of the agreement to work properly. Additionally, concerns have been voiced by people as to lack of awareness and consultation on detail, and this simply compounds those fears. At this seminal moment in our history, it is incumbent on all of us, whatever we think of individual aspects or the misgivings we may have on issues, to make the best of this agreement for the good of Gibraltar. In that context, proper scrutiny of the intended laws is crucial. This would have been facilitated if Government had been prepared to consult in greater detail on these measures. Legislating in this way risks things going wrong that then affect people and businesses in months to come.

Those were the precise words I said — the precise words — *not* the words that were being read into the record by the Chief Minister that a contortion of those words sounded to me — sounded to me, maybe unfair — but that maybe someone who had put it in front of him had actually consulted *ChatGPT* on what I said in the *Chronicle* rather than look at the words I said in the *Chronicle*, where I expressed that we understood the urgency but that we would have wanted

to have received a bit more advance notice on the Bills. And the hon. Member says in his intervention that he passed it on to me as soon as he got it. Well, you see, the thing is, Madam Speaker, there are only two roads here, either this was in advanced production — and I would have thought that the Chief Minister was being consulted in the advanced production — or he received it and immediately passed it on to me. Well, if it is the latter, I am more worried than I was. I am more worried than I was? (**Hon. Chief Minister:** will the hon. Member give way?) Yes.

Hon. Chief Minister: Madam Speaker. I actually told him the whole timetable. I told him I received it on the Friday, that the Deputy Chief Minister and I had four days to review it. We then had a further meeting with the drafter on the Monday, and that I then received it on the Tuesday at 6.57 p.m. and sent it to him — without checking it against what I had asked should be done — at 7.04 p.m. I gave all of that detail.

Hon. Dr K Azopardi: Yes, Madam Speaker I accept that I was probably having an aside when my hon. Colleague has confirmed that to me when he said that. But can I say, I mean, the point about this is certainly, even on that explanation, we could have had it a few days earlier, and in these short periods a couple of days makes a difference. That is the reality of these things. A couple of days makes a big difference when we are saying that, and the reality is it is important and these are issues that are important.

So first of all, I have not questioned the certification of urgency — far from it. I have said I understand it. That is our position. That is our position. I would have wanted a bit more time, of course, because I think when we scramble forward in this way we can get it wrong, and those are the issues of detail.

I mean, I was quite struck, on one of the issues that I am going to raise later of detail — I was quite struck that this House had six weeks between the taking of the Second Reading of the European Communities Bill in 1972 and the Committee Stage on 21st November 1972. So, I was quite struck by that.

And the reality is that the question in terms of the legislation — it is a matter for the Government to have considered this question on advice, and we are going to accept that view, by the way, *prima facie*. But this is all about Article 336. Because Article 336 of the Treaty says that:

The Parties may agree to provisionally apply this Agreement from a date prior to the date referred to in paragraph 1, provided that prior to the date from which this Agreement is provisionally applied, the Parties have notified each other of the fact that the Implementation Plan referred to in Article 7 and the administrative arrangements referred to in Articles 29, 33, 38, 55, 56, 251, 260, 265 and SSC 31 are in effect and have been fully implemented and that the measures described in Article 258 are in place.

Those cross-referred Articles are as about:

- Article 7: the removal of physical barriers;
- Article 29: the border crossing points;
- Article 33: border control by Spanish authorities;
- Article 38: UK Forces, etc.;
- Articles 55 and 56: continued surveillance and hot pursuits;
- Article 251: access to IT systems;
- Article 260: rules applicable to UK Forces;
- Article 265: the joint visit arrangements to verify; and
- The other reference is to the Protocol on Social Security Coordination.

Now, those are the issues that require, in the Treaty, the provisional application. Provisional application cannot happen until those things are put in place.

Now, I do not know if this Bill needs to be taken before that, or you can put these arrangements in place ahead of that and the Bill can follow at the end of it. Some of the Bill is supposed to give retrospective effect — or at least there is power to give retrospective effect — to certain arrangements. But look, we are not going to get into that technicality. We understand, as we say, the urgency and we take no issues with it. But we are concerned about aspects of the Bill and how it is constructed.

So those are the main issues that we take today, and I want to turn to that in broad principle and just signal a few headline issues, and I will then go through the Bill, if I may. Because there are aspects of the Bill that do concern us — maybe colleagues have other aspects that they want to also raise.

I should say as well, in terms of timing, the Hon. Chief Minister has indicated that Gibraltar is taking the view that we want to be ready by 10th April, because we still do not have official confirmation of any slippage. But there might be slippage — and I have no issue with that — we agree we should be ready by 10th April. If there is an EES cut-off, we should do as much as possible to be ready for whatever we need to do to avoid people on the ground suffering, except subject, of course, to the issues that businesses have raised as to transition periods, and so on — that is a different point. But in terms of mobility across the border, we agree; certainly, we should do what is necessary if it can be done. But if there is slippage, it may be possible, therefore, to accommodate concerns that we have on the legislation with due time. So, as I said to the Honourable the Chief Minister in opening, we are going to make points of detail on the Bill; we hope that they will consider them; we hope that they will at least slightly delay the Committee Stage, even if it is for 24 hours, if they feel that they need to discuss matters with the Attorney General, for example, who is in the House, to at least reflect on certain issues.

If they do not feel that they can do that — I am not sure why that would be the case, because we are still in March — but presumably if there is slippage on the date of EES, and so on, there will be time in the interregnum to reflect further on the issues that we raise and see if the Bill can be improved by amending legislation. But to avoid that, we would hope that they would at least consider certain aspects that we are going to raise.

There are headline issues, if I may. And the first is, we are worried about the principle of aspects of this Bill leading to an erosion or sufficient scrutiny in the future. This could have been done differently in some respects. This is a Bill to, in effect, domesticate the Treaty.

There are aspects of the Bill, there are certain Parts of the Bill that draw from the agreement, and to the extent they draw from the agreement almost verbatim, or at least encapsulate in words the principles that are in the agreement, there is little to be said about that, because that is what the agreement says. So, if you are domesticating what the agreement says, then that is what it says. So, we may not like aspects of the agreement, but that is what the agreement says.

But there are other aspects of this Bill that are not about that. There are other aspects of this Bill that establish principles which allow law-making powers to be done in a particular way or in another way. Those are choices — those are policy choices — first by the Government and brought to this Legislature and commended by the Government to the Legislature.

There are aspects of those where we do not share those policy choices in those respects, in terms of the principles that we fear will be caused — because the Parliamentary scrutiny will be eroded as a result of some of those mechanics. The Chief Minister said that this guarantees oversight. We do not agree. We think that there are aspects of this Bill that undermine scrutiny and oversight, and it could be done in a different way. And there are very wide powers that are vested in the Government on law-making as to the future that will remove any kind of debate or discussion in this House. And there are important aspects of the agreement that are going to be done through regulations without the possibility of any debate on very fundamental things that should be debated in this House.

So far from there being guaranteed Parliamentary oversight — this is a one-chance-only debate. Because in future these things are not going to come here. And that is the issue that we see. We are quite concerned about that.

It could be done differently. We think it should be done differently. And in future it would need to be done differently if we are on the other side of this House. But we would hope that they would take on board some of our concerns, because we are still early, and there are aspects — and it may be because of the very constrained time that Members opposite have had, especially because of the explanation that the Chief Minister has given us earlier today — we would hope that they would take on board and widen the ability of this House for Parliamentary oversight.

Madam Speaker, the other headline point that I would make is that we are concerned that this Bill will have the effect — the very clear effect — of superseding, overriding, our Constitution. And we are concerned about that, about the constitutional competences being overridden by this Bill.

We do not see this Bill in the same way as the European Communities Act. I mean, at the end of the day, the European Communities Act — we will come to it when I get to the particular section — but in the European Communities Act we were acceding and therefore subjecting ourselves to those principles where we were joining a supranational entity; and having joined the supranational entity, there are certain EU law principles that you have to abide by, not least that it is supreme.

But we are not doing that. We are not joining the EU. We have an agreement with the EU to do certain things. We are not joining the EU. EU law is not becoming supreme in that sense — not in the sense that it was when we were in the EU.

And therefore, in the rushed time that we have — and I do not use “rushed” pejoratively, but because of the small amount of time we have — this is an important issue that needs to be considered further. And I will give the hon. Member a bit more detailed explanation on this issue.

There are also detailed issues that I have beyond that, and I am going to do a page-turn if I may through the Parts — although some of the Parts, as I say, we have little to say about because they are drawn from the agreement, and we have already expressed our misgivings on certain aspects of the agreement and see no point in duplicating or lengthening this debate by restating things that we already said which are issues of principle to a very large extent. Sometimes we have a debate on the principles of the Bill, but the underlying principles of certain Parts in this Bill were already debated in this House not that long ago, and therefore I refer everyone to the things that I said on those aspects that are simply put into the relevant Parts of the Bill.

Madam Speaker, I will signal that, to the extent that issues that we raise are not taken on board by hon. Members, we will be sorry about that; but that if indeed they are not taken on board, then we consider that this Bill that we will vote on today — even though we will support it — has aspects which are important and absent in terms of removing oversight from this Chamber that we would want changed in the future. And I signal that if we are on that side of the House, we will consider amending this legislation, for reasons that I have given in headline form but also for reasons that I will give as we go along in relation to those Parts.

So, with those headline issues having been said, Madam Speaker, I just want to do a bit of a page-turn on this Bill, if I may.

The first point that arises, Madam Speaker, in section 3 — and this will be linked to the point that I make on the Constitution — is that “enactment” is defined as:

An enactment whenever passed contained in any Order, Rules, Regulations etc., or other instruments made under an Act;

but importantly it also says that,

an enactment contained in an Order in Council made in exercise of His Majesty’s prerogative in so far as it applies to Gibraltar.

That, of course, would include the Constitution. So, the Constitution, for the purposes of the Bill, is an enactment. And that is important to bear in mind, because as I go along, Madam Speaker will see that the Constitution therefore is made subject to the Treaty.

So, these are wide powers. Because very clearly, one just has to glance at section 5 of the proposed Bill to see that the reference to the agreement contains — includes — even under 5(1)(b)(iv):

830

Any political declaration or other document that the Chief Minister designates by notice in the Gazette.

835

So, anything that the Chief Minister designates by notice in the Gazette also is part of, ultimately, an overriding framework. Hence why oversight is important; hence why it is important to curtail things like that — because really what we are saying is we are creating a scheme which overrides other laws, and that regulations can be done without oversight, without proper debate; and that — and in a way more radical, as we will see — to the European Communities Act. And that diminishes democracy and scrutiny rather than enhances it.

840

So, Madam Speaker, section 7 of the Bill talks about the implementation purpose, and I was rather concerned about the reference in 7(1)(b) about the arrangements being between His Majesty's Government of Great Britain and Northern Ireland in respect of Gibraltar and the Government of the Kingdom of Spain.

845

Of course, I told myself that that is how it is described in the agreement — that I was concerned about — but this brings to the fore once again the importance of the Concordat. So that we — the Government of Gibraltar — are the ones who are approving those powers and no one else. Because otherwise it diminishes our power.

Madam Speaker, the point that I was making on overriding effect is, of course, in section 10, which says that the Treaty on Gibraltar and the European Union will have legal effect. And it says, in section 10, that:

850

The Agreement shall have the force of law.

And then it says, in section 10(2):

For the purpose of subsection (1), any enactment or rule of domestic law shall have effect subject to any modifications necessary to ensure the implementation or operation of the TGEU.

855

Now, of course —

Any enactment shall be subject to any modifications necessary

— that includes the Constitution. And I am concerned about that and I will just talk a bit more about that, if I may. But first I need to continue the guided tour of that, because it says in section 11(6) that:

860

The Government may by regulations specify certain EU regulations or other instruments or certain provisions of EU regulations or other instruments that do not have effect by virtue of subsections (1) and (3).

865

So that is one of a number of very wide regulation-making powers. Section 11(6) — one of a number of very, very wide powers. And again, I am just picking on some sections — it is not necessarily all the sections that we would have had, but I am trying to do so in the interest of speed as I go along.

And you have the principle there also under “implementation regulations”, which is section 13:

The Government may by regulations make any provision that appears to the Government to be necessary or expedient for an implementation purpose.

870

Another wide power.

And that includes — under 13(2):

a provision of any kind that could be made by Act of Parliament.

and under 13(2)(c):

To adapt, vary, amend or repeal any enactment.

875 Of course, “any enactment” includes the Constitution. I query it, by the way, the Government cannot by regulation amend the Constitution but “any enactment” includes the Constitution in the way it has been defined because of what I have indicated. — because of the way it has been defined.

880 **Hon. Chief Minister:** Exactly.

Hon. Dr K Azopardi: So, the Hon. Chief Minister says exactly from a sedentary position. But if he wants to refine that, he will need to introduce words in that Part of the Bill that make it clear that it is:

885 Any enactment other than the Constitution of Gibraltar.

Because unless he does that, the sweep into the definition of “enactment” under section 3 — which includes the Constitution — means that every time you come to “any enactment” in this Bill, it includes the Constitution.

890 That is a granular issue that needs to be clarified — and indeed modified, I would say to him, with due respect.

And that is the same point that I make in 13(2), because “suspend or make provision permitting the suspension of the operation of any enactment” — clearly cannot mean the Constitution, needs to be resolved and indeed the wider principle is this, this is not about drafting necessarily because it is obvious that by regulations you cannot amend the Constitution. Obvious.

895

Hon. Chief Minister: Or by Act

Hon. Dr K Azopardi: Yes, but, therefore, it needs to be drafted differently. And he says, the Hon. the Chief Minister says, “or by Act”, I agree but that is the point, it is not drafted that way. It is drafted in the way that this has the effect of overriding constitutional issues, rights and protections in our Constitution and we should be concerned that this is not the case. Because this is the point...

905 **Hon. Chief Minister:** Will he give way, just a second.

Hon. Dr K Azopardi: Well to help me, I am not sure.

Hon. Chief Minister: Madam Speaker, I will only say to him, would he accept in the context of what he is developing, I am not saying it is not a serious point, but will he accept in the context of what he is developing, that if such as regulation were to be made, or indeed such an Act were to be passed by this Parliament, it would be of no effect whatsoever and it could be struck down immediately by a court and indeed it would be void *ab initio*.

915 **Hon. Dr K Azopardi:** Madam Speaker, this is a serious process, but this is not a debate as to a hypothesis of whether it will or will not be struck down by a court. I am pointing out to him. No, I mean, he says from a sedentary position that it has no effect. He is bringing this legislation to this Parliament. He is bringing it. I have quoted a section in this Bill that he is bringing, he is recommending. If he says it has no effect, he needs to amend it.

920 **Hon. Chief Minister:** It would have no effect to amend the Constitution. By regulation,

Hon. Dr K Azopardi: Madam Speaker. He says it would have no effect to purport to amend the Constitution by regulation. He is giving himself that power — commended to this House — to purport to make regulations which can have the effect of overriding any enactment, which includes the Constitution. If that is not what he means, what is the point? He should remove it. He should remove it, Madam Speaker. *(Interjections)*.

Madam Speaker: The Hon. Chief Minister can reply in due course but let us not have a debate across the floor. *(Interjections)*.

930

Hon. Dr K Azopardi: The Hon. Chief Minister, on reflection. This is why he needs to reflect on these issues. The Hon. the Chief Minister, he appears to be saying that he is vehemently not purporting to do these things, or could, and therefore should not ask the House to pass a law that says it can. That is the point that I am making, and that requires an adjustment—an adjustment to a particular part of this Bill, which is the definition of “any enactment”, that I would ask him to take on board. Because he says, from a sedentary position, that he does not want to do it, but yet the way it is cast allows the principle of it to be done. He says that if it were done it would have no effect. We do not want to get there. We are at the stage where we have not passed the Bill yet, and therefore it is still in time to do something to correct something that he says he does not intend.

940

Quite clearly, if he puts the definition of “enactment” together with section 13, which talks about the adaptation, varying, amendment, or repeal of any enactment, or the suspension of any enactment, or the adaptation of, etc., then it is theoretically possible for that to be the case. In fact, it is doing so and overriding the Constitution in a way that we say gives us concern.

945

I go back to that principle. I say that we are not acceding to the European Union, so surely, we are in a different place. Not acceding to the European Union, we are in a different place to that post-accession place where we would be giving supremacy to a vast—to this—because we are part of the supranational entity. We are not doing that. To that extent, we need to be concerned about preserving and protecting our Constitution and not allowing it to be eroded through a side-wind.

950

That erosion, Madam Speaker, is because our Constitution is not just about the mechanics of governance. It includes, of course, the rights—the fundamental rights—of peoples, and indeed references to the things that we hold dear, like our Preamble of Sovereignty, and there are references to self-determination, and so on.

955

Madam Speaker, on section 13, if I may: also, at 13(2)(j), it involves the regulation power; it involves the creation of criminal offences by regulation. So again, there is slight concern there that we are creating criminal offences by regulation rather than by taking Bills in this House. The way we can have proper scrutiny and debates in this House—this is methodology. I mean, there is nothing in the Treaty that obliges certain things to be done in a particular way in terms of the mechanics of governance. So, it is important that we have a say on these things. And, importantly also, not only is this a power to create criminal offences by regulation, but it is the power to create, by regulation, criminal offences that are not provided for under Gibraltar law. So, we are going to— we can create criminal offences that are not criminal offences in Gibraltar by regulation.

960

I mean, I think our view would be that these are things that need scrutiny and oversight rather than just put in regulations. And then it says, in 13(4):

965

The implementation regulations, that they shall be laid before Parliament as soon as practicable after being made, without specifying a defined period.

So, at some point they are laid after. And at 13(5):

Implementation regulations shall come into effect in accordance with their terms and may come into effect in accordance with those terms before being laid in Parliament where necessary by reasons of urgency.

970 So not only is there a wide power to put in regulations—a very wide power—these regulations take effect before they are laid in Parliament.

Now, all those things, Madam Speaker, and without speaking to additional detail... but this is about the difference. None of this—none of this—is in the Agreement. So, how this is done is a policy choice of the Government in recommending this to this House, because none of this is in the Agreement. There are other parts of this Bill that are in the Agreement, and to that extent, 975 having expressed misgivings as we have, we have got to— it is in the Agreement; it has to presumably be said if it is going to be domesticated.

But this part—this initial part that I have spoken to—is not in the Agreement. The choice of how to do these things in terms of the introduction of the laws is for the Government, and we 980 consider it needs to be done in a different way.

And Madam Speaker, the Hon. Chief Minister says, in praise in aid, the European Communities Act. But I would tell him that the European Communities Act does things in a different way, because there was a very lengthy debate on the European Communities Bill when it was taken in 1972 in this House. Because there were Members on this side of the House—the Hon. the late 985 Peter Isola, the Hon. the late Bob Peliza —who spoke on a number of matters; the Hon. the Father of the House was also here participating in the debate, as indeed the Hon. Maurice Xiberras. And there were expressions of concern precisely on the issue of how it would override the Constitution.

And on that point, Madam Speaker, I just refresh the memory of the House that section 4(2) 990 of the European Communities Act, now repealed, said this—which was a general provision for the implementation of EU obligations. It said that the provisions allowed under section 4(1) gave a very wide power to the Government to make regulations to implement EU obligations. But section 4(2) said this:

The provision that may be made under subsection (1) includes, subject to Schedule 2, any such provision of any such extent as might be made by Act, but does not include any such provision as may be made by Act by virtue only of section 2(6) of the European Communities Act of 1972 and section 3(2) of this Act.

995 And then it includes this phrase:

And any enactment which expression shall be deemed to include an Act of Parliament or any instrument made thereunder, other than the Constitution of Gibraltar, extending to Gibraltar and stated to be passed or made in implementation of the Treaties and of the obligations of the United Kingdom thereunder, passed or to be passed, other than one contained in this Act shall be construed and have effect subject to the foregoing provisions of this section and section 3 but except as may be provided by any law made under section 33 or 34 of the Constitution. Schedule 2 shall have effect in connection with the powers conferred by this section.

1000 The effect of this section—this section came about in that amended form because there was a big debate in this House as to whether the European Communities Act should override the Constitution. So, what this said was you can pass regulations, and that has supremacy over everything except the Constitution of Gibraltar, and they are subject to the law-making provisions of the Constitution. And that is very clear, Madam Speaker, from the debate itself in this House. And indeed, it was an amendment introduced by the then Chief Minister, Sir Joshua Hassan, 1005 because he had heard Members on this side of the House. They had proposed a more ambitious amendment which was voted down by the AACR Government, but in return the Chief Minister suggested this amendment.

And I quote:

In order to be able also to allay the anxieties of the Opposition—apart from this proposed amendment that I will make

1010 and he gives the notice of the amendment by amending the words I have read into the Hansard, which became section 4(2). He said, and I quote:

We have excluded the Constitution of Gibraltar, because I do not think that anything affecting the Constitution of Gibraltar can be done either by Regulations or by Ordinance, and therefore I hope that this will be acceptable together with the other amendments.

1015 That was to meet the concerns raised on this side of the House by Members then as to the effect of the Bill. And I repeat concerns of a similar nature—that this Bill, we are not satisfied, should override the Constitution, and that it should expressly not do so. And I would ask the Hon. Chief Minister and the Government to consider that, and if the Committee Stage needs to be delayed by 24 hours while they consider that point, I would ask them to do so.

1020 And then, secondly, on why the European Communities Act is different fundamentally to this Bill, I say this. Because, as I pointed out, Madam Speaker, section 13(5) of this Bill says:

Implementation regulations shall come into effect in accordance with their terms and may come into effect in accordance with those terms before being laid before Parliament where necessary by reasons of urgency.

1025 Again, as a matter of compromise on the European Communities Bill, when it was considered in this House in 1972, to meet the concerns on Parliamentary oversight by Members on this side of the House 50 years ago, the Government introduced an amendment, and it read like this, and it became section 4(3) of the European Communities Act 1972. It said this:

Regulations made under subsection (1) of this section shall not come into force until such regulations have been approved by resolution of the Parliament.

1030 And so, Madam Speaker, I appreciate how things are moving quickly, and I appreciate, in making this point, that if there was a wide point like that, the Government might not be able to achieve its objective of the 10th of April. So, I am going to make the point in a slightly different way.

1035 I believe that, as a matter of principle, we should have a regulation-making power similar to the European Communities Act. In other words, that the regulations should not come into force until such regulations have been approved by resolution of the Parliament. But I understand that we are moving with urgency towards the 10th of April.

1040 So, what I would suggest to the Government—what I would suggest to the Government—is that there is what the Government will understand a sunset provision. A sunset provision that allows them to make regulations from now to a point in time—say the end of April or May—that allows them to go forward while we are in recess, to make regulations without having to lay them in this House or approved by resolution. But that after that sunset period is over, which allows them to meet their objective of the 10th April, we revert to a more traditional provision, which was the case under the European Communities Act until repealed: that the regulations shall not come into force until such regulations have been approved by resolution of the Parliament.

1045 And I hope that that provides them with a pragmatic way forward that does not derail the desire on both sides of this House that we should be ready. They can still do what they want, adopting the 1972 methodology accepted in this House, and indeed as part of the laws of Gibraltar for the last 50 years. That was what we had for the last 50 years. Why should we do it differently under an Agreement that provides us less than European Union membership, when under European Union membership that provided more European law, we had a power that said it had to be approved by resolution of Parliament?

1050 But the pragmatic aspect of meeting the deadline is met by amending that regulation-making power to put in place a regulation-making power akin to the European Communities Act but subjecting a provisional sunset period of wider regulation-making powers on the Government for a defined period so that it can meet the objective of being ready by a particular point in time for

provisional application. Beyond provisional application it should not be applied. So, for the Government to choose the date, which we will live with, but we say there should be a sunset provision which then makes this regulation-making power like it was under Gibraltar law for the last 50 years.

Madam Speaker, we have concerns about section 20 of the Bill, in part because I think we need clarification. I am not really sure we are understanding completely what the purpose of the section is, correlating it with section 69 of the Constitution. Section 69 of the Constitution is the section that requires the Minister with responsibility for finance to lay Estimates for the revenue and expenditure of the year, and as Madam Speaker knows, we then have the Budget debate.

We are not really understanding what the purpose of this, or the mechanics of what this is—what this will result in—especially because of the duality it has in the definition of “Minister”, and why that is the case. What is being envisaged, and whether it is being envisaged to be done before or after? It looks like both.

My hon. Colleague Mr. Clinton will address this further in his contribution, I understand, so I will defer to him on that, but we are seeking clarification, because we are not really sure on that.

Madam Speaker, again similar points arise under section 22. So, there is section 20—section 22 is about guidance and explanatory material. And I should say that there are aspects of this below we welcome. Of course, we welcome that the Chief Minister shall publish and lay before Parliament a report under section 21, and that there will be guidance and explanatory material. Of course, wherever you see an enactment, it does bring you back to the uncomfortable issues of definition.

There are transitional implementation periods under section 23, and we understand that. We understand that, of course, those provisions need to be put in place. And I have made the point already about the power vested in Ministers as you go along in this Bill, about passing laws by regulation that may or may not suspend or affect any enactment, and I will not repeat the point. There are a number of instances throughout the Bill that, read together with the definition of “enactment”, uncomfortably need to be clarified because of the read-across with the Constitution that surely, we are not seeking to override.

Madam Speaker, in the post-implementation period under section 24(2), it says that the Government may make or enter into arrangements for another person to make administrative arrangements where the Government is satisfied that the arrangements are necessary or expedient for an implementation period. I am assuming, for the purpose of this debate, that “the Government” means the United Kingdom Government there; I suppose I am not really sure what anyone else would be envisaged.

Under section 25(3)(a), you have the same type of provision that I made before, because this allows, by notice, a provision that replicates, with or without modifications, an enactment. There are radical powers, or deep powers, which allow the Government to get on with issuing notices under section 25, determining matters by subsidiary legislation.

Then, Madam Speaker, as you get into page 27 of the Bill and Part 4 onwards—as the Chief Minister indicated—there are parts of the Bill that intend to give the implementation mechanics enabling provisions that are of things that are in the Treaty. Now, on that, we have fewer points, in the sense that these are not, at this stage, policy choices of the Government. They were policy choices of the Government when they chose to subscribe to the Agreement, but at this stage what are policy choices are the mechanics of how to do these things that were in the first part—the first three Parts—of the Bill. These other Parts are seeking to implement aspects of the Agreement, so I have less observations on that, purely because we have had that debate already in this House and there is no point duplicating it.

I would say that, as I go through these clauses, Madam Speaker, I was assuming that section 33(3) is when the Government shall make any necessary arrangements to permit the Schengen authorities to instal automated border control systems for border checks to be carried out for entry into the territory of the Member States applying the Schengen Acquis in full. So, I was assuming that those were not EES-type controls, but maybe the Chief Minister can clarify that to

1110 me because of course, when a non-EU national—say a British national not resident in Gibraltar—
arrives in Gibraltar, as I understand it, that period counts towards the 90 days. So, in some ways,
we will be going through the same barriers. So, the Hon. Chief Minister can clarify what type of
automated control he is talking about there.

I notice restatements that they did not seek freedom of movement. And I also note, under
1115 section 36, that there is a reference to nationals of Liechtenstein or Andorra or the Republic of
San Marino who will have free movement rights, of course, under those, under other aspects of
the international agreements entered into by those territories. But never mind that— that is a
debate for another day.

Yes indeed—well, yes. I mean, presumably San Marino is not worried about the 480 million
1120 people going to live in San Marino, but anyway—no matter. We can debate that any other time, I
am sure.

Madam Speaker, there are sections then—sections 42, 43, and so on—about the rights of
residents in Gibraltar. We have expressed our misgivings about the conferring of powers to Spain,
and the effect on these matters, but of course that was done at that time. Those are—those are—
1125 I should flag, at section 43(5), that it says the Government may make arrangements for
establishing residence for a continuous period of at least 10 years for the purposes of Article 45(a),
and so on.

Now, to the extent that there is a difference between policy choices of the Government and
what Articles 45 say, well then, of course, a future Government has freedom to depart from any
1130 policy choices made in this Bill. To the extent that it does not have freedoms because it is curtailed
by those Articles, well then, as long as the Agreement is in place, we understand that a future
Government does not have freedoms. But I flag that as a difference. And of course, the same again
on short-stay visas. We have expressed our misgivings on that, but these provisions in the Bill are
taken from the Agreement itself.

Under section 49—again this is drawn from the Agreement—there is the logistical issue that
arises, and I just flag here, on the debate on principles, that of course residence permits issued by
the Authority prior to the implementation date shall remain valid for a period of two calendar
years after that date, or until their expiration, whichever comes first. So, if you are a cardholder
whose card expires in the next two years, you are not caught by this. But anybody else who has a
1140 residence card—a civil registration card as a residence permit— they will all expire in bulk. And to
what extent and how many permits we are talking about that will expire in bulk, and whether that
creates a logistical issue, I am not sure. But of course, I understand that this is a period defined in
the Agreement, so we are kind of stuck with it. But we have time— we have time to put in place
whatever administrative resources need to be put in place, and I am sure the Government will be
1145 mindful, hopefully, of that.

You then get into the police cooperation chapters—Chapter 6—where we have expressed our
misgivings about boots on the ground in different guises. But this part, of course, gives effect to
those provisions.

There is a provision under section— I highlight one of them, but it is not the only one—section
1150 53, for example, where the Government may, by implementation regulations, make provision
setting out the modalities of continued surveillance and uninterrupted pursuits. Now, I would say
as a matter of principle I would encourage the Government to do so. At a given point in the
debate—I cannot recall exactly when it happened—but the Chief Minister, either at the debate or
perhaps in questions afterwards, indicated that he was not clear at that stage whether
1155 administrative arrangements that would give effect to the modalities of these aspects would be
published. But I think—for the... I would say to this House that I would certainly encourage that if
the Government is acquiring a power to introduce regulations on those modalities, that they
should do so for the interests of clarity, they should be published so that it is clear to people what
people can and cannot do. And I repeat the point, what I am saying is that the Government has a
1160 power under section 53—well, that is one of them—to make clear, in regulations, the modalities
of continued surveillance and uninterrupted pursuit.

When I had asked previously whether administrative arrangements would be published, I said that the Hon. Chief Minister was not clear whether they would be. To the extent that there are aspects that are not sensitive operationally but govern modalities of how things are done under the Schengen Acquis when there is a framework of surveillance or uninterrupted pursuits that can be published in those regulations, they should be, for clarity. Because I gave the example, when I was making my contribution in this House, that the modalities, for example, of the Spain–France or Spain–Portugal arrangements were public, because they were clear—they were... in terms of how far into the territory you go, do you carry your weapon, do you not carry your weapon—all these things are clear.

And I just repeat the point that I made in the debates on the motion: that there are aspects of the administrative arrangements that we were concerned about, and that we think that if the Government take a closer look at what they are able to do under the Schengen Acquis, they can restrict further how things are done by foreign law-enforcement agencies. And we would invite them to do that when they come to invoke this regulation-making power, or indeed to enter into the administrative arrangements were they to decide to keep it in administrative arrangements, although we are encouraging that they should make it clear in regulations. The Government should revisit the drafts we saw to perhaps tighten those issues.

Madam Speaker, a point of clarification on section 55(3). I am not sure I understood when it said—this is section 55, which is about joint operations and the Government making arrangements to grant permissions or permits for the implementation of joint patrols. And then it says, under section 55(3):

The Government shall submit a declaration laying down the conditions for, and practical aspects of, the cooperation in accordance with Article 58.

I am not sure— a declaration where? I am not really sure what is meant by that. So perhaps the Hon. Chief Minister can explain that when he gets up to reply on those issues of principle.

So, Madam Speaker, Chapter 7 is about surrender—i.e. extradition, in effect—well, handing over, and different regimes. And the point that I wanted to raise is, I would say, of constitutional nature.

Section 63 of the Bill says that:

for the purposes of Articles 117 to 151 [which is all about surrender, extradition] the central authority shall be the Government. [I would ask... It then also says that] the Governor shall delegate to the Chief Secretary their powers under subsection (1) in relation to matters not affecting internal security or defence.

I would ask the Government to consider, at Committee, an amendment to delete the words “the Governor” and just introduce “the Chief Secretary”, and to delete subsection (2). And I explain why.

Because that method of drafting—of making the central authority the Governor and delegating that to the Chief Secretary—that is an old method of drafting. Because if you... I will just give the Chief Minister a placeholder, if I may.

Under the Extradition Arrest Warrant Act 2004, that was the methodology of that drafting: central authority, the Governor, and delegation to the Chief Secretary. That was under the Extradition Arrest Warrant Act, and that was an Act that regulated arrangements between Gibraltar and the United Kingdom only.

But under the more modern, I think, practice—the 2018 Extradition Act, which is an Act which is wider in its nature, and it is an Act which is described as, and I quote:

An Act to provide for the extradition of persons pursuant to any conventions, treaties, bilateral or multilateral agreements that apply to and have been extended to Gibraltar, or any extradition arrangement or agreements which have been entered into by the United Kingdom and extended to Gibraltar, and for connected purposes.

Under that Act—and I refer the Hon. Chief Minister to section 4 of that Act—it simply says:

the central authority for the purposes of this Act shall be the Chief Secretary.

1210 And I would commend to him that, to modernise this, he should put the modern version, which is the 2018 Act, which in any event was designed for agreements that had been extended to Gibraltar.

1215 And this is not just an aside—this is a point that we raise that has constitutional effect. I would say to the Hon. Chief Minister—and I am sure he will agree with me—that we all desire that, as well as we get on with His Majesty’s representative in Gibraltar, the laws of Gibraltar should, to the extent possible, make sure that powers are vested in the Gibraltar Government and in officials who are public officials of Gibraltar, and not the Governor.

1220 And so, I would recommend strongly to him that he should take on board the point that I am making that he should follow the form of the 2018 Act of his Government, that simply has the central authority being the Chief Secretary. There is no reason why that should not be the case, because that Act in itself was about giving effect to international agreements. This is an international agreement. So, I make that point to him; it is an important constitutional point, I believe.

1225 Madam Speaker, you then get into the economic aspects—Part 5 of the level playing field, and so on. And again, there I had less to say, because this more closely follows the Agreement, and it had little departing it from the forms of the Agreement.

1230 I did notice, at section 98(2), that the transaction tax must be collected by the Collector—something that, of course, we agree with and welcome. Although the mechanics of that happening, we are unclear about, because of the way that the Agreement is conceived, as we understood it. I suppose the collection is in staggered form, given that there are others who are collecting for the Collector first. But it would be—it would be interesting to get more detail of that, if I may.

1235 **Hon. Chief Minister:** So, I can deal with the point when I reply, who does he think is collecting on the way to the Collector?

1240 **Hon. Dr K Azopardi:** Well, I— I had understood... maybe it is because of the detail, and I got distracted by the detail, but I had understood that the transaction tax is being paid—collected—by external authorities to Gibraltar and then paid over to Gibraltar. If that is not the case, then there is a simple point. Is the hon. Member asking me to give way?

1245 **Hon. Chief Minister:** Yes. So, just to clarify that point, that the transaction tax is collected—like, although you are not allowed to call it that when you have a customs union—like an import duty on importation through the ASYCUDA system. It is the common external tariff that is collected at the first point of entry but returned to us.

1250 **Hon. Dr K Azopardi:** I am grateful for that. That was simple enough. And so, on section 103—so 103 is liability to excise duty and payment into the Consolidated Fund. Some concerns have been expressed to me about the technical detail of the Schedules, and I should say I express no view, therefore, on this side of the House on those aspects, which are extremely technical on the excise duty. So, I express no—no—view on that. But it may be that the Government has engaged with the business community on those issues, and the concerns that have been put to me, which have been rather more anecdotal, might not be accurate. So, I put it no higher than that. But I express no views on that issue.

1255 Under section 130—this refers to goods being placed on the market, and indeed transitions—the Government will be aware that the business community is concerned about the short

transition periods. We understand, of course, that it is in the Agreement, and therefore we have had that debate. But those concerns are there.

The Chief Minister read into the record the provision on section 135, the joint venture on the air terminal. He will have heard me say that, even though I had misgivings on many aspects of the Agreement, I did say that I thought the aviation aspects were—subject to us landing a Concordat—workable and neutral. So, I do not depart from that in this House today, although I make the point that it is important to have that Concordat in place. And indeed, the only point that arises there on section 135 is whether that should be done by notice, or whether there should be some other form that allows a debate in this House. But that is a different matter. It does not depart from the more general principle that I have raised on these issues.

Madam Speaker, those were the points of detail that I had on the Bill. I am sure my colleagues will have other points. I did want to end on a general point, which is this. The United Kingdom entered its own deal with the EU, and it led to legislation in the United Kingdom Parliament to give effect to that Treaty in the same way, and for the constitutional theory that the Chief Minister has described at length, in an Act called the European Union Future Relationship Act 2020.

I compared the European Union Future Relationship Act with our own Act—or our own Bill, rather—and, you know, especially in the context of these so-called Henry VIII clauses. Now, for the purposes of, of course, non-lawyers and anyone listening—or still listening—to this debate, although it is slightly technical, Henry VIII clauses are of course clauses which allow the Government to amend Acts, etc., by secondary legislation. Henry VIII clauses, I mean, are things that can be used—can be abused—if they are very wide.

And indeed, in its highest form—I mean, one of the most senior judges in England, the Lord Chief Justice, a former Lord Chief Justice, at an annual dinner in England in 2010 said—and this is the former Lord Chief Justice, I quote:

You can be sure that when these Henry VIII clauses are introduced, they will always be said to be necessary. Half a moment's thought will demonstrate that proliferation of clauses like these will have the inevitable consequence of yet further damaging the sovereignty of Parliament and increasing yet further the authority of the Executive over the Legislature. Henry VIII clauses should be confined to the dustbin of history.

Now, while I do not pretend to take as bold a view as that—because I take a more pragmatic view of life, that I think Henry VIII clauses are sometimes necessary—what I do say is that we need to be cautious in their introduction. And indeed, it is right for the House, to pause to see when there are Henry VIII clauses, that we adjust them so that they introduce further scrutiny.

And indeed, a very good example of that was when this House itself, 50 years ago—faced with a regulation-making power that would deprive this House of scrutiny—agreed to amend the European Communities Bill 1972 to allow regulations made to only take effect once there was a resolution in this House that would allow a debate on that resolution or not. Because people could decide those were fine, and if they wanted a debate, they could have it.

As I say, Madam Speaker, I have made that point already. But I have compared the European Union Future Relationship Act of the United Kingdom 2020 with our own Bill, and it is obvious, Madam Speaker, that our Bill has far fewer of the provisions of control and oversight that the UK legislation has. So, in terms of the modification of primary legislation, we have extremely wide powers of modifying primary legislation under this Bill. And yet, under the UK Act, it is subject to a number of significant constraints and sunset provisions.

So, the creation of criminal offences—I gave the example that you can create criminal offences under this Bill that are not even provided for under Gibraltar law. However, under the UK legislation it is rather more limited, generally mirrored to existing offences. And whether it is the imposition of civil penalties, or the conferring of powers to make further subordinate legislation, or the retrospective effect, or the establishment of new bodies, or the conferment of jurisdiction on courts, or the creating of licensing or regulatory regimes—in our Bill, when you make that judgement against the UK legislation, our Bill is far more liberal in providing powers to the

Government than the UK Act does to the UK Government, which is much more constrained. It does not permit certain powers to be given and, when it does, it is subjected to real limitations, sunset provisions, and is in a much more constrained way.

So, Madam Speaker, in practice, when you do the like-for-like comparison, you are left with the view that this does deprive Parliamentary scrutiny from our Parliament, rather than provide Parliamentary oversight in a proper form. I mean, we surely should not just have Parliamentary oversight because we are having this debate today, and because a future Government could just repeal it. I mean, what about the meantime? Because we are worried about the Agreement not being in place long enough—if we want it to be in place. But let us say it is in place for 50 years, do we only debate it today and in 50 years' time when we decide to repeal the Act? So, what about the meantime?

So there are things like that, where, when you compare the English legislation with the Gibraltar Bill, it does raise constitutional issues of concern—of Parliamentary oversight and of ability and accountability of the Government by not having proper scrutiny and the opportunity to have debates in this House on things that will be done—wider things that will be done under the guise of implementation of the Agreement that we have voted for, but that *should* be subject to scrutiny in this House.

And so, for those reasons, Madam Speaker, we have misgivings, especially on the first part of this Bill. We are going to take the leap of faith because we understand the urgency. We are hoping that the Government will take on board the points that we have made, because we are still in time, and they can delay Committee Stage to take that on board.

In any event, we are going to vote in favour. If they are not taken on board, then a future Government should review—must review—some of these things. And if we have the privilege to be a future Government, we will do so. But I would hope that the Government will take on board some of the points that we are making, because they are in the interest of better scrutiny and, indeed, some of them are to protect things that we hope we share in common, which is the desire for us to secure constitutional protections and secure the powers of the Government and no one else. *(Banging on desks)*

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

Hon. R M Clinton: Thank you, Madam Speaker. I have to apologise to the House for my voice; I am unfortunately nursing a rather bad cold at the moment. *(Interjections)*

Madam Speaker, I have listened with great interest to contributions by the Chief Minister and, obviously, the Leader of the Opposition, and it is a very complex 110-page Bill. I am no legal expert or constitutional expert, so, Madam Speaker, I am going to limit my contribution really to the aspects of the Bill which touch upon public finances as the Leader of the Opposition mentioned in his address—specifically, Madam Speaker—I am looking at section 20 of the Bill, which is headed “Provision of funds for implementation purposes”. And “implementation purposes”, Madam Speaker, is actually defined in section 7, so the two really should be read in tandem, in the sense that one defines what “implementation purposes” are, and the other says, “Well, this is how we are going to provide funds for implementation purposes.”

Madam Speaker, I have read section 20 several times, and each time I read it I just cannot quite figure out how this is meant to work. Let me start with, Madam Speaker, section 20, subsection (3), and it reads as follows:

There shall be charged on and issued out of the Consolidated Fund any amount required to meet any implementation purpose or obligation in respect of Gibraltar arising under the TGEU, identified for the purposes of this section by the Minister by notice in the Gazette.

Madam Speaker, under our public finance rules—at least as far as I am aware—a charge on the Consolidated Fund is a bit like the salary of the Chief Justice, and other things like public-debt charges. They are charged directly to the Consolidated Fund. There is no debate about it. In fact, Madam Speaker, Parliament has no say in it, because it is a charge on the Consolidated Fund.

So, the first thing that I need clarification on—or I would like clarification on—is: what is the intention under section 20, subsection (3)? Is it that the implementation costs are charges on the Consolidated Fund full stop? In which case, it is not something Parliament actually votes on, because it goes directly out of the Consolidated Fund, and that is not clear to me in the way this is worded.

And if that is the case, Madam Speaker, then it gets slightly more bizarre in section 20, subsection (1), when we are talking about the Minister—

may in accordance with section 69 of the Constitution—(a) causing the supplementary Estimates, effectively, to be prepared; and (b) including heads of expenditure, and a supplementary Appropriation Bill introduced in Parliament to provide for the appropriation of these sums.

But basically, if it is a charge on the Consolidated Fund, then there is no appropriation, because it is not voted on by Parliament. So, what exactly is the intention? Is the intention that it is a charge on the Consolidated Fund, therefore there is no Appropriation Bill because there is nothing to debate, and so there would not be any supplementary Appropriation Bill? So that is not clear to me, Madam Speaker.

And then it gets a little bit more confusing because it then says:

The Minister may, in accordance with section 69.

Now, in section 69 of the Constitution, Madam Speaker, it only refers to the Minister with responsibility for finance—and that is in the Constitution. And yet in this section 20, it defines “Minister” meaning: (a) the Chief Minister; (b) the Minister for Economic Development, Enterprise, Telecommunications and the Savings Bank; or (c) both acting jointly.

And I say, Madam Speaker, I do not understand this joint arrangement when, in fact, it is not even joint, because they can act individually. And I welcome if the Minister for Economic Development, Enterprise, Telecommunications and the Savings Bank—i.e. the Father of the House—could perhaps enlighten the House as to what his involvement would be in making these decisions, and in what circumstance he would unilaterally be presenting supplementary Estimates or Appropriation Bills.

Because Madam Speaker, under section 69—and again, I am not a constitutional expert—but it is the Minister with responsibility for finance who is tasked under the Constitution to do these things. I do not know what the intention is of section 20 here as to who should be doing what and why. I mean, why say the Minister means the Chief Minister and, effectively, the Father of the House, both individually or jointly? I mean, not even in the heights or the depths or the worst periods of COVID, Madam Speaker—when we were collectively facing death—did we have anything like this. Even in the case of the COVID Fund—yes, we had controls over it—but there was never this duality of ministerial action over the Fund.

And in fact, in those days, it may have made sense to have two Ministers involved in the case anything happened to the other. But in this case, I do not understand this combination of Ministers—why this combination of Ministers—and perhaps the Father of the House could enlighten the House as to what his role is in this section.

And then again, of course, Madam Speaker, you come to the bizarre scenario that, even if these Ministers—either jointly or individually—presented a supplementary Appropriation Bill, under the Constitution the Minister with responsibility for finance would still have the responsibility to raise the supplementary Estimates and the Bill. Although, admittedly, the Chief Minister is the Minister

1400 with responsibility for public finance. But if the Father of the House raises a supplementary Bill under the Constitution, the Chief Minister would still have to raise a parallel—but not duplicate—supplementary Appropriation Bill. So, I do not understand what the thinking is behind this, or even if it is actually doing what it is meant to be doing.

1405 And furthermore, there is a slight potential conflict with section 7(3), which is the definition of “implementation purpose”. Because under 7(3), it says the Chief Minister may, by notice in the Gazette, designate a specified purpose. But then under 20(3), it is talking about “shall be charged on ... identified ... by the Minister by notice in the Gazette”. But the Minister under section 20(3) is not necessarily the Chief Minister—it could be the Minister for Economic Development, Enterprise and the Savings Bank. So, you have the possibility, it seems to me, that you could have
1410 two Ministers issuing their own notices in the Gazette. Which I doubt is the intention of the drafters. I do not know if that is the thinking, and if that actually is the purpose.

And furthermore, under section 20(3), it talks about obligations—sorry, I started the wrong way round, it talks about the implementation purposes which is quite clearly defined in section 7 but then it says “or obligations, but I have not been able to find an actual definition of “obligation”,
1415 certainly not in the definitions page. There is no definition, as far as I can see, of what an obligation would be. I mean, we have a specific section defining “implementation purpose”; I would have thought that we would somewhere define what an “obligation” would be as well.

So, Madam Speaker, I am slightly perplexed by this section and how it is meant to work. Madam Speaker, is this a charge on the Fund, in which case supplementary Appropriations do not come
1420 into it? If it is not a charge on the Fund, then Appropriations would happen as normal. So, there is probably not even a need for this section, because it would go through the normal Appropriation system, whereby, if there is additional expenditure, a supplementary Appropriation would be raised by the Minister for Finance. So, I do not understand what the purpose of this section is, or what in fact the intention of the section is.

1425 And again—look, it may be that there is something perhaps obvious that I have missed, given such a complex document, a complex Treaty, that requires this kind of wording. But again, I would be grateful for the Father of the House to explain what exactly he envisages his role would be in this section.

And so, Madam Speaker, the Chief Minister has said the Bill is not perfect, and we accept that
1430 obviously, there is a very tight timeframe. But—not to be ungenerous, and I am trying to be constructive—I genuinely want this to function as it is meant to work. I had thought, well, I could do some kind of amendments at the Committee Stage, but I cannot even do that because I am not quite sure what the intention is in this section.

Madam Speaker, there is a sort of comment that “a camel is a horse designed by committee”.
1435 I do not know whether this is a camel, or a horse, or a giraffe. I do not know what it is meant to be, so I cannot actually assist the House in any way by proposing an amendment when I do not know what this is trying to achieve.

Madam Speaker, I would be grateful for clarification, both from the Father of the House as to what his role is in this section, and indeed the Chief Minister, as to how this is actually meant to
1440 function in conjunction with our existing rules on public finance and our Constitution.

And that is really all I can contribute towards this Bill, Madam Speaker. Thank you. (*Banging on desks*)

Madam Speaker: Would any other any hon. Member wish to speak on the general principles
1445 or merits of the Bill? The Hon. Mrs. Ladislaus.

Hon. J Ladislaus: Madam Speaker, I have not prepared a full speech on this because I do not want to repeat what has already been said. In particular, I associate myself with the comments made by my hon. and Learned Colleagues, particularly in respect of the points made by the Leader
1450 of the Opposition as regards the constitutional issues with this Bill.

And I pause to observe now that the Government has been quick, in past months, to bring to this House opinions of different experts—particularly of lawyers—in respect of different areas. And I pause here to reflect that we have just had a contribution from the Leader of the Opposition, who is in fact a doctor of constitutional law. And so, I am very comfortable in associating myself with the remarks made by the Hon. Leader of the Opposition, particularly in respect of the constitutional-law points.

And so, Madam Speaker, I am going to limit myself—as well as my hon. Friend has done—to the areas in which I have shadow responsibility.

Madam Speaker, in respect of Chapter 6, which deals with police cooperation, we see that... We heard the Hon. Chief Minister today say that the Bill “tames Brexit”. But in order to tame it, you have to set the boundaries, and in order to set the boundaries, we need to see what the regulations say. My concern here is that we are hurtling towards implementation, but we are yet to see any regulations, particularly in respect of what powers are to be given to law-enforcement officers and the framework within which they will operate.

And so, I think it is important that I do ask for clarification here in this House as to the envisaged timeframe for these regulations—especially because I think that these regulations will deal with powers given to officers in respect of controversial aspects of the Treaty, which are at the forefront of the minds of a lot of people within our community. So, for example, in respect of surveillance, in respect of hot pursuit—what is it that officers will do in the absence of these regulations, until such time as those regulations are put in place? So, I think that is a particularly important point.

In respect of section 53 in particular— I am just going to turn to that—which deals with surveillance and pursuits and implementation regulations. And I think it is important to confirm also that Spanish law-enforcement officers will, in fact, be provided with briefings as to regulations to be implemented here in Gibraltar, because those briefings are important in respect of the powers that these individuals will have when they cross the Frontier into our jurisdiction. And so, I think— I think it is just a simple point to make, but it is important for the community to hear—that perhaps the Hon. Chief Minister has information as to whether those briefings have taken place, are taking place across the Frontier, and also whether those... Because I mention this only because, obviously, it takes just one person who does not understand what the actual powers that they have are to cause any issues. And therefore, I think it is important to confirm that that is the case.

In respect of section 57, Madam Speaker—which deals with protection and assistance during joint operations—that section gives officers from Member States participating in joint operations in Gibraltar protections and assistance in the course of that officer’s duties as would be afforded to the RGP, Customs officers, or Borders and Coastguards under our domestic law. Again, can it be presumed that the same protections will be offered to our officers when, if and when, they need to cross the border onto the other side of the Frontier?

Madam Speaker, in respect of law enforcement, those are the points that I had to make—very simple, very brief.

In respect of a more granular point—at section 108, which is page 68—there is a section on the refund of excise duty in cases of total destruction or irretrievable loss. It is, I appreciate, an extremely technical section, which is why I ask. The section says:

The Collector may refund excise duties of excise goods when the Collector is satisfied that there has been a total destruction or irretrievable loss—total or partial—of these goods as a result of unforeseeable circumstances or force majeure, or as a consequence of an authorisation to destroy the goods by the competent authorities of Gibraltar.

To my mind, if there is an authorisation to destroy the goods by the competent authorities of Gibraltar, it is perhaps due to an unlawful act, or something along those lines. So, I ask—and again, it is very technical, and perhaps I am not understanding it correctly—but I ask: why should a person who has had their goods destroyed, under authorisation—perhaps by a court order—be

1500 able to have that duty returned to them? Perhaps I am completely misunderstanding this, but to my mind, why—if as a consequence of an authorisation to destroy the goods—could the excise duties of excise goods be returned to that person? So that is a brief point.

In respect of Chapter 8, Madam Speaker—page 73—which deals with goods to be placed on the market in Gibraltar, I am specifically looking at clauses dealing with the importation of medical devices, accessories for medical devices. Here, Madam Speaker, under those clauses, goods may be imported which do not comply with relevant rules of Union law governing production or placing on the market of those goods.

If so, these sections mean that importation is limited to entities placed under the direct responsibility of the GHA, and that the sole end-users of the devices are entities under the direct responsibility of the GHA and professionals employed by the GHA. I am just thinking now of scenarios whereby there may be patients under the care of private clinics who perhaps have to source some of this equipment—or accessories for their equipment—from private pharmacies. What is in place to bridge that gap? Because there may be specific accessories that are required that do not fall within this. Is there anything in place so that those individuals can procure anything from the GHA if and when they need? Because again, the carve-out is in respect of health, we see. And so, I ask why has that not been extended to private care?

I have nothing further to add. Again, I specifically chose to remain within my shadow portfolios, and I ask those questions of the hon. Chief minister.

Thank you. (*Banging on desks*)

1520 **Madam Speaker:** Any other hon. Member wish to speak on the general principles or merits of the Bill? The Hon. Mr Bossino.

1525 **Hon. D J Bossino:** Madam Speaker, a lot of the debate on the principles, as the Hon. Leader of the Opposition has pointed out, has already been covered during the course of the debates on the motion. But I think there are certain things which can be said in respect of the principles which impact on this particular Bill which, as the Hon. Chief Minister rightly points out, is the enactment which is to be supported—we have already indicated unanimously by this House—which brings into force, into force of law, the Treaty entered into by Gibraltar, in effect through the UK and the EU.

We have certain issues of complaint in respect of that Treaty, but for the reasons that we have already enunciated across the floor of the House, we have chosen on this side of the House to support it with our own misgivings.

1535 The Hon. Chief Minister has, in quite a lot of detail, addressed the issue of complaints that have been raised by the Hon. Leader of the Opposition outside of this House in terms of the time that we have been given as His Majesty's loyal Opposition to review the detail of this complex—as Mr. Clinton has rightly pointed out—piece of legislation. But he has explained that they themselves had a time constraint because they needed to have the Treaty in its full entirety—as he put it, to have a “stable Treaty text”—before they were able to presumably commission the drafting of the Bill and then consider it.

1540 He has given us a chronology; he has given us a timeline. I think within that it would have been of benefit—if I may say, simply by way of observation at this stage; I would not even raise it to the level of criticism—to say that we could have received a draft slightly before then. As it is, in the very short period of time we have analysed it—in effect, during the course of the latter parts of last week and over the weekend—and debated it as far as we have been able to in that very limited period of time. But it is understood that such are the practical pressures which the Government is operating and labouring under.

1545 And I do get the sense, in fairness to the Hon. Chief Minister when he has presented this Bill to the House, that there was almost a feeling of discomfort in that, as he put it, we have not been able to give it a more considered, stately review—and indeed, in effect, what he is suggesting is the Rolls-Royce treatment to which something like this ought to have been given. And he says that

we will leave perfection to be—we did not want perfection to be the enemy of progress, and we will leave that on other issues. But given the exigencies of time, he has not been able to do that in respect of this Bill, which ought to have been—we say—the subject of greater scrutiny and analysis.

He says that the Treaty is not perfect, and we say indeed that this Bill, therefore, and certainly in the way that it has gone through this House, is not perfect. I mean, something similar like this in the UK House of Commons would have been the subject of tremendous and detailed debates and scrutiny, but it has not been possible in this case. But it is a point of complaint that we continue to raise.

The other general point, Madam Speaker, is that whilst we understand that there are provisional aspects of this which need to be implemented because of the continuing deadline that we are facing of that magical date of the 10th of April—although we have already received an indication that that may be pushed to one side—we want to ensure, as Gibraltar, that we are ready, as the Hon. Chief Minister has said. And we support him and his Government in that endeavour, to ensure that there can be no criticism levied against us in respect of our preparedness or otherwise, in respect of what needs to be done in order to ensure that at least the provisional arrangements are put in place so that this thing can get off the ground.

We understand that. However, I think the point that my hon. and Learned Friend the Leader of the Opposition makes—I am assuming he has borrowed this characterisation from somewhere else—of the “sunset provision” is, I think, something that we need to bear in mind.

The Hon. Chief Minister talked about, I think he was referring to the Bill—once it becomes an Act—enduring for many decades to come, and we share that view because that would mean that we are in the happy place where this Treaty will have positive effects not just for Gibraltar but indeed for its “Campo”; that once we share those positive effects of the Treaty... I think it is important that, in terms of Parliamentary scrutiny, as the Hon. Mr. Azopardi pointed out, it is not just left here today. In the future there are the necessary amendments which certainly we would, if we are on that side of the House, wish to implement to ensure that the wide-ranging powers—many of which bypass this Parliament—do not endure for decades to come. And I think that is an important distinction to make.

And I found it of tremendous interest, the comparison which my friend made in respect of the EU Act which implemented the 1972 international arrangements, where Gibraltar in effect acceded with some qualifications and caveats to the EU, where the wide-ranging nature of the powers granted to the executive arm of this place at the time were not as wide as they are wishing to grant themselves in order to implement this Treaty.

Madam Speaker, as I said, Mr. Azopardi has already indicated that we would do things differently in order to ensure that the principle of the sovereignty of Parliament into the future is maintained and respected—and in that regard, that is reflected by way of control and oversight. If not, we become irrelevant almost into the future insofar as this particular Bill is concerned, because there are many things which, as lawyers, some of us constitutionalists, all of us Parliamentarians Elected democratically to this House, find inherently uncomfortable—although we understand why we are giving the executive these powers. But we say that those powers ought to be limited in time and, in that sense, restricted.

When I say all these things, we are again borrowing a phrase from the Leader of the Opposition during the course of this debate but, indeed, during the course of the debate when we were debating the Treaty. This still remains an Act, insofar as us taking a leap of faith. And he uses the word “hope”, and I share those sentiments—and indeed I think the entire Opposition shares those sentiments of hope.

In that sense, when I just referred to the hopefully continuing positive effects of the Treaty... when I crossed into Spain during the course of the weekend and I saw those structures being built on the other side of the airport—when, you know, as a result of the Cordoba Agreement, we had this bizarre situation where the Gibraltarian side of the structure was already there; there was a

bit of an overhanging lip onto the Spanish side, and it never happened on the Spanish side—now we are seeing the first signs of that reality on the ground in a practical way happening.

1605 The buildings are going up in respect of the shared aspects of immigration—on the left side if you are looking to the airport towards Gibraltar—and on the right side in terms of the customs shared space. The Hon. Sir Joe Bossano, in a very positive way, I thought, described this almost as an acknowledgement of our sovereignty of the isthmus because, you know—and indeed we would say that in terms of that shared space—there are Gibraltarian enforcement agencies which will be
1610 going into Spain. I think he referred to five metres in distance; I am not sure whether that is the case, but whether it is five metres or five millimetres, there is a recognition and an acknowledgement that we will be able to exercise executive authority on the Spanish side as well.

And what I am saying there is that, in that context, I would describe those as “structures of hope”, where we hope that that will be a continuing feature into the medium term and indeed
1615 into the long term. Because already—although I must say in that context—we are not seeing necessarily what I would have expected when this was announced: perhaps a more violent opposition from the right, the centre-right party in Spain (the Partido Popular) or indeed from what is considered the far-right party Vox in Spain. We are not seeing that.

I have seen—I have been shown—an interview given by one of their representatives quite
1620 recently; I am not sure whether he is an EU Parliamentarian or a Member of the Spanish *Cortes*, where he does make a criticism of the deal but on the basis that there has been no recognition of the Spanish claim, and almost too much concession being made to the Gibraltarian side of the argument.

And in that context, what I do say is that let us see what will happen when the matter is brought
1625 before the EU Parliament for debate and, more importantly, for a vote—which we hope will be positive, but there are no guarantees that that will necessarily be the case.

So, Madam Speaker, it is still a matter of hope that this thing will get off the ground. But as the Hon. Chief Minister rightly points out, we need to ensure that, as far as Gibraltar is concerned, we can say that we are ready and willing and waiting for this thing to happen as a matter of practical
1630 reality—for the benefit of all.

Nevertheless, the reality is that in terms of the general principles of this Bill there are hugely significant—whilst not in respect of territorial and State sovereignty, as I have already flagged during the course of my introduction—there are hugely significant effects in terms of our legislative sovereignty.

I would highlight broadly two aspects. The first one is—and it is what it is; it is what it is—we are, in effect, although not becoming members of the EU, we are re-introducing, subject to the straitjackets of what applies in terms of application of this Treaty, EU law into our domestic law. Which I, from when I studied law and practised it—always found, in that sense—I was a Brexiteer in a way, because I found that it was offensive that we were having to implement and transpose
1640 into our domestic legal structures decisions, laws, which had been based on decisions made not by us but by entities external to us, and for a very long period of time in respect of which we had no democratic say, because we did not have a vote in the European Parliament.

That was somehow slightly assuaged when we did gain the right to vote in the EU Parliament, albeit not as Gibraltar itself, but under the constituency system which applied through the UK.

1645 Now we are in a situation where we are having to once again re-introduce EU legislation, but without having the democratic say; and in that sense they do not have the Gibraltarian democratic mandate.

So, in that sense, what the Hon. Chief Minister quoted in the context of Lord Denning’s judgments—when he was quite rightly referring to the incoming tide—and that is what we are. I mean, the tide is perhaps slightly less violent than it was when we were in the EU because it is
1650 only in respect of EU law which is relevant to our Treaty obligations under this now new Treaty. But nevertheless, it is and remains a tide.

And one sees that, Madam Speaker, in a very obvious way—and it has already been dealt with by some of the earlier contributions from this side of the House—we see it in clause 10, which,

1655 really in effect, sets out the primordial core provision in this Bill, which is that the Treaty now becomes a part, in effect, of our laws.

But it does, on an objective—perhaps technical—analysis, but I think also on an emotional analysis, represent a new and significant encroachment which was not there before when we were out of the EU. But of course, if you are out of the EU—something which I did not support, 1660 and the vast majority of Gibraltarians did not support—it has its consequences and effects. And we are freely willing and able and wishing this to happen by dint of the Government having that mandate, they say, as a result of being re-Elected to Office two and a half years ago, and indeed with the unanimous support of this Parliament.

One also sees it, Madam Speaker, in respect of clause 11, where it sets out that the application 1665 of EU law is to have legal effect—and not just the current structures, but also any subsequent Union Act. So, going forward, we will be subjected to EU law within the constraints that I referred to earlier.

Madam Speaker, I think one sees it again—something which, I am sure, would cause significant difficulties to those Brexiteers in the UK, where they made a huge issue about the fact that the 1670 European Court of Justice had such an important trickle-down effect, in terms of its decisions, on the laws of the United Kingdom when it was part of the EU. We are now re-introducing that in a very express way under clauses 18 and 19, where decisions of the European Court of Justice will be relevant again and we also see the imposition of EU law through clauses 137(2) and 138(2) as well.

In terms of the other aspect of how there will be an effect on our Parliamentary sovereignty, 1675 we are also seeing it in the point that I have already alluded to in my introduction, which is the significant powers that we are handing over to the Government as and when this Bill is passed and it is encapsulated—but not limited to—clause 13 of the Bill, which sets out the very wide powers—huge powers—which are being handed over to the Government. My learned and hon. 1680 Friend the Leader of the Opposition made a significant focus of his contributions, not just on clause 13 but in respect of others, about the potential effect that it could have in terms of the powers that we are handing over to the Government and the effect in terms of our Constitution.

The Hon. Chief Minister—we look forward to his response in that respect. We say that it just requires a slight amendment to the definition section in clause 3 of the Bill, and we hope that the 1685 Government takes our observations on board in that regard.

But I make a wider point, which is simply the objective point that a lot of powers are being handed over to the Government to be able to carry out and put into effect laws—not just in respect of regulations but also in respect of notices, but also in respect of declarations. And one sees it more in the latter part of the Bill—not so much at the beginning—where there is this 1690 particular language which basically gives the Government—not any particular Minister, not the Chief Minister—the Government, the power; it says:

Shall have the power to do anything necessary...

The Government shall have the power to do anything necessary...

And that is littered across many of the provisions set out in, I say, the latter part of this Bill. 1695 And whilst one can appreciate the practical necessity of that, and doing that, once again we repeat the point that it is important that there be a check in respect of those powers, so that sometime in the future—we say, let us give it a date; but certainly, sometime in the future—if we are on that side of the House, and hon. Members opposite have not done what we feel is necessary in order to curtail the powers which we are giving them here and now, then we will do 1700 so in Government.

And, you know, we are saying something also, Madam Speaker, where provision is being made—we have seen it in the past in this House—but it is something which we need to make sure is only happening as a result of practical necessity. Although my hon. Friend the Leader of the

1705 Opposition did make reference to the then Lord Chief Justice saying that they will always be said—this is the Henry VIII laws—to be necessary. But we need to make sure that they are limited in that respect.

1710 So that, for example, under Schedule 1, which basically lists the various pieces of primary legislation which are going to be amended as a result of the requirements set out in this Bill... there are, in respect—I think it is the Transport Act, clause 16(1) —where I just cite this as an example; it is not the only instance where one sees this—where it says that the Government may, by regulations, amend this Act for any purpose referred to in subsections... and they list the subsections. It is limited to that extent. But the reality is that we are dealing here with the principle that the relevant Government Minister will be able to amend primary legislation without bringing a Bill for debate and a vote before this House.

1715 Simply to make the broad point that I am making that we are—and we have to recognise that we are—handing over to them, on the opposite side of the House, these powers. And it is, with the greatest of respect to him—I understand why this is being done—it is what is being done. It cannot be described as something, as the Hon. Chief Minister says, where we are giving full democratic oversight. He says, you know the filing of reports, the laying of regulations in the House, and I think he mentioned another one. It is not good enough.

1720 The reality is that we need something a bit more restrictive into the future. And I think he also mentioned that it is for a defined purpose—that purpose being the implementation purpose. And that may be the case, but I think we need to have a limitation as to time.

1725 Madam Speaker, moving on, in terms of clause 13... I am assuming—and I appreciate that I may be delving slightly into matters and issues which are more appropriately set out at the Committee Stage—but I am assuming that this is an error and does not have more significance from a principles point of view. And that is that in clause 13(2)(f) there is a reference to “the regulations”. I am assuming that the reference ought to have been—and here is to “the implementation regulations.” And so, to the extent that that is a point that ought to be raised at Committee Stage, I do apologise, but I am just giving the Government the opportunity because it may be that I am misreading it, or that there are more principled points that need to be dealt with.

1730 Also, I think it would assist, by way of interpretation, Madam Speaker, in clause 13(5)—and I will read it because it is quite brief and I think it sets out the point I am trying to make:

1735 The implementation regulations shall
so it is a mandatory provision
come into effect in accordance with their terms...

1740 Now, if one stops there, before the opening of the bracket, that would suggest that it does not require laying in this House. Now presumably one is to read that in conjunction with sub-paragraph (4), which says that the implementation regulations—and I will only read the operative words—

Shall be laid before Parliament as soon as practicable after being made.

1745 And I think the confusion may have arisen because it then, in brackets, says—

And may

So, therefore, it is a discretionary element

come into effect in accordance with those terms before being laid before Parliament where necessary by reason of urgency...

So, my interpretation is that the implementation regulations shall come into effect immediately, will have to be laid before the House, but that they may receive effect if there are reasons of urgency. Who decides that? I am not too sure on the face of the provision, but I give the hon.—whoever is presumably the Chief Minister—the opportunity to clarify that point if he thinks that it ought to be clarified.

Madam Speaker, one of the other points which is, I think, encapsulated in clause 17(3)—another significant encroachment into the body of our laws, in respect of which there will not be an opportunity in Parliament to debate them and vote on them—is in 17(3), where we are seeing that:

The decisions of the Corporation Council adopted in accordance with Article 22(4) or Article 4 shall have effect and I repeat—

Shall have effect in domestic law.

So, these are decisions promulgated by this body in respect of which—it does not form part of this House—will become matters of domestic Gibraltar law. And I think that is a significant encroachment, as it stands on the face of it—unless I have misunderstood it—into our laws, and I think it is an important point to highlight.

My hon. Friend Mr. Clinton has already given us a detailed analysis of the effects of clause 20. My general point is that it is also another example to be cited of the encroachment on our sovereignty as a Parliament, and our ability to curtail and monitor and participate in the decisions before initiatives become the law of this land.

Madam Speaker, if I may move on to the provisions—there are positive aspects in this Bill. I will not go through them in detail, but where they refer to the authorities, the Gibraltarian authorities, which very much sets out their express powers—that they will have the responsibility of carrying out certain functions. And I think that is very important, that that is set out in the Bill.

But can I draw the House's—and the Chief Minister's—attention in particular to clause 50(10), where it says—

where the authority has

and I will paraphrase

informed the Schengen authorities,

this deals with applications for international protection.

Where the authority has informed the Schengen authorities of an application for international protection that has been made, and within 14 calendar days the Schengen authorities inform the authority.

that is, Gibraltar

of their objection to the granting of international protection,

it says:

...the authority shall refrain from granting international protection until it has given full consideration to any information provided by the Schengen authorities.

So, I assume that we, Gibraltar, would continue to maintain—and that, if that interpretation is correct, is a good thing—ultimate decision-making powers in terms of granting or not granting an

1790 application for international protection. So, I just wanted a confirmation that that interpretation is correct.

I think also, Madam Speaker, there are hugely positive— I would say—provisions which have been dealt with, and touched upon, by my learned and hon. Friend Mrs. Ladislaus in the context of clause 53. The Hon. Leader of the Opposition made a very specific point on it—which clearly, I would agree with—which is that once the modalities are entered into, that they be published insofar as they can be published. Of course, there will be sensitive operational aspects which will impact on confidentiality, but I think it is important to highlight, in terms of the principles to highlight the significant effect, in my view, of these provisions.

1795 It may—one thing is our political sort of debate and distance that we may have, in respect of the promises made in respect of Spanish presence in Gibraltar, and all the rest of it—they say they never said that, that it is not reflected here, etc. We say it is. But putting all of that to one side, I think what this does is that it allays many of the concerns that many Gibraltarians may have in respect of the presence of Spanish agencies in our land.

1800 Indeed, we will have also the ability to go across, in terms of hot pursuits, into Spain. But clause 53(1)(a)—I think it is important to dwell upon that—where it says:

The Government may by implementation regulations make provision setting out the modalities concerning continuous surveillance and uninterrupted pursuits, including, in particular...

I will just relay:

1810 ...the performance of the duties of the RGP, Customs, and the competent authorities of the Kingdom of Spain.

Those three entities—those three agencies—are then defined as the “enforcement authorities”. And that is important. Why? Because it includes the enforcement authorities of the Kingdom of Spain.

And then in clause 53(2)(a), it says that:

1815 The implementation regulations may, in particular, make provision...

—and then it sets out a long list of things in respect of which it may make provision. But I think it is very important to highlight—and I will emphasise simply two of them.

Because it says it may make provision:

1820 ...requiring the enforcement authorities

which includes those of the Kingdom of Spain

...to obey instructions of competent local authorities...

And secondly, I would highlight (j):

1825 ...make provision permitting the establishment of specific conditions, restrictions or limitations on the operations of any enforcement authorities...

which includes those of the Kingdom of Spain—and clearly, also, the RGP and Customs.

I think that is very important to highlight, and to give it due emphasis, because it means, as I interpret it—and the hon. Member can correct me if he thinks I am wrong, or support what I am saying—that we, Gibraltar, will be able to control, in a very significant way, by law, the operations of Spanish agents in our land. I think it is very important to emphasise and highlight that.

1830

I would also emphasise and highlight, under the clauses in respect of communications—clause 54(2)—where it is very important, because it talks about the Government making any necessary arrangements to facilitate police and customs cooperation with the Kingdom of Spain.

I am told that many of us have spoken to enforcement authorities, both here and in Spain, and there is already, by and large, that cooperation which exists. But this, both in the Treaty and in this Bill, for the first time, encapsulates and codifies the structure which will give greater certainty to agents on both sides of the Frontier—no longer a border, no longer a fence—but a free-flowing Frontier, where they will be able to carry out that cooperation and improve communication, which is very, very important in order to fight crime on both sides of the Frontier. Because, at the end of the day, crime, in many instances, knows no Frontier.

My friend the Leader of the Opposition has already dealt with clause 55(3), and I think clause 55(4) is also significant in terms of its importance, in terms of us—Gibraltar—retaining power, where it says that:

Any joint operation, including where it takes the form of a joint patrol, that takes place in Gibraltar shall require the Government's explicit prior authorisation.

I know there is a reference to that in the Treaty, but I think it is important and significant that it is set out, black upon white, in this Bill—soon to be an Act—with the support of both sides of the House.

And then sub-clause (5) says:

The RGP, Customs and the Borders and Coastguard Agency may participate in joint patrols and other joint operations [joint being the operative word] in a Member State...

—not just Spain, though clearly it is going to be Spain from a practical perspective in accordance with Article 58 which obviously is a cross-reference to the Treaty.

Madam Speaker, do forgive me, because, as I say—this was given to us, as has been made the point earlier, as indeed the Opposition has made similar points—given to us very, very recently.

Again, one of the examples, in clause 107, I think it is important to pause there just very briefly because it sets out—I think my Learned Friend Mrs. Ladislaus also made the point—but you know, it is the Collector—i.e. the Collector of Customs, which is the Gibraltar authority—who has the power to refund excise duties charged on goods, and so on. And I think you see that across the Bill, where we do retain a lot of these powers.

Madam Speaker, may I ask the Hon. Chief Minister if he might take note of this point, if he could respond to it in the context of clause 111, which is under Chapter 6, where it says:

In response to exceptional circumstances, the Minister may by regulations take one of the following measures: apply a temporary reduced rate of transaction tax; temporarily exempt from the transaction tax; and excise duties...

and it goes on.

I have not seen—certainly not in the body of the Bill—what “exceptional circumstances” means; how that is defined. It may be in the Treaty, and I know that there is a significant importation of definitions in the Treaty into this Bill—there is an express provision for that in the Bill—but perhaps I have not had a proper chance of re-looking and re-studying the Treaty provisions in order to find that particular definition.

I have already dealt with the latter part, in terms of the transposition of EU laws. And there is nothing—Members of the House will be relieved to hear—nothing in the Schedules which I think I need to highlight, other than the one point, Madam Speaker, which I made in the context of encroachments into our laws of now EU laws in the context of this Treaty.

Madam Speaker, the Hon. Leader of the Opposition has already set out in very clear terms that this side of the House will be supporting the Government in passing this Bill, in voting in favour.

So, they should have no concerns in that respect. In any event, they have the in-built majority on that side of the House.

We have simply tried to do—in the very limited period of time afforded to us—justice to this very important—I refuse to use the word “seminal” again—this very important piece of legislation. This is not run-of-the-mill. This is certainly one for the history books. And we hope—we hope sincerely—that 50 years from now politicians sat on these chairs—maybe not exactly these chairs—across both sides of the House, will be—if not the same individuals (which is probably physically impossible)—will be sat across these chairs referring to these debates and giving it the historical significance that it deserves.

Thank you. (*Banging on desks*)

Madam Speaker: Would any other hon. Member wish to speak on the general principles or merits of the Bill? No, in that case I will ask the mover to reply. The Hon. Chief Minister.

Hon. Chief Minister: Madam Speaker, I am grateful for the indication—which came, I think, some two and a half hours ago—that hon. Members are going to be supporting this, Bill. I am grateful, Madam Speaker, not just from the point of view of this Government; I am grateful from the point of view of Gibraltar as a whole, that we will be able to pass this Bill with unanimity, just as the Bill in 1972 for the European Communities Act, despite a robust debate, was passed by unanimity.

But Madam Speaker, we do have to put things into their proper focus to understand the points that hon. Members have made, and how the Government intends to deal with them, and why the Government intends to deal with them in that particular way.

The first thing I think it is worth reflecting on is people.

Last Monday, the 23rd of March, 39,965 people crossed the Frontier into Gibraltar. Population of Gibraltar is 38,000. So, on the 23rd of March last—which is just last Monday—39,965 people crossed the Frontier.

A lot of economic activity. Lots of businesses moving. Lots of tourists coming. Lots of workers coming—but also children coming to schools here. Some of them legitimately to our Government schools; some of them perhaps not so legitimately coming to our Government schools. Many of them coming legitimately to our private schools; some of them perhaps coming to visit grandparents or other relatives, to play football, to play basketball.

There are Spanish children who live in the Campo who are in school in Gibraltar—in private schools—who do their extracurricular activities in Gibraltar too. Human interaction of the sort that we sometimes do not often spend long enough thinking about.

We talk about business. We talk about money. We talk about the opportunities for new business and new money. And of course that is hugely important, because that drives the revenue which funds the public-finance spend on public services. That is human too—at the end of the output.

But when you are dealing with the problems that Brexit created, we have spent 10 years talking and hearing about business. And some of those who sold Brexit to the United Kingdom are only now being blamed—at last—for some of the huge difficulties they have caused for people in the United Kingdom, as those people find themselves in three- and four-hour queues to enter through airports, or indeed to leave Dover or King’s Cross St Pancras when there are difficulties to come on holiday to Europe.

So let us start there. Let us start realising that when I said that this is the Bill that kicks down the Frontier, the most important thing it does is protect people. And then it does all the very many other hugely important things too.

And we have to get it right in legal terms, of course. But the key thing—the most important factor—is that we get it right in substance. And if there is small print to fix in the future, we will fix the small print, because the small print is there to facilitate the substance. And that is not to

1930 excuse errors in the small print—because, as I will show, I do not believe there are any—but it is to remind ourselves of what our key legislative purpose is here always, and in particular today.

Now, when I deal with the contribution of the Leader of the Opposition on the text of this Bill, I am going to try and go through everything that he has said and give him comfort, so that although he said he is going to vote in favour of the Bill whether or not I give him comfort, he can vote in
1935 favour of the Bill with the comfort I am going to give him.

I did a similar thing, Madam Speaker, because you will recall during the course of the debate on the motion on the text of the Treaty, when the Hon. the Leader of the Opposition got up and said he had lots of concerns about boots on the ground etc. etc. I thought I had allayed his concerns, because they then voted in favour of the motion. But today he has come here to say that they voted in favour of the motion despite their concerns—live as they are—on boots on the
1940 ground.

Well, Madam Speaker, we are very clear, as I said during the course of the debate on the motion there are no boots on the ground.

Yes, there are provisions of continued surveillance and provisions on hot pursuit. But those
1945 exist in the Acquis that we are acceding to. We were never trying to avoid those. We were trying to accede to those on a reciprocal basis. What we were never going to permit was that there should be Spanish boots on the ground in Gibraltar doing things in Gibraltar—other than those things that we are asking to be able to do in Spain.

And the thing that I think divides us—and I think it is hugely important, because my political
1950 sense is that this will become now the fault line in Gibraltar politics—is that we voted in favour of the motion to ratify, sign and implement the Treaty on the basis that there are no boots on the ground. We would have voted against the motion if there were to be boots on the ground.
(Laughter and interjections)

They have told us they voted in favour of the motion despite there being boots on the ground
1955 in their interpretation.

The Hon. Mrs. Sanchez says that I am turning the omelette on them. I am not. I am showing them their omelettes, Madam Speaker. I am showing them the omelette they have made of their analysis of this and the way that they have voted.

Look, let us be clear, other than continued surveillance and hot pursuit—which are the Acquis
1960 that we sought to accede to; we could never say we did not want that, Madam Speaker; that is what we were asking for—there are no boots on the ground here. That is why we supported the motion that led to this ratification and leads to this Bill.

The Hon. the Leader of the Opposition has now told us the opposite—that he did not accept our assurances, and that he voted in favour of the motion despite that.

1965 Well—now we know who is who, Madam Speaker. Now we know who is who.

That is on substance.

But Madam Speaker, the other point that the hon. Gentleman makes on substance is that the other thing he does not like about the Treaty—and he does not like about this Bill, therefore—is that it gives control of economic and involvement in economic matters to a foreign government;
1970 to Spain. And how terrible that is, because that can constrain economic growth in Gibraltar.

Well, Madam Speaker, look I have to tell him—and I do not think it is a secret—the GSLP would never have supported, in Opposition let alone in Government, and I am sure the Liberals would not either, a measure that gave control of economic levers that was going to constrain growth in Gibraltar, potentially, to a foreign government. And I would be surprised, Madam Speaker, if that
1975 was anyone's interpretation of the Treaty or the Bill—except of course the only person who can claim that sort of interpretation is the Hon. Leader of the Opposition. Because he made exactly—not similarly—exactly the same analysis of the tax treaty.

Exactly the same analysis, Madam Speaker. He rose from that side of the House and said this treaty is going to constrain who can invest in Gibraltar; it is going to stymie economic growth. And
1980 indeed from a sedentary position he affirms himself with the position and says that it does—despite, Madam Speaker, the huge economic growth that we have had since we delivered the tax

treaty, and despite, Madam Speaker, he himself having gone on to say during the last General Election campaign that he accepted that the tax treaty was one of the building blocks in the process through the Withdrawal Agreement to this Treaty.

1985 So, Madam Speaker, whether it is on boots on the ground—where he is wrong, and if he was right, he voted wrong—or on economic growth—where he is wrong, and if he is right, he voted wrong—he is wrong.

1990 So I am grateful that despite being wrong—Madam Speaker, demonstrably wrong—he is nonetheless going to support the Bill that does all of these, as the Hon. Father of the House would call them, “video nasties”, which he should vehemently disagree with, as we would vehemently disagree with, if they were true. But they are not.

1995 But now, Madam Speaker, to leave those points aside and descend to the substance of what the Hon. Leader of the Opposition said. We did not need to be reminded—Madam Speaker—by the Hon. Mrs. Ladislaus that the Hon. Leader of the Opposition has a doctorate in constitutional law, because we are treated to a lecture on constitutional law on just about everything that we deal with in this House when the Hon. Leader of the Opposition gets the opportunity to speak.

But let me try to descend to the issues that he raised.

2000 The first issue that he raised, Madam Speaker, in my view, is an entirely non-issue. It is theoretical beyond theory. And this is the definition of “enactment” and whether, as a result of the definition of enactment in a law, in a piece of primary legislation in this House, the Government of Gibraltar—which is a creature of the Constitution—could, by secondary legislation, amend the very constitutional document that creates the Government of Gibraltar and the Parliament, without let or hindrance.

2005 Because this is the Hon. Leader of the Opposition’s interpretation of the definition of “enactment”, its reference to Orders in Council, and the later references to enactment and the rights to make regulations.

2010 Now, if that is possible as a matter of strict definition, it is certainly not something that the Government has ever envisaged being able to do, or that would ever survive an attempt by the Government to do. Because what the Hon. Mr. Azopardi is saying is that we have the ability to, for example, remove or change who has responsibility for external relations under the Constitution; we have the ability under this Act to change the Constitution so that the Governor no longer has responsibility for internal security.

Look, Madam Speaker, in my boldest moments I might be attracted to his interpretation—bring me the regulation. But it is such a nonsensical stretch to think:

2015

- A. That the Government of Gibraltar would do it.
- B. That the Government of Gibraltar would be advised to do it.
- C. That the Government of Gibraltar, advised to do it, would for one moment think that it would survive a challenge.
- 2020 D. Not to think that that would lead to an immediate constitutional crisis—if not the undoing of the Order in Council immediately by the United Kingdom and there doing of it, back with the Governor being in charge of internal security.

Hon. Dr K Azopardi: will the Hon. Chief Minister give way?

2025

Hon. Chief Minister: I mean, it is—yes, of—

2030 **Hon. Dr K Azopardi:** Of course—well, I mean, I gave way to him a few times. I mean, I know he likes to paint it in extremes, but really it arises in a much more nuanced way. Because the Agreement, for example, establishes a framework that impacts on the circulation of people in different directions. It also impacts on economic controls. There are rights and freedoms that the people of Gibraltar have. There is going to be a body of regulations that is going to be enacted. There may be regulations that are enacted ostensibly to give effect to the Treaty, or decisions that

are taken by specialised committees going forward, that can impact on constitutional rights that people have. And that is the point that I am making: that it should be clear in this piece of legislation that things that are done do not affect constitutional issues or constitutional rights.

Hon. Chief Minister: That is not the point that the hon. Gentleman made earlier. No. He talked about changing the letter of the Constitution, not constitutional rights, and that is why he had to do the definitional exercise to refer to the Order in Council.

But Madam Speaker—Madam Speaker—if he gives me a moment, without having Parliamentary apoplexy in his seat, he might be very relaxed—he might be very relaxed—when he hears where I am going to end. Because although the point he is making, Madam Speaker, seems to me to be impossible to reconcile with any political reality that could ever come about, I have no problem in proposing, in the Committee Stage—which, by the way, we have no intention of taking today anyway, because we have other Bills to do, but we could have taken today and made this amendment without having to take today—

—to add, at the end of (b) in the definition of enactment and I will give written notice of it when the time comes, Madam Speaker the following six words and one figure:

other than the Gibraltar Constitution Order 2006

Now, there is absolutely no intention of doing this; there is absolutely no need to do this from the Government's point of view; but there is absolutely nothing lost, and we would have, I think, dealt with the Hon. Leader of the Opposition's point if we add those six words and one figure.

I have to tell him, Madam Speaker, that he talks about consultation—how much he would have liked to have been consulted earlier. I mean, I sent this to him on Tuesday night last week. He could have sent me a sentence saying, why do you not add the words *other than the Gibraltar Constitution Order 2006* at the end of enactment?

What is the point of sending him stuff and having conversations with him if he does not then want to make the simple suggestion and he wants to come here to give us three-quarters of an hour of extraordinarily exciting constitutional theory.

I mean, Madam Speaker, perhaps we should change the web address of our YouTube to "Con-Hub", so that constitutional fetishists can enjoy all of his contributions a little more.

I hope that deals with—I hope that deals with—that point, Madam Speaker.

The other point he made, which was a point of substance—he will not be surprised to hear—is a point I made in identical terms to him in respect of 63(1), which makes the Governor the central authority. The response to me—which he confirmed—is correct that under the European Arrest Warrant Act, it was the Governor, not the Chief Secretary, and the Governor then delegated all of those powers to the Chief Secretary.

Now, the point I imagined he would make in retort to that is that the Arrest Warrant Act was 2004, and the Constitution was 2006, and therefore there is a good argument—despite the earlier European provision being the Governor, not the Chief Secretary—for the reasons he has indicated, on a later Act, to stick with the Chief Secretary as the central authority.

Now, I have reviewed Articles 117 to 151. They do not seem to me to create any reference whatsoever to internal security or defence. They all deal with the concept of surrender. And therefore, I do not think it is possible to make the argument that there are residual security or defence aspects, or any other aspects, which are under the Constitution Order 2006 as unamended by regulations promulgated by the Government which carry the responsibilities of the Government. So, in agreeing with him, I am going to therefore—because I think his view and mine should prevail now that we have heard what he said, and what I had taken up during the course of the drafting—that 63 should be a single section without subsections the "(1)" should go; the reference should be simply to the central authority being the Chief Secretary; and little "(2)" should go. And I will move that amendment during the course of the Committee Stage.

2085 Madam Speaker, I think that deals with the two textual points that the Hon. Leader of the Opposition made.

The other point he made was that there is an issue with the termination clauses, and he is very concerned about that etc. Let us look at this question of the termination clauses.

The hon. Gentleman said:

2090 We are going to do all of this but let us not pretend that there is certainty here. We might all have to undo what we have done, and be ready for another economy, because the termination clause is a 12-month termination clause.

Well—okay. It sounds, I mean, when you make the point like that, it sounds as if the Government has not been able to secure something certain enough. But look, the Treaty of Rome, then the Treaty on the Functioning of the European Union, in effect gave us a two-year termination clause, which was Article 50, without the trigger being in our hands.

2095 Let us be clear about that, because all this talk now about the trigger—on which we all agree—and all the work that is being done on the concordat—on which we all agree—has to be put in the context of where we were, which was, membership of the European Union with an Article 50 trigger that somebody else pressed, despite us, by 96%, having said we did not want it pressed. That is the reality.

2100 So now that we are out of the European Union without the two-year provision in Article 50—where are we?

2105 Well, look we are not Japan. Japan and the European Union have a trade and cooperation agreement. That agreement alone represents 30% of the world's GDP and 40% of the world's global trade. It has a termination clause of six months. Well—if either Japan or the EU touch that one, we have all got to undo our economies and start again, whatever our termination clause says. So at least we did a little better than the Japanese—and they are notoriously good at what they do.

2110 The Mercosur agreement, which is supranational-to-supranational, which has just come into effect, has a nine-month termination agreement. And the TCA has a 12-month termination agreement, same as we do.

We have got to put things in their proper context. I mean, if everybody else had a five-year termination agreement and we had only achieved a 12-month termination agreement—bad government, terrible, what a terrible negotiation! But when you put it in that context, we have not done so badly.

2115 So, when the hon. Gentleman says:

We hope for the future, but we fear for the future.

2120 we disagree with him entirely. Because we hope for the best and plan for the worst. That is why we are the only parties that went to the General Election with a National Economic Plan. Because that is what you do if things do not work. That is what you get ready for in the event that there is a termination.

2125 Madam Speaker, the other thing that has excised people in Gibraltar—rightly—is this question of the termination clause under the Concordat and how we have to do it. Now, this is about us having the trigger in our hand, and having control also of committees etc., or representation in committees etc. when the time comes. Of course that is how it should be. That is what the Government was negotiating with the United Kingdom during the course of the negotiation with the EU.

2130 Now, we do not yet have the final version of the Concordat, because events in the Middle East are making it hard to have the final engagement with Ministers on the negotiation of the concordat. He knows that because I briefed him on it.

But we do know that there is now a change in the Treaty required by the Commission's jurist-linguists, and the new reference is in Article 66(2). Article 66(2) used to read as follows:

where the Kingdom of Spain has requested the Union to terminate this agreement in accordance with paragraph 1, the Union will proceed with such termination.

2135 And that caused angst in people, because people felt that Spain would therefore simply have the trigger in her hand.

The legal conclusion of the Commission of the Council is that that cannot stand because of EU law, and this being an EU-only agreement. And as an EU-only agreement, there cannot be the primacy that Spain was arguing for.

2140 The clause in the final version of the Treaty now reads:

Where the Kingdom of Spain has requested the Union to terminate this agreement in accordance with paragraph 1, the Union shall take the necessary steps in accordance with its internal procedures with a view to terminating the agreement.

2145 That means that qualified majority voting applies, and that the qualified majority of the Member States have to vote in favour of termination. So that trigger is no longer in Spain's hand. And that is a welcome development and is in keeping with the view we had taken as to how qualified majority voting would have to apply, whatever the clause said.

And therefore, Madam Speaker, we do not think that any of what we are doing today is "scrambling forward", as the Hon. Leader of the Opposition says.

2150 Now, he said, in saying that we were scrambling forward, that in 1972 the House had six weeks to consider the European Communities Act between the date of publication and consideration. The point that he did not make—which I know he knows, because, as Mrs. Ladislaus reminded us, he has a doctorate in constitutional law—is that then the House did not have to wait six weeks, because it could move on with a Bill without a certificate of urgency.

2155 But perhaps, Madam Speaker, it is always better to be accompanied in matters of Gibraltar politics by somebody who has a doctorate in the political history of Gibraltar, because the thing to remind ourselves of is that in 1972 the Frontier was closed, and that Europe started in the Pyrenees. And there were no live issues affecting the 39,965 people I have just reminded the House crossed the Frontier last Monday—and will have done again today.

2160 So, would that we could enjoy six weeks of rumination over this Bill? Would that—given that I shared it with him—and Madam Speaker, he might have shared those two points with me that I have said we are happy to accede to, to make small changes which we think change nothing?

2165 But this is a completely different world to 1972. This is a completely different reality that we have to deal with at that Frontier. And what we are doing is actually almost the complete opposite of what was being done in 1972. This is about fluidity of people. In 1972—well, it was not, in 1982 and 1984 and 1985, although in the end it did not happen in 1982—but in 1972 there were no fluidity-of-people issues that were going to apply, and a Frenchman had to go to Tangier before coming to Gibraltar or to the United Kingdom if he was going to come from Europe to Gibraltar.

Today it is going to be different. And the bits on goods in the Treaty of Rome did not apply. So, it is a false comparison to look at '72 in terms of the detail and the timing to be taken.

2170 And so that is why some of the powers that we are taking are different, because some of these powers, in so far as they relate to the creation of offences etc.—are necessary in a way they were not in '72. First of all, because Schengen did not exist in '72, and because there was none of that fluidity. Now you are dealing with Schengen, and you are dealing with people who you need to control because of the fluidity point.

2175 And we think, Madam Speaker, that the clauses in here are very clearly for—this answers Mr. Bossino's points as well—the implementation purpose, which is to give effect to the Treaty. So, they do not need to be further circumscribed.

In fact, when I was making my introduction to the Bill, I was saying the Bill circumscribes the regulation-making power, because it is very clear: it has to be for the implementation purpose. So how can you go outside the implementation purpose when you are making regulations?

How can you take away—for example (not that we are going to continue with that, because I have added the words on the Constitution)—how can you make a regulation that takes away from the Governor responsibility for internal security in the Constitution? You have to make an argument that that is for the implementation purpose.

And in any event, Madam Speaker, coming to the other point: you have to lay those regulations in Parliament. And it is only when you can make the argument of urgency that you can give effect to them before you have laid them.

But if what you do is you say that you have to have a resolution of the Parliament before you can pass the regulation—what is the point of doing a regulation? You might as well do a Bill, certified as urgent, and come here and pass the Bill. And yes, of course, then there would be a debate. Yes, there would be a debate—a debate by another name; a debate by resolution instead of a debate on the Bill—right? But what is the point, Madam Speaker?

In fact, I am reminded by the draftsman that that clause of the European Communities Act 1972 was never used. It was never used. The clause that was used was the one that permitted emergency use of the regulation-making power to amend primary legislation. Because of course—rightly—if you are going to amend primary legislation and you have the time to come to Parliament, and now you have the certificate of urgency, you come here and you do the debate on the Bill. You publish the Bill in the same way as you publish the motion. You certify it as urgent in the same way as you certify the motion as urgent. And you take the debate.

It is that simple.

So, it is—I mean, it is a pyrrhic point that the Hon. Leader of the Opposition would be making in that respect.

So, we think that actually the provisions in the legislation are in keeping with what we need for a specific purpose, without incurring any of the potential dangers that hon. Members referred to.

And 13(2), Madam Speaker, which is the power to create criminal offences, in fact is almost more specific because, although it says “including”, it is only about offences that are not provided for in Gibraltar. The European Convention, the suppression of terrorism, and the offences in Annex 13. I mean, it is quite specific, Madam Speaker. To suggest that we are trying to have a backdoor power to make offences—that is far from what it is that we are trying to do. Far from it.

And it is because we are not acceding to the EU that we are having to do these things. Because when we acceded to the EU, we acceded to a body of law, and we acceded for a purpose which was actually more limited than the purpose that we are acceding for now in some respects when it comes to the mobility of people.

But the one thing that was fascinating about the debate in ’72—which I referred the House to; he will remember during the course of our debate on the motion—was that Joshua Hassan was dealing with a Bill to implement in Gibraltar the accession of Gibraltar through the UK to the EU, that had been negotiated by the people sitting opposite him. So, what the man was saying, as Chief Minister and Leader of the House, was “Look, I have got all these powers I am taking to do all these things,” —and he carried on— “And if you were standing here,”

he said, “You would be telling me that taking these powers was necessary and the best thing since Dinkum,” which for the uninitiated is the closed-Frontier generation “sliced bread”, Madam Speaker, which I remember fondly.

That is the reality.

Because, Madam Speaker, if I can deal with all the speakers at once, I would have to tell Mr. Bossino, that without the imperative of the implementation of that and the Treaty, the GSD in government did at least three pieces of legislation which provided for home-grown Henry VIII powers: the Financial Services Act of 2006, the Medical and Health Act of 1997—probably ushered through the Parliament by the Hon. Mr Azopardi, I cannot remember whether he was Minister for Health then in 1997—and the Gambling Act of 2005.

2230 None of those related to a seminal treaty like this Treaty being implemented into our law in a short period of time, with the need to do so using regulations to amend legislation where necessary. None of them. And none of them had a sunset provision, which is a common type of clause; it is not something that the Hon. Mr. Bossino has to be impressed that the Hon. Leader of the Opposition—and the doctor in constitutional law—has referred to today. It is not... most
2235 lawyers know what a sunset clause means. None of them had sunset clauses in them. The European Communities Act did not have sunset clauses in it. Maybe it was intended originally that way.

So, we do not think it is necessary to have a sunset clause, Madam Speaker.

2240 And to give the Hon. Leader of the Opposition some comfort: the automated controls that are being referred to are the e-gates, the European e-gates—are the automated controls. I hope that aids his understanding of the provision.

I did not quite get what it was he meant in respect of 43(5)(a), which I think is the 10-year provision. I will just go to it now. 43(5)(a), Madam Speaker, is the one that makes arrangements for establishing residence for a continuous period of at least 10 years for the purposes of Article
2245 45(4)(a). Now, that is something that we inherited from them, because *they* changed the principles applying to registration for status to 10 years. So, I do not quite see how he would be raising a concern about that. Certainly, we have no concerns about the application of 49(2) and what happens at the end of the two-year period. We think that the cards will be renewed in an orderly manner, and if there is an amount left over at the end of the two-year period, dealing with
2250 those that are left over in one shot will not be an issue.

We will be dealing with publication of aspects of arrangements in respect of Chapter 6. Many of those are already published—they are the Acquis itself that deals with much of what needs to be done.

2255 And the declaration under section 55(3), which is a declaration under Article 58, is a declaration to be made in respect of the Treaty. It is an international-law declaration.

I do not think there were any other points that the hon. Gentleman made that I think it is necessary for me to deal with, other than to say that I have a lot of respect for retired judges—not a bad thing in this place, Madam Speaker—but what a retired former Lord Chief Justice has said at a dinner is neither ratio nor obiter, and it has to be taken in the context of what it is, which
2260 is one person's view of what Henry VIII clauses should be.

It is a view, Madam Speaker, that we all share—that Henry VIII clauses should be used in a very circumspect way, in a way that is designed not to avoid Parliamentary scrutiny, and that they enjoy Parliamentary scrutiny as soon as practicable. That is what this Bill does: it makes all of the Henry VIII powers subject to the scrutiny of this House, although some of them may come into effect
2265 before they can have scrutiny in this House.

And yet, Madam Speaker, in all the time that I have been a Member of this House since 2003; in all the time that the Hon. Leader of the Opposition was a Member of this House before I came to it, since 1996; and from what I have seen since the Father of the House became a Member of this House in the month that we debated as a community the European Communities Act of
2270 1972—all of the regulations which have been made, which have been laid in this House because they amended primary legislation, have enjoyed a clear run, without anybody ever asking to have a debate about them because they offended some rule or other. None of them.

2275 So, the hon. Gentleman can be assured that we are not intending to do anything that would require that one of our regulations should be brought up by motion in this House once laid, after being used to amend primary legislation.

But because we all make a hullabaloo about these things—Mr. Bossino has made a hullabaloo; the Hon. Mr. Azopardi as Leader of the Opposition has made a hullabaloo—and yet never have amending regulations had to be raised in this place in that way.

2280 Madam Speaker, section 20, which deals with the provision of funds, is a catch-all provision. We do not think it is necessary at all, because we are now on the 30th of March, the 1st of April is around the corner, the next Estimates Bill will have a Treaty line in it—as we will call it—where we

can the Hon. Mr. Clinton will forgive what he will no doubt regard as the heresy dump all of the Treaty costs, broken down properly, to be analysed in the appropriate way. But in the event that something falls between the lines, we thought it was important to be able to say it would be caught in some way.

The charge here is not a charge on the Consolidated Fund as a charge where the charge is to secure a salary that the Parliament should not be able to interfere with. The charge is that you can charge it to the Consolidated Fund; in other words charge me the next pint, but not that I am charged with every pint. The word “charge” there means something different, and “charge” is a word that has many meanings in law in the United Kingdom and in Gibraltar.

But in any event, as it is—given that we do not intend to pass the Bill today, because I have to be away after today—this may have only hours of operation, because from the 1st of April the new line will apply.

Madam Speaker, the Hon. Mrs. Ladislaus says that we are hurtling towards implementation, but we have yet to see the regulations; what is the timeframe? Well—that is the issue, Madam Speaker. The reality of international relations, especially in this matter, is that sometimes you have to be ready to do things even though you do not know when your counterpart is going to be ready.

The regulations will be published in good time for implementation. All of the relevant public authorities will have the ability to familiarise themselves with the regulations, which they will very likely have a hand in drafting, as they are already having a hand in drafting. What we are going to be implementing is the Acquis, which is already public.

But, you know, it is impossible to say that we will be able to brief Spanish officers in Gibraltar, or that they are being briefed on the other side. In fact, you just have to look at the Campo press to see that law-enforcement officials in Spain are less than happy with the way they are being informed of what is or is not going to be their responsibility going forward. That is a matter for the Schengen authorities—in this case, the Schengen authorities of the Kingdom of Spain. They have to ensure that they comply with the provisions of the Treaty and any underlying administrative agreements.

And as to the reciprocity of the provisions—and she referred to that—that is provided for already in the Acquis.

In section 108, she referred us to the rights of people who have items destroyed to have the excise duties returned, and she said, “How can this be? If you have the thing destroyed after an order of the court, why on earth should you have your excise duties back?”

Well, Madam Speaker: because there are many more reasons why things are destroyed. For example: tobacco which is imported may pass its sell-by date, and therefore it cannot be sold for human consumption. And therefore, the importer, the wholesaler, will seek the destruction of the tobacco by Customs so that Customs is assured that these items are not going to be in circulation. And even today we would return import duties—in future excise duties and transaction tax—to the importer that has destroyed the thing, because it is no longer fit for human consumption. It has not been sold; the purpose of the duty is to charge the sale, and if the sale does not happen for that reason, they get their excise duty back.

As for section 116, Madam Speaker, the provision is exclusively for the Public Health Service—for the Gibraltar Health Authority. Private patients who seek to make private provision that is outside of the provisions of the National Health Service—the GHA—will need to make alternative arrangements.

Madam Speaker, I heard Mr. Bossino make a reference to the sovereignty of Parliament and how he was assured about the sovereignty of Parliament. I was surprised at that, because given that, as Mrs. Ladislaus reminded us, he sits next to a doctor in constitutional law who in his last theorem on the Constitution reminded us less than six months ago that this Parliament is not sovereign, I was surprised to hear him say the opposite.

Now, it may just be that this is another string to the challenge between them; that one will stand in the next leadership election in the GSD on a ticket of Parliamentary sovereignty, and the

other one will stand on a ticket of Parliamentary supremacy—constitutional Parliamentary supremacy, of course—which is what the Hon. Mr. Azopardi reminded us of.

2335 But I did think it a little strange that on something as fundamental as the Constitution they have different views even in relation to that. I mean, I know they have different views about LGBTQ+ stuff, and that we are treated often to speeches by the Hon. Leader of the Opposition that relate to what the GSD's policy is in relation to those matters whilst he is the Leader of the GSD— *vaya redundancia*, as they might say in another place.

2340 Madam Speaker, I did not think that they had opposing views as to what the Constitution means and whether we have Parliamentary sovereignty or Parliamentary supremacy.

But I want to thank the hon. Mr. Bossino for his speech and the tenor of it, because it was—in the context of the debate that we had on the motion on the Treaty—slightly of a different tenor to what we heard from others. And I do thank him, and I am grateful for the approach that he has taken both to the debate on the motion and the debate on this Bill.

2345 In particular his analysis—which is our analysis—about how much control foreign Schengen authorities, which he said included the authorities of Spain (as they do), will have to surrender to the law-enforcement agencies of Gibraltar in the context of hot pursuit and border surveillance. So, on that key issue he agrees with us: these are not boots on the ground; these are boots subject to our control when they are on our ground.

2350 And that analysis, Madam Speaker, if I may say so to him with respect, is the correct analysis—for once, Madam Speaker.

The provision, Madam Speaker, in section 50(10)—he is absolutely right—is about us having the final say on asylum, in effect. This is us having the final say, but a requirement to consider what is sent from the Schengen authorities.

2355 On the Corporation Council, he will want to read the clause again and see that it does not say that it will have direct effect in Gibraltar. So, they will have effect in Gibraltar, but the words “direct effect” is not in the clause. And that means, Madam Speaker, that they have effect—but the way that you give effect to that decision of the Corporation Council is not by direct effect.

2360 As to the exceptional circumstances provision in section 111, that is a political issue. You know, for example, now in Spain the VAT on fuel has been halved because of the exceptional circumstances arising because the barrel of Brent is going up because of the crisis in the Middle East. So “exceptional circumstances” is a politically defined issue.

In the end, Mr. Bossino agreed with us that this was a hugely important Bill. It is. He hoped—as we hope—for the history books. It is, therefore, Madam Speaker, seminal. Because if it is not for the history books, it is not seminal. And this one—we all agree—is for the history books for 50 years or more. And so, therefore, Madam Speaker, almost ergo, this one is certainly seminal.

2370 And that is why, Madam Speaker, we have to get it right. And that is why I am going to agree, Madam Speaker, that to get it right in these 110 pages, in these 148 clauses, we will add the six words in the one figure that the hon. Leader of the Opposition has proposed.

And it is a pity, Madam Speaker, that despite the fact that I sent him the Bill—as I had agreed to send it to him—he did not find it in his... he did not find it in his WhatsApp to send me just this reference—

2375 Just hang on—just let me finish the sentence—just this reference that would have enabled us perhaps to have avoided an hour of debate. Because either I might have been able to give him comfort, or he might have been able to persuade me to do something which might have given him the ability not to have to raise the points today.

And before I sit down, Madam Speaker, I will give way to the hon. Gentleman.

2380 **Hon. Dr K Azopardi:** I am grateful. And the only reason I rise is because he said—he said several times now—that he sent it to me and that I could have said something to him. Well, he rose last time before we adjourned—last time he rose to say, with great drama, he was going to provide me with a copy of the Bill as soon as he received it. We now know it was not as soon as he received it, by the way; he got a different version and he sent it.

2385 But he sent it to me—when he did send it to me, it was actually after it had been published. So, I mean, I did not view that as an engagement at any level other than “here it is”. And when I looked at my emails, I had received his WhatsApp after it had already been published.

2390 So, we are having a debate—so that is when matters get raised. I mean, if I had... you know... so I am not sure why he is chastising me on this particular issue, as if somehow, he had given me notice of a proposed Bill, with time, which engaged an internal process between he and I which was outside the publication process. It had already been published by the time he sent it to me.

2395 **Hon. Chief Minister:** Madam Speaker, I do not think he understood what I said at the time, but it is such a pity that this debate is going to end on this, because 50 years from now, when people look back at this debate, they are going to see that I am going to have to remind him that I got the Bill on Friday for policy decisions to be taken by the Deputy Chief Minister and me, before we had anything to share.

2400 I shared it with him the minute I got back—the version that purportedly had all of those policy decisions made. And I commend the drafts person, because there were no changes to be made, and I was able to send it on without checking it myself to see that those policy decisions had been reflected, immediately that I got it.

Now, if it was published in the interim or not—well, so be it. It was published. We also could not delay publication, because if we delayed publication, it would have been published for even less time before it was debated in this place.

2405 But it does not stop hon. Members getting in touch when the Bill has been published. The Hon. Mr. Cortes—Professor Cortes, we also have a professor in matters environmental—and a doctor, Madam Speaker, and a doctor—shares discussion with hon. Members about Bills that are published. It does not mean that Bills being published does not require that we continue to discuss.

2410 I mean, the only person who was not engaging here was him. I sent it—he never replied. I mean, his reply was short and sweet, “Sure, I’ll take a look.” Okay— “I’ll take a look,” right?

2415 Madam Speaker, he could have taken a more collaborative view. He did not want to. It is up to him. It is up to him. But let us be clear about who pretends that they are up for consultation, and up for engagement, and up for a chat, and then simply sends back “Okay, I’ll take a look,” and does not say, “Look, why don’t you tweak this reference? Why don’t you tweak that reference?”

That is the reality. That is the reality.

But anyway, it does not change what this Bill does, Madam Speaker—the importance of doing it—and, in the end, Madam Speaker, what it will do for Gibraltar.

2420 All the things I said in my first speech. But the minute it starts operating, it will do something else, at a political level, in respect of all of those people who are attacking it. I do not mean them—I mean the people outside Gibraltar who are attacking this; the Brexiteers.

2425 In the end, what this Bill does—what it will do in effect, on the ground, when people start to flow, when those people who need to come here or need to go there no longer need to go through not just the formalities they had to go through when we were in the European Union, but none of the formalities at all the we ever had to go through - this will be the taming of the crew that sold us Brexit. Because they sold us all a pup. At least 96% of the people of Gibraltar were not prepared to buy the fraud that Brexit was.

I commend the Bill to the House. (*Banging on desks*)

2430 **Madam Speaker:** I now put the question, which is that a Bill for an Act to make provision for and in connection with the implementation of the Agreement in respect of Gibraltar between the European Union and the European Atomic Energy Community of the one part and the United Kingdom of Great Britain and Northern Ireland in respect of Gibraltar, of the other part and for connected purposes, be read a second time. Those in favour? (**Members:** Aye.) Those against?

2435 Carried.

Clerk: The Treaty on Gibraltar and the European Union Act 2026.

2440

Adjournment

Chief Minister (Hon. F R Picardo): So, Madam Speaker, I move that the House should now adjourn to tomorrow at 10.30 in the morning.

2445 **Madam Speaker:** I now propose the question which is that this House do now adjourn to Monday 30th March at 10.30 am. I now put the question which is that this House do now adjourn to Monday 30th March at 10.30 am. Those in favour? (**Members:** Aye.) Those against? Passed.

This House will now adjourn to Monday 30th March at 10.30 am.

The House adjourned at 3.00 p.m