



# PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

AFTERNOON SESSION: 3.05 p.m. – 3.55 p.m.

Gibraltar, Thursday, 19th September 2013

## The Gibraltar Parliament

5

*The Parliament met at 3.05 p.m.*

[MR SPEAKER: Hon. A J Canepa GMH OBE *in the Chair*]

10

[CLERK TO THE PARLIAMENT: M L Farrell Esq RD *in attendance*]

### BILLS

15

#### FIRST AND SECOND READING

#### **Criminal Justice (Amendment) Bill 2013** **First Reading approved**

20

**Clerk:** Bills continue.

A Bill for an Act to amend the Crimes Act 2011 and the Criminal Procedure and Evidence Act 2011.  
The Hon. the Minister of Education, Telecommunications and Justice.

25

**Minister for Education, Telecommunications and Justice (Hon. G H Licudi):** Mr Speaker, I have the honour to move that a Bill for an Act to amend the Crimes Act 2011 and the Criminal Procedure and Evidence Act 2011 be read a first time.

30

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

**Clerk:** The Criminal Justice (Amendment) Act 2013.

**Criminal Justice (Amendment) Bill 2013**  
**Second Reading approved**

35

**Minister for Education, Telecommunications and Justice (Hon. G H Licudi):** Mr Speaker, I have the honour to move that the Bill be now read a second time.

40

This is a Bill which amends the Crimes Act 2011 and the Criminal Procedure and Evidence Act 2011. In particular, the Bill amends Parts 6, 7 and 13 of the Crimes Act 2011 and Parts 2 and 29 of the Criminal Procedure and Evidence Act 2011.

45

Mr Speaker, this Bill allows the Government to fulfil two Manifesto commitments. We have a commitment to introduce protection from harassment provisions. Part 6 of the Crimes Act already contains some provisions for the protection from harassment. We are expanding these provisions to put Gibraltar legislation on a par with the UK on harassment. We are also creating new specific offences for stalking and stalking involving fear of violence, or alarm or serious alarm, or distress.

50

We also have a Manifesto commitment to criminalise hate crimes. There are also presently offences in Part 7 of the Crimes Act dealing with religious or racial hatred. These are expanded upon in this Bill and include other forms of recognised hatred, namely hatred on the grounds of sexual orientation, disability and age. The Bill also introduces offences of harassment which are aggravated by one of the forms of recognised hatred as set out above.

55

Furthermore, the Government has taken the opportunity of this Bill to introduce other amendments which we consider necessary to the Crimes Act and the Criminal Procedure and Evidence Act. Amendments to Part 30 of the Crimes Act are made – and these are the provisions which created the Sex Offenders Register – and these are included as a response to UK case law in this area. These amendments provide for the possibility of a review where someone is included on the register on an indefinite basis.

60

Finally, Mr Speaker, there are also amendments to Parts 2 and 29 of the Criminal Procedure and Evidence Act. The amendment to Part 2 is in response to operational issues that the Royal Gibraltar Police have faced whilst investigating certain offences, whereas the amendments to Part 29 relate to the way in which amendments to the codes of practice under that Act may be made.

65

I will take these amendments in turn as they appear in the Bill, starting with the Crimes Act 2011 and Part 6. Mr Speaker, Part 6 of the Crimes Act 2011 currently contains offences which provide for the protection of persons from harassment. The amendments in clause 2 introduce the new stalking offences which I have already mentioned and also bring our legislation in this area closer to that which currently exists in the UK. The amendments include changes to the way a course of conduct is defined. At present, a course of conduct requires harassment of the same person on at least two occasions. We are now also making provision for situations where a course of harassment is aimed at more than one person but each person is harassed once. A specific offence dealing with this is also included. This was introduced in the UK to deal with offenders who harass certain groups of persons due to their beliefs or employment – for example, animal rights activists or extremists harassing laboratory employees, or anti-hunting groups targeting participants in legal hunts – and even though these particular circumstances, those specific circumstances, do not arise in Gibraltar, there are other circumstances where this could actually apply: for example, the harassment of employees of a particular company or of a Government agency or Department, or the targeting of a particular family where two or more members of the family are individually subject to conduct which amounts to harassment.

75

Mr Speaker, the new offences of stalking and stalking involving fear of violence or serious alarm or distress will be sections 92A and 94A of the Crimes Act. These mirror the offences in this area which were brought into force in England and Wales on 25th November 2012, which was after the Crimes Act and the Criminal Procedure and Evidence Act were passed by the Gibraltar Parliament, and those provisions in the UK were actually based on a 2010 Act of the Scottish Parliament. A course of conduct, under the new provisions, amounts to stalking if it amounts to harassment, the acts or omissions involved are ones associated with stalking, and the person knows or ought to know that the course of conduct amounts to harassment of the other person. A non-exhaustive list of examples of behaviours that are associated with stalking is included, such as following a person or watching or spying on a person's activities. A person would be guilty of the aggravated version of the offence where that person pursues a course of conduct amounting to stalking which causes another to fear, on at least two occasions, that violence will be used against them or it causes the victim serious alarm or distress that has a substantial adverse effect on their usual day-to-day activities, and a person knows or ought to know that his course of conduct will have such an effect on the victim.

85

90

The hon. Member opposite, Mr Figueras, has raised with me a drafting issue in relation to these particular matters concerning stalking and I understand that either himself or myself will propose an amendment to cure a drafting defect in the Bill, and we will deal with that in Committee.

95

Mr Speaker, to support the policing of these new offences, a new power of entry is introduced in respect of the offence of stalking. The new power of entry is exercisable by warrant to allow the Police to enter and search premises if there are reasonable grounds for believing that such an offence has been or is

being committed and certain other conditions are met. Furthermore, provision is made so that an officer may seize and retain anything for which the search has been authorised. These new provisions are designed to address specific stalking behaviour, as opposed to the general form of harassment which will continue to fall within the current offence of harassment.

100 Amendments to other sections within Part 6 are also included within clause 2 of the Bill and new sections are introduced. These include making provision so that a person may, in certain circumstances, directly apply to the Supreme Court for an injunction restraining another person from committing acts which will amount to harassment. There is already a power in the Crimes Act for an injunction to be sought to prevent harassment. However, the new power is related to and follows the introduction of the  
105 new offence, in section 91(1A), of harassment involving two or more persons.

In addition, we are making provision allowing for the imposition of restraining orders where applicable. That is increasing the remedies available to persons suffering from harassment. There may be circumstances where someone is acquitted of a criminal offence but the court may consider that it is appropriate for a restraining order to be made to protect a person from harassment.

110 A question may arise as to how can a restraining order be made to restrain harassment where someone is actually acquitted of the offence of harassment. I will say this, Mr Speaker: these will be matters for the court to consider and I do not intend, by this speech, to place any limitations on the issues which the court might itself consider. There is, in fact, already case law in England which sets out some judicial guidance specifically on restraining orders following an acquittal on an offence, a charge of harassment, but I will  
115 also point these matters out, Mr Speaker: a restraining order under this section would be a civil remedy and therefore different standards of proof would apply; secondly, whereas the criminal trial looks at past events where the harassment has actually occurred in the past, the court considering a restraining order will look at future risk and take into account which is not actually given during the criminal trial itself. In this regard, Mr Speaker, I will also quote from legal guidance prepared by the Crown Prosecution Service  
120 in the UK in relation to section 5A of the UK's Protection from Harassment Act, and that is the equivalent provision in England which is published on the website. I quote:

125 'Section 5A was introduced to deal with those cases where there is clear evidence that the victim needs protection, but there is insufficient evidence to convict on the particular charges before the court. It is still open to the victim to seek a non-molestation order or injunction from a civil court. However, the more proactive approach on the part of the courts using section 5A is seen as not only avoiding delay and increased costs to the legal aid budget,'

– although it could also be without a person having to be on legal aid –

130 'but also providing a more seamless process of providing protection to victims.'

Mr Speaker, in addition, the Bill creates a new offence of harassment of a person in his or her home. The purpose of this offence is to give the Police the ability to deal with harassing or intimidatory behaviour by individuals towards a person in his home. It is a necessary ingredient of the offence that the  
135 person intends his presence to amount to harassment of or to cause alarm or distress to the resident, or that a person knows or ought to know that his presence is likely to result in the harassment of or to cause alarm or distress to the resident. It is also necessary for the person to be present there for the purpose of representing to or persuading the resident or another individual that he should not do something that he is entitled or required to do, or that he should do something that he is not under an obligation to do.

140 Mr Speaker, I turn to the amendments to Part 7 of the Crimes Act. Part 7 presently contains offences dealing with religious and racial hatred. Clause 3 of the Bill makes provision for the implementation of our Manifesto commitment on the criminalisation of hate crimes. The following provisions are included in clause 3 of the Bill: (1) the hatred-based offences in the Crimes Act which currently apply only to stirring up of racial or religious hatred are extended to include the stirring up of hatred on the grounds of  
145 sexual orientation; (2) the saving for freedom of expression is extended to apply to discussions or criticism of sexual behaviour or practices or the urging of persons to refrain from such conduct or practices – this means that freedom of expression is safeguarded and that nothing in Part 7 of the Crimes Act prohibits discussions or criticisms of sexual conduct or practices or the urging of persons to refrain from such conduct or practices; (3) the current law in the Crimes Act on aggravated offences, which currently applies only to racially aggravated offences, is similarly extended to cover other types of  
150 aggravated offences and aggravated harassment – namely offences which are religiously aggravated, disability aggravated, aggravated by reason of sexual orientation and age aggravation; and (4) a new section 117A is introduced to provide for the increase in sentences for racial, religious, disability or age aggravation and aggravation related to sexual orientation for offences which do not specifically include  
155 an element of that aggravation.

In summary, Mr Speaker, what clause 3 of this Bill does is to provide a uniform application of 'hate crime' of the law on hate crime by extending the offences of stirring up hatred to include sexual orientation, by extending the aggravated offences to religion, sexual orientation, age and disability, and

160 by introducing new provisions which allow for increase in sentences where an offence is aggravated by reason of race, religion, sexual orientation, age or disability.

I should perhaps explain the difference between the aggravated offences and the possibility of an increase in sentences as a result of an aggravating factor. A person may be charged with a basic offence of assault, or with a separate and distinct and more serious offence of racially aggravated assault. Where a court is dealing with the basic offence of assault but the offence is in fact racially aggravated, the court must treat that as an aggravating factor when it considers the sentence which ought to be imposed. In most cases, when that kind of aggravation is evident from the outset, the defendant will be charged with a more serious aggravated offence, but there may be cases where the aggravation only becomes evident during the trial itself for the lesser offence, and in those cases it is right that the court should treat that as an aggravating factor and sentence accordingly.

170 Part 13 of the Crimes Act. Mr Speaker, Part 13 contains what is commonly known as the Sex Offenders Register and also contains other measures which can be deployed in dealing with sex offenders. This Bill contains, in clause 4, amendments to Part 13 to remedy an incompatibility with article 8 – which is respect for private and family life – of the European Convention on Human Rights. In accordance with section 307 of the Crimes Act, a sex offender who is sentenced to imprisonment for a term of 30 months or more will be subject to notification requirements – in other words, inclusion in the Sex Offenders Register – for life. The current law is that those sex offenders have no possibility of reviewing those requirements.

180 On 21st April 2010, the Supreme Court in the United Kingdom declared, in *R (on the application of F and Angus Aubrey Thompson) v Secretary of State for the Home Department*, that the provision in the UK Sexual Offences Act 2003, which are the equivalent to our Crimes Act for these purposes, about indefinite notification requirements for sex offenders without the right to have them reviewed is incompatible with article 8 of the European Convention of Human Rights.

185 On 30th April 2012, the UK Sexual Offences Act 2003 was amended by the UK Sexual Offences Act 2003 (Remedial) Order 2012 to introduce a mechanism which will enable registered sex offenders who are subject to notification requirements for life to apply for those requirements to be reviewed.

The amendments contained in this Bill to Part 13 of the Crimes Act in essence mirror the content of that remedial order and are intended to ensure that the notification regime under the Crimes Act is no longer incompatible with the Convention right. The one difference between the UK provisions and our provisions will be that, whereas in the UK applications for review are made to the Police, in Gibraltar such applications will be made to the Magistrates' Court.

190 The new section 315D will provide an extensive list of factors which must be taken into account by the court in determining such an application for review. These include the risk of sexual harm posed by the offender; the seriousness of the offence for which he was convicted; the period of time elapsed since the offence or other offences committed; and importantly, any submissions or evidence from a victim of the offence to which the indefinite notification relates.

195 In the light of this, Mr Speaker, and other provisions in the Crimes Act relating to sexual offenders, we are satisfied that this amendment in no way affects the effectiveness and the powers in dealing properly and adequately with sexual offenders.

200 I turn to the amendments to the Criminal Procedure and Evidence Act 2011. Part 2 of the Criminal Procedure and Evidence Act sets out the provisions in relation to the power to stop and search or enter and search. Section 12, which is contained in Part 2, limits the making of an application for such a warrant to investigations into indictable offences. This Bill amends that requirement, as provided for in clause 5, to allow for such warrants to be also sought in relation to a list of summary offences which are included in a new schedule 14 to the Criminal Procedure and Evidence Act 2011.

205 The requirement for this amendment was brought to my attention by the Royal Gibraltar Police, who highlighted difficulties in investigating certain serious but summary-only offences, such as wasteful employment of Police, harassment, improper use of electronic network and dealing in offensive weapons. Under the legislation, in effect, pre the Criminal Procedure and Evidence Act, a search warrant could be sought for any offence. We are not proposing to go back to that system. What we are proposing is a system of scheduling certain offences due to (1) their relative seriousness and (2) the possible difficulty in investigating them without a search warrant. Apologies Mr Speaker. I lost my way there. The list in the proposed schedule 14 contains such offences.

210 I will also say, in relation to this particular schedule – and this follows a conversation which I had with the hon. Member, Mr Figueras, on this particular part yesterday about the possibility of a power to add to the list of offences – it was certainly Government's intention that a power should be included so that whenever a new offence is brought to our attention as requiring a search warrant – by order in the *Gazette*, for example – the list can be amended.

215 I have looked again at the Criminal Procedure and Evidence Act and confirmed that there is already that power. Section 698 of the Act gives power to the Minister to amend any Schedule by notice in the *Gazette*. What I could not do certainly under that power was introduce a new Schedule, and therefore by

220

this Bill we are introducing the new Schedule with a list, as had been requested of us, in the first instance, and should the occasion arise to add to that list, that addition can be made by notice in the *Gazette*.

225 Mr Speaker, Part 29 of the Criminal Procedure and Evidence Act relates to the publication of the codes of practice under that Act. A change proposed under this Bill introduces a simplified procedure where what has been done is that a code is being revised or amended, rather than the issue of a new code. There is still, however, a requirement for the revised or amended code to be laid before Parliament, where there will be an opportunity to pass a motion to disapprove of the revision or amendment, and if so disapproved, the Minister must revoke the amendment or revision and, in effect, reintroduce the code as it was, in effect, immediately before the changes.

230 The Government considers that there may be circumstances where a code may need to be amended without having to go in advance through the procedure currently set out in the Criminal Procedure and Evidence Act, which requires the publication of the amended or revised code in draft, giving time for representations to be made and consideration of those representations, the tabling of that code in Parliament, and then waiting 30 days after the next sitting of Parliament before the amended or revised code has effect. That is a procedure which could take two months or more.

235 The codes contain procedures which relate to rights of suspects or detainees and there may be, for example, a need to respond to a case concerning compatibility or incompatibility of a particular part of the code with the European Convention of Human Rights. In those circumstances, a power should exist to amend the code immediately and the matter brought to Parliament thereafter. In that way, there would be no continued breach of the Convention.

240 And another concrete example I would give on the possible use of this power is in relation to the duty solicitor scheme. A draft of the code which is currently in place contained provisions for the introduction of such a scheme. These were removed, given the very limited take-up there was by lawyers at the time wishing to participate in that scheme, and for that reason section 85 of the Criminal Procedure and Evidence Act was not commenced. The Government expects that this section will be commenced in due course and it will be then necessary to reintroduce those provisions in the code which were removed. It should not, however, be necessary to deal with this as if a totally new code was being introduced. The amendment to Part 29 will allow the Government to make such a change without starting the whole procedure afresh.

250 I would also add, in relation to this, that this amendment is not intended to give the Government or me, as Minister for Justice, a power to make wholesale changes or wholesale revisions, even though the power does that; it is intended for very specific circumstances which may arise and which may require a code to be amended straightaway. The current procedure does not have a saving for urgency, it just does not have that provision at all, and therefore there is a possibility of having to wait a couple of months.

255 But to the extent possible, whenever any amendment or revision is going to be made, it would be my intention to publish the code in draft and allow representations to be made. So to the extent that we can follow the procedure for the new code, even in relation to amendments or revisions, that will be done; but where it is necessary to act with urgency, it is, in our view, important that that power should exist.

260 In any event, even if the power is used, it is always open for Parliament to pass a motion disapproving of what has been done, and that would happen immediately at the next sitting after the power has been used; so Parliament still has a supervisory role to take and, if disapproved by Parliament, as I have already mentioned, the new code, or rather, the code as originally existed would have to be reintroduced by the Minister. So there is a safeguard there for Parliament in any event.

265 Mr Speaker, this Bill gives effect to Manifesto commitments of the Government as well as introducing provisions which we consider necessary or appropriate. In complex legislation, such as the Crimes Act and the Criminal Procedure and Evidence Act, there will always be issues which arise post commencement and which require correction. This Bill achieves that. As such, we consider that the passing of this Bill will result in an improvement to our criminal justice system.

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

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

275 **Hon. S M Figueras:** Yes, Mr Speaker.

I am grateful to the Hon. Minister for Justice's intervention in this respect and for dealing with a variety of issues that we have had occasion to discuss just, over the last 24 hours or so. I am grateful to him for making himself available for those conversations as it will make this process far simpler and far more collegiate than it might otherwise have been, and for that I am grateful.

280 In relation, Mr Speaker, and I will go briefly through the various parts and amendments proposed in the Bill. In relation to the two stalking offences and the introduction of search warrants in the context of stalking, this side of the House certainly considers that it is right and proper that this should be the case and that we should be brought in line with the position in the UK, building on the introduction of the

285 harassment offences in the Crimes Act introduced by my Learned and Hon. Leader, Daniel Feetham. I am pleased to note in the statistics in the Gibraltar Police Authority's report that, since the introduction of those offences, only one report has been made, but certainly it is not our place to be complacent and ignore such issues; and being ahead of the fold is certainly, in my view, a worthy pursuit.

290 In relation to the injunctions and other amendments to Part 6, including, in particular, the restraining orders which will be imposed upon individuals following acquittal, again this has the full support of this side of the House. As something that was discussed between myself and the Hon. Minister during our conversations on this Bill, the issue of harassment at home is one that has been an issue more in the UK than it has been here but once more we certainly consider it, on this side of the House, as important to keep ourselves up to date in respect of these particular offences, whether or not it is a current issue in the community currently.

295 In respect of the amendments to Part 7 and the introduction of the raft of offences and enhancement in respect of offences on sexual orientation, age and disability, again this side of the House wholeheartedly supports that initiative.

Moving on to the amendment to Part 13 of the Crimes Act, which deals with the incompatibility between the Convention right and the indefinite notification requirement, certainly it is the case that this has been dealt with in the UK as well and we have no issue whatsoever in supporting that.

300 Further, in relation to section 12 and the creation of Schedule 14, it is in fact the case, as the Hon. Minister alluded to earlier, that we have had a conversation in this particular regard and I was certainly perfectly keen for the additional power, had it been necessary, to be added to this Bill by way of amendment, and I am grateful to the Minister for confirming that that is not necessary.

305 I turn now, Mr Speaker, to perhaps the only significant point of contention that has arisen during the review of this Bill, and that is the amendment of section 690 of the Criminal Procedure and Evidence Act. For the Members on this side of the House, the general principle which is brought into effect by this amendment – that the Hon. Minister is able to amend by order the whole of the codes which originally are required by law to pass through a drafting procedure and then through this House – caused... perhaps 'consternation' would be too strong a word, but it caused just a moment's concern in the context of what the application of that power would mean in the current Gibraltar context. We are satisfied – certainly, I personally am – and it is the view on this side of the House that the assurance given by the Hon. Minister in respect of the application of this power is sufficient to allay any fears that we may have in respect of the abuse of the power, that we will be supporting the Bill in its entirety, despite some reservations that we may have.

315 Again, I would like to echo the Minister's comments in respect to the teething problems that are to be expected and are entirely natural in the context of legislation as significant as this, and this side therefore has no issue in supporting this Bill.

320 **Hon. D A Feetham:** Mr Speaker, just very briefly, I am grateful to the hon. Gentleman for recognising that when one is dealing with a seminal... indeed, two seminal pieces of legislation, as the Crimes Act and also the Criminal Procedure and Evidence Act clearly are – the two largest Acts in legal history in Gibraltar, dealing with crimes and also evidence and procedure from top to bottom in what is our criminal law – that it is always going to be an evolving process for any subsequent Government coming back to it and needing to amend in order to effectively keep that Act up to date or deal with any problems in the implementation of the Act. Indeed, he may recall that when we had our exchanges in relation to the amendments to the Sexual Offences parts and the Sexual Offences Register in March of this year – I think it was March of this year – I also alerted him to the fact that I was aware of certain European Court of Human Rights decisions that may well necessitate amendments to this Act, which is one of the reasons why he has had to bring amendments today.

330 But I would like to talk about the question of the amendments to the codes of conduct. I do not know whether the idea to amend this particular way that codes of conduct are revised was taken from a previous draft of the Bill, or whether it has been an initiative from his Department, but let me tell him that my recollection is that, in fact, in one of the late drafts of this particular Bill we had actually done exactly what the hon. Gentleman has done today in his amendments. When I had my bilateral meetings with – the backbencher then – the Chief Minister, his view, which carried a lot of force, was, 'Well, hang on a minute: what you are effectively doing, or what can arise as a consequence of the regime as drafted, is that you could amend the entirety of the draft without actually going through the original safeguards and the original procedure, and even if you don't amend the entirety of the draft, you could amend substantial parts of it, and by substantial parts of it that really are so substantial that you ought to go through the original procedure, because the original procedure is there, intended to provide the public and stakeholders with a safeguard that there is going to be some proper input from stakeholders and some proper scrutiny in relation to amendments to the code.'

340 I have to say that, although my preference is that the Act should not have been amended and that the procedure should have stayed the same as we had originally drafted, I recognise that it was on the cards

345 for us. I recognise that there are two views in relation to this and that, of course, if at the end of the day it  
 arises in the future, or a situation arises in the future whereby a government seeks to abuse this particular  
 power by introducing, for example, very substantial amendments to the codes or revised the entirety of  
 350 the codes without going through the original procedure, as a way of circumventing it, that that obviously  
 would create a political problem and would create a political debate, which we, no doubt, either us, or  
 some future Opposition may raise in this House and outside it. For that reason, we do not believe that  
 despite the fact that we would have taken, and did take, a different policy decision in relation to this, that  
 it is a good enough reason for us either to abstain or to vote against this Bill.

355 **Mr Speaker:** Does any other hon. Member wish to contribute before I ask the hon. mover to reply?  
 The Hon. the Minister for Justice.

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

360 The comments from the two Members opposite are very helpful indeed, and not just the comments –  
 as Mr Figueras has mentioned, there have been several conversations between myself and him, outside of  
 this Chamber on this particular Bill, which have been very useful in focusing on particular areas, and in  
 fact, as he mentioned, in identifying one particular matter which actually requires amendment because  
 there is a drafting issue.

365 The Hon. Leader of the Opposition asked whether the amendment we are making in relation to the  
 introduction or the amendment or revision of a code was as a result of a previous version of the Bill. I was  
 not aware, in fact, that there had been a previous version of the Bill where this had been considered, but I  
 can tell him how it actually arose. It arose out of consideration of the introduction at some point of... or  
 the commencement of section 85 of the Criminal Procedure and Evidence Act, which is what provides for  
 the right to legal advice and therefore the introduction of the duty solicitor's scheme. It occurred to me  
 370 that that is something I can do: I can commence section 85, as Minister for Justice, by a notice in the  
*Gazette*, but I cannot give it effect because I could not amend the code. The corresponding amendments  
 to the code which have to be made would have to go through the whole procedure of publishing the code  
 in draft, hearing representations, considering representations, tabling before Parliament, and then waiting  
 375 30 days after the next sitting. So there is something strange in that a Minister can commence primary  
 legislation but not a code of practice which is designed to give that effect, and therefore I thought that, in  
 those circumstances, that power should exist.

It also occurred to me, when looking at this, particularly given the amendment we are introducing in  
 relation to the Sex Offenders Register, because of the incompatibility with the European Convention of  
 Human Rights. In that particular case, it has not been a practical problem to wait to cure that  
 380 incompatibility because we only commenced the Sex Offenders Register last year and realistically and  
 practically the time for review of anybody who is there on an indefinite basis certainly would not have  
 arisen, so whatever incompatibility exists can be amended through this normal course of events by  
 waiting and, as the hon. Member has mentioned, earlier this year, the fact that this amendment was  
 required was mentioned in this Parliament and in practice it has not resulted in any problem. But it did  
 385 occur to us that a question of incompatibility might arise in relation to existing rights of people who are  
 being dealt with by the Police and you could have a situation where there is some sort of declaration of  
 incompatibility somewhere else – in the Supreme Court in the United Kingdom, for example, or the  
 European Convention or in the European Court of Human Rights – and we would not have a procedure to  
 implement that straightaway, which raises a practical problem: how do the Police deal with a code of  
 390 practice which is actually stated to be incompatible with the Convention rights; and during those two  
 months that it takes – or six weeks or whatever, however long it takes – how do the Police deal with those  
 suspects or those detainees? Therefore there is a possibility of a practical problem and the need to act with  
 haste in those circumstances.

395 But I can say, as I have already said, that it is envisaged that this power would only be used in very  
 rare and extreme circumstances, and to the extent possible it will be published in draft – any amendment  
 or any revision – and certainly no wholesale revision is planned for the moment, but if it was it certainly  
 would go through the normal procedure of publishing the draft and considering representations.

400 Finally, Mr Speaker, the hon. Member has mentioned that we have to recognise that these are seminal  
 pieces of legislation. They introduced, essentially, a new criminal justice framework. Particularly  
 following what in England had been introduced as PACE, the procedural side, in particular, that was  
 somewhat revolutionary for Gibraltar. These are very substantial pieces of legislation. They were passed,  
 I recall, in June 2011, and commenced towards the end of last year. In that over one year we have had  
 occasion to come back to Parliament – on this occasion and on a previous occasion – to make an  
 amendment which we wanted to make. Teething problems have not been that great and perhaps it is a  
 405 testament to the care that was taken with those two very important pieces of legislation at the time and  
 how they were introduced that we have not actually had too many problems in practice – or not too many  
 issues have arisen which have been brought to our attention which required some sort of revision or

410 amendment to the Act. Therefore, I just wanted to place on record that these were important and complex pieces of legislation, and the fact that over the past year or so that they have been in place only minor issues have come to light, I think shows that, as the hon. Member has mentioned, quite a number of drafts would have had to have been gone through – 11 drafts, I understand – in order to arrive at what are quite clearly two very important pieces of legislation.

415 I am very grateful for the hon. Member signifying that they will support the amendments in the Bill, which as I have indicated, I expect will serve as improving even further the criminal justice structure that we have in Gibraltar.

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

420 **Clerk:** The Criminal Justice (Amendment) Act 2013.

425 **Criminal Justice (Amendment) Bill 2013**  
**Committee Stage and Third Reading to be taken at this sitting**

430 **Minister for Education, Telecommunications and Justice (Hon. G H Licudi):** Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

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

435 **COMMITTEE STAGE**

**Criminal Justice (Amendment) Bill 2013**

440 **Mr Speaker:** May I ask the Leader of the House, therefore, to ask that the House resolve itself into Committee.

**Chief Minister (Hon. F R Picardo):** Yes, Mr Speaker.

445 I have the honour to move that the House should resolve itself into Committee to consider the following Bill clause by clause: namely the Criminal Justice (Amendment) Bill 2013.

*In Committee of the whole Parliament*

450 **Criminal Justice (Amendment) Bill 2013**  
**Clauses considered and approved with amendment**

455 **Clerk:** A Bill for an Act to amend the Crimes Act 2011 and the Criminal Procedure and Evidence Act 2011.  
Clause 1.

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

**Clerk:** Clause 2.

**Mr Chairman:** Clause 2 stands part of the Bill.

465 **Minister for Education, Telecommunications and Justice (Hon. G H Licudi):** Mr Chairman, clause 2(13) where it says:



'After section 94 insert– and there is a heading:

470 “Stalking involving fear of violence or serious alarm or distress.

Then there is section 94A.(1)...’

475 – I would propose that we amend this. Where it says ‘is guilty of an offence’, those words should be at the end of 94A.(1) as a separate paragraph, so that it reads:

*‘94A.(1) A person (“A”) whose course of conduct–*

*(a) amounts to stalking; and*

480 *(b) either A knows or ought to know that A’s course of conduct will cause B so to fear on each of those occasions or (as the case may be) will cause such alarm or distress, is guilty of an offence.’*

So, ‘is guilty of an offence’ is a separate line after (b).

485 **Mr Chairman:** Does the Clerk have a copy of that amendment in writing?

**Clerk:** Therefore, what the mover of the amendment is saying that 94A.(1) should read as follows:

490 ‘94A.(1) A person (“A”) whose course of conduct–

(a) amounts to stalking; and

(b) either –

495 A knows or ought to know that A’s course of conduct will cause B so to fear on each of those occasions or (as the case may be) will cause such alarm or distress,

is guilty of an offence.’

500 Is that the amendment?

**Hon. G H Licudi:** Yes, that is right.

**Clerk:** And is there a comma after ‘distress’?

505 **Hon. G H Licudi:** No, there is not a comma.

**Clerk:** Or we remove the full stop?

510 **Hon. G H Licudi:** It is a new line.

Mr Chairman, the full stop after ‘distress’ should be removed, and then ‘is guilty of an offence’ on a new line with a full stop after the ‘offence’ and a comma after ‘distress’.

515 **Mr Chairman:** I will now put that amendment to the vote. Those in favour? (**Members:** Aye.) Those against? Carried.

Clause 2 as amended.

**Hon. G H Licudi:** Mr Chairman, can I just add –

520 **Mr Chairman:** Do you have another amendment?

**Hon. G H Licudi:** No, it is the same – just to clarify... That we have to remove the word ‘if’.

**Clerk:** That is noted.

525 **Mr Chairman:** Clause 2 as amended stands part of the Bill.

**Clerk:** Clause 3.

530 **Mr Chairman:** Stands part of the Bill.

**Clerk:** Clause 4.

**Mr Chairman:** Stands part of the Bill.

535 **Clerk:** Clause 5.

**Mr Chairman:** Stands part of the Bill.

540 **Clerk:** The long title.

**Mr Chairman:** Stands part of the Bill.

545

**BILL FOR THIRD READING**

**Criminal Justice (Amendment) Bill 2013**  
**Third Reading approved: Bill passed**

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

**Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to report that the Criminal Justice (Amendment) Bill 2013 has been considered in Committee and agreed to with amendment, and I now move that it be read a third time and passed.

555

**Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Crimes Act 2011 and the Criminal Procedure and Evidence Act 2011 as amended be read a third time. Those in favour? (**Members:** Aye.) Those against? Carried.

560

**ADJOURNMENT**

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

**Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to move that the House do now adjourn *sine die*.

570 **Mr Speaker:** I now propose that the House do now adjourn *sine die*.  
I will now put the question, which is that this House do now adjourn *sine die*. Those in favour?  
(**Members:** Aye.) Those against? Carried.  
The House will now adjourn *sine die*.

575

*The House adjourned sine die at 3.55 p.m.*