



PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

AFTERNOON SESSION: 3.00 p.m. – 5.06 p.m.

Gibraltar, Friday, 15th March 2024

Contents

Prayer	2
Order of the Day	2
Bills	2
First and Second Reading	2
Supplementary Appropriation (2019/2021) Act 2024 – First Reading approved	2
Supplementary Appropriation (2019/2021) Act 2024 – Second Reading approved.....	2
Supplementary Appropriation (2021/2022) Act 2024 – First Reading approved	7
Supplementary Appropriation (2021/2022) Act 2024 – Second Reading approved.....	7
Social Security (Non-Contributory Benefits and Unemployment Insurance) (Amendment) ...	8
Act 2024 – First Reading approved.....	8
Social Security (Non-Contributory Benefits and Unemployment Insurance) (Amendment) ...	9
Act 2024 – Second Reading approved	9
Civil Aviation Authority Act 2023 – First Reading approved.....	10
Civil Aviation Authority Act 2023 – Second Reading approved.....	11
Civil Aviation Act 2024 – First Reading approved	18
Civil Aviation Act 2024 – Second Reading approved	19
Income Tax (Amendment) Act – First Reading approved.....	24
Income Tax (Amendment) Act 2024 – Second Reading approved	25
Adjournment.....	30
<i>The House adjourned at 5.06 p.m.</i>	30

The Gibraltar Parliament

The Parliament met at 3.00 p.m.

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

[CLERK TO THE PARLIAMENT: J B Reyes Esq *in attendance*]

PRAYER

Madam Speaker

Order of the Day

BILLS

FIRST AND SECOND READING

Supplementary Appropriation (2019/2021) Act 2024 – First Reading approved

Clerk: Meeting of Parliament Friday, 15th March 2024. The Order of the Day.
Bills – First and Second Reading.

5 A Bill for an Act to appropriate sums of money to the service for the period ended
31st March 2021. The Hon. the Chief Minister.

10 **Chief Minister (Hon. F R Picardo):** Madam Speaker, I have the honour to move that a Bill for
an Act to appropriate sums of money to the service of the period ended 31st day of March 2021
be read a first time.

Madam Speaker: I now put the question, which is that a Bill for an Act to appropriate sums of
money to the service for the period ended 31st March 2021, be read a first time.
Those in favour? (**Members:** Aye.) Those against? Carried.

15 **Clerk:** The Supplementary Appropriation (2019/2021) Act 2024.

Supplementary Appropriation (2019/2021) Act 2024 – Second Reading approved

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

Madam Speaker, Members of the Opposition may have seen that this Bill is different to the original Supplementary Appropriation Bill, which was Bill number (B02/2022). Before moving that the Bill be passed, I will explain the reason for this.

Madam Speaker, during 2019-2021, a total of £2.8 million – in fact it was £2,782,970 – was received in the form of regulatory settlements from several – in fact there were four – Gibraltar-based gaming operators during the closing stages of the extended financial period 2019-2021. Just for the purposes of putting this Bill in context, hon. Members should recall that we are dealing here with the double financial year. This is not financial year 2019-20 and 2020-21, this was the year where the House determined that we should have a 24-month year.

When we brought that Bill, which was approved with the unanimity of the whole Parliament, that because COVID had struck – I believe sometime in April or May – we sought the consent of the Parliament to extend the financial year because it would have been impossible, with COVID, for us to be able to go through the internal budgetary process, that which I paraphrased yesterday during the course of Question Time as ‘the spending round’; and then to present the estimates to this House and for this House to meet as it would have to, in keeping with the normal calendar for the operation of the financial year.

Therefore, Madam Speaker, that is why we are dealing with a financial year, which in the context of this Supplementary Appropriation, like the Appropriation which it supplements, deals with those 24 months rather than the usual 12 months.

So during those 24 months, Gibraltar received sums of money in the form of regulatory settlements from four *different* Gibraltar-based gaming operators. The settlements, which were agreed with the operators concerned, arose as a result of regulatory investigations conducted by the Gambling Commissioner in Gibraltar. A condition of these settlements was that the monies would be treated as voluntary donations to support and promote responsible gambling and anti-money laundering in the jurisdiction. Had we not reached agreements it would have resulted in a breach of regulations and corresponding fines would have been issued by the Commissioner.

These settlements were effected directly by the operators to the charitable foundation, which is at the University of Gibraltar. These were inadvertently not booked in the Government Accounts and not brought to the Financial Secretary’s attention at the time of the preparation of the Estimates of Revenue and Expenditure, nor indeed were they brought to his attention prior to the publication of the Supplementary Appropriation Bill (B02/2022). And I should say the *then* Financial Secretary, because Members of the House will recognise behind me the current Financial Secretary, but it was his predecessor who was in post at the time.

Madam Speaker, had we had the opportunity to debate the original Bill, we would have corrected this at the time of the debate and I would have made an amendment during the course of the Committee Stage. Due, however, to the dissolution of Parliament as a result of the 2023 General Election – which once again saw the same Government returned to office as hon. Members opposite well know – the Bill was revised and it was submitted with that correction made when it was republished. Members can have no doubt that the settlements will be reflected in the Government’s Accounts for 2019-21, when those are finalised.

Madam Speaker, I have clarified the reason for the differences, therefore, between the Bill that was published before in 2022 and the Bill that is published now in 2023 and I have the honour, therefore, to move that it be *this* Bill that is the one that we are reading a second time.

Madam Speaker, the purpose of this Bill as a whole is to appropriate further sums of money to meet the Government’s expenditure incurred in the extended financial period of 2019-2021.

I know that there are a lot of new Members of this House after the General Election, Madam Speaker, so I will just pause there very quickly, at the risk of boring Sir Joe Bossano to death because he has heard 52 of these gone through; some have had none of these gone through in their presence.

What happens when you are doing a Supplementary Appropriation is that you are taking the thing that we call ‘the Budget’, which actually in legal terms means the Appropriation Bill for a particular financial year, and you are adding to it the additional amounts that have had to be spent

70 during the course of the financial year that were not provided for. And in every single year this happens. This is not something that is peculiar. It is not peculiar to the COVID year, which was the year that we are dealing with, it is something that has happened in every single year since we have had Appropriation Bills.

75 So, therefore, what this Bill does is what we now call 'the Supplementary Appropriation' required to provide that additional appropriation – which is the taking of money – to cover retrospectively for the final figures, which are what we call the 'outturn' figures, for the financial period 2019-21. Again, for the purposes of Members of this House who may be new, when we look at the budget book there is always a column that says 'Estimate' and there is always a column that says 'Outturn'; and the column called Estimate is what we think we are going to spend in the
80 financial year, the outturn is the figure that we believe we have spent in that financial year and then you have a final figure when the accounts are finalised after the Supplementary Appropriation has been added to the final outturn figure.

Madam Speaker, hon. Members should note that the £6.6 million required to cover the additional expenditure incurred under the Consolidated Fund represents the amount required, in
85 addition to the supplementary provision of £20 million, that is already included in the approved expenditure under 'Head 54', which is the Supplementary Provision Head.

If I can also just concentrate on that for a moment, whenever we estimate – and again this comes from time immemorial from the time that this House started to do appropriation in this way and it is the way that it is done in the United Kingdom also – we add an additional amount
90 because we are likely to be out, because estimating in the millions is not easy to do. In fact, it is probably impossible to do entirely accurately unless you are just dealing with the payment of the contract. So we always leave ourselves an amount extra and that is principally in order to deal with the settlements that can be reached in the course of the financial year.

Traditionally that was any public sector pay rise that may be agreed, etc. and which may be in
95 negotiation after the period that the Government has circulated the estimate but is still negotiating with the trade unions, etc. and so you leave yourself an additional amount on top of the estimate in order to be able to cover those costs. In the context of the sorts of estimates that we are looking at, where we are looking at revenue of over three quarters of a billion and expenditure in the region of half a billion-plus from the Consolidated Fund, having an additional
100 £20 million is not a huge amount that you are expecting to overspend.

Going £6 million beyond that, again in the context of expenditure nearing in terms of the sums paid out from the Government General Account and the first charge on the Government General Account on the Consolidated Fund being £26 million out – although £26 million is a huge figure by any standard – is not a massive amount to be out by, in particular given that £20 million is already
105 built-in as the amount that you have available *over* the estimate and you are talking about a further £6 million. And the total amount that we are out by in the context of this financial year is the £27 million that that is the total of, that is to say the £6.6 million and the £20 million of reallocations to be made under Head 54.

Madam Speaker, that will be tabled at the next available session of Parliament, giving
110 hon. Members a full and detailed breakdown of the Heads and Subheads for which this supplementary provision has been applied. And, Madam Speaker, the other components of the Bill that hon. Members can see are entirely self-explanatory. Of course, I was addressing myself to the Article 2, Section 2 of the Bill, the other provisions are self-explanatory.

Madam Speaker, I therefore commend the Bill to the House.

115

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

Yes.

120 **Hon. R M Clinton:** Thank you, Madam Speaker.

First of all, I have to thank the Chief Minister for having brought this Bill to the House and indeed the next one, which we will consider for the following financial year as we have extensively debated the problems that the delay in taking the Supplementary Appropriation Bills can cause to the Principal Auditor.

125 So I welcome that we are now taking these two Bills that will bring us up to date, and I would again urge the Chief Minister to make sure that in fact, in my view, the Supplementary Appropriation should be brought before the end of the financial year, but as close to the end of the financial year as is possible.

130 Madam Speaker, I have heard what the Chief Minister had to say about the correction made and I do not think there is any issue with that on our side of the House. I do have a technical reservation about the way Head 54 continues to be used because of course the entire Supplementary Appropriation Bill comes under section 69(3) of the Constitution; and section 69(3)(a) and (b) talk about the need to raise a Bill. But when it comes to the supplementary estimate being required to be prepared and laid before Parliament it says:

... and the heads of expenditure shall be included in a supplementary appropriation bill

135 For me – and again I may be taking a very purist approach – it would be all the various heads of expenditure in the Estimates Book that was previously approved and not through the Supplementary Provision Head 54; because as Sir Joe Bossano has told us in the past that particular provision was put in place to avoid the need to come back during the year for any, as the Chief Minister has alluded to, pay settlements, any matters which may arise during the year – and that gave the Government some flexibility.

140 But where there is a general overspend on any other head, Madam Speaker, I would venture to suggest that this Head should no longer be used. Once has been used during the year any Supplementary Appropriations that are required should be by those Heads, not into this Head, and then redistributed among the other heads, which has been the practice of this Government in the past.

145 Madam Speaker, that is my technical point on this Bill and it will be the same technical points on the other Bill.

150 As regards the position of the Opposition, as the Members correctly pointed out there are obviously a lot of new Members on this side of the House and this expenditure was incurred during the session of the last Parliament and as a result, Madam Speaker, we this side of the House, although welcoming the presentation of the Supplementary Appropriation Bill today for this two-year period, will be abstaining on the Bill.

155 **Madam Speaker:** Any other hon. Member wish to comment?
Would the Mover like to respond?

160 **Hon. Chief Minister:** Madam Speaker, I am delighted to hear the hon. Gentleman say that hon. Members will be abstaining on the Bill. As he can imagine, I would have been very surprised if they had supported it; and given that they have voted consistently against every single budget that we have presented since he was first elected to this House, other than indeed the COVID budget, I would have been very surprised indeed if they were going to vote in favour of it.

165 Although, of course, that does demonstrate the horns of the dilemma upon which the hon. Gentleman manages to pitch himself which is that he asks me to bring a Bill in order to vote against it or abstain on it, where it was a remarkable set of circumstances. He asked me to pay for more nurses and then refuses to vote for the cost of more nurses. They ask us to provide for more services and then refuse to vote for the cost of more services. But nothing should surprise us in that context when it comes to the GSD.

If I can just deal quickly with the points that the hon. Gentleman has made and this may help us both in the context of the next Bill, which would raise the same issues, we will not have to say

170 the same things to each other twice, I trust. We have, he is absolutely right, extensively debated, what *he* says is the problem for the Principal Auditor in what he calls the delay in the presentation of these Bills, something which of course we have extensively debated because we do not agree. If we had agreed that this was a delay which causes a problem for the Principal Auditor, we would not have debated, we would simply have agreed.

175 We have debated because we do not agree and I do not want the House to have to hear those arguments again and I am not going to repeat them. But I do think it is not fair simply to say that we have 'debated' these issues without reflecting the fact that there is no agreement there.

We do not agree that the Supplementary Appropriation Bill can usefully be brought *in* the financial year. We think it has to be brought, at least just after the financial year. He will see, 180 Madam Speaker, in what I have told him that this Bill was brought in 2022. I have explained the technical difficulty that we were experiencing and why we could not proceed with it.

We would have wished to have been able to proceed with it before the General Election but we could not because we could not resolve the technical problem that had arisen. When we resolved the technical problem, the Parliament was dissolved. Now with the republication, the 185 issue can be explained and the matter is resolved.

Madam Speaker, we also of course do not agree with what the hon. Gentleman has, I think, *rightly* characterised as *his* interpretation of how things should be done, whether they should be done under Head 54 in keeping with the provisions of section 69 of the Constitution in subsection 3.

190 He rightly said, 'For me it would be better done that way.' Given that the people of Gibraltar have on three occasions rejected his proposal that he should be the one doing it, he will excuse me for saying that we are going to continue doing it in the way that, for me, and for him – Sir Joe – we think it is the appropriate way to do it based on the advice of people like him, namely successive Financial Secretaries who have seen fit to advise us to properly do it in that way.

195 But I would not want to get in the way of accountants having technical arguments. I know that that is as dangerous as getting in the way of lawyers having technical arguments.

Anyway, without prejudice to the generality of the foregoing, I would just say, Madam Speaker, that I believe that this Supplementary Appropriation Bill is one on which we should just quickly reflect that what we are doing is a Supplementary Appropriation for a 24-month year, something 200 very unusual, it has only happened on one other occasion that this Parliament has pretended – in fact I think on two other occasions – that a financial year can be made up of more than 12 months and that was in the year that we introduced Appropriation in 1969 or 1970; and as the Hon. Sir Joe Bossano reminded the House last time, in the time that they were in office for reasons not related to a worldwide pandemic. And that is where I want to end.

205 I want to just remind us that we are dealing here with *the* Supplementary Appropriation of that year, the year that COVID struck, the year that we came together as a community and as a Parliament to deal with all of the issues that we were facing; and it is *that* year's financial appropriation that we are now extending in the way that is set out in the Bill and I commend the Bill to the House.

210

Madam Speaker: I now put the question, which is that a Bill for an Act to appropriate sums of money to the service of the period ended 31st March 2021, be read a second time.

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

215 **Clerk:** The Supplementary Appropriation (2019/2021) Act 2024.

**Supplementary Appropriation (2021/2022) Act 2024 –
First Reading approved**

Clerk: A Bill for an Act to appropriate sums of money to the service of the period ended 31st day of March 2022. The Hon. the Chief Minister.

220 **Chief Minister (Hon. F R Picardo):** Madam Speaker, I have the honour to move that the Bill for an Act to appropriate sums of money to the service of the period ended 31st March 2022 be read a first time.

225 **Madam Speaker:** I now put the question, which is that a Bill for an Act to appropriate sums of money to the service of the period ended 31st March 2022, be read a first time.
Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Supplementary Appropriation (2021/2022) Act 2024.

**Supplementary Appropriation (2021/2022) Act 2024 –
Second Reading approved**

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

Madam Speaker, the purpose of this Bill is to appropriate, again, further sums of money to meet Government expenditure incurred during the financial year ended 31st March 2022. That is to say, this is the financial year *after* that double financial year from 2019-21.

235 The Bill is, therefore, the Supplementary Appropriation Bill required under section 69. (3) of the Constitution to cover retrospectively for the outturn figures for that financial year 2021-22. Hon. Members should note that the £30.8 million required to cover the additional expenditure incurred under the Consolidated Fund represents the amount required in addition to the Supplementary Appropriation provision of £9 million that is already included in the Approved Expenditure under Head 58, which is the Supplementary Provision Head.

240 Madam Speaker, you will see that that £9 million is near half the £20 million that we were dealing with in the earlier Bill because that earlier Bill, when we had brought it, we had sought when we had extended the year to double the period, we had doubled all of the provisional figures that is why we had gone to £20 million and that is why we were now back to just under £10 million to £9 million.

245 A full breakdown of that £40 million, that is to say, the £30.8 million and the £9 million of reallocations to be made from Head, now, 58 and under this Bill it is Head 58. We have added four different heads to the Estimates Book, that is why it is no longer Head 54, and will be tabled in the House at the next available session of Parliament giving all hon. Members a full and detailed breakdown of the heads and subheads for which this Supplementary Provision has been applied,
250 the other components of the Bill are self-explanatory.

Just, again trying to assist Members of this House who may not have gone through this process before, the heads that we are talking about are, what you might call, the sub-chapters of the book dealing with the Departments that there are in the Government; and depending on how a Ministerial reshuffle might affect those Departments, they may be set out in different heads and there may be different numbers of heads each year. That is why the general head that we were
255 talking about and debating before was Head 54 in double financial year 2019-21 and is Head 58 in this financial year, which is 2021-22. I commend the Bill to the House.

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

Hon. R M Clinton: Thank you, Madam Speaker.

265 Again, as I mentioned for the last Bill we obviously welcome this Bill is now before the House; and again I make the same point about the use of the supplemental provision under Head 58 in this Bill.

270 And, Madam Speaker, I note that obviously the last Bill there was no move to the Committee Stage and I would remind the Chief Minister that in the motion that was amended by himself in the last session of this House, he did undertake that this Bill would move through all its stages in the month of March; and I would welcome if the Chief Minister will confirm that that is still his position and of course we will be abstaining on this Bill as well.

Madam Speaker: Any other hon. Member wish to speak. Would the Mover like to respond?

275 **Hon. Chief Minister:** Yes, very much so, Madam Speaker, because on this Bill, hon. Members are *really* hoisting themselves on the petard of their vote against this budget. I gave them the benefit of the doubt last time because in financial year 2019-21, they had voted in favour of that double-year budget, so to speak.

280 But in 2021-22 they were back to his old tricks, if I may call it that, for a simple reason that the hon. Gentleman has said and his colleagues have recognised that he is the person who has led the GSD's view, as Shadow Minister for Public Finance, that they should vote against the budget for the reasons that have been ventilated in various budget debates.

285 So they voted *against* the Bill for the appropriation for the financial year 2021-22 and they are going to abstain on the Supplementary Appropriation. It is a particularly peculiar approach to take to appropriations. So I do point that out, Madam Speaker, because I think it demonstrates the horns of the dilemma on which they park themselves and the difficulty into which *he* – because he has said it is *he* – has led his party in the context of their approach to Gibraltar's budgets.

But be that as it may, Madam Speaker, I welcome the fact that they are not going to vote against it.

290 Finally, Madam Speaker, dealing with the issue of the Committee Stage, I am not moving the Committee Stage today. The Committee Stage has to be dealt with before the House rises *sine die*. That is a procedural reality before we move out of Bills; and therefore before we move to the adjournment *sine die*. He does not need me to confirm anything in that respect. I therefore commend the Bill to the House.

295 **Madam Speaker:** I now put the question, which is that a Bill for an Act to appropriate sums of money to the service of the period ended 31st March 2022, be read a second time.

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

Clerk: The Supplementary Appropriation (2021/22) Act 2024.

**Social Security (Non-Contributory Benefits and Unemployment Insurance) (Amendment)
Act 2024 –
First Reading approved**

300 **Clerk:** A Bill for an Act to amend the Social Security (Non-Contributory Benefits and Unemployment Insurance) Act. The Hon. the Chief Minister.

305 **The Chief Minister (Hon. F R Picardo):** Madam Speaker, I have the honour to move that a Bill for an Act to amend the Social Security (Non-Contributory Benefits and Unemployment Insurance) Act be read a first time.

Madam Speaker: I now put the question, which is that a Bill for an Act to amend the Social Security (Non-Contributory Benefits and Unemployment Insurance) Act be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

310 **Clerk:** The Social Security (Non-Contributory Benefits and Unemployment Insurance) (Amendment) Act 2024.

**Social Security (Non-Contributory Benefits and Unemployment Insurance) (Amendment)
Act 2024 –
Second Reading approved**

Chief Minister (Hon. F R Picardo): Madam Speaker, I beg to move that the Bill be now read a second time.

315 Madam Speaker, our arrangements with the United Kingdom and matters related to Social Security co-ordination have, since 1974, been based on European Union Law. It used to be called European Community Law in those days. An exchange of letters agreed at the time confirmed that the UK and Gibraltar wished to treat each other as if they were separate EU Member States for these purposes. This meant that EU Law applied as between Gibraltar and the UK in accordance with this bilateral understanding.

320 The EU Treaties, Madam Speaker, did not require that because the EU Treaties saw us as one Member State unit we agreed to treat each other as separate Member States *inter se*. On EU exit pursuant to a further exchange of letters, we agreed with the UK that these arrangements should continue between us post-31st December 2020 on a provisional basis. I say ‘provisional’ because 325 it was agreed at the time that this bridging arrangement would eventually be replaced by a more permanent self-standing agreement between the UK and Gibraltar, which would not rely on EU Law.

330 We have, over the course of several months now, been working with UK colleagues to finalise such an arrangement with a guiding principle of not materially altering our relationship with the UK on these matters, and ensuring continuity on the same terms which applied whilst we were both part of the EU. I am happy to be able to report that the text is now agreed and both Governments are making arrangements to give legal effect to that agreement.

335 Madam Speaker, the way in which we will be giving legal effect to the agreement is by using existing powers in our Social Security legislation to implement reciprocal agreements by way of subsidiary legislation. Such powers are already available in the following measures: the Social Security (Insurance) Act, the Social Security (Employment Injuries Insurance) Act, the Social Security (Open Long-Term Benefits Scheme) Act 1997 and the Social Security (Closed Long-Term Benefits Scheme) Act 1996.

340 These powers allow for the Minister, by Order, to make provisions for modifying or adapting these respective Acts to cases covered by reciprocal agreement with the UK, a foreign Government or an international organisation. However, we note that unemployment benefit, which is within the scope of the agreement with the UK, is covered by a different Act, namely the Social Security (Non-Contributory Benefits and Unemployment Insurance) Act. And therefore for the sake of completeness, we are amending this Act in order to introduce similar powers as 345 contained in the aforementioned measures for the purposes of implementing reciprocal agreements.

Madam Speaker, I commend the Bill to the House.

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

350

Hon. Dr K Azopardi: Madam Speaker, we are grateful for the explanation of the Chief Minister in respect of what is behind the Bill, because the explanatory memorandum is rather succinct, so it did not have all that information. On that basis we will support this Bill.

355

Can I just ask for clarification from the Mover because he has spoken at length about the arrangements with the UK, but of course the enabling provision relates to not just the UK but any foreign country or an international organisation: is there an intention that in the future this would be used in respect of other agreements and indeed, for example, is this something that once there is this enabling provision would allow the mechanism to be used in the context of the proposed treaty with the European Union?

360

Madam Speaker: Would the Mover like to respond?

365

Hon. Chief Minister: Madam Speaker, with your leave, the clause as I understand it is identical to the clause that is contained in all of the other powers that I have referred him to. In other words, I am not making this amendment in any way which I am advised is different to the power that is contained in the other Acts that I referred to; and the only live issue and the only live intention relates, as I have told the House, to the arrangements with the United Kingdom.

370

The hon. Gentleman has asked me what I believe would have been considered to be, in Question Time, a hypothetical question but we are in debate, so different rules apply. The only answer I can give him is that there is nothing, as far as I can recall – and if others recall they might whisper in my ear, but I do not think there is anything like that in the context of the negotiation – which might require an arrangement to be reflected in this way.

375

There may be other arrangements reflected in a different way, but it may be that in the final weeks of compression in the discussion it does, in the context of the EU-future arrangements, lead to something having to be certified or provided for under this Act or the other Acts that I have referred to in the context of Social Security, etc. But there is nothing, at the moment, which would require it and other arrangements are being discussed which do not require this sort of arrangement. But that may change is all I can say, Madam Speaker.

380

But I commend the Bill to the House.

Madam Speaker: I now put the question, which is that a Bill for an Act to amend the Social Security (Non-Contributory Benefits and Unemployment Insurance) Act be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

385

Clerk: The Social Security (Non-Contributory Benefits and Unemployment Insurance) (Amendment) Act, 2024.

Civil Aviation Authority Act 2023 – First Reading approved

Clerk: A Bill for an Act to provide for the establishment of the Civil Aviation Authority, its functions and composition and for connected purposes.

390

The Hon. the Deputy Chief Minister.

Deputy Chief Minister (Hon. Dr J J Garcia): Madam Speaker, I have the honour to move that a Bill for an Act to provide for the establishment of the Civil Aviation Authority, its functions and composition, and for connected purposes, be read a first time.

395 **Madam Speaker:** I will put the question which is that a Bill for an Act to provide for the establishment of the Civil Aviation Authority, its functions and composition and for connected purposes be read a first time.

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

400 **Clerk:** The Civil Aviation Authority Act 2023.

**Civil Aviation Authority Act 2023 –
Second Reading approved**

405 **Deputy Chief Minister (Hon. Dr J J Garcia):** Madam Speaker, I have the honour to move that the Bill be now read a second time. I want to explain at the outset that the Government had volunteered to brief the Opposition privately on the purpose of this Bill. However, this proved to be logistically difficult to arrange, owing to diary-drafting and technical issues on our side. In any case, my contribution on the Second Reading will now set out the position clearly.

410 Madam Speaker, the existing Civil Aviation Act of 2009 was a landmark piece of legislation in its day. It reflected the new relationship between the United Kingdom and Gibraltar which followed the 2006 Constitution. This was seen in the acceptance by the UK that Gibraltar should legislate for itself in the field of civil aviation. In addition to this, in the fact that we should also have our own competent authorities.

The 2009 Civil Aviation Act established the Office of Director of Civil Aviation with the Director being responsible to the Minister for the discharge of his duties and his functions.

415 Madam Speaker, the time has come for both the Civil Aviation Act of 2009 and the Office of Director of Civil Aviation to be updated and replaced. First, because there is a need to provide a legislative framework and a competent authority that better meets our international obligations. Secondly, to prepare the ground for the establishment of Gibraltar's very own aircraft registry.

420 In 2022 the Government entered into an agreement with an experienced aviation industry operator to develop, operate, market and manage the Gibraltar Air Registry. That agreement followed a tender process. This came about as a consequence of a pledge made in our 2019 and 2023 General Election manifestos.

425 Former ministerial colleagues Gilbert Licudi and Vijay Daryanani each led on the detail of this project through their responsibility for commercial aviation during their time in office. It was subsequently inherited by my friend and colleague, the Minister for Tourism, Minister Santos. I am introducing the Bill today to the House on behalf of the Government given my responsibility for civil aviation and how this impacts on the Civil Aviation Act.

430 So, Madam Speaker, the establishment of an aircraft register will benefit Gibraltar. It will provide opportunities for new business development, for employment and a platform for an aggressive marketing campaign throughout the aviation world. Aircraft registries exist already in small states like Aruba, San Marino and the Cayman Islands. Crown dependencies, too, like Guernsey, have proved that their aircraft registries have the potential to generate economic activity and economic growth.

435 In order to assist with the development of an aircraft registry, the current Office of Director of Civil Aviation will be replaced by a Gibraltar Civil Aviation Authority. This is a new organisation established under this Bill to meet the demands of an aircraft registry. It will become the new competent authority for Gibraltar on aviation matters. This Act will go hand in hand with a new Civil Aviation Act, which will replace the Civil Aviation Act of 2009. That Act will continue to regulate the aviation industry, to oversee the proposed addition of aircraft services related to the registry and to ensure Gibraltar's compliance with the Chicago Convention and other international obligations.

440 The new Civil Aviation Act is also on the agenda to be read in this House shortly.
Madam Speaker, permit me to summarise the important areas of each part of this Bill.

Part I states that the Bill would only come into operation on such day as a Minister appoints in the Gazette and the Minister may appoint different provisions for different purposes. The intention is to commence the Act at the same time as the new Civil Aviation Act. However, this
445 provision, along with the powers of repeal, will allow the Government to commence parts in stages if necessary in order to achieve a seamless transition from the old legislation to the new one.

Part II establishes the Gibraltar Civil Aviation Authority as a body corporate, which will consist of a Director General appointed by the Minister. It will include no less than three suitably qualified
450 and competent persons in the field of civil aviation, appointed by the Director General and a legal officer. The Authority's functions and powers are clearly set out, as well as the requirements for the Authority to maintain records, registers and to establish and maintain programmes required by the International Civil Aviation Organisation.

Part III addresses the administration of the Authority with funding and with financial provisions, as well as the duties, powers and directions of the Minister. It provides for the
455 establishment of an independent board to provide oversight and administrative and financial sense. This Part also establishes the appointment of the Director General with functions, powers and the co-ordination with the Minister.

Part IV addresses miscellaneous provisions such as aircraft accident investigation, co-operation
460 with responsible authorities, protection of officers and employees, the Governor's constitutional responsibilities, as well as transitional arrangements and regulation-making powers to repeal provisions contained in the Civil Aviation Act of 2009.

It must be emphasised, Madam Speaker, that nothing in this new legislation would affect the existing responsibility of the Governor under the Constitution for defence, internal security or any
465 other matter for which the Governor may have responsibility. The Constitution, function and procedures relating to the board are also set out at the end.

Madam Speaker, it has long been the policy of the Government to establish an aircraft register in Gibraltar. This Bill sets out the broad framework under which that can happen through the
470 establishment of a Civil Aviation Authority. It reflects a technical and legal advice that the Government has received. The next Bill on the Order Paper, among other matters, establishes the actual aircraft registry itself. I commend the Bill to the House.

Madam Speaker: Before I put the question, does any hon. Member wish to speak on the general principles or merits of the Bill?
475

Hon D J Bossino: Yes. I see that the Hon. the Deputy Chief Minister has spoken in respect of both Bills, that is the Civil Aviation Authority Bill and the Civil Aviation Bill. And by way of preliminary comments I must say that we are slightly disappointed that we never had the
480 opportunity to take up the hon. Member's invitation and meet on these legislative initiatives.

In fact, the meeting was set up for a day in mid-January and then it was cancelled, presumably until further notice, and on this side of the House because it was the Leader of the Opposition and myself who were each invited to this meeting. We were expecting a new date to be scheduled.

Unfortunately, that has not happened but we were then operating under the assumption that although these Bills were set out in the agenda of the House, they would not be taken until we
485 had that meeting; and we, in fact, only had notice that the hon. Member opposite was going to be pursuing these Bills when we received the timetable literally about an hour before the start of this session.

Be that as it may, as far as the principles of each of these Bills are concerned the Opposition has no major difficulties and it is mindful – and I use that word carefully – to support these Bills.
490 But save that we have issues in relation to some of the wording – and I will take the hon. Member and the House through it – such that if I would suggest and commend to the hon. Member that

he does the same as the Hon. the Chief Minister in relation to the other Bills, and not take this to the third stage, the Committee Stage, because I think that would give us an opportunity to raise these issues, which I would have raised at the meeting and I think been successful in persuading
495 him at least as far as 80% or 90% of the suggestions are concerned, to make the necessary amendments or at least have a discussion with him and then he would have had the opportunity to have persuaded me otherwise.

So if I can, respectfully, Madam Speaker, recommend that he take that course of action.

In terms of one of the other macro points I would like to raise, I would ask him to enlighten this
500 House as to what is the nature, does he have any idea of what Government's resources will have to be employed in order for all these things as set out in the Bills to happen?

So, for example, the setting up of the aviation register which in principle is something that we certainly support as another economic-generating activity for Gibraltar, which is particularly and sorely needed, but also in terms of the administrative aspects of the discharge of the
505 responsibilities of the Civil Aviation Authority and the individuals that that Authority will be employing. I would ask him, please, to address that in his response and his reply. And that applies to both Bills.

The hon. Member, I think I am right in stating that he has presented these two together, and therefore I will do the same in response.
510

Madam Speaker: Can I stop the hon. Member there? What is before the House at the moment is the Civil Aviation Authority Bill, only.

Hon D J Bossino: I would proceed on that basis, but I am simply responding to the hon. Member who I think addressed this House in respect of both Bills. He is shaking his head. I will certainly
515 focus my attention on the first Bill before us, which is the Civil Aviation Authority Bill.

Can I take the hon. Member, firstly, to clause 4(5) which states that the authorities shall designate a member of staff to be the Secretary of the Board; and whilst there is, perhaps, a more granular aspect of that which I would object to in the sense that I think there ought to be more
520 uniform language used with the rest of the Bill, which talks about an employee of the Authority rather than a member of the staff of the Authority, and I would invite him to consider that.

But that is something that if he were to take me on board on the invitation that I have suggested that we deal with this on another occasion, it is something that he and I can consider more carefully.

But I think the more important point in terms of the principal here, is whether he does not consider that that particular provision clashes with Schedule 1 of the Bill, sub-paragraph 11, in terms of the appointment of the Secretary given that that provision, I have just referred the House to, talks about the designation by the Director General himself or herself to be the Secretary to the Board as opposed to the Authority. So there is, I think perhaps, a more substantive point there
530 in terms of lack of uniformity and lack of power and authority.

Also, Madam Speaker, clause 5(2)(a) refers to the Chairman, there is an issue here also of uniformity of language where there are other references to Chairperson in the Bill. But also, furthermore and perhaps more substantively so, is to make the point that the Chairman is not a defined term in the Bill as it currently stands.

If I can move the House to clause 6(d) which makes a reference to:
535

... an adequate system of air navigation ...

and it makes a further reference to:

... as may be the subject of a treaty or international agreement that applies to Gibraltar.

And I would simply put this to the hon. Member to state whether there are any Brexit treaty issues which he considered when he instructed the relevant individuals to draft that clause in that particular fashion.

540 Moving on to clause 6(p), when it talks about the performance of the Authority's functions in accordance with 'sound financial principles' and it obliges the Authority to ensure, as far as possible:

that its revenue is sufficient to meet expenditure properly chargeable to its revenue.

545 How is the Authority to be funded, is the question? In other words, is this something which is going to be drawn, and I assume that the answer to the question would be in the affirmative, is going to be drawn from the Consolidated Fund; and then thereafter is it the intention whether at some point in time the Authority will be self-financing, but there will be an initial outlay in terms of costs to the Gibraltar Taxpayer? And I would ask the hon. Member to enlighten this House as to what that initial outlay will amount to and for how long he expects that to be the case.

In relation to clause 7(2)(c) again this is a financial provision question which talks about

in accordance with the provisions of financial estimate provided under section 22 ... appoint and employ at such remuneration and on such terms and conditions as it [the authority] thinks fit, any officers, staff or agents it considers necessary to carry out its functions;

550 That is a very wide power but which requires to be funded and it basically links in with the point I have just made. But I would add a further layer to that and ask the hon. Member to state whether the Government will have any oversight in terms of the expenditure, or is it simply that the relevant authority is going to have complete independence in relation to how it spends its money; and if that is the case then that is, I think, an issue which would give us some cause for concern.

555 One other granular point – and I would ask him, I think for the sake of *Hansard* and for my sake because I simply do not know what he is referring to in clause 9 when it talks about Article 83bis to the Convention. I assume it is a specific, although oddly set out I think, clause of the Convention or Article of the Convention and I would ask him to enlighten this House as to what that is. But
560 I think it will be useful to have that, if he has that information available, recorded in *Hansard*.

Again, Madam Speaker, there is a reference to a cost financial issues in clause 14(4) where it says that there is an obligation on the Minister – in this case it would be himself for now – to ensure that 'the Authority is provided with sufficient resources'. So there is clearly a statutory –
565 should this be passed – obligation on the Minister to ensure that the Authority is sufficiently resourced. But then it seems that the Authority can do whatever it likes with its money and it will be on a completely and utterly arm's-length relationship insofar as the financing of its activities are concerned. And, as I said earlier, that does give us some cause for concern.

Moving swiftly on to clause 15 and there are various points I wish to raise here. The way this is set out in 15(1) it says that the Minister, in effect, because of the use of the word 'may' has the discretion to consult with the Board in relation to the things which are then set out thereafter.
570

However, in clause 15(1)(c) one of those Items and I shall read it out: 'The Minister may, after consultation with the Board, give any such directions as may be specified by the Governor, in the interests of the security of Gibraltar.'

575 Now the issue I have here is, is there not a tension and a potential clash if one considers the provisions of clause 29 which I think quite rightly carves out the constitutional responsibilities of the Governor in relation to defence, internal security or any other matter for which the Governor may have responsibility in exercise of his constitutional powers. And the hon. Member made a reference to it in his initial intervention when presenting the Bill.

580 But surely, if the Governor has concerns in relation to the security of Gibraltar, then surely his wishes or his directions in relation to this will have to be complied with in order to comply with the Constitution and not be the subject of a discretion on the part of the Minister, after

consultation to the Board to give directions in this respect. I think that raises a potential constitutional issue which ought to be reviewed; and I would repeat, on a third occasion, the suggestion that these things be considered a bit more carefully rather than across the floor of the House on a Friday afternoon at 4 p.m.

585

A more specific and hopefully easier point for the hon. Member to address is that there is, what appears to be, a defined term, 'Directions' but it is not defined as far as I can see. So that is the hon. Member will find it in 15(1)(a).

590

The other point I would wish to raise with him and if I can take him to clause 20, subclause 5, where the Minister is empowered, under the Bill, to *request* the Director General to furnish to the Governor such information as the Governor himself may request of the Director General. So it is Governor requests presumably the Minister, and then the Minister requests the Director General in respect of those matters which fall under the Governor's constitutional responsibilities, and then there is also to permit the Governor to have access to, at the Governor's request, copies of documents and all the rest of it.

595

Surely, the language there should be much firmer than a simple request by the Minister of the Director General and should have wording like, for example, 'to direct', which in fact would be more akin to the language used in clause 18(3)(e) and clause 15. So, there is already precedent in other parts of this Bill which makes a reference to this more firm and direct language. And I say that I would venture to suggest, that this is more appropriate in this context given, once again, that we are dealing with an approach which in these circumstances would have been made of the Minister by His Excellency the Governor, and we need to be mindful of the constitutional realities which I think this Bill has tried to do, but has not gone the extra mile it needs to.

600

Madam Speaker, if I can take the House to clause 22(1), where there is an obligation on the Director General to prepare a report on the financial activities of the Authority and then to submit such a report to the board, and I ask the hon. Member whether a consideration could be given to the possibility of having those reports, given that we are dealing with the financial activities of the of the Authority; and I imagine that there will certainly be an initial cost on the Taxpayer that those reports should be laid before this House rather than exclusively to the board.

605

In terms of the clause 31, just by way of general comment, it is something that we on this side of the House have seen featuring more and more in the legislation that is emanating from the benches opposite, where the Minister is given power by the House by subsidiary legislation, i.e. by regulation, to 'repeal or modify any provision contained in the ...' primary legislation in this case, not the one that we are debating now but the sister Bill, if I can put it in those terms, i.e. the Civil Aviation Act of 2009.

610

615

Although there is a reference to ... I had assumed, I think I have read that incorrectly, that it would have been to the one that is going to be introduced now, but the hon. Member may be able to clarify those doubts. The point of principle, which may be less offensive than I thought if I had made an error, or indeed the draughtsman has made an error in terms of the reference to the Act, still stands. That, I think, we are seeing that almost as a practice that by subsidiary legislation a primary legislation can be amended without bringing it for debate and a vote before this honourable House.

620

I think this is also a drafting error, I assume, but I think whilst at first blush it may seem ... Well, I think it is a simple point which can be addressed unless the Hon. Member has a different policy thinking in relation to this, I can take him to Schedule, Paragraph 1. subclause (6) and it says, unless I have read it incorrectly: 'A person appointed as a Member of the Board' and there were various Members of the Board – 'shall have knowledge', so this is every single individual who is appointed to the Board, that is the way I interpret it, but he can give it, I think, a more logical interpretation and I think it would be useful that he does so for the sake of future interpretation of this clause in *Hansard*: 'shall have knowledge and experience in aviation matters, finance and the law.'

625

630

So one individual has to have experience and knowledge of all these three. I dare say he will either be very difficult to locate or certainly very expensive; and not if you are dealing with more

than one individual. I assume the intention is that it will be 'or' rather than 'and'. He or she does not have to be an expert in all these three different fields

635 Other than that, Madam Speaker, there are other instances of the points that I have already made in terms of the references to staff or juxtaposed with employee of the Authority to member of the staff. All those issues are tidy-up issues which, I think, if he and I had an opportunity to discuss behind the Speaker's Chair we would reach a point and a place where we would have a much better piece of legislation.

640 Simply, if I may also as a final point, take him to paragraph (4) of the Schedule so that 4(2) ... I am assuming if one reads 4(1) and 4(2) together, that 'A Board member' will be able to continue to have 'a financial interest in any aviation business' so long as he declares it and so long as he then also meets the other criteria that he does not 'control, manage or operate any aviation business while in office.'

645 I am not too sure whether the language there is clear enough but I would ask him, please, to provide that clarity if he can across the floor of the House, because it seems odd that the legislation as it currently stands, the Bill as it currently reads, allows him to retain that financial interest but he cannot control, manage or operate it so long as he then also declares it.

650 And with that, I think, I hope, I have managed to assist him and the House in achieving, hopefully, a better piece of Law.

Madam Speaker: Does any other hon. Member wish to speak? Would the Mover like to respond?

655 **Hon. Deputy Chief Minister:** Madam Speaker, I am grateful to the hon. Member for his contribution and his comments regarding different aspects of the Bill. Clearly, if he had been briefed and he had more time, he would have been here twice as long given the extent and the detail to which he has gone. I am very grateful for that and also for their support for the principle of a register and for the qualified support in general in relation to this Bill.

660 To clarify, as Madam Speaker clarified in her intervention, I have not spoken on both Bills, but there are aspects of one Bill which reflects on the other, so I needed to cross reference one and the other. It was only my contribution on one of the two Bills before the House on this subject.

665 The hon. Member said that they only had a one-hour notice that the Bill was going to be taken today. The hon. Member knows a Bill was first published on 10th August 2023, it was then republished on 8th December 2023 as a result of the General Election, so it has been on the agenda of Parliament for a considerable amount of time. Although I accept that he may have expected a briefing, but that sadly it was not possible, although it was something which the Government volunteered and offered, it was not that they requested a briefing, the Government offered to brief them as I understand it. The Bill we are going to consider later was published on 670 19th January.

So in all cases, the Bill has been on the agenda of the House and has been published for some time.

675 The Government does not intend to take the Bill to Committee Stage now, so there will be an opportunity to discuss, in some more detail, some of the issues that he went into. I will provide an overview now of some of those, but we do not intend to take the Bill to Committee Stage.

680 The Member referred to the question of resources and how would those be employed. This is modelled on other Government authorities, which already exist. There are some aspects which are taken directly from other similar situations and there are others which are taken from the Civil Aviation Act of 2009. So they are not new. Some of the points as referred to are not new to this Act they are also in other pieces of legislation in our Statute Book.

The Member referred to in 4(5) the question of a Secretary to the Board and the reference to that Secretary as a member of staff and not as an employee. That is perhaps, to an extent, semantics but it is something that we can look at and to see whether it is something that can be

685 tightened. He also referred to the fact that the term *Chairman* is used and the term *Chairperson* is also used in the same Bill, so that will certainly need to be tidied up.

In relation to 6(d) related to treaty issues, this is unconnected to any treaty that Gibraltar may be negotiating at the moment. This Bill has been in preparation for a considerable amount of time. I referred to the fact that my colleague, ex-former colleagues Gilbert Licudi and Vijay Daryanani were both the ones dealing with the detail of it. I came into it later on.

690 In 6(p) he referred to the revenue issues and where the funding would come from. Like other authorities the funding is from the Taxpayer. The intention is that the Authority would be self-financing and self-funding after a certain period of time. The Member referred to the question of oversight of expenditure in 7(2)(c), like other authorities, other bodies of this nature that exist, the funding is voted by this House and the oversight is provided in this House.

695 In relation to 9(4) and the reference to 83bis, that reference is taken, as I understand it, from the Chicago Convention which is in general the convention that this Act refers to. In relation to the resources, his resources point in 14(3), I think I have already covered that when I have mentioned the way in which the Government intends to do that.

700 In 14(4), I should say, if it looks at 14(4) he will see there that the resources provided are qualified in the sense that they have to be in the reasonable opinion of the Minister. That is taken from the old Act which said reasonable opinion of the Government, this says of the Minister. So, again, it is a question of wording but many of these terms are taken from legislation, as I said, which already exists.

705 In relation to 15(1)(c) the hon. Member referred to the directions given by the Governor in the interests of security and the Bill has, as he correctly identifies and as I mentioned in my opening contribution, the Bill is playing that delicate balance between the powers of the elected Government of Gibraltar and the powers of the Governor of Gibraltar.

710 Civil aviation was always a UK responsibility, until the Act of 2009 came in bestowing those powers on the Government and at the time that was done by carving out the Governor's powers of security and emphasising the point, as this Bill does and as the next one also does, that the Governor's powers of security are not in any way impacted over security issues in any way impacted by this Bill.

715 So in relation to 25 the hon. Member made a point as to the use of the word 'request' and said – (*Interjection*)

Hon D J Bossino: In relation to that particular clause, I am grateful for the answers that he is providing to the points I have raised, but how is that tension resolved? In other words, as it is currently drafted the Minister retains, it seems, that discretion to then direct the Director General, but on the strength of a request which has been made by the Governor, this is the point that I am not too sure of, as it is currently drafted.

720 Whilst he is absolutely right to say that there is that constant tension between the elected officials in Gibraltar with the fact that the Governor retains certain constitutional powers and authority I am not sure, with the greatest of respect to him, that he has answered that specific point about the retention of discretion because of the use of the word 'may' and the provisions of 15(1)(c).

730 **Hon. Deputy Chief Minister:** I thank the hon. Member for that contribution and request for clarification. This is a way in which this constitutional issue has been settled in this legislation and in similar pieces of legislation in the Statute Book. So it follows a set procedure which will already exist and I understand the point that he is making.

735 So on 25 the hon. Member raised the question of using the word '*request*', the Minister requesting the Director General, and I do not see any issue with that bearing in mind that in clause 21 it says the Director General '*shall*' give such information, advice and assistance to the Minister as the Minister considers appropriate. So I think it is covered by what comes previously, his point is covered by what is there already in 21.

The Member asked whether the Government would consider tabling the report referred to in section 22(1) in this House. That is something the Government would be happy to consider as a matter of policy, not necessarily to put in the legislation at Committee stage, but certainly we would be happy to consider it.

740 In Section 31 the hon. Member refers to the ability to change primarily legislation by regulation. That again is not new, that is something which is very common in legislation in Gibraltar, I think, that was invented by the hon. Members when they were in Government and was a practice which we took on board and have simply continued.

745 So it is not anything new or different to the way the hon. Members were doing it themselves. In this case because there is a practicality of needing to change the 2009 Act to bring in different pieces of the new Act at the same time, it makes sense to have that power by regulation, rather than to have to come back to the House on each and every occasion that a change needs to be made.

750 In 4(2) of the Schedule, the hon. Member referred to the point of the financial interest and I think his interpretation is correct. I agree with the interpretation he gave, which is that a board Member or close family member shall not control, manage or operate any aviation business while in office. But what they can have is a financial interest in an aviation business, and they are supposed to make a full disclosure of such an interest to the Minister. That is the interpretation that he gave to the drafting interpretation, which I give also.

755 **Hon. D J Bossino:** Just before the hon. Member sits down, I think, I sensed that he was just about to conclude because in fact it is the last point that I made and I am grateful for the hon. Member to have given way now, for a second occasion. But only simply to point out that I think he has missed, unless I have missed it, his response to the point that I made in respect of schedule of paragraph 1(6) of the Schedule, which dealt with the expertise that each Member of the Board is, at least as currently drafted, expected to have.

Hon. Deputy Chief Minister: Madam Speaker, yes, the Government would be happy to look at that before it gets to Committee Stage and see exactly what the intention of the drafters were.

765 Madam Speaker, I commend the Bill to the House.

Madam Speaker: I now put the question, which is that a Bill for an Act to provide for the establishment of the Civil Aviation Authority, its functions and composition and for connected purposes be read a second time.

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

Clerk: The Civil Aviation Authority Act 2023.

Civil Aviation Act 2024 – First Reading approved

775 **Clerk:** A Bill for an Act to repeal and replace the Civil Aviation Act 2009, to modernise the regulation of civil aviation in accordance with the international obligations of Gibraltar under the Convention on International Civil Aviation, to make provision for the establishment of an aircraft registry and for connected purposes.

The Hon. the Deputy Chief Minister.

780 **Deputy Chief Minister (Hon. Dr J J Garcia):** Madam Speaker, I have the honour to move that a Bill for an Act to repeal and replace the Civil Aviation Act of 2009, to modernise regulation of civil aviation in accordance with international obligations of Gibraltar and of the Convention on

International Civil Aviation, to make provision for the establishment of an aircraft registry and for connected purposes be read a first time.

785 **Madam Speaker:** I now put the question, which is that a Bill for an Act to repeal and replace the Civil Aviation Act 2009, to modernise the regulation of civil aviation in accordance with the international obligations of Gibraltar under the Convention on International Civil Aviation, to make provision for the establishment of an aircraft registry and for connected purposes be read a first time.

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

Clerk: The Civil Aviation Act 2024.

Civil Aviation Act 2024 – Second Reading approved

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

795 Madam Speaker, I touched upon some of the reasons for the introduction of this Bill during the second reading of the Civil Aviation Authority Bill.

I apologise to the House for the unavoidable repetition in this contribution given that the two pieces of legislation, although separate, deal with subject matter which is connected. As hon. Members know, the Bill is driven both by technical and by policy considerations. The technical driver has been the need to replace 15-year-old legislation in order to better meet our international obligations. The policy objective is to secure the establishment of a Gibraltar Aircraft Registry and the regulatory oversight of aircraft on such a register.

800 The Civil Aviation Authority Act establishes the Gibraltar Civil Aviation Authority. This body, as I just set out earlier, will become the competent authority for Gibraltar. That legislation, together with this Bill for a new Civil Aviation Act 2024, will form the foundation of a new legislative framework for civil aviation.

805 Madam Speaker, this Bill will enable the Authority to regulate all aspects of the aviation industry, to oversee the proposed addition of aircraft and services related to the aircraft registry, and to ensure Gibraltar's compliance with the Chicago Convention and those international obligations that extend to us. I proceed to summarise, in more detail, the more important parts of this Bill.

810 Part I states that the Act would only come into operation on such day as the Minister appoints in the Gazette and the Minister may appoint different provisions for different purposes. The intention is to commence this Act at the same time as the Civil Aviation Authority Act. However, this provision on implementation, along with the powers to repeal, will allow us to commence parts in stages if necessary in order to achieve a seamless transition from the existing Civil Aviation Act of 2009.

815 This Part also includes an application provision setting out who the Act will apply to. It will include aircraft, persons and organisations holding a Gibraltar Aviation document, even if they are outside of Gibraltar. Having said that, the Bill will not alter the existing arrangements regarding RAF Gibraltar, the MoD, military equipment or the armed forces of any State.

820 Madam Speaker, Part II sets out the actual administration of civil aviation. It defines the responsibilities of the Minister. It designates the Authority as a competent authority for the administration of this Act and it sets out the obligations of this Authority under the Convention on International Civil Aviation.

825 Part III sets out how civil aviation will be regulated and includes provision relating to aircraft registration, aircraft operators, both Gibraltar operators and where appropriate foreign air operators using the Airport, insurance requirements and the carriage of dangerous goods by air.

830 In order to regulate civil aviation an aviation document will be issued to persons, services or
entities involved in civil aviation. This document may be a licence, a permit, a certificate or any
other document issued by the Authority. An aviation document can only be granted or renewed
to a 'fit and proper person' as defined in the Act. The aviation document will require compliance
with conditions and may be varied, suspended or revoked by the Authority.

835 So the Authority also has the power to issue administrative penalties. An administrative
penalty is a civil fine that may be imposed for non-compliance with the conditions of an aviation
document or regulations made under the Act and the criteria for its imposition, as explained in
the Bill. The Authority must issue guidance on the use of administrative penalties and this guide
must be approved by the Minister. Such fines are subject to review by the Director General and
there is further recourse to appeal to the Supreme Court.

840 Madam Speaker, this Part also includes powers to make regulations in respect of civil aviation
safety and security matters, as well as for the use of Winston Churchill Avenue. In addition, there
is also a provision whereby the Director General of the Authority may make operating regulations
in accordance with the annexes to the Convention on International Civil Aviation, for which the
Authority is responsible.

845 There are 19 annexes that fall into this category and those annexes are amended by the
International Civil Aviation Organisation on a periodic basis. The Act allows the Authority to
directly update the operating regulations for any annexe amendments in a timely manner. This
concept is recommended by the International Civil Aviation Organisation itself and the Minister
will retain oversight of the technical legislation by being consulted prior to the operating
regulations being gazetted.

850 Part IV addresses the aeronautical lighting and operations at and outside Gibraltar Airport, as
well as the operation of the civil airport and the civil air terminal. A plan depicting Gibraltar Airport
is included in the Schedule to the Bill. These provisions are essentially unchanged from the Civil
Aviation Act of 2009.

855 Madam Speaker, Part V addresses air navigation services and retains the requirements of the
Civil Aviation Act of 2009.

Part VI addresses liability for aircraft trespass, nuisance and damage and also retains the
requirements of the Civil Aviation Act of 2009.

860 Part VII addresses miscellaneous provisions not captured in the previous parts. It covers
documentation, psychoactive and prohibited substances, infringement of aircraft parts, and the
authority of the commander of a Gibraltar-registered aircraft. The last provision, together with a
section on endangering the operation of occupants of an aircraft, formed part of our international
obligations under the Tokyo Convention, which applies to Gibraltar.

865 Part VIII contains inspection and enforcement powers available to the Authority and
authorised persons in respect of this Act, regulations and operating regulations. It also permits
the Authority to prevent a flight in circumstances where that flight may constitute an offence
against this Act, regulations or operating regulations.

870 The primary purpose of the Authority is to oversee the operation of aircraft to ensure flight
safety. However, whenever contravention of this Act, regulations or operating regulations is
identified then enforcement action may be warranted. This part sets out the enforcement action
that can be taken in such an event.

Part IX describes, in detail, the offences under this Act, including the jurisdiction of offences
and penalties that may be imposed on persons, including persons acting under a body corporate.

875 Part X addresses the Governor's role, transitional arrangements and repeals. Once again it
must be emphasised, Madam Speaker, that nothing in this new legislation would affect the
existing responsibility of the Governor under the Constitution for defence, internal security or any
other matter for which the Governor may have responsibility under it.

Madam Speaker, I commend the Bill to the House.

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

885 **Hon. D J Bossino:** For two reasons this will be shorter. The first one being that, I think, some of the wider principled points have already been debated in the context of the other Bill; and secondly on the assumption, I think it will be an accurate assumption, that we will not be moving on to the Committee Stage on this one, then should there be any more granular specific issues to be dealt with and addressed, then I will take that opportunity in the interim to discuss those with the hon. Member opposite.

But some points of clarification, if I may, Madam Speaker.

890 In relation to the register which he spoke about when he first stood up which, I think, is a very interesting proposition and a novel one for Gibraltar as far as I understand it and I would ask him to address two points. The first one is where is the register likely to be housed? How does that operate from an administrative on-the-ground perspective, so to speak? And secondly, does the hon. Member, does the Government have an idea as to numbers? In other words, is there a projection as to what the likely economic growth which he referred to, is likely to achieve? What 895 is he thinking of in terms of numbers, so to speak? That specifically arises from clause 9, which is the clause which sets up the register.

I am assuming, but that is something that we can raise, I think, separately, that a lot of these provisions he refers to, international obligations to which we are subject, are in order to implement and give effect to those obligations. In that context, I see, what at first blush seems a 900 rather scary thought, the circumstances which could arise when you are talking about ‘an article, an animal or a person falling from an aircraft while in flight, taking off or landing’.

Perish the thought! But I am assuming that, so that comes from one of the international obligations the hon. Member refers to and that is set out for his own edification in clause 47.

905 If I can take him, briefly, to clause 37 which sets up the appointments of an operator of the civil airport, what is it that we are talking about here? Is it the intention that a current post holder who may be managing the airports at the moment would take that role? Or, is it the intention that somebody new outwith those current arrangements would be appointed?

Penultimately, in clause 55 which is in Part VIII of the Bill under Inspection and Enforcement, it does give the Director General, once again, I think wide powers of independence to appoint in 910 writing persons to conduct inspections generally; and these individuals are defined as ‘authorised persons’.

915 So this may not be a fair question to ask of the political individual responsible for this, but does he have an idea – given that in this sense it is a fair question to ask, given that this is an outlay cost that we will be meeting, I assume the Taxpayer, that is – how many individuals are envisaged in order to carry out those inspections?

920 Finally, Madam Speaker, in relation to clause 45, which refers to the air traffic control service provider and sets out the duties and obligations that that particular entity will have. I do not think I have identified a specific definition for ‘air traffic control service provider’. So it just appears there, I think, for the first time in the Bill – although I may be mistaken – and I would ask him to address that.

925 But secondly, more specifically, does he envisage any changes in terms of the current arrangements, as I understand it this is currently, I think there are contractual arrangements which the Ministry of Defence enters into with a private service provider, which I think provides services across the UK, whether those arrangements he thinks are likely to be changed as a result of the introduction of this Bill?

Madam Speaker: Any other hon. Member wish to speak? Yes.

Hon. R M Clinton: Thank you, Madam Speaker.

930 Following on from my colleague to the right, if I could ask the Minister given the Section 37(1), where it says ‘Minister *may* appoint an operator’, can he tell the House whether he envisages any changes to the current arrangements with Gibraltar Air Terminal Limited; or is he actually looking to get some other operator, or do they have some other scheme of arrangement in mind?

935 Then secondly, Madam Speaker, I do not claim to be any aviation expert, but I have just noticed online there is something called the Defence Safety Authority, which the Minister is probably aware of, and they actually have an RAF Gibraltar Defence Aerodrome Manual which is extremely detailed. But in the introduction it says that this applies or this manual is written to ‘inform and direct military and civilian aircrew’. I just wonder whether the Minister can enlighten the House as to how any interaction between military directions and this Authority’s directions will be
940 resolved.

Madam Speaker: Any other hon. Member wish to speak? Would the Mover like to reply?

Hon. Deputy Chief Minister: Thank you.

945 I thank the hon. Member, first of all, the Hon. Mr Bossino for his comments, support and for his brevity also. The first questions were in relation to the actual register. So I should explain, I said in my initial contribution that there was a contract signed with the Government and a commercial entity following a tender in 2022, something I was not involved in myself and my colleagues, who are no longer in the House with us carried that out and signed the contract.

950 But in terms of the arrangements, where he asked where would it be housed and what are the numbers, it may be helpful just to give an overview of what that entails, I think that will probably answer the question. The arrangement was entered with a company called Aircraft Registry Group (ARG) based in Miami, so it is an American entity. The intention is that they would administer and market the register on behalf of the Government. So they would provide a pool of trained
955 inspectors.

When the hon. Member talks about inspections in clause 55 of the Bill, these are not inspections carried out in Gibraltar. They are inspections carried out on Gibraltar-registered aircraft wherever the aircraft might be. So in some way, I suppose, in relation to the shipping registry, we send out people from here or from the maritime authority to go and inspect our vessels, and this operates in somewhat a similar kind of way, according to the to the way I have
960 understood it.

So the inspectors are provided by this entity, experienced and trained, and the Civil Aviation Authority would delegate its powers of inspection to them to go and inspect Gibraltar-registered aircraft. The entity in question already provides similar services to the Registry of Aruba, since 1995, and this kind of support to San Marino since 2012. So those two are established
965 aircraft registers with excellent reputations and both have seen considerable growth.

So to answer his question about the projection for growth and the numbers: yes, there are numbers; and yes, there is a projection for growth which predicts that over a number of years the Registry will break even.

970 So in terms of the other parts of the legislation before the House today, yes this is the transposition if you like, of international obligations. Many of them are repetitions which already exist in our current Law and are simply repeated and carried forward to this Law, because they are based on the Chicago Convention, which is the main convention that regulates international civil aviation. But there are others, I mentioned the Tokyo Convention also so that is also reflected
975 in this Law.

In terms of section 37 and the way in which the operator of the air terminal is designated, or the operator of the airport is designated, there is no change, that is in the old Law as well. So it is the same, it is simply carrying that forward to the new piece of legislation. The part about inspections I have already covered.

980 In terms of air traffic control, that is an MoD responsibility, nothing in this Law, in the same way as nothing in the previous Law, affects Defence, MoD and the RAF and the aircraft of a foreign

state. So all that is exempt from this legislation. The air traffic control is an MoD responsibility but it can impact the civilian use of the Airport, as we saw when they had industrial action and when civilian flights were impacted by the action taken there. So there is certainly no intention, on the part of the Government to change the current arrangements, to answer his question directly.

985 I think I have answered Mr Clinton's question already in relation to the 37(1) and the appointment process that is also there in the current legislation; and in relation to the military aspect and the security and defence –

990 **Hon. Dr K Azopardi:** The hon. Member gives way and I am grateful in terms of that.

But in relation to section 45 which he has just spoken to, so he says that there is no intention to change the arrangement. It actually reads: 'The air traffic control service provider shall provide a service in accordance with the terms of an Air Traffic Control Approval granted by the Authority'.

995 So I am just trying to understand how that works, given what he has just said. So perhaps if you can illuminate me?

Hon. Deputy Chief Minister: Yes, Madam Speaker, that relates to the approval to be able to operate or to be able to control the paths of civil aviation.

To answer Mr Clinton's point, we are aware that clearly there is a defence manual and Gibraltar is integrated into that because the RAF is the owner of the Airport itself. He will see at the back of the piece of legislation that there is a plan and the plan actually designates – this is simply replicating the existing one and the existing legislation is not new – but it shows very clearly in a very clear way exactly what parts of the Airport are owned and run by the RAF; which ones are controlled by the Gibraltar Government; and which parts are, in a sense, it says they are combined or controlled by both.

1000 **Hon. D J Bossino:** I am grateful to him, once again. I do not think he has answered the point about the projected economic activity which he thinks that the setting-up of the register will yield.

1010 I would also ask him, because it occurs to me when he was talking, when he was addressing the House, that given that this is a novel venture, which I appreciate that the Government has announced in the past but this is now going to be Law, whether his Department is also considering educating and familiarising the potential industry out there in relation to this as a new product which, basically, can be sold from Gibraltar.

1015 Finally, Madam Speaker, because it arises from the contribution he has just made: what are the specific commercial arrangements – does he have that with him? – that the Authority would be entering into with this, I think he said it was a Miami company, ARG? What are the commercial arrangements in terms of costs and that type of thing?

1020 **Hon. Deputy Chief Minister:** Madam Speaker, on the last point the hon. Member will forgive me, but this is not Question Time, so I do not have the specific commercial arrangements. We are setting up the regulatory legal framework in which a register can operate.

1025 In relation to the economic activity, I did say that there is a programme, there is a plan which predicts, or which suggests, that the register will be self-financing after a number of years. This is a formula used, for example, with a company registry, with a shipping registry so it simply looks at a successful formula and applies it elsewhere.

1030 In terms of the familiarising of the industry and selling this ability to register aircraft in Gibraltar, that is something which the specialist company that is responsible for running the register is also responsible for marketing it. It will not be my Department, I do the civil aviation, my colleague Minister Santos will run with commercial aviation and this is part of that and we will be dealing with it because it impacts, as I said at the beginning, on the Civil Aviation Act. That is why I am dealing with it before the House.

1035 **Madam Speaker:** I now put the question, which is that a Bill for an Act to repeal and replace the Civil Aviation Act 2009, to modernise the regulation of civil aviation in accordance with the international obligations of Gibraltar under the Convention on International Civil Aviation to make provision for the establishment of an aircraft registry and for connected purposes, be read a second time.

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

1040 **Clerk:** The Civil Aviation Act 2024.

**Income Tax (Amendment) Act –
First Reading approved**

Clerk: A Bill for an Act to amend the Income Tax Act 2010.
The Hon. the Minister for Justice, Trade and Industry.

1045

Hon. R M Clinton: Madam Speaker, may I make a point of order?

Madam Speaker: Yes.

1050 **Hon. R M Clinton:** Madam Speaker, on Standing Orders section 25, it is a technical point in respect of 'the moving of Bills which make provision for imposing increasing taxes, rates or duties' and it says 'no Member may introduce one other than with the recommendation of the Minister of Finance', which obviously the hon. Member is not; and I would also refer, Madam Speaker, to section 35 of the Gibraltar Constitution which mirrors that statement.

1055 As I say, Madam Speaker, this is just a technical point which I would be grateful for your clarification because this is an unusual position for the House because we have never had a Bill presented to the House which is effectively, in my opinion, a Finance Bill which is not presented by the Minister of Finance.

1060 **Chief Minister (Hon. F R Picardo):** Madam Speaker, if I might just assist the hon. Gentleman. I have written to you because the Constitution, when it is engaged, does not give rise just to technical issues it gives rise to constitutional issues, indicating that I confirm that I recommend that the Parliament should proceed upon the Bill which alters taxation in Gibraltar, reference the Income Tax (Amendment) Bill 2024. That in my view clearly satisfies the requirement that the Bill should not be proceeded with without my recommendation.

1065

The Hon. Minister was going to inform the House of that in the beginning of the Second Reading.

1070 **Hon. Dr K Azopardi:** Madam Speaker, just on that and we welcome clearly that clarification. But it would be useful perhaps in practice for recommendations made in that tenor to also be copied to this side of the House, so that we are aware that that formality has been fulfilled.

1075 **Hon. Chief Minister:** Madam Speaker, there is no requirement that that should be the case under the Constitution or under the Standing Orders, but when I write to you I am, of course, perfectly happy for any communication that is sent to the Chair to be copied to other Members, if the Chair so considers appropriate.

Madam Speaker: Right, we can proceed.

1080 **Hon. Minister for Justice, Trade and Industry (Hon. N Feetham):** Madam Speaker, I have the honour to move that a Bill for an Act to amend the Income Tax Act 2010 be read a first time.

Madam Speaker: I now put the question, which is that a Bill for an Act to amend the Income Tax Act 2010 be read a first time.

1085 Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Income Tax (Amendment) Act 2024.

**Income Tax (Amendment) Act 2024 –
Second Reading approved**

1090 **Hon. Minister for Justice, Trade and Industry (Hon. N Feetham):** Madam Speaker, I beg to move that the Income Tax (Amendment) Act 2024 be read a second time. This Bill extends the remit of Paragraph 15 of Schedule 3 to the Income Tax Act 2010, from one that charges tax on interest accrued where the recipient company is either a money lender or a deposit-taking
1095 institution, to one that will now also charge to tax a wider range of financial services and activities which exhibit similar characteristics to traditional banks and money lenders.

It is intended to provide legal clarity given the dramatic changes in the financial services landscape since the Income Tax Act 2010 was introduced in 2011. I will highlight and address the various sub-paragraphs contained in the Bill in which changes have been made, given that the
1100 entirety of this clause substitutes the existing paragraph in Schedule 3 to the Income Tax Act 2010.

The manner in which the existing provision has been extended is immediately notable in sub-paragraph (1). This provision previously only applied to companies and referred exclusively to interest. It now applies to any person other than an individual and encompasses equivalent or similar amounts to interest.

1105 This allows the charge to tax to now apply to any entity or arrangement carrying out those financial services activities that are in scope. The inclusion of a deeming provision in relation to the accrual and derivation of this income provides the certainty on the intended taxation treatment in conjunction with those licensed activities.

1110 These changes ensure that these new emerging industries and activities are adequately in scope. Sub-paragraph (1A) provides a comprehensive definition of the term ‘similar interest’ and assists in defining the categories and the types of income by those financial activities that are both in scope and exhibit similar characteristics to traditional interest income.

1115 The structure of the provision ensures that the charge to tax is applied to traditional interest income, ‘the existing provision’, profits or gains derived from interest – such as notes, specialties and derivative instruments; profits generated from crypto-lending entities; discounts; and such income arising from any arrangement where the main purpose of the arrangement was to avoid the charge to tax. Essentially one of the two anti-avoidance provisions with this one designed to capture any other in-scope income not generated through any of the other above-mentioned activities.

1120 Sub-paragraph 1(B) focuses on activities relating to virtual assets to bring the charge to profits or gains arising from proprietary custodial or brokerage trading and the facilitation of such services. This ensures that the different categories of virtual asset-based activities are adequately covered by the extended application of this provision.

1125 The amendments made to sub-paragraph (2) predominantly reflect the extended remit, with the inclusion of Part 7 of the Financial Services Act 2019 regarding both the activity of affecting or carrying out contracts of insurance and the use of distributed ledger technology for the storage or transmission of value belonging to another.

1130 Similarly, following the repeal of the Financial Services Banking Act on 15th January 2020 reference is now made to its successor legislation, the Financial Services Act 2019. This is a clear example of the important need to update this particular provision, given the changes in the financial services landscape since 2011; and how crucial it is for tax to evolve, together with the regulatory framework to keep abreast of technological and economic development.

1135 No substantive amendment has been made to sub-paragraph (3). It continues to prohibit a deduction for any amount of interest incurred in generating such income that falls outside the scope of this sub-paragraph.

Subparagraphs (4) and (5) set out the other anti-avoidance provision, preventing this charge to tax from being circumvented through the disposal of any instrument or asset-generating interest, or any similar amount to a connected person.

1140 It is vital that this is introduced so that complex schemes and connected party arrangements cannot be used to exploit any measure of tax leakage via an artificial and arm's-length transaction with connected persons. This anti-avoidance measure does not apply if sufficient and appropriate evidence to satisfy the Commissioner of Income Tax is available and can be demonstrated that the main purpose, or one of the main purposes of the disposal was not to avoid tax.

1145 The 'main purpose test', as it is commonly referred to, is a well-known and widely-used anti-avoidance test which relies on evaluating whether or not the principal aim of the transaction is to gain a tax advantage. These changes apply prospectively.

Paragraph 6 brings these regulated financial activities and categories of income within this charge to the tax for accounting periods commencing on or after 1st February 2024.

1150 Subparagraph 7 ensures a consistent treatment within the Act in relation to such entities used in structures operating within the newly-included financial services activities.

Madam Speaker, I commend the Bill to the House.

Madam Speaker: Before I put the question, would any hon. Member like to speak on the general principle and merits? Yes.

1155 **Hon. R M Clinton:** Thank you, Madam Speaker.

1160 In relation to this Bill I would say that, obviously, I would much prefer this would have been taken as part of the normal budget cycle and budget session. I say that, Madam Speaker, because any revenue-raising measures must be taken in the context of expenditure, as the Chief Minister will know; and therefore to have this in isolation without a view of the overall economic or the fiscal position of the Government is perhaps a salami-slice thing to the extent that the necessity of this provision is perhaps not immediately evident if we do not have the overall picture of the budget itself.

1165 But having said that, Madam Speaker – and I am conscious of the Minister's initial statements to the House on 24th January in which he set out his thinking.

Madam Speaker, if I may ask the Minister – and first of all perhaps before I say anything else, I should indicate to the Minister that in terms of the principle of widening the tax base for the Government and for Gibraltar, and certainly in terms of spreading, as it were, the tax burden, I certainly have no issue with that and obviously welcome that.

1170 But of course we have to target taxation in the right way and in a measured way, and as he extended the scope of this particular provision for financial services – which he knows as well as I do, is particularly sensitive to change. But I will assume that he has had no – I would ask him in his response, if he has had any representations from industry in respect of this clause. I can say that I have had none and I have reached out certainly to the insurance industry and I have had no comment, so I assume they are content.

1175 But the Minister will be aware that industry does not look at things in isolation. I believe there has just been an increase in FSC licence fees and this will just be an additional measure which companies operating in our finance centre will consider; and as the Minister knows, we operate in a very competitive environment in the world.

1180 So, Madam Speaker, we do accept or welcome any broadening of the tax base provided it is in a measured way and in the context of the overall fiscal position or strategy of the Government. If I could ask the Minister – again I think I may have asked him before – how much he thinks he might be able to raise from this particular measure?

1185 Finally, Madam Speaker – and I think I did ask him at the time of his original statement – that he stated and I quote, ‘These are important times for taxation in Gibraltar’. I would welcome if he could clarify that, because I think I did ask for some clarification on that last time, but I think he may have missed the question.

1190 Anything to do with taxation is obviously of concern, it has to be taxation for the right reasons and targeted in the right way. In this particular Bill, in terms of the industry that he has identified for widening this clause – look, as I said, everybody has to pay their fair share and we have no issue with that on this side of the House and I can tell him that he will have the support of this side of the House.

Thank you, Madam Speaker.

1195 **Madam Speaker:** Would any other hon. Member wish to speak? Would the Mover like to reply?

Hon. N Feetham: I am grateful to the hon. Member for, I think, I have heard that the Opposition, the hon. Members opposite, intend to support the Bill and I am really grateful for that.
1200 He has made a number of comments. The first comment that the hon. Member has made is whether it is appropriate to bring the Bill to this House outside the normal budgetary cycle. I believe that in my Ministerial statement, I addressed that issue and I said that it is not abnormal, if you like, for Governments to introduce tax legislation outside the budgetary cycle and to that extent it is therefore open to this Government to do precisely that and I have done that on two
1205 occasions already. The hon. Member might be delighted to know that we are *hoping* to bring other legislation before the House, whether it is done within the budgetary cycle or not it is a matter that my cabinet colleagues and I will have to discuss at the appropriate time.

You have said that the hon. Members opposite welcome the spreading of taxation. Well, as the hon. Member will know, that is precisely what I said in response to the questions that were
1210 directed *at* me when I gave my Ministerial statement.

He also says that the hon. Members opposite welcome tax measures being targeted or targeted, measured tax amendments, or tax provisions; and indeed that it is only fair for companies to pay their fair share of taxation. That is, if I can say, with all due respect, the kind of language that I have been using when I have actually made the statements that I have made both
1215 in this House and outside this House.

Perhaps to give some reassurance that what we have done is targeted and the reasons why we have done it. I am going to do, now, what I invited the hon. Member opposite to do, which was to ask me what contributions are actually the sectors that we have identified under the relevant statutory provisions make in terms of their corporate tax contribution to Gibraltar. Because I think
1220 it is important for this House to be cited.

I am not going to go into a lot of detail because I do not think it is fair, but maybe I will give some highlight figures of the current contribution to tax; and why, therefore, I think the consensus view around this House will be, after I give the information that I will provide today, that certainly
1225 there is more than ample merit for us to do what we are currently proposing to do.

There is a pie chart here. I have got a pie chart here of four financial tax years, so we have the tax year 2020-21, 2021-22, 2022-23, 2023-24 and if you look at the pie chart and the contribution to tax of the insurance sector – which includes broadly more than just insurers it includes insurance intermediaries and other companies undertaking insurance services – the contribution from the insurance sector for the overall tax contribution in each of those tax years were:
1230 2021 – 17%. A 17% contribution to the overall tax yield of the Government of Gibraltar for that

tax year. The contribution from the DLT sector was zero, nought contribution, no contribution to the corporate tax yield of the Government of Gibraltar, Madam Speaker.

1235 If we go on to 2021-22, the insurance sector's contribution is 16% of the overall corporate tax contribution. DLT, 2%. In 2022-23 the contribution from insurance was 21% and the DLT sector was 3%. The current tax year, 2023-24, the insurance contribution is 17% and the DLT contribution to the overall tax yield is 1%.

1240 So if you take that as context for what the Government is proposing to do, you will see that clearly those contributions do not reflect – as I said in my Ministerial statement – when I made that statement, it does not reflect the measure of risk that the corporate jurisdiction takes in terms of licensing entities. You cannot just take the reputational risk for the jurisdiction but none of the economic benefit. I have said it in this House and I have repeated it time and again outside this forum.

1245 If I can, Madam Speaker, I have asked the Commissioner of Income Tax to give me a deep dive of some statistics, and he is working on a deep dive of the statistics to allow the Government to plan ahead in terms of our projections on expenditure and to ensure that the levels of expenditure correlate with the levels of revenue that clearly we are projecting. But sometimes the data is misleading, Madam Speaker, you need to do a deep dive and that is why I asked the hon. Member at the last Ministerial statement that perhaps he ought to be asking these questions. I am grateful that he is supporting the Bill but I think it is important for us to be cited on this.

1250 Whilst I have asked for statistical data analysis that gives us an insight into the more detailed analysis of where the revenue is coming, or where the losses are coming, the highlight figure in insurance is that a large number of companies – and I am not going to give you the statistics because I do not think that is right – are actually reporting losses, Madam Speaker.

1255 So if companies are reporting losses and what we are saying on this side of the House is that we intend to bring certain income within the scope of tax, at the very least what we are then saying is that companies that make a windfall in relation to the interest income that they are making as a result of a record high interest environment, that they use those profits to offset against some of the losses that companies seem to be declaring.

1260 Then you will have a measure of insight as to why – when I took over my responsibilities as the Minister with responsibility for taxation – why one of the first things that I said was the Government's policy will be that we need two tax professionals working from the Income Tax Office because this requires a measure of visibility and challenge.

Lastly, Madam Speaker, because again it puts these things into context when on this side of the House we come again, perhaps in the near future, with other tax provisions.

1265 The following information that I asked for from the Commissioner of Income Tax – without going into specifics, because I do not think this is the right place to do that – in relation to DLT firms, Madam Speaker, approximately 91% of the revenue collected in the period from 1st April 2023 to 31st December 2023 is generated from, and I have put here a very small number of operators I do not want to identify the number but it is certainly less than the fingers that I am holding on this hand, certainly less, significantly less than the five fingers that I am holding up.

1270 And if we did the same exercise, and I have asked the Commissioner of Income Tax, again, to give me the same information in relation to insurers, you will find, Madam Speaker, that approximately 70% of the income is generated by a very small number of insurance companies – I have got the number here, but I am not going to say it, less than the number on this hand ... And that one single operator – listen to this, this is interesting – one single operator generates approximately 39% of the total!

1280 So here we have a sector, which is a sector that I have worked in for many years, that we all pride ourselves on the fact that 30% of all motor insurance business undertaken in the UK is underwritten by Gibraltar companies – 30%, a *huge* number, but the tax revenues do not correlate with that level of business that is being undertaken from Gibraltar.

But there are companies that are paying their fair share of taxes – and on the face of it, it may well be, and I am not going to pre-empt it, and I have my own views on this – that when we ask

the two tax professionals to start working and reviewing the transfer-pricing arrangements. That is the key. This is where it is all happening.

1285 The transfer-pricing arrangements, which companies have in place and this is why my first GBC
interview when I was appointed as the Minister for responsibility with taxation, I went to GBC and
I said, 'The reality of the situation is that, I think, the transfer-pricing arrangements are working
against the Taxpayer in Gibraltar.' And it could be as innocuous as this, and I am going to quote
myself, when I said and I have repeated it here time and time again, 'Is it as innocuous as the
1290 Finance Director of companies in Gibraltar, taking the view that because historically, perhaps,
there has not been a high level of challenge in terms of tax returns that have been submitted for
whatever reason, that the view that is taken is that you book profits in the UK because HMRC is
far more challenging than perhaps Gibraltar has been historically'.

So, Madam Speaker, I thought I really ought to share that information with Members opposite,
1295 but I would like to say that I am very grateful for the hon. Member supporting this Bill.

Would you like me to answer the other questions or am I taking too long? (*Interjection*) Yes,
I know that, I have been told that perhaps I tend to speak a little bit too much and a bit more than
Damon Bossino, sometimes, the hon. Member (*Laughter*) so I do not want to be criticised because
I hear the criticism on this side of the House and I say, I do not want to fall in the same trap ...

1300

Hon. Chief Minister: You make more sense!

Hon. N Feetham: You said: have any representations been made? Again, I do not want to call
people out by name, I do not want to identify companies. I had a meeting in my office earlier this
1305 week with three individuals, one of them said, 'Minister, in relation to the tax measures that you
are proposing to make, why are you only taxing us, insurance companies? You ought to be taxing
everybody else?'

That was an easy one to deal with. Well, Government policy is that clearly should be targeted
and we are targeting the sector for the reasons that I have explained. And he then said, 'But we
1310 are the largest contributor of corporate tax in Gibraltar.' That was really easy, when I mentioned,
actually, that the statistics do not support that, he said, 'Minister, I hope you do not say that in
Parliament'. Well, I have, because I think it is my obligation to actually say this, so that we are all
aware of what the information shows. (*Interjection and laughter*) No, not at all. Not on Twitter,
absolutely not.

1315 How much will we raise? That is a difficult one. I would love to say that this would raise
significant amounts of revenues for the Government, but will it, for one reason? And the answer
is in the information that I gave before, when I said that if a significant number of companies are
actually reporting losses, then what you are doing is using the profitability that we will tax under
these tax provisions to eat into those losses before he generates a revenue for the Government.

1320 But, of course, unless you eat into the tax losses we will never create tax revenues for the
Government. So it is not that I do not want to answer, it is that I cannot answer precisely for the
reason that I gave.

You then said, the hon. Member, in his Ministerial speech, in his statement to Parliament, used
the words, 'These are important times for taxation in Gibraltar'.

1325 I was carried away, Madam Speaker. I will be honest with you. I was carried away, I am
enthusiastic, I am so enthusiastic about the work that we are doing; and I believe that the work
that we are doing is work that has not been done before; and it has not been done before for no
other reason than this is an area that I enjoy, it is an area that I like, a lot of effort and time is being
put into this.

1330 So do not read anything sinister in those words, there is no sinister motive at all, it is just a
reflection of the work that we are doing and we are hoping, Madam Speaker, that by the end of
the life of this Parliament we will do many good things for the people of Gibraltar.

Thank you very much. (*Banging on desks*)

1335 **Madam Speaker:** I now put the question, which is that a Bill for an Act to amend the Income Tax Act 2010 be read a second time.

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

Clerk: The Income Tax (Amendment) Act 2024.

Adjournment

1340 **Chief Minister (Hon. F R Picardo):** Madam Speaker, I move that the House should now adjourn to next Friday at 3 p.m. – Friday, 22nd March.

Madam Speaker: I now propose the question, which is that this House do now adjourn to Friday, 22nd March 2024 at 3 p.m. I now put the question, which is that this House do now adjourn to Friday, 22nd March 2024 at 3 p.m.

1345 Those in favour? (**Members:** Aye.) Those against? Passed.

This House will now adjourn to Friday, 22nd March, 2024 at 3 p.m.

The House adjourned at 5.06 p.m.