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Statement by the Chief Minister on the Delay on the Passing of the EU Withdrawal Act

Mr Speaker

Yesterday, you called the Committee Stage and Third Reading of the Bill on the EU Withdrawal.

In doing so, you asked whether ‘all Honourable Members agreed’, which is the formulation required by the rules.

The rules require unanimity for a Bill to go through all its stages on one day.

It has long been the practice of this House to take a Bill through all its stages in one day.

In fact, in the 16 years I have been a Member of this House, I have never seen any member exercise his or her right to delay a Bill passing its stages by a day.

In fact, the delay could even have been less than a whole day.

It was open to the Government to have returned at one minute after midnight this morning.

In fact, to use the device of the right to delay for a day is a futile exercise unless one needs to consider or check a point.

Potentially, if the debate on the Second Reading had changed an understanding or interpretation, it might be necessary to delay the passage of the Bill to make those additional consultations.

Yesterday, however, the Honourable the Leader of the Opposition simply decided to exercise his right to delay for a day without giving any explanation to the House.

He did so, Mr Speaker, not just in relation to any Bill.

He did so in respect of a Bill which I had certified as urgent under the Constitution.

You reminded the House of that certification at the start of the debate on the Second Reading yesterday.



The Deputy Chief Minister, in his excellent presentation of the Bill at the Second Reading, explained the need to have the Bill on the Statute Book expeditiously for a number of reasons which he detailed in his speech.

He also explained that we had provided a Command Paper of the Bill as an opportunity for Honourable Members and the rest of the Community to comment and consider the issues that it gave rise to even before it became a Bill.

The Bill has been published for almost 6 weeks.

In fact, the Bill would have been published for 6 weeks by Friday.

Yesterday, however, when the Leader of the Opposition decided to exercise his right to delay the Bill, he did not tell us why he had decided to be the first person in living memory to delay a Bill in that way.

He also did not bother to ask, during the recess or otherwise in debate, why we had continued with the Bill as an urgent one and why we had not waited until Friday to proceed with it.

Without notice, he decided to use the unprecedented device of not agreeing to the Committee Stage and third reading being taken on the same day.

It is important, Mr Speaker, that the House and the whole community should understand the consequences of the decision by the Leader of the Opposition to delay the passage of the Bill yesterday.

First of all, as all Honourable Members know, the Gazette issues every Thursday morning.

This morning, the Gazette has not issued as usual.

It is now held back, pending passage of the Bill.

That means that many tens or hundreds of legal notices etc are delayed, thanks to the decision of the Honourable Member to delay the passage of the Bill by one day.

These notices are of the business of individuals and businesses throughout the land who are required by law to publish notices in the Gazette.

Secondly, the acting Governor is on stand by to sign the passage of the Bill into law as soon as we end the Third Reading and the Clerk confirms that the law has been passed by the Parliament.

Why the urgency, Mr Speaker?

Because, thirdly and most importantly Mr Speaker, a failure to have passed the Bill yesterday means that there is now a risk that the United Kingdom will not be able to extend to Gibraltar the provision on two of the Hague Conventions.



The first is the Hague Convention on Choice of Courts Agreements 2005.

The second is the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance 2007.

These are multilateral international agreements to which the EU is a party.

Both agreements have been implemented in Gibraltar through regulations made under s.23(g)(ii) of the Interpretation and General Clauses Act, which confers a power to make regulations in matters 'arising under the Treaties (as defined by section 2 of the European Communities Act)'.

The UK has committed to continuing its participation in both Conventions after it leaves the EU.

It deposited instruments of accession with the Depositary (the Dutch Ministry of Foreign Affairs) on 28 December 2018.

In accordance with the procedures laid down in the Conventions, the UK's accession will enter into force on 1 April 2019, i.e. 'the first day of the month following the expiration of three months after the deposit of [the UK's] instrument of ... accession' (s.31(2)(a) of the 2005 Convention; s.60(2)(a) of the 2007 Convention).

The UK will only become a party in its own right on 1 April 2019 if there is a no-deal Brexit.

If there is a withdrawal agreement with a transition period agreed before 29 March 2019, the UK will withdraw its instruments of accession, and the Conventions will continue to apply to the UK and Gibraltar during the transition period.

After today Mr Speaker, I imagine that the leader of the Opposition will be hankering for a withdrawal agreement and a transition period.

The UK has not yet made declarations extending the application of the Conventions to Gibraltar.

It has agreed with us that it is not possible to do so is until the Withdrawal Bill becomes an Act because until then there is no legislative basis for Gibraltar to be covered by the Conventions in its own right (i.e. not via EU law).

Declarations by the UK post-accession, extending the application of the Conventions to Gibraltar would also take effect 'on the first day of the month following the expiration of three months after the date on which the notification is received by the Depositary' (s.32(4) of the 2005 Convention; s.63(4) of the 2007 Convention makes that provision).

Thus, if HMG decides to make the declarations today (31 January 2019) and these are received (and deemed to have been validly made) by the Depositary today, the Conventions would enter into force in relation to Gibraltar on 1 May 2019. That is the first possible day on which they will be able to enter into effect.



For the UK to be able to make the declaration today, therefore, the Bill has to pass expeditiously today, as soon as possible.

If the UK's declarations are made after 31 January 2019, which is what would happen if we delay too much today, my provisional view is that the earliest the Conventions could enter into force in Gibraltar would be thirty days later in keeping with the formulation Mr Speaker, on the 1st June 2019.

Such a delay would potentially be hugely damaging for individuals and businesses seeking to rely on the provisions of the Hague Conventions, as well as for Gibraltar as a jurisdiction more generally.

We would be the only jurisdiction on the European Continent not to have that cover for those additional thirty days.

Indeed, it remains unclear whether the UK is able to make a declaration extending the Convention to Gibraltar before the UK's own accession enters into force on 1 April 2019.

But the Government's advisers are not aware of any state practice under either of the two relevant Hague Conventions on this point.

FCO legal advisers have raised doubts about the position but have not yet taken a view on it.

Secondly, it may be possible for the UK to rely on the fact that declarations made 'at the time' of signature, that is to say ratification or accession, take effect 'simultaneously with the entry into force of [the] Convention for the State concerned' (s.32(3) of the 2005 Convention; s.63(3) of the 2007 Convention).

If the Depositary could be persuaded that declarations made by the UK on 1 April 2019, the day of the UK's accession entering into force, were made 'at the time of accession' (despite the instruments of accession having been deposited on 28 December), it may be possible for the UK to extend the Conventions to Gibraltar with effect from 1 April 2019.

Again, there is no state practice under the Hague Conventions that I am aware of on the 'time of accession' point.

The FCO lawyers told our advisors at our last meeting that they were investigating the point.

Ultimately, the UK may consider it tactically preferable to make the declarations on 1 April 2019 in the event of a no-deal Brexit, rather than to now have to rush to make them today, assuming we can now get the notification to London on time this afternoon, and run the risk of being rebuffed by the Depositary.

And that, Mr Speaker, is the consequence of Mr Phillips' decision yesterday to decide to exercise the power to delay the passage of the Bill through all its stages in one day.

In effect, Mr Speaker, potentially delaying or worse prejudicing the ability of families enforcing judgments on child support and maintenance.



Potentially delaying or worse prejudicing the ability of litigants to choose the jurisdiction of courts for disputes.

In effect, Mr Speaker, potentiality delaying or worse prejudicing the extension to Gibraltar of two important conventions which are a part of our law today but which we have to make separate provision for in the post-Brexit environment.

The House should proceed to committee now, Mr Speaker, with the full knowledge of this potential delay or worse prejudice now being a real and present danger for Gibraltar families and for the jurisdiction, thanks to Mr Phillips.