

STATEMENT BY THE GSLP/LIBERAL OPPOSITION

46/2010

15 April 2010

The Opposition understands that Gibraltar and the United Kingdom have been massively exposed to infraction proceedings because an Act of the Gibraltar Parliament to bring into Gibraltar law EU legislation was improperly drafted and inadequately transposed. This has led the Government to rush through amendments to the Act of Parliament in question by decree through publication in the Gazette without these being discussed in Parliament first.

This is not an uncommon procedure when the amendments are simply of a technical nature. Indeed, this is the case with one of the two regulations that were published in the Gazette last month. However, the changes contained in the other one, the Market Abuse (Amendment) Regulations 2010, are not of a technical nature and raise a number of serious issues which are of concern to the Opposition. This represents a much more substantive change to our law and it should not be enacted simply upon the signature by the present Chief Minister of the Regulations without going to Parliament for discussion beforehand.

The Opposition is therefore against both the content of the amendment and the manner of its passing without a Parliamentary debate. We also consider it is right to highlight the defective drafting because it has been responsible for creating this problem in the first place and which has already had to be amended before for purely technical reasons.

Most worryingly, the substance of the amendment concentrates further powers in the hands of the Chief Minister and away from the Financial Services Commission. In the change to the Market Abuse Act 2005, Mr Caruana is purporting to become the person responsible (as Minister for Financial Services) for the enforcement of the law in respect of any party breaking the law (or alleged to be breaking that law) that is not a person already regulated by the FSC. In effect, all persons who are not licensed by the FSC would thus come under the power of Mr Caruana (or any person he may choose to extend the power to) if it was alleged that they had contravened any part of the Market Abuse Act 2005.

It is highly unsatisfactory that the present Chief Minister should be so insistent in trying to take power over issues of financial services regulation and breaches of the law, even if he is intending to designate another entity as the relevant party to exercise it. This amendment, and the decision as to which entity should be the Authority that makes decisions about alleged breaches of the law, should be a matter for Parliament.

Moreover, it is totally unacceptable that our laws should have been drafted in a manner that is not fit for purpose and that the Parliament has been asked to

legislate to transpose this law in a way that did not actually provide for what was required. The errors of the draftsman have massively exposed Gibraltar and with us the United Kingdom as the party responsible to the EU for the transposition of Directives and Treaty obligations into our law. Indeed, the Opposition believes that the drafting errors in both of these cases actually led to threats from the Commission to start court proceedings against the UK/Gibraltar because the laws in place in Gibraltar did not do what the European Directives required.

Commenting on the issue, Shadow Minister for Financial Services, Fabian Picardo, said:

"It is frankly highly unsatisfactory that the Market Abuse Act of 2005 is so defective that it has resulted in Gibraltar and the United Kingdom being exposed to infraction proceedings in the European Court. Given that an amendment to it is required because of the defective drafting, the government should have brought legislation to the Parliament to make substantive amendments like the one they propose which will further concentrate power in the hands of Mr Caruana. There is a power for a law to be debated by Parliament at short notice and that could have been invoked in this case. Instead Mr Caruana has used a mechanism he used to criticise when he was in Opposition to give himself more powers without a debate in Parliament. That is just unacceptable and is, in my view, a major indictment of Mr Caruana's credentials as a Parliamentarian."

ENDS