

It is, Sir, revolutionary, because as we see it, how could we possibly hold to theories - and I know it is a controversial point - such as a limited and introverted ultra-Gibraltarian attitude in the face of the amendments which are coming before the House now. We must certainly protect Gibraltar to the limit of our resources, but the times have caught up with us in this important respect and in accepting these amendments on behalf of the Opposition I would urge once again Members of the House to bear in mind what the Opposition has said about a growing relationship with Britain. We urge the Honourable and Learned the Chief Minister to take up the suggestion made by the Opposition of talks between Opposition and Government as early as possible to try to define the common ground in the constitutional sense which alone, in this sea of changes that we are having to cross, can really safeguard the position of the Gibraltarian. This is an amendment of tremendous significance for Gibraltar and I am sure the Honourable and Learned the Chief Minister of Gibraltar is aware - I am sure Members on the other side are aware of this - I am sure that more than one Member in this House has reflected on what he has said in the past in the political sense, and now has to adjust to a situation which is no longer tenable, and I would urge all Members of the House not to dwell on what has been said before, but to make a determined effort to try to make this relationship with Britain grow in a positive sense, in the economic sense, in the social sense, which alone is going to preserve the Gibraltarian as - I was going to say, she is loved - but as we, the Members of this House, have known the Gibraltarian in the past. It is of immense significance that people who have been, let us say it, excluded from full participation in Gibraltar society, in business, in work, should now be accepted, not only by Members of this House, but also by her Majesty's Government. This is of immense significance. Such a just and fair action that have come through the force of events, times changing, it is important that this change should not be to the detriment of what Members of this House hold dear, and I for one cannot see any amendment which can be put by this side of the House to forestall this. If it were possible I would do it only out of consideration for British Gibraltar. But now what has to be done, I am sure all Members of the House will agree, is to make sure that within this new structure which we are creating, and this is a most important amendment which has been brought forward, that within this new structure we are able to preserve the Gibraltar in a new fashion and I urge once again on Members of the House and on the Honourable and Learned the Chief Minister in particular, to reconsider the position afresh, to think what the working people in Gibraltar are going to say when the effects of this percolates down to them, what the business community is going to say when it percolates down to them, and to consider all this in a new light and to examine their conscience and say can we hold what we held some time ago.

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Sir, the only other almost objection, or protest, which we have in the Opposition side is that even though the Honourable and Learned Chief Minister/some notice of this amendment which he was bringing before the House, it did not form part of the original Immigration Bill and perhaps the Honourable and Learned the Chief Minister might give some explanation as to why it did not form part of the original Bill before the House and has been brought forward as an amendment.

HON CHIEF MINISTER:

Dealing with the last point, Sir, I think the answer to that is that the concern of those responsible for the drafting of the five Bills was to carry out the duties which we were incurring under the Common Market. As I said before, there was this rush about legislation but I never had any doubt in my mind, since I saw the terms under which Gibraltar was entering the Common Market, and which must have been more in the knowledge and the details of the Government then in office who must have been informed of the terms of the negotiations which were going on, which must have formed part of all the jubilation about the entry into the Common Market, that this was a matter which we could not put aside. In the context of the Common Market responsibilities it came to my knowledge and to my consideration of the fact that this was a problem, and this of course I must say is not unconnected with the consideration that had to be given to the other Bill which will come later and on which we may have some discussion before we decide finally.

But I am surprised in a way that the Honourable the Leader of the Opposition seems to be less prepared for the change, that are coming about as a result of our entry into the Common Market than the bulk, if I understand, it properly, of the people, particularly in trade, who have I think well been aware that this was one of the consequences. I am not at all alarmed because I think the trade has understood for a long time that this had to come, and certainly since the question of the Common Market came into the picture as a discussion for possibility. We cannot be completely introverted and at the same time form part of the millions of the people that are going to be in the Common Market. we cannot have it both ways, we cannot be ultra-introverted. That was what I call the "warship" mentality, the ultra-introvention of not allowing other people in. I may have well shared, at one time, that attitude, I am not saying that I am free from sin in that respect, but times change and I think we must accept this challenge. Insofar as trade is concerned it has been said many times that the Trade Restriction Ordinance was a farce and that the provisions were no longer realistic because there were "fronts" all round and people were getting round it. When a law is better known by the



way in which it is violated rather than by, the way in which it is observed, that law is immoral and that law cannot continue and cannot have the force that it should have. This is a reality of everyday life in Gibraltar.

Now, insofar as those who have British nationality in Gibraltar, insofar as the Britishness of Gibraltar is concerned, I would imagine we are not in any way diminishing our link or our relationship with Britain by virtue of the fact that we are going to accept the number of people that they themselves are going to accept. I do not under any circumstances accept these propositions that this is going to make us any less British than we were before, because I do not think that in order to be British you have got to be fair haired and blue eyed, you can be dark and you can be semi-dark. To me that is of no importance and I hope that that does not form part of any of the points made before.

Insofar as the Gibraltarian identity is concerned I think we owe it to ourselves to survive as Gibraltarians, but it seems to me almost ludicrous to hear such references to the Gibraltarian identity by those who advocate complete integration with Britain, which would mean a complete loss of our identity in the mass of integration that would come about by direct integration with Britain. I stand for the Gibraltarian individuality and I hope that we can survive that precisely by being Gibraltarians and precisely by standing out for our rights as Gibraltarians and not by integration with Britain.

withdraw

Mr Speaker, would you please tell Mr Caruana to / the word nonsense, I would be grateful, because every time I speak this is his habit and I would ask him to withdraw it.

MR SPEAKER:

I must remind Members that the Member holding the floor must be entitled to speak without interruptions of any kind what, ever, and I must call the attention of the particular Member to respect those rules.

HON CHIEF MINISTER:

I am grateful, Mr Speaker. These are the answers to all the points. Discussions as to the future, yes, but if what the Members opposite want is talks about a future Constitution to try and convince us of integration, I will be happy to have one or two meetings as a start, but I can tell them that we are going to waste our time because we do not subscribe to integration.

MR SPEAKER:

Order. We must not go into the merit of integration in any manner of form at this particular stage.

HON M XIBERRAS:

Sir in the first place the answer to my most important question, which I think is most relevant to the subject before the House now, this amendment, the answer to this question, which I have put to the Honourable and Learned the Chief Minister, has been clearly given to my mind in the very last sentence of his intervention. The answer is that so far as integration is concerned, the Honourable and Learned Member has an absolutely closed mind.

However, what I would ask him to look at and focus his attention on is less the question of integration than the amendment before the House, and not only this amendment but other amendments that have come before the House. He has mentioned one or two things which to my mind are offensive to this side of the House. About being blue eyed and fair haired, I doubt whether I would pass the test, Sir, but I am sure that this was not my own intention in saying what I did say. It is a fact, and is no use at all trying to minimise it and feel flipantly with it, it is a fact that by naturalisation from now onwards, when this Bill becomes law, people will have a right of residence which he did not enjoy before I do not feel that it is worthy of the Honourable and Learned the Chief Minister to deal flipantly in this way with what has been said. The Honourable and Learned the Chief Minister is perfectly aware that this is a most important decision that the House has to take, not only in respect of immigration but also in respect of trade, or in respect of work, and also in respect of deeper matters which are of great importance to the House. There is absolutely no doubt that a population which is basically naturalised rather than settled and brought up in a territory is going to be a political influence in the future. I am not saying that everybody that becomes naturalised is going to be anti-British, I am not saying that a good percentage of them are going to be so, but I am saying that this is an important innovation which the Honourable the Chief Minister could do better than deal with flipantly.

Sir, I would repeat what the Opposition has said, and that is, we support this because it seems to us that it is morally right in the circumstances, but I would commend the intervention of the Honourable and Learned the Attorney-General to the Honourable and Learned the Chief Minister because the former said quite clearly that this was not required by the Common Market, whereas the whole tenor of the Honourable and Learned the Chief Minister's intervention was based on the fact that now one had to do it because of the Common Market.



HON P J ISOLA:

Mr Chairman, we support this amendment, but I would like to suggest that there are some substantial snags in it which we should be very much aware of. Apart from the fact that the Gibraltarian Status Ordinance is now being whittled down to nothing at all literally I would say this, that as far as the Gibraltarian Status Ordinance was concerned, before anybody could acquire this status, this identity, which meant the right to reside in Gibraltar, he had to have a father born in Gibraltar or a grandfather and there was a test at first that it would have to be before 1905. Then in the one we did in 1969 it had to be before 1925. Anybody who was born after these periods of time, 1905 or 1925, was not a Gibraltarian unless his father had been born before then and so forth. All this intricate piece of legislation which is still in our statute book really goes by the board insofar as anybody, and the words "to any non-Gibraltarian" which appear in 26(a)(1) in the proposed amendment, to my mind are superfluous, not necessary. Anybody who was born in Gibraltar, it does not matter whether it was in 1925 deadline is, as I said is irrelevant, if he was born in Gibraltar in 1952, although he is not called a Gibraltarian, virtually acquires exactly the same rights, because we do away with the Trade Restriction Ordinance, we do away with everything, so the Gibraltarian Status Ordinance is virtually superfluous. A Gibraltarian is no longer a creature of statute, he is a creature of identity, like the Honourable Financial and Development Secretary who is a Scotsman, and another person who is a welshman, but he is not said by statute to be a Scotsman or a Welshman, he is by nature. To that extent the Gibraltarian will carry on forever, but the status, the legal status of Gibraltarian as a creature of statute, disappears now. And this thing is a fact, and who has a right to live in Gibraltar insofar as this section is concerned, not as far as the past is concerned which we agreed that the situation be put right, but as far as the future is concerned is in the hands of the Secretary of State and not the Governor of Gibraltar, or the House of Assembly. Because the person who acquires naturalisation rights in Gibraltar from now on will have his rights. And I think it is pertinent, Mr Speaker, to remember that to get naturalised in Gibraltar does not require five years residence in Gibraltar, you can have four years residence in the Seychelles, in a British territory, and have one year in Gibraltar and apply for naturalisation. And if the Secretary of State is so disposed you get it and that entitles you under this section to a Certificate of Permanent Residence. And although we would agree with the moral case for those who have been in Gibraltar now for so many years without any apparent legal rights, although we would agree that they should have them, I think we should remember that this is for the future as well and that it is not a difficult thing to obtain registration in Gibraltar as a British Subject as opposed to naturalisation, because that is a matter for Commonwealth citizens of a year's residence. For naturalisation it is not five years residence in Gibraltar: Honourable Members must remember that it is five years

residence in any British territory. Therefore, what we are doing through this amendment, is not just doing justice to those who deserve justice but opening a very very very big door, Mr Chairman, opening a very big big door in the future to many people, this in fact could be the way in to the Common Market, the way in to the United Kingdom, for people who are not Gibraltarians or who have not been in Gibraltar very long, although I suppose we can rely on our good friend the Secretary of State to see that this is not abused, but it is outside our power, Mr Speaker, and that is to my mind the important point about this particular section. Of course we must put right the position of those citizens in our community, of those British Subjects in our community, who have lived for many years here without any rights, but is it our wish, is it our intention, that there should now be open doors in the future for everybody? I would certainly hope that the Government has some definite plans as to the use of its powers where immigration control is concerned in respect of non-European Community Nationals, because as we know there are certain people who are entitled to bring so many employees from abroad to Gibraltar under the present legislation, who could not acquire any rights in Gibraltar, nobody could, but who now could very easily and certainly although we are utterly in agreement in protecting and in legalising and putting right the position of all those who are here, I think that Honourable Members should remember that this section goes much further than that, much, much, further than that, and much further I would have thought than is necessary to meet the circumstances. And although we are supporting this in the sense that obviously we would wish to put right the situation of those people here, I think we would all wish in our own interest that rather than have it done administratively, to have some provision in our law which would prevent the future acquisition of right by people who have absolutely no connection with Gibraltar and the Treaty of Rome.

Mr Speaker, it is bad enough, or good enough, to have three hundred million people in the same boat as us, but if we are going to extend this to another thousand million: Gibraltar is too small, Mr Chairman, and I hope Government will be able to give us assurances as to the future.

#### HON ATTORNEY-GENERAL:

Mr Chairman, Sir, whatever my friend the Minister for Tourism, Economic Development, and Trade, may say, I am not a betting man. But I would be prepared to wager a very considerable sum of money that there is no country in the world which denies to a person naturalised in that country the right to permanent residence there, so long as that naturalisation is not withdrawn. This being so, I would submit that Gibraltar is at the present - and let me not condemn, just let me make the statement - I would think that Gibraltar is the one country in the world at present which does not



give a right of Permanent Residence to persons naturalised in Gibraltar. Now, naturalisation is a discretion, not a right: registration, on the other hand is as of right; naturalisation is not. You have to satisfy various tests before you are eligible, but even then, it is in the United Kingdom, with the discretion of the Secretary of State; in Gibraltar in the discretion of His Excellency the Governor. I can see the point made by the Honourable Mr Isola, that a person need not have spent five years in Gibraltar to enable him to apply for naturalisation, he may have spent four years in the United Kingdom or some other Colony, and a year here. But do not forget, he has got to get in here the first place before he can start applying, he has got to be here for at least a year before he applies, in addition to his time spent elsewhere, and then it is still discretionary. I do feel that if we were to attempt to water down this right which we are now giving, we would be doing a very great disservice to this country. It can be abused but far better, Honourable Members, to accept that there may be the odd case of abuse, rather than that we should be out of touch with the rest of the world and out of the touch with common humanity.

HON P J ISOLA:

With respect to the Honourable and Learned the Attorney-General I think he misses the point. He talks about a country: Gibraltar does not warrant that right, Gibraltar is not a country. If Gibraltar was integrated with Britain these objections would go, but we are mindful of the fact that although we were United Kingdom Citizens in Gibraltar, we did not have the right of entry into Britain, and the right of residence in Gibraltar is being granted by Britain. If we were integrated, and I am not going into the argument of whether we should or we should not be, if we were, this would indeed be an acceptable argument, but the status of United Kingdom Citizens is not granted by the Governor of Gibraltar, it is granted by the Secretary of State. And as far as I am aware in my experience, Gibraltar Council even is not consulted on who naturalisation is granted on, in fact it goes to London and is decided by London. Of course if we were a country, of course in France if somebody was French, of course its right, he should not be chucked out of France; if you naturalise somebody in England, of course it is right he should not be chucked out of England; but he is not being granted in Gibraltar, Gibraltarian status, he is being granted United Kingdom Citizenship and where he has a right to go, or should have a right to go, is in fact the United Kingdom. But the United Kingdom, because of its Immigration Act, does not allow them to go there, hence the problem of the British Subjects in Uganda and elsewhere in the world who have derived their status from the United Kingdom. While we do not shirk our responsibilities in the sense that once we give somebody permanent residence he has got it, once he becomes a Gibraltarian we respect him, but our nationality

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here, well, we do not quite know, it is British, and it is Gibraltarian and so forth. These are problems on which a lot has been said for a long time, but the point I am wishing to make is that we, Gibraltar, are granting these Certificates of Permanent Residence in Gibraltar, not Britain. The national status is being granted by Britain not by Gibraltar and we are granting the right to stay in Gibraltar ad infinitum to somebody who perhaps has very little connection with Gibraltar. He might have done twenty years in the Seychelles and come to Gibraltar and apply for naturalisation.

What British Government could refuse such a person British Nationality and we would have to give him permanent residence status. It is our view that if what is being said is that the Gibraltar Immigration Authorities should allow anybody to come into Gibraltar who has done five years in another British territory in order to acquire the status, then this amendment would of course very deeply concern us, I hope I interpret the views of the Opposition correctly here, what we are perfectly happy to do is to put right the position of all those many British Subjects who have been living in Gibraltar for many years and who have not got a right of Permanent Residence, but we certainly do not wish to provide machinery which conveniently fits in and accommodates the British pattern of not wanting to take more immigrants in and, therefore, saddles a particular territory with everybody that we have naturalised in that territory. Now, this Mr Chairman, is a matter of some concern certainly to this side of the House, although we are the Integration With Britain Party. If we had integration, full integration, nothing more to say with it, no problems can arise now or in the future, but we all know as the Chief Minister is very anxious to remind us time and time again although most of his measures seem to be integration measure, but apart from that, Mr Speaker, despite that, that is not the position, and it does raise for Honourable Members in this House, and for the community as a whole if they were to know the full implications of this Bill, it certainly does raise serious problems for us in the matter. And I think we should say that certainly in our understanding of the position we are voting for this measure very strictly on the understanding that there is - and in fact we would expect an undertaking that there will be very very strict immigration control in respect of non-European nationals, because certainly we do not want to find ourselves saddled with the drop-outs of the rest of the Commonwealth in Gibraltar.

HON CHIEF MINISTER:

I am not going to give any undertakings because my undertakings are worth nothing, and, therefore, I am not going to give you any understanding on this one because the Opposition have not got a better way of dealing with it. They have not got an alternative and they have to accept the strength of the necessity of putting this right.



HON P J ISOLA:

Could I clarify, Mr Speaker, and remind the Honourable the Chief Minister that this amendment has been placed in front of us today. If he was prepared to leave this till Friday, we will try and come up with something. It is very difficult for us to do it now.

HON CHIEF MINISTER:

The point is that I entirely agree that we should be strict in the question of Immigration for people to acquire rights, but I think the registration of British Subjects is less controllable than the naturalisation, because naturalisation requires the three conditions of 5 years residence, knowledge of the English language, and good conduct. In practice one knows that there are people who have been here 25 years, 30 years who are really assimilated, which is a test for naturalisation, assimilated to Gibraltarian life, to the British way of life, and their applications are pending; they take a very very long time, I think that the vetting is quite ample. I do not think we should be ashamed to say that many prominent people in Gibraltar, in a very great spheres of life, are sons of naturalised people who came to Gibraltar in one way or the other and were naturalised and assimilated into the Gibraltar way of life. Whether it is two or three generations this is what has made the Gibraltarian and we should not be ashamed of that.

Now, the question of Immigration, the danger really is that though the Governor grants the naturalisation, the certificate comes signed on behalf of the Secretary of State. It is confirmed in Gibraltar, but it is given there, and it is given on the strength of the recommendations made here. This is a thing which is sufficiently strict but no doubt the consequences of this will have to be borne in mind by those who do it. I cannot speak for them because we have no power over it.

The difficult one is the other one, where under the British Nationality Act we are bound - and this is a thing I have always felt very strongly about - we are bound to give Citizenship of the United Kingdom and Colonies to people who are British Subjects, non-citizens, and who reside here for a certain time. If they qualify for that, there is no discretion there. It is a statutory obligation on the part of the Governor on behalf of the Secretary of State to do it. That is a difficult one, but I think that where the argument misses the whole point is that people are going to take advantage of that to flood us here. If the British Government knows the full extent of the terms of our entry into Europe, they should know that this could also be used to go into Europe, into England, if they cannot go by using Gibraltar.

So we cannot tell the British that they have done something to lump on us a number of British Subjects that they do not want, very much the opposite. They are giving, so to speak, the right of entry into Britain through Gibraltar. This is the whole basis of the amendment, that because the Common Market have given the right to certain people to go in under the terms of our entry, we cannot do less to those who are here. That would be most unfair. We have thought of the many ways in which this could be done, we had thought that we should differentiate them from the Gibraltarians, it could have been done by it by exempting the Gibraltarians from the provisions of the Immigration Ordinance. We have deliberately put it in another way by giving them a special status, which is the status which they have been given to go into Britain.

Of course we are concerned that only people who are really assimilated to Gibraltar acquire any rights in Gibraltar, and I think it is fair to say in these changing circumstances that if in fact Gibraltar is the only place where if you are naturalised you have not got a right to live here, one should also say that perhaps Gibraltar is the only place that if you are born here before and after a certain date you have not got a right to live here. Can anybody tell me of anybody who has been born in Gibraltar after 1925 who has been thrown out of Gibraltar? Where could he go? Where could we send anybody born in Gibraltar after 1925 if we did not want him here? There has been a sort of understanding and that has been inevitable; this has not been the directions of any Government, this has been the realities of life; that you cannot have a man born here in 1927 or 1928 that does his service with the Gibraltar Regiment: that does all these things and at the end of the days he has no right to live here. Alright, you have no right but you give him a permit, he has a permit, but has anybody dared send anybody who was born in Gibraltar away from Gibraltar? Where could you send him? Who would take him? There have been entrenched positions about this matter for a long time for some reasons or another, but this I think is the practical result of a new situation, this brotherhood of man about which the Honourable Major Peliza was talking to us applies as much to the people who were born here as it does to the people who were born in the wilds of Cornwall. We cannot differentiate, it is impossible. There can be an element of self-interest in ensuring that people do not come in through the backdoor to acquire rights here as well as rights to go into the United Kingdom. That no doubt will be done, and as I say, apart from the fact that I understood that they were not happy about undertakings, even if I wanted to give it immigration is not a defined domestic matter, though representation can be made to the appropriate authorities to take accounts of that. And I am sure the feelings of the House in this matter are being registered elsewhere. But this is inevitable, it is all very well to say: "Well let it apply to those who are here now but not allow others to acquire rights."



Are we going to say that anybody born in Gibraltar after 1972 does not acquire the rights to go into Britain or the right to live in Gibraltar? How can we say that. The births in Gibraltar before 1900 were brought forward 25 years, in the 1960's. After fifty years you halved the time. Well, it is now twenty-odd years since that date was fixed. Can we go on prolonging this matter? This is a decision which is consequent on other decisions, it is inevitable and we must face it and do the best we can to ensure that as the Scots and the Welsh and the Cornish have accepted and maintained their identity, we shall do so as Gibraltarians.

HON J BOSSANO:

Mr Speaker, I am glad that the tone of the Honourable and Learned the Chief Minister's latest contribution was very different from his earlier ones, because when he spoke earlier I felt an instinctive need to stand and refute the nonsense that he was saying, and I hope that once one is standing one can call it nonsense. But, the tone of his latest contribution was reasonable and rational and acceptable to me because I am a rational man and I like to reason. And I noted that the only time he got excited, Mr Speaker, was in fact when he was refuting the argument that had been put forward by the Honourable and Learned the Attorney-General because in fact he was saying that although one could say that Gibraltar was the only country that denied the right of residence to naturalised individuals, and this had been said by the Honourable and Learned the Attorney-General, and not by anybody else, it could not be said that we in Gibraltar denied the right to anybody born after 1925 because we have not chucked out anybody born after 1925, because there was nowhere that we could send him out to. So that even if we denied them residence without a permit, we did not in fact send them out of Gibraltar. And I could see, Mr Speaker, the Gibraltarian identity coming out in the Honourable and Learned Chief Minister, and the contrast between the feeling of the Honourable and Learned Chief Minister, when he was talking about this, and the dispassionate and analytical attitude of the Honourable and Learned Attorney-General who looked upon us as the country which had certain moral obligations to naturalised citizens whom we do not naturalise, because in fact we are not a country, Mr Speaker, we are a British Crown Colony whose existence as a separate entity, and whose sense of identity is due to that happy, that very happy historical accident which took place in 1704 and which removes us from the rest of the Iberian peninsular. It is this which is the very essence of our identity and our existence, which we do not want endangered, and it is this that we wish to preserve. This is at the root of the philosophy of the party which I was fortunate to be associated with in founding. I do not intend, Mr Speaker, to launch into an attempt to convert anybody to integrationism because I know that if I did attempt it you would call me to order, but I have in fact been

baited into doing this by the contribution of the Honourable and Learned Chief Minister. And although I have had the dissatisfaction of hearing him say that any future meeting between the two sides of the House with regard to Gibraltar's further constitutional progress is not going to succeed in converting him to the integrationist philosophy, I am happy to learn this because I am a very optimistic person who never gives up the hope of making everybody an integrationist in Gibraltar and a social~~ist~~ in the rest of the world, but I am not giving up this hope. Nevertheless, the general tone of the argument that has been put forward in considering different amendments and different legislations does suggest to me, Mr Speaker, that there may be particular individuals whom I had not previously taken into account in my philosophy which are incapable of being converted to anything. And it saddens me to think that there are people like that, because I would wish that there would not be, I would wish that everybody should be sufficiently big to be able to consider a different point of view from his own, and if the arguments are cogent, rational and satisfying, to admit that he was previously wrong. There is no shame, Mr Speaker, in being wrong and, therefore, when we on this side of the House stand to question what is being proposed, there is no shame in any of us receiving satisfactory explanation from the Government benches and being shown to have been wrong in the misgivings we expressed originally. There is nothing wrong in expressing misgivings and in receiving satisfactory answers, but there is something radically wrong in receiving no answers, Mr Speaker, because then this House of Assembly is a farce and we might as well give up having elections, we might as well give everything on a plate to those people who have got closed minds, to those people who are not willing to listen to anything, to those people who are sure they are right and let them get on with their job. If this is the attitude, Mr Speaker, that we are going to encounter ....

MR SPEAKER:

Mr Bossano, I have been as tolerant as I can and I think you have got away with more than you should have. We are debating the addition of a new clause to a Bill which has nothing to do with the philosophy of attitudes in the House of Assembly.

HON J BOSSANO:

I accept, Mr Speaker, that you have been very tolerant with me and I am grateful for your tolerance. However, I would submit to you that if there is a principle behind both the original legislation and the amendment that has been brought forward by the Government, a principle such as I have suggested might possibly exist, and which I would wish did not exist if it does, which makes it impossible to get any change



from the original attitude, then in fact, Mr Speaker, when we are considering this amendment or any other amendments, or any Bill, we are going to be presented with measures that however much we may thrash out in the Chamber, however much we may discuss, will go though in their original form. This is the principle to which I am referring, Mr Speaker. We have expressed reservation in respect of this because for example there appear to be so many inconsistencies in the arguments that are being put forward.

MR SPEAKER:

I do not wish to enter into an argument, but that is a penalty perhaps of democracy, but again it is not the time or the place to discuss this now, that is all I am saying. What we must not discuss on an amendment to a Bill is the attitudes and the consequences of attitude. That can be done as a motion if it is found to be necessary. All I am saying is that this is the wrong time and place to do it.

HON J BOSSANO:

Thank you, Mr Speaker.

To be specific, if in fact we are told that in respect of giving the right of residence to individuals who are naturalised or registered in Gibraltar we are in fact giving them the rights to free movement in the Common Market, and this has been suggested by the Honourable and Learned the Chief Minister, that we cannot in fact say that we are going to do it up to 1972, but individuals born after 1972 will not be given the right of residence in Gibraltar this would be wrong, and it is further suggested that we are not in fact burdening Gibraltar with possible future residents to come in from other areas, because they would have the right to go out of Gibraltar once they are given the right of residence here, they would have the right to go out of Gibraltar, into UK and into the Common Market, this Mr Speaker, is presumably a statement of fact that has been used in support of this amendment. I cannot myself see how giving the right of residence to certain individuals in Gibraltar automatically involves their being recognised as Community Nationals by the rest of the Common Market. We have in fact the case of the East African Asians who are United Kingdom Citizens and are not being accepted in the United Kingdom, so I do not think it follows automatically, nor can one use such an argument in support of this to say that because we are giving them the right here we are in fact open to the rest of the Common Market. This I think requires clarification because any misgivings that we express here are purely intended, Mr Speaker, to ensure that by satisfying us the Government can get the legislation through with a lesser danger of committing an error of judgement which can be detrimental to the welfare of Gibraltar.

If they can satisfy us that any misgivings we express are not justified and the amendments are then accepted, Mr Speaker, then I think the chances of anything being done unconsciously which might harm Gibraltar are less.

HON CHIEF MINISTER:

I think he has got it all wrong, with the greatest respect. What I said was that this was the criterion for entering the Common Market from Gibraltar, and we could not give people in Gibraltar who had the right of nationality in Gibraltar lesser rights to live in Gibraltar than they were being given to go into Britain and into the whole of the Common Market. This was the point: that the criterion that we have used here is the one which the British Government negotiated on our behalf for the definition of a United Kingdom national for the purpose of Community laws, and that is: born in Gibraltar or registered or naturalised. Those are the people who can go into Britain from Gibraltar. Yes, or whose father was naturalised, born or registered.

The point is this, if we have agreed and the Government of the day have agreed to a clause which brought Gibraltar into the Common Market, giving the people emanating - let us put a completely neutral word - emanating from Gibraltar the right to enter Britain and the right to enter the whole of the Common Market, how can we give those people lesser rights within Gibraltar. This is the criterion we have used and I hope that the Honourable Member has realised that I was not using that as an argument, what I was using as argument was that this could have been done by Britain to dump on us a lot of people to say 'no' because precisely the people who acquire that right under this thing have the right to enter Britain, so they would have been doing themselves a disservice by doing that. What I said was that Britain must have been very conscious of the fact, having regard to the policy of immigration and so on, that the conditions which they were giving were ones that they could defend themselves, having regard to their own problems.

That is the criterion and I think I have heard it said many times in this debate that morally this law is acceptable. If it is acceptable morally it must be acceptable generally. We would not have done it if we did not have the provisions of entering into the Common Market, this is obvious, we would have proposed more protecting legislation. All the legislations that we have prepared in connection with this is legislation to implement the provisions of the Common Market and this is a consequential one. That is why my Honourable friend, the Attorney-General said rightly that this was not a responsibility for entering the Community, this was not a responsibility, but it is a natural consequence of the conditions under which we are entering the Community, that we should give the people here the same rights that Britain is giving us to go into Britain and to go into the whole of the Common Market.



HON M XIBERRAS:

I think we all appreciate the Honourable and Learned the Chief Minister is making an effort to explain the position, but, Sir, at the same time I must say that this amendment as it is presented is not quite what the Honourable and Learned the Chief Minister gave us to understand in our meetings with him. In fact, we thought, as my Honourable and Learned Friend on my left, Mr Peter Isola, said, in an excellent speech if I may say so, we thought that he was referring to only the people who were here in Gibraltar and to whom we owed a treatment of equality. But this amendment opens the door to the future as well. This is a fact and colleagues were there present with me when this was said. In addition the important points raised by my Honourable and Learned Friend Mr Peter Isola I think deserved rather more consideration that is afforded by being presented with an amendment of this nature on the same day that it is being considered.

Sir, I feel certain that this is not the right way to do it; to present the House with an amendment of this importance, on which even the Honourable and Learned the Chief Minister I detect is not at all happy in respect of registration - I am not talking about naturalisation now but in respect of registration. The Honourable and Learned the Chief Minister has not sounded at all happy to me about these provisions. Sir, the argument, the strongest argument produced by the Government side has been in respect of a document which has been brandished from the other side which I suspect is a statement of policy by Her Majesty's Government, possibly governing the question of the Commonwealth Immigrant Act in relation to the Common Market.

HON ATTORNEY-GENERAL:

This is the Treaty concerning concessions of the various Kingdoms, including the United Kingdom of Great Britain, and there is a declaration in this by the Government of the United Kingdom of Great Britain on the definition of the term 'Nationals'. It is part of the Treaty, it is not a declaration, it is part of the Treaty, as to whom should be United Kingdom National for the purposes of the Common Market obligations.

HON CHIEF MINISTER:

If perhaps the Honourable the Leader of the Opposition will give way, I will perhaps clear something up. I entirely agree that this is a most important matter, and if at the beginning there had been any indication that the Opposition wanted more time to consider alternatives I would readily have agreed to an adjournment of this

matter for the subsequent meeting, but we have gone out on a tangent, sometimes in agreement, sometimes beyond agreement and sometimes in another vein. This has come out at the end of the speech of Mr Peter Isola. This is very fundamental, I am not going to rush this through the House at all, and I am quite happy to adjourn the discussion for another day. If the Opposition can come out with something that maintains the moral attitude that we must take having regard to the Treaty of Accession and is a little more protective, I will be quite happy to look at it. It is a thing that has worried me a lot, I am not going to deny it, it is very important, and I am quite happy to have a recess and to have the matter discussed at a later stage in the proceedings. But this is the first indication I have had in the speech of Mr Isola that you have not had enough time to consider it. Therefore, I accept entirely that this is a matter and if the Opposition wants more time I would not wish under any circumstances to try and rush this through now. They have already said many times that they agree that morally it is defensible but even that does not deter me from saying that if you want more time you can have it.

HON M XIBERRAS:

Sir, the view of the Opposition is quite clear, we are trying to co-operate as much as possible in getting this legislation through the House and the Honourable and Learned the Chief Minister knows that this is the case: that we are trying to co-operate. The reason why the Opposition has not objected to this, I myself have mentioned the fact that we are prepared to support this amendment on moral grounds, is that we had not seen, having been presented with this today, the implications in respect of registration, and I think the House owes the Honourable and Learned Mr Isola, a vote of thanks for bringing these things to the attention of the House. The thing is that we have been considering amendments since 3 o'clock this afternoon and the Bills before the House are most important. We have put off the question of the Licensing Bill until another time and this involves a number of amendments. These amendments, which we thought we had cleared in fact in our discussions with the Honourable and Learned the Chief Minister, we were quite convinced, referred to the people who are actually in Gibraltar now, and this is the reason why we had no hesitation in saying, yes, on moral grounds, but let us look at the consequences even within Gibraltar now. But there is no obligation in respect of the Common Market there is no obligation other than rationalising entry into the Common Market from different points, and what we are discussing now is the corridor, if I may put it that way, between the Commonwealth and the Common Market, and under what conditions people can become registered in Gibraltar, can acquire a right of residence in Gibraltar, and then possibly move into another part of the Common Market.



That is most important, that we have not heard, a clear exposition - that is why I was interested in the document which was being brandished on the other side - as to what conditions are applied to British Subjects outside the Common Market for entering in the Common Market be it through Gibraltar by right of residence by registration or by any other way. That I think is a relevant point for the Government to have made in relation to this Bill, certainly I would stake the Opposition's case on this, in respect of registration we are not quite clear about what the implications are for the future.

This is important, the entry point into Europe through Gibraltar, and the control of this entry point by the Secretary of State. Therefore, Sir, I very much welcome what the Honourable and Learned the Chief Minister has suggested, that this be put off for a later stage of this meeting. I do not know whether we can do any more business tonight and it would mean meeting again, but if we have to do it, then it has to be done. I would suggest to the Honourable and Learned Member that perhaps insofar as this is possible the meeting should be held later in the evening.

HON CHIEF MINISTER:

Well I would like first of all to clear up this matter and I would have thought to be quite frank that this declaration to which we have referred would be known by half the members opposite because it is just the Treaty of Accession and the conditions for the definition of a Community National. I am not in the least worried, with the greatest respect, of Gibraltar being used as an entry point in the United Kingdom. We are not worried, it is not our responsibility. What I have said is that they well knew that this could be and when they have done it we should not now use this House in order to protect Britain from the entry of Asian people. This is not our concern, our concern is the protection of the people of Gibraltar and those who reside with us. All that we said was that under the terms of the Treaty the definitions were two: the one for the United Kingdom and the one for Gibraltar, which is separate and this is all. Perhaps if you want I will remind you insofar as the United Kingdom is concerned what the criterion is for considering people in the United Kingdom as Community nationals. As to the United Kingdom of Great Britain and Northern Ireland, the term 'National of Member States' or 'Nationals of Member States and Overseas Countries and Territories' wherever used in the Treaty establishing the European Economic Community, the Treaty establishing the European Atomic Energy Community, or the Treaty establishing the European Coal and Steel Community, or in any of the Community Acts deriving from those Treaties, are to be understood to refer to:

- 1) persons who are Citizens of the United Kingdom and Colonies; or British Subjects not possessing that citizenship or the Citizenship on any other Commonwealth Country or Territory who in either case have a right of abode in the United Kingdom and are therefore exempt from United Kingdom Immigration Control; and then
- 2) persons who are Citizens of the United Kingdom and Colonies by birth or by registration or naturalisation in Gibraltar or whose father was so born registered or naturalised.

There is one other point that I would like to clear, and that is that I did speak loosely, I accept that, when we had not finalised in our own way how we were going to deal with the local one. What I am sure I remember saying was: "We will have to consider the local people here because we cannot give the local people here less rights than are being given to them to go into the Common Market," and this is precisely what we have tried to do. We could not give the people who are in Gibraltar, who are not Gibraltarians, lesser rights in Gibraltar than they would have in the Common Market countries. That is the thinking, and that is the philosophy, as members opposite like to call these matters, in this amendment. That is all that we have done and we have done it in the way that we think would least offend the Gibraltarian in the sense that we have not related it to Gibraltarian Status at all, in fact it is excluded. The only point about this question of adjourning the matter further is that we could have perhaps an hour or two tomorrow afternoon, but I am afraid that late tomorrow evening would be unacceptable, or else start at half-past-two on Friday, as we have suggested, and carry on with this and the rest of the business, but it will have to go over the weekend because on Friday unfortunately we cannot sit too late.

I am quite happy to sit tomorrow morning, mid-day tomorrow, perhaps we could have an hour, or at 3.00, but I am quite happy to accommodate within that whatever suits the Opposition best. I cannot do any better than that.

We also have to look at the amendments put forward yesterday by the Opposition in Council of Ministers, we have to also crystallise our views on that if we are going to consider the proposals that have been put forward with the seriousness that they deserve.

HON M XIBERRAS:

I should say, Sir, that the best thing to do is to leave this, not to upset the time-table which we had originally which was 2.30 on Friday till 5.00, and if upon reflection the Opposition feels there is something which can be suggested then we shall do so in 5 minutes of the House's time, and then we can move on to the other amendments. I will not labour the point if you feel that there is nothing that can be done. I feel that much of the debate today has been due to the fact that the amendment suggested something other than what we had the impression it would suggest.



Sir, if it is the case that we are doing no more than other parts of the Common Market would be expected to do, and to giving people in Gibraltar exactly the same rights as people moving within the Common Market, then of course we will not labour the point. I think that just to delay the vote would be a good thing until Friday at 2.30.

Sir, may I also ask whether it is the Honourable and Learned the Chief Minister's intention to take....

MR SPEAKER:

You must not under any circumstances talk across the House. If there are matters to be consulted between the Chief Minister and the Leader of the Opposition they can do so in the Ante-Chamber, by all means.

HON CHIEF MINISTER:

We are going to adjourn until 2.30 Friday, we will adjust the programme by consultation. I am quite willing to do that.

MR SPEAKER:

Are you going to move an adjournment or do you want to recess.

HON CHIEF MINISTER:

Well I think perhaps a recess is better since it is agreed.

MR SPEAKER:

If it is the House's pleasure I will now call a recess until Friday at 2.30 in the afternoon.

The House recessed at 11.10 p.m.

FRIDAY THE 1ST DECEMBER 1972.

The House resumed at 2.30 p.m.

MR SPEAKER:

I will remind Hon Members that we are at the Committee Stage of the Immigration Control (Amendment) Ordinance and that we are debating the addition of a new Clause 4 as moved by the Hon the Attorney General.

HON M XIBERRAS:

Sir, I have circulated copies of an amendment to the Immigration Control Bill which reads as follows:

"That clause 26A(1) be amended by the deletion of the word 'is' in the fifth line thereof and the insertion of the following words after the word 'who' in the fifth line thereof, namely 'satisfies him that he was on or before the 1st January 1973'."

.... Sir, the purpose of this amendment is as the House will recall to try to do justice to persons concerned who were actually in Gibraltar now, this meeting any possibility of this consideration spreading further than what we feel the House really intended.

Sir, the principle that present persons affected by the Bill, people at present in Gibraltar should not be discriminated against on moral grounds, is fully accepted.

MR SPEAKER:

Before I propose the question I would like to warn the mover that this is an amendment to an amendment, because there isn't a clause as yet in the Bill. It has been proposed by the Hon the Attorney General that the Bill be amended by the addition of a clause 4 and you are moving now that this amendment should be amended in the manner that you have moved.

Mr Speaker then proposed the question.

HON ATTORNEY GENERAL:

Mr Chairman, Sir, although I sympathise with the motives behind this amendment I must urge this Honourable House to reject this amendment. The reason for my so doing is twofold; firstly, it would mean that you have for example, a father, a mother, who are entitled to certificates of permanent residence, their child was born here on or after the 1st January 1973, he is not entitled to a certificate of permanent residence. You have a Gibraltarian who marries a Spanish wife in shall we say December of this year, she immediately applied for registration and is registered. She will come within my proposed new clause and would be entitled to a certificate of permanent residence. Any other person who comes here and is registered or naturalised after the 1st January would not be entitled under the proposed amendment to a certificate of permanent residence.



Now, if a flood was feared of people coming in, then they can always be stopped in the first place from entering Gibraltar, if they cannot satisfy the qualifying period. Going back, if you had a citizen of the United Kingdom and Colonies, let us say an Indian, he marries a wife in December of this year, she is entitled to be registered and she would have a certificate of permanent residence. If he marries after the 1st January, even though he is entitled to a certificate of permanent residence, his wife would not be so entitled.

Now, the second point is this, the persons who you cannot stop being registered, who cannot be stopped being naturalised, but you can of course at the moment refuse them a certificate of permanent residence. Because of their naturalisation or registration on the 1st January 1973, they are still coming within the definition of the United Kingdom National under the terms of the Treaty and they, because of their connection with Gibraltar, have got a right to go into any other country in Europe. Is it sensible that when they should have that right, to deny them the right of permanent residence in Gibraltar.

And why should we deny them the right of permanent residence when we are bound to give a right, eventually anyway, a certificate of residence to any - let us say Indians as these are very much in our minds - to have an Indian who has a right to abode in England, he has got the right to enter Gibraltar under the Treaty, if he is working he gets his residence permit, if he finishes his working life here he gets his certificate of permanent residence. Why should he be in a different position to the Indian who comes to Gibraltar and is naturalised - he would be naturalised if he was an Indian because he is a British subject already - if he is registered here as a citizen of the United Kingdom and Colonies. It really does not make sense with the greatest possible respect.

I sympathise with your problems. I think possibly although this is a matter which is arguable, that you are making mountains out of molehills. I think it is highly unlikely that there would be an influx of people into Gibraltar seeking to acquire permanent residence here.

HON P J ISOLA:

Mr Speaker, Sir, I am not sure whether I can agree with all that the Honourable and Learned the Attorney General

has said. This particular section covers, to deal with his first point, this particular section covers already the children of any person who has been born, registered or naturalised in Gibraltar. So that not only are we protecting everybody who is here but also any children they may have. The point about the wife not being entitled, the person who has a certificate of permanent residence at the moment, or gets one and then marries in January and his wife is not entitled to get a certificate of permanent residence, on that frankly we certainly would not have any objections to an amendment. Instead of saying "Or whose father was so born, registered or naturalised", saying: "Or whose father, husband or wife, was so born, registered or naturalised". We are extremely anxious, as we have said, to protect the position of everybody here today, and who will be here until the end of the year and who has the right, and any issue of those people. So we think that we are giving them plenty of protection.

Now, the other point about who is entitled to go into the Community from Gibraltar is something really that we have not had before the House. We have not really had the terms of the protocol as it affects Gibraltar. I am not quite sure what the position is, but what we want to do here, Mr Speaker, what we seek to do with this amendment is to protect fully everybody in Gibraltar, their children, their future wives, or their future husbands, but have some control in Gibraltar as to the future position and not open a door that we are not bound to open. There is no harm, in our view, of the Government coming back to the House in two years time and saying: "Look we ought to push the date forward to 1st January 1975 because of a, b, c, d, e, and f", or coming in five years time or ten years time. As the House will recollect, where Gibraltarian Status was concerned, it was only done roughly every 25 years and this section in effect gives Gibraltarian Status, although one may not call it that. As the House may remember that under paragraph 2 it says: "The provisions of Section 24 do not apply", and section 24 is the section that deals with the grounds on which you can take away a certificate of residence given by the Governor-in-Council to anybody. Those conditions just do not apply, so a person who gets this has the right for life and nothing can take it away from him. So virtually he is in the same position as the Gibraltarian now for all intents and purposes.

Now, all we want to do is: "Right, so be it" but what we do not want to do is for the flood gates to be opened



for the future. Not just naturalised cases over which we have absolutely no control and which people may obtain as a result of residence in another British Territory nothing to do with Gibraltar, not only those cases, but also cases of registration where a person is entitled to be registered. It has nothing to do with discretion of the Secretary of State or the Governor. He is a Commonwealth Citizen, and provided certain conditions are fulfilled, he is entitled to be registered. Those people can easily come and find their way into Gibraltar. It is impossible for the Immigration Department to hold that up, and I would submit Mr Speaker that under the most recent Immigration Act in the United Kingdom people are not entitled to residence in England even after they have had their 5 years there. This is the latest Act passed by the British Parliament only months ago. They are not entitled even though they have been in England five years, they are not entitled to it. And it is proposed that we, however, should give them that right. This is what is proposed by the Section: not just today, but for the future. We agree with today, but we say for the future: "No, hold it, hold your horses, we have absolutely no control over naturalisation or registration". We have absolutely no control over naturalisation or registration, Mr Chairman, and we have been asked to go much, much further than the British Parliament has gone only a few months ago.

We would commend this amendment to the House which would safeguard in our view all those people we are morally bound to safeguard, and we feel it is right we should, but keep the position in the future under the control of the legislature.

HON CHIEF MINISTER:

Mr Speaker, I wish one could agree with the proposal because we are as concerned as the other side of the House to see to what extent one can limit the right of residence in Gibraltar to the extent that it is possible, but the point is that it is very, very difficult to draw a line anywhere. And it is very difficult to deny certain people here rights that they acquire in nine other countries precisely because they are here under this condition.

I am surprised at the Honourable Members opposite who have been such supporters of the Common Market and the declaration of the way in which Gibraltar has entered are not well aware of the fact that there has been a declaration, and this is binding and it is in the Treaty, and the

decisions of the Council in an official publication of the terms under which we the people from Gibraltar are entitled to go into Common Market countries.

HON M XIBERRAS:

Sir, I think there must be a misunderstanding about the position. In respect of Community Nationals and in respect of non-Gibraltarians, people about whom we are talking who are now in Gibraltar. We fully accept that there should be right of residence and so on. What we are talking about, and what my Honourable Learned Friend was talking about, was British Subjects who are not Community Nationals and are not in Gibraltar today.

HON CHIEF MINISTER:

Well, but the Treaty is not going to be revoked in a year or two years time. The treaty is a live document. Rights are acquired under the Treaty continuously and people who are acquiring rights of residence in England under the Old Immigration Act, will be entitled to become Community Nationals, will be able to come here now, so, therefore, it is untenable I think, even in this....It is no use saying no like that, you may say no, I am speaking now, you can speak later - Major Peliza.

The point is that it is untenable internationally, where we have been trying as a people to have our rights respected, to deny people. What is the difference that a person who was born in Gibraltar on the 31st December will have a right that somebody born in Gibraltar after the 31st December will not have. This is what the amendment means and nothing else, because the right to be able to live permanently in Gibraltar is not acquired unless your father was a Gibraltarian or was born in Gibraltar before 1925. So anybody who is born in Gibraltar after the 31st December 1973 will have less rights than anybody born in Gibraltar on the 31st December or before that date. This is the dividing line. Why the 31st of December? Why the 1st of January? When you start putting these divisions you see the impracticability and the unfairness and the difficulties that arise in acquiring rights with people. There is no doubt that under the terms of the entry of Gibraltar into the Common Market we have a right to send anybody to those nine countries whenever he was in Gibraltar, whenever he was registered, whenever he was naturalised. There is no doubt about that. Anybody



naturalised next month, next week, next year will eventually be able to go to the nine countries in Europe immediately. Of course if his father was registered or naturalised, I am not talking about that, it is the same, the son of a Gibraltarian who was born abroad: he is still a Gibraltarian, and this is the difficulty in our view. And the difficulty is: why review it in two years time.

I sympathise in one respect in particular. First I think there should be no limitation: birth in Gibraltar. Naturalisation, I think having regard to the example we have, it is a very very long association in Gibraltar that is required before naturalisation is granted. One knows of cases of people who are still waiting for their application to go through after twenty or twenty-two years. The statutory period may be five years but in the way that it is granted it takes a very, very long time. I doubt whether anybody with under 15 or 20 years residence in Gibraltar, or residence elsewhere and in Gibraltar, and the bulk of the cases are the cases of the people who have lived most of their lives in Gibraltar. Nobody is naturalised, because naturalisation is a discretionary matter, the registration is not, and, therefore, I sympathise with an attempt to limit the rights acquired by registration. I fully sympathise with that. Against that Government can exercise some considerable control because you must have 5 years residence before you are registered here; 5 years residence in Gibraltar, or even 4 years somewhere else and one year in Gibraltar. In that respect the question of the issue of the entry permits to people who come here as British Subjects, not Citizens of the United Kingdom and Colonies, could be considerably restricted in order that these other rights are not acquired, not just his rights of registration but the right to acquire that right to remain in Gibraltar. That I think could be done administratively. I am not impressed at all about the fact that under the new Immigration law in England people do not acquire any rights. Neither do they do so by coming here now, this is what the law is in England but it does not apply to Citizens of the Common Market because the whole basis is that the Immigration law does not apply to citizens of the Common Market and Citizens of the Common Market are persons who are citizens of the United Kingdom and Colonies by birth, or by registration, or naturalisation in Gibraltar, or whose father was so born registered, or naturalised. They do not need to acquire any rights: they have their right to go into England by Treaty and the ones we are speaking about in connection with the new Immigration

Law and the Asians who have no connection with England and no connection with the Common Market. Those are the ones on whom the restrictions are being imposed and no rights being acquired. Perhaps it might be possible to do something in respect of the non acquisition of rights by registration as citizens of the United Kingdom and Colonies. That part of the difficulty I completely sympathise with but I cannot see how we can differentiate it in this context. Whether we can differentiate it in another context, in another amendment to the Immigration Ordinance, that is another matter. In this context it is wholly untenable that people who acquire their British Nationality through Gibraltar and are thereby entitled to go to the nine countries in Europe because of that should not be given that right in Gibraltar. That is a responsibility that no Government, despite all the difficulties, can easily give way because we would be ridiculed in the eyes of the world; that people who have under the Treaty acquired certain rights to go into all these countries are not going to have the same rights in Gibraltar.

HON P J ISOLA:

I do wish the Government side will consider this very, very carefully, because what is being said by the Hon and Learned the Chief Minister is just not correct, as far as we know, the point about putting an arbitrary date being wrong and immoral. If sole legislatures in Gibraltar have been wrong and immoral for the last 25 years. Where Gibraltarian status is concerned there has been an arbitrary date ever since Orders-in-Council were made in 1897, So that is not a point, but what is a point which I think completely eludes the Government side is this, that we are giving them in this section far more rights than they are entitled to as European nationals, because all the European National is entitled, according to the Bill that we are being asked to pass, all that he is entitled to in Gibraltar is a permit for a period of not less than 5 years, if he satisfies the Principal Immigration Officer that he is self-employed, or if he is employed and the period of his employment is expected to last at least 12 months. So that a European national has to prove to the Principal Immigration Officer that he has got a job /to last that this is going for 12 months, and then he will get a 5 year permit. He is not going to get a certificate of Permanent Residence for the rest of his life in Gibraltar, and that is what is proposed by this Section, and that is what is so objectionable to the Opposition. What the Honourable and Learned Chief Minister says about naturalisation, about having to be here for 16 years, let



me put him right straight away on that. That is just not so. The Secretary of State, to my knowledge, has recently naturalised a young Spaniard who has only been in Gibraltar 6 years and he has got United Kingdom Status and quite rightly too, he was married to a Gibraltarian girl, we have no objection to that at all. But what we are saying is that this Section goes much, much further than we are required to do with European nationals, in respect of people to whom we have no obligations at all, Mr Speaker, because we are talking of people who come in the future. The baby that is born in January will be covered if his father was born in Gibraltar or registered he is covered by this Section. And any babies that are born for the next ten years, 20 years, are going to be covered if their parents come under this Section. If their parents are registered, naturalised, or born in Gibraltar. We are covering a whole generation in respect of everybody that is here. Let us be clear about that, because it would be tragic, Mr Chairman, if this House took a vote not really understanding the position and not really knowing what we are letting ourselves in for, because what this Section does, as it is amended, goes far further than I am sure any Hon Member would wish it to go, or has to go, or has any moral obligation to go. Until we went into Europe, Gibraltarians had not got a right to go into England. We have the Immigration Act and so forth.

If the British Government makes somebody here a British Subject of the United Kingdom, we have no obligations ourselves, it is the British Government that has the obligation because they have naturalised them or registered them in accordance with the Imperial Act of 1948, I mean, let us be clear. By all means let them stay, by all means at a future date bring your deadline up, but let us have no doubt about it, what this section is doing is opening the door for the future in respect of people we have absolutely no obligations to, and giving them far more rights than we are required to do to European Nationals or in the Common Market or even to citizens of the United Kingdom with a right of residence in the United Kingdom. Those people come here and all they are entitled to is 5 years residence, that is all they are entitled to, and yet it is suggested that an Asian or a Spaniard or somebody else with no connection with us comes to Gibraltar, gets naturalisation and immediately in Gibraltar we give him virtually Gibraltarian status. So we are giving a Spaniard, an Asian in the future more rights than we are giving a United Kingdom Citizen with a right of residence in England today. That is what this section does and I would urge the Government

side to look at this very, very carefully because the results of this can be profound on the light and make up of Gibraltar as we know it today. By all means let us be right and let us do right by all those people with respect to whom perhaps we have not been doing right because they have been here a very long time, by all means, and their children, let us cover them completely. But let us have a hold on the future, because the future does not belong to us, it belongs to our children and to those who have elected us here.

HON ATTORNEY GENERAL:

Mr Chairman, what are we going to do with the person who comes to Gibraltar who in due course becomes naturalised? What are we going to do with him? We cannot get rid of him. It is foolish not to give him a Certificate of Permanent Residence. Supposing we said get out, we have got nowhere where we can send him.

HON P J ISOLA:

I am not suggesting - if I may interrupt one second - that we should tell him to get out, I am not suggesting that for one minute. We have got a lot of Asians in Gibraltar who have no right until now, we have not told them to get out, no one is suggesting that. It is one thing not to tell them to get out, and we will not tell them that, but it is another thing to tell them: "Now you have a right to stay here as long as you like." There's a difference.

HON ATTORNEY GENERAL:

But is it different? We give them at the moment Certificates which last, I think in most cases, a year, they go on from year to year. Even if under the law as it stands at the moment we were to refuse them a Certificate, say technically they were here illegally the law would laugh at us, if we tried to prosecute them for being here without a permit. What would happen then? If you cannot get rid of a person who has been naturalised unless and until you remove his naturalisation, why not give him his Certificate of Permanent Residence. Certainly as far as the United Kingdom is concerned a person naturalised in that country is entitled to stay there permanently, unless of course his certificate of naturalisation is revoked. On the question of registration, I regret I have not



got a copy of the latest Immigration Act here. I believe it to be the case that if you are registered as Citizen of the United Kingdom and Colonies in the United Kingdom, then you are entitled to stay. If you are a citizen before having gone there then admittedly the Immigration restrictions are much much tougher, but if you are registered there then you can stay there.

HON M XIBERRAS:

I think, Sir, that the point which the Hon and Learned the Attorney General is making is the one made by the Hon and Learned the Chief Minister earlier, the question of the contexts in which such a limitation would come, and the context is the Immigration Control Bill. I appreciate that it might very well be that somebody who bona fide comes into Gibraltar, meets our normal laws, registration, naturalisation, and so on, would be entitled to Common Market Status, to speak loosely of it, but what we do not have in Gibraltar is an Immigration Act of the same sort as in the UK, and therefore in accepting the Hon and Learned the Attorney General's amendments we would be giving up all the measure of control over British Subjects coming into Gibraltar now. This is going far beyond the position of the United Kingdom at present. The Hon and Learned the Attorney General has already said that in the United Kingdom there is a tougher Immigration Act. Well, this is precisely the point we are making, that we do not have that control for Gibraltar, and because of its size our problem is very much greater. This is why I mentioned earlier in the debate the corridor into Europe, for those outside Europe, this would be the effect of the Honourable and Learned the Attorney General's amendment. Therefore, I think it is of vital importance that we should just think about this one before we take a decision.

HON CHIEF MINISTER:

It may have been overlooked perhaps, that though the conditions of Immigration in the United Kingdom are stricter we have had them for longer, but they have not been systematised as they are in England for the subsequent acquisition of rights to remain there. This is what our Immigration law has not got. Now, there is I think in fairness a point which has been made that whereas the rights that they acquire through registration here in Common Market Countries are the rights of entry subject to the conditions of Common Market Countries, these are of a very permanent nature, and in fact it is one

which affects the people of Gibraltar generally, and I would respectfully, Mr Speaker, propose now that we leave this for the moment and we proceed with the Committee Stage or the next Bill, so that I have an opportunity of considering the matter further. This is far too important. I agreed the other night at a moment's notice when they said they wanted more time.

Unfortunately we have not been given that time because the amendment was circularised at mid-day today - certainly that was the time I got it and members got it a little later - and we would like to be able to do that in the course of the afternoon whilst we proceed with what I hope will be less controversial amendments.

HON M XIBERRAS:

This side of the House is certainly agreeable to that, except, for the record, that I believe my Hon Friend sent the amendment at 10 o'clock.

MR SPEAKER:

If it is the wish of the House, of course, we will continue with the next Bill and of course we will revert to this particular Bill when we have finished all the other Bills perhaps or one particular Bill, whichever is the wish of the House. If it is the wish of the House we will then leave this Clause until a later stage and we will now proceed with the next Bill to be considered in Committee which I believe is the Control of Employment Ordinance.

#### THE CONTROL OF EMPLOYMENT (AMENDMENT) ORDINANCE 1972.

Clause 1 was agreed to and stood part of the Bill.

#### Clause 2

HON M XIBERRAS:

Sir, I would move the following in relation to Clause 2.

"That Clause 2 of the Bill be amended by the addition of the following words at the end of the clause, namely:  
"provided always that for the purposes of employment in the Public Administration of the Crown a resident of Gibraltar shall mean only a British Subject or a Gibraltarian as defined by the Gibraltar Status Ordinance", "



Sir, we spoke earlier on this side of the House about the need to protect insofar as it was compatible with the Treaty of Rome the various sectors of our community and particularly and very especially the working sector of Gibraltar. The Treaty of Rome makes this provision as a part of the Treaty that in Public Administration of the Crown then only people of that area need be employed, that there is preference in the Public Administration for people living in that particular country of the Common Market. This is very important in Gibraltar, as the House will know, because of the large proportion of the workers of Gibraltar who work directly for the Crown, and of course by that I also mean the Government of Gibraltar. So that workers, industrial or non-industrial in the Gibraltar Government, the Department of the Environment, the Dockyard, Fortress Headquarters and so on, Gibraltar workers in those areas would still have preference of employment.

Sir, figures will be made available a bit later as to the number of workers so affected, but it is something in the region of, about 5,500 Sir. And this, taking into account an insured labour force some 13,000 which include workers from abroad, is a very substantial number. Sir, this is one way in which the Opposition is contributing to the forming of this law. We were sorry not to see the inclusion of this in the original draft of the Bill before the House and, therefore, we are very pleased to see that the Government has now given notice that it intends to put in an amendment which completely satisfies us and which is based on the same sort of approach as the amendment which I am at present putting to the House.

Sir, the only other point I would make is that this is what the Opposition meant by saying that we should by all means try to afford the working sector of Gibraltar, the employee's sector of Gibraltar, as much protection as possible, which is compatible with the Treaty, and certainly, as much as this House is willing to afford to the Trading sector of Gibraltar. This side of the House is not satisfied that in fact the amount of protection afforded in the Licensing Bill for instance is comparable with the amount of protection afforded in the Control of Employment Bill, but this type of amendment which I am quite willing to withdraw and allow to be replaced by the Government amendment on the same lines, represents the type of safeguard which can be built, and we hope will be built, into the Control of Employment Ordinance for the protection of labour in Gibraltar.

MR SPEAKER:

I now propose the question, which is that Clause 2 of the Bill be amended by the addition of the following words at the end of this Clause:

"Provided always that for the purposes of employment the Public Administration of the Crown, resident of Gibraltar shall mean only a British Subject or a Gibraltarian as defined by the Gibraltar Status Ordinance".

HON M KIBERRAS:

Unless Members wish to speak on this amendment, I would ask leave of the House to withdraw it.

MR SPEAKER:

Has the Honourable Member the leave of the House to withdraw the amendment that is proposed?

Leave of the House was given.

MR SPEAKER:

Then the amendment is withdrawn. I believe that the Honourable the Attorney-General has an amendment to make.

HON ATTORNEY-GENERAL:

Mr Chairman, I have an amendment of which notice has been given, that in the definition of 'resident of Gibraltar' there be substituted for subparagraph (b) two new sub-paragraphs as follows:

- " b. Does not require a permit to reside in Gibraltar or to hold a certificate of permanent residence on part III of the Immigration Control Ordinance or who holds or is entitled to be issued with a residence permit under Part IX of that Ordinance subject to the provisions of section 53 thereof; and



- c. In the case of employment in Her Majesty's Service or in the Service of the Government of Gibraltar, is a British subject;"

Mr Speaker then proposed the question.

HON ATTORNEY-GENERAL:

Mr Chairman Sir, it sounds, I think probably rather an odd thing to say when I get up to move an amendment that the amendment is in fact unnecessary. But I do so. I was accused the other day by an Honourable Member of the Opposition of a great oversight when certain words were left out the Immigration Control (Amendment) Bill, so if perhaps I could now explain the position about this particular amendment. There is under the Treaty of Rome a right to seek employment, but there is no ~~right~~ right to be employed. Subject to what I say in a moment, employers must not discriminate against persons on the grounds of race. Articles 48 and 49, however, provide that there can be discrimination in what I will call here, Service of the Crown. That means that in Gibraltar Her Majesty's Government or the Government of Gibraltar ~~may say~~ *Further the Government* categorically "we do not propose to employ Community Nationals". Now, this is, as I understand it, what will probably be done. As a general policy Community Nationals will not be employed. There may be the odd case where perhaps it is necessary to do so, a doctor, a vet, or whatever it may be, but if I could perhaps revert to the amendment originally proposed by the Opposition, even if we put in this provision saying that a resident of Gibraltar as far as public service is concerned, only means a British Subject, if the Government of Gibraltar wishes to employ someone else all it has to do is to issue a permit. We are not shutting the door by putting in this particular provision. By putting it in there has to be a permit to be issued, without putting it in it is merely done administratively: we do not allow in Nationals. Quite clearly although the general policy must be to restrict employment in the service to British Subjects, there are obviously cases where this cannot hold good. As I say we may need doctors, we may need vets, professional men, we cannot close the door entirely, but all we are doing here is merely saying: "although we could stop it administratively,

merely by not issuing a permit, however we will have to issue permits to persons who are not British subjects".

We had ample control before, it was not an oversight on the part of Government, it was their policy only to employ in the public service British Subjects, but we had put this in order to accommodate perhaps the feelings of both sides of the House.

MR SPEAKER:

Does any other Honourable Member wish to speak on the amendment?

HON J BOSSANO:

Mr Speaker, I cannot agree with the Honourable and Learned the Attorney-General that this amendment is unnecessary. I am unable to follow precisely the technical side of the argument that he has put to us and perhaps privately he will be able to explain it further to me. I think that it is necessary, quite apart from anything else, because it clearly puts in our law something that we might have been able to do even if there was not a specific provision because it would not have been incompatible with our Treaty obligations to discriminate in favour of Gibraltarians against other Community Nationals in the employment of the Crown. This would have been possible perhaps without a specific section in the law saying so but nevertheless it is a good thing to have. And you know it is a good thing that the working people of Gibraltar should be made aware that the Government and that the members of this House are concerned to have it in the Statute Book that their rights to earn their livelihood in Gibraltar is something that is worthy of protection. That is very much the concern of the elected representatives of the people and, therefore, quite apart from any other reason, purely for its psychological and emotional effect, I think there is sufficient argument for having this in the Statute Book. In fact it clearly shows that we are concerned to ensure that we can guarantee employment to every Gibraltarian. And we can wish this, Mr Speaker, because of the number involved. I have not got the exact figures available at the moment because I haven't brought my copy of the Census along, but in the 1970 Census there



were something like  $11\frac{1}{2}$  thousand total labour force, of which something like 6,000 were in the public sector. The male Gibraltarian employed labour force was about 5,000 and there were about 2,000 females, so that in fact it means that if in the employment of the Crown we can say to a Community National, and one can think towards the future when the Common Market might be enlarged and when the working people of Gibraltar might be faced with the competition at work, this is not an immediate danger one must not think of Frenchmen or Italians coming here to work in the Dockyard, but we may find that if at some future date the composition of the Common Market changes we might have workers from another country, from a new member, wanting to come and work in Gibraltar. In that situation, what does this amendment do; Mr Speaker?

It enables us to guarantee employment to Gibraltarians, because we would only give employment to non-Gibraltarians or non-British Subjects if in fact there was already full employment among our own people. Because of the numbers concerned it means that if it comes to extremes, we can ensure that everybody in Gibraltar who is a Gibraltarian or a British Subject and permanently resident here will have a job, because we could accommodate all the labour force in the public sector and the competition would only come in the private sector.

HON A J CANEPA:

Mr Speaker, I would very much hope that on an amendment on which both sides of the House are so clearly ~~at~~ <sup>as</sup> one we will not be involved in ~~the~~ debate on whether it is a necessary amendment or whether it is not. The fact of the matter is that the debate which took place at the Second Reading of the Bill, on the general principles of the Bill, showed in no uncertain manner that both sides of the House were concerned that we should continue as far as possible to be able to exercise a desirable measure of control over any labour coming into Gibraltar.

Sir, I am very happy to see that the amendment which the Attorney-General has proposed is acceptable to both sides of the House. With this amendment we are providing a measure of control that covers the public sector. With this amendment any one other than a Gibraltarian or a

British subject will require a permit for employment by the Crown. This is permissible under Article 48 para 4 of the Treaty of Rome which states that the provisions of the article shall not apply to employment in the public service. I do not know exactly what the numbers involved are, they may well be in the region of 6,000, but the fact is that we are continuing to exercise a measure of control, a very desirable measure of control, over a large proportion of our labour force. When we also bear in mind that employers in the private sector are under no obligation whatsoever to employ Nationals from the EEC, I think both sides of the House will fully realise that we are only diluting the existing element of control under this Ordinance to that bare minimum which is necessary to meet our obligations under the Community Laws.

I strongly commend this amendment to the House and I would hope that we will accept it in a resounding manner.

Mr Speaker then put the question which was resolved in the affirmative.

Clause 2 as amended stood part of the Bill.

HON M XIBERRAS:

As the House is aware I also gave notice of a further amendment which read as follows:

"That the Bill be further amended by the addition of a new clause, to be numbered clause 3, to read as follows:-

" Section 14 of the Control of Employment Ordinance is amended by the deletion of all the words appearing in the said section and by the substitution therefor of the following words:

' the Governor shall set up appropriate machinery for the progressive abolition of any discrimination as regards remuneration and other working conditions within Gibraltar and for connecting offers of employment and requests for employment with a view to equilibrating them in such a way as to avoid serious threats to the standard of living and employment in Gibraltar.'



Sir, the principle behind this amendment was the same one which applied in respect of the previous which I withdrew a few moments ago, and that is, that since the Treaty of Rome provides as an aim that there should be no discrimination in questions of remuneration as between Common Market Nationals then this principle, which is of positive effect in Gibraltar and which will represent a very great advantage to the working classes of Gibraltar, as a method of appealing against any discrimination in the question of employment, that this principle should not only be accepted by us, in the general context of our acceptance of the Treaty of Rome, but that it should be incorporated into the law of Gibraltar and specifically that law which deals with the Control of Employment of Labour from abroad which to our mind represents the fundamental threat to the achieving of a situation of no discrimination between Common Market Nationals.

Sir, I understand that this amendment, because of the way it was phrased, would not be acceptable and if I may, Sir, I would like to sit down and hear your ruling on this.

MR SPEAKER:

You are of course referring to the first notice given of the amendment, and I would like to say that I considered the amendment as first phrased to be unacceptable in accordance with the Standing Orders, in that it was not specific and will not require to do something specific but was more so an expression of policy. Therefore, that amendment was withdrawn and it has now been re-phrased and re-drafted in a manner which is acceptable to the Chair and which can be proposed by the mover and debated as a valid legitimate amendment.

HON M XIBERRAS:

I thank, Mr Speaker, for this ruling and, therefore, the amendments as it is phrased now, would read:

"that the Bill be further amended by the addition of a new clause, to be numbered Clause 3 to read as follows:

- '3. Section 14 of the Control of Employment Ordinance is amended by renumbering sub-paragraph (d) thereof as sub-paragraph (e) and by the

interposition of a new sub-paragraph (d)  
to read as follows:

"for the progressive abolition of any discrimination as regards remuneration and other working conditions within Gibraltar and for connecting offers of employment and requests for employment, with a view to equilibrating them in such a way as to avoid serious threats to the standard of living and employment in Gibraltar."

Sir, what we have done in fact, having been made aware that the other amendment was not acceptable because of its phrasing, is to introduce into the Control of Employment Ordinance a Section under that part of the Ordinance where the Governor is entitled to make Regulations. And the effect of this would be to give the Governor in the constitutional sense power to set up machinery for the progressive abolition of any discrimination as regards wages, salaries, remuneration, and working conditions within Gibraltar, and also for connecting offers of employment and requests from Common Market Nationals.

The wording of these two principles is taken practically to the letter from the Treaty of Rome, and therefore we feel that this sort of amendment cannot be rejected on the grounds that we would be in conflict with our Treaty obligations. At the same time it affords a platform for the expression of those feelings which Members on both sides of the House have accepted, namely, priority of employment for Gibraltarian and protection for Gibraltarian labour in such a way, as I said, as to be within the Treaty of Rome and yet be of signal advantage to the working classes of Gibraltar.

Sir, we do not intend that these two principles as embodied in our law should be to pay mere lip service to the progressive principles of the Common Market. We in this House have had to accept a lot for a small community, rather a price to pay for becoming members of the Common Market and, therefore, we feel that small Gibraltar is entitled, as nobody else, to press that the advantages, economic, social and political of the Common Market should be passed in like measure onto Gibraltar. It is not a question of just paying a membership fee, it is also surely a question of getting the benefits of belonging to the Community as well.



Sir, Mr Heath, the Prime Minister, spoke not so long ago about underdeveloped territories in Europe and what could be done as regards bringing their standards up to those of the the rest of Europe, which because they have no great industry, because the labour is flooding across to other parts of the Common Market where work is more plentiful, there are factories, and so on, because of these reasons - Southern Italy for instance - there is unemployment and there is a need to make a determined effort to raise the standards in these rather less developed areas to the same standard as that which has been achieved already in the focal points of the Common Market, and also those standards which it is the Community's purpose, in accordance with the stated policy of the Treaty, to achieve in future years. This side of the House, Sir, intends to press on the basis of these amendments, if they are incorporated in the law, not only in respect of the Common Market but also in respect of Her Majesty's Government, and all this is in consonance with the stated policy of this side of the House that standards in Gibraltar should in a reasonable time be no less than they are in Britain to begin with and the rest of the Common Market thereafter.

Mr Speaker then proposed the question.

HON A J CANEPA:

Sir, as the Honourable mover of this amendment has stated, the basis of the amendment is part of paragraph 2 of Article 48 of the Treaty of Rome, and sub-paragraph (d) of Article 49 of the same Treaty.

Sir, in my view the object behind the relevant parts of these two Articles is two fold. Firstly, to prevent discrimination against immigrant workers from EEC Member states, and secondly to avoid such an influx of workers into a particular area as would threaten the standard of living and the employment situation there.

Sir, I think the Opposition are trying to use these provisions of the Treaty of Rome for a different purpose, for a purpose which, although I am in spirit in sympathy with, is in my view not proper to the Control of Employment Ordinance. I say, Sir, that it is not proper to the Control

of Employment Ordinance because I think that it could be proper to some other piece of legislation, such as the Regulation of Conditions of Employment Ordinance, or perhaps some new Ordinance altogether, that would be applicable to all workers. The Opposition, Sir, -

the Opposition

I may be wrong and they will correct me if I am so - but I think that the purpose behind the proposed amendment cannot be covered under this Ordinance, I would remind them that the Long Title of the Ordinance is: "An Ordinance to Control the Employment of aliens and others to establish employment exchanges and for matters connected therewith".

Sir, I must point out that with the introduction of the new definition of resident of Gibraltar, any regulations which the Governor may make under this Ordinance insofar as the abolition of discrimination, as regards remuneration, and so on, is concerned, could, therefore, be held not to cover EEC Nationals completely. I doubt whether really this is what the opposition have in mind and that is why I honestly and sincerely do not think that this Ordinance is the proper vehicle for such a provision. If, Sir, on the other hand the purpose behind the amendment is to provide against an influx of non-EEC cheap labour, then of course perhaps I ought to remind the House that section 7, I think it is, of the Ordinance, already stipulates as one of the requirements, for the issue of an employment permit that the terms and conditions of employment shall not be less favourable than those prescribed by law or generally observed by what are commonly termed good employers.

I must stress Sir that Government is unreservedly sympathetic to the spirit behind the Opposition's proposals; however, I am not entirely sure that it is a matter which can be solved by a simple statement of intent in a Clause of an Ordinance that was enacted for a different purpose. One would have to go into great length I think to specify exactly what constituted discrimination and to lay down what are the measures which are to be taken in order to eliminate it. Sir, I feel that, as I have said, this is altogether a far wider subject than we can effectively cover by a single clause. I think the matter calls for much closer study, and not only that, but I think the House will agree that one would hope that if we introduced such an amendment into any of our existing legislation, or give it effect in any new measure of legislation, I would hope that



we would be doing that not necessarily as a direct consequence of our going into Europe, but because we all subscribe to the principle. Therefore, I do feel that the principle should be enshrined in our legislation and I think it is just a question of making up our minds as to which is the most proper vehicle to give effect to this. What type of legislation can be introduced so that it will ~~apply~~ ~~and it will~~ cover all workers and not just those covered by the Control of Employment Ordinance.

MR SPEAKER:

May I interpose here and ask the speaker: he did read the Long Title which is completely different to the one I have here and for the purpose of the record could he perhaps make sure that we are dealing with the same Bill just in case there is a misunderstanding. The long Title of the Bill we are dealing with, as I have it is: "An Ordinance to amend the Control of Employment Ordinance".

HON A J CANEPA:

Sir, I quoted from Chapter 33 of the 1965/1969 edition of the laws. The Long Title of the original Ordinance, the main Ordinance, which I think, Sir, was enacted on the 1st September, 1956.

MR SPEAKER:

I am just trying to make sure that we know what we are debating. Whatever else, the Bill that we have before us has not got the Title that you read, that is all. It is for the purpose of the record. There was a Title read which is completely and utterly different to the title of this Bill. That is why I must make sure you were referring to the main Ordinance.

HON M XIBERRAS:

Sir, in the first place I would like to welcome what has been said by the Minister for Labour and Social Security, that he is unreservedly in support. He and the Government are unreservedly in support of the spirit behind this amendment.

Sir, as far as I know there should be no discrimination between Common Market workers, whether moving in an inwards direction or an outwards direction, and that is the main, the essential, spirit of the provision. Of course, it may be the case that immigrant workers, in-coming workers, are more likely to be subject to certain disabilities than people moving out, and it is also natural that the state into which workers move should have the provision in the law to deal with what appears to be the major side of the problem. But I do not think that the Honourable Minister for Labour would question the statement I have just made, that the essential element of this proposal is surely that there should be no discrimination in the working conditions and the remuneration of Common Market members within a particular area and, therefore, I think, Sir, that he is being rather too practical in looking at this amendment and indeed at the Treaty of Rome. We in Gibraltar should be concerned with our particular problem and we should appeal to the essential factor in this amendment and in the Treaty of Rome which is that there should be no discrimination, one way or the other.



However, I have welcomed what the Minister for Social Security has said.

Sir, I also disagree with him on the question of putting this provision in this particular law. He himself has said that there was already some provision - Section 7 I believe he quoted - as regards the question of no discrimination for incoming workers, and the law he was referring to was indeed the Control of Employment Ordinance. Therefore, this development of the same principle, this application of the same principle in respect of Common Market Nationals cannot be out of place, I would suggest, in this particular law since some provision already exists in that law. And also because, Sir, the general situation and circumstances of the Common Market National worker is being written into this particular law and into no other. They might argue that we should not say that Common Market Nationals are labour from abroad at all, and, therefore, we should not put these provisions into the Control of Employment Ordinance especially when the spirit of the Treaty of Rome is to eliminate control and restriction. But yet it has been chosen by the other side as the proper vehicle for the amendments in respect of Common Market National workers.

Therefore, Sir, I do not agree with the Honourable Minister for Labour and Social Security on this point. Sir, I disagree with the Honourable Minister also in this respect: that this amendment is no more than a statement of intents. I believe that the Honourable Minister must have been thinking of my previous amendment, which I withdrew because it was merely a statement of intents, but the present amendment goes further. It enables the Governor, in the Constitutional sense, to set up machinery to deal with the two problems of discrimination in relation to remuneration, and also in equilibrating of offers of employment and request for employment. Therefore, it is no mere statement of intents.

It is important, I feel, that this should be in this ordinance because the problems are inextricably connected. The control of Labour from abroad and the circumstances and conditions under which that labour works in Gibraltar are two sides of the same coin. And I would, therefore, ask the Honourable Minister and Members opposite whether they have very strong views on this matter, as to where this should go, because I know that if a completely new law has to be drafted then inevitably it will take some considerable amount of time and we would have, at the end of this protracted meeting, something less than a complete law in my submission.

The Regulation of Wages and Conditions of Employment Ordinance may not be a proper vehicle either because that Bill deals mostly with the private sector, and as far as I know, does not cover the public sector. The public sector to my recollection is not bound by the Regulation of Wages and Conditions of Employment Ordinance, and, therefore, I have no hesitation in saying that this is the proper place in which to put this amendment. The only other choice is to draft a new law but then again there is going to be a lot of legislation on the Government's plate no doubt, and I would request the Government not to postpone the incorporation of this important principle into our laws.

HON A J CANEPA:

Sir, the Honourable Leader of the Opposition has said that I took a very practical view of this amendment. Yes, I do take a very practical view, and that is why I do not think he has heard completely what I said when I referred ~~to~~ <sup>to the</sup> statement of intents. I said that this was a matter which was so fundamental and so important, that it could not be solved merely by a statement of intents, without actually going into a definition, without actually specifying what constitutes discrimination, and deciding upon those measures which are to be taken to eliminate it. I am saddled with the responsibility under this Ordinance of deciding what is discrimination and trying to do something about it, and, therefore, I must take a very practical view. It is my concern to see, subject to whatever advice I may get, what is the best way that I can tackle this matter. One is feeling one's way in these matters. The amendment has come upon us in the last two or three days. The matter of discrimination, may I remind the House, has not been in the air for two or three days. In fact, if I recall correctly, I think the matter really came to the boil during the life of the previous administration, and if all that was required to eliminate discrimination in Gibraltar was to insert such an amendment into the Control of Employment Ordinance, I am sure that the Honourable Leader of the Opposition, when he was sitting in my place, could have done that.

HON M D XIBERRAS:

Sir, I am so sorry that the Honourable Minister for Labour has chose to put his views in such a way. Of course we know that this is not going to be the end of discrimination, but if the Honourable Minister is keen on fighting discrimination, then he had a good start now with this amendment. One knows that there was in my time, in his chair, a certain amount of petitioning, and demonstration on the question of discrimination. The Honourable Member must also be aware that there was a very forthright statement from the then elected members of the Government on the question of discrimination and we have in no way changed our minds, as to the abnoxiousness of discrimination.



But here we are going a step further and we are incorporating this into a labour law which the Honourable Minister for Labour should be very pleased about. If the Honourable Minister for Labour is going to wait until someone drafts a complete set of regulations and criteria to establish discrimination in the question of employment he is never going to get it. I can assure him of that. It is going to take a very long time and this non-existence and even this amendment in a labour law is not going to help the Minister in doing away with discrimination, if that is what he wants. It is going to hinder him and possibly people will march again to establish whether there should be discrimination or there should not be discrimination. I think he is being naive in supposing that he is going to be able to come up with a complete law in which all aspects of discrimination are going to be set out his T's crossed and I's dotted. What we are doing really is saying: "Do it in your own way." Here is the machinery for it, here are the powers of the House for it, here is the proper vehicle for it, and I would be, as I said, very sorry to see that this chance is not seized by the Honourable Minister for Labour and Social Security to incorporate such an important principle, and the possibility of action on that principle, into our law.

HON A J CANEPA:

Sir, I would remind the Honourable Leader of the Opposition that the elected members who were then on that side of the House - I was not one of them - also issued a very strong statement condemning discrimination. And even though I was not an elected member at the time, I did play a not inconsiderable part in the drafting of that statement condemning discrimination. Of course I want to see discrimination done away with, but I hope that the Honourable Leader of the Opposition would not be so naive as to imagine or to expect that the mere inclusion of this amendment in the Control of Employment Ordinance, or in any other existing Ordinance, will bring over-night the end of discrimination.

*for* I hope he will bear in mind that this may lead to a long road, the inclusion of that statement will not do away with it. It will be a very, very long road and I would hope that he will bear with me in the difficulties that are going to be experienced in doing away with discrimination. It is not an easy matter to pin down, it is not easy to take measures to eliminate it, this is what I am concerned with. I have got the responsibility for implementing whatever goes into our statute books, and I would not want, to find myself in an intolerable situation as the result of a statement of intents without having, as the Honourable Major Peliza would put it, the nuts and bolts to get the machinery working. This is the difficulty that I would want him to bear in mind.

HON M D XIBERRAS:

Sir, I would not suppose that the people who drafted the Treaty of Rome and incorporated this wording with no provision for the setting up of specific machinery, were also naive. The Treaty of Rome, as the Honourable the Minister for Labour has said, I believe it was article 48, provides exactly the same kind of statement, and this I am sure the Honourable Minister would say was not a naive statement, nor that it was completely valueless if it is serving to provoke debate in this House today. Therefore, it should be to my mind incorporated into the law of Gibraltar. We have given absolute flexibility for the Minister or whoever might be concerned with these responsibilities to set up whatever machinery he thinks it is necessary. We are not hamstringing him, we are just asking him to accept our principle, which is taken straight out of the Treaty of Rome and given expression in the Control of Employment Ordinance. It is no more than that. I cannot agree that you need to have the nuts and bolts to the last bit of steel. I cannot believe that. The machinery can provide the nuts and bolts and we are giving the Minister absolute freedom to draw up the machinery and to make it work, but rejection at this stage, I would point out to the Honourable Minister, is not a good thing.

HON CHIEF MINISTER:

Sir, I am sure that all Honourable Members have been reading of the attempts in the United Nations to make a law against hi-jacking and terrorism, and it is rather interesting because everybody agrees that this should be put an end to, but all the difficulty that they have now is to define terrorism. This is what is holding up the passing of a law which everybody agrees with. Why? Some countries say: "You must not include there the acts of Liberation Movements, whether they are terrorist or not, we must not do that". It seems to me that there is no use putting a declaration of intent into a law unless you have the proper machinery to administer. To do this is just to give lip service to it. The principle is accepted and I think no Member of this House could ever disagree with that principle.

The Minister has stated that he shared the views expressed and he wants to consider it. In any case we are bound by the Treaty so I think the Government is just acting in the best interests to see that when it becomes effective it is not just a temporary satisfaction and becomes a dead letter.

Mr Speaker, subject to those remarks, I was going to suggest that the question be now put.



HON MAJOR R J PELIZA.

Mr Speaker, before the question is put, I would like to say a few words. Because I was mentioned, I think I ought to come and say that this is not really a question of nuts and bolts, far from it, this is a principle, the nuts and bolts will come later. This is grease, this is power, this is steam, not ~~nuts~~ and bolts, and I would recommend to the Minister that if he is so keen in doing away with discrimination, as I am sure he is and I have no doubt whatsoever on that, this should add to his strength and not take power away from him. No one on this side of the House is going to expect a miracle overnight. We know how difficult it is to get things in the right place, particularly when Gibraltar is a very tiny, powerless community, although of course with the highest principles as the biggest member of the European Economic Community. But since that is already in the Treaty of Rome there can be no objection in principle from any quarter or for any part of the Gibraltar Government, or any authority to do with the Gibraltar Government which is not in the Government itself. Therefore, I cannot see why there should be an objection in principle to this going into this law, which to me is the appropriate piece of legislation into which it should go. Because there can be discrimination in favour or against someone coming from outside to work in Gibraltar, and whether it is one way or another it is discriminatory. Therefore, I would say that this is the most appropriate piece of legislation into which this should be added and I would recommend to the Minister to give more careful thought to this. If they reject this amendment then they might give the wrong impression and no one from this side of the House would want him to give that impression. This is not the object at all, it is not intended in any way to create the wrong impression of the Government. In the same spirit that we have introduced amendments into this House, on which after some discussion it has been possible to arrive at some kind of consensus. I do hope that the Minister can use his influence with his colleagues in the Government to reconsider the whole point and if there is any strong objection within the Government, and this is not personal unto himself, to try and bring it about even if it means a slight change of wording. But in any case to have the principle inscribed in this piece of local legislation which to me is so important, not only to enable him to get on with the job as soon as it is passed but also to ensure that whoever may take the office subsequently will continue doing the same work as I am sure he would like to do. It is a difficult task, we are all aware of this, but it has got to have a beginning. I think it is the Chinese who say: "If you want to walk a thousand miles you must take a first step." This may well be, as far as we can see, the first step. And even if we still have to walk a thousand miles to get there, I am sure that the Minister can be certain that he will have the full support of this House in bringing about the end of any discrimination that may exist in Gibraltar.

So he need not be afraid, I assure him, that he is going to be under pressure from this side of the House by putting this into this Legislation. On the contrary, he is going to have a lot of support now or for any other measures against discrimination that he may wish to take. So at least from this side of the House he has got the full support. But I go further and I say that it looks to me as if eventually we shall have to have a division on this unless there is a change of heart from now onwards. But if this does happen, if at the end of the day this amendment is not incorporated into the law, unfortunately, I do hope that the words he spoke before, that he would try to introduce this into another law will be given effect with all speed, and that he will try if possible to obtain some kind of advice if he wants to, or discuss the matter with the Opposition. I am sure that he will have our full support on this. But what we would not like to see, after having discussed here today and unfortunately not having had this incorporated into the law, that the whole matter should be forgotten. I think the Minister can be sure that certainly this side of the House will not forget about it and we shall bring pressure to bear on the Government to do something about it.

I still believe as I said before that this would be helpful to the Minister, that this is not in conflict with the Treaty of Rome in any way, and that if anything, it will show the other nations how keen we are to harmonise our laws with the Treaty of Rome and try and follow the principles which all the other European nations are trying to implement. Therefore, I strongly recommend to the Minister to give second thoughts to this and try whether there are some ways and means of introducing this amendment.

HON A J CANEPA:

Sir, May I say that I cannot possibly forget this principle. In going into Europe we are accepting the provisions of the Treaty of Rome and perhaps I ought to remind the Honourable Major Peliza what paragraph 2 of Article 48 actually entails: "Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the member states as regards employment, remuneration, and other conditions of work and employment." We are accepting this in going into Europe, we are committed to it, and I would just ask leave to be allowed by the House to see what is the best way that I consider, with advice from the Honourable the Attorney General, for implementing this very desirable paragraph of Article 48 of the Treaty of Rome.

HON CHIEF MINISTER:

I move that the question be now put.



HON J BOSSAHO:

Mr Speaker, I think the last intervention from the Honourable Minister for Labour, that he should be given time to consider how this may be implemented does have perhaps some weight, but certainly the arguments that have been put forward previously in an attempt to convince the House to vote against this amendment are not good enough.

There were three main points, Mr Speaker; that perhaps this was the wrong law in which to put the amendment, but no suggestion as to what the right law might be, and no cogent argument why this law might be the wrong one; Secondly, the Honourable Minister for Labour stressed the fact that it would be his responsibility to implement, to bring in the necessary regulations to do this. Well, in fact what the amendment does is to follow the provisions that are already included in Clause 14 of the original Control of Employment Ordinance, where it says: "the Governor may make regulations", so in fact we are extending the power to make regulations which is already there. For example, section (d), which would then be section (e) if the amendments were accepted, says that regulations may be made generally for carrying into effect the purposes or provisions to this Ordinance, which is a fairly vague thing to say, Mr Speaker, and presumably nobody objected to this originally. The fact that we cannot give a precise and clear definition of "discrimination" should not to my mind inhibit us from saying that where discrimination is seen to arise, and this is in fact what the amendment is saying, when the time comes that we have discrimination, then the Governor - in this case the elected member, the Minister, - may make the necessary regulations to put matters right. We have already heard, Mr Speaker, in another context how important it is to have the power to make regulations so that you can deal things quickly. Well, this is what we are doing, we want to give the Honourable Minister the power to make regulation so that he can deal with discrimination quickly, just like the Government wants powers to make regulations in other respects. Perhaps they do not have the same sense of urgency when it comes to working conditions, in spite of the very powerful speeches that have been made here in support of the spirit of this amendment, Mr Speaker. But the other argument in any case, the question of the lack of definition seems to be in marked contrast to the acceptance of a similar provision in respect of Trade, where it says that the needs of the community in the area are adequately well catered for, for that reason, a permit, a licence to trade may be refused, so that in fact what that is doing is giving the law on trade the power to equilibrate the supply and demand in respect of business, in respect of the sale of goods. This is the power that we want the Honourable Minister for Labour and Social Security to have in respect of supply and demand of labour, because

we think that if anything the livelihood of the working man is the most important thing. It comes before protecting business, because business depends on the wage earner and what we have seen in the House is protestations from the Government there is equal concern for business and for the working people, and yet when it comes to one side they provide in the law, Mr Speaker, for control of business so that there is a measure of regulation of competition. Competition to trade should be controlled, the Trade Licensing Ordinance says, and the Licensing Authority may refuse licences when there is already an over-abundant supply. Here we are saying to the Honourable Minister for Labour with this amendment: "You do the same for the working people, we give you the power, to make regulations, to equate supply and demand, just like your colleagues are asking this House to give this power to the Minister for Trade or to the Honourable Financial and Development Secretary."

I would be saying, if I were speaking to the Honourable Minister for Labour: "Your colleagues are asking the House to give this power to the Honourable the Financial and Development Secretary - the power to regulate trade by equating supply and demand - so that there is no excessive competition, and we on this side of the House, since your colleagues have not done it for you, are proposing the amendment so that you yourself will have the power, so that you yourself will have the opportunity whenever it is necessary to put into effect this deep concern that you feel for the working people. And the fact that we do not provide you with a clear definition of "discrimination" should not preoccupy you too much". This is, Mr Speaker, what we would wish to say to the Honourable Minister for Labour and Social Security: that he should not be over preoccupied because he is being asked to take upon his shoulders the responsibility for ending discrimination at some future date if he considers it right. He should not be afraid of this power, Mr Speaker, because when it comes to trade the Honourable Financial and Development Secretary is being asked to take an even greater responsibility: he is being asked to have the right to refuse a licence if it is against the public interest. Who is going to define the "public interest" for the Honourable the Financial and Development Secretary? If the Honourable the Financial and Development Secretary is not afraid to take this burden on his shoulders then I would say to the Honourable Minister for Labour and Social Security that he should be equally strong, when it comes to taking upon himself the power, when it comes to availing himself of this opportunity at some future date, to fight to protect the working people which he has told us on a number of occasions he himself wants to do.

Well I call on him, Mr Speaker, to reconsider his objection to this amendment and to support it.



MR. SPEAKER:

I will ask now the mover to reply.

HON. M. D. XIBERRAS:

Mr Speaker, there is one more point I would like to add to that, and that is the point raised by the Honourable Minister for Labour and Social Security that this was already in the Treaty of Rome and why translate this into the Bill, into our law. Well, this was precisely the sort of consideration which was accepted earlier in respect of employment in the public service, where it was taken straight out of the Treaty of Rome and put into the law.

Now, Sir, we have not said how people should apply for public service, where people are going to come from seeking employment in the public service; we have not said what structure there should be in the various public departments; we have not said any of these things, and moreover, Sir, what would happen if we actually had to say before passing this law what specifically were the areas of discrimination and how specifically we were going to deal with them. It is going to be impossible to do and it is going to bring much greater pressure on the Minister even if he should succeed in doing it. It is going to get him into all sorts of trouble. I would imagine in the building trade, for instance, if one had specific definitions of "discrimination" and specific ways of dealing with this discrimination. Therefore, Sir, we have merely in the first attempt stated a general policy: I referred to the amendment which we have withdrawn, and then we have given him power to do whatever he thinks like doing in respect of this principle, but I think, Sir, that we are going to end up, even if he does succeed in getting specific, in an intolerable situation which no Minister for Labour is going to be able to deal with if we are specific to the extent which the Minister wishes. Therefore I do not think it is a good thing to be as specific as the Honourable Minister wishes to be, and I forecast that he will not be able to be as specific as he wishes to be in this question.

Sir, if the amendment is not agreed to now, in political terms it is going to be very difficult for the Minister to come back and say we should put a similar amendment back into this law. Where is he going to put it? The Regulation of Wages and Conditions of Employment Ordinance is not the proper place. We already have an indication in this Ordinance that there should be no discrimination when dealing with workers from outside Gibraltar, so surely this is the place. If the Minister can come forward with an improvement later on in the form of extra regulation under this particular Section of the Control of Employment Ordinance,

or with something quite sophisticated under another Ordinance, then this side would gladly repeal this one and give expression to the other one. But if this is not the case, this side of the House cannot but blame him for not taking this step. It is a clear opportunity to do so. When I started speaking, Sir, I was under the impression once again that this would meet generally with the approval of the House. It is in this spirit that I would ask the Minister and the Government generally to reconsider putting this in, make complete our obligation under the Treaty of Rome and also incorporate some of the other parts of the spirit of the Treaty of Rome which is a levelling up of standards. If this is not done in the Control of Employment Ordinance at this stage, then how can this side of the House be asked to vote in favour of similar controls in respect of Trade at a later stage. And yet we have accepted the principle of control and protection in trade to a reasonable degree well in advance, even though the measures and the nuts and bolts of that Bill were not at all the sort of thing that we were willing to accept. And yet we have said that there should be protection for Gibraltar generally in respect of trade and in respect of labour, but when it comes to the crunch, to putting something actually in now in respect of labour, unfortunately we do not get the support of the Minister for Labour and Social Security, when there could not possibly be any objection on grounds of Treaty, on grounds of compatibility with the law, on grounds even of rigidity, that we were trying to apply something which was too rigid. On any of those grounds, Sir, it is impossible to my mind reasonably to criticise this amendment, and yet the opportunity is sadly going to go amiss at this stage.

Mr Speaker then put the question.

HON M D XIBERRAS:

Sir, can we please have a division?

HON CHIEF MINISTER:

There should be a vote first and then we can have a division?

MR SPEAKER:

There is no requirement to do that. In other words the 'ayes' and 'noes' on a motion can be taken in two ways: by a vote or a division. I will perhaps rely on the advice of the Honourable the Attorney-General on this matter but I am completely and utterly satisfied in my mind. Standing Order 53(i) states:



"(1)(a) All questions proposed for decision in Assembly shall be determined by the majority of the votes of the Members present and voting.

(b) The Speaker, and the acting Speaker if at the date of his appointment he was not a Member of the Assembly, shall have neither an original or a casting vote.

(c) Subject to the last foregoing paragraph the Acting Speaker or any other Member shall, when presiding, have an original vote but no casting vote."

HON ATTORNEY-GENERAL:

Mr Chairman, Sir. Standing Order 54(2): "At the conclusion of a debate the question shall be put by the President and the votes may be taken by voices Aye or No and the result shall be declared by the President, but any Member may claim a division when the votes shall be taken ....." I think a vote must be taken first.

MR SPEAKER:

Take a vote first.

HON ATTORNEY-GENERAL:

Take a vote first and then the Honourable the Leader of the Opposition can claim a division.

Mr Speaker then put the question and a vote was taken.

On a division being taken, the following Hon Members voted in favour:-

The Hon M Xiberras  
The Hon Major R J Peliza  
The Hon P J Isola  
The Hon W M Isola  
The Hon J Bossano  
The Hon J Caruana  
The Hon L Devincenzi

The following Hon Members voted against:-

The Hon Sir Joshua Hassan  
The Hon A W Serfaty  
The Hon A P Montegriffo  
The Hon M K Featherstone  
The Hon A J Canepa  
The Hon I Abecasis  
The Hon Lt Col J L Hoare  
The Hon E J Zammitt  
The Hon J K Havers  
The Hon A Mackay

The Amendment was accordingly defeated.

The Long Title was agreed to and stood part of the Bill.

THE LAND (TITLES) (AMENDMENT) ORDINANCE, 1972.

Clauses 1 to 5 were agreed to and stood part of the Bill.

The Long Title was agreed to and stood part of the Bill.

MR SPEAKER:

We will now recess for approximately ten minutes and we will then resume.

The House recessed

The House resumed

MR SPEAKER:

I believe that we are now going to continue with the Immigration Control Ordinance.

THE IMMIGRATION CONTROL (AMENDMENT) ORDINANCE - 1972

HON ATTORNEY-GENERAL:

Mr Chairman, Sir, I would like to amend my present motion by the deletion of .....

MR SPEAKER:

May I remind the House that we are still dealing with the amendment to the amendment. Perhaps if the amendment to the amendment is withdrawn then we can then continue.

HON MAJOR R J FELIZA:

Mr Speaker, the Opposition is prepared to withdraw the amendment to the amendment.

This was agreed to.

HON ATTORNEY-GENERAL:

Mr Chairman, Sir, I would propose the amendment that sub-clause (1) of the proposed new Clause 26(a), be deleted and replaced by a new sub-clause in these terms:

"The Principal Immigration ....."

MR SPEAKER:

I would not like to interrupt the speaker, but I would like



to say that if there is going to be an amendment to your new clause, which is an amendment, perhaps it might be better if another member of the Government were to propose it, otherwise we have the anomaly of the mover of an amendment proposing an amendment to his own motion.

HON CHIEF MINISTER:

The amendment is, Mr Speaker, to remove the first sub-clause and substitute it by the following:

"The Principal Immigration Officer shall, upon application, issue a certificate of permanent resident to -

- (a) any citizen of the United Kingdom and Colonies who is not a Gibraltarian and who was born in Gibraltar or whose father was so born; and
- (b) any citizen of the United Kingdom and Colonies who was registered or naturalised as such in Gibraltar before the 1 January 1973 or whose father was so registered or naturalized."

The amendment to this, which has been inspired as a result of the discussions and the contributions of the Opposition, is that we are making a distinction between "born in Gibraltar" and "naturalised or registered." We are not making any limitations on those who are born in Gibraltar, the limitation on the others are the ones originally contained in the first amendment of the Opposition to the whole of the subsection.

I commend the amendment.

MR SPEAKER:

May I have perhaps a copy of the amendment.

Mr Speaker then proposed the question.

HON M D XIBERRAS:

Sir, this amendment covers the points which the Opposition has been making and the only thing I would add at this stage, since it concerns such an important part of the law, is that perhaps Members on the other side might give an indication as to any difficulties, if any, which might arise in the months to come.

HON CHIEF MINISTER:

Hardly any.

Mr Speaker then put the question which was resolved in the affirmative.

MR SPEAKER:

I would remind the House that we now have the original amendment to the Bill, which is to add a new Clause 4 as amended.

The question has been proposed, if there are no further speakers and if the mover does not wish to reply, I will put the question, which is proposed by the Honourable Attorney-General which is that a new clause should be added to the Bill, to be Clause 4, to read as follows:

"26(a)(1) The Principal Immigration Officer shall upon application issue a certificate of permanent residence to -

(a) any citizen of the United Kingdom and Colonies who is not a Gibraltarian who was born in Gibraltar or whose father was so born; and

(b) any citizen of the United Kingdom and Colonies who was registered or naturalised as such in Gibraltar before the 1 of January 1973, or whose father was so registered or naturalised.

(2) The provisions of section 24 shall not apply to a certificate of permanent residence issued under this section."

On a vote being taken the question was resolved in the affirmative.

New Clause 4, as amended, stood part of the Bill.

The First Schedule was agreed to and stood part of the Bill

The Second Schedule was agreed to and stood part of the Bill

The Long Title was agreed to and stood part of the Bill

#### THE TRADE LICENSING ORDINANCE, 1972

HON ATTORNEY GENERAL:

Mr Speaker, Sir, I will if I may with the leave of the House, without at this stage dealing with each and every amendment which the Government are proposing to the Bill, to explain briefly what those amendments are.

To Clause 1, sub-clause (2), we are going to provide that the Ordinance shall not apply to persons who sell from a private house goods manufactured in that house, provided not more than three people are there employed.



As far as the second Clause of the Bill is concerned, we are going to remove the distinction between retailers and wholesalers and ~~make trading~~ <sup>provide for trading</sup> a single licence for the buying and selling of goods, and we are going to redefine "Licensing Authority", by giving the power to licence to a committee consisting of the Financial and Development Secretary as Chairman and six other persons appointed by the Governor, two of whom shall be appointed after consultation with the Chamber of Commerce and two after consultation with the Trades Council.

Licences are going to be transferable at will except that of course a licence cannot be transferred to somebody to whom a licence could have been refused in the first instance. In other words, a person under the age of 18 - we are lowering the age to that - a bankrupt, or a person who has been convicted of an offence under the Bankruptcy Ordinance.

The vital date for the various purposes of the Ordinance is going to be the 17th of November. In other words, if you are trading before that time you cannot be refused a licence because the needs of the community generally are satisfied. If you were trading before then you cannot have what you are selling restricted. If you were selling watches, potatoes, and haberdashery, you can be prevented from selling wireless in the future, if necessary, but you cannot be prevented from selling those three.

All fees have been reduced to £1 and we have specified some eleven businesses which will require to be licensed: they are hairdressing, banking, dressmaking, moneylending, printing, publishing, building contracting, electrical contracting, manufacturing, catering and decorating.

The point was made at the Second Reading that a Cooperative should be excluded from the Ordinance. What in fact we are doing is not to exclude a Cooperative, but to say that a Cooperative is entitled to a licence as will also be a development project under the Development Aid Ordinance.

Those briefly are the amendments which I shall be moving in detail, but as I understand that one Member of this Honourable House wishes to speak at this stage, I think that with the leave of the Chairman I will now resume my seat before dealing with the proposed amendments one by one.

MR SPEAKER:

May I just say that we are at Committee Stage. I have allowed the Honourable the Attorney-General to speak generally on the proposed amendments to clauses because there are a considerable number which he intends to move.

We will have to deal with them as the clauses are called.

I would also like to call the attention of the House that over and above the amendments which are going to be proposed by the Government, and of which notice have just been given to me, there are also I believe about twenty others which have been proposed by the Opposition. If a Member of the Opposition wishes to make general comments on their proposed amendments they will be free to do so. Then we will of course start going through the Bill clause by clause.

HON CHIEF MINISTER:

Mr Chairman, before the Honourable Member who wants to speak at this stage I would clarify the point of the amendments, and that is that the Opposition gave us notice of twenty amendments. We have looked at them carefully, we have accepted quite a number of them, - I would say about 75% of them - we have re-worded some because the Attorney-General felt that that was required, we have not accepted one or two which have been explained, and this of course will come out in the detailed examination. But I would commend perhaps to the Opposition to look at this carefully over the recess and perhaps as we go along, if they find our proposals acceptable, they will withdraw theirs. In that way we will not have two debates on each one.

MR SPEAKER:

I would perhaps commend to the House the advisability of meeting before we meet again and perhaps agreeing on these amendments, and that therefore, we will not have to go through them in the House.

HON M D XIBERRAS:

Sir, it is always, when there are so many amendments at stake which are going to be discussed, it is always a better thing to my mind if they are rationalised in some form. I think the Honourable and Learned the Chief Minister has already explicitly paid a tribute to the Opposition contributing to the Bill, and I would like to say that in fact only two or three amendments have not been accepted by the Government. Therefore, for neatness and quick procedure we will be withdrawing our amendments as the moment comes.

HON MAJOR R J PELIZA:

Mr Speaker, I would like to say a few words on the general principles which perhaps would be helpful in enabling the Government to give a little bit of more reflection to some



of the amendments that have been proposed already as there might be amendments to the amendments which I think are of an important nature as we get along. I do not intend to keep this House very long, only to say that I hope that this process of Government and Opposition which is providing to be creative, there is no doubt about this whatsoever, can continue even if amendments have already been produced, because for as long as I think it is possible to improve on the law, a few more minutes used up in that process are not wasted.

The main objection that I think the Opposition had to this Bill was that it could be arbitrary, that it would take away from the citizen the right to trade and, therefore, create monopolies. And to a large extent hand power to individuals or authorities which I think in a democracy one is reluctant so to do it if can be avoided. But the fact remains that the circumstances of Gibraltar require some kind of control and I think that on this we are all united. Looking through the amendments that have been suggested, on many of which, as my Honourable friend the Leader of the Opposition has just said we agree, there are one or two which I certainly would like the Government to give further consideration.

I would like to refer to amendment number 11, and this is to do with Clause 17 of the Bill. It appears to me from that ..... that the appeal would have to go to the Justices: we would like to see the appeal going to the Court of First Instance. I think the Chief Minister, at the time we were discussing this generally suggested something about the Brewster Sessions, and these are the Licensing Justices. But this is precisely what we do not quite agree with. We would not like to see appeals being heard by the Licensing Justices because in many instances they could be traders themselves and, therefore, in a way you could have a trader sitting in judgment on trade generally. I think it would be better, as we see it, that appeals should go to the Court of First Instance where there is no possibility of that sort of thing happening. - I am not suggesting for a moment that the Justices would themselves be biased one way or the other because I think it is right to say that people can in fact, act objectively, yet I think it might not appear to be so, particularly to people whose licences have been refused since they themselves would be biased in wanting one. So I think in that the interest of appearing to be fair, if not being absolutely fair, it would be better if the appeal were to go to the Court of First Instance. These are the lines on which we are thinking, and I am not suggesting that you should give us an answer now, but I think it gives food for thought and perhaps we could give this further reflection.

The other one is No 14, and in this case as you will see, the Financial and Development Secretary will be the Chairman, two members would be nominated by the Chamber of Commerce and two by the Gibraltar Trade Council. So there I think, so far, the balance is good. But then we have the Governor appointing two other members and unfortunately if this happens then of course if it was the desire to give weight to the Chair this could easily take place. Our suggestion is that one member should be nominated by the Consumer Association. It is a pity in my view to leave an Association, which has proved to be so active in Gibraltar in this respect and who speaks for the consumers, out of this very important Committee. One of the things I think that the Committee will have to decide, as we all said before, is whether in fact there is a need for that extra service in that particular area. And who better, therefore, than the representative of the consumer to be able to speak in that respect. It is clear that if the consumers say that there is a need for such a service, obviously their voice will carry considerable weight and no amount of argument from any interested party in the Trade claiming that there is no need for such a service in that area would obviously have to argue very strongly to carry the day. As it is now, I am afraid that one side is not being heard, and however much interest the Chamber of Commerce and the Trades Council may have in their respective fields, I think we are leaving out someone who is absolutely important, and that is the consumers. This side of the House would like to see of the two members appointed, but one should come from the Consumer Association, and the other appointed by the Governor. In my view, the right balance could then be achieved. A little bit of latitude would be given through this independent member to fit a person who would best suite the circumstances at the time, since of course times could change and it might be of benefit to everybody to see a person there who can provide certain advice that could not be provided by any of the other organisations that are represented in that Committee.

Except for those two basic suggestions, there will be others, perhaps of not such importance to be met as amendments are read at the time, but since I think the Chief Minister said that after this there was time to reflect in the recess, I do hope that what I have said is given though to as we do honestly believe that this would be in the interest of the objects for which the Ordinance is being enacted, it would operate to the best advantage of trade and consumers alike and would be in the interest of the general economy of Gibraltar.



There is no doubt whatsoever that we shall all agree in this House that the Bill as it is now being amended is a much better piece of legislation than that which was first introduced into this House. This I think is a great credit to all the Members of the House. We must of course give special thanks to the Hon the Attorney-General who had to do all the redrafting. I know it might be annoying to the Honourable the Attorney-General to have to keep changing bits and pieces here and there, we are all very conscious of this; however, it is better to work a little harder now and produce a good piece of legislation rather than not to sweat it out, as we are doing here, and have something which is not really worth the paper it has been printed on.

HON ATTORNEY-GENERAL:

Mr Chairman, Sir, if I could say one thing. There is absolutely no question of it being annoying to me, I am here to do a job of work to put into as good a form as I can, what is wanted, it does not worry me whether I do it one, ten or twenty times, I can assure the Honourable and Gallant Major Peliza that that is no worry to me at all. (hear, hear)

HON CHIEF MINISTER:

I would just like to say a few words, before I move the recess in order to finish the days work, on the remarks of the last speaker but one, Mr Speaker, and that is that I started off by saying that we did not like the Bill when we brought it even before there were any amendments and that it was really an attempt to cover the situation. If I may say so, the main change that has been made, apart from making it a better Bill to work for a small period, is the fact that we have agreed that it will come to an end at the end of May. And as I said in my original opening, this would have been a proper thing for a Select Committee had there been time. I think we have found a compromise between one and the other.

There are answers to many of the points made by the Hon Major Peliza, but I will not go into them at this stage because we are going to deprive ourselves of the pleasure of a long session in Committee which I hope will be reasonably curtailed by restraint on all sides.

I, therefore, have the honour to move that the House should recess until Tuesday at 6 pm.

MR SPEAKER:

We will now recess until Tuesday the 5th day of December 1972, at 6 pm.

The House recessed at 5.30 pm.

TUESDAY 5th DECEMBER, 1972

The House resumed at 6.00 pm.

MR SPEAKER:

I will remind the House we are still in Committee and that we are considering the Trade Licensing Ordinance. The last time we met the Honourable the Attorney-General and the Honourable Major Peliza spoke on the general outlines of the amendments before the House and I will now ask the Clerk to call the first Clause.

Clause 1

HON P J ISOLA:

Mr Speaker, as far as Clause 1 of the Bill is concerned, I would like to move the amendment standing in my name, that Clause 1(2) of the Bill be amended by the addition of three sub-paragraphs to be numbered (f), (g) and (h) as follows:-

- "(f) a Cooperative Society registered under the Cooperative Societies Ordinance;
- (g) a Development project in respect of which the Governor in Council has issued a Development Aid Licence under the provisions of the Development Aid Ordinance;
- (h) any manufacture of goods of any kind which individuals can conveniently perform in their homes and which is generally known as Cottage Industry."

In moving the amendment to this Clause, Mr Speaker, I would like to say that in the amendments that have been put forward by the Honourable Attorney-General in this Bill, we are in agreement with a large number of them, but there are one or two amendments with which we on this side of the House do not agree. The reason why, Mr Speaker, in this particular case we would like the amendment to go through in this particular form is that although the Honourable and Learned the Attorney-General makes provision for a Development project and a Cooperative Society in an amendment he is proposing to Clause 14 of the Bill, it is our view that we do not in that Clause necessarily get the protection for these particular activities as we do if they are excluded from the Bill altogether.

Mr Speaker, the proviso to Clause 14 states that a licence shall not be refused under this sub-paragraph if the applicant is carrying on a trade or business, applying for the renewal of a licence in force, is a Cooperative



Society or is a Development project. The problem is that once you make somebody subject to a licence it entitles the Commission to restrict the activity that that Society can do. In the case of an applicant who was already engaged in business this is not possible because the law prescribes that he should get a licence to trade in the goods that he is already trading. In the case of a Cooperative Society that is not operational, or was not operational on the 17th of November 1972, the Commission could in fact restrict its activities. As we understand the position a Cooperative Society, which is a non-profit making body, is a society that is likely to sell anything from bicycles to groceries to clothes to shoes and so forth. Accordingly, it does cut across the Philosophy of this particular Bill which seems to plan that particular premises should be used for the sale of particular goods. In our estimation, and I will not trouble members with referring to other sections of the Bill which provides the authority for the Licensing Committee to restrict the nature of the economic activity, in our estimation because in the case of a Cooperative Society not in existence or not operating on the 17th of November 1972, the Trade Licensing Committee has got powers to restrict the lines in which it can deal and so forth. Accordingly in our estimation the Cooperative Society should be outside the ambit of this Bill because in fact the Cooperative Society is a society that deals in goods that its members want it to deal with, for the purposes of its members. It could be shoes, with groceries and so forth, and that is why we feel that it should be left in as we originally proposed, that is, outside the provisions of the Bill.

Similarly, Mr Chairman, the Development project. The reason why we say that the Development project should be outside the scope of this Bill is because the Governor in Council when granting a licence, and the planners when approving the project or the development, in our view should have the power in the ordinary planning legislation. It should have the power to say what sort of business or what sort of trade or what sort of economic activity the development project should have, and if the Governor in Council has to decide whether it is for the economic benefit of Gibraltar as a whole there we have the highest body in the land considering the project and approving it and giving it a licence. If the planners have to give planning permission for the project again we have a skilled body mixed between politicians and technical people stating the use to which the project can be put. In our estimation the Trade Licensing Committee would be a totally inappropriate body to deal with a development project about which other bodies, perhaps more qualified to deal with the matter, have dealt with it.

This line of argument that I am putting forward, Mr Chairman, actually permeates through most of the amendments that we are proposing. It is our view for example that in the case of Bars, Taverns and so forth, there is a Licensing Authority that deals with them today. It is our view that a Bar, for example, if we want to restrict the number of Bars, or think that there are too many, or so forth, the Licensing Rules should be amended so that the Licensing Authority deals with whether the chap is the proper man to have a licence, deals with objections of nuisance and annoyance to the neighbourhood, and deals with whether a bar should be allowed in the area. Therefore, one Authority deals with it all rather than putting people to the expense of going to the Licensing Authority to see whether they can sell beer there, and then going to the Trade Licensing Committee to see whether they can sell beer there as well. It is that philosophy that permeates out approach to this Bill. Even though it is going to be only of five months duration, we do want to make it clear on the way we feel that this Bill should go. We feel that the Trade Licensing Committee should only deal with matters that no other suitable body can deal with. We do not want to duplicate work. It is for this reason, Mr Chairman, that I move this particular amendment to clause 1(2) and for this reason that I ask that the Cooperative Society and the Development project be put outside the ambit of the Trade Licensing Bill in common with all the others.

If the Government side agree to that I would then withdraw my amendment of Clause 1(2)(h) and we would then happily accept the equivalent amendment to this particular Clause that is being proposed by the Honourable and Learned the Attorney-General.

Mr Speaker then proposed the question.

HON ATTORNEY-GENERAL:

Mr Chairman, Sir, Government feels that Cooperatives and Development projects should be subject to the provisions of this Ordinance and should be required to have a licence. It does enable some control to be maintained. Now, if for example a Cooperative Society - I agree this may not be particularly likely - should be found guilty of certain offences for which a licence can be taken away from a normal trader, then it is felt that the Cooperative Society itself should not be allowed to trade. Also as far as conditions that are to be imposed, the case can well arise of conflict with an approved town planning scheme. That, as Government sees, would probably be the only condition which would ever be imposed on a



Cooperative Society. That is felt to be reasonable and there should be means for Government to impose a condition that such a scheme should be observed.

HON J BOSSANO:

Mr Speaker, I want to confine myself to defending the Cooperative Society and to the .....

MR SPEAKER:

To the extent that it affects the amendment.

HON J BOSSANO:

To the extent of the amendment, Mr Speaker. I think that the arguments that have been put forward by the Honourable Attorney-General for not exempting Cooperative Societies from the need to have a licence in order to trade are not really satisfactory and are not really sufficient to convince me, anyhow, that there is a case for licensing Cooperative Societies because the suggestion that there may be offences which justify the withdrawal of a licence in any case has not yet been accepted. The amendment that we are going through, and to which you referred earlier when it came to the question of removing a licence, on this side of the House we felt that this was perhaps too drastic a step and that other measures should be considered rather than the removal of the licences, which in the case of a private trader would mean the removal of the livelihood of the individual. In the case of a Cooperative Society, it seems to me that it would just not make sense to attempt to stop a Cooperative Society trading by removing its licence because the Cooperative Society is a body corporate in the sense that it is established under a given law, the Cooperative Societies Ordinance, but it has no shareholders other than its own customers. So that in fact the Society buys for its own members and all it does is channel the purchasing power of the members through a central committee which buys the goods that the members want bought. All it does is that it works on a margin which allows it to cover its costs. It is not a trading organisation in the conventional sense of the words because it is not concerned in making a profit. It is not concerned in selling to a third party, it is a group of individuals buying for themselves and selling to themselves. And if a Society like that were to be refused a licence for an alleged infringement of the conditions upon which the licence has been given, and certainly I would not want anybody to have the right to say to individuals what they can buy for themselves, and if the Licensing Authority, Mr Speaker, is going to be able to say to the Cooperative Society: "You may trade in this but not in that", if it can in fact stipulate in the licence what it can trade in, it may refuse it a licence because the needs of the community are met.

This is one of the amendments which goes some way to protect the Society, but the amendment says nothing about the power of the Licensing Authority to stipulate what areas can be traded in and what cannot. And when one remembers that the Cooperative Society will not in fact be competing with other traders in the normal sense of the word, in that it will not be attempting to go for the same customers, it is the customers who organise themselves and provide the goods for themselves who from the Cooperative Society, and those who still wish to make use of private enterprise will continue to do so.

The Cooperative will sell to its own members and the private trader will sell to the general public. In this situation it seems to me a very dangerous thing to have a Licensing Authority telling people what they can deal in amongst themselves, firstly. Secondly, I cannot see how it would be a workable proposition that the Cooperative Society should be refused a licence because a Cooperative Society would consist of say a thousand families, Mr Speaker. Does this mean that having been refused a licence to trade, or once their licence is withdrawn, none of those individual members of the Cooperative would be allowed to trade again? Or will the individual members simply be able to get around that by dissolving the existing Cooperative and setting up a new Cooperative with a different label, registered under the Cooperative Societies Ordinance, which will then be a new organisation which was started with a clean record and apply for a new licence. If they can do it, it is pointless to say that one can refuse them a licence, and if they cannot do it, then in fact we are going to penalise a thousand individual families because they are a Co-op. So I would like Government to give very serious thought to the possible ramifications of insisting on a Cooperative Society needing to be licensed, and in particular to consider whether in fact it is not incompatible to suggest that a Co-op needs to be licensed and at the same time to be thinking in terms of legislation which is designed to protect private enterprise. A Co-operative organisation is not part of private enterprise, it is not an organisation that acts as a go-between between a seller on a large scale and a consumer at the other end. It is the consumers organising themselves to channel their joint purchasing power and reap the benefits of buying for themselves. This is all a Co-operative is. It is not a normal trading organisation, it does not enter into the equation at all, and I think it is incompatible with the supposed principles of this legislation, which is to protect private business.

HON CHIEF MINISTER:

Sir, I tried to feel that we are not very far apart in this, but I think the main point that should be emphasised, though it has been mentioned that it makes no difference, I would



commend Members opposite to appreciate - whether it makes a difference or not - that in fact in order to bring out something much better than what we are doing now the life of the Bill is going to come to an end by the end of May. And I would like to say here and now that even on any agreed amendment, or on any amendment that we feel we would have to reject and get through by a majority, that would not mean that we consider it completely essential that it should be included on any new Bill that could be gone into by the Select Committee. We have a complete open mind on that and the Government is not out for any particular set of rules that we consider sacrosanct now, and that, therefore, whatever is passed now must necessarily go into a future Bill. I would like to make that clear and I think the main point that has been gained in this for a better legislation later on, is the fact that it is only going to last five months. This I hope will be appreciated by the extent to which we have gone to meet the points that have been made.

On the other hand the Government have got responsibilities and must feel sometimes, even if we are at variance and I would hope that we are not at variance, to put the matter in the way it thinks it has to be done. It has its advisers and it has its other matters to consider, but I would like first of all to say that I don't think we are going to have a licence granted and a licence amended to a Cooperative Society in five months because we have not got a Cooperative Society now. And I would also like to feel that though one gets a little sentimental about the Cooperative Society, they can become very big business as they are in England, and it is not just as if it is something that is almost sacrosanct for the worker, that therefore he is going to get goods cheaper and everybody else is going to go out of business. We know that Cooperative Societies in England are a very powerful part of big business and what I think this message is, is that it should not be beyond the law. It should have every facility to carry out its duties, it should be encouraged as it was encouraged by having had an expert brought out to go into the matter and by having had the legislation passed by this House. But there should be no aura of sanctity about it. It is just another business concern for the benefit of those who invest in it and buy in it.

I hope very much that one Cooperative Society, whether the Union's or whatever it is, gets off and makes a good start. We are delighted. But I cannot see how conditions can be imposed if they cannot refuse a licence under these provisions.

With regard to the other point which was made, I would support the point made by my Hon friend the Attorney-General on the question of the Development Project in respect of which

development and licence has been issued. First of all, it has the same basis, that it cannot be refused, but it has an opportunity of drawing attention in case it is going beyond the rules under which it has been given. That is the only purpose putting it there and therefore

I would urge members to accept the proposal now rather than go to a Division because as I say we are not committed to anything in the rules and I would like to apply this to any amendments where the principle is there but the way of approaching it is different. We are all going to be in the Select Committee, or a representation of both sides will be in the Select Committee to look at this matter, to look at them in more detail and get out a better working law. For that reason I would suggest to the Opposition that they should allow this amendment to come through without pressing for the other one.

I agree that there may be many things which can be improved. I think that even in the little time that there has been for consultation on both sides a great deal has been improved. It will be a much improved piece of legislation which is meant to last for five months. That is all that it is going to last, until we get something better. As I say, we are not now saying: "Well, what is passed now we will hold later." We will be quite willing to find some form, which I cannot think of now, to say that there can be no conditions imposed on a licence under this which would be contrary to the principles for which it is being done, because otherwise it would be an absolute farse to have the thing placed in a separate section so as not to require licence rather than to have it completely out.

HON M D XIBERRAS:

Mr Speaker, what the Honourable and Learned the Chief Minister has said is something which the House has considered before, and that is, the general grounds on which both sides of the House look at these copious amendments before the House. The first point I would like to make is that if there is any immediate danger of the aims of the Bill being thwarted, then this side of the House would agree to amendments of a temporary nature which would last for five months or so. Secondly, Sir, this side of the House will not prejudice the case that it hopes to make in the Select Committee when it is going to be set up; and, thirdly, there are certain matters which are important in themselves and of which obviously one side or the other will feel it must adopt an entrenched position because to yield in any respect would be to fail itself.

Sir, applying these three criteria to the points in question, may I say first of all that I do not think there is any immediate danger of a Cooperative upsetting the apple cart



at this stage, and, therefore, there is no immediate reason for including the Cooperative inside the general provisions that apply to the other bodies. The second point is that obviously our amendment would not prejudice the stand with this side of the House would take in the Select Committee; and, thirdly, Sir, I think that the House should look at, simply for the purpose of elucidating what is behind the motive of the Opposition proposing this. I believe it is Section 14 of the Ordinance, the point raised by my Honourable and Learned Friend, Mr Isola, which is one against which the Opposition will speak at a later stage, and this is the root of the problem, because by Section 14 we are applying the rather drastic and unfair penalty of removing the licence from people who infringe against the provisions of what would otherwise be provisions of other Ordinances. In other words, if it is felt by the House, to take Price Control as an example, that people who do not abide by Price Control legislation should be punished or punished severely, then an amendment in this sense should be brought to the House in respect of Price Control legislation. If it is a question of town planning then there should be a Town Planning Bill brought before the House and in the Town Planning Bill one could have penalties for breaches of the law in this sense. That this side of the House objects to is that all these offences which, as I say, would be or might be in the future offences against particular Ordinances should be lumped together, and the overall blanket penalty should be the withdrawal of a licence to trade. Now, that we feel is a most important principle which we are not prepared to give way on. Now, bringing this argument to bear on the present matter under consideration by the House we feel that, for the arguments stated by my Honourable Friend, Mr Bossano, a Cooperative should be outside this consideration; one, on principle, two, that we do not agree with Section 14 and we agree least with Section 14 in its possible application to Cooperatives. Therefore, this side of the House cannot support the amendment which is going to be moved by the Honourable and Learned the Attorney-General.

Moreover, Sir, as my Honourable and Learned Friend on my left, has also said, once a Cooperative is subject to a licence then even though leniency would be exercised towards the Cooperative and sympathy would be given it, nonetheless in law it would be subject to restriction as regards the goods it might sell. I would not feel that this is any encouragement to the Cooperative movement in Gibraltar and we do not feel that it is really necessary. There is something special about the Cooperative and this side of the House is wholeheartedly in support of a Cooperative. We could not in fact agree with the Honourable and Learned the Chief Minister when he calls it big business. A big enterprise, Yes. It could be big business but a proper Cooperative does not have the profit motives immediately in mind and simply

exists to serve its members.

Now, that is the attitude of the Opposition towards the Co-operative and this is the attitude which some Honourable Members on this side of the House put forward when the Co-operative Bill was being discussed last year by this House. We do not think it would be a good thing to restrict or even have the power to restrict the Co-operative in what it sells. We feel the Co-operative should have carte blanche to sell what it pleases, and therefore, Sir, this side of the House would not be in a position, as I say, to support the amendment which is going to be moved by the Honourable and Learned the Attorney-General.

HON M K FEATHERSTONE

Sir, I think the whole essence of Section 1 that we are discussing is to separate what is actually "Trading", to "any other sale", which should not necessarily be classified as trade, and this is the whole intention of (a), (b), (c), (d), (e) etc. But although I would support fully the Co-operative, Sir, a Co-operative does trade and there is no real reason that I have heard from the other side that convinces me in the least that they should not be subject to going through the procedure of being licensed.

The Honourable Mr Bossano, Sir, has painted a very utopian picture of the Co-operative: this is not quite so in practice. Co-operatives do make profits, but they do not call them profits, they put them into reserves ....

MR SPEAKER

I must warn Members that we are not going to debate the qualities or the raison d'etre of the Co-operative. We will debate as to whether Co-operatives should be licensed under the Bill or not. I have been slightly liberal because there was a remark made by the Honourable the Chief Minister which deserved a reply, but I think that is as far as one can allow the matter to go, if you follow what I mean.

HON M K FEATHERSTONE

Yes, Sir, I am only answering what was actually said from the other side.

MR SPEAKER

Yes, precisely, you can only answer insofar as we are dealing with



the amendment to the Clause which is exclusively whether a licence should be needed by a Co-operative to trade or not.

HON M K FEATHERSTONE

Yes, I am just saying, Sir, that because they do make projects, because they do not necessarily sell only to their members, they do sell to other people who would not share from the beneficial part; they are intrinsically trading; and since they are trading, Sir, there is no rhyme or reason why they should be exempt from the general provisions of this Bill. I do not think, Sir, as has been said, that we are going to run into any immediate difficulties with Co-operatives in the five months that are ahead of us. I do not think either, Sir, that if there were an offence by a Co-operative, they would lose their licence immediately, although one does see in the newspapers that Co-operatives are not so innocent as perhaps the Honourable Mr Bossano would have us believe. I believe there was a case the other day where a Co-operative which was fined for unfair dismissal, I think they paid £800 compensation. I do not know where this comes from, from their reserves, their profits, their members, or what it is, Sir, but it is a point, Sir, that I would like to suggest to the other side, that if we are putting some measure of licensing on Trade, and we are exempting these very simple people, a sheriff who is doing his duty etc., from being in Trade, is a completely different thing to exempting what can be quite a big concern which is buying and selling, perhaps wholesaling as we see Co-operatives do in England, perhaps retailing, even going into banking, they can do all sorts of things done in the name of Co-operatives, and to give them a complete blanket freedom from this I feel would not be compatible with the idea we are trying to bring. This is almost discriminating against one section in favour of another. I think, Sir, that the position would be quite adequately met to accept the amendment of the Government at the moment, and I am sure that this will not prejudice the strength of purpose and the desire to negotiate on behalf of exemption for Co-operatives, if they can get it through, by the Opposition in a Select Committee. But at the moment, Sir, I think we would not really be doing justice if we were to exclude Co-operatives from any measure of licence at all.

Mr Speaker then put the question and on a vote being taken the following Honourable Members voted in favour :

The Opposition

Hon M Xiberras  
Hon P J Isola  
Hon W M Isola  
Hon J Bossano  
Hon J Caruana  
Hon L Devicenzi

The following Honourable Members voted against:

The Government

Hon Sir Joshua Hassan  
Hon A P Montegriffo  
Hon M K Featherstone  
Hon A J Canepa  
Hon I Abecasis  
Hon L J Hoare  
Hon J K Havers  
Hon A Mackay

The amendment was accordingly defeated.

HON ATTORNEY-GENERAL

Sir, I beg to move that Clause 1 (2) of the Bill be amended by the addition of a new sub paragraph as follows :

"(f) any person who sells from a private house goods which have been manufactured in that house and in which house no more than 3 persons manufacture goods."

Mr Speaker then proposed the question.

HON ATTORNEY-GENERAL

Mr Chairman, Sir, this amendment is aimed at taking out of the ambit of the Bill the small man; and I mean the very small man, who does not have a shop and is perhaps engaged in what is loosely called a Cottage Industry. He perhaps makes pots, baskets and it does not seem to Government that at the present time any such activity does need to be licensed and can very properly be exempt from the provisions of the Bill.

HON P J ISOLA

This amendment of course goes a third of the way of what we actually want in Clause 1 (2), but a third is better than nothing, so we will certainly support the amendment.

Mr Speaker then put the question which was resolved in the affirmative.



Clause 1, as amended stood part of the Bill.

Clause 2

HON P J ISOLA

Mr Chairman, I beg to move that Clause 2 (1) of the Bill be amended by the deletion of the definitions of the following words and phrases therein contained:

"business Licensing Authority", "Trade", "Retail", "Wholesaler" and by the substitution therefore of the following definitions:

"Licensing Authority" means the Trade Licensing Commission constituted under Section 22.

"Trade or business" means the operation of buying or selling any commodities or materials upon within or from any premises in respect of any of the activities set out in the First Schedule hereto or the carrying on of any business set out in the First Schedule hereto.

Mr Speaker, in respect of this Clause 2 (1), the Honourable and Learned the Attorney-General is proposing a number of amendments that meet us again part of the way, but I should say that again on Clause 2 of the Bill, the amendments we propose go to indicate the thinking of the Opposition on the Trade Licensing Bill.

As you will remember, Mr Chairman, on the Second Reading of the Bill, we objected to the "Licensing Authority" being the Financial and Development Secretary, but we did want a committee or a commission to consider applications for licences and grant them. That is one of the big points which we made and which we are glad to say has been accepted by the Government in their proposed amendment. The other point which is not apparently accepted is that we feel that this Ordinance should not be a comprehensive Bill, covering every economic activity: hence the amendments we have proposed already. The way we are thinking is that this Bill should have a First Schedule into which should go the sort of economic activity that Honourable Members feel should be subject to a licensing system, and in our proposed First Schedule we in fact left a blank so that the House could discuss and decide what should go in, or rather,

perhaps that the Government should make a case of what it wanted to go in. Now, there is this fundamental conflict of approach between the Government and Opposition on this Bill which we certainly hope can be resolved in the Select Committee and I do not think we want to labour these points very long because of that. But I think it is necessary for us to ask the House to divide on this particular Clause again because for us it is important that it should be absolutely clear that we do not believe there should be a comprehensive Trade Licensing Bill, but we do believe, and we will be prepared to go with a Trade Licensing Bill that meets the requirements of the Population in accordance with the circumstances of the situation. We do not believe, as I said before, that other things can be controlled by other legislation, like planning, or licensing by the Justices, and so forth, should be brought into this Trade Licensing Ordinance. We do not believe that there should be a committee sitting which decides that because there have been breaches of other laws which have their own penalties, this omnipotent Trade Licensing Committee should be able to deprive people of their living and of their livelihood by cancelling licences. So in that respect there is a fundamental difference of approach between the Government and the Opposition on this Bill, which, as I say, I hope can be resolved in the confines of the Select Committee where we can perhaps argue more intimately on the matter.

I commend the amendment to the House.

Mr Speaker then proposed the question.

HON CHIEF MINISTER

Mr Speaker, I would just like to say a few words in reply to the last speaker and I think he was right when he said that in the case of some of the differences we will probably be able to find a consensus in Select Committee, but I think what we ought not to forget is the reason why we have a Bill at all, and that is because we have to have regard to the fact that the Trade Restriction Ordinance has to go at the end of the year in order to comply with the EEC requirements. It is in order to protect, let us put it this way, to protect ourselves and Community Nationals, and have machinery that can reasonably be upheld to avoid discrimination between local people and Community Nationals but to prevent others who have no right as to



non-discrimination. I think this is quite clear. The concept is to protect us and those who have to come with us now because this is our duty in the Community as against others who have no right of establishment in Gibraltar. That is the main purpose. I do not think, that the question of controlling the economic activity really does not come into it, and when we go into Select Committee we shall, I hope, convince Members opposite that it is not an attempt to prevent economic activity, in fact very much the opposite, but to have a measure of protection, now that we have to give so much latitude under the Common Market to outsiders, that the measure of protection we have is good for those outsiders whom we must have and ourselves. That is the only purpose, and in respect of that I think there will be a lot of argument on how best we can do that. For the moment we feel, and I am glad that the speaker thought that we had gone some way to meet that, and that is why we hope that our amendment will be acceptable.

HON M D XIBERRAS

Sir, as My Honourable and Learned Friend on my left has said, this is important in this respect, that the definitions that are going to be moved by the Honourable and Learned the Attorney General in a little while, should the Opposition's amendment be defeated, do reflect upon the whole approach to the Ordinance. The attitude of the Opposition is clear, I feel, for the House to see. We do not want to have any distinction between wholeselling and retailing on the one hand, and other economic activity on the other. I find a contradiction in the attitude of the Government in so far as they have accepted the Schedule, where we would list any manner of economic activity which needs controlling at any particular time, their acceptance as I say, of this Schedule, and yet their keeping in the body of the Bill, as we shall see, certain economic activities "wholeselling and retailing". There is a difference which is accentuated by the Government's proposal. We feel this difference should not be there. Now this does not mean that the Opposition would not be persuaded by any case the Government might make for putting the whole of the wholesale or retail trade in the Schedule, but we find an inconsistency in putting one set of economic activities in a blanket form into the body of the Bill, and then making a list of other economic activities in the Schedule.

Sir, the important thing about this is the attitude of

the Opposition, if I may say so, to this, and that is, we are prepared even for five months to say:

"These powers we think the Government should have, reasonably, provided they make a case for the exercise of these powers in particular circumstances."

So that if there is a case for wholesaling and retailing, whatever, what have you, then the Opposition would certainly consider it with an open mind, but we take it pointed and inconsistent to have in the body of the Ordinance a blanket provision and yet also agree to a Schedule which includes a wide variety of economic activity.

Mr Speaker then put the question and on a vote being taken, the following Honourable Members voted in favour:

The Opposition

Hon M. Xiberras  
Hon P J Isola  
Hon W M Isola  
Hon J Bossano  
Hon J Caruana  
Hon L Devicenzi

The following Honourable Members voted against:

The Government

Hon Sir Joshua Hassan  
Hon A P Montegriffo  
Hon M K Featherstone  
Hon A J Canepa  
Hon I Abecasis  
Hon Lt Col J L Hoare  
Hon J K Havers  
Hon A Mackay

The amendment was accordingly defeated.

HON ATTORNEY GENERAL

Mr Chairman, I beg to move that Clause 2 (1) of the Bill be amended by the deletion of the following definitions:



"Retailer", "Wholesaler", and "Licensing Authority" appearing therein and by the insertion therein in the appropriate alphabetical position of two new definitions as follows :

"Licensing Authority" means the Trade Licensing Committee established under Section 23;

"operative date" means the 17th November 1972.

Mr Speaker then proposed the question.

HON ATTORNEY-GENERAL

Mr Chairman, the Government has agreed to do away with the differentiation between wholesalers and retailers, not entirely because of my friend the Honourable Mr Bossano's buying milk in bulk, which is an activity with which nobody could object, but it does feel that a simple single trade licence is more satisfactory in the circumstances.

The definition of Licensing Authority is removed. It was what is in the Bill at the moment, the Financial and Development Secretary, and it is now proposed to have a Trade Licensing Committee. I think I can better deal with the merits of the composition of that Committee when I move the insertion of the relevant Section if this present amendment is carried.

As far as the operative date is concerned, as Members will be aware, throughout the Bill we have given certain privileges to people who were trading or carrying on business six months before the Ordinance became an Ordinance. Representations were made by the Opposition, which were with its general good sense and beneficence accepted by Government, that the date should be the date of publication of the Bill. This is what we have done and this is what we feel is the proper date in fact to include.

HON P J ISOLA

Mr Chairman, I do not think the Opposition have made representations, they have made points in debate in the Second Reading of the Bill. Others make representations

I should think. But insofar as this amendment meets half-way the proposals on this side, and agrees to the appointment of a Licensing Committee which can look at applications in a rather different way I think than they have been done up to now, we of course welcome these amendments as well as the amendment which reduces the operative date from six months to the 17th November 1972.

Insofar as the proposed amendments go they are fair and we, of course, vote with them. We would have liked the Government to have gone the whole way with us but we hope to persuade them on this in the Select Committee.

Mr Speaker then put the question which was resolved in the affirmative.

Clause 2, as amended, stood part of the Bill.

MR SPEAKER

I would like to say that for the purposes of speeding up the proceedings of the House, the Opposition having given notice of amendments before the Government have, of course, the right to move their amendment before, but perhaps if they concede this right the Government can move their amendment. The Opposition can make their views as well known as they could do so in their amendment. It will save me having to propose the two amendments and put the question twice over and the matters can be ventilated just in the same manner. But of course I am just suggesting this for the purposes of speeding up the work and nothing else.

HON M D XIBERRAS

Sir, at an earlier stage in this Committee Stage I said the Opposition would be withdrawing certain amendments when the moment came. I feel sorry, Sir, that we are unable to save you your hard work in the sense of having to repeat the questions, but it is as you will appreciate, no doubt, Sir, important for the Opposition to make its point, that it is proposing an amendment and that it has taken an initiative in certain matters. We shall be as brief as possible from this side of the House to ease the work of the House.



MR SPEAKER

We shall then continue as beforehand.

Clause 3 was agreed to and stood part of the Bill.

Clause 4

HON P J ISOLA

Mr Chairman, I beg leave to withdraw the amendment standing in my name as the Government amendment meets it fully.

Leave of the House was granted.

HON ATTORNEY-GENERAL

Mr Chairman, I beg to move that Clause 4 of the Bill be deleted and a new Clause substituted therefore as follows :

- "4 (1) The Licensing Authority may issue licences to trade or to carry on a business specified in the First Schedule.
- (2) A licence shall authorise the person named therein to trade or carry on business on the premises specified therein subject to such conditions as may be contained in the licence.
- (3) A licence shall be in such form as may be prescribed."

Mr Chairman, the need for the new Clause is that the old Clause 4 contained special reference to trading wholesale, trading retail, and businesses. We have attempted to incorporate into the new Clause a simple provision providing for the issue of licences. What the licences show authorise people to do and we make provision for the form in which they shall appear.

Mr Speaker then proposed the question.

HON P J ISOLA

Sir, I welcome this amendment. Apart from the virtue of removing the distinction between a wholesaler and a retailer and just having one licence, it also removes specific mention in the terms of the licence, which it had in the original Clause 4, that the Licensing Authority could say the class of goods in which people could trade and so forth. Again we felt that this was going too much into people's business and we felt that for the small period between now and five months these were matters that could more properly and profitably be discussed in a Select Committee. We welcome the proposed amendment.

Mr Speaker then put the question which was resolved in the affirmative.

Clause 4, as amended stood part of the Bill.

Clause 5

HON P J ISOLA

Again I beg leave to withdraw the amendment standing in my name as a suitable and acceptable amendment is being proposed by the Government side.

Leave of the House was granted.

HON ATTORNEY-GENERAL

Mr Chairman, I beg to move that Clause 5 of the Bill be amended by the deletion of sub-clause (4) thereof and by the substitution therefor of a new sub-clause as follows:

"No licence fee shall be payable in respect of the first licence issued to any person who was trading or carrying on a business at the operative date."

Mr Speaker then proposed the question.



HON ATTORNEY-GENERAL

Mr Chairman, this follows very closely the existing sub-Clause (4), it merely substitutes: "for six months prior to the coming into force of the Ordinance", the operative date as the date on which a free licence will be issued to a person trading.

Mr Speaker then put the question which was resolved in the affirmative.

Clause 5, as amended, stood part of the Bill.

Clause 6

HON P J ISOLA

Mr Chairman, I beg to move the amendment standing in my name that Clause 6 (1) of the Bill be amended by the addition of the following words at the end of the sentence:

"during the duration of this Ordinance except with the consent of the Licensing Authority, which shall have absolute discretion to approve or refuse the transfer."

Mr Chairman, in proposing this amendment I ought to explain the reasons why we think that the Government amendment is not acceptable in this case. The reason for proposing this amendment was ....

MR SPEAKER

Mr Isola, you know the difficulties we are labouring under. We must not speak on an amendment which is not before the House, we must speak on the amendment which is before the House, which is the one being moved by the Opposition now.

HON P J ISOLA

Well, if I may put it this way, we felt at the Second

Reading that it was wrong to prohibit the transfer of a licence, it was wrong not to allow somebody who had a licence under the Trade Licensing Ordinance to be able to transfer that licence to a prospective purchaser. As this Bill would be put to a Select Committee we felt that if there is going to be some control, and we had not declared ourselves against control entirely, if there is going to be some control, and we had not declared ourselves against control entirely, if there is to be some control, obviously there should be some control over the transfer of licences. If there is no control over the transfer of licences there is no point in this Bill because the Bill gives everybody who is trading on the 17th November - that is everybody in Gibraltar - a licence, and then if those people are to be able to transfer it freely, well, there is no point in the Bill. So knowing that, we propose this amendment during the duration of the Ordinance to emphasise the extent, "except with the consent of the Licensing Authority", and we left it to the Licensing Authority to decide whether the transfer should be approved or not approved.

In moving this particular amendment we appreciate that we are setting the Licensing Authority a difficult task but we can not see how else we can subscribe to the principle of control unless there is some control in the transfer of licences. Therefore, the reason why we have not withdrawn this amendment and accepted the Government amendment is because the proposed amendment that would be moved, if this one is defeated, would rather - I am afraid, Mr Speaker, I do not know if this is the appropriate word to use - castrate the Bill! The proposed Government amendment in fact allows free transfer of licence to anybody who is not under the age of 18, or who is not caught by the provision to Section 15 of the Bill, and this is why we feel that perhaps, with some suitable amendment, it is this particular amendment that should go through and not the one to be proposed, of which we have seen notice from the Honourable and Learned the Attorney-General, which in effect allows licences to be transferred freely except to under 18 year old's or people caught by the provisions of Section 15 of the Ordinance. This of course, defeats the whole purpose of the Bill. If this particular amendment that is going to be proposed were to be passed, there would be no point in us carrying on with consideration of this Bill.

Accordingly, Mr Chairman, whilst thanking the Government for going perhaps rather further than we wanted, all we wanted was to ensure that in certain circumstances, where



the Licensing Committee thought it to be wise, the transfer of licences should be allowed. We took the point made by the Government in the debate that there has to be some control on the transfer of licence, otherwise this Bill would be of no effect.

I accordingly, Mr Chairman, commend my amendment to the House.

Mr Speaker then proposed the question.

HON ATTORNEY-GENERAL

Mr Chairman, Sir, I find it a little difficult to comprehend the reasoning behind this suggested amendment. If a person is given a licence to trade, surely he must be allowed to transfer that licence. What is it intended that the Licensing Committee should take into consideration in refusing the licence? No undesirable characteristics or nationality being a reason for refusing a licence in the first place, why should it be a reason for refusing a transfer? Surely they could only refuse a transfer for the same reason as they could refuse a licence in the first place. If a Patagonian comes here and applies for a licence, he will not be refused a licence because he is a Patagonian, why should there, therefore, be a chance to refuse a transfer of a licence to him because he is a Patagonian. If we restrict the Licensing Authority to the cases in which they can refuse, surely those must be the cases which we allowed them to refuse to transfer, those and no others.

HON P J ISOLA

Mr Speaker, the only point I was wishing to make was that originally, in the Bill before the House, a licence was not transferable at all. We kicked about that because we thought this was unfair, then we agreed to ~~commit~~ the Bill to a Select Committee of the House and we thought it wise that there should be some provisions under which the position could be frozen if thought desirable: public interest ground, or any other grounds, but if a person is to have the right to transfer his licence, then of course the whole purpose of the Bill in our view is reduced to an insignificance. Because everybody occupying premises today in Gibraltar is entitled to a licence, and the only people who would perhaps be refused a licence, I suppose, I imagine, would be somebody in a new development who is ~~also~~ now entitled, unless there are some odd empty premises around, and I understand that there are not many, there would be absolutely no point in this Bill. This is the way we see it. If a person who gets a licence is ~~going to~~ be able to transfer it freely, except in the cases shown, then ~~what~~ is the point of licensing. We do not quite see it, and that is why

we thought that we would give the Committee - I know it is putting a hard job on them - but we would give them the absolute discretion to approve or refuse the transfer so that the Select Committee could carry on with its work peacefully. Of course there might be grounds such as the public interest, for example, in which a transfer of a licence might not be desirable, in accordance with directions given by the Governor in Council, and this is why we are reluctant to give a Licensing Authority too much discretion. But we feel that because it is going to be a five months period, it is only right that during that five months period, the Licensing Authority should have an absolute discretion to approve or refuse a transfer. We have very much in mind that if they do not have that, if transfers are automatic, except in the case of people under 18 or a case under Section 15, we have a feeling that the purposes of the Bill would be defeated ab initio.

HON CHIEF MINISTER

I do not know whether perhaps the difference arises out of the fact that one may be thinking of licences issued, whereas in fact others may be thinking of licences which are automatic because you are in business. I think perhaps it might meet the point if we could find some way in which licences issued afresh, not by virtue of the fact that you are in business, should be restricted and not the others. That is the difference in the approach or the other way about. The point is that somebody has an acquired right to be in business here now, and, therefore, he gets a licence automatically. Now, that is different to a licence which is issued or granted by the Commission after application.

I think perhaps if we had a little time to think about this for the moment, we could leave it till later on, if Mr Speaker, might agree to allow this Clause to be left for later on, because I think we are a bit confused.

HON L DEVICENZI

Mr Speaker, I think the Chief Minister has a point, and in fact I was thinking in those same lines. There must of course be a distinction between licences which are granted after the Bill comes into operation and those which exist right now. The way I was thinking is that, and this is to answer the Attorney-General's point.



There could, for example, be ten shoe-shops in Gibraltar now, and it might not be desirable to have such an amount, but because they are there now the licence can not be refused. They are just there and they stay there. If any of those licences is transferred without restriction then it could be that anybody, this Patagonian for example, might come over and could just buy a licence from the person who is there. The Government would then find that there are ten shoe-shops there, which they consider to be too many, because there is no restriction they would continue to be there.

The other point I would like to make, Mr Chairman, is that if there is no restriction then certainly licences to trade could go to the highest bidder, and this in itself in my opinion is not a very good thing.

HON ATTORNEY-GENERAL

Mr Chairman, I think it a little hard that a person should be compelled to go on trading because he finds that he can not transfer his licence to a person who is basically respectable. Let us take the case of the ten shoe-shops. If it should be felt that these were too many, and that certainly there would be no more applications, are each and every owner of these shops to be compelled to remain in business and not to be allowed to transfer, to realise his assets because the Licensing Committee feel that they want to cut down on the number of shoe-shops? It is very hard. There are difficulties on both sides, I accept, but I think on balance, I would advise that there be a free transfer.

HON M D XIBERRAS

Sir, with all due respect to the Honourable and Learned Member opposite, I can not see how he can bring a Bill to the House in the first place which will prevent any kind of transfer and then argue rather vehemently in favour of complete freedom to transfer.

Sir, what we are saying is that there are grounds already in the Bill on which the Governor can prevent a transfer of a licence: on grounds of public interest, and it would be completely incompatible and ridiculous in my submission to have a Clause at the same time which says that you can consult whosoever you like. I am not

advocating, nor is anybody on this side advocating more restrictions than are necessary to meet the general purposes of the Bill which has slowly been crystalising in the minds of Members of the House, but it is going to make a nonsense of such provisions as that the Governor in Council will give directives on grounds of public interest if people can sell to whosoever they like. I think a number of Members on the other side of the House have said that there is a purpose to this Bill which Members here have understood clearly, and if such is the case, then both sides of this House be consistent about our purpose in this Bill, and this to my mind completely defeats, as my Honourable and Learned Friend has said, the original purpose for which the Bill was brought to the House.

I appreciate that on grounds of need it might be wrong to deprive a person from selling his business to the highest bidder, but the grounds of need is not the only consideration in this Bill, there are also grounds of public interest, and if grounds of public interest are going to apply to all sections bar this one, then the hole is so big that the circumference would be hardly worth looking at, Sir. I feel honestly that this is an important amendment if the House is consistent with its purpose which it set itself out to meet after the Second Reading had been finished. Even the five months, to accept the Honourable and Learned Member's amendment would be a most dangerous thing and, therefore, Sir, I think the House is indebted to my Honourable and Learned Friend on my left who picked out this wording and has brought it to the notice of the House, and I can not see how the House can but think again about what we put down in this Section.

HON CHIEF MINISTER

Mr Speaker, I have requested that this amendment be left to a later stage of these proceedings, until we look at it a little carefully later on in this evening.

MR SPEAKER

There are provisions under Standing Order 33 (6) which reads: "A clause may be postponed, unless a decision has already been taken upon an amendment thereto." which it has not of course. "Postponed clauses shall be considered after the remaining clauses of the Bill



have been considered and before new clauses are brought up." So that if it is the wish of the House we will postpone this clause until the end of the clauses.

Clauses 7 and 8 were agreed to and stood part of the Bill.

Clause 9

MR SPEAKER

I believe the Honourable the Attorney-General has an amendment to Clause 9.

HON ATTORNEY GENERAL

Mr Speaker, I beg to move that Clause 9 (1) of the Bill be amended by the deletion of the word "him" appearing therein and by the substitution therefor of the word "it".

Mr Speaker then proposed the question.

HON ATTORNEY-GENERAL

Mr Speaker, this is purely grammatical and consequent upon the change of the Licensing Authority from a single person to a committee.

If I might say at this stage that I hope in the new Standing Orders there might be provision for grammatical variations to be made without the necessity for the House voting thereon, consequential grammatical amendments, but of course that is a matter which will have to be discussed at a very much later stage.

HON M D XIBERRAS

Sir, this side of the House would certainly welcome any kind of discussion about the Rules of the House with an open mind.

Mr Speaker then put the question which was resolved in the affirmative.

Clause 9, as amended, stood part of the Bill.

Clause 10

HON P J ISOLA

I seek the leave of the House, Mr Chairman, to withdraw the proposed amendment to Clause 10 (3) standing in my name as the amendments proposed by the Honourable and Learned the Attorney-General meet the points raised.

Leave of the House was granted.

HON ATTORNEY-GENERAL

Mr Chairman, I beg to move that Clause 10 (3) of the Bill be amended:

- ((i) by the deletion of the words "a licensing authority in his" appearing therein and by the substitution therefor of "The Licensing Authority in its"; and
- ((ii) by the deletion of the words "has for not less than six months prior to the 31st December 1972 been" appearing therein and by the substitution of the words "was on the operative date".

Mr Speaker then proposed the question.

HON P J ISOLA

Mr Speaker, I welcome this amendment, and there is only one point I would like to make on this, and it carries on right through. The amendment states "was on the operative date" carrying on business or trade in those



premises. I am just wondering whether one ought not to put "was on or before the operative date", or does the Honourable and Learned Attorney-General consider that just leaving the words "was on the operative date" will meet the case of people who have been trading before who perhaps did not happen to be trading on that 17th November, but were trading on every day before. Subject to that we welcome the amendment.

HON ATTORNEY-GENERAL

It is the intention to only give certain advantages to people who were trading at that time. Now, trading at the operative date does not necessarily mean that their shop was open on the 17th November, but it does mean that if a reasonable man looking at the facts would say yes X was trading, he might have shut down for two or three days because he was sick or he might have gone off to see his wife, but it is intended not to confer an advantage on the person who perhaps stopped trading in 1952-53.

Mr Speaker then put the question which was resolved in the affirmative.

Clause 10, as amended, stood part of the Bill.

Clause 11, was agreed to and stood part of the Bill.

Clause 12

HON P J ISOLA

Mr Speaker, I wish to withdraw the amendment standing in my name.

Leave was granted.

HON ATTORNEY-GENERAL

Mr Chairman, I beg to move that Clause 12 of the Bill

be amended:

- (i) by the deletions of all the words after the word "form" in sub-clause (1) thereof; and
- (ii) by the deletion of sub-clause (4) thereof and the re-numbering of sub-clause (5) as sub-clause (4).

Mr Speaker then proposed the question.

HON ATTORNEY-GENERAL

The reason for the amendment, Mr Chairman, is to obviate the necessity of the applicant sending in his licence fees along with his application for a licence. He will pay his fees if and when he gets his licence rather than sending the fee to start with, and then later having it returned if it is refused.

Mr Speaker then put the question which was resolved in the affirmative.

Clause 12, as amended, stood part of the Bill.

Clause 13

HON ATTORNEY-GENERAL

Mr Speaker, I beg to move that Clause 13 of the Bill be amended by the deletion of the word "him" appearing therein and by the substitution therefor of the word "it".

Mr Speaker proposed the question.

There being no responses, Mr Speaker, then put the question which was resolved in the affirmative.

Clause 13, as amended, stood part of the Bill.



Clause 14

HON P J ISOLA

Mr Chairman, bearing in mind what you said earlier on I would like leave to withdraw my amendments to Clause 14, with the exception of the word two. In other words, little sub-paragraph (ii) and little sub paragraph (iii).

MR SPEAKER

May I make something very clear. I did not suggest that the Opposition should withdraw their amendments before consideration of the Government's amendments, what I suggested is that they should give way to the Government to propose their amendments first and then in the light of the discussion the Opposition should consider whether they still wished to press with their amendments or whether they wished to withdraw, or proceed with part of them. That was the suggestion I made.

HON P J ISOLA

The thing is that I am asking leave to withdraw everything else, because everything else is in fact met by the Government amendments, but I would like to move little paragraph (ii) and little paragraph (iii), of my amendment, which I think chronologically fits in before the Government's amendment. It is the deletion of sub-paragraphs (b) and (c) and renumbering of sub-paragraphs (d), (e) and (f).

MR SPEAKER

The Honourable Member is proposing an amendment to his own amendment, which I suggest should be done by another member of the Opposition.

HON P J ISOLA

Mr Chairman, what I was proposing is to have leave to withdraw all the amendments proposed under Clause 14 except for these two little ones.

MR SPEAKER

That would be an amendment to an amendment.

HON P J ISOLA

Well, in that case, Mr Chairman, I must ask for your indulgence to read the whole of the amendment, unless is to be given to me to renumber little paragraph (ii) (3) and little paragraph (i).

MR SPEAKER

If the Honourable Member will give way I might suggest a way. A member of the Opposition can propose an amendment to other amendments before this House which would provide for what the Honourable Member wishes to put before the House and then that would be the question before the House.

HON M D XIBERRAS

Sir, bearing in mind Standing Orders and the need to write out amendments and so on, I would suggest that my Honourable and Learned Friend should speak on the amendment which he has already put to the House and should make whatever points he needs to make in the course of that intervention. Then later on, judging from the Government's reply, perhaps an amendment might be called for or not.

MR SPEAKER

Then I would ask the Honourable Member to read his proposed amendment.

HON P J ISOLA

I apologise for the length of this particular amendment, I am proposing that Clause 14 (1) of the Bill be amended by :

- (i) the substitution of the word "eighteen" for the words "twenty one" where the same appears



in sub-paragraph (a);

- (ii) by the deletion of sub-paragraphs (b) and (c);
- (iii) by renumbering sub-paragraphs (d), (e) and (f) and sub-paragraphs (b), (c) and (d);
- (iv) by the deletion of the words "approved or proposed" where the same appears in new sub-paragraph (b) and by the addition of the following words at the end of this sub-paragraph: "approved by the Development and Planning Commission";
- (v) that the new sub-paragraph (d) be amended by the deletion of the words "in the area" and "which" in the first line thereof, the deletion of the word "is" in the second line thereof and the interposition of the word "generally" between the word "Community" and the word "in" in the first line thereof;
- (vi) that the proviso contained in Section 14 (1) be amended by the substitution of the word "was" for the words "has been" in the second line thereof and the substitution of the words "on or before the 17th November 1972" for the words "for at least six months immediately prior to the coming into force of this Ordinance" in the third and fifth lines thereof.

Mr Speaker, this particular proposed amendment is another one that is of fundamental importance to the approach of the Opposition to this Bill. Under the existing Section 14, the Licensing Authority has discretion to refuse to issue a licence if he is satisfied that the applicant is under 21 years. We said make it eighteen and that is apparently agreed. Then there are two important sub-paragraphs which said: "if he is satisfied that the issue of such licence is likely to cause nuisance or annoyance to persons residing or occupying premises in the neighbourhood of the premises in respect of which the licence is sought; and (c) that the premises on which the applicant intends to conduct his trade or specified business would not conform to the requirement

of any law for the time being in force."

Now, with regard to these two, if I may deal with them at the moment, the proposed amendments of the Government, to this clause do not include the deletion of these two sub-paragraphs, although we have been met in respect of the rest of the Section.

We feel that this is important, Mr Chairman, because Clause 14 (1) (b) really looks to us to be in respect mainly of licenced premises, of taverns, and bars, and so forth. Now, we feel that the proper place to make objections - it is the duplication argument again - the proper place to make objections in respect of licensed premises is to the Licensing Authority which sits and hears and has a procedure for hearing objections from people on the grounds of nuisance or annoyance to persons residing. We can not conceive of any other people having a right to complain about premises in the town area unless they are factories for example or manufacturing premises, and again here we feel that there is a Factories Ordinance, a Public Health Ordinance, there is a Town Plan on factories: where you can site them and all that, and this in our view is the proper province of the Development and Planning Commission or the Planning Authority or Planning legislation. We must always bear in mind that we are dealing here with a committee which is really composed of complete laymen, not experts; two members of the Chamber of Commerce thinking in terms of trade and trading interests; two Union employees thinking in terms of their Union, and two other people. You are not dealing with a technical body, you are not dealing with people who know all about these particular subjects. We feel that on the question of bars and objections to licensing, the Licensing Authority has an abundance of history on how to deal with this. Some people may think they deal with them properly, some people may think they do not, but they do have a whole case history on it and they know how to deal with the sort of situation of nuisance or annoyance. The question of not conforming to the requirements of any law, again in our view, if the law does not allow a restaurant in a particular place, well even if the Licensing Committee gives a licence it is ineffective because the chap can not set up business there. If it is against a Planning Scheme, or planning legislation, he just can not do it. If its a place that requires a tavern licence, well, he can not do it unless he has got his tavern licence from the Licensing Authority. We think it is confusing to put these considerations into the minds of the Licensing



Authority who is entitled to assume that the person seeking a licence from him will conform with all other laws and regulations. He does not have to be told, he must: the Licensing Authority in our view is entitled to assume that.

So, Mr Speaker, in addressing you on these amendments I address myself principally to these two which do not seem to be accepted by the Government in their proposed amendment. They accept our other amendments which deal with the needs of the community, not specifically in a particular area, but generally the needs of the community, and our other objections on the planning side, again they deal with that and they agree with it and we are glad to see that. But we do feel that these two sections again should be eliminated because they are misplaced. We do not want to set up, especially having regard to the constitution of the Committee, we do not want to set up an overall overlord on matters that are at present being dealt with by other bodies, and in our view competently so.

I commend my amendments to the House.

Mr Speaker proposed the question.

HON ATTORNEY-GENERAL

Mr Chairman, there is provision earlier in the Bill for objections to be made on an application for a licence. Such an objection could well be that the would-be applicant is likely to conduct the business in a way which would cause a nuisance. If that is accepted by the Licensing Authority, then 14 (1) (b) as it stands is the only place where power is given to the Authority to refuse a licence: Clause 11, which deals with objections, does not say that they should refuse a licence: what they have to do is they take it into consideration and then when they come to the question, their power to refuse is granted under 14 (1) (b). 14 (1) (c) - what we envisage there is not such matters as having no tavern licence. There are provisions for example under the Public Health Ordinance as to the state in which a building should be. Very often great trouble is caused in trying to compel owners of property to take the necessary steps to put the building in order. Human nature being what it is, people are just unwilling to spend money, lazy, but it they have got to do so in order to get a licence then

they will do so, and we feel that this should be put in in order to certainly protect members of the public when going into that particular shop. That is the reason for that particular clause and I would urge this Honourable House to vote against its omission.

HON M D XIBERRAS

Sir, as the House is aware this is going to be a temporary piece of legislation and I think that it is not a good principle for the House to adopt that principles that are not strictly speaking relevant to the main purpose of the Bill should be included within the Bill, especially in temporary legislation. Sir, as I read it, this business about nuisance or annoyance which now applies to bars would, if we pass this particular clause, that clause would apply to all sorts of businesses which are Scheduled, and to wholesale and retail in their new definition which is included in the body of the Bill. Therefore, upon application being made for renewal of a licence, the Licensing Authority could on the grounds of nuisance or annoyance refuse a licence to businesses other than pubs. It is an extension of the principle of nuisance and annoyance to other types of business which have nothing really at present to do with nuisance and annoyance other than the normal common law or whatever it is. Now, that to our mind is not a good way of introducing the principle, even if it is desirable, in legislation of a temporary character.

Sir, we fully appreciate the point that has been made about public health. This, I think no Member of the House would try to gainsay, but we do not believe in giving teeth to the Public Health Ordinance in a piece of temporary legislation, and, therefore, whereas we would not have anything in the Bill which would conflict with public health or any other Ordinance already in existence, we would not think that the provisions of any other Ordinance should be made harsher by this piece of temporary legislation.

Sir, as regards Town Planning, we see a need for this, but we keep the Authority as the Development and Planning Commission for the same reason. That the judge of Town Planning should be the Development and Planning Commission and not the Licensing Authority, and, therefore, Sir, we feel that this is an important point which we hope will be considered by the other side. It is the curtailment of certain rights of



businesses, other than pubs, in a very indirect and not too satisfactory a manner.

HON CHIEF MINISTER:

First of all let me say that I feel, Mr Speaker, that the reason why this kind of objections can be raised in respect of bars is obviously because the activities that find their way to bars, or by the time the people who go to bars are finished, do tend to come out and create a nuisance by noise and by drunkenness, and so on. But there are other kinds of nuisances that can make the life of people very difficult, and I do not see, particularly in a place where you have expansion and so on, where you can have zoning and you can say a particular area should be zoned this way or the other, /so it is perhaps not/necessary, but here where we are so cramped .... I mean, I have a note here from an Honourable Member on my side to say "How do you stop a wet fish shop being put beside a hospital, or how do you stop a wet fish shop being put just below a doctor's clinic" I mean, these things may go through the Health Department strictly speaking and then the burden is put on the occupier of the clinic or the Hospital or whatever it is to go to Court and show that it was a nuisance to them. All the requirements of the Health Department have been complied with yet there is this nuisance. We have this with Fritters Shops and so on. This is one of the things. I do not think really that one is allowing too much power in this by saying that the issue of such licence is likely to cause nuisance or annoyance. After all it is important to carry on a business, it is equally important to be able to live quietly. Some people make noises, but not necessarily because they play music, and things like that, in premises. So I feel, Sir, that there is a lot of good in these two sub-sub-sections and we really can not see our way to removing them or to agree with the amendment of their removal. As the Attorney-General rightly pointed out, these are matters which will be gone into on their merits and there is a right time for objections, and a time for hearing the other side.

HON A P MONTEGRIFFO

Sir, I will confine myself exclusively to the health aspect. No doubt as a result of our bringing forward legislation to meet our commitments as regard the

Treaty of Rome, the Trade Licensing Ordinance, we have provided, as the Honourable the Leader of the Opposition very ably put it, quite a number of new sets of teeth. And it may well be that this set of teeth should go into other particular Ordinances, but it is precisely because this is a temporary one that I think the Opposition agrees that this set of teeth should go into other appropriate Ordinances. There is no harm at this stage to leave it in this very temporary one so that they can serve as a guiding principle, if we subscribe to the principle on both sides of the House for this particular measure, to recommend, when they have got a Select Committee, that such a new set of teeth which we are producing as a result of this reshuffle of legislation, should go here or there. I think we gain a lot of time and we give more force to our arguments and to our desire to improve other legislation, if we were to leave these particular sub-clauses that we are debating now.

HON M D XIBERRAS

Sir, I would gladly give the Honourable Member opposite a new fresh set of teeth to chew over at the wet cod, but this is not the point, Sir. We are fully in agreement that you do need teeth to make a good Ordinance, but I can not agree with his logic that we should slip in this particular provision, which is as he has quite clearly pointed out a public health provision, and less so to give authority, to give the set of teeth, to the Licensing Authority rather than to the Medical Department. And this is the objection to it.

In the same way that we say that the expert on Town Planning is the Development and Planning Commission, so the expert on having fish shops next to certain other places should be the health people, not the Licensing Authority.

Sir, the other point of course, is that we should not have it in a temporary Ordinance, we should not do this in a temporary Ordinance because I honestly do not feel that it is necessary for the purpose of the Licensing Bill.

Mr Speaker then put the question and on a vote being taken the following Honourable Members voted in favour :



The Opposition

Hon M Xiberras  
Hon P J Isola  
Hon W M Isola  
Hon J Bossano  
Hon J Caruana  
Hon L Devicenzi

The following Honourable Members voted against :

The Government

Hon Si<sup>e</sup> Joshua Kassar  
Hon A P Montegriffo  
Hon M K Featherstone  
Hon A J Canepa  
Hon I Abecasis  
Hon Lt Col J L Hoare  
Hon J K Havers  
Hon A Mackay

The amendment was accordingly defeated.

HON ATTORNEY-GENERAL

Mr Chairman, I beg to move that Clause 14 (1) be amended:

- (i) in sub-paragraph (a) by the deletion of the words "twenty one" and by the substitution therefore of the word "eighteen";
- (ii) that sub-paragraph (d) be amended by the deletion of the words "approved or proposed town planning scheme or zoning area" and by the substitution therefore of the words "town planning scheme approved by the Development and Planning Commission";
- (iii) that sub-paragraph (f) be amended by the deletion of the words "in the area in which" and by the substitution therefore of the words "generally in"; and

- (iv) by the deletion of the proviso thereto and by the substitution therefor of a new proviso as follows :

"Provided that a licence shall not be refused under this sub-paragraph if the applicant:

- (i) was carrying on the trade or business on the operative date;
- (ii) is applying for the renewal of a licence in force;
- (iii) is a co-operative society registered under the Co-operative Society Ordinance; or
- (iv) is a development project in respect of which a development aid licence has been issued."

Mr Speaker then proposed the question.

HON ATTORNEY-GENERAL

Mr Chairman, I think, with respect to my drafting, that the amendments speak for themselves. If any problems arise I will be prepared to deal with them when other Members have had the opportunity to speak.

HON J CARUANA

I must declare an interest but there are persons in business who I gather are in a predicament as the one I am going to explain. Little (i) says "was carrying on the trade or business at the premises on the operative date". Mr Speaker, it is a fact that there are businesses which have changed addresses since the operative date and, therefore, try as I may, I can not see how one can get a licence in the circumstances as the law is proposed. I would welcome some elucidation from the Government side as to what happens to those businesses which have transferred in the interim period. I see that Clause 7 (i) takes care of the question of the change of premises, but it refers to persons or the business which already hold a licence. I am wondering whether in fact to cover those people in that pre-



dicament, (i) might not be amended by the deletion of the words "at the premises" and simply say: "was carrying on trade or business on the operative date" and the licence to carry the address on the date of issue or provided that the person can justify that it has been a bona fide business or operator at the time when the law was coming into force.

HON ATTORNEY-GENERAL

Mr Chairman, I would point out to the Honourable Member opposite that the person who has changed his place of business is not refused a licence, he merely loses his absolute right to a licence. He can be refused a licence because the needs of the community are sufficiently met. There may be a case of this nature, but I appreciate the problem in which the Honourable Mr Caruana finds himself, but it would mean, if we do not put in this provision, that somebody who is trading in a small way can acquire very much larger premises and demand premises which are not in the needs of the Community generally. He can, therefore, demand to have a licence in respect of his new premises, that is not desirable in the least.

HON J BOSSANO

Sir, I think the idea that a change in premises from which one is operating can in any way affect the economic functions that one performs hinges on the original phrasing of sub paragraph (a) which refer to the needs of the community in the area in which a trade or business is carried out. Now, it would seem to me that if that were the case, if we wanted to retain that, that if the criteria that the needs of the community in a particular area was the important thing, then one could say that a change in premises from area B to area C would necessarily require a review of the licence, because the needs in area B might have already been met by whoever was operating in area C and that therefore there was no need for the new entrance in area C from area B. But if in fact we were forgetting about areas, and this has been proposed here, and we are talking about the needs of the community being generally met, then if that individual was trading from a particular outlet and he was not required to justify his existence in terms of whether the needs of the community were being met in his absence, then the further he moves from one

premises to another in no way can affect how the needs of the community are being met, because we are looking at the community as a whole with the proposed amendment, and therefore, it would seem to me that it does not make sense both to propose that the original criterion of looking at the needs by area should be withdrawn, and to argue that because of that criterion you need to include the distinction about premises. I would like the Honourable and Learned Attorney-General to give some thought to that.

#### HON CHIEF MINISTER

I am sorry, I wanted to try and help in the problem but I was not listening very carefully to what the Honourable Member has just said. Perhaps he might repeat it all over again and ask the Attorney General to reply. But I was trying to solve a problem, not only if I may say so because it affects an Honourable Member here, but because it could affect other people. I mean, not because I would not like to help an Honourable Member but because it would not be proper that we should be devoting our time solely to solve the problems for the Member, which I sure was not the purpose for which he mentioned it, but because other people might find themselves in the same situation.

I think I heard something about the question of the economic activity of the area, and there is no doubt that this can only refer to the future, because since all businesses are going to be respected - and I would like to say that when I was talking of a wet fish shop I did not have the Honourable Member in mind, in fact it had not occurred to me at all, in fact I thought the instance was a good one. But there is a difficulty of extending the matter too much, on the other hand by the dearth of premises in Gibraltar the amount of changes that could take place between the 17th of November and the end of December can not be that many, or certainly they can not be done to take advantage of the Ordinance. That could not be done, it is just simply impossible. People find themselves in an accidental situation like that and we would certainly be prepared to advise, under the sub-clause which we have not dealt with yet but with which we will deal and which I hope will be accepted, advise that directions should be given to the Licensing Authority generally with respect to the exercise of its functions under this Ordinance in relation to matters which affect the public interest: "and the Licensing Authority shall give effect to such directions".



Under that question of the "public interest" one might well say that the Licensing Authority should, under the directions, make no objection whatever of any changes that have been made whilst the legislation was in the process of implementation. That is to say between now and the end of the year.

I think this is as far as one can go to meet such cases as that which has been mentioned here. I think to stretching in to an amendment to the Ordinance, much as one would like it, would mean that one would have to see how it affects all other parts of the legislation. To touch the operative date is a very dangerous one. I think that should meet the point.

HON J BOSSANO

Mr Speaker, I am not very clear about what precisely is a sub-paragraph and what is not, because in the original I think that I have it said "sub clause", and then it was changed, but in fact it is proposed that the four categories should only be exempt from being refused a licence by virtue of (f) "that the needs of the community are met". If for example, it is suggested that a Co-operative Society can be refused a licence because the issue of such a licence would operate against the public interest, that is something that I must very strongly object to, Mr Speaker, because to me it is logically incompatible. The issue of a licence to a Co-operative Society is of necessity in the public interest.

HON P J ISOLA

We read this particular sub-paragraph as referring to the whole of sub-section (1). Are we right?

HON ATTORNEY-GENERAL

The proviso is for (f). You have 14 (1) and then sub-paragraphs (a), (b), (c), (d), (e), (f).

HON P J ISOLA

Mr Chairman, then this means in effect that people in existing businesses can today be refused a licence, because somebody may come along to say: "Well, for good-

ness sake, do not give that chap a licence. There is a fight in that shop every day between Maria of Castle Road and Julia of the other place." I mean, we understood this to refer to the whole of Section 14 (1). In other words, people at the moment in trade in particular premises would not be disturbed.

We would like to move an amendment to that proviso.

The only sub-paragraph that we would agree to have applicable is the first one, that the applicant is under the age of 18.

HON M D XIBERRAS

Sir, I think we might find serious difficulties over this one. Another example has just been pointed out to me by my Honourable Friend on my right, and that is, that if the Development and Planning Commission approve a site, an area for something, and there happens to be a shop in that site, then under the powers of this Ordinance the licence can be refused. Sir, if there is a business trading now and in say two months time the Development and Planning Commission should recommend and approve that such an area should be set aside for a particular purpose, such a person could lose his licence, his licence would have no safeguard at all, safeguards which might be included in the Town Planning Ordinance.

HON CHIEF MINISTER

Is the Honourable Member saying that somebody who is already established could be put out of business because of a planning area in respect of other premises, or of the same premises?

HON M D XIBERRAS

I am talking about the same premises, Sir.

HON CHIEF MINISTER

Well, I mean if there is reconstruction the tenancy of the person - and it is the tenancy which is protected, as all business premises are protected under the Landlord and Tenant Act of 1969, that part of the Landlord and Tenant (Miscellaneous Provisions) which deals with the



protection of businesses - the developer has a duty to provide premises near in area and size to the place which is being asked to withdraw. That is to say if some place is reconstructed under Section 58 of the Landlord and Tenant Ordinance, I think it is, I will have it in a minute, the tenant can not be ousted from his business and must be provided with alternative accommodation for the business.

HON M D XIBERRAS

Sir, it is all wrong in my view. It is not just a question of compensations that I have mentioned up to now.

HON CHIEF MINISTER

..... provide alternative .....

HON M D XIBERRAS

Or providing alternative accommodation, but declaring a particular area to be one for a particular purpose, say an industrial purpose, is a very serious thing because it is going to affect a whole number of people within that area, and you should not do that with an Ordinance whose main purpose is not to do this. One should have all the apparatus, all the appeal machinery, all the means of safeguarding the legitimate rights of the persons affected and so on, and all that means a proper Town Planning Ordinance. This is the point that was being made earlier. Similarly I do not like the principle referred to by my Honourable and Learned Friend on my left, that because there is a brawl a shop might very well be closed, and that the Licensing Authority should have the power to do this. The Honourable and Learned the Chief Minister said that brawls and so on were something characteristic perhaps of certain bars and so on, but now he is assuming, or we are assuming in this House, that the same may be the case in respect of other premises; dressmakers, or moneylenders. We are extending this and we are not providing the proper machine to safeguard the rights of people and we are doing this in a very haphazard way I would suggest.

HON P J ISOLA

Mr Speaker, I would like to move an amendment to the amendment proposed by the Honourable and Learned Attorney-

General to read: "The amendment should be further amended by an amendment to the proviso by the substitution of the word "these" for the word "this" in the first line thereof, and the addition of the letter "s" to the word "subparagraph" in the second line thereof. This would mean that a licence shall not be refused under these subparagraphs if the applicant has been carrying on a trade or business, and so forth. We do this, Mr Chairman, because we understood that to be the position which we now know it is not. We do this too, because as we say this is a five months bill, and it would seem to us totally wrong that for example in the third month, while this Ordinance is in force, somebody should be refused a licence to trade which he has been doing for the last ten years, on one of these grounds, or on any of these grounds. It may well be that in the final Trade Licensing Ordinance, if any, that comes out of the Select Committee, this would not be the case, but certainly we feel that anybody who is at present trading from premises should not at this period of time have his licence, which is going to last him for the currency of this Ordinance, at least five months, interfered with, or his right to trade interfered with, by any alleged breaches under any of these subparagraphs. That is the view that we hold firmly.

Mr Speaker then proposed the question.

HON CHIEF MINISTER

I think that would be acceptable for the moment because we are only going to be five months.

Mr Speaker then put the question which was resolved in the affirmative.

The amendment to the amendment was accordingly carried.

Mr Speaker then put the question on the original amendment, which was resolved in the affirmative.

HON P J ISOLA

Mr Chairman, Clause 14 (2) of the Bill. I beg leave to withdraw the amendment standing in my name under Clause 14 (2) of the Bill as the amendment proposed by the Honourable and Learned Attorney-General fully meets our position.



Leave was granted.

HON ATTORNEY GENERAL:

Mr Chairman, I beg to move that Clause 14 of the Bill be amended by the deletion of the existing sub-clause (2) thereof and by the substitution therefor of a new sub-clause as follows :

"14 (2) The Governor-in-Council may give directions to the Licensing Authority generally with respect to the exercise of its functions under this Ordinance in relation to matters which affect the public interest and the Licensing Authority shall give effect to any such direction. Whenever a licence is refused on the grounds of public interest the Licensing Authority shall so state this in its decision."

Mr Speaker proposed the question

HON M D XIBERRAS

This is obviously an amendment of very great importance and we have no hesitation in supporting this.

Mr Speaker then put the question which was resolved in the affirmative.

Clause 14, as amended stood part of the Bill.

Clause 15 was agreed to and stood part of the Bill.

Clause 16

HON P J ISOLA

Mr Chairman, I beg leave to withdraw the amendments standing in my name under Clause 16 (1) and Clause (2), as they are met in the proposed amendments by the Honourable and Learned the Attorney-General of which he has given notice.

Leave of the House was granted.

HON ATTORNEY GENERAL:

Mr Chairman, I beg to move that clause 16 of the Bill be amended:

- (i) by the deletion of sub-clause (1) thereof and the substitution therefor of a new sub-clause as follows:

"(1) The Licensing Authority may issue a licence subject to such terms and conditions as it considers necessary. Without prejudice to the generality of the foregoing conditions may restrict the economic activity permitted under the licence and may require conformity with any approved Town Planning Scheme;" and

- (ii) by the deletion of sub-clause (2) thereof and by the substitution therefor of a new sub-clause as follows:

"(2) No condition may be imposed restricting economic activity which will prevent the licensee from selling any goods that he was selling on the operative date."

Mr Speaker proposed the question.

HON ATTORNEY GENERAL:

Mr Chairman, this is, as members will see, the clause which enables the Authority to impose conditions. The important restriction is that they cannot impose conditions which prevent a licensee selling anything he was selling on the operative date. If he was selling watches, potatoes, and tooth paste, he would continue to sell them, that cannot be stopped, but of course he can be stopped engaging in further lines, but only of course if we go back to 14 again, it would be that particular commodities were already sufficiently available for the community.

HON P J ISOLA:

Mr Chairman, we welcome the particular amendment which again makes the discretion of the Licensing Authority more general rather than particular. We were worried about special conditions, about particular classes of goods and so forth, or the sale of them, until the Select Committee had had an opportunity to look into the matter. A general authority or power is given to the Licensing



Authority of which we approve and of course we are particularly glad to see the proposed amendment that people in existing lines and trading at the moment are covered and no conditions can be imposed restricting economic activity which would prevent them from selling anything which they were selling on the operative date. We welcome the amendment.

HON J BOSSANO

Mr Speaker, there seems to be a certain amount of incompatibility between this Clause and the preceding Clause 14 to which the Honourable and Learned Attorney-General just made reference to, when he suggested that the exercise of the discretion restricting economic activity attached to the licence would be conditioned by the same criteria, namely presumably the criteria of whether the needs of the community were being met. Now, the point is that, that it is of course a step in the right direction to say that it would be wrong to set up a new body to introduce new legislation which could turn round and say to an existing trader "the thing you have been selling you are no longer allowed to sell", and this is obviated by the amendment. But what the amendment continued to do, which to my mind is wrong, if I have interpreted it correctly, and perhaps the Attorney-General would be kind enough to clarify if I have done so or not, if I have understood it correctly, what the amendments seems to do is to give the Licensing Authority a right to say whether somebody who was not selling toothpaste can sell toothpaste or not. Now, it does that because it considers it necessary and it does not say anything about the needs of the community because the needs of the community applies to the issue of a licence as a whole and not to the conditions that are attached to the licence, as I see it.

HON ATTORNEY-GENERAL

The Licensing Authority may issue a licence subject to such terms and conditions as it considers necessary. In considering what is necessary it will consider the needs of the community. No, it does not say so. It has to consider something. You have to give it some discretion.

HON M D XIBERRAS

Sir, I think it was made quite clear by the Honourable Member on my right that he is seeking clarification on a



certain point and I believe it is a point of substance, that is, that whereas there are certain guidelines, certain specific grounds on which a licence can be refused, there are no specific grounds on which the limitation of the terms of the licence can be made by the Licensing Authority. In other words, we were very careful to outline and to give guidance to the Licensing Authority as to the reason that a licence could be refused, but we have not been all that careful, I would suggest, as to indicate on what grounds the licensee could be restricted in his trade. The Licensing Authority could be completely arbitrary and say "I do not want you to sell toothpaste because I do not feel like it". Of course it would not, but as it considers necessary, one might have a licence which is only worth the paper on which it is written on theoretically.

HON CHIEF MINISTER

First of all, as I understand it, we have preserved, or we will preserve when we have taken this clause, the right of people who are now trading to continue trading in their line. That is quite clear, quite clear, that the economic activity being carried on now is carried on without any hindrance. Now, an extension of that surely is subject to the Licensing Authority having regard to the directions that may be given and the other conditions in the Ordinance. I do not think this is very extraordinary, that if you have been selling shoes and you want to sell bread you should have to have permission to carry out that economic activity, so long as what you are selling at the time of the introduction of the legislation is safeguarded, the status quo is safeguarded, the rest comes within the extension of the activity. That is how I think it must be, otherwise, it would mean giving a complete licence to all existing businesses. It would mean really the Ordinance meaning nothing at all. Nothing at all. That would mean the Ordinance meaning nothing at all, if everybody who is carrying on a business and is entitled to a licence can expand his economic activity within that business, anyhow, that would of course mean that there would be no need for an Ordinance.

HON J BOSSANO

Mr Speaker, I think perhaps the Honourable and Learned the Chief Minister was again discussing something else and does not follow what I say. I think perhaps if he paid a little more attention and listened to what I say ....

HON J BOSSANO

I was not suggesting, Mr Speaker, that the licence should not be restricted in any way. This is not what I said. What I said was that the Honourable and Learned Attorney-General had said that when it came to issuing a licence to somebody who was not trading, and we know that it protected somebody who was trading already, this amendment protects the person who is trading and certainly the protection that would have been denied previously under Section 14 has been put right by the amendment we have just approved of making the whole paragraph and not the final section apply. So that is alright, the chap who is there now is protected, but somebody comes along new and applies for a licence, and I know that this is going to be only for five months, but I think the principle is an important one, because it is a principle that is implicit in Section 14. The principle that we should say to the Licensing Authority: "There are certain grounds which you have to base yourself on in order to refuse a licence. But if instead of refusing a licence you give a licence, but you state on the licence you can only sell, I do not know, toothpaste or ice cream, or whatever you want, and nothing else". The Licensing Authority may impose a condition because it considers it necessary, because it does not have to take into consideration the question of the needs of the community in Clause 14, like it would if it refused the licence completely. If it said to the individual: you can not trade what you want because the needs of the community are met, then it would have to be that the needs of the community are met. But if it says to the individual: you will get your licence to trade from these premises, you can sell A, B and C, but not D because we consider it necessary that you should not be allowed to sell D. Now, I think that that is an arbitrary power, we are putting this power in the hands of a Commission, and we are not telling it how it should apply this power, what should guide it when it comes to deciding what is necessary and what is not necessary, like we do when we ask it to either refuse or grant a licence.

HON M D FEATHERSTONE

Mr Speaker, temporary legislation, I am wondering whether it will lapse before we manage to finish getting through passing it. I think, Sir, it stands quite easily to reason that the Licensing Authority, which is going to be from the constitution which is proposed a very reputable body, is not going to just say you must not sell toothpaste willy-nilly.



The first things, Sir, would be that a person applying for a licence would surely say: "I would like to sell", and he would state what he wants. The Licensing Authority would consider this in accordance with the - I will not say instructions but guidelines - which they will have been given, as they are obviously going to be given, from 14 (2), and this must obviously take in the general public interest, the general needs of the community. I think that we are just splitting hairs on this, Sir.

HON J CARUANA

This Clause 16 has hit at the crux of the matter and it is showing very clearly the weakness of the philosophy behind this Bill, and behind the principle of this Bill. How many licences will a supermarket require? How many licences will a supermarket require started in Gibraltar. One licence to trade in spirits; in meat; in fish; in delicatessen; in bread, where perhaps a bakery is only two doors away, or perhaps where a delicatessen is two stores away? It is ridiculous. This has hit the crux of the whole matter. This Bill is not workable. This side has been saying so. We do not like it. We are trying to put it through on a temporary basis and the word "temporary" is coming up time and time again, but it is becoming so temporary and so feeble and so full of holes that we are wasting everybody's time by passing this Bill as it is. Trade patterns are such today, Mr Speaker, that you can not restrict people from enlarging their selection....

MR SPEAKER

We are not now speaking on the general principles of the Bill we are speaking exclusively on an amendment to a Clause. We must keep to the question.

HON J BOSSANO

Mr Speaker, I would just like to carry on the argument against this particular thing because it seems to me that it is an important point. I am conscious of the time element involved, which the Honourable Mr Featherstone referred to, but I can not accept that simply because he pushes back the arbitrary power from this theoretically honourable group of men who are as yet unknown faces, back to presumably an equally Honourable group of men consisting of the Governor-in-



Council, the fact that the Governor-in-Council should say to this Licensing Authority what are the conditions that it considers necessary in no way I think does anything to meet my objection, which is that this House, just like it does in Section 14, should provide the guidelines. I would suggest that perhaps it might be possible to change the drafting of this, to make a reference to the matters referred to under Section 14 as the criteria for deciding what terms and conditions should be applied to the licence. I would say that the only thing that would be acceptable to this House would be that the terms and conditions that are applied to the licence are justified exclusively on the same grounds as a refusal of the licence would be justified, and on no other grounds, because if we are going to give this way out for a Licensing Authority or the Governor-in-Council, then it seems to me that the power is being taken away from this House and put into the hands of a body which is free to do whatever it likes. I suggest that the only way to make this compatible with the clear specifications contained in Clause 14, which lay down what are the grounds that a licence can be refused on, those grounds and those grounds only should be permissible.

in arriving at the terms and conditions that can be imposed on a licence restricting economic activity.

HON CHIEF MINISTER

I think, Mr Speaker, with respect that we are going back on all the work we have done with this attitude because there is only in my view one Clause that is an absolute bar to the granting of a licence and that is Clause 15 : "The Licensing Authority shall refuse to issue a licence." Surely, Section 14 says that subject to the provisions of Section 15 the Licensing Authority may in its discretion refuse to issue a licence: The whole thing is that it is all discretionary up to a point. There are guidelines and I think that Section 14 is obviously the kind of consideration that the Licensing Authority will have to bear in mind in order to refuse a licence. In any case nobody appointed under an Ordinance can act completely capriciously. They must have an approach which has the test of an appeal and they must act judicially. They can not act in their own capricious way. This is fundamental and I do not feel really the need now to go back on Section 14, because in fact, as I read, the Section is for the imposing of conditions and not for the refusal of a licence.

HON M D XIBERRAS

Sir, the Honourable Member on my right has made a very valid point. It is not at all good enough to have the discretionary element relegated from the front line to the second line. We appreciate that there are problems which can be very varied and very complex and it is very difficult to have such a net that you can catch all the fish that you want to catch, but you must have some net otherwise you are going to open and close the doors at your own whim and volition. I agree that the Licensing Authority will be composed of good men and true, and they are going to exercise their common sense but that is not good enough because we have told them that they can act in their own discretion in refusing a licence.

My Honourable Friend on my left, Mr Caruana, has made another valid point. How does the Licensing Authority tell whether a shop next door to the Supermarket will be able to sell a particular class of goods. Will they walk down the street and examine how many tubes of toothpaste there are in the Supermarket and then allow a certain quantity of toothpaste to be sold next door? Will they do this ever so often? Walk down the street to see how different shops are stocked with toothpaste? Well, it is a difficult Bill to work, but the least we can do is to attenuate the



discretionary power, which one feels is needed by certain guidelines which my Honourable Friend has already proposed. And a phrase such as: "as it considers necessary", without any need to give any kind of explanation, is not good enough for the House to accept. After all, we have gone through some trouble trying to indicate to the Licensing Authority as to what grounds they can refuse a licence. And what is wrong with applying, as my Honourable Friend has suggested, the same guidelines to this line of defence as to the first line of defence. It seems to me, Sir, to be a perfectly reasonable proposition. It would certainly make the work of the Licensing Authority much easier. It would give them grounds to refuse, but if you create an arbitrary authority such as this, then the public will not think it is acting fairly. This is the purpose of setting down guidelines and putting grounds. Sir, I am sure that this goes much further than the House wants to go. In fact in our amendment, Sir, - may I just refer to it for a moment - we said: "in their reasonable discretion", but we were not seized of the importance at the time of what my Honourable Friends have said, and that is that the Licensing Authority has complete discretion. It has complete discretion to tell you what your licence is going to be good for, once they agree in principle to issuing a licence. So, you might have a very nice licence but on the licence the Licensing Authority, theoretically, and this is most important, and it could happen in practice, can tell you: "We will only allow you to sell matches," theoretically. So, Sir, I think it would be good to think of this one also, the Honourable and Learned the Chief Minister will agree, and to leave this clause perhaps also for a later stage and consider it after a brief recess, Sir. It goes against the very fundamentals of the Bill. The tenor of our objections from this side was in fact to say that the Bill was arbitrary in its previous form, that the Financial and Development Secretary would have too much power and that the grounds on which he could refuse were not all that clear.

We have gone through this process of clarification but now we come against this big void and that is that the Licensing Authority can do whatever it pleases when it comes down to writing into the licence what the licence is good for. Therefore, Sir, I am afraid that this side of the House would have, on reconsideration, to vote against the amendment because it hits at the very fundamentals of the Bill.



MR SPEAKER

Perhaps the Minister would like to reply.

HON ATTORNEY GENERAL

All that has been said from this side is all that is necessary, Mr Speaker.

HON M D XIBERRAS

Sir, I appreciate that and I take it that that is the Honourable and Learned Member's reply.

Mr Speaker then put the question, and on a vote being taken the following Honourable Members voted in favour:-

THE GOVERNMENT

Hon Chief Minister  
Hon A P Montegriffo  
Hon M K Featherstone  
Hon A J Canepa  
Hon I Abecasis  
Hon J L Hoare  
Hon J K Havers  
Hon A Mackay

The following Honourable Members voted against :-

The Opposition

Hon M Xiberras.  
Hon J Bossano  
Hon P J Isola  
Hon WM Isola  
Hon J Caruana  
Hon L Devicenzi

The amendment was accordingly carried.

Clause 16 as amended stood part of the Bill.

Clause 17

HON P J ISOLA

Mr Chairman, I beg to move the amendment standing in my name, that Clause 17 of the Bill be amended by the deletion of the words "to the Governor" where the same appears and by the substitution of the following words: "by way of case stated to the Supreme Court".

Mr. Chairman, this side of the House took objection in the Second Reading of the Bill that the right of appeal from the Licensing Authority should be to the Governor and we felt then, and we feel now, that the right of appeal should be to a judicial body. I notice that the Government accept in principle that the right of appeal should not be to the Governor but the alternative they propose is unfortunately an alternative that does not endear itself to this side of the House.

Mr Chairman, in our amendment we ask for the right of appeal by way of case stated to the Supreme Court as being a Court that is equipped and used to dealing with appeals from other bodies. We would not object as a compromise that the appeal should be to the Court of First Instance but we do not agree that it should be the Licensing Authority set up by the Licensing and Fees Ordinance because, Mr Speaker, that Licensing Authority, if I remember rightly, might not just be the Stipendiary Magistrate but the Bench of Magistrates, and whilst in no way wishing to cast any aspersions on that noble body of men, it is of course, and it must be obvious to the House, that among the Justices sit a great number of persons who might have vested interests - Perhaps that is not the right word, not vested interests, who might have a certain sympathy on a particular side on an appeal.

We do not suggest for one moment that this would be exercised but we feel an appellant who appeals against the grant of a licence might come out very aggrieved if he went to the Licensing Authority and found himself before a panel of Justices whose interest he felt did not represent his particular interest or his particular class of interest.

We would not put it more strongly than that, but we do feel that if a right of appeal is going to be effective and people are to have confidence in the right of appeal, it should be, may I put it this way, a paid Judge, an experienced Judge who will have to sift evidence before the Committee, who will have to decide for example whether the discretionary powers contained in Section 16, about which we have talked so much and about which complaint has been made on this side of the House as being too wide and too sweeping. In our view we feel that it should be an experienced judge, it should be a judge who is used to sifting evidence, sifting the exercise of discretion, who should deal with such an appeal and not lay Justices who do not have experience, in our estimation, in appeals. Accordingly I would propose this amendment, and if it helps the other side of the House we would certainly agree to amendment that it should be through the Court of First Instance, or if expense is the problem the Stipendiary Magistrate set up under the Magistrates' Court Ordinance, but we do not think it is right, and I think Honourable Members opposite must take the point, that it is right that an appeal from an essentially secular body should be another appeal to another essentially secular body.

That is the main objection to the Government's amendment when it comes to us, and that is why I am putting forward my particular amendment, but I would certainly welcome an amendment to that amendment that would reduce the expense of appeal, if that is in the minds of Honourable Members on the other side, in any way or form, but not at the expense of not having a proper qualified judicial person sitting in judgement on the appeal.

I commend the amendment.

Mr Speaker then proposed the amendment.

HON CHIEF MINISTER

Mr Speaker, we must oppose this amendment as it appears because we think that the Supreme Court is a very heavy and very expensive organ to take an



appeal to, and, therefore, there are three alternatives of a judicial nature. There are only three courts except of course the Court of Appeal and the Privy Council which do not come into it, three courts functioning in Gibraltar. The Petty Sessions, the Justices or the Court of Summary Jurisdiction as it is generally called, the Court of First Instance, and the Supreme Court. It appears to be conceded now that the Supreme Court is perhaps not the best but the Court of First Instance is. Now, I am sure that despite all the reservations made by the Mover he has done less than justice to the Justices because they carry out a considerable amount of important work in Gibraltar and they have never been found wanting. They have never been found wanting in withdrawing from sitting in cases in which they are particularly interested and have in one way or another an axe to grind on the problem, and the other thing of course is that the Licensing Authority, certainly in my experience, Mr Speaker, and for a long time now, has been the Stipendiary Magistrate. And if the Stipendiary Magistrate sits in the Magistrates' Court without a wig and without gown it is much cheaper than the Court of First Instance. Even though the Court of First Instance is supposed to be a poor man's Court, there are not any poor men any more of that nature in Gibraltar. The accessibility and the procedure and the experience of the Licensing Authority is much more helpful for a case of this nature because it has got behind it the practicability. After all, we are going to leave this completely open, an appeal on what? An appeal on discretion; an appeal on the exercise of the discretion by the Licensing Authority? It is rather vague and if I may say so, in cases where you go before the Court with pleadings, as you do in the Supreme Court and the Court of First Instance, it would be much more restraining in the arguments that could be used to look into an appeal than in the lower Bench which is what eventually will be proposed. I commend the other side perhaps to consider this and withdraw the amendment. It is just, in my view, too burdensome to put this matter in the hands of either the Supreme Court or the Court of First Instance.

HON M D XIBERRAS

Sir, in rising to support this amendment I must remark that it would be a sad day for this House when Members on one side of the House feel that there is no chance of convincing Members on the other side of the House. I am sure that it is the general practice to answer in some measure to the points put to one side by the other side and I am sure, as I say, that it is not good practice or conducive to the right Parliamentary spirit to have points which are made in seriousness, perhaps in error, cast aside and spurned, when persons are not prepared to reply to points which are made in all good faith.

Sir, in rising to support this amendment, I must say that it is a well-known fact that Justices of the Peace do come from a particular class of people, this is undoubtedly so. Statistically it can be shown, and I know since I refer to statistics that the Honourable and Learned the Chief Minister was very keen on the powers of the Court, the powers of appeal to the Courts, when we were discussing the Statistics Ordinance in this House not so very long ago. We feel that this is much more than the Statistics Ordinance. This really involves the livelihood of persons, and not just of one person but of many persons, and that, therefore, we should go to the fairest possible and least prejudiced of our institutions, which undoubtedly in this particular case would not be the Justices of the Peace, who do have their biases and who do have their prejudices, and perhaps we could have more Trade Unionists as Justices of the Peace in the future, but to the Court of First Instance. There we do feel that people will think that it is fair, that we get fair treatment from the Court of First Instance. Gibraltar is a small place, we know it is a small place, and we should make every provision to see that the public respects appeal and respects the law. I do not think quite frankly that the Justices of the Peace are the most suitable persons to deal with appeals of this nature. There are important business interests involved, and therefore, I have no hesitation, Sir, in saying that we will not be able to accept the amendment which I gather is to be put from the other side and that we must say no to that one, Sir.



HON CHIEF MINISTER

Sir, whilst I respect the views of the Leader of the Opposition I do not see the relevance of his introductory remarks. I made a case, whether it was a good one or a bad one, I made a case in answer to the proposal and I was not spurning or casting aside or laughing. I do not know to what he has referred, he has certainly referred to this amendment and I think he is completely wrong. In fact I can not think what other amendment he can refer to here. We have been doing what I think is good work giving way here or there and trying to get together, so I think the remarks are totally uncalled for and perhaps - they may not be intended - most offensive because we are here trying to bring about as much of a consensus as possible in a difficult situation. To be told now that we are spurning, that we are not carrying out Parliamentary procedure, and so on, is I think the sort of thing that breaks the spirit or Parliamentary procedure. These are the kinds of allegations which are not founded on anything really basic or true.

HON M D XIBERRAS

Sir, I made the remark in a general sense because I would hope that the sense of it would get across to all Members of the House. But I was not referring, I can say quite categorically, to the Honourable and Learned Chief Minister when I made that remark.

MR SPEAKER

Does the Mover wish to reply.

HON P J ISOLA

Mr Chairman, I will move the amendment about the Court of First Instance to the amendment I presume will be moved by the Honourable and Learned Attorney-General and perhaps I will then deal with the points that have been made by the Honourable and Learned the Chief Minister.



It is quite clear to me, and it must be quite clear to all Honourable Members of the House, that to have a lay authority sitting in the First instance and have an appeal to another lay authority, unqualified, however much justice they appear to do, however much they may sit, but an unqualified body which the Courts in England have said should not sit until they have done particular courses in their appropriate work is not right. It seems to me to be quite wrong to expect a person who feels arrrieved by what a secular body has done to push him into the hands of another secular body. It would seem to me that when somebody appeals it is because he is suffering under the sense of injustice and grievance, and he should feel that his appeal goes to a person or to a court about which he can have no doubt whatsoever and to my mind this is an unanswerable argument.

Mr Speaker then put the question, and on a vote being taken the following Honourable Members voted in favour :

The Opposition

Hon M D Xiberras  
Hon P J Isola  
Hon W M Isola  
Hon J Bossano  
Hon J Caruana  
Hon L Devicenzi

The following Honourable Members voted against:

The Government

Hon Chief Minister  
Hon A P Montegriffo  
Hon M K Featherstone  
Hon A J Canepa  
Hon I Abecasis  
Hon J L Hoare  
Hon J K Havers  
Hon A Mackay

The amendment was accordingly defeated.

HON ATTORNEY GENERAL

Mr Chairman, I propose to move that Clause 17 of the Bill be amended by the deletion of the words "to the Governor" and the substitution therefore of the words "to the Licensing Authority established under Part I of the Licensing Rules made under the Licensing and Fees Ordinance".

Mr Speaker then proposed the question.

HON CHIEF MINISTER

It may, Sir, shorten the proceedings of the House if I were to say that I propose to move the deletion of the words "to the Licensing Authority established under Part I of the Licensing Rules made under the Licensing and Fees Ordinance" and to say "to the Stipendiary Magistrate".

HON M D XIBERRAS

I thank the Honourable and Learned the Chief Minister for that, Sir.

MR SPEAKER

Therefore, there is an amendment to this amendment moved by the Honourable the Chief Minister. Is that right? And that the amendment will read, if I may be given a chance to write it down, that the words: "to the Licensing Authority established under Part I", is that right? "of the Licensing Rules made under the Licensing and Fees Ordinance" be deleted?

HON CHIEF MINISTER

Yes, and substituted therefore, in inverted commas, "to the Stipendiary Magistrate".

MR SPEAKER

And the words "to the Stipendiary Magistrate" inserted in their place.

Mr Speaker then proposed the question. There being no response, Mr Speaker then put the question which was resolved in the affirmative.

The amendment to the amendment was accordingly carried.

MR SPEAKER

We are now at the original amendment as amended, and I will put the question, unless the Honourable the Attorney-General wishes to ....

HON ATTORNEY GENERAL

Withdraw the original amendment?

MR SPEAKER

No, no. I think that the position now is that the original amendment has been amended and will now put the question which is that the amendment as amended should be passed.

Mr Speaker then put the question which was resolved in the affirmative.

The amendment, as amended, was accordingly carried.

Clause 17, as amended, stood part of the Bill.

Clauses 18, was agreed to and stood part of the Bill.



Clause 19

HON P J ISOLA

Mr Speaker, I beg leave to withdraw the amendment to Clause 19 standing in my name.

Leave of the House was granted.

HON ATTORNEY-GENERAL

Mr Chairman, I have the honour to move that clause 19 of the Bill be amended by :

- (i) the deletion in sub clause (1) of the words "A Police Officer of or above the rank of Sergeant or a person authorised in writing in that behalf by the licensing authority" appearing therein and by the substitution therefore of the words "Any person authorised in writing by the Governor"; and
- (ii) by the deletion of the words "a police officer or" appearing in sub-clause (2) thereof and by the substitution therefore of the word "an".

Mr Speaker then proposed the question.

HON ATTORNEY-GENERAL

Mr Chairman, Sir, it is felt that the class of persons who may enter premises for the purpose of seeing that this Ordinance is being carried out should be left to the discretion of the Governor who should authorise people in writing, that there should not necessarily be police officers of certain rank and others but that there should be a general class.

HON M D XIBERRAS

Sir, we on this side obviously welcome this amendment and the point is one which is not new to us. The new form is much more in keeping with Gibraltar we feel.

Mr Speaker then put the question which was resolved in the affirmative.

Clause 19, as amended, stood part of the Bill.

MR SPEAKER

I believe that this would be a convenient time to recess until 10 o'clock.

The House recessed at 9.15 p.m.

The House resumed at 10.15 p.m.

Clause 20 was agreed to and stood part of the Bill.

Clause 21

HON P J ISOLA

Mr Chairman, I beg to move the amendment standing in my name that Clause 21 (2) of the Bill be amended by the addition of the words "unless the Licensing Authority shall otherwise permit for the duration of this Ordinance".

In this particular case, Mr Chairman, the Government do not propose any amendment - this is a small amendment that we are proposing - but we feel that there should be provision for a licence to be transferred in the case of a partnership as there is in the case of other licence holders.

Under Clause 21 if a licence is issued to a partnership and there is a change in the constitution of the partnership, the licence has to be surrendered, on the expiration of a period of six months, to the Licensing Authority. I know this Bill will only be on the Statute Book for five months but we feel that there should be provision under which the Licensing Authority permits the partnership to continue when there has been a change in the partner or death in the partnership.

Mr Speaker then proposed the question.

HON ATTORNEY-GENERAL

This is not an amendment, Mr Chairman, which is opposed in principle, but if a licence is issued under the Ordinance to a partnership it can only be issued to a partnership as is in existence at the time the application is made. If the day after the licence is granted there is a change in the partnership that licence will continue until well after the expiration of this Ordinance. It does seem to Government that this amendment is completely unnecessary because the situation will never arise in which it will be necessary to allow the licence to be issued to the new partnership.

HON M D XIBERRAS

Mr Chairman, the points the Opposition obviously wishes to make, when suggesting this phrase on several occasions: "for the duration of the Ordinance", is simply to underline the fact that the Ordinance will lapse in some five months. The point made by the Honourable and Learned the Attorney-General is fully taken by this side, and, therefore, we would withdraw the amendment.

HON P J ISOLA

I do ask leave of the House, Mr Chairman, to withdraw the amendment.



There was another point I wished to make on this one, having regard to our proposed amendment to Section 6 of the Ordinance, that we did not like the principle which was enshrined in the Bill as it came to the House, that people under no circumstances could transfer their interests in a licence. That was the purpose behind this amendment, to allow permission to be given for the transfer of a licence.

However, I do ask leave of the House to withdraw this particular amendment because as has been said the Ordinance will have expired by the time the duty to give up occurs.

Leave of the House was granted.

Clause 21 was agreed to and stood part of the Bill.

Clause 22

MR SPEAKER

Mr Isola, I am most concerned about this amendment. It is, I do not think, acceptable under the rules of practice in that you are proposing by the expediency of moving an amendment to take away a complete Clause and substitute it by another one which has nothing to do with the subject matter of the Clause.

It is quite in order, of course, to vote against the Clause as it stands and for a Member to move the addition of a new clause to the Bill, but I do not think it is correct under the rules of practice to substitute wording to a clause which has nothing to do with the subject matter of the clause under discussion.

HON P J ISOLA

Sir, I was going to ask leave of the House to withdraw my amendment to Clause 22 because the new Clause that we propose is almost fully dealt with now in an amendment that is going to be proposed by the Honourable and Learned Attorney-General later on

in the proceedings, which although it does not meet us completely we shall talk and deal with that when the time comes. It meets substantially the point of principle that a Licensing Authority should be established by statute and it should not just be the Financial Secretary.

Sir, I would ask for leave to withdraw that amendment.

Leave of the House was granted.

HON P J ISOLA

Mr Chairman, on Clause 22 of course this side of the House objects in principle to the whole of that Clause and we will vote against it being passed.

Mr Chairman, we said at the Second Reading of the Bill that we did not like a Clause that enabled a Licensing Authority or a Licensing Committee to withdraw the licence of a person to trade in the circumstances set out in this Bill. We do not like to give an authority the power; the very wide power; that is given in this Section to deprive a person of his livelihood and it is our view that the circumstances that are dealt with in this Clause which will justify a Licensing Authority to withdraw a licence can be dealt with in the appropriate Bills. For instance, in written law, it states: "Any offence against any written law providing for the control of prices and charges." It is our view that if a person transgresses for example the Price Control legislation he should be brought before the Stipendiary Magistrate for a breach of that offence, and if necessary penalties should be increased under these Ordinances if the Government feels that the present penalties permitted by law are not sufficiently severe or sufficiently high. Equally, with written laws providing for the control of weights and measures; or written laws relating to the substance and quality of goods sold, or any written law providing for the keeping of trading books and accounts. This side of the House Mr Chairman, objects in principle, that we should create here an authority which is not a judicial authority, only an administrative authority, composed of representatives of the Trade Union, of the Chamber of Commerce and others, and that this authority should have the right to deprive a business, a trade or a company or individual from the right of earning its livelihood.

Mr Chairman, it is our view that the paying of penalties, or rather the imposition of penalties, should be controlled by the particular laws dealing with these rules and I should here say that of course in this particular case the power is in fact given to the Court not to the Commission. The power is given to the Court to deprive a person from earning his livelihood in a business. We think that this is much too severe, Mr Chairman, and in the terms of a small community is quite likely to be used for want of a better word, for witch hunt purposes. There is suddenly an outcry in a particular section of the press that there are too many people being brought to Court about price control offences for example, why are they not deprived of their licence and then action is taken on that. This sort of thing in our view will tend to bring the Courts into disrepute. There are plenty of laws that deal with the matters laid down in this Section and it is our view that if the penalties in these laws are not adequate enough, then the Government, and the Opposition would support them, should take steps to stiffen the penalties. But to deprive a person or a business entirely from earning its livelihood we feel is much too severe a penalty and goes to the roots of the right of a Gibraltarian or of anybody else to trade in Gibraltar and earn his living. We feel this Section is a bad Section and should be deleted from the Bill. We will vote against it.

#### HON ATTORNEY-GENERAL

Mr Chairman, I am glad that the Honourable and Learned Member corrected himself to say that it is the Court and not the Licensing Authority. It at least shows that he has now read the Section. Mr Chairman, Sir, one of the points I would make first is that the power to endorse or order a withdrawal is of course discretionary, it is not mandatory. It is surely a matter which we can leave to the good judgement of the Magistrate presumably sitting in the Court. Now, if a person is convicted of driving a motor vehicle dangerously, shall we say, or recklessly, firstly there is the particular punishment directed to that man: he is fined, he is imprisoned. Then comes the measure to safeguard the public, and it is the public who must be safeguarded, his licence to drive is taken away. If he is a taxi driver then you can rightly say that you are removing his source of livelihood; but it is his own fault, he has brought this upon himself and the balance of public interest must favour that he should be stopped being a risk to the public. And the same here: these offences are offences which have injured the public. They have been over-



charged; there have been false weights, instead of being given a pound of butter they have been given three quarters of a pound; they have been sold something not right and proper. We must guard the public and that is what we are trying to do here. It may be unfortunate that a man and his licence taken away but it is being taken away because he has injured Gibraltarians, and if the Court really decides that he is worthy of this punishment then it should have the right to inflict it. The point I must make is this, we could always amend the various Ordinances, the Price Control Ordinance for example, providing where there is a conviction then the Magistrate may endorse or order to be taken away any licence he might have under the Trade Licensing Ordinance, but that is really what we are doing here. There will not be a prosecution under this particular Section. The Magistrate when coming to deal with the prosecution under the Price Control Ordinance will have this because of the powers conferred by this Ordinance. He will still convict under the Price Control Ordinance and under that Ordinance, on conviction, impose the penalty which he is entitled to impose by this Ordinance. It is hard, but it is the public who must be protected and that is why Government feels that this is a proper Clause. It will not be invoked against the person who is perhaps, let me say, unwittingly committing an offence, but who is not a hardened sinner, if you would like to put it that way, but it must be there to act not only as a safeguard but as a deterrent.

HON M D XIBERRAS

Mr Speaker, I am sorry I can not agree with much of what the Honourable and Learned the Attorney-General has said. Not that we on this side of the House are not out to protect the consumer from excessive prices, or of violation of Price Control. This House has the assurance that if the Honourable and Learned the Attorney-General were to bring, or any of the Members on the Government bench were to bring to this House any effective and fair measure in relation to the Price Control Legislation which will ensure that the public is protected, this side of the House would have absolutely no hesitation in

supporting such a measure. What my Honourable Friend on my right, the Honourable Mr Bossano, has said in respect of co-operatives is one way of protecting the consumer and I would wish to see more feeling in the House as regards the protection of the interests of consumers generally. What this side of the House is objecting to, however, is the breaking of new ground in an area which is not immediately relevant to the problem being discussed. We said this in respect of the nuisances paragraph, we said there that this was the case today in respect of bars, but when we pass this law grounds can be given to the Licensing Authority to refuse a licence on the grounds of nuisance but in respect of other establishments: groceries and what have you. That is the principle we are against on this side of the House, that is what I would say is not a principle which is likely to be accepted by this House, for the reason that we will get into all sorts of difficulties, I am sure. I am absolutely certain we shall have cases in which there are difficulties because this is bad legislation in my view. We will not have the means of appealing for instance, in respect of Town Planning; we will not have adequate protection and relevant protection in respect of people who might be done out of a licence because the Development and Planning Commission decides that that is an approved area after the licence has been given. And you need very well-thought out legislation, to my mind, before you can break new ground in the manner we are doing now quite without thinking. We have gone into the Public Health Ordinance and we have given it, in the words of one member of the House, stronger teeth, or new teeth; we have gone into Town Planning, which is very contentious legislation in the United Kingdom, and we have said that we have broken new ground there again; and now we are going into Price Control. And in respect of Price Control we are saying: "you can lose your licence if you break a law." However worthy that law may be, however much Members of this House may be in sympathy with that law, yet we are attaching a penalty to a law which is quite distinct from the Price Control law, and that is not a good principle for legislation. Therefore, Sir, we must vote against this section, as we made



clear earlier on, when I think we were discussing Section 14.

Sir, we question the competence of the Licensing Authority to pass judgement in respect of things for which it is not competent, it is not even set up. We question the relevance of this law in judging a case on the grounds on which I have just stated when there are other laws to deal with any particular offence. To take the example of the taxi driver: if the taxi driver is whatever he might be then there should be a law about driving but there should not be a general law which applies to the depriving of livelihood, be it a taxi driver or whatever he may be, the person, a businessman, in general terms, when each particular case has not been thought out. It is a bad principle of legislation to do this, to apply a blanket penalty for offences under quite different ordinances. One might as well codify the whole of our Ordinances and apply one particular punishment. One dreads to think what that might be. We can not accept that different subjects should merge in this way. One is totally committed to protecting the interests of the consumer; one is totally committed against drunken driving, but we do not lump those things together and say we deprive a taxi driver of his licence by virtue of the same law as deprives a businessman of his licence to trade. We certainly punish the offender but according to the law which is relevant to the particular case, and with a punishment commensurate to the offence, and we feel that this section illustrates how the Bill, in at least two of its Sections, offends against this basic principle. Therefore, we have no option but to reject this amendment.

HON CHIEF MINISTER

Mr Speaker, I really find the attitude of the Opposition in this Clause completely inconsistent with the whole approach to the law. They have accused us of giving a protection to traders which we were not giving to workers in respect of Common Market legislation. This has been a protective



law for the traders, a privilege given to them, and where we bring a very reasonable section which protects the consumer from the kind of things that the consumers require to be protected; and where better than in a licensing law regarding trading should you have this protection. And what are the grounds on which the penalty applies. To provisions under the Ordinance: "Any written law providing for the control of prices and charges; any written law providing for the control of weights and measures." which goes to the root of honesty in business;" any written law relating to the substance and quality of goods sold", which goes again to giving full value for what you buy; and "any written law providing for the keeping of trading of goods". And then there is a further proviso": that they shall not endorse a licence or make an order for the cancellation of a licence", and this is all a court of law, this is not the Licensing Authority; a court of Law": "make an order for the cancellation of a licence or the disqualification if the licence holder proves that the offence was not committed knowingly or willfully". So that it provides, that it must be a deliberate act, not just a technical breach of any law; "that in the case of lack or omission of an employee of the licence holder, the licence holder has taken reasonable steps to prevent the commission of the offence." Therefore, it exempts the licence holder from being punished for what his servant has done without his authority; it can only happen after the second conviction within five years; and then, after a licence is endorsed, or when a court makes an order for the cancellation, the court shall cause the Licensing Authority to be notified. Sub-clause (3) says that any person whose licence is endorsed or cancelled or is disqualified from holding a licence by order of the Court, under sub-section (1), may appeal against such order in the same manner as against the conviction, and the Court may suspend the operation of such an order subject to such conditions as it may deem fit pending the determination of such appeal.

To be quite frank this is the most logical section of the whole Ordinance to protect the consumer, and here you have the Opposition opposing it.

HON J BOSSANO

Mr Speaker, the Opposition is not opposing either the fine sentiments expressed by the Honourable and Learned the Chief Minister of the section itself. It is opposing the incorporation of this section in this law. Now, it is not a question, Mr Speaker, of playing about with words or splitting hairs. The arguments that have been brought forward by my Honourable and Learned Colleague about whether this is the right place to deal with this in no way detracts from the wholehearted support that this side of the House has for what appears to be a clear commitment from the Government to do something effective and practical about protecting the consumer. This is, as the Chief Minister has said, the most effective and strongest measure that has ever been thought of to protect the consumer, but does it belong here, Mr Speaker? What is wrong with it is what is wrong with the whole of the Trade Licensing Ordinance, Mr Speaker. I will go back to what the Honourable and Learned Attorney-General had to say in reference to the contribution of my Honourable and Learned Colleague when he corrected himself and the Honourable and Learned the Attorney-General deduced from this fact, from the fact that he had corrected himself, that he must after all have read the Section. But when I look at the Trade Licensing Bill that is introduced by the Honourable and Learned Attorney-General, and to which the Honourable and Learned Attorney-General subsequently moves 17 amendments, I ask myself whether the Honourable Attorney-General has himself read the original Bill! And when the amendments are further amended I ask myself whether he has read the amendments! It is because the Bill is a patchwork quilt instead of a sensible piece of legislation that the Opposition feels it can not support something that does not really belong in a piece of legislation which as the Honourable and Learned Chief Minister told us at the beginning we should not forget was really designed to bring us in line with the Common Market. This piece of legislation, Mr Speaker, is to replace the Trade Restriction Ordinance because we can not discriminate against Common Market nationals. Now, if we want to use this as a blanket piece of legislation to

protect the consumers, to do this and that to give teeth to the Public Health Ordinance, well then obviously we will not be able to do this between now and the 1st January. We are trying to reform the whole of the legislative frame of Gibraltar and use as a vehicle the need to come into line with the Common Market on the 1st of January. This is why we are faced with 17 amendments and 24 hours to look at them, Mr Speaker, and having to propose the addition of an 's' here and a comma there to try and protect and to try and eliminate obvious anomalies.

Now in respect of this section the view of the Opposition is that the section attempts to do something that is worthwhile doing but it does not belong in this piece of legislation because this piece of legislation, we were told originally, was an attempt to give protection to Gibraltar businessmen, to Common Market businessmen, because the existing legislation gave protection to Gibraltar businessmen and would discriminate against Common Market Nationals and be in breach of Treaty obligations. This is what the Ordinance is for. If this is what it is for, then it is attempting to do a hell of a lot more than that, and because it is attempting to do too much in too short a space of time this House has been faced with a shambles. There it is.

HON A P MONTEGRIFFO

Mr Speaker, quite honestly there were many things that I thought there would be a lot of controversy about in this Bill, but I never thought by any stretch of the imagination that the Opposition and the Government would be divided on a cause which I think we have all been clamouring for for a very long time. Now, it is not a question, as I see it, that we have brought this into a piece of legislation where it does not belong, I think that perhaps, as I said before on the question of health and the other relevant matters that were mentioned by the Leader of the Opposition previously, I quite agree that it may be a question, after the Select Committee has deliberated, of channelling this particular process into more appropriate Ordinances, but I feel



that if there is one clause that really belongs to the Trade Licensing Bill it is this particular one. If we are licensing businesses and giving the right to trade the least that we can expect is that when issuing this licence we should have in mind the conditions under which it will be allowed to trade honestly. Consequently I think that if there is one clause that really belongs to this rather patchy Bill, it is this particular one and I do hope, and I do beg the Opposition, not only not to vote against it but that there should be a message coming out from this House to the whole of the trading community, that we are hereby prepared to protect their interests, that we are prepared to protect the other interests of another section of the community, and that is what we are here for. We shall not allow either trading interest or any other interest to profit at the expense of the consumer or any other section of the community, and I think this is the message that should go out of this House. I beg and appeal to the Opposition to support this fully, and not only to support this fully but even if the law has got to be changed, after the Select Committee goes into it, that the substance and the spirit of this clause will remain in whatever other law eventually comes into being.

Quite honestly I really feel that we are splitting hairs on this one because if you were to have used the Price Control Ordinance to exercise the powers we are asking for under Clause 22, then we would have had to refer under the Price Control Ordinance to the Trading Licensing Ordinance. We would have had to say: "anybody who breaks or overcharges will under the Trading Licencing Ordinance have the licences withdrawn." We are doing it here instead of in the other one. It is the same thing and I would honestly ask and appeal to the Opposition that we are breaking new ground to protecting the consumer and please let us be together on this one.

HON J CARUANA

Mr Chairman, no doubt when the Honourable Mr Montegriffo refers to protecting the consumer he is no doubt thinking about the price of bread, but

let us assume for a moment that this clause belongs here. Is there not an inconsistency in the punishment? Whilst everybody finds it desirable, and that should be the aim of everybody, to protect the consumer and give a better service to the Housewife, is it not a bit too much, and inconsistent with other punishment for other offences against the law that can be found in this clause? Is the House not aware of the consequences of withdrawing a licence from a businessman, assuming that the chap has probably willingly added on a halfpenny or a penny on the price of this or the other, that he loses his whole livelihood because he has infringed this law, and yet when criminals break the law in regard to the traffic of drugs and other things, all they get is a maximum of six months imprisonment. Is there not a tremendous inconsistency that by this law, assuming that it belongs here, one is taking away the complete livelihood, causing the ruination of that man, of that family? Surely the penalty of £200 and subsequent penalties of a similar nature should be enough as a deterrent when one balances penalties that can be found for infringement of other laws.

HON M D XIBERRAS

Sir, for a moment I thought we were going to discuss the general principles of the Bill again and even the four Bills before the House at this session. Of course there is virtue in protecting the consumer. I feel this one has been thrown in for good measure and that no doubt the Honourable Minister for Medical and Health Services firmly believes that it is a good thing to hold this very big stick over the traders and to tell them that if they infringe price control legislation then they might have to stop trading. Sir, in respect of weights and measures, equally, it is a good thing, it is the root of honest trading and this side of the House could not under any circumstances be less in its concern for the protection of the consumer and for the furtherance of honest trading than Members opposite.

Therefore, Sir, the plea of the Honourable Mr. Montegriffo has not fallen on deaf ears. Of course, we reserve our position in respect of the method of doing this. We do not think that the caluse belongs here, we do not think it would be impossible to include it in the Price Control legislation. Of course we want to give teeth to the Public Health Ordinance, of course we wish to have a law abiding clean living city. The point being made by the Opposition is, however, that these pieces of legislation brought in from other Ordinances, from other fields, do not belong here. But far be it from this side of the House to in any way detract from the message that the Honourable Member wishes should go forward from this House.

This side of the House fully supports the spirit behind the Honourable Member's speech and just in case either the Honourable Member or the public generally gets the wrong idea this side of the House is willing, on reconsideration, to vote in favour.

However, we hope to see from Government benches a consistent and logical approach to the question of prices which was much talked about by Members opposite, just around election time; we hope to see a consistent approach to price control itself; we hope to see a consistent approach in the question of wages; and we hope to see from the other side a real genuine, practical care for the consumer and for the people who are most affected by breaches in price control legislation, breaches in the Public Health Ordinance and breaches in most of the other Ordinances.

If such a concern does not outlive this particular meeting, then Honourable Members opposite can be sure that this side of the House will bring the matter to mind in no uncertain manner.

Mr Speaker then put the question which was resolved in the affirmative.



Clause 22 was agreed to and stood part of the Bill.

HON ATTORNEY GENERAL

Mr Chairman, under Standing Order 34 (7) I would ask your consent that the new clause of which I have given notice be taken next and not as would be otherwise the normal practice, after all the amendments and all the Clauses of the Bill.

Leave was granted.

HON ATTORNEY GENERAL

Mr Chairman I propose that the Bill be amended by the insertion immediately after Clause 22 of a new clause as follows :

"23(1) There is hereby established a Trade Licensing Committee (hereinafter referred to as "the Committee") which shall consist of the Financial and Development Secretary who shall be the Chairman, and six other members appointed by the Governor, two of whom shall be appointed after consultation with the Gibraltar Chamber of Commerce and two after consultation with the Gibraltar Trades Council.

(2) Four members shall constitute a quorum at any meeting of the Committee.

(3) At all meetings of the Committee the Chairman, or, in his absence such other member as the members present shall appoint, shall preside.

(4) All decisions of the Committee shall be decided by a majority vote of the persons present at any meeting, and in the case of an equality of votes the persons presiding at the meeting shall

have a second or casting vote.

(5) No decision of the Committee shall be invalid by reason only of there being a vacancy among the members of the Committee.

(6) The Committee may make rules regulating its own procedure."

Mr Speaker then proposed the question.

HON ATTORNEY GENERAL

Mr Chairman, I think this is a clause which, even if there may be disagreement with any of its provisions, does speak for itself. It is Government's attempt to set up a body which is considered to be the best available to regulate licensing. The second to sixth sub-clauses would, I hope, be non controversial, dealing very much with matters of practice and procedure. I would perhaps in this particular case not speak further at this stage on the clause but perhaps reserve any comments I might wish to make after I have heard anything which the Opposition have to say.

HON CHIEF MINISTER

Before the Opposition have their say, I would like to confirm what I have said verbally, in response to the point made by the Honourable Major Peliza before he left. On the general principles he spoke about this constitution and it is the intention of the Government to appoint a representative of the consumers to the Committee as proposed, but for reasons that I have explained, and I do not want to be too specific about this, it was found difficult to put it into the substantive law as was intended, but we have every intention of having a representative of the consumers in the Committee.

HON M D XIBERRAS

Sir, I understand what the Honourable and Learned the Chief Minister is saying about the Consumer Association. In fact in our amendments we said there should be a representative of the Consumer Association. There is an undertaking now that there will be a representative of consumers and in fact of the Consumers Association. Now this is undoubtedly a very good thing and we would hope that when the impediments which the Honourable and Learned the Chief Minister feels stand in the way of statutory recognition of that body is removed that the Honourable and Learned the Chief Minister would bring to the House a change in the composition of this, which may be very well in five months from now. In the meantime, of course, we welcome the consistency of the Government in supporting the Consumer Association and we hope again that we shall continue to do so in the future and especially about bread.

Mr Speaker then put the question which was resolved in the affirmative.

New Clause 23 stood part of the Bill.

Clause 23

MR SPEAKER

It will have to be taken as it stands now. It will be amended as far as numbers are concerned in due course unless the first amendment can be made now.

HON ATTORNEY-GENERAL

There is no reason why the Honourable Members of the House who will propose the amendment should not also propose that the Clause be renumbered.



HON P J ISOLA

Mr Chairman, I have the honour to move that Clause 23 should read Clause 24, and be amended by the substitution of the figure "£200" for the figure "£100" in the third line thereof.

Mr Chairman, the intention of putting in this figure was to illustrate our principle that a law should have its own punishment within the law, its own fine for an offence against that law. And having regard to our proposal about Clause 22 being deleted, we thought that a more significant fine should be put in with regard to this Ordinance, having regard to the fact that you are dealing with traders and so forth, a more significant fine than just a £100. This is why we suggested that £200. Whether that is the right suggestion to make in view of the fact that the House has passed the previous Section, under which a person who had a right to trade, not given a right by this House but had it already, can be deprived of this right on a second offence unless he can prove that he did not know that he was doing it, - contrary to the normal principles, nevertheless passed by this House. I wonder whether one should proceed with this amendment, but we do push it forward because I do think it illustrates our principle that an offence in an Ordinance should be self contained. I commend the amendment to the House

Mr Speaker proposed the question.

HON M K FEATHERSTONE

Mr Speaker, I wish to speak on this. I think Shakespeare said in Hamlet: "what's in a name". The whole essence of this, Sir, as with Clause 22, is that in the Courts who are going to decide. If they feel that somebody in Clause 22 has made a similar offence they may not even endorse a licence for the first time or even a second time if they feel somebody is a gross offender well they may fine him £200 instead of £100. I do not think really there is very much difference in the figure.

If they had made it £1,000 there might be little teeth in it, but I do not think this side is going to object to £200 or to £100.

Mr Speaker then put the question which was resolved in the affirmative.

New Clause 24 was agreed to and stood part of the Bill.

Clause 24.

HON P J ISOLA

Mr Chairman, I beg to move that Clause 24 should be numbered Clause 25 and that Clause 25 ....

MR SPEAKER

Perhaps I might sound the views of the House as to the amendment to be proposed, because we are going to find ourselves in a difficulty that if you are going to propose the renumbering of the clause and your own amendment at one and the same time, we may have to go into an amendment to our amendment for the purposes of renumbering the clauses. If your amendment is not going to be acceptable to the Government Side.

HON P J ISOLA

Can I then first propose that Clause 24 be re-numbered as Clause 25?

MR SPEAKER

Yes, perhaps that is a better way of doing it.

Mr Speaker then proposed the question which was resolved in the affirmative.

HON P J ISOLA

Mr Chairman, I would now like to move that Clause 25(2) be deleted, and that sub-paragraphs (c), (d), (e) and (f) be renumbered (b), (c), (d) and (e); and that Clause 25(3) be deleted.

Mr Chairman we are moving the deletion of Clause 25(2)(b), which gives the Governor power to regulate and control the sale and delivery of goods by or to any person or any class or classes or persons required to hold a licence under this Ordinance, because you will notice that we have deleted references to class or classes of persons in other sections of the Ordinance and we do not think that this is a proper subject for the regulations which can be made by the Governor. We raise this point as a point of practice to keep it in line with the other sections. As I said this is something that will be dealt with no doubt by the Select Committee and I am not particularly worried about this particular amendment. We are, however, very much worried by the other amendment proposed, which is the deletion of Clause 25(3), because as you will no doubt appreciate, Mr Chairman, the First Schedule contains a number of subjects that are going to be proposed should be put in it and the inclusion of this particular sub-section would give the Governor power to put in lots of businesses into the Bill without reference to the House. And I would commend to the other side that when we come to the First Schedule we could add the clause that we have drafted in our nineteenth amendment, or put it in there: "May by order amend the First Schedule provided that no such order shall have effect unless a draft thereof has been laid before the House of Assembly and has been approved by resolution of the House". In other words, we feel that any amendments to this Ordinance should be subject to the approval of the House as far as the



First Schedule is concerned.

I commend the amendment to the House.

Mr Speaker then proposed the amendment.

HON CHIEF MINISTER

I think we will accept the proposals to amend sub-clause (3) but not the others, so perhaps in that case he will withdraw the other one.

HON P J ISOLA

Mr Chairman, I ask the leave of the House to withdraw my amendment with regard to Clause 25(2) and just have the amendment to Clause 25(3) be deleted.

Leave of the House was granted.

Mr Speaker then put the question which was resolved in the affirmative.

New Clause 25 was agreed to and stood part of the Bill.

Clause 25

HON ATTORNEY-GENERAL

I beg to move that Clause 25 be renumbered as Clause 26.

Mr Speaker then put the question which was resolved in the affirmative.

New Clause 26 was agreed to and stood part of the Bill.

Clause 26

HON ATTORNEY-GENERAL

Mr Chairman, I beg to move that Clause 26 be renumbered as Clause 27.

HON M D XIBERRAS

Sir, I think without tiring the House at this particular stage something should be said, if I take it rightly, about the Trade Restriction Ordinance being repealed. This is in fact what we are voting for is it, Sir?

MR SPEAKER

No, we are now dealing exclusively with the renumbering of the clauses.

Mr Speaker then put the question which was resolved in the affirmative.

HON M D XIBERRAS

Sir, we are on Clause 27 now?

MR SPEAKER

Well, new Clause 27, or old Clause 26, as you wish.

HON M D XIBERRAS

Sir, the Trade Restriction Ordinance had to go because of our Common Market obligations and I think

that this is perhaps the place or the time, but not at any great length, to say a few words about the Trade Restriction which Honourable Members in this House have had more experience of than I have and which has been, for the business community of Gibraltar, a source of power, a source of wealth and a source of privilege. Undoubtedly, until the Amendment to the Control of Employment Ordinance was enacted in 1970, the Trade Restriction Ordinance was the most protective of legislation in Gibraltar, and the section of the community that was protected was undoubtedly one sector and that is the trading sector. There were no doubt certain advantages as regards priority of employment to Gibraltarians but there was nothing as compelling, as real, and as effective as the quota system which was brought to this House in 1970. This to my mind provided a real protection for labour commensurate with that which was afforded by the Trade Restriction Ordinance. As far as my knowledge goes the Trade Restriction Ordinance was honoured sometimes more in the breach than the observance, I have heard it said, but undoubtedly its passing will mean the end of a particular era for trade in Gibraltar. The effectiveness of replacing the Trade Restriction Ordinance by the Bill before the House is still very much a matter for speculation. We have seen a Bill brought to this House which to my mind is not based on proven practice, which is going to have a very fickle life, but which basically, thanks I may say to the work of this House and particularly if I may say so to the two Members sitting on either side of me, and particularly I single him out, my Honourable and Learned Friend Mr Peter Isola, whose contributions no doubt the House greatly appreciate. We have some sort of a Bill with which to maintain the principle of protection which we on this side of the House would have liked to see extended to Labour as much as to trade. Though we put Gibraltar first and though I have said that we should protect all sections of the community in like measure, we on this side of the House cannot be satisfied, having gone through all these amendments, that we in this House have been able to give as much protection to labour as we have to trade and I think Honourable Members thinking back over the amendments that have been put and have been agreed and the advice we have received from time to time from the Honourable



and Learned the Attorney-General, I do not think we can be satisfied that we have offered the same protection to trade as to labour. The provisions of the Treaty of Rome are no doubt more strict in respect of labour than they are in respect of trade and yet what we have done for labour with some exceptions, prompted if I may say by interventions from this side, is scarcely more than is contained in new Section 27 of this Bill.

In respect of Common Market Nationals we are barely offering more protection than the Treaty of Rome allows for and so, Sir, though my knowledge is not thorough about the history of the Trade Restriction Ordinance, all Members know that it is an important Constitution for Gibraltar. I can remember the Constitutional Talks when many people, whether the Ordinance was effective or not effective, thought that the world would come to an end if the Trade Restriction Ordinance were repealed. Well, one hopes that the world will not come to an end and one hopes that the best resolve of Members offer adequate protection for Gibraltar as one has attempted to do with the Trade Licensing Bill, and as one will no doubt hope to do in respect of Labour in the next one, two or three years, insofar as this is compatible by the Treaty obligation. One hopes that these efforts on both sides of the House will be crowned with success. There are serious misgivings on this side of the House about what is replacing the Trade Restriction Ordinance. We have tried our best from this side of the House, but the Bill as presented has been given various epithets, and I feel that no one in the House can be satisfied that it is a coherent, adequate piece of legislation. One hopes that the contributions that have been made by Members in this House to the Bill at this Committee Stage will be continued in the Select Committee. I hope, as the Honourable and Learned the Chief Minister indicated, that the Select Committee which will be announced in the course of this meeting, will be able to improve upon this and to safeguard the very necessary principle of protecting a small community within the Common Market. One hopes too, Sir, that we may use this as some sort of vantage point from which to regard the next two, three or four years,

which undoubtedly will bring difficulty to Gibraltar. I do not think it will be a good thing to look back, that we can not do because of the Common Market, but perhaps we can look forward and we can see what ideas can be discarded that are going to inhibit us in realising our future, our destiny as a people in Gibraltar, and be able thus more effectively to do away with the shibboleth, the false images, the things that were valid some years ago but are no longer valid now, and perhaps in this sense we can be united in fighting Gibraltar's case equally for all sectors of the Community.

I would thank the Chair for its indulgence shown in my drifting away from the points at issue but I am sure that Members on the other side of the House will no doubt be willing to reply in like terms.

HON CHIEF MINISTER

Mr Speaker, Sir, I am not going to digress as much as the Leader of the Opposition but I think for the record one should state one or two facts in giving an honourable burial to the Trade Restriction Ordinance, and that is, that it was passed on the 1st of October 1934 and whatever may be said of it, and it had many imperfections and so on at the time when it was passed, it suited a particular purpose. I, Sir, had nothing to do with it, in 1934, but it suited a particular purpose or a particular danger then in the community. We have spoken so much about the Gibraltarian status, and we must not lose the identity, that it is in fact the only other law, apart from the Gibraltarian Status Ordinance itself, where the question of Gibraltarian is stated. It was, whatever may be said, a protection for Gibraltarians. Alright, Gibraltarian Traders of all kinds of all calibres let us put it, the same for all. It was a protection against outsiders. This is no longer possible particularly going into the Common Market. I myself never thought that it was a very good piece of legislation and I even said at the beginning that in the last few years it was more noted by the way it was broken than by the way it was observed. It is I think, as the Leader of the Opposition has

said, it is not so easy to find protection within the Common Market legislation for the duties we have to provide for the free movement of workers. It is mainly for this and it very much depends how we get this working. I was very glad that in the end, after all the discussion, we did get the Opposition to vote in favour of Clause 22 which made this not very ideal Ordinance at least an element of protection to the consumer.

I would like to remind you, Mr Speaker, that we have Clause 6 to come back to at a later stage.

I think it is a good day that the Trade Restriction Ordinance is going by the board.

New Clause 27 was agreed to and stood part of the Bill.

New Clause 28

HON ATTORNEY-GENERAL

Mr Chairman, I beg to move that a new Clause 28 is added to the Bill as follows :-

"This Ordinance shall expire on the 31st May 1973."

Mr Speaker then put the question which was resolved in the affirmative.

New Clause 28 was agreed to and stood part of the Bill.

MR SPEAKER

We will now then go back to Clause 6 before considering the Schedules.



HON CHIEF MINISTER

Mr Speaker, there was some concern expressed at the time we were looking at the amendment to Clause 6 and we were pressed to pass an amendment which had been proposed from the other side which we did not find acceptable. But meeting to the extent possible the concern of the Opposition I move the following amendment:

"Delete the full stop and inverted comma at the end of this sub-clause ....

MR SPEAKER

May I remind the House that we were dealing with the amendment proposed by the Honourable Mr Isola.

HON CHIEF MINISTER

I am sorry, I thought we had dealt with that, Perhaps if he will give way I will propose the amendment and then he may perhaps think whether he wants to proceed with his own.

The amendment is :

"Delete the full-stop and the inverted comma at the end of the sub-clause and add the following words :

"or if the Licensing Authority considers such transfer to be against the public interests in accordance with any general directions given under Section 14(2) of the Ordinance."

That is in order to state on what grounds licences will be transferred.

There was a complete freedom here, except for those people under 18 years of age and also unless

people were convicted under Clause 15. Now the other amendment was to leave it in the absolute discretion of the Licensing Authority and my proposed amendment is that it will be within the discretion of the Licensing Authority, subject to directions made under Clause 14, which are the general directions given by the Governor-in-Council. The inclusion of the reference to the Governor-in-Council has been made to meet the Leader of the Opposition's point.

HON J CARUANA

I am not following this. Mr Speaker, this amendment that the Chief Minister is proposing now is the amendment to the Attorney-General's amendment and not to the original Bill?

HON CHIEF MINISTER

Mr Isola has given way to have this amendment considered first to see whether he will proceed with his.

MR SPEAKER

May I, so that I know myself what is happening, explain and be corrected perhaps by the Mover. It is being suggested at this stage that Mr Isola should withdraw the amendment as proposed.

HON CHIEF MINISTER

No, giving way.

MR SPEAKER

Giving way at this stage and perhaps withdraw his amendment on condition that the amendment to be proposed by the Honourable the Attorney-General will

read as it stands on the notice given to the House with the additions of the words read by the Honourable the Chief Minister just now. So that the proposal of the amendment by the Honourable the Attorney-General will then read :

"No licence shall be transferred without the consent of the Licensing Authority but such consent may not be withheld unless the transferee is under the age of 18 and shall be withheld if the transferee is a person to whom the Licensing Authority would be bound to refuse the issue of a licence under the Section 15 or if the Licensing Authority considered such transfer to be against the public interest in accordance with any general directions given under Section 14(2) of this Ordinance."

Is that correct?

HON CHIEF MINISTER

That is right, Mr Speaker.

MR SPEAKER

All I wish to be told now at this stage is whether it is acceptable to the Opposition that they should withdraw their amendment on condition that the amendment to be proposed by the Government to this section will read as I have read.

HON M D XIBERRAS

Sir, as the House is aware, this particular section was taken out some time ago, I have now had an opportunity of putting it to my colleagues and now we are considering, with the leave of the House; whether we should in fact withdraw the amendment



made by my Honourable and Learned Friend or not.

HON P J ISOLA

Mr Chairman, the only problem we have on this is that what is happening here in effect is that the Governor-in-Council will make general directions to the Licensing Authority and it seems to me that the net result ....

MR SPEAKER

I can not allow a debate within a debate. All I am waiting for is for an answer from the Opposition whether they are prepared to do as suggested, otherwise we just proceed with the amendment as proposed by the Opposition. It will be dealt with and then the Government can propose whatever they like, but we must not have a debate within a debate in any manner or form.

HON CHIEF MINISTER

Perhaps if I were to explain one thing in the wording it might help the other side. My original proposal was that the word should stop at: "the Licensing Authority considers such transfer to be against the public interest. "Therefore, that there was an element of discretion on the part of the Licensing Authority. It was suggested that we should refer back to Clause 14 and I did so at the request of the Leader of the Opposition, but I am quite happy to take away those words if the discretion is felt to be wider without reference to Clause 14.

HON M D XIBERRAS

Sir, as I take it the brunt of the Honourable Mr Isola's amendment was in fact that the Licensing Authority should have discretion. The anomalous

situation had been reached in fact in discussing the debate proposed by the Government that whereas they regard the control or protection to be essential .....

MR SPEAKER

I am afraid I can not have a debate within a debate. You are completely at liberty to choose between debating the amendment proposed by the Honourable Mr Isola, which is your right now and this is the question before the House, or withdrawing it on the undertaking given by Government.

HON P J ISOLA

Mr Chairman, the reason why we feel we must talk on this particular amendment is that if this Trade Licence .....

MR SPEAKER

My question is whether you wish to proceed with your amendment.

HON P J ISOLA

We wish to explain it too.

MR SPEAKER

Well, we will proceed with your amendment.

HON P J ISOLA

Yes.

MR SPEAKER

That is the decision that I am waiting for and, therefore, we have now resumed the discussion of Clause 6(1) and the question before the House, as proposed at the time, is that the amendment proposed by the Honourable Mr Peter Isola should be made. We will take it from there.

HON P J ISOLA

Mr Chairman, the reason why we say we go on with this amendment is because in our view, if this Trade Licensing Bill is going to have any meaning at all and we are not all wasting our time here, somebody must decide whether a person may or may not transfer his licence. Under this Bill we allow everybody who is trading in Gibraltar to have a licence. Now, if we make the transfer an automatic affair well then surely the whole purpose of the Bill is defeated because most business premises are occupied today on the 17th November were so occupied. Everybody who was occupying them is entitled to trade in the particular line of business that they were doing, and if they are going to have a right to transfer fully what is the purpose of the Bill? Just to catch the odd new thing that may come along. Are we not wasting the Commission's time, the Committee's time, the House's time, and everybody else's time? It seems to me that if we leave it to the discretion of the Licensing authority, and Licensing Authority will still be bound to take account, under our new Clause 14(2), of any direction the Governor-in-Council may give in relation to matters which appear to them in the public interest. The Licensing Authority may decide that they should not approve the transfer, A party aggrieved still has the right to appeal to a higher court against the use of the discretion by the Licensing Authority. It would seem to us that, until the Select Committee comes out with something better, if we are going to give just a little more than lip service to this Bill, there must be at some stage control by somebody on



licences that are transferred and this does seem to go to the whole root of the Bill.

HON CHIEF MINISTER

I accept that proposition in principle and I have suggested the way it can be done with the proposed amendment of the Attorney-General: by adding the words "or if the Licensing Authority considers such transfer to be against the public interest". So it puts the burden on the Licensing Authority to find that it is against the public interest, or as added further, in order to help: "in accordance with any general directions given under Section 14(2)".

So it means really what the other one said. It is just a neater way of putting it in our view.

HON J BOSSANO

Mr Speaker, I think the difference is that the introduction of the words "the public interest" in this particular Clause of the Bill would, in my mind, inevitably be tied up with the use of the same words in Clause 14, where the issue of a licence can be refused on the grounds that it would operate against the public interest. We have the same words used twice in the Bill. Now, in the case of the issue of licences we have already established, with the agreement of both sides of the House, that people who happen to be in business at a particular date can not be refused their original licence by virtue of this Clause, the public interest Clause. We have also established that Co-operative Societies should not be treated in this way either, that they should also have the freedom to trade. Now, here when we talk about the transfer of licences I think we get back to the very root of the purpose of the Ordinance, which is to replace the Trade Restriction Ordinance and to give protection in trade, but on a basis that does not discriminate against Common Market Nationals. If we have the freedom

to transfer licences which is not in any way connected with the origins of the transferee, namely that the transferee should not be either a Gibraltar or a British subject or a Common Market National but that anybody can come in and buy up a business and get the licence for those premises and that business transferred to him, it seems that we can not in any way be said to be doing anything to afford protection along the lines which discriminates between the Common Market Nationals and those who are not, and that in fact it would have been much more effective to have simply amended the Trade Restriction Ordinance by re-defining in the Trade Restriction Ordinance, the Gibraltar, or Gibraltar residents, in terms of a Community National. That would have been a watertight thing which could not be overcome. Here in fact, because transfers of licences are permissible, and because the only criterion is in our amendment, that there should be absolute discretion, the question of the public interest in terms of the use of those words in Clause 14 does not arise. It may be thought that the extension of a particular line of business would be against the public interest and that licences should be refused on these grounds, but here we are talking about who owns businesses in Gibraltar. This is what the transfer of licences is about. It is not about the nature of the economic infrastructure of Gibraltar. It is not about how business is distributed or about how it is concentrated. It is about the ownership of business that we are concerned when we are thinking about transfers of licence between individuals. And there it is our view that we need something that goes beyond the powers given in other sections because the principle behind the Bill is that discrimination is permissible as between the Common Market Nationals and those who are not. With all the legislation we have faced, Mr Speaker, there is at the back of our minds the possibility of Gibraltar's social and economic structure being infiltrated from outside and being taken over. This thing, which makes reference to the public interest, which appears in another part of the same Ordinance, to my mind is considerably weaker than what we were proposing which gives a categorical statement to



the strength of feeling behind the need to protect us and our fellow nationals in the Common Market from those who are not. It is there that the play of words "absolute discretion" come in.

HON M K FEATHERSTONE

The play on words in the various debates on this Bill have left me completely perplexed. When on the general principles the Honourable Mr Isola came as far as this clause he was most upset as far as I can remember that there was not the freedom to transfer. Now that the freedom is given they do not like it. As far as we heard earlier on it was a terrible thing that lay people should have the power to decide, and even worse if it should on appeal go to another section of lay people, and yet now you want to give absolute discretion to the lay authority. I just do not understand it, Sir. Obviously the instructions under 14(2) that would be given if it were passed, as has been suggested by the Honourable the Chief Minister, are going to state quite clearly that if it is given to somebody outside the Common Market this is not in the public interest. I mean, it seems to be quite reasonable, Sir, I can not see why we are hair-splitting, saying things in one breath, and on one hand in favour, and the same people, perhaps a different person sometimes, it appears to be the same person, is saying exactly the opposite in the next breath. They go from one clause and say they are in favour and in the next clause the same thing comes up and they say they are against it. I am completely confused, Sir.

HON P J ISOLA

Mr Chairman, I would like to tell the Honourable Member that we did object to Clause 6 as it was drafted originally because it prohibited any transfer of licences to anybody, and we said: "who is the legislature to stop a man selling his business when the time comes." But then we accepted the



need for some protection and we accepted that there should be a Select Committee considering this Bill, and when considering our amendments as a matter of principle to Section 6, we felt that there should be a right to transfer a licence with the consent of the Authority during this transitional period of five months while the Select Committee is sitting. We thought it necessary to leave it in the absolute discretion of the Licensing Authority precisely to help the other side, if I may put it that way. In other words, precisely to produce a sort of free situation as much as is possible while the Select Committee considered the whole future of the Bill. But if we go and allow an absolutely free transfer as we said, Mr Chairman, both the House and the Select Committee would be wasting its time because by the time they came out with the new Bill we might have a completely different set of places all the way up Main Street. This is the reason. There is no inconsistency in this. What we have been trying to do is, consistent with our own principles and our own attitude to the Bill, to meet the Government's desire for some protection for some Bills to be brought forward, and we thought that to allow free transfer defeats the purpose of the Bill. This is why we are prepared during this period of five months, not necessarily after that period, we are prepared to leave it to the discretion of the Licensing Authority, to leave it to the Governor-in-Council to make his directions to the Licensing Authority which they must take account of, but let them decide whether in all the circumstances as put before them a licence should be transferred or not. That is all.

Mr Speaker then put the question, and on a vote being taken the following Honourable Members voted in favour :-

The Opposition

Hon M D Xiberras  
 Hon P J Isola  
 Hon W M Isola  
 Hon J Bossano  
 Hon J Caruana  
 Hon L Devicenzi

The following Honourable Members voted against.

The Government

Hon Chief Minister  
Hon A P Montegriffo  
Hon M K Featherstone  
Hon A J Canepa  
Hon I Abecasis  
Hon Lt Col J L Hoare  
Hon J K Havers  
Hon A Mackay

The amendment was accordingly defeated.

HON ATTORNEY-GENERAL

Mr Chairman, I beg to move that Clause 6 of the Bill be amended by the deletion of sub-clause (1) thereof and the substitution thereof of a new sub-clause as follows :

"No licence shall be transferred without the consent of the Licensing Authority but such consent may not be withheld unless the transferee is under the age of 18 and shall be withheld if the transferee is a person to whom the Licensing Authority would be bound to refuse the issue of a licence under Section 15."

Mr Speaker then proposed the question

HON CHIEF MINISTER

I now move that this sub-clause be further amended as follows :

that the full stop and inverted comma at the end of the new sub-clause be deleted and that the following words be added:

"or if the Licensing Authority considers such transfer to be against the public interest in accordance with any general directions given under Section 14(2) of this Ordinance."

I imagine that whatever else the directions will say they will set out the main purpose of the Bill which is that there can be no discrimination against Common Market Members and Gibraltarians, so that really it would be against the public interest to refuse any such persons a transfer of licence and that would be at the same time upholding the non-discriminatory nature of the Ordinance, which is that licences should be transferred. There would be no difficulty in a licence being transferred to either Gibraltarians or Common Market Nationals. I can not see, in the five months that this Ordinance is going to have, and subject to directions which will ensure that it is not used as discriminatory, that there can be any problem with that. I commend the amendment as, perhaps from the point of view of the Opposition, the lesser of two evils.

Mr Speaker then proposed the amendment to the amendment.

HON J BOSSANO

Mr Speaker, on the further amendment proposed by the Honourable and Learned the Chief Minister, the Opposition can go quite a long way in support of this, and of course it is an interesting spectacle to see the amendment that is being amended which causes the original section to be completely reversed. This amendment is necessary, if for no other reason, to prevent the Honourable and Learned Attorney-General from standing on his head. But it is necessary further than that because the practical purpose of the Ordinance is not only to remove discrimination against Common Market Nationals, which was in the original Trade Restriction Ordinance and which we have been assured will



naturally form part of the Governor's general direction to the Licensing Authority, not only to remove that discrimination, but by implication to continue some form of discrimination in favour of Gibraltarians and Common Market Nationals, because that is what protection means. And where that discrimination can only be justified in terms of the public interest, then the justification for it is weaker than the one that the amendment that this side of the House was suggesting previously and which was defeated. And it is weaker because we are already using the notion of the public interest in the exercise of the power of the issue of licences in respect of Gibraltarians and in respect of Common Market Nationals. So that we are using the same principle at two different levels and we are over-working the principle. This weakens the basic purpose of the Ordinance, which is to continue discrimination but to continue discrimination against outsiders. And if one needs to be quite specific, to remove any doubt that the Honourable Mr Featherstone may have on the other side of the House, what we want to prevent is the Spaniards coming in through the back door and buying up licences in Gibraltar, Mr Speaker. We must be sure that we can do this and this must be one of the primary things that must concern the Select Committee in the drafting of the new legislation.

#### HON CHIEF MINISTER

I am afraid there is a considerable inconsistency when we talk about discrimination at one stage with a certain amount of contempt and in the next breath we say we want the discrimination to exercise it against our neighbours. It is protection, as protection was sought for the workers; it is protection for the local trader and for those who have a right to come and establish themselves. Whether we achieve it to the extent that we intend or not depends very much on ourselves, the workings of the Ordinance, and what comes out of the wash in the Select Committee.

Mr Speaker then put the question on the amendment to the amendment which was resolved in the affirmative.

Mr Speaker then put the question on the amendment, which was resolved in the affirmative.

Clause 6 as amended, stood part of the Bill.

### The First Schedule

HON ATTORNEY-GENERAL

Mr Chairman, I beg to move that the Bill be amended by the deletion of the First Schedule thereto and by the substitution therefore of a new Schedule as follows :

### First Schedule

The Hon the Attorney-General moved that the Bill be amended by the deletion of the First Schedule thereto and by the substitution therefore of a new Schedule as follows :

### FIRST SCHEDULE

Hairdressing	Printing	Manufacturing
Banking	Publishing	Catering
Dressmaking	Building Contracting	Decorating
Moneylending	Electrical Contracting	

Mr Speaker then proposed the question.

HON CHIEF MINISTER

Mr Speaker, I would like to propose a slight amendment to that Schedule: to delete the word "Publishing" in the second column. I would like to explain that the purpose of bringing this here, as I found out, was to prevent a certain evil but was in no way meant to attempt to make the publication of newspapers or anything like that subject to licence. It would be very ill of me to do that bearing in mind that after a long campaign my Party achieved the abolition of the licensing laws which existed whereby no paper could be published without a licence and which at that time was occasionally exercised to try and muzzle the press. The Press became fully free after that and there has been no intention whatsoever of muzzling it by putting this. It was an attempt to prevent precisely the kind of evil that has been mentioned by the Honourable Mr Bossano in respect of traders, but we think that that can be achieved in another way. There was certainly no attempt, and I would like to make this quite clear, to interfere with the freedom of the persons, as it is understood here, but in order not to have any doubt, and because the Press itself has got its own charter in a way I am suggesting that this is removed. It was certainly not there for that purpose.

Mr Speaker then proposed the question.

HON P J ISOLA

Mr Chairman, we were going to propose a number of amendments to this but as we are just dealing with the particular amendment of "publishing", we can not understand how this ever got into this particular First Schedule. The original First Schedule brought to the House had about five items. We thought that the Government should make a case for putting anything on a licence basis and



instead of Government coming with less, it comes with more, a more all embracing licence. We are dealing just from the point of view of publishing. We can not understand on this side of the House how this particular activity got on to the licensing laws. As the Honourable and Learned Chief Minister said this looked very much like muzzeling or interfering with the freedom of the Press and so forth. We of course much welcome this amendment.

Mr Speaker then put the question which was resolved in the affirmative.

MR SPEAKER

We now have before the House the question which is that the First Schedule be amended by the deletion of the word "publishing".

HON J CARUANA

Mr Speaker, on the generality of the First Schedule one appreciates that the headings included in the First Schedule, I gather, are intended to cover that type of business which is really the business which gives a service as against a business which trades in the buying and selling of commodities, and as against professional service. For that matter, just slightly referring to publishing, publishing would not even come under service, it would come as a media, a kind of media like a cinema would be. But the rest, printing, is a service, you do not buy anything, you give the service; manufacturing is also a service; catering is a service; decorating: but, one wonders, why stop there.

There are many other industries, businesses, which could equally qualify under there, which do not qualify under the general description of trade which is stipulated and their interpretation which says: "trade means the buying or selling of any goods, commodities or materials by way of business."

Transport, for example, is one of those services which could equally come under here; window cleaning, for example, is another kind of service like decorating. Shipping, airlines, you know: one wonders why stop there. What excludes those which have been left out from obtaining a licence. Since we are interested in making a law, even though it is a temporary one, perhaps this law might wrap into the new one that is to be considered by the Select Committee, one would like to have the satisfaction of at least doing the right thing. And whilst I think it might be burdensome, I am not even sure whether we should not include other items under this heading, one could enlarge it. But then we would have the problem of trying to find out what are the services which we have not covered.

However, Mr Speaker, having said that, why stop there? One goes further and contradicts oneself and says: why have this in? Because the building constructing industry, for example, the electrical contracting industry; we are in great need of firms to come to Gibraltar to build; we know what the pressure is on building; we know what the pressure is on contractors; why restrict further this final operation? In catering too we are in great need of restaurants and so on and so forth, and manufacturing industries. Well, we all want this very much, so why restrict this line of business when this is the type of business that Gibraltar requires. This is the kind of industry that we do not want restricted and left out. This is the kind of industry we want to call back into Gibraltar. We want to see more contractors so that when a contract goes out we have a substantial number of contractors bidding for a contract, so, therefore, the prices would be the best possible going instead of having a restricted number of contractors whereby prices directly or indirectly are rigged.

So, Mr Speaker, having said why not make the list longer, why stop there, I say, why put it in at all.

In one way it is logical to make the list longer, and on the other hand one could not certainly

support the restricting of an Italian firm coming to Gibraltar from the Common Market with their modern innovations; or electrical contractors coming from France, or Germany, or even light industry coming from Luxembourg, Italy - I was going to say Japan - but even manufacturing industries coming even from Japan, why not. We are outside the Common Market barrier, why not. So, therefore, Mr Speaker, food for thought. I think this has food for thought that one would like to carry into the Select Committee if we can not progress any further tonight.

#### HON CHIEF MINISTER

Mr Speaker, I think the Honourable Mr Caruana has missed the point. The activities which have been included here are not exhaustive but they are the kind of activity over which we would like to exercise some measure of control precisely to prevent what the Honourable Mr Bossano spoke about trade. It is all very well to say Italian contractors, alright, but are we going to have our neighbours as contractors here without being able to control them? Are we going to have them as electrical contractors, in banking? This is not intended as a restriction for the kind of activities mentioned by Mr Caruana, this is to exercise some control, this was the only purpose. We could have taken away the Trade Restriction Ordinance and put nothing in its place and we would have been complying with the Common Market. But did we want to do that? Really not. We want to exercise that measure of control against outsiders who have not got a right to come. I mean, this was never intended to restrict the number of people that will come to build when on the one hand we are trying to put out tenders for development and so on. This would be ridiculous. Banking is a particularly sensitive one I would have thought. As far as hairdressing, dressmaking and money lending the only reason why they are there is that they were in the old Trade Restriction Ordinance as one of the restrictive trades, that is all. But hairdressing is not a protected Common Market industry, Members will be interested to know. It has been left out of all the Treaties.



I do not know why, but it has been left out of all the Treaties. As far as money-lending is concerned, well, you can look at the Gazette and see who is applying and so on, there are other things, I think it is a matter of convenience. The House has already made amendments proposed by the Opposition to add to the Schedule by a resolution. We would be quite happy to have in the meantime, if there are any particular activities that Members might think would be a danger against which we want to ward, to pass a resolution adding: on the other hand the building contracting, electrical contracting, manufacturing and Banking, and so on we consider are the right sort of thing to get protection against the other side. That is all and there will be certainly no restriction in any regulation limiting the bona fide people who we want to attract.

HON J BOSSANO

Mr Speaker, at the risk of annoying some Members on the other side of the House I am just going to mention a couple of points that have been mentioned before. The original First Schedule included five items, and at the time the Opposition put forward the question why these five and no others, and the amendment that we brought forward left the Schedule in blank with the idea that a case had to be made for inclusion.

MR SPEAKER

I am afraid that I have not accepted notice of that amendment. I can not accept notice of an amendment which is incomplete. I did say that to the Mover at the time.

HON J BOSSANO

The intention, Mr Speaker, was, had it been accepted,

to have had a Schedule which would have given the freedom to include what it was thought necessary to include, to make effective the measure of protection that we are also concerned to have, but a case should be made, a positive case should be made, for the items that are going to be included. It seems to me that it is not enough to say that these items are there because they were in the Trade Restriction Ordinance and in comparing the two lists one finds that since this was in the original list and not in the second list, and dressmaking was in the original list and still appears in the second one. Now it would appear that the way ....

HON CHIEF MINISTER

Mr Speaker it is under dressmaking.

HON J BOSSANO

In the original list, Mr Speaker, there were both seamstresses and dressmakers, and as I understand it in the present list it is only dressmakers. Perhaps one could have this clarified. In the original list, Mr Speaker, both seamstresses and dressmakers required licences. In the present one only dressmakers do. Perhaps there are deep and compelling reasons for this adjustment but they are not immediately obvious to anybody who looks at the legislation, and I would have thought that introducing very controversial and new measures like this Bill is was something that required a great deal of thought and not a sort of slap-happy approach. You put one thing in and then you change your mind and you amend it and take it out and then you come back and put it in. It is people's livelihood that we are playing with! We are saying to some people: they need a licence, and to others that they do not. We have had in the original one only these five. In the amendment we have had publishing put in then we have got publishing taken out.

Now, it is a great relief to Members on this side of the House that publishing is being taken out because with publishing in the Schedule there would have been complications which I do not intend to develop now, Mr Speaker. That being the case we are left with the Schedule which we have to either vote for or against and I think that the importance is that we are being asked to vote on the whole thing, whereas the position is that each individual item should require at least a measure of thought to decide whether there is justification for putting it there or not. Because the people who are affected by being required to have a licence, just like the people who are affected by publishing were concerned, the people who are in hairdressing are concerned that they are required to have a licence and the reflection on the competence of this House, the public image of this House, is being sorely tried by having a Bill brought here which is being amended and the amendments to which are being amended and people outside in the street do not know whether they are coming or going Mr Speaker. They do not know whether they are going to be required to have a licence; whether they ought to be doing something immediately about it; whether this new law is going to be enforced rigorously; or whether because it has a life of five months it is going to be sort of left suspended in the air. These things need to be thrashed out. It may well be that now is not the ideal time to thrash them out, but we are here to ensure that we do our work well. It is not sufficient to be motivated by good intentions. We have at least to marry our good intentions with a measure of competence which will give people outside, the people who voted for us, sufficient confidence for them to come out the next time and vote for anybody.

MR SPEAKER

We must not censure now, or otherwise we will never move. We are debating the contents of the First Schedule and nothing else.



HON J BOSSANO

Well, Mr Speaker, on the contents of the First Schedule. I would like the Government to give us some notion of the individual items that are being included there. The reason, the criteria that have been used to arrive at the choice of items.

HON CHIEF MINISTER

I am sorry, Mr Speaker, if the Honourable Member will give way. Apparently he was not here when I explained, and he was obviously not listening outside. I did give a criteria, it may not have been satisfactory, but I did give one. I am sorry if my fellow Member of this House has not heard it, but I did indicate that the main thing about the kind of businesses included here was protection against ....

HON J BOSSANO

Mr Speaker, I was in fact sitting here listening to that and in fact I accepted that this was the underlying criterion for the whole Ordinance. There is no doubt about that. This is the whole justification for not simply repealing the whole of the Trade Restriction Ordinance. And quite obviously using that criterion it had been decided originally to include publishing, and presumably using the same criterion it has been decided to take it out. We had printing put in initially, using the criterion that printing in Gibraltar needed protection from our enemies, and apparently it still needs protection. Well, I am not satisfied that it does, Mr Speaker.

HON J CARUANA

Mr Speaker, I raised a point raised by the Learned Chief Minister, on his reason for that, but it defeats me that the Government can use that argument, the criteria for putting this here when

in fact the part of the Bill which they did not accept, which was the part dealing with the transfer of businesses provides the loophole to the criteria which the Government is trying not to defend. Which means that any person we do not like can come here now and buy out an electrical company and just simply transfer the licence: equally the same with decorating, catering etc., etc., etc. This was the case being put by the Opposition at the time. So it defeated me why the Government uses its criteria here and did not think it fit to use it in the other part? This is why we are saying that that part defeated the whole object of the Bill.

HON P J ISOLA

Sir, I was going to move an amendment to the First Schedule under which I deleted seven items, but I notice that the other three items which I was going to leave in have been objected to by other Honourable Members: that leaves the First Schedule without any items at all. Mr Chairman, looking at this Schedule, I think it is a bit late in the day to start talking about protection ~~from our neighbours~~ because if that is the case then probably the Trade Restriction Ordinance was a much better piece of legislation, and a short amendment to the Trade Restriction Ordinance which included Community Nationals, with Gibraltarians alongside them, would have been a very much better piece of legislation, because there it refers to who holds to who own the Companies and so forth. We have made no provision at all in this Trade Licensing Bill for this. There is absolutely nothing to stop neighbours, or Asians, or anybody else from forming a company in France and coming over to Gibraltar. So we can not really say that we are looking at this Schedule with that completely in mind. I prefer to look at the First Schedule in the same way as we have looked at the rest of the Ordinance in a reasonable way and saying whether the particular activity is one that should be included and should be subject to a license under this Bill.

Mr Chairman, if one considers Hairdressers one leaves it in because it was in the Trade Restriction Ordinance - that is probably the only good argument one has - at least we can leave somebody in, but that Banking: it is extraordinary that for Banking, for example, they should require a licence, when in order to be able to Bank in Gibraltar they should require a licence from the Governor-in-Council under the Banking Ordinance. And the Governor-in-Council sits in there with the oath of secrecy, they can refuse anybody anything, it can be a Community National, it can be anybody. We decide that such and such a Bank shall not trade in Gibraltar, for whatever reason they have. I think that there is no need to put Banking in the Trade Licencing Bill at all.

Dress-making: no need at all, why put this in, there is no problem there; on the contrary, you would like hundreds of dress-makers to come to Gibraltar, encourage them to come.

Now, money lending: there is an Ordinance which deals with Money Lenders. A chap goes to the Magistrates' Court, puts up a notice, the whole procedure for objection on money lending is in an ordinance. Why bring Money Lenders into the Trade Licensing Bill? Why get, for instance, a situation, where the Trade Licensing Committee may say, yes, to a Money lender and the Magistrates' Court may say, no, or vice versa. So, why not leave them out as well.

Printing: I would have thought that printing does affect the freedom of the press, no question about it, because one of the sections we have passed, Section 14, I think it was, if anything is obnoxious: "the issue of such a licence ..."

HON CHIEF MINISTER

If the Honourable Member will give way for a moment. If he will indicate which of them he agrees should remain there we might be able to make quicker progress.



MR SPEAKER

I do not propose under any circumstances to sit after half-past-one this morning: we have still got the debate on the adjournment. I would like to know whether it is intended to prolong this debate on the First Schedule and on the Second Schedule, because if it is the intention of the House to further debate the matter I will then of course recess until tomorrow. I think we have had a long day and unless there is a hope of finishing before 1.30 there is no reason why we should go on now.

HON P J ISOLA

Mr Chairman, the seven I had were Banking, Dress-making, Moneylending, Printing, Manufacturing, catering and Decorating. I just left in Hairdressing, Building Contracting, because it is one of the ones in at the moment, one could leave that, and Electrical Contracting, being an allied trade. It just occurred to me that of the ones I have mentioned we do not have a surfeit of any of them. Printing, I think, is a delicate one, I think it does protect the freedom of the press because if somebody printed a newspaper and that paper was obnoxious to people they could go to the Licensing Committee, and object to the printers for printing obnoxious paper. I am not sure, but I would have thought that printing does affect the freedom of the press and I would have thought that it would be wise to keep clear of antagonising the press. Not so much the press but the principle of the freedom of the press. As I said Banking has an Ordinance; Moneylending has an Ordinance; Dressmaking I think is an irrelevant consideration today; Manufacturing, I would have thought that if anybody who came to manufacture in Gibraltar, to set up an industry had to go to the Trade Licensing Committee, I would have thought that this would not encourage; Catering, again there is a shortage of good catering, so we are told, in Gibraltar. Why give it a protective atmosphere? Decorating, I do not know of any interior decorators in Gibraltar at all.

I was going to move that the First Schedule be further amended by the deletion of the words "Banking, Dressmaking, Moneylending, Printing, Manufacturing, Catering and Decorating". If it will be quicker I could move the deletion of individual words, then votes could be taken, but if the whole lot were accepted I would move them collectively.

HON CHIEF MINISTER

I think we would accept the removal of some of the smaller ones, but the big ones: I do not think they are going to have any difficulty but it is precisely for their ultimate protection for the purpose for which the Ordinance was brought. I think Manufacturing, Catering are particularly sensitive ones; Decorating I do not know, but certainly Catering is a sensitive one. Take out Printing by all means, take out Dressmaking and Moneylending and let us get on with the Bill.

HON M D XIBERRAS

Sir, I hate to spoil the Honourable and Learned the Chief Minister's high spirits at this time of night, which is remarkable. I think we have reached another important stage in the discussion of the amendments, and that is the Schedule.

Sir, already in the body of the Ordinance we have the retail trade, the wholesale trade, and now in the Schedule of the Ordinance we have Manufacturing. That covers a considerable number of economic activities. What I particularly do not like, speaking personally, about the Schedule is that it relies too much for no good reason on the old Trade Restrictions Ordinance. Both things certainly should go. The second thing that is obvious, Sir, is that very little thought has gone into the production of the Schedule at all, and

even at this late stage the point must be made again that here we are dealing with a most important Bill and we come to the last but one or two or three of the amendments before the House and it is becoming even more painfully obvious that there is no rhyme or reason in some of the things that are said in this House. There has not been a really good justification of the reason why certain things crept into the Schedule and why certain things are still there. Someone, Sir, must be responsible for putting things into the Schedule and defence is called for, and even though I was not in the House when Printing and Publishing was discussed, I was listening outside and I did not hear very convincing reasons as to why these two words have crept into the Schedule. One would have thought that the Honourable the Chief Minister's sensibilities on the subject, bearing in mind his tradition, would have encouraged him to keep out these two words, "Printing and Publishing" from the Schedule. One would have thought also in the new spirit, as I said, that Hairdressing and Dressmaking and the like would have been out.

Sir, the House has considered this a very long time now and I doubt whether it is physically possible for the House at this stage to make the improvement. I doubt if it is physically possible for the other side of the House to produce convincing reasons why any of these items should be in the Schedule at all, and this, as my Honourable Friend has said, is a sorry state to reach. So, Sir, to my mind, the one important thing that has come in the last half hour, if I may say so, is the attitude of the Honourable and Learned the Chief Minister in regard to the reasons for the Bill. He has mentioned our neighbours ....

HON CHIEF MINISTER

-I think that that was originally mentioned by another member and I said this was the spirit of protection for ourselves.

HON M D XIBERRAS

Indeed, Sir, and these are most important words in relation not only to the Schedule but the whole of the Ordinance and to the Ordinance which we have been discussing, including the Labour Ordinance, and I am sure, just as the Honourable Mr Montegriffo wished a



Mr Montegriffo wished a message to Government from the House.....

MR SPEAKER

We should not, at the Committee Stage, now, to digress from the subject matter before the House, the question being the insertion of certain items. We must keep to this question strictly now if we are going to go on. It is essential that we must be relevant to the question at this late hour.

HON M D XIBERRAS

Sir, I appreciate the concern of the House and yourself, Sir, as regards the lateness of the hour ....

MR SPEAKER

Let there be no misunderstanding, provided we stick to the question there is no objection to anything being said in any manner or form.

HON M D XIBERRAS

The relevance, Sir, I would suggest, of what I am saying in respect of our neighbours are the comments that have been made in relation to this subject earlier. What I am saying, Sir, is, and I did illustrate it by reference to other ordinances or other bills before the House in this sitting, is that this is a most important factor which has come out in the last half hour we have been debating, and here, too, I would like to see a resolve, the resolve of the House to bear these factors in mind at any level of Government activity and at any level of the activity of this House. I fully appreciate that when we are talking about this First Schedule we are talking about things which are most important

to Gibraltar in relation to our neighbours. And the problem will come upon us time and again in the next, let us say, five years. I hope all Honourable Members present in the House tonight will not forget that there is this intention, which is the intention of the House, and that firm methods must be used to resist the pressures which will undoubtedly come. At an early stage in this meeting I was called gloomy or words to that effect for saying this. I believe it was in relation to the the Immigration Ordinance. But now it is quite clear that it is a matter for concern on the other side of this House, and so it should be. And if it has always been, Sir, as I hear the Honourable and Learned the Chief Minister say, this again is a good thing, and that it should continue to be in future.

Sir, I can not help feeling that in selecting these activities we are not really living up to the standard of this House. There has been arbitrary selection, there is a mixture of criteria and the whole thing, Sir, is, to put a word used by Honourable Members opposite at one time, a mess. This indeed, Sir, is a mess. There has been no concerted approach to this, Sir. It has been quite obvious throughout the discussion of the Bill that Honourable Members opposite had an intention in mind, but because they were under pressure, because there was no time for one reason or another, today or tonight at twenty-five to one in the morning, we are picking and choosing, at random almost, what we should put into the Schedule and what we should leave out, and that is the fact of the matter.

Sir, before leaving the question, and the line my Honourable and Learned Friend propose the amendment, I must say that I would hope that the Select Committee on this Bill can get to work as early as possible, and as the Honourable and Learned the Chief Minister undertook earlier in this meeting, that an announcement can be made, perhaps not now because not many people would listen to it apart from Members of the press, but perhaps at the earliest opportunity in the course of the week as to the composition and terms of reference in the shape of a notice of a motion to be

to be brought to the House at the next meeting, if we do not meet tomorrow. I would hope that this at least will show that the House is far from satisfied from the result of debating this Bill.

As far as the Opposition is concerned, Sir, and I do not believe I shall say anything else on the Bill, as far as the Opposition is concerned our attitude has been clear. We have said that these are the powers which we think you can reasonably have: make a case as to what or where or how you would use them. We do not think that there has been a compelling case made but we are prepared to accept what comes out of this wash now because we feel that there is a need for protection.

HON A J CANEPA

Sir, I have been very very restrained all evening, and particularly so when the Honourable the Leader of the Opposition was playing to the gallery about an hour ago on labour matters. He seemed to choose the time very, very conveniently. But at twenty to one in the morning, Sir, my nerves are a bit more strained and I am not prepared any longer to restrain myself. I think it is shameful that the Honourable the Leader of the Opposition should be preaching at this time in the morning to Members of this side of the House about the extent to which we have been prepared to withstand in the past the onslaught from our neighbours. He has been giving the impression that this is something *now*. Perhaps I ought to remind him that back in 1954 when, he, the Honourable Mr Bossano and myself, and maybe one or two other Members of this House, were wearing short pants, there were Members from this side of the House who were defending the interests of the Gibraltarians against the onslaught from the Spaniards. It is nothing new and it is shameful that he should bring this up now. I will not say anything further on the matter.



MR SPEAKER

Do I understand Mr Isola, that you wish to propose an amendment?

HON P J ISOLA

Mr Chairman, may I first move my first amendment that the words: "dressmaking, moneylending, printing and decorating", be deleted from the First Schedule.

Mr Speaker then proposed the question.

HON CHIEF MINISTER

Mr Chairman, this is not acceptable because this is not what I said and we would now have to vote for everything. I agreed to have the deletion of dressmaking, moneylending, printing, and decorating.

MR SPEAKER

Those are the ones moved! dressmaking, moneylending, printing and decorating.

HON CHIEF MINISTER

I am sorry.

Mr Speaker then put the question which was resolved in the affirmative.

HON P J ISOLA

Mr Chairman, I know that enough has been said, but we still feel that Banking, Manufacturing and

catering, should also be deleted from the First Schedule, and I propose that those three items be deleted as well.

Mr Speaker proposed the question.

HON CHIEF MINISTER

On a point of order, Mr Speaker, is the same mover entitled to move again an amendment.

MR SPEAKER

In Committee any Member of the House has more than one say.

HON M K FEATHERSTONE

Sir, I am astonished to hear these amendments come through. We have had a very melodramatic speech from the Honourable the Leader of the Opposition, but much earlier on in the Bill, Sir we did have an amendment out of a whole list of amendments from the Opposition, and one of them did say something about: "may issue a licence to trade or carry on business in respect of any of the matters set out in the First Schedule." Their First Schedule they funk'd it, they left it completely blank, and now they want to - they use the word "crastrate" I would say "emasculate" the one they have here.

I think Sir, at this stage of the proceedings, that this is simply done more out of bloody-mindedness than to try and make what they are pretending is a good Bill.

I would say, Sir, and I am not ashamed of saying it, that I put in the word "publishing", and I was thinking of the publishing of certain types of books ....

We have decided on that and we are not going to go back. We are now dealing with four different items exclusively we will make sure that we stick to that now and nothing else.

HON M K FEATHERSTONE

Yes, Sir, I was only answering a challenge that these were put in without any thought whatsoever ....

MR SPEAKER

That remark was made at another motion and not in this one.

HON M K FEATHERSTONE

Well, Sir, had the challenge been made in support ....

MR SPEAKER

No use arguing. That is the end of the matter! (Laughter).

HON M K FEATHERSTONE

However, Sir; I do feel that if we are opening the door to perhaps a gentleman from the Seycehlles who is going to come in here, I think, afterwards to become naturalised - although if he is from the Seychelles he is already a British Subject Sir, so I do not know quite how his coming in to be naturalised - he would then be able, if there was no First Schedule, to set himself up into a business without any difficulty, but he could not set up in trade. This would be a discrimination against the Trader and in favour of the businessman. This gentleman from the Seychelles, or perhaps from Patagonia, who is coming in, and, therefore, Sir, I think we should resist removing any more from this First Schedule whatsoever.



Mr Speaker then put the question and on a vote being taken the following Honourable Members voted in favour :

The Opposition

Hon M Xiberras  
Hon P J Isola  
Hon W M Isola  
Hon J Bossano  
Hon J Caruana  
Hon L Devicenzi

The following Honourable Members voted against :

The Government

Hon Sir Joshua Hassan  
Hon A P Montegriffo  
Hon M K Featherstone  
Hon A J Canepa  
Hon I Abecasis  
Hon Lt Col J L Hoare  
Hon J K Havers  
Hon A Mackay

The motion was accordingly defeated.

Mr Speaker then put the question on the amendment proposed by the Honourable the Attorney-General, which was resolved in the affirmative.

The First Schedule, as amended stood part of the Bill.

SECOND SCHEDULE

HON ATTORNEY-GENERAL

Mr Chairman, I beg to move that the Second Schedule should be amended by the deletion of the words "wholesale or retail" appearing therein; by the addition thereto of a new item as follows: "(5) Transfer of licence £1; " and by the deletion of the following signs and figures "£5; £2," wheresoever they appear, and by the substitution therefor of the sign and figure £1.

Mr Speaker then proposed the question.

HON ATTORNEY-GENERAL

Mr Chairman, Sir, the first amendment is consequential upon the decision to remove the differentiation between whole-sale and retail trade. As licences are now transferable it is necessary to put in a fee for the transfer; and lastly it has been decided by Government that the proper fee in all cases should be £1.

Mr Speaker then put the question which was resolved in the affirmative.

The Second Schedule, as amended, stood part of the Bill

The Long title was agreed to and stood part of the Bill.

Resumption :

House resumed

HON ATTORNEY-GENERAL

Mr Speaker, I have the honour to report that the European Communities Bill, 1972; with amendments; The Immigration Control (Amendment) Bill, 1972, with amendment; the Control of Employment (Amendment) Bill, 1972, with amendments; the Land (titles)(Amendment) Bill, 1972; and the Trade Licensing Bill, 1972, with amendments; have been considered in Committee, and I now move that they be read a Third Time and so passed.

Mr Speaker then put the question which was resolved in the affirmative.

The Bills were read a Third Time and passed.

HON CHIEF MINISTER

Mr Speaker, you indicated earlier on that it was too late to take the adjournment debate, so I would like to move that this House resume ....

MR SPEAKER

I did indicate that I would not sit after half-past one.

HON CHIEF MINISTER

I am sorry, I thought you said, one.

MR SPEAKER

It is now exactly ten-to-one so that we have 40 minutes for the adjournment. If Members are quite prepared to have the adjournment debate now, that will be the end of this meeting. If that is the case would the Honourable the Chief Minister move the adjournment.

HON CHIEF MINISTER

We are going to take the debate now, yes.

I now move that we adjourn sine die.

MR SPEAKER

I will now propose the question which is that this House do now adjourn sine die.

I would like to bring to the notice of the Members of the House that the Honourable the Leader of the Opposition has given notice under Standing Order 25 (b) (3) and (4) that he wishes to raise on the motion for the adjournment a matter of the question of the method of the allocation of houses by the Government on a pointage system arising from



the answers given by the Minister of Housing in question No.39 of 1972 (2). May I remind the House that according to our Standing Orders there are 40 minutes to debate this question. The rules of debate apply with the exception of course that at the end there will be no vote. It is now exactly eight minutes to one in the morning, and that is from the very moment that I am going to invite the Leader of the Opposition to move his motion ....

HON CHIEF MINISTER

Mr Speaker, before you do that you might indicate that it is not absolutely necessary to occupy the 40 minutes in debate.

MR SPEAKER

Most certainly, that is only the limit that the House has to debate on the matter.

HON M D XIBERRAS

Sir, I can assure the Honourable and Learned the Chief Minister that I should not occupy 40 minutes, and not even 35 as was done on one occasion by my Honourable Friend the Minister for Education!

Sir, as a result of the question earlier in the meeting, the Honourable Mr Abecasis, the Minister for Housing, made certain statements which no doubt were intended to reassure the House about the allocation of Glacis buildings; the 240 or 250 flats at Glacis, but in the course of supplementary questions, this side of the House felt most dissatisfied with the answers that he was giving. Had there been no background at all to the Minister's answers, perhaps our suspicions would not have been aroused, but there is a background to what the Minister was saying and specifically there is the background of the Transit Centre.

The Transit Centre, it is notorious, were the object of a number of election promises made by a number of Honourable Members opposite in the course of the last elections, in which willingly or unwillingly the impression was given that a special deal would be made for the Transit Centre occupants.

Sir, as the questioning proceeded it was clear that there was a split in the Minister's loyalties. In the first place towards the attitude of his party in the course of the elections, and he mentioned this specifically in the course of his answers, he spoke about the Transit Centres at election time; and on the other hand the commitment to the system that had been established by Members on this side of the House, who will speak in the course of the debate, to a much fairer system for the allocation of houses. And that is the independence of the Housing Allocation Committee, the impartiality of the Housing Allocation Committee with its independent Chairman; the statutory importance which was given by the Housing (Special Powers) Ordinance to the Housing Allocation Committee; and the importance that was given to the Housing Allocation Scheme since my Honourable Friend, Mr Caruana, brought the Scheme to this House for its approval, for amendment if necessary, and it was amended by the Honourable Members of the Opposition, and in fact to a number of measures taken by the last administration to ensure that insofar as it was possible there was a fair allocation of houses.

Sir, it is not just the promises that were made in respect of the Transit Centres which came to mind here, it was also the disastrous and incompetent allocation of the Tower Blocks, and the style in which those blocks of flats were allocated at the time, which are again notorious. The Honourable Minister for Housing mentioned in the course of his election address on TV, that there would be from his party, if elected, a personal approach to the question of Housing. And, whereas this side of the House would of course welcome any time which the Minister feels he is able to give to his duty, and as much personal contact as possible, it could not accept any hints, and it was a pretty broad one, Sir, on TV, any hints that there would be departures from a rather stiff, a rather rigid, but a very fair method of allocating houses elaborated over the last three years.



Sir, I feel that the Minister has learned to accept certain things which the last Government brought in. I think in his answer on the Housing (Special Powers) Bill, the Minister was appreciative of the powers now available to him and that this side of the House was convinced that he intended to use them as best he could. And yet, when he was in Opposition, Members opposite, though I must confess that the Honourable Member said that he was pleased with the intention of the Bill, Members opposite started a scare about this particular Bill. We brought it on that occasion because we thought it would provide a fair distribution of the houses available.

Sir, I gather from reading the transcript of what the Minister said that he was speaking about the Viaduct, or the next allocation after Glacis, when he said there would be certain variations in the Scheme which he would propose to the Housing Allocation Committee, but his answer is confused from reading the transcript and Members on this side of the House certainly got the impression that he intended to introduce these variations in respect of the current allocation. Perhaps he could make this clear in the course of the debate, because this it is which lends urgency to the motion before the House, that we want to be absolutely certain that there will be no changes in the Housing Allocation Scheme, especially changes concerned with one particular sector of the Housing List in respect of the Glacis allocation. The second important thing is that when he does put these changes to the Housing Allocation Committee, and if the Housing Allocation Committee accepts them, and we have every confidence in the Housing Allocation Committee, then he should bring them to this House in the same manner as my Honourable Friend the Minister for Housing brought the matter to this House and gave the then Opposition a chance of looking, discussing, amending, where necessary, or where desirable, the rules which he hopes will be an improvement on the present ones.

He mentioned two things which he had in mind as possible changes, and I thought sounded fairly committed about this. One was the question of the kitchen at the Transit Centres, and the other the date of application. Of the two, the second is the more serious because if one accepts that a person can make some sort of application to the Housing Department whilst he was living in Spain, and that this application based on the assessment of the floor area and the conditions according to the present Scheme, that this application will stand him in good stead and give him an



advantage over people who applied from Gibraltar, perhaps so many years later, then the Housing Allocation Scheme would be rather drastically changed. It would mean for instance that people applying from the United Kingdom could very well apply and have an advantage over persons who were in Gibraltar, and make their application from rather cramped quarters here in Gibraltar. I do not think that it would be possible to say that one should accept applications made by persons in the Transit Centres and made from Spain, but one could not accept applications made from the United Kingdom from other Gibraltarians. As the Honourable Minister is aware there are many cases of this kind, and I think he alluded to this in the course of his answers. I was not referring to that at all, I was not referring to the undoubted difficulty of establishing whether or not a particular application should be counted from a particular date, I was referring to the principle which he enunciated of accepting a date of application corresponding to a time when the person was not in Gibraltar, and at the same time throwing overboard the provisions of the Scheme that the application is judged on the basis of the accommodation from which the application is made.

This would mean a tremendous difference to the Scheme which other Members on this side will no doubt elaborate on. But certainly whatever happens, whatever the Housing Allocation Committee says to the Minister's suggestion, Members of this House should have the courtesy extended to them of being able to comment on any new provisions of the Scheme in the same way as Members opposite, and the Honourable Minister for Housing himself had the opportunity to comment on the revised Housing Allocation Scheme, we would hope that the Minister is in a position to give this assurance.

As he knows Housing is a very serious matter and people do pay a lot of attention to the Housing Allocation Scheme these days. It is necessary to convince people of pointage and, therefore, the way in which you assess pointage should have the full weight of this House.

Lastly, Sir, there were certain things said in the course of these questions and answers as regards assurances that had been given to Transit Centre occupants. I would hope that the Honourable Minister has not given such assurances before bringing the revised Scheme to this House. I would hope that he has not done a deal of any kind. Also I would hope



that he will retract what he said that it was this Government that discriminated against the Transit Centre people, when it was with the full agreement of the Committee of the Transit Centre that they were included into the Scheme on exactly the same basis as other Gibraltarians, other people eligible for Government Houses.

I can not imagine why the Honourable Member has said that there was discrimination before. The Committee was representative in my time as Minister of over 80%, as I remember, of signed persons in the Transit Centre, and I made a point in my first interview with the Committee of recommending that they actually get the names of the supporters down in writing before they spoke on their behalf. So whatever was done then had the full assent of members of the Transit Centre Association, and we had ample evidence in the Government then that the Transit Centre and Association Committee was fully representative of the Transit Centre. This sort of accusation on discrimination which has been picked up by a certain newspaper is to my mind quite unworthy of the Minister because he knows, and there are papers in his department to prove it, that it was the Transit Centre Association that wanted to be included on the same terms.

Sir, I can appreciate that the Minister may very well want to more adequately reflect the living circumstances of the Transit Centre and to convert it into pointage, but what we object to here is that the Scheme should be changed: That either the Scheme should be changed to conform with the requirements of the Transit Centre or that the Scheme should be changed for the Transit Centre and those changes not applied to the rest of the applicants. We would like assurances on that.

It would be of course much better, Sir, to have the actual proposals of the minister before the House to discuss, to see the effect, but this no doubt will have to wait to a later stage.

And so, Sir, to sum up, we were suspicious of the method in which the Government wanted to tackle the allocation of houses, and I have put forward some evidence to show this. It was a factor in the elections, the Minister did give a clear indication in his answer that he did feel under an obligation to keep to these obligations, to meet these obligations, these undertakings that he had made at election time, and there is specific reference to this in the transcript of the questions and answers. Sir, there is something quite specific if the Honourable the Minister for Labour will allow me to find it .... "this side of the House was committed in the manifesto to do something about the Transit Centres." Of course in the context of the question of the fairness of the allocation of houses to do something about the Transit Centre, and one need not recount what actually happened at election time in the Transit Centre. I felt that throughout the speech, and in the answers, the Minister was torn between those two things and if there is nothing more than meets the eye, then we shall have a categorical assurance from the Minister that there is nothing more than that. But this side of the House is going to resist any attempt to weight the Scheme in one way or the other. This side of the House is equally concerned that something should be done about the Transit Centre along with everybody else, but if there are going to be any special provisions made for the Transit Centre then we should like to know what they are and we should like the House as a whole to agree what should be done in the interest not only of the Transit Centre but of other applicants on the list.

So, Sir, I will yield my place now to other Members of the House who might be desirous of speaking.

MR SPEAKER

May I for the guidance of Members say that the Rule as strictly interpreted restricts the speakers to the person who has obtained leave



to speak and to the Minister in charge of the department to reply. However, before my time the practice was established that all Members could speak and I will not depart from this practice. I am saying this because I will allow anyone who wishes to join in the debate to do so, but once the Minister has answered that will be the end of the debate, whether the time is up or not.

HON L DEVICENZI

Mr Speaker, may I ask, surely if that is the case, and I have no doubt about it, there must be some provision that if other Members were to speak there must be a limit to the length of time in which they can speak so that the Minister has at least some time to answer.

MR SPEAKER

That is actually the unfortunate thing about the Rule itself. The rule is 25 (B), - and you can deduct the time taken by me to read this for the 40 minutes available.

25 (B)(3) gives you the right to raise the matter and it ends up by saying: "When Member has concluded his speech a Minister may reply," and then we come down to rule 25B (5): "If at the expiration of forty minutes after a member who has obtained the right to raise the matter under paragraph (4) of this Standing Order has been called upon to speak the Minister has not concluded his reply, the President shall either call upon the next Member who has obtained the right to speak, or, if no other Member has obtained the right, shall declare that the Assembly stands adjourned." That implies that the Minister should be given

an opportunity to reply but nothing else. The Rule is not specific or explicit. Therefore, whilst there is an implication that the Minister should be given an opportunity to reply, that opportunity must be limited to whatever time the person who has obtained the right to speak allows him so to do.

As I said, the practice has been established that any Member may speak and I will honour that practice, but the Minister must have the last word even if he is not given a chance to speak.

HON J CARUANA

Sir, we definitely want to hear the Minister repudiate the implications contained in answer to questions put by this side of the House. Statements made by the Minister at question time earlier on were most misleading. His implication and statement that the present Government was all out to do away with discrimination in the Transit Centre was misleading and it was a deceit on the public, and on the Transit Centre people themselves, because, Mr Speaker, on the 22nd July I had the honour to make a statement in the House which went as follows: "I have much pleasure, Sir, in informing the House that the revision of the Housing Allocation Scheme ....

HON CHIEF MINISTER

On a point of order, Sir. It could not have been on the 22nd July unless it was last year.

HON J CARUANA

The 22nd July 1971. I thank the Honourable and Learned the Chief Minister for that correction. It just goes to show how long ago the point was made. We have not been all that long out of office.

"Revision of the Housing Allocation Scheme has now

been completed by the Housing Allocation Committee and this has been accepted by the Government for implementation. The new Housing allocation Scheme would be available to the public on request at the Housing Department. The new Scheme will become fully productive with effect from 1st August 1971."

Then I went on to say further on: "The new Scheme, long overdue, is the first revision that has taken place in 10 years and also contains provisions for the applications of tenants of Transit and/or Transit Centres. It has been worthwhile noting that hitherto families in Transit Centres have been allocated houses on an ad hoc percentage basis. Since no form of assessment under any criteria whatsoever had been carried out for these families. The Government. The Government, " and that was was our Government, "the Government considered that this situation was not satisfactory and that after six years the situation should be rationalised and that what appeared to be a discriminatory situation should be corrected", and I was being very kind at the time, I was kinder than the Minister was here when he had no ground to do it, when I had grounds to say so. I said that what appeared to be a discriminatory situation should be corrected, "as applicants residing in Gibraltar", I went on to say, "these families will from now on be assessed under the same rules as the rest of the community, incorporated into the general Housing List and considered purely on individual family conditions like everyone else." Mr Speaker, it was a from that moment that the people from the Transit Centres ceased to be discriminated against, and not as the Minister was implying in his answer the other day, that they are going to eliminate the discriminations in the Transit Centres. Mr Speaker, what is this discrimination the Government is trying to do? The Government is trying, now under Clause 5, to give further pointage for the lack of kitchens and they want to do it on the floor area, whereby in the new Scheme we gave them pointage, not because they did not have kitchens, because there are communal kitchen facilities. It is very different to somebody living in a block of flats in town, and there are



many who have no kitchens or communal kitchens, but, Mr Speaker, we will be very kind on that point. I will allow that point to be considered and judged by the Housing Allocation Committee and leave it to them to make a decision on whether or not more points should be given on that basis. But, Mr Speaker, in Clause 7, as my Honourable Friend on my right, the Leader of the Opposition has said, we are very concerned, very concerned indeed. What the Minister implied in his statement, in fact it was taken as a de facto thing, that people in the Transit Centre who had applied from over the border would be given points for waiting time to count from the date that they had applied from across the border. This side of the House could never accept applications from outside Gibraltar. A person under this Clause must be residing in Gibraltar and we will contest this with everything we have. We are very sympathetic to those people who did apply from across the border or from China or from England, before coming to live in Gibraltar. But they were living outside Gibraltar, therefore, they could never have been assessed. Therefore, Mr Speaker, this is a very serious point to tackle, and the way that the Minister was talking was not that this was being put to the Housing Allocation Committee for their consideration, but that this was something that was almost a fact. It was so misleading, and this is what we want to correct in the public mind. I know what the Minister was trying to say, but this is not what came out of the House. The newspaper got it and the newspaper said "The Transit Centre People to get a fair deal" and this was not true.

So great, Mr Speaker, was that deceit, unintentional perhaps, that families in the Transit Centres ....

MR SPEAKER

May I ask the Member, the deceit which is being charged is against the Honourable Minister or against the newspapers?

HON J CARUANA

No, Mr Speaker, neither. It was the unintentional deceit in the statement, in the general argument that came out at question time and on the Minister's statement.

MR SPEAKER

Is it being imputed that the Minister was deceitful in his answering of the question? That is all I am concerned about.

HON J CARUANA

No, Mr Speaker, No. If I have said anything of that nature I withdraw it. What I am saying is that what the Minister did say at the time was so misleading that people at the moment are under the impression in the Transit Centre that they will all be re-accommodated at the next allocation of Glacis, irrespective of the pointage system, and this is a fact, Mr Speaker. So great has been the upheaval in recent days concerning the controversy in the Transit Centre that the Transit Centre Committee has broken up. It has broken up. And if the Minister did not know this he knows it now. The Minister is aware of everything, but the Committee of the Transit Centre has given up the ghost and they have given up trying. This is something that did not happen in our time. At least we gave people hope to come back.

Mr Speaker, we are very interested in hearing what the Minister has to say on this point.

MR SPEAKER

May I, before I allow the Minister to reply, ask whether there are any other Members who wish to speak on the matter.



Then I will now call on the Minister.

HON I ABECASIS

Mr Speaker, when I had question No.39 put to me a few days ago, earlier in the proceedings, I would have thought that if the answer I gave, plus twenty three supplementaries, would have been sufficient to put their minds at ease and for them to understand what I was talking about. But apparently that is not the case. I just want to remind them, Sir, that there was a supplementary from the Honourable and Gallant Major Robert Peliza; two from the Honourable Mr Bossano; three from the Honourable Mr Caruana; four from the Honourable Mr Peter Isola; and fourteen from the Honourable the Leader of the Opposition, Mr Xiberras. If after 24 answers they could not understand I honestly do not understand myself.

A moment ago the Honourable Mr Bossano was asking the Chief Minister that he did not pay much attention to what he was saying. Well, I ask the Opposition: what attention are they paying to the answers I was giving at the time, when they are now asking the same questions and for the same assurances and the same undertakings.

Let me remind them of the question. The question was:

"Has there been or will there be any modification from the Housing Allocation Scheme in the assessment of pointage of families in the Transit Centre in respect of the forthcoming allocation of Glacis"

and the answer was, "No, Sir," I think later on I said for the fifth time "No, Sir." Nevertheless, they ask me again tonight. I hope that the message is now clear, that there will be no change of the Allocation Scheme prior to the allocation on the Glacis complex.



However, I added that I was not satisfied with the way that things had been done and it was my intention to change it in the future.

My intention to change it is quite obvious.

If I could deal with the two clauses first, Clause 5 and Clause 7. On the clause for the waiting time, the applications that were received in the Housing Unit in 1954 came from what was known at the time as the "Campo Area". That was acceptable at the time and there were people residing in La Linea who had made applications, whose applications had been assessed, and who had been allocated houses in Gibraltar from applications from across the border. So, therefore, at that time applications from La Linea were valid. In the revised Scheme, there is on the last paragraph 20 a saving proviso: "the implementation of the revised Housing Scheme will no way prejudice the position of an applicant whose application has been assessed under any previous Scheme." So, therefore, the applications of the people who were living in La Linea were valid at the time and I said that it was unfair to penalise some of them inasmuch as eleven years waiting time. Now, I never accused the Opposition of having discriminated on this question. If I can read from the script, Mr Speaker, and they have a copy in front of them, I said - I am reading from page 2: "but a decision at the time by the previous administration was perhaps in agreement with the Transit Centre Committee." I did not say that the Government of the time had discriminated, I said perhaps, in agreement with the Transit Centre Committee. I did not say it was a decision of the previous administration and that they had ignored the Transit Centre Committee. I could not know, I was not there, I could only assume, but I granted that much to the previous administration, that perhaps they had consulted the Transit Centre Committee, in the same way as I have consulted the Transit Centre Committee as to the problem they have.

And if you now care to read page 5 - there were quite a few pages on that but page 5 - almost at the end of the paragraph I said: "I have had two or three meetings with the Transit Centre, we exchanged views, I listened to them, I listened to their aspirations, and I have taken note of all they think they should be entitled to." So there is no undertaking, Mr Speaker, to anybody.

I think I was perfectly entitled to listen to what the Centre Committee had to say to me and to take note of it, but there was no undertaking, no conspiracy, nothing being done behind this House. And I go further to say, and this is in reply to a supplementary by the Honourable P J Isola, that after I had taken note of all that the people in the Transit Centre thought they were entitled to, then the Housing Allocation Committee would be consulted, or rather, I would put it to them in accordance with the Ordinance. I shall put it to them, as I said then, and I shall explain to them what the policy of the Government is for them to consider. Now, they have asked me again for assurances, Mr Speaker. "Let me make sure that this is going to be placed before the Housing Allocation Committee." Well, I already explained then and now, Mr Speaker.

If we go to the question of the kitchen, Mr Speaker, the Honourable Mr Caruana said that they have a communal kitchen. Well, those of us who share our houses with our in-laws know how many quarrels, how much trouble, how much talking goes on in the kitchen when it is used by a mother-in-law and a daughter-in-law. Well, the Members in this House can imagine the amount of quarreling there must be in a kitchen shared by 55 families, 55 mothers and 55 mothers-in-law! So, therefore, a compensation of 10 points for the lack of kitchen, bearing in mind that there is only one communal kitchen for 55 families in No.15 Town Range, I think is not unfair. All I intended to do, and if you go through the answers to the supplementaries, you will find it, is that the assessment of the kitchen which is not taken into account should be taken into account, and 60 sq. ft. deducted from the total area. That is the intention and this is what I have explained before, what I am explaining now, and that is what I will put to the Housing Allocation Committee for them to consider.



HON M D XIBERRAS

Glacis?

HON I ABECASIS

I am sure, Mr Speaker, that there is no need for that remark from the Honourable the Leader of the Opposition. I shall say so for the sixth time "No, Sir." And if he wants to ask again, I will repeat for the seventh time, "No, Sir".

The Honourable Mr Caruana was referring to the allocation of houses before on a percentage basis. Let me remind the Honourable Member opposite that Twenty three families were re-accommodated under that particular scheme by the, what I would term, the Hassan administration and only eight by the Peliza administration, so one families were accommodated under that system. Under the present system, I do not know, it will depend on the points, but this question of discrimination, Mr Speaker, and we have been talking about discrimination a moment ago, we have been talking about the removal of discrimination between members of the Common Market and so on. Well, I want to remove discrimination within Gibraltarians, never mind Common Market Nationals, and the Honourable Mr Caruana read certain paragraphs of his previous minutes and so on, but let me read one, and I quote, Mr Speaker, from a letter addressed by the Honourable Mr Caruana, when he was Minister for Housing to the Transit Centre Committee which reads :

"Exactly the same criterion will apply as the rest of the community since I have considered from the moment I took office as Minister for Housing that the discrimination that has existed in years gone by was not right and did not help either the families or the Allocation Committee in making a fair allocation."



Well, I say, Mr Speaker, that exactly the same criterion was not used. I want to use exactly the same criterion by giving them exactly the same opportunity as anybody else in Gibraltar, exactly the same opportunity. No more and no less. Discriminations exist today, the fact remains that a person who lives in Carrera's Passage or in Engineer Lane and who has not got a kitchen, 60 sq ft are deducted, but if he lives in the Transit Centre only 10 points are awarded; if a person applied in Gibraltar on any specific date, that is the date which is applicable, in the case of those who came from Spain the date is 1965 and not 1954. There are no less than twelve cases of people whose application number, if I remember rightly, was 106, whereas, if anyone applied today his application number would be 5,700. This Gibraltarian, whose application is No.106 only has 35 points for waiting, when anybody else in his condition would have had 80 or would have been accommodated a long time ago. Let me also say, Mr Speaker, if I have the time - 2 minutes. Well, perhaps, Mr Speaker, I will just finish off by saying that the Honourable Mr Xiberras and the Honourable Mr Caruana have both been Ministers for Housing but I am sure that neither one or the other has ever gone to the Transit Centre to see for themselves how the people live in the Transit Centre. They have absolutely no authority to speak on the Transit Centre. I know, I have asked the neighbours, I have asked the Committee, no, neither Mr Caruana, nor Mr Xiberras have been there. The only one who went was Miss Anes but she went accompanying Lady Shepperd who was in Gibraltar at the time and nothing else. Perhaps it was to show that we wanted financial assistance from Foreign and Commonwealth Office which has been put to other use. It is about time that people for whom the money was allocated should derive some benefit from it.

Finally, Sir, I said that there is nothing revolutionary in what I have done, the only difference, Mr Speaker, is that if I remember rightly the Honourable and Gallant Major Peliza when elected Chief Minister said: "one thing is what one says during election time, and another thing is what one says after being elected." And I say: what we said during election time is valid after the election. That is all.

Mr Speaker put the question that the House adjourn sine die, and this was resolved in the affirmative.

HON CHIEF MINISTER

May I interrupt the proceedings, in view of the fact that we will not be sitting until after Christmas, to wish you and all members a Happy Christmas, even at this time!

HON M XIBERRAS

Sir, it is my pleasant duty to agree with the Chief Minister as it is also my inclination to do so and I also wish all Members and yourself, Sir, a Happy Christmas and a Prosperous New Year.

MR SPEAKER

May I join with the good wishes and wish all the Members of the House a prosperous New Year too.

The House then adjourned sine die.

The adjournment was taken at 1.40 a.m. on Wednesday 6th December 1972.