

HOUSE OF ASSEMBLY

HANSARD
OF MEETING

HELD ON 12 MAY 1975

L 9/5(23)
No

22 September 1975

The Clerk
House of Assembly
Gibraltar

Dear Sir

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY MEETING COMMENCING ON 12 5 75

I would like to give notice of the following amendments -

Page 15 third line

Delete "calami" and substitute "linguae"

Page 32 line 11

After the words "applied and" insert the words "we will".

Page 32 line 23

After the word "can" insert the words "water their".

Page 32 last line

Delete "to the" and substitute "into".

Page 50 lines 20/21/22/23

Delete the sentence commencing "It is considered".

Page 50 10 lines from bottom

Delete "may be released" and substitute "may he be released".

Page 50 8 lines from bottom

Page 54 line 5

Delete "should" in both places where it occurs and substitute "shall".

Page 60 12 lines from bottom

Delete "position" and substitute "provision".

Page 60 5 lines from bottom

Delete "under power by our own choice an Application of English Law" and substitute "by our own choice under the Application of English Law".

Page 60 2 lines from bottom

Delete "an" and substitute "the".

Page 61 line 16

Delete "delegating" and substitute "validating".

Page 62 5/4 lines from bottom

Delete "responsibility" and substitute "possibility".

Page 64 main paragraph line 17

After the word "bending" substitute "the law".

Line 18

Delete "provided" and substitute "divided".

Lines 24/25

Delete "You are assessed on the actual rent and where there is a consideration that the lump sum paid in respect of the lease you pay stamp duty assessed on that" and substitute "You are assessed on the actual rent and also, where part of the consideration is a lump sum, you pay stamp duty assessed on that lump sum".

Page 64 main paragraph 3 lines from bottom

After the words "lump sum" add the word "is".

Page 68 main paragraph lines 10/11/12

Delete "Now it is considered that it is appropriate to allow Prison Officers and Fire Officers in the case of Prison Officer the Superintendent and in the case of Fire Officers the Chief Fire Officer" and substitute "Now it is considered that it is appropriate to allow Prison Officers, other than the Superintendent, and Fire Officers, other than the Chief Fire Officer."

Page 68 main paragraph line 16

Delete "This is" substitute "this was".

Page 70 main paragraph line 9A

After the words "is related to" add "one of the parties".

Line 11

After the words "be determined" add the word "only".

Line 16

Delete "is no reason" and substitute "may be reasons".

Page 71 line 10

insert the word "and " before the words "the Chief Justice".

Page 71 lines 13/14

Delete "ridiculous you couldn't" and substitute "ridiculous if you had to".

Page 77 second line

Delete the words "on the intestacy" and substitute "on an intestacy".

Page 77 line 10

Delete the words "it is a lump now of £1,000".

Yours faithfully


Attorney-General

Amelia Dine
23/9

L 9/5(26)

4 May 1976

The Clerk
House of Assembly
Gibraltar


Sir

HOUSE OF ASSEMBLY: VERBATIM REPORT OF THE MEETING HELD ON THE 25 11 75

I beg to give notice of the following amendments -

- i. page 5: last para: line 2: Delete "1972" and substitute "1973".
line 3: Delete "what was then".
line 9: Delete "allegiance" and substitute "opinion".
- ii. page 28: para 3: line 2: Delete "for" and substitute "under".
- iii. page 29: para 2: line 13: The word "restaurant" should be in the plural.
line 16: After the words "eating houses" insert the word "which".
- iv. page 35: my second para: After the words "in the lounge", insert the word "or".
line 9:
- v. page 42: first para: The word "interpretation" should be in the singular.
line 2:

Yours faithfully


J K Havers
Attorney-General



REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Eighteenth Meeting of the First Session of the Second House of Assembly held at the Assembly Chamber on Monday the 12th May 1975, at the hour of 10.30 o'clock in the forenoon.

PRESENT:

Mr Speaker (In the Chair)
(The Hon A J Vasquez CBE MA)

GOVERNMENT:

The Hon Sir Joshua Hassan, CBE, MVO, QC, JP, Chief Minister.
The Hon A W Serfaty, OBE, JP, Minister for Tourism, Trade and Economic Development
The Hon A P Montegriffo, OBE, Minister for Medical and Health Services.
The Hon M K Featherstone, Minister for Education.
The Hon A J Canepa, Minister for Labour and Social Security.
The Hon I Abecasis, Minister for Housing.
The Hon Lt Col J L Hoare, Minister for Public Works and Municipal Services.
The Hon H J Zammit, Minister for Information and Sport.
The Hon J K Havers, OBE, QC, Attorney-General.
The Hon A Mackay, CMG, Financial and Development Secretary.

OPPOSITION:

The Hon M Xiberras, Leader of the Opposition.
The Hon Major R J Peliza
The Hon P J Isola OBE
The Hon W M Isola
The Hon J Bossano
The Hon J Caruana
The Hon L Devincenzi

IN ATTENDANCE:

Mr P A Garbarino, ED (Clerk to the House of Assembly)

PRAYER:

Mr Speaker recited the prayer.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 6th March, 1975, having been previously circulated were taken as read and confirmed.

DOCUMENTS LAID

The Hon the Minister for Tourism, Trade and Economic Development laid on the table the following documents:

- (1) The Pilots (Amendment) Rules, 1975.
- (2) The Pilotage Administration Charge (Amendment) Rules, 1975.

Ordered to lie.

The Hon the Minister for Education laid on the table the following document:

The Educational Awards (Amendment) Regulations, 1975.

Ordered to lie.

The Hon the Minister for Labour and Social Security laid on the table the following document:

The Conditions of Employment (Retail Distributive Trade) (Amendment)(No 2) Order, 1975.

Ordered to lie.

The Hon the Minister for Housing laid on the table the following documents:

- (1) The Postal Order (Amendment) Regulations, 1975.
- (2) The Landlord and Tenant (Rent Assessment Tribunal)(Amendment) Regulations, 1975.
- (3) The Landlord and Tenant (Forms)(Amendment) Regulations, 1975.
- (4) The Landlord and Tenant (Rent Relief)(Terms and Conditions) (Amendment) Regulations, 1975.

Ordered to lie.

The Hon the Minister for Public Works and Municipal Services laid on the table the following documents:

- (1) The Traffic (Parking and Waiting)(Amendment) Order, 1975.
- (2) The Traffic (Driving Licences)(Amendment) Regulations, 1975.

Ordered to lie.

The Hon the Attorney-General laid on the table the following document:

The Supreme Court (Amendment) Rules, 1975.

Ordered to lie.

The Hon the Financial and Development Secretary laid on the table the following documents:

- (1) The Public Health (Exemption from Rates) Order, 1975.
- (2) The Trade Licensing (Forms)(Amendment) Regulations, 1975.
- (3) The Financial Report for the year 1972/73.
- (4) Report of the Principal Auditor on the Accounts of Gibraltar for the year ended 31st March, 1973, together with the Financial and Development Secretary's comments thereon.
- (5) Statement of Virement Warrants approved by the Financial and Development Secretary, 1974/75.
- (6) The Gibraltar Broadcasting Corporation's Financial Statement for the year ended 31st March, 1974, together with Auditor's Report.
- (7) The Annual Report by the Chairman of the Gibraltar Broadcasting Corporation for the year ended 31st March, 1974.

Ordered to lie.

ANSWERS TO QUESTIONS

MOTIONS

HON CHIEF MINISTER:

Sir, I beg to move on the terms of the motion standing in my name. I would just like your guidance as to whether I could deal with both or deal with them separately.

MR SPEAKER:

Separately. They are two separate motions.

HON CHIEF MINISTER:

Mr Speaker, as you well know the question of the broadcasting and television services under the Gibraltar Broadcasting Corporation has been the subject of considerable debate in this House and some time ago we had a team of two gentlemen called Mr Rickard and Mr Sizer who came and made a study of the whole situation and issued a very detailed report not only on the situation now, but on the future of television, generally, and that report was duly presented and Honourable Members opposite were given copies of it and it was made public. It is considered that the report has got very wide implications, expenditure, future, and many other aspects and that it would be in the best interest of the service and of those of us who have the responsibility to provide substantial funds for it, that the whole future of the Broadcasting Corporation should be looked at by a Select Committee of the House. There has been consultation of this matter with the Leader of the Opposition on the scope of the terms of reference and I commend the motion to the House.

MR SPEAKER:

Perhaps the Honourable the Chief Minister will read the Motion.

HON CHIEF MINISTER:

Yes, Mr Speaker. "That this House resolves that a Select Committee be appointed to consider the Report on Broadcasting in Gibraltar by Mr J K Rickard and Mr D J Sizer and to make recommendations on the findings in the Report and such matters as may be relevant to the future of broadcasting in Gibraltar generally."

MR SPEAKER:

I now propose the question in the terms moved by the Honourable the Chief Minister.

HON M XIBERRAS:

Mr Speaker, as the House is aware this subject of the Broadcasting Services has come before this House not only on the lifetime of this House but of the previous House. It was my Honourable Friend, the Honourable and Gallant Major Peliza, who moved the motion about GBC some time ago which was not carried despite having the support of seven out of the eight members of the Government at that time, and it came at a very significant time politically. Mr Speaker, the very interesting debate that was held on that occasion made a number of points that remained unresolved over a long period of time. I don't for a moment want to pre-empt the work of the Select Committee but it is interesting to reflect how much has been said on the broadcasting services, even I remember at the time of Supplementary Estimates at Budget time, how much has been said before Messrs Rickard and Sizer were invited and how long before this actual Select Committee came before the House. Let us hope that the work of the Select Committee will not take as long again as the Trade Licensing Select Committee or would be as ineffectual as the Committee on Air Communications which the Government appears intent on ignoring.

MR SPEAKER:

We must not make references to the work of the other Select Committees.

HON M XIBERRAS:

But I did not make general judgments of Select Committee of this House, Mr Speaker, I merely expressed the hope that this Select Committee will be as efficient as the one we had on doing away with compulsory military service. Mr Speaker, the issues involved here are very important ones, not least because television and

radio are a monopoly of those who operate them now and also because the people of Gibraltar contribute to the monies voted by this House to Gibraltar Television and Radio and also because the licensees contribute more or less directly to the Broadcasting Company. Mr Speaker, I would hate to feel that this Select Committee is going to be a sort of stamp whereby the Opposition support is elicited in favour.

MR SPEAKER:

We must not prejudge the work of the Select Committee.

HON M XIBERRAS:

I am discussing the terms of reference, Mr Speaker.

MR SPEAKER:

The terms of reference are exclusively to consider the Report from Messrs Sizer and Rickard.

HON M XIBERRAS:

Mr Speaker, this is precisely what I am coming to.

MR SPEAKER:

Well, you can amend the motion if you want to.

HON M XIBERRAS:

I am saying that the present motion is not that.

MR SPEAKER:

With due respect I will read the motion which is that a Select Committee be appointed to consider the Report on Broadcasting in Gibraltar.

HON M XIBERRAS:

And such other matters as may be relevant to the future of Broadcasting in Gibraltar generally. Mr Speaker, what I am saying is that this Committee cannot be a means of getting the support of the Opposition for raising of licence fees, increasing the subsidy and so forth because there are other matters which are, generally, relevant to broadcasting in Gibraltar and I wish to make clear for the Opposition exactly what we are doing by voting in favour of this motion.

Mr Speaker, one of the issues which was brought up repeatedly in the course of the various debates in this House on this subject is the question of political impartiality and by political impartiality I mean not only impartiality between Members of this House or other political or quasi-political bodies, I also mean the need in the view of Members on this side of the House for a service which can be called free in the same sense as the BBC is free and, therefore, Mr Speaker, since at present the Governor has a right to make directions in this subject it is vitally important that this matter should not be excluded from the consideration of the Select Committee. It is my interpretation that the phrase "such other matters as may be relevant to the future of broadcasting in Gibraltar generally" includes the right of this House and of this Committee if it is set up, to comment on this particular aspect of the broadcasting services and I should not go into it unless it meant that. Mr Speaker, there is one minor thing which I would put forward, and on which I seek your guidance. Is the Leader of the Opposition entitled to be called the Leader of the Opposition instead of the Honourable M D - I am grateful for the D which doesn't normally appear - Xiberras.

MR SPEAKER:

Well, the wording of the motion is the exclusive prerogative of the person who moves it. Objection can be taken by any Member as to the way he has been referred to and perhaps a correction can be made. I don't think there is any hard and fast rule as to how Members should be referred to.

HON M XIBERRAS:

I don't know what the practice is, whether one refers to the Chief Minister and the Leader of the Opposition or if one refers to the Chief Minister and the name of the Leader of the Opposition or the other way round.

MR SPEAKER:

I will have to ask the Honourable the Chief Minister whether he wants the Leader of the Opposition or Mr Xiberras in the Select Committee. Whether he can have one without the other is another matter.

HON CHIEF MINISTER:

In view of the fact that there has been in the lifetime of the IWBP a change of leadership, perhaps, we might have the Leader of the Opposition instead of Mr Maurice Xiberras. There is no chance of it happening on this side of the House.

MR SPEAKER:

It is not Mr Xiberras who is being appointed, but the person who happens to be the Leader of the Opposition.

HON M XIBERRAS:

I merely put the point Mr Speaker and the Chief Minister has chosen to take it this way. I am delighted that there is going to be no change in the leadership. I always pay a good deal of attention to the assurances that he gives us and I would just ask

HON CHIEF MINISTER:

It is proved by facts and the opposite is proved by facts on Honourable Members opposite.

MR SPEAKER:

Let us not debate the durability of the Chief Minister.

HON M XIBERRAS:

That, of course, is a matter of opinion.

HON CHIEF MINISTER:

No, it is a matter of fact, of history.

HON M XIBERRAS:

Mr Speaker, one man's history is another man's

HON M XIBERRAS:

Mythology.

MR SPEAKER:

Anyway, the composition of the Select Committee doesn't come into this motion.

HON M XIBERRAS:

Perhaps the Honourable Member can cool down by the time we reach the next motion and he will give consideration to the implication. Mr Speaker, apart from that of course we support this motion on which there has been some consultation between the Honourable Member and myself. But I thought that this particular safeguard in the case of the Governor's right of directions should be made abundantly clear in this House.

MR SPEAKER:

If there are no other Honourable Members who wish to contribute I will call on the Honourable the Chief Minister to reply.

HON CHIEF MINISTER:

There has been a considerable amount of agitation, in fact, even of the words of the Honourable the Leader of the Opposition. The previous Government foundered on this question of television and led to the glorious 23rd of June. I will give way on another opportunity but not now because I want the Honourable and Gallant Member to calm down. He gets terribly excited. The point is rather interesting because the Opposition both in Opposition and when they were in Government - except that they didn't get a majority - wanted a Select Committee, and now that we have gone through all the process of an enquiry and so on and we now have a report on which we have a Select Committee, we have a long speech which reminds me of the article in "The Parliamentarian" about long speeches: I don't consider that I am in a position to give any undertakings about what is going to be discussed in the terms of the Committee or not. I adhere myself to the terms of the motion which has been agreed with the Honourable Member. I will now give an opportunity to the Honourable Major Peliza to speak. I don't want him to think I have shut him up because I was replying.

HON MAJOR R J PELIZA:

Mr Speaker, I think the Honourable Chief Minister stated that this is what we foundered on. We didn't founder on that at all. It was a free vote and the House took advantage of that free vote and, unhappily, we didn't carry the motion. In fact the reason why we went to the General Election as the Honourable Member knows very clearly, was our disagreement on the question of the Gibraltar view. I just want to put the record right.

MR SPEAKER:

Yes. I have allowed you to mention it but no more.

HON CHIEF MINISTER:

I make no other agreement or reservation upon the terms of the motion which has been cleared with the Leader of the Opposition, the Honourable M D Xiberras and, therefore, I have nothing more to say and I commend the motion to the House.

HON M XIBERRAS:

Mr Speaker, do I understand that this is on the terms which we agreed in consultation?

HON CHIEF MINISTER:

The terms are on the motion. I don't go behind or in front of the motion. These are terms which were agreed.

Mr Speaker then put the question in the terms of the Chief Minister's motion which was resolved in the affirmative. The motion was accordingly carried.

THE HOUSE RECESSED AT 1.00 pm

THE HOUSE RESUMED AT 3.15 pm

HON CHIEF MINISTER:

Mr Speaker, Sir, I have the honour to move the motion standing in my name in the Order Paper except for a slight amendment which I move in order to meet the point made by the Honourable Leader of the Opposition. He was struck as I was, too, by the fact that his second initial appeared in the Order Paper. That was, I assure you, not my doing. In fact, I wanted to make sure that was right and I asked my friend on my left this morning whether the letter D was the correct second initial for whatever it may stand, whether it is for David or for something else.

HON ATTORNEY-GENERAL:

Perhaps the Honourable the Leader of the Opposition could elucidate what it does stand for?

HON M XIBERRAS:

Mr Speaker, the Honourable the Attorney-General will have to pay 6p for that.

HON CHIEF MINISTER:

Just to show that this has been prepared in the office and that there was no attempt to in any way belittle the position of the Honourable the Leader of the Opposition or the hope that he might substitute somebody else and, therefore, shorten the proceedings of the Select Committee by his absence, I have no hesitation in giving you notice that the words "the Honourable the Leader of the Opposition" be substituted for the words "the Honourable M D Xiberras" which does not mean that it makes the Leader of the Opposition less Honourable than otherwise. Mr Speaker, subject to that amendment

MR SPEAKER:

Well, it is not really an amendment. You may read the motion as you want it presented since it has not yet been proposed.

HON CHIEF MINISTER:

Subject to the correction I will make on reading the motion, I will say again that this of course has been the subject of ~~confrontation~~ ^{consultation} between the Leader of the Opposition and myself and that in accordance with established practice he was invited to nominate two members of whom he is one and I, therefore, move that "This House resolves that the following members should be nominated to the Select Committee appointed to consider the Report on Broadcasting in Gibraltar by Mr J K Rickard and Mr D J Sizer and to make recommendations on the findings in the Report and such other matters as may be relevant to the future of broadcasting in Gibraltar generally:

The Honourable the Chief Minister
The Honourable A P Montegriffo
The Honourable H J Zammitt
The Honourable the Leader of the Opposition
The Honourable L Devincenzi

Sir, I commend the motion.

Mr Speaker proposed the question in the terms of the Chief Minister's motion.

HON M XIBERRAS:

Mr Speaker, I am grateful for the slight amendment which has been moved by the Honourable and Learned the Chief Minister. I assure him that there is one infallible method whereby he can shorten the proceedings of the proposed Select Committee bearing in mind that the Select Committee on conscription was the quickest to produce a recommendation possibly in the history of the House, and that is to allow me to occupy the Chair. However, I am sure that that would not be to the approval of the majority of Honourable Members so I shall endeavour, bearing in mind the importance of the subject, to conform with his ideas as to brevity though in no other respect, of course, Mr Speaker, I do trust that the Select Committee will in all seriousness be able to arrive at a speedy report to this House because the matter under discussion is one of some importance for Gibraltar and the pressures on this particular body are indeed great and the number of ad hoc arrangements that have been made since Rickard and Sizer and even before are not enough for the peace of mind of members of the Board or the staff working at GBC. We on this side of the House naturally support the Motion.

HON CHIEF MINISTER:

I would just like to say that I wish the issue was as simple as the one on conscription. Unfortunately the issue is complicated, it covers a very wide issue, the Honourable the Leader of the Opposition has one or two matters in mind but one has only got to look quickly at the Report to see the problems that we face not only in so far as those subjects which he has mentioned many times but many others. The whole future of television is at stake and I hope that Members will get to work quickly and regularly and that we can produce something which is good for Gibraltar as a whole for a long time to come.

Mr Speaker then put the question in the terms of the Chief Minister's motion which was resolved in the affirmative, and the motion was accordingly carried.

HON ATTORNEY-GENERAL:

Mr Speaker, Sir, before I speak on the motion, I would ask the indulgence of the House to excuse me, as was done in several motions during the Budget Session, from reading the whole of the motion standing in my name in view of the fact that it is of some length and the details are, in fact, set out fairly clearly in the notice.

MR SPEAKER:

Notice of the motion was circulated and if the House so allows I have no objections at all.

HON ATTORNEY-GENERAL:

I am much obliged. As Members will be aware, provision for the naturalisation as British Subjects of aliens and British protected persons and the registration of persons as citizens of the United Kingdom and Colonies, is contained in the United Kingdom's British Nationality Acts of 1948 to 1965. Although in the majority of cases naturalisation and registration are effected in the United Kingdom, persons can be naturalised and registered both in dependent territories and in the United Kingdom High Commissions and Consulates in other parts of the world. The Act covers registration and naturalisation in all these cases. Subsidiary legislation under the Act describes the fees which are to be collected on registration or naturalisation. These fees have to be collected whether the registration or naturalisation takes place in the United Kingdom or elsewhere. In practice, we in Gibraltar specifically legislate under the Licensing and Fees Ordinance for the collection of these fees.

We are bound to collect the same fees as are laid down in the United Kingdom legislation. I think the monies collected as fees should, strictly speaking, be remitted to the United Kingdom Treasury but, in practice, we in Gibraltar are allowed to keep these fees in the Consolidated Fund. It is not a large sum involved but, as I say, we do keep the money. This, however, in no way precludes us from charging the same fees as are charged in the United Kingdom. We were told in February of this year that the fees had been increased in the United Kingdom above those for which we gave approval in this House on the 21st January this year and which were published in the Gazette as rules made by the Governor on the 24th of January. As will be seen the Registration fee, in all cases with one exception, is now made a flat fee of £10. Before it varied according to the particular class of person who was registered and in some cases there was, in fact, no fee payable at all. Wives by and large were charged £2 and children - that is minors - were charged £7.50 if they were British protected persons and £15 if they were aliens. I am pleased to be able to point out to Members of this Honourable House that now no fee at all is payable in respect of minors, they can be registered free. That is a great advantage because the majority of cases in Gibraltar are registration of minors. The naturalisation fee for aliens was £30 and £15 for a British protected person. These have now been increased to £35 and £17, respectively, but it is also provided that on application for naturalisation of an alien there is a fee of £5 payable which is not returnable if the application is refused and in the case of a British protected person on application a fee of £3 which is not refundable if the application is refused. Where husbands and wives apply together for naturalisation and both applications are granted, then a total of £10 only is required from the wife. I would stress that we have no alternative to charging these fees, we are acting in accordance with United Kingdom legislation and collecting fees really as their agent. Now, if I could pre-empt my Honourable friend the Financial and Development Secretary, he will be moving two amendments to my notice, the reason for this being the notice was drafted on a circular supplied by the Foreign and Commonwealth Office and the Home Office, which do not include two matters which will be included as a result of his amendments. The final regulations only came to me on Friday and as a result of that there will have to be an amendment. I cannot move it myself, but I could perhaps explain what it is. The cost of supplying a certificate - that is on page 2 - will be increased from 50p to £1 and there will be another item of administering the oath of allegiance and the cost of that will be 50p. I think it only fair to explain to the House why it is necessary for the Financial and Development Secretary to make these amendments. Mr Speaker, I commend the motion to this Honourable House.

MR SPEAKER:

I will then propose the motion in the terms moved by the Honourable the Attorney-General.

HON M XIBERRAS:

Mr Speaker, this is one of the occasions on which Honourable Members apparently have no choice in the matter and our comments will be comments and in no way attempting to alter the issue perhaps, reflection is a better word. It is indeed a matter for reflection that in this very limited sphere Her Majesty's Government strives for parity and that we shall pay the same amount for naturalisation as people do in the United Kingdom. Would that it were so in other respects and we got some of the advantages. Mr Speaker, I note the comment of the Honourable and Learned the Attorney-General about funds not going to the United Kingdom Exchequer but being retained here. I also have no doubt that out of local funds there is a certain amount of expenditure involved in the procedures of registration, naturalisation and so forth and, of course, I don't for a moment wish to sound tightfisted in this matter but it is a point, I think, that the local Civil Service is involved in some degree with the production of certificates and, therefore, it is not that strange that this money should remain here in Gibraltar. I know too, Mr Speaker, that minors will be free and I think this is a good thing because for a family affected by these proposals it would be an extra burden if you have a lot of children, and you have to pay £10 for each and therefore this is a good thing. I wonder how many of these passports, from the financial point of view and also from the humane points of view, how many of these are granted per year? I would imagine that the number will be around 25 and that the number of these passports is controlled by the relevant Secretary of State in Britain. I am not usually involved in cases of this kind but I have had the occasional one that has been on the waiting list for a very long time and there appears to have been no chance despite their conformity with our laws, despite residence in Gibraltar, despite contribution over a good number of years to Gibraltar, economic and otherwise, yet they have to wait in line for a good number of years, often 6, 7, 8, 10 years for a passport and when I occasionally have enquired as to why this should be so or in what order these applications are taken, I find no satisfactory reply. So I wonder if the Honourable and Learned the Attorney-General would care to comment on my reflections bearing in mind that this is not a matter for any Honourable Member in this House and that he perhaps better than anybody will try to throw some light on the matter for the benefit of all Honourable Members here and also for people who sometimes tend to despair of the situation and say, "Well, if I have to be kept waiting for this long then, am I really wanted after so many years". Mr Speaker, I don't intend to involve the House in any controversial discussion about the intrinsic value of the passport in months to come. We had a question about revisions in nationality laws in the United Kingdom but, perhaps, the House might reflect that if this increase had come a year from now, different types of passports might have to be issued at any particular time.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, I will now with your leave, move the two amendments to which the Honourable and Learned the Attorney-General referred which are required for conformity with the United Kingdom Regulations. Sir, I shall take these consecutively and say that the first relates to the entry which appears in the Order Paper before us at the top of the second page. Sir, I beg to move that the motion standing in the name of the Attorney-General be amended by the deletion of the fee of 50p in respect of supplying a certificate or true copy of any notice, certificate, order, declaration or entry given granted or made by or under the British Nationality Acts 1948 - 1965 and by the substitution therefor of the fee of £1.

Mr Speaker proposed the question in the terms of the above amendment.

Mr Speaker then put the question which was resolved in the affirmative and the amendment was accordingly agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I beg to move that the motion be further amended by the insertion at the end immediately after the words "witnessing the signing of an application or declaration" of the following: "Administering the oath of allegiance - £0.50".

MR SPEAKER:

Could I, perhaps, clarify something. I suppose this 50p will go into the Consolidated Fund?

HON ATTORNEY-GENERAL:

No, Sir, it will be covered by the words "if the application or declaration is witnessed or the Oath administered by a Commissioner for Oaths or Notary Public to the Commissioner or Notary Public."

Mr Speaker proposed the question in the terms of the above amendment.

Mr Speaker then put the question which was resolved in the affirmative and the amendment was accordingly agreed to.

HON P J ISOLA:

Mr Speaker, following on what my friend the Honourable Leader of the Opposition has said on this question of naturalisation of non British Subjects, the fee they have to pay, and general sentiments that he has expressed about the processing of application in this

matter I would certainly like to call attention to the House to a feature of naturalisation which I don't think is working very well and that is the question of the naturalisation of males who are married to Gibraltarians. It seems to me that in the administration of the Acts which require naturalisation to take place in relation to periods of residence on British territory etc, in the case of non British Subjects married to Gibraltarians, I feel that the applications concerned should be processed - I don't know whether the fault is at this end or at the London end - but it should be processed rather more quickly and perhaps with more fervor, certainly by the Gibraltar end, than I think is being done. Because that sort of application is an application which is closely concerned with the life of the territory in which it is made. Here you have got people who are not British Subjects married to Gibraltarians and who seem to have set up their home in Gibraltar and it would seem to me that the general policy in those applications once they have complied with the qualifications under the British Nationality Acts relating to residence and so forth, that those particular applications should be processed favourably certainly at this end, in Gibraltar, and recommended. Certainly we would like to hear reassurances on that. It seems to me that persons married to Gibraltarian women are in a different situation, I feel, to persons who are not so married and who are living in Gibraltar. It does seem to me especially in this International Women's Year, that if a Gibraltarian can marry a foreigner and give her that right immediately, I don't say the contrary should be equally true because it isn't actually as a matter of law, it just isn't, but certainly, I think if a male has married a Gibraltarian and, has already lived in Gibraltar 5 years or in British territory 5 years, I think there is a case for that sort of application being favourably processed from Gibraltar as a matter of policy. I know London has a say in it but London obviously pays high regard to what is said at the Gibraltar end and we would certainly like to have assurances on this side of the House that at the Gibraltar end when such applications are made - unless there are strong reasons and we cannot find any if the man is allowed to live in Gibraltar with his Gibraltarian wife and work here and so forth we cannot think of many reasons of objecting to grant British status - we think that certainly at the Gibraltar end a strong recommendation should go in favour of that application. And if we find as far as the London end is concerned they are treated exactly the same as any other application, neither more favourably nor less favourably, then I think representations should go from Gibraltar to London on that and I hope we can get assurances on these points.

HON ATTORNEY-GENERAL:

Mr Speaker, Sir, I am quite sure it was what the Honourable Leader of the Opposition being a Latin Scholar would understand a lapsus *linguae* ~~calami~~ calling it passports. It doesn't, in fact, deal with passports. This has nothing to do with passports at all. On the point on the number of applications in the year coming under these regulations it is not really possible to give exact figures. You have got to split it up between registration and naturalisation. Now, in certain cases registration is as of right. Any woman marrying

a Gibraltar has a right of registration as a citizen of the United Kingdom and Colonies. Certain other persons with long connection with Gibraltar have a right of registration. It is only naturalisation where, I believe, there is a quota laid down. Now, it is laid down to the best of my belief in the United Kingdom.

HON M XIBERRAS:

If the Honourable Member will give way. This is an important point. Is there, in fact, a restriction in United Kingdom legislation on the number of people who can be naturalised in Gibraltar?

HON ATTORNEY-GENERAL:

I believe the position to be this. In the United Kingdom there is to my belief, a limit on the number of applications which are entertained in any year in the United Kingdom. I believe that the same applies in Gibraltar. I will, however, undertake to find out whether this is so and what is the number of applications which are entertained. I will also - and I have no idea on this point at all - I will also find out whether in the United Kingdom favourable treatment is given to alien males who marry United Kingdom women, to put the expression broadly. If that is so then I would agree we would have very good grounds for representing to the United Kingdom for the same speeding up of the process where the application is from an alien man married to a Gibraltar woman. I will undertake to make enquiries and to keep the Hon the Leader of the Opposition and the Hon Mr Isola informed on this particular point. As Mr Isola pointed out, of course, there are delays. There has to be a statutory 5 years which a person must reside in a territory - and this includes the United Kingdom - before he can even submit his application. That is the start of the delay. But I do understand and Government understands the interest of the Opposition in this matter and we shall do our best to reach a satisfactory solution.

Mr Speaker then put the question in the terms of the Honourable the Attorney-General's motion, as amended which was resolved in the affirmative and the motion was accordingly carried.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, Sir, I have the honour to move the suspension of Standing Order No 19 in respect of this motion which I propose to introduce without notice.

Mr Speaker proposed the question in the terms of the Honourable the Financial and Development Secretary's motion and this was agreed to.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, in introducing this motion I should first explain the reasons for not having given prior notice of it to the House. It is simply that as a matter of principle, proposals affecting import duty should not be revealed in advance. Sir, Item 28 of the First Schedule to the Imports and Exports Ordinance exempts medical supplies and pharmaceutical products from the payment of import duty. Government now consider that there is good reason to include in these exemptions invalid wheelchairs and artificial limbs. These are expensive items on which import duty could bear heavily in cases deserving of sympathetic treatment. Sir, I therefore move that in exercise of its powers conferred by section 48 of the Imports and Exports Ordinance, and of all other powers thereunto it enabling this House resolves that the first schedule to the third Ordinance be amended by the addition to Item 28 thereof of a new sub item as follows -

"No 6. Wheelchairs and artificial limbs."

Mr Speaker proposed the question in the terms of the Honourable the Financial and Development Secretary's motion.

HON M XIBERRAS:

Mr Speaker, I was expecting another budget when I heard the Financial and Development Secretary speaking in those terms. This is of course something which the Opposition are delighted to be able to support. I wonder, in passing, how many other little things of this nature - by little I mean items which affect a handicapped minority - might be subjected to similar treatment.

Mr Speaker then put the question which was resolved in the affirmative and the motion was accordingly carried.

BILLS

FIRST AND SECOND READINGS

The Trade Licensing (Amendment) Ordinance, 1975.

HON A W SERFATY:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Trade Licensing Ordinance, 1972 (No 22 of 1972) be read a first time.

Mr Speaker put the question which was resolved in the affirmative and the Bill was read a first time.

HON A W SERFATY:

Sir, I have the honour to move that this Bill be now read a second time. The House knows that I have been here several times asking for an extension of this law which I do with the support of my colleagues on both sides of the House in the Select Committee. We have been having quite a number of meetings, at the present moment we are virtually meeting every week and some time ago we had what we thought was a good and simple solution within our grasp but neither the Honourable and Learned the Attorney-General nor the experts in London whom the Honourable and Learned Mr Isola and myself went to see, were in agreement with that kind of a solution. So we are now looking at another kind of solution which I hope - and I certainly don't give this House any assurances - will meet with the agreement of the Attorney-General and other experts in London on the EEC. Of course another reason why we could not at this moment of time come here with the report of the Select Committee nor with any suggestion to alter the legislation is that we do not know whether the United Kingdom is going to remain in the EEC because if the UK does not remain in the EEC then all the work we have done in these 30 or 40 meetings we have held will have to go overboard and we shall have to think again. Sir, I commend the Bill to this House.

MR SPEAKER:

Before I put the question to the House does any Honourable Member wish to speak on the merits and general principles of the Bill?

HON M XIBERRAS:

Mr Speaker, I am sure the Honourable and Learned the Chief Minister will support this Bill wholeheartedly. It is however

HON CHIEF MINISTER:

If the Honourable member will give way. I think we might not only support it but also inform the UK Government that this is one more reason why the UK should remain in the Common Market.

HON M XIBERRAS:

Mr Speaker, quite seriously, I appreciate it is a subject which is very complex and we on this side were very critical of the manner in which Government tackled it. We appreciated the difficulties but the Bill that was brought to the House was far from perfect. Mr Speaker, I have no doubt at all that Honourable Members are working very hard at this but, on principle, it is not a very good thing to have a Select Committee sitting like this apparently just waiting for events to change perhaps or not to change. And I would say with all due respect to the Chairman of the Select Committee and to the members that perhaps the House

is entitled I don't mean individual members on either side of the House - but the House collectively is entitled to some indication of what deliberations have taken place and what possible solutions are in the offing. I noticed that the Honourable Member was a bit shamefaced when he got up about the matter and I appreciate that some issues are difficult but there is a certain amount of concern amongst certain people who might be affected one way or another by this legislation. It has been represented to me already that whatever happens perhaps Government or the House of Assembly should decide what is going to happen so that people can plan and these are formal representations that have been made to me. Now, be that as it may, I think that it would be a good thing to have some indication by way of an interim report or some document to the rest of the Members of this House as to what is being done, especially if a solution is now awaiting Britain's decision whether we are going to remain in EEC or leave it and it might serve to clarify the minds of Honourable Members on the Select Committee if something were produced for the benefit of the House as a whole. Not a lengthy document but just some indication of where their deliberations had taken them. I for one on a personal level would more wholeheartedly support this Bill if I knew this was going to be the case.

MR SPEAKER:

Any other contributors? Then I will call on the mover to reply.

HON A W SERFATY:

Sir, I don't think it would be in the public interest at this moment of time to give the House an indication on the way the Select Committee is thinking. Surely the Honourable the Leader of the Opposition can ask his colleagues in the Select Committee how things are going. But I would like to clarify that we are not just waiting to find out whether Britain is staying in the EEC or is not. We have work to do, we are still doing it and I am hopeful that this work and report will be completed by the end of the year. Of course all the work we are doing will be affected by the decision taken by the British people. But I want the House to know quite clearly that we have still work to do and we are not waiting that particular development.

Mr Speaker then put the question which was resolved in the affirmative and the Bill was read a second time.

HON A W SERFATY:

Sir, I beg to give notice that the Committee Stage and Third Reading of this Bill be taken at a later stage in the meeting. This was agreed to.

The Regulations of Wages and Conditions of Employment (Amendment) Ordinance, 1975.

HON A J CANEPA:

Mr Speaker, I have the honour to move that a Bill for an Ordinance to amend the Regulation of Wages and Conditions of Employment Ordinance (Cap 139) be read a first time.

Mr Speaker then put the question which was resolved in the affirmative and the Bill was read a first time.

HON A J CANEPA:

Sir, I beg to move that the Bill be now read a second time. Mr Speaker, section 18 of the Regulation of Wages and Conditions of Employment Ordinance permits the making of a contract of service whereby an employee becomes entitled to "food, a dwelling place or other allowances or privileges in addition to cash wages as a remuneration for his services" provided that the cash value attributed to such payment in kind are "fair and reasonable and properly assessed". Sir, inspections which have been carried out by the Department of Labour and Social Security show that in certain instances deductions are being made for food, dwelling and so on which are actually in excess of the statutory minimum wage and this makes it impossible to administer the law prescribing minimum wages. The advice which has been given by the law officers in view of the difficulties which have been experienced by the Director of Labour and Social Security in administering this legislation, is that the fair and reasonable proviso is enforceable but that the Government would be treading on very dangerous ground if an officer of the Government were required to decide this question. The matter could only be decided by a court on an actual prosecution and even the court could have difficulty in deciding the question. It is, therefore, felt, Sir, that an entirely new approach to the matter should be adopted, and that is that it should be possible to stipulate in a Conditions of Employment Order - and that would be on the recommendation of the Regulation of Conditions of Employment Board - the maximum sums which an employer may deduct from wages or charge to an employee in respect of food, accommodation and other allowances provided. This, Sir, is done in the United Kingdom and we also feel here that it is the best way of tackling abuse of this particular law. And it is, Mr Speaker, clauses 2 and 3 in the Bill which make provision for this. Clause 4 of the Bill, Sir, merely removes surplus words in the 1974 amendment to the Ordinance. As regards clause 5, Mr Speaker, the House will recall that when the unfair dismissal provisions of the Ordinance were enacted at this time last year, it was laid down that protection against dismissal should not be extended to employees with less than 2 years service, as was the case in the United Kingdom. Sir, this qualifying period had been set down in order to avoid any possible overloading of the industrial tribunal, at least in the initial stages of the application of the legislation. However, Sir, I gave a commitment

law.

that I would review the matter after a year and reduce the qualifying period from 2 years to 1 year if after a year's experience in the application of the Ordinance, the fears that we had had initially proved to be groundless. In fact, Sir, during the first 10 months since the Bill that I introduced in May last year became law, no case has, in fact, had to go to the Tribunal and therefore, Sir, it is clear that this tribunal is not being overloaded in any way and, therefore, I can fulfill the undertaking that I gave the House. So it is now proposed, Mr Speaker, to reduce the qualifying period to one year, and I will not omit to mention that in the United Kingdom it has been reduced still further to 6 months but I consider that in view of the nature of the very large proportion of our labour force, I don't think it is advisable to follow suit at the moment in Gibraltar, certainly not to the extent of reducing it to 6 months. And clause 6, Mr Speaker, refers to the question of fixed term contracts and is really consequential on what is being provided for in clause 5. Sir, I commend the Bill to the House.

MR SPEAKER:

Before I put the question to the House does any Honourable Member wish to speak on the general principles and merits of the Bill?

HON J BOSSANO:

Mr Speaker, the amendments contained in this amendment Ordinance bring about certain improvements on the original Ordinance and what I would like to express in relation to this is that there are still a number of things in connection with the original Ordinance which we now have an opportunity to put right if we choose to amend the original Ordinance even further and I would in particular remind the House that when the provisions of the Unfair Dismissals Ordinance was being considered here I pointed out that my own view was that the restriction of the protection, for example, against unfair dismissal for persons on strike, the limitation of this protection only to those cases where some people are dismissed and not others was to my mind not going far enough and I regret that the Government has not taken this opportunity - and I hope that it is not too late for them to do so - to extend the protection to all employees in a place where there is industrial action. I cannot see where the logic is to condemn dismissal as unfair where an employer dismisses those who are involved in legitimate industrial action in a grievance and then on the other hand to go on to say that provided he does what is unfair to everybody it ceases to be unfair. To my mind by making it legal to dismiss everybody who goes on strike in a particular firm, we are only saying to people: "provided you are unfair to everyone the law allows you to do it". I cannot see where the logic is in that, I couldn't see it originally and I regret, Mr Speaker, that the Government has not brought along something in this particular amendment Ordinance to put what I consider to be an anomaly in the original Ordinance right. And the fact that we have not had any claims for unfair dismissals to the Labour Department should, in fact, encourage the Minister for Labour to

widen the degree of protection because, obviously, if he widens it by including areas which were not previously protected is not going to overburden a tribunal that has not yet been faced with having to take any decisions on this matter. As regards the part of the Ordinance that seeks to protect employees from excessive charges, Mr Speaker, I would have thought that it would not be a very difficult thing to lay down a maximum proportion in the law that deductions in respect of accommodation and food should not exceed. It's certainly shocking to hear that there are people who are being provided with food and accommodation that is being valued at more than the minimum wage that the law provides, because that suggests that the minimum wage is apparently insufficient to cover basics like food and accommodation and it is quite clear that the minimum wage legislation can be circumvented by unscrupulous employers who have got a hold over their employees because more often than not workers in this category are alien workers who are subject to a contract and who are afraid of being sent back to their country of origin if they don't play along with what the employer wants. And I think it is very important not only for the protection of the unfortunate workers themselves who find themselves in that category, but also for the protection of our own local workers who are being faced with unfair competition and our own local traders who are being faced with unfair competition. We should insist that once people are in Gibraltar they should be obliged to operate under what we consider to be a fair system and if they don't like what we consider to be a fair system then they can set up shops somewhere else. But I would have thought, Mr Speaker, that we could in fact, without having to wait for the regulation of wages to decide what should be charged at any particular time and it seems to me that to say, for example, if this is what is being proposed to say you can charge so much for food and so much for accommodation would, in fact, be a difficult thing to defend really, because the quality of the accommodation and the quality of the food and the type of food for different workers of different ethnic origins is bound to create quite a complicated thing if one is thinking of laying down a schedule of how much one can charge for each individual item. But I can see that there is a great deal to be said for the House in the law saying that it is unreasonable that a worker should have to spend more than say half his salary or more than $\frac{3}{4}$ of his salary on food and accommodation because, obviously, if we accept that a bigger proportion than this should be spent on basic essentials like food and accommodation, then we are saying that we are virtually condemning people in Gibraltar to live at subsistence level and I don't think this is our intention.

HON ATTORNEY-GENERAL:

Mr Speaker, I think both sides of the Honourable House have expressed concern in the past at the manner that some employees have been, I won't say victimised, but have been almost penalised by the conditions under which they are expected to work, and it is for this reason that we have brought this legislation today. Before I deal or try to answer the point made by the Honourable Mr Bossano, I would like to

sound a word of caution. However careful one may be in drafting a law, if an employer in this case is unscrupulous enough and wishes to get round the law, he will take every possible step to do so. We shall on the Government side watch this very carefully and if it is necessary to bring further legislation to stop employees being exploited we shall do so. On the point raised by the Honourable Mr Bossano, I think he suggested that there should be power to prescribe a proportion, the maximum proportion which could be deducted. Bearing in mind that the majority of employees who will be affected by this legislation are also covered by a minimum wage order, I think it can be seen that the Regulation of Wages and Conditions of Employment Board can make a recommendation. Let us say the minimum wage for a particular employee is £20 per week, they can advise and the order can be made that not more than £5 can be deducted in respect of food and accommodation. There is no need, I think, to go to the proportion. If you know the minimum wage and if you lay down the maximum that can be deducted then you have got a control on your employer, you are insuring that after the necessary statutory deductions by which I mean income tax, Group Practice Medical Scheme, Social Security, after the statutory deductions there must be paid a specific sum to the employee. This is not an easy piece of legislation to draft, I have given considerable thought to it but I do think that this is going to meet the problems which have been exercising the minds of both sides of this Honourable House.

HON M XIBERRAS:

Mr Speaker, I am delighted to hear those words from the Honourable and Learned the Attorney-General and that this subject is so close to his heart, the question of protecting these workers usually, as my Honourable Friend Mr Bossano says, from abroad, Mr Speaker, I wonder whether the Minister for Labour in exercising his right of reply might give us an indication as to whether there is evidence of the ill we are trying to remedy by this legislation, because, on the other hand, my Honourable Friend has said on more than one occasion, this sort of law can be ineffectual because people in the position which my Honourable Friend was talking about, are usually on such difficult grounds themselves, on a personal level, with their employers that their ability to complain is seriously curtailed and, therefore, I wonder whether the only way one can overcome this sort of inability, this difficult position in which these persons may find themselves in, which to put it bluntly means that if the bosses of so and so that has brought you over from some place on a contract is not giving you your money it is very difficult to stand up and complain against him. The only way of counteracting this is to my mind, by vigilance and people being able to speak up in places such as this and put people on their guard against it and deter the likely offenders. Therefore, I wonder whether the Honourable the Minister for Labour might give an indication whether this ill which I know some time ago was rearing its head rather more often than usual, whether there has been a recrudescence of this now and whether it is because of this that the Honourable Member is bringing forward this legislation.

HON P J ISOLA:

Mr Speaker, if the Honourable Member will allow me. One is pleasantly surprised that there have been no cases for appeal to the Tribunal for unfair dismissal which is probably due to a number of factors but certainly I have found myself advising on a number of occasions on this and one of the practical problems that I have found is the period of time contained in the Ordinance for filing a complaint which to my mind must be the shortest period of time in any legislation in Gibraltar or elsewhere. Only 4 weeks are given in which a person can decide whether to complain or not. Now, when a man is dismissed I know the instant reaction is that he may be annoyed or he talks to his Union, the Union may have to talk to the employer or he may not know about his rights, he may think the employer is perfectly entitled to do what he does, and takes no action until perhaps 2 months later he speaks to a friend and he is told about his rights, and so forth. It seems to me very short. The law in most cases allows much longer periods in which to make complaints. The only practical consideration I think that can be for having a short period of time I suppose is if the tribunal would wish to have the person re-engaged but the Tribunal has a discretion in this and clearly if the complaint is made 4 months after the person has been dismissed or his employment terminated there will obviously not be much point in the tribunal asking for his re-engagement and it would not be practical to do so so it would not apply. It would be up to the person concerned if he wishes to be re-engaged it would be up to him to make a quick appeal to the Tribunal, this is sound practical common sense. But when you are talking of pure compensation and nothing else, I do think the period of time should be longer. I notice in the law there is provision that says: "unless the tribunal is satisfied that in the circumstances it was not practicable for making the complaint earlier". Of course that depends on the interpretation the Tribunal gives to that. The Tribunal may be very kind in its interpretation or it may not be, then there would be an employer being represented possibly and saying: "Well, the four weeks up, I assume he was not going to appeal and so forth". It brings all sorts of complication and since we are amending the Ordinance I would suggest that the period within which a complaint can be presented to the Tribunal should be extended, I would say as much as 6 months, or even possibly a bit shorter. The reason I say that, Mr Speaker, is that if a person takes six months to complain well that of course obviously will damage his complaint as far as re-engagement

is concerned but it should make no difference to the question as to whether he is being unfairly dismissed or not, it should make no difference to the question of compensation. But whatever period is used, Mr Speaker, I think it should be a substantially longer period than four weeks. I do believe this is much too short the way Gibraltar normally moves. I mean most people are pretty lethargic in Gibraltar in a lot of things and it takes time. I think four weeks is much too short. That's my practical experience. I have had people who have come to see me two months after they have been dismissed.

HON CHIEF MINISTER:

The only difficulty I see in this question although we are not completely adamant to the four weeks - I think the Minister might like to say something in respect of that - is that it isn't fair to either side to leave it for too long because the facts then may become obliterated, the memory of the facts themselves under the circumstances of the dismissal may be very different and the recollection of people or events may be very different five months after the event happened than soon after the event happened so that though I agree that there should be a sufficient time, too long a time becomes a little confusing to both parties including the worker himself where the grievance that he has missed for such a long time may colour the facts somewhat and the same thing can happen to the employer.

HON MAJOR R J PELIZA:

Mr Speaker, I think the Chief Minister has touched on a point which I suppose applies to any kind of litigation in that the question of remedy has got to be taken into account. But surely there are even matters of great seriousness than dismissals of this nature and there is a greater latitude in the time given to present the case and I would have thought that 4 weeks, as my honourable friend Mr Isola said, is a rather a short time and whilst it is true that the employer situation must also be taken into account, the uncertainty of whether in fact there is going to be a claim, it is important that it should be expedited as much as possible. On the other hand I think the situation of the employee in most cases is that he is probably ignorant of his rights as Mr Isola so rightly pointed out and it may be some time before in fact he realises that he can take proceedings and I would suggest to the Minister for Labour that he should give some consideration to this. The point that the Minister will recall I was very concerned about is clause 2. I would like to know if in fact there is any penalty to an employer who acts contrary to the regulations that will be enforced. I cannot but feel that employees who come from afar and who accept such contracts which are really not in their interest and only put their signature to it because the conditions in which they are living are far worse than the ones they are going to find here, will be extremely reluctant and even impaired from coming forward and making their complaint and I would like to see some sort of positive action on the part of the Government in an effective way so that the onus is no longer on the employee who may be suffering, but on the employer.

HON A J CANEPA:

If the Honourable Member will give way. I referred to inspections carried out by the Department of Labour when I was speaking on the general principles and merits of the Bill.

HON MAJOR R J PELIZA:

Maybe I was outside and I just came in immediately after you said that. If you have of course I am very glad to hear that. I think anything the Minister does in that respect will be in the interest not only of the employees themselves but of the other employees as well in Gibraltar who will not find that there is unfair competition going on and, perhaps, will give greater opportunities to Gibraltar-ians to have jobs which at the moment are not being taken by them because there are employees coming from abroad and this is very noticeable in certain particular shops and there must be a very good reason why in fact in those kinds of shops there are very few Gibraltar employees. There might be a relationship in this and, therefore, I think it is in the interest of the employees of Gibraltar but it is also equally important from the employer's point of view in that there might be unfair competition for the local employer who doesn't usually do that and takes local employees and consequently I think it would be in the interest of both sides, both employees and employers, that the Government should take very quick measures to ensure that the new regulations are implemented.

MR SPEAKER:

If there are no other contributors I will call on the Minister to reply.

HON A J CANEPA:

Sir, may I say first of all that I am grateful to the contributors to this debate for a number of valid and useful points that have been brought up and I will try to take them one by one. With regard first of all, Sir, to the deductions that can be made, that are allowed or, putting it another way, payment in kind, the position is, Sir, that first of all I think members of the House are fully aware of the particular area in the private sector that this amendment is aimed at. The problem is one which hasn't had to exercise the attention of the Department of Labour and Social Security over a wider field ~~it is particularised~~, it is one particular area only. And the matter, Sir, was raised in the House, I think it was by the Honourable Mr Bossano well over a year ago, and the matter also had some airing, as I recall it, in the press and I gave an undertaking at the time that my Department would carry out inspections, and this the Department has done, Sir. The Labour Inspectors have carried out systematic inspections and it was on the basis of those inspections that a year ago we introduced

some amendments to the Regulation of Wages and Conditions of Employment Ordinance and in that year the matter has been kept under very, very close scrutiny. ~~and~~ Because we haven't been satisfied with the way in which this particular legislation has been working, we haven't been able to see it work as effectively as one would have wanted, ~~that~~ I am now today, Sir, bringing further amendments which it is hoped will make the whole thing far more effective. Needless to say, Sir, when the matter is referred to the Regulation of Wages and Conditions of Employment Board ~~and they lay down regulations which will make it possible to lay down a maximum~~ ^{they will lay down a maximum deduction -} and I would hope it is a maximum amount that can be deducted from wages rather than a proportion, because with a proportion the amount of money that can be deducted can increase. I would hope that it is a cash amount but I am sure the matter will be aired fully by the Board. I hope that we will ~~begin~~ ^{begin to begin} Sir, to really come to grips with the problem. It is undoubtedly difficult to ascribe a value to payment in kind. The Honourable Mr Bossano spoke about the quality of the food, ~~we are dealing~~ ^{here} with a particular ethnic group but it is a particular ethnic group only and, therefore, after the matter is referred to the Board and they make their recommendations and Government makes these regulations, I can give the House an assurance that we will continue through the labour inspectorate, ~~the Department of Labour will continue~~ to keep this matter under review to ensure as far as is humanly possible that there is no abuse. Now, Sir, another three points were raised mainly in connection with the provisions under unfair dismissal. First of all, although no claim has had to be brought to ~~the~~ ^{the} tribunal that doesn't mean that there haven't been any cases. ~~There haven't been very many that I am aware of.~~ In the last ten months, I think, about three cases have been brought to the notice of the Department. One of them was not covered by the provisions of the law because the person concerned was a part-timer and didn't work a ~~particular~~ ^{particular} number of hours to be covered, which I think are 21, and another two cases which were brought to the notice of the Department of Labour were settled by mutual agreement between the employer and his former employee. So certainly whilst the machinery has not been overloaded the legislation seems to have been effective. In 1972, Mr Speaker, - and it was on the basis of the figures that we had then that the decision was taken in 1972 to go ahead and introduce legislation protecting workers against unfair dismissal - in 1972 the Department of Labour dealt with 167 claims of dismissal. But in the last year or so it has only had to deal with three. That to me is an indication of the effectiveness of the legislation. It has been a useful deterrent if nothing else. People now must be very careful before they dismiss anybody. But

HON M XIBERRAS:

If the Honourable Minister will give way. I think it would be fair to say that it also reflects on the position of Unions today.

HON A J CANEPA:

This brings me to the point raised by the Honourable Mr Isola regarding the four weeks which are allowed during which a complaint can be presented. Now, Sir, in the Department of Labour we never thought that this would present any problems whatsoever. You see, Mr Speaker, there is no permanent tribunal. If a tribunal was to actually deal with a claim a Chairman of the tribunal would have to be appointed on an ad hoc basis [that is the present position. What we do have is a permanent Secretary of the Tribunal and it is the Secretary who will have to deal initially and process a claim. It is he, by and large, who may have to determine initially whether a period of four weeks was sufficient or not and in my department we thought that in practice in Gibraltar there would be no problem in people filing a complaint within four weeks. We also based it, Sir, on the relevant section in the United Kingdom, but I am aware of the fact that recently that particular section has been amended in the UK; the period has been increased from four weeks to 3 months; I don't think myself that it is necessary in Gibraltar but I am flexible, Sir, and I will give this due consideration and it could well be that I will bring an amendment at Committee Stage and possibly extend the period to 3 months. I don't think it is necessary but I have no inherent objection to it. So I will pursue the matter. The final point, Sir, is one that was raised by the Honourable Mr Bossano. Of course, I can understand that he is not entirely happy with the provisions of the existing law whereby dismissal of all employees who go on strike is adjudged to be fair ^{in other words it is not unfair}. But let me say this, Mr Speaker, that I was under the impression - and I am not being polemical - but I was under the impression that when the Labour Party came into office in the United Kingdom and it repealed the Industrial Relations Act of which the unfair dismissal provisions were part and parcel that a Labour Government at the time I was discussing this with Mr Urwin before the labour government came in) - a Labour Government would carry out substantial amendments to the section of the Act dealing with unfair dismissals. In fact, Mr Speaker, that has not been the case. The Industrial Relations Act was repealed, the provisions on unfair dismissal were retained and the amendments that ~~have been~~ ^{have been} made to those provisions ~~some of them are~~ ^{some of them are} of an administrative nature, and I have mentioned one of them increasing the period for filing a complaint to three months, ^{and} lowering the qualifying period from 2 years to 1 year, ^{and} increasing the upper limit of compensation which one should obviously do from time to time. But ~~one thing~~ ^{nothing} has been done about, Mr Speaker, ^{about} the question of dismissal in a case where an employee goes on strike. That, ^{to} my understanding ~~is~~, it remains as it was in the Industrial Relations Act, 1971, and therefore, Mr Speaker, breaking new ground as we are - in fact we haven't broken any ground at all - we have very little experience to dwell back upon in the last year. But breaking new ground ~~in the~~ ^{though} kind of legislation that is proposed I am rather reluctant to ~~do~~ ^{do} ahead and do something which even a labour government in the UK doesn't consider they ought to do at this stage. Again, as with that particular section and other sections of the law on unfair dismissal, I am prepared to look at what they do in UK to judge the matter in the light of their experience and if one feels that perhaps that we ought to follow suit we will, but as I say, Sir, I am surprised ^{at} that and I certainly don't propose to suggest that we should have any amendments. So other than that, Mr Speaker, I commend this Bill to the House.

that

is something which

Mr Speaker then put the question which was resolved in the affirmative and the Bill was read a second time.

HON A J CANEPA:

Mr Speaker, I beg to give notice that Committee Stage and Third Reading should be taken at the next meeting of the House.

The Public Health (Amendment) Ordinance, 1975.

HON LT COL J L HOARE:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Public Health Ordinance in relation to the supply of water and in other minor respects, be read a first time.

Mr Speaker put the question which was resolved in the affirmative and the Bill was read a first time.

HON LT COL J L HOARE:

Sir, I have the honour to move that this Bill be now read a second time. This Bill is aimed, primarily, at updating the Public Health Ordinance in regard to the supply of water, both potable water and what used to be known as brackish water which nowadays is in fact salt water and this is the object of clause 2 of the Bill. Clause 3, Mr Speaker, deals with section 98(2) and is rather negative at the moment so the opportunity is being taken to expand it more in line with common and actual present usage. For example, under the old 98(2) it wasn't permissible to use potable water for bathing at all. Section 4 deals with the repeal and substitution of new section 101. The existing section 101 gives government the same power in relation to the laying and maintaining of water mains as it has in relation to the laying of sewers. Water mains are under pressure, of course, and present entirely different maintenance problems and, therefore, clause 4 repeals the existing section and sets out the appropriate powers and duties for the laying down of mains in a new section 101. It introduces nothing fresh. Clause 5 is the main clause here where we have tried to bring under the same heading, where appropriate, both potable and salt water supplies and it will be seen in the first paragraph of the Explanatory Memorandum it gives side by side the new section and the section being repealed. This is quite easy to follow. Clause 6 is that section 105 is much too restrictive and requires further amplification. Clause 7 merely details the sections which have been repealed and substituted by 102 and is its various subsections. Mr Speaker, here, by some mischance Section 107 has been left out of the repeal and I will move an amendment to this at the Committee Stage. It is, in fact, so stated that it has been repealed in the first paragraph of the Explanatory Memorandum. Section 8 makes it

clear that any water rules also require observance. Section 9 widens the scope of rule making powers to enable not only bathers and persons using the seashore to be protected but also boats at anchor. I think this point was made when we were dealing with an amendment to this originally, that whilst motor boats were prevented from being a nuisance to actual bathers, there was no provision in the law to stop them being a nuisance to other boat users. For example, people fishing hearing a water ski boat coming very close to them and upsetting the fishing and anybody else. This tries to stop them being able to do that. Clause 10 amends section 263 of the Ordinance and is aimed at ensuring that the depositing of all types of obnoxious matters in a public place is an offence. And clause 11 widens the scope of the rule making power and in particular allows rules to be made forbidding nuisances of all sorts. Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

Before I put the question to the House does any Honourable Member wish to speak on the general principles and merits of the Bill?

HON M XIBERRAS:

Mr Speaker, I think it is the first Bill the Honourable and Gallant Member has moved in this House and perhaps I should pay him the compliment of saying that we shall study it in greater detail because it is a Bill that due to the number of small items, varied, but nonetheless at least two of them which I can see involve matters of some importance in principle. Mr Speaker, I shall not propose to deal with clause 4 which we shall study; clause 5 which at first glance seems rather hard and the section starting with 102B especially subclause (b) there "lay the supply of water at its own expense and so forth" which I think requires further study. And the whole of that rather long clause we shall study further. I would like to hear more about clause 9, the question of the boats and so forth, because even though it is a good thing to give protection to two parties at any possible confrontation of the type the Minister envisages between boats and human beings, it is a good thing also to define things a bit more closely if one is going to make any reference to it in legislation and I recall the case of paddling when we spent some very enjoyable minutes in this House discussing what was paddling and what wasn't paddling and I suspect that this type of clause would involve us in similar discussions, not that we object to it in principle however. Clause 11 is another one which requires further study but I would like to say a word or two about clauses 3 and 8. And these deal with restrictions as to what purpose water may be used for in Gibraltar and clause 8 to the misuse of water. Now, we know the background to this type of legislation and that is that there has been a shortage of water and I remember a great concern that there was at one time at washing cars with fresh water or even this spills over into washing cars on the streets for much the same reason that this was misuse of

water and restrictions of one kind or another were placed on the use of water. But I think even though we have heard in this year's Budget that there is likely to be a shortage of water again this year, I think legislation of this kind is totally useless because statute is flouted and water is used for any purpose which comes to mind in a reasonable society. In other words even though apparently having a bath was illegal at one particular time I dare say, and I have no evidence olfactory or otherwise to go against this that Honourable Member in this House have not adhered to the provisions of the legislation such as it is. And I am sure that legislation of this kind which seeks to perpetuate restrictions of one kind or another on the use of water, are bound to fail in the same manner. I would suggest to the Government that the days when one could place this sort of restriction are over and, therefore, unless a very good case can be made for it there is no sense in perpetuating ineffective legislation unwanted and limiting legislation even in an amended form. And on these clauses, therefore, Sir, I would like to be convinced before Honourable Members on this side of the House vote against. I think it is an unnecessary restriction, it smells of the day when citizens of Gibraltar were restricted in these matters whilst other people, in fact, were not. And it is a point of principle involved here. As to the other clauses I said we will give further study to, I would like an assurance from the Minister in exercise of his right of reply that this kind of legislation is similar to local authority regulations in the United Kingdom or even of parent Acts of the United Kingdom. I know the problems of Gibraltar can be rather special because of the limited space but I think this is a matter which concerns a lot of people, developers and what not and I think we have a reputation in Gibraltar for putting a tremendous number of obstacles in the way of things getting done. And I think that this House should act as a sieve against these eventualities. Therefore, we reserve while of course agreeing that the second reading should take place, we reserve the right to comment on all clauses and particularly on the ones involving the so called wastage of water.

HON ATTORNEY-GENERAL:

Perhaps Mr Speaker, I could allay some of the fears of the Honourable the Leader of the Opposition, the Honourable M D Xiberras - I don't think I should say M D unless he tells me what the D stands for - there is nothing, with respect, whatsoever in here about the wastage of water. Now, let us start with clause 8. That is the first one on this point. I will read the Clause: "Section 123 of the principal Ordinance is amended by the insertion immediately after the words "misuse of such water" appearing therein - those are the words that are there already - of the words "and that any rules made under this Ordinance are being complied with". Now Section 123 at the moment gives to - I think they are called water inspectors - who are authorised officers of Government, power to enter premises to see whether there is an abuse or misuse of water. That is there already. What we are now doing, and this is because we are proposing to bring in water rules which will standardise the type of fitting on water connections and make the wastage of water less likely, we are giving the authorised officer power to enter premises not only to see whether there has been

a misuse of water but also to see whether the persons are complying with the rules. The existence of the rules is common sense. We all know how short water is in Giffaltar from time to time and, therefore, we make rules to prevent this. Now, its no use having rules where you cannot have some method of seeing whether or not they are being breached. Normally, the fittings are inside a private house. There is no right to enter that house unless it is given by law. And what we are doing under clause 8 is specifically saying "authorised officer" and knowing as I do the Honourable and Gallant Minister for Public Works I am quite sure this provision will be sensibly applied and not have persons going willy nilly just to be difficult but if there is a suggestion that the rules are being broken then authorised officers can go in to see whether this is so. That is all clause 8 is doing. Now, we come back to clause 3. I think, with respect to the Leader of the Opposition, he took the new subsection out of context. If we look at the existing section 98(1) it says: "the Government may provide supplies of potable water to domestic purposes and of brackish water for flushing, cleaning and other purposes". What we are saying in subsection (2) in the new clause 3 is that with this provision of water all they are obliged to do is to provide it for drinking, washing and cooking. They are not obliged to produce water so that people can garden or clean their cars. We are not saying it is a misuse of water, we are saying there is no necessity to provide for those purposes. Now, going slightly out of context the Honourable Leader of the Opposition referred to clause 9 and the question of water-skiers. The second provisions are that rules may be made regulating the use of pleasure boats so as to prevent their navigation in a dangerous manner or without due care and attention or without reasonable consideration for other persons. The first point is this is restricted and that the rules can only apply for 1,000 yards out from the low water mark. You can take your speed boat whether you have got water skiers or not, outside the 1,000 yards mark and go like a rocket, turn figures of 8, anything you like. But users of the seashore, bathers, and now as it will be, persons in pleasure boats, it is not that you cannot take your speed boat with a water skier or speed boat near to them but you must exercise a reasonable consideration for other users of the water. It is rather like driving a vehicle without due consideration, you have got to look after and think of other members of the public, and that is all we are doing here. We have had complaints of people fishing or perhaps at anchor in a pleasure boat that people who have come by at a rate of knots I think the expression is quite unnecessarily causing a wash, causing great furore, rocking the boats and this is what we want to stop. The last matter with which I think the Honourable Leader of the Opposition expressed concern was the provisions of the new section 102B which is contained in clause 4. That clause is, in fact, a replica of the existing clause 112 except that the present 112 only applies to brackish water and we are now making it apply to brackish and potable water. It is not a burden which doesn't exist at the moment, it certainly does as far as brackish water goes but we want to provide that it applies to both brackish and potable and it means that the person desiring a supply of potable water gives his notice to the Government and then in due course he will be supplied with the necessary pipes. I think if the Honourable Leader and other members of the Opposition do consider the main clauses of this Bill relating to potable and salt water they will find this is not really very much of an amendment. We are trying to rationalise the existing provisions. There are no new burdens imposed on private citizens but it is trying to put ^{into} the practice what seems to Government to make sense.

we will

water then

HON P J ISOLA:

Sir, I would not like the debate closed without a plea for the expression "brackish water". I mean this has been a time honoured phrase in Gibraltar for many, many years and is the Government going to be moved by just the simple advice of the Director of Public Works and change the whole history of Gibraltar with a stroke of the pen. Why call it salt water? Well, it is all salt water, isn't it? Mr Speaker, is the Honourable and Gallant Member certain about that? Is not a certain amount of potable water occasionally if there is heavy rainfall which there hasn't been I know for many years, Oh, yes, Mr Speaker, put into the reservoirs of brackish water? Is not the original flow water all the first 100,000 gallons collected from the catchment areas allowed to go to waste? Well, Mr Speaker, it has taken us a long time to realise this in Gibraltar and I would suggest that, perhaps, the Government should consider keeping this phrase 'brackish water' if for no other reasons for reasons of sentiment in our legislation. Presumably, I trust the Financial and Development Secretary is not now going to throw away all his forms and bills in his Accounts Department which say 'brackish water' and change it to 'salt water'. Is he going to do that, too? Well, Mr Speaker, I would ask the Government to consider seriously the feelings expressed by the Honourable Members of this House, it is not only me I am afraid, on this and balance that against the advice of the Director of Public Works.

HON CHIEF MINISTER:

I too was surprised and not very happy about changing something which is so long standing in our legislation - perhaps we might find a way of putting it "as or brackish" or whatever it is but it is not all sea water. Anyhow it required the new kind of a City Councillor who did not belong to Gibraltar to make us change the words "scavenger" to "dustman" and nobody had thought of that and they are now "dustmen" and I think a much more respectable name than "scavenger".

HON MAJOR R J PELIZA:

Mr Speaker, the Chief Minister agreed that it is not all sea water. Well, if it is not all sea water and it is not coming from the sea where else can it come from? I imagine it can come from wells or it can come from the reservoirs. If it comes from wells that is not sea water anyway it is salt water but not sea water and it is brackish water because I understand that part of that water sometimes is pumped up to the fresh water reservoirs. Anyway the answer is if it is not all sea water what water is it? Is it fresh water we add salt to and that is why we call it salt water? I don't think so I think salt is expensive and I doubt whether the Government can afford to do that. So, therefore, if it is coming from somewhere else the mixture I think could very well continue to be called 'brackish water'. I think it is traditional in Gibraltar I think it is sentimental as my Honourable Friend said

here so why change phrases that certainly are local. I don't see why that should be changed unnecessarily plus of course the possible cost in extra printing. But let us go back now to what the Attorney-General said. He mentioned for instance inspection of homes. Now this, Sir, to me is always a very dangerous thing. In order to see whether the right tap is inside the kitchen it means that the home ceases to be the castle and once again we have an inspector who can knock at the door and walk in just to find out what sort of tap there is there. That to me is a dangerous thing to do and take it lightly. And I suggest that before we ever contemplate doing that if, in fact, it is necessary to change the fittings which perhaps is a very good thing for the sake of saving water, I think first of all we should put it into practice. I think it is in the interest of all consumers to use as little water as possible. This Government

MR SPEAKER:

I think the Honourable the Attorney-General explained that the power is already in the law. It has only been extended not only for the purposes of seeing whether there is a wastage of water but for the purposes of seeing additionally as to whether the fittings are correct. But the power is already incorporated in the law.

HON MAJOR R J PELIZA:

First of all we may not necessarily agree with the law as it stands and this is an opportunity since we are amending it to talk on it generally. Secondly, by the mere fact that something else is going to happen it means that the inspector has got more excuses to go into a house. So I think in both cases my argument is valid. I think it is in the interest of the consumer to waste as little water as possible, particularly in view of the rising costs of fresh water. If it is properly introduced I think most consumers would follow the line and introduce the new fittings or whatever it may be, because I don't suppose we are going to go back now and tell every tenant in Gibraltar "You must change the fittings" I don't know.

HON ATTORNEY-GENERAL:

If the Honourable Member will give way. The new rule will not require the existing fittings to be changed but when new fittings are put in then they must be of a particular standard.

HON MAJOR R J PELIZA:

All the more reason I should say why there is very little need for the inspector to go in because obviously if it is a new building, and most of them are Government in any case, the new fittings will have been fitted. I would have thought that it would be unnecessary at this stage anyway unless it was proved in practice, and this I

think one could easily tell by reading the meters, unless it became absolutely necessary that we should have another inspector walking into the house, then I think this side of the House would support it. At this stage I think now that the Attorney-General has spoken about the intention behind this we are even more worried than ever of the extent that regulation can abuse the rights of the individual particularly in their homes, and particularly so because I think we might have been alerted by the Honourable and Gallant Colonel himself but I think he was giving the impression that there would be restrictions in the use of water as to whether it could be used for baths or how many baths an individual was going to have. Are we going to have an inspector knocking at the door when he hears the bath tap running? Or the man whistling in the bathroom about to have a shower and find out how many showers he has taken and how many gallons of water he has put in his bath.

HON A P MONTEGRIFFO:

Depending on who is in the bath.

HON MAJOR R J PELIZA:

Yes, I think I might become an inspector if that should be so. But I would say that we should have a much more explicit indication of the reasons for the amendment and the consequences that the amendment could bring. And, perhaps, when we do come to the next stage unless there is further explanations to be given to the House and the matter cleared up, perhaps, when we deal with the amendments one by one the matter could be clarified further and I think to the satisfaction of the Opposition.

MR SPEAKER:

I will call on the mover to reply.

HON LT COL J L HOARE:

Mr Speaker, that was an interesting session. I think it would have helped tremendously if people had had access to the actual Public Health Regulations at the time when they were saying these things because on this question of baths, if I may now quote from 98(2)-the Honourable and Learned the Attorney-General read 98(1). Now is 98(2) "domestic purposes" is defined and this is what this is doing. And at present it reads "A supply of potable water for domestic purposes shall not - this is why I call it negative - shall not include a supply of water for baths, horses, cattle or for washing carriages or for any trade or business whatsoever or for watering gardens or for fountains or for new ornamental purposes but that the Government may agree to supply the water for any such purposes". Now, we have made our present one much more up to date than that. We even allow you to take a bath nowadays. And there

is still the saving clause at the end that even despite all these things provided that the Government may agree to supply the water for any such purposes if there is a need in a special place for this then you can have it but it doesn't give the persons the absolute right of demanding enough water to have a huge ornamental pool.

HON M XIBERRAS:

Mr Speaker, if the Honourable Member will give way. We are grateful for his explanation and the explanation of the Honourable and Learned the Attorney-General. But is it not a fact that under even the amended Bill before the House it is possible for the Government at any particular stage or the Government would have the power at any particular stage to limit the supply of water to any house so that there would not be enough water to wash your car with or something of the kind. Is it not a fact?

MR SPEAKER:

No, we are not going to have a debate. That can be done at the Committee Stage when we get to the implication of the particular clause. We are talking now on the general principles.

HON LT COL J L HOARE:

This is why I quoted the present 98(2) to show how we are liberalising this. Now the other thing that a great play was made of was the question of brackish water. It is pure salt water it is water pumped from the sea. There is no such thing as brackish water from the well being pumped into what we used to call the sanitary-water system at all. What water we get from the potable water wells at North Front is used necessarily to break down part of the distilled water that comes from the distillers. If we were to put on supply pure distilled water nobody's entrails in Gibraltar would last more than a year. In the same way that you put water in your whisky so you put ~~part~~ salt water into distilled water. Inspectors already have the power of going into houses if they suspect that there is a wastage of water but once again I think the members on the opposite side have overlooked the fact that salt water does not go through meters and there can be just as much wastage in salt water as there is in potable water and it matters because it has to be pumped

at great cost and stored. I was asked for an assurance that the inspectors would not enter houses willy nilly. Of course they won't, they are the same inspectors who are doing the job now so why should they change overnight? It is a bit unfortunate that we weren't able to issue for technical reasons or some legal reasons I think the Water Rules which are based primarily on the UK Water Rules. Finally, Mr Speaker, I am so glad to get so many suggestions from the Honourable gentlemen on the other side and I look forward with joy to the Committee Stage and Third Reading when, perhaps, we shall have those in the form of some amendments.

Mr Speaker then put the question which was resolved in the affirmative and the Bill was read a second time.

HON LT COL J L HOARE:

Mr Speaker, Sir, I beg to give notice the Committee Stage and Third Reading of the Bill should be taken at a subsequent Meeting of the House.

MR SPEAKER:

Right. We shall now recess for 20 minutes.

THE HOUSE RECESSED AT 5.20 pm

THE HOUSE RESUMED AT 5.45 pm.

THE TRAFFIC (AMENDMENT) ORDINANCE, 1975

HON LT COL J L HOARE:

Mr Speaker, Sir, I have the honour to move that a Bill for an Ordinance to amend the Traffic Ordinance (Chapter 154) be read a first time.

Mr Speaker put the question which was resolved in the affirmative and the Bill was read a first time.

HON LT COL J L HOARE:

I have the honour to move that this Bill be now read a second time. Mr Speaker, this is a very small Bill consisting of two clauses in addition to the introductory clause. Clause 2 amends section 45 of the Traffic Ordinance and this permits the Governor to make regulations requiring the wearing of protective headgear by persons driving or riding motor-cycles. This has had a certain amount of publicity in the press. I think there has been only one person objecting and he doesn't object to wearing protective headgear but he hates being told to. In other words you can murder people but you mustn't tell them not to. The third clause is one which arises from a case in the Supreme Court last year and makes it perfectly clear that being in charge of a motor vehicle when under the influence of drink or drugs under section 35 is, in fact, an offence for which the penalty of disqualification may be imposed. Mr Speaker, I commend the Bill to the House.

MR SPEAKER:

Before I put the question to the House does any Honourable Member wish to speak on the general principles and merits of the Bill?

HON W M ISOLA:

Mr Speaker, the way the Minister for Municipal Services brought this Bill, I would have imagined that instead of talking about a small Bill, he would have given the reasons to us as to why he considers that people should be forced to wear helmets. Normally, no one can be in favour of something which imposes an obligation on somebody else without justification or cause. I know and we all know that crash helmets in England are obligatory. Fair enough. Why are crash helmets obligatory in Great Britain? They have highways and speed limits basically are about 70 miles an hour. In Gibraltar the maximum speed limit is 30 miles an hour and that is only in certain areas of Gibraltar. In other areas in Gibraltar the speed limit is 15 miles or 20 miles. It is very well for the Minister to say that he is introducing a very simple matter. But it is not a simple matter, Mr Speaker, because you are making a section of the community of Gibraltar do something which they particularly

may not want to do and no reasons for bringing this Ordinance has come about. If, for instance, the Minister were to have said that in the last four or five years four or five people in motor cycles had died as a result of not wearing crash helmets or had he made a case for wearing crash helmets then this Bill would have been a simple bill as he calls it. But to come along and to say that this is a small Bill and that they are making regulations to wear crash helmets, I would like an explanation on mopeds. I should imagine people having mopeds will also have to wear crash helmets. Mr Speaker, I would be far more interested if the Minister had taken a much more positive action and said he was bringing a Bill to increase the penalty for speeding in Gibraltar. Certain vehicles along Queensway and Devil's Tower Road go at an excess of the 30 miles and never do we see policemen stopping the excessive speed which is dangerous in Gibraltar. I understand that for once the Minister has deigned to consult the Traffic Commission and asked him for their recommendations. And they have said that as the Bill stands it is perfectly alright, and as the Bill stands it is perfectly alright. It does not necessarily mean that we on this side of the House are going to vote against it or in favour of it but I would like to hear reasons why the Minister considers that in Gibraltar it should be obligatory to wear a crash helmet because it is something which he is imposing on a minority of people in Gibraltar to my mind at least without any justification and I would very much like to hear the Minister give valid reasons. It is only during the last four or five years that the wearing of crash helmets was made obligatory in Great Britain and even now in Great Britain it is not even obligatory to wear seat belts in cars. It is only obligatory to supply seat belts when they sell a car. And here in Gibraltar with only 32 miles of roads with very, very few of these lorries dashing through highways, etc., with a certain amount of vehicles on the road, I cannot see any strong justification and this is why I am very interested to hear the Minister give his reasons. This is exactly the same, Mr Speaker, as when the Government brought in the question of parking tickets. There was no justification at all. And still, Mr Speaker, on the question of parking tickets you still see cars all along the Main Street area. I am talking about the justification of the matter and comparing it with other bills. In other words, Mr Speaker, when a Bill is brought to this House there must be compelling reasons to bring it not just to say that they are going to bring the Bill because they have it in Great Britain and they want to have it in Gibraltar. That is no justification in itself. And I would be interested to hear the Minister on this question of crash helmets. I appreciate this is the case in Great Britain where the speed limit is 70 miles per hour and in such circumstances there would be some justification. I have read in the press that the President, I think, of the Motor cycle Association objected strongly, or at least it was somebody who is very interested in motor cycling.

HON CHIEF MINISTER:

If the Honourable Member will give way. There were quite a number of letters in the press against that objection and supporting the measure.

HON W M ISOLA:

Mr Speaker, that is where he has got it wrong, with respect to the Chief Minister. If people who are motor cyclists wish to wear a helmet let them do so, fair enough, by all means let them do so but what I am saying is this. Is there any justification in Gibraltar with our present speed limits, to oblige a minority to do something which is not really necessary. Unless, of course - and that is what we are here for - unless, Mr. Speaker, we hear reasons why it is necessary that they should wear crash helmets.

HON H J ZAMMITT:

Mr Speaker, I hope that the reasons I can contribute to this debate will convince the Honourable Mr William Isola, that they are more than justified. But briefly, Sir, may I just put him right about what he has said. I agree entirely that in UK the wearing of crash helmets is compulsory possibly because they have highways which we haven't got here but I would like to clarify for the Honourable Member that even mopeds in England are compelled to wear crash helmets and mopeds are not allowed on the motorways. So it shows that it is not a question of speed. It is purely a question of the enormous amount of accidents that occur in UK of slipping over, falling and hitting your head and therefore death ensues. Now, Mr Speaker, when it comes as far as Gibraltar I would like to remind the Honourable Member and indeed Honourable Members that we unfortunately suffered a case at Devil's Tower Road only a few months ago, in fact, I think it was just before Christmas, where a young man lost his life and it was established that there was not a case of speeding. In fact this unfortunate young man always wore a crash helmet and on that particular night he was not wearing a crash helmet and the poor lad lost his life. May I emphasise again that it was established that there was no speeding involved. It was one of those things that occur with motor cycles and those of us that have experience of motor cycling know what I mean that is that the simplest of accidents can occur and a life can be lost. The other thing I would like to say, Sir, is that I cannot agree with the Honourable Mr William Isola that we should allow people to do as they please. For that matter we should allow a minority that want to bathe naked. I think that the reason that I have given about the unfortunate death that we experienced a few months ago plus the important factor - and I am sure Mr William Isola will also know this - is the enormous influx of motor cycles in the last few years in Gibraltar. There has been a craze about the buying of motor cycles; there are a lot of youths riding around, there may be certain discomforts to them but we consider this to be of the utmost importance and we feel that the wearing of crash helmets can save a life and I think the Bill and the motive behind it is more than justified.

HON MAJOR R J PELIZA:

Mr Speaker, I think the previous speaker misunderstood my honourable friend Mr Isola. At no time did he say that he was against any law compelling people to wear crash helmets. I think what he was saying is that these things cannot be taken lightly as they interfere with the rights of the individual, I am afraid the Government in practically every occasion that comes into this House; certainly that I usually stand up and talk against, they seem to dismiss this

quite lightly without giving any compelling reasons. Now, the Honourable Minister for Information has been much more convincing than the Honourable and Gallant Colonel Hoare because at least he has attempted to show the reasons. He has quoted at least one case where there was a fatal accident. We do not have the statistics, we do not really know what is happening, but we do expect that when the Government introduces a Bill that does interfere with the rights of the individual, that they do make a very strong case before they ask us to vote in favour. And this I think is what my Honourable friend Mr William Isola was saying. I do hope that in future the Government every time they bring a Bill which interferes with the rights of the individual will do that, will produce a strong case to convince us that this is absolutely necessary and then I think they will have our support. I think I should put just one point right for the Minister for Information. It is not only in motorways that speed in England can be exceeded over 30 miles an hour. There are many places where it is 40 miles an hour and places where you go up to 60 miles an hour and before even 70 miles an hour which is equivalent to a motorway. So I think my Honourable friend is absolutely right that the speed limits in England and the speed limits here are completely different and not only is the speed limit allowed but the nature of the traffic in Gibraltar is very different to England where speed is natural just to keep with the flow of the traffic whilst here anyone who increases speed is not keeping with the flow of the traffic. In fact he is accelerating the traffic and causing danger to pedestrians and users of the road. So I think my honourable friend was absolutely right and whilst I think we will support the measure I still believe that the Honourable and Gallant Colonel Hoare should have been more conscious of the rights of the individual before dismissing the whole matter and saying that everybody in Gibraltar who rides a motor cycle in future will have to wear a crash helmet. God knows what he or any member of the Government may think in future to do. And I think it is absolutely correct that this side of the House should stand up for the rights of the individual every time the Government acts in such an off hand manner about the rights of the individual.

HON ATTORNEY-GENERAL:

Mr Speaker, the first point which I would like to make is that the provision for making rules does not automatically cover all motor cycles but enables classes of motor cycles to be specified. It does not follow necessarily from the Bill, of course, that mopeds will be covered. That is just one point of law. On the general merits I think it can be proved from the figures that if you are riding a motor cycle with an unprotected head you are equally capable of damaging your skull if you crash even at 15 miles an hour as if you crash at a greater speed. There is also no doubt that people in Gibraltar do exceed the speed limit very much. Now, the police are not to be blamed for this. If they are present then they stop the offenders. All of us must be aware there are many occasions when they have seen motor cyclists speeding and, therefore, the fact there is a speed limit is, in my opinion, immaterial. There is one other point which has not been mentioned in this House and as far as I am aware it was not mentioned in the press when this matter was discussed. The argument, as I recall it,

put forward by the gentleman who said; "I encourage people to wear crash helmets but don't make it compulsory". His argument was that if a chap wants to kill himself, well, let him jolly well do so. Well, that is an argument but the case with which Government is concerned is not whether the person necessarily kills himself but where because he is not wearing a crash helmet he badly injures himself. He is then, Gentleman, an unnecessary drain upon our hospital services. He has to be admitted to hospital, he has to be tended. He may be there for weeks, months, taking up entirely unnecessary beds and keeping out other more deserving individuals. I think that is a valid point and certainly one which was considered by Government when this legislation was being drafted.

HON M K FEATHERSTONE:

Sir, I would not like the House to think that there is any desire on this side of the House to restrict the freedom of the individual as the Honourable and Gallant Major Peliza seems to think. But of course, Sir, Government - and I am sure the Opposition when they were in Government - thought exactly the same - has sometimes to protect the individual against himself otherwise we would say why have any legislation against dangerous drugs? If somebody wants to take hashish let them take it, why bother at all, why make any restrictions? Why in England did they make a rule that you have to wear a safety belt in a car? These things are protecting a person for his better interest and I just did a little mathematics, Sir. A person of 160 lbs flying off a motor cycle at 30 miles an hour hits the ground with a force equivalent to ten tons. Are we going to let a 10 ton weight drop on anybody and say; "Oh, not to worry."

MR SPEAKER:

For one terrible moment I thought the Honourable Minister was saying that the gentleman was going to crack the road.

HON P J ISOLA:

If he hits with the force of 10 tons is the helmet going to help?

HON M K FEATHERSTONE:

Yes, I fell over once and I put my arm out and the damage I did to my arm the doctor estimated that the arm took a stress of 6 tons.

HON M XIBERRAS:

Mr. Speaker, there seems to be a curious inconsistency - not that inconsistencies are not interesting - in the views of the Government.

I think it is a point which still bears analysis whatever the attitude of the Opposition is going to be to this Bill. First of all, I entirely concur with my honourable and gallant friend that the way the Honourable and Gallant Colonel Hoare has presented this Bill to the House is very off-handed and very casual. And I welcome, therefore, the contributions made by other Honourable Members on the other side. Now, the first point is the question of rules whereby the Government can apply the powers which this Bill seeks to one kind of motor cycle or another. We would be grateful, of course, for an indication of what motor cycles the Government thinks this legislation would be applied to or should be applied to if it gets through the House or when it gets through the House. I think this is valuable information because in Gibraltar, especially with the fuel situation, there might be a good number of people riding on small mopeds who would look rather ridiculous to my mind with a crash helmet. I think you might dissuade people from taking on these little bikes which otherwise would be very useful from the point of view of fuel economy and so forth. Secondly, Mr Speaker, I would have liked to have seen a more positive reference to the Transport Commission and I would have liked to have seen - with due respect to that august body - some arguments by the Transport Commission as to why it is necessary. Not because someone gets into his head with or without a crash helmet that this is a good idea must Honourable Members of this House allow the Honourable Minister to become a channel of communication of the Transport Commission - which doesn't always work by the way - and bring this to the House and glibly say that there is only one person in Gibraltar who objects to the introduction of legislation on crash helmets. This is not the case. My information is that the people concerned do not welcome the idea and we must remember that this is not protection of other people that we are seeking or that the Bill seeks to provide. It is protection of the person on the motor cycle. I would imagine the injury to a by-stander would be greater if he were hit by a crash helmet than if he were hit by a head. So, Mr Speaker, we are trying to save motor cycle riders from themselves. We are not trying to protect innocent members of the public. If we, however, take the analogy a bit further as the Honourable and Learned the Attorney-General attempted to do and say; - and it might be a bit grotesque to say so - that it is not so much the chap that gets killed that is of concern to the Government, and I shall add, in the financial sense, but the man who is maimed. Well, indeed if that broad social consideration is going to apply then why doesn't the Minister for Medical and Health Services ban advertising of cigarettes on television? And if we are going to place restrictions on one section of the community on the grounds of the financial interest of the rest of the population as reflected in the Government's thinking then, surely we should apply this criterion to other sections of the community with some degree of consistency. This is not being done by this Government. Mr Speaker, finally, if we accept the degree of protection from themselves which this Bill seeks to provide in respect of motor cyclists, are we not equally to apply these very considerations including the Hon Mr Featherstone's computation, to drivers of cars, of

motor vehicles of that kind. Because, equally, if you have an accident and you hit a brick wall at 30 miles an hour the injury when you are not wearing a safety belt are much greater than when you are wearing a safety belt and our friends across the way already have introduced legislation in this respect. So, our concern in discussing this Bill is not merely the off-handed way in which it was originally moved, not merely whether it is fair on a particular section of the community, but also the degree, the wider extension which this criterion if approved by this House might be put in the future. The argument on this Bill is reminiscent of the argument on parking tickets if I may say so, in some respects. There is the comparison between the situation here and the situation in the United Kingdom, in that respect. And we have heard arguments from the Honourable Minister for Information for introducing the crash helmet compulsorily here. But have the Honourable Members opposite realised that once you do it for motor cycles then we shall be extending this to other things. There are people here who come from England and immediately they buckle on their safety belts. The degree of protection which the driver of a car requires is in my experience equal to that of a motor cyclist. I think there are more accidents involving cars in Gibraltar than accidents on motor cycles. There are more cars and there are more people at risk. Well, I don't know what the statistics are but at least it is a consideration for all Honourable Members in this House to bear in mind. Can we in equity apply this restriction of the freedom of the individual as regards motor cyclists while not applying the same restriction in respect of safety belts?

HON A P MONTEGRIFFO:

I think in answering a question this morning I said that in everything in life we must strike a happy balance and have the right sense of perspective. The analogy the Honourable Member has put forward is valid from an academical point of view for scoring debating points but, really, we can go back to "no parking" notices. When we introduced "no parking" notices we were aware we were restricting the freedom of the individual because I think that in certain circumstances the rights of the community overrides the rights of any particular individual in many respects but again this is not an absolute doctrine I am preaching. One must always try to reach a proper balance. As regards cigarettes of course it would be possible to pass legislation to ban cigarettes. But I am not a hypocrite. Either I stop cigarettes altogether or else why go through the hypocritical process of banning it on television and not on newspapers etc, etc. The number of people that may not die as a result of not smoking will on the other hand bring less money that would save a lot of people who would otherwise not be cured because of lack of finance. It is very true, this is not in text books but in different theses that have been developed by different people. One must always strike a happy balance in everything and I think that as far as we are concerned in the hospital I can assure the Honourable Member that though we have got more car accidents than we have motorcycle accidents, nevertheless, I think all members of the House are aware that motor cycle accidents

are much nastier than car accidents and can result in more fatal results than car accidents do. I don't think we are either depriving anybody from their freedom in fact, we may be in a way preventing them from crashing their brains against the wall unnecessarily.

HON A J CANEPA:

Mr Speaker, I support this Bill for a very simple reason, and that is that I value the sanctity of life very, very highly indeed, and I am fully conscious of the fact that in our situation in Gibraltar where recreation and amusement is at a premium, it is natural for young people who are purchasing these very beautiful and very powerful machines to feel that they want to put them to the test fully ~~and one can understand~~ - after all one has been 18 or 19 years old - and one can understand that at that age young people are not as conscious of the dangers involved, primarily to themselves, ^{and} to the community as well ~~but to themselves as well~~. I sincerely feel, though I am fully conscious of the inconvenience that the compulsory wearing of crash helmets can be to individuals - and I will say something about this in a moment - ~~I am nevertheless conscious of the fact that that~~ inconvenience is worthwhile if it will save a single life, ^{and} apart from the recent accident. I am aware of other fatal accidents in Gibraltar involving motor cyclists. I know that it will be inconvenient. I can think of young people during the summer months going to the beach on a motor cycle and having to take not one but two crash helmets, possibly for the pillion rider, and those crash helmets are going to have to be carried on to the beach and put aside, together with their clothes. That can be inconvenient for them. I am aware of the fact that a young couple might go to the cinema in the evening and they will have to take crash helmets along with them and it is inconvenient to be sitting there with these crash helmets for very many reasons. But, nevertheless, conscious as I am of these inconveniences, I think it is worthwhile that we should introduce such legislation to protect life. And, finally, Mr Speaker, it is over three years now since I last had to check calculations involving kinetic energy but the Honourable Mr Featherstone did make a mistake. I checked the computation and it isn't 10 tons, it is just over 1 ton.

HON CHIEF MINISTER:

I would just like to say one word, Mr Speaker, and that is that the draft Bill was published on the 7th of March - two months ago - and I received one letter from the one and only Mr Thorpe and I replied to him duly and gave him the answer. He didn't come back on it at all. There was this very unfortunate accident which no doubt brought the whole matter into the picture particularly because he was using the crash helmet and particularly because that evening he thought he wouldn't use it and that evening he met his death. Of course this is a consideration but that consideration can apply to anybody today, tomorrow and the day after and for this reason the inconvenience ^{was} caused is outweighed by the safety that in the circumstances ^{was} so ably explained by the Minister for Labour. Anybody

who lives in Europa Road can give testimony to the speed at which these young people go with their motor cycles irrespective of whatever traffic is coming down or going up.

HON P J ISOLA:

There is a very popular misconception about motor cycles that because they make a noise they give an impression of speed. People talk of fatal accidents in motor cycles and everybody has referred to one fatal accident. I can certainly say that there have been three fatal accidents involving motor cars since 1973 and all three in Devil's Tower Road. I think when death occurs it doesn't really matter who gets it. There have been four accidents in Devil's Tower Road, one serious injury almost killing the occupants of two cars. And one killing the driver of the car. So the record for motor cars is, in fact, far worse than that of motor cycles and I defy anybody to produce facts to the contrary. I can think personally of four accidents involving cars since 1973, one in Devil's Tower Road where a young man near Catalan Bay met his death at the wheel of the car, another one further down where two cars went into collision, a taxi and a motor car, and a young man had to be flown to England especially and nearly died, fortunately he didn't. The third one involving a teacher in a motor car accident in 1974 and another one very recently unfortunately. The rate of accidents in motor cars is far higher, Mr Speaker, than motor cycles. There has been one unfortunate death, yes, this is true. As for motor cycle speeding we all know - at least I certainly know - what a very close watch the police do keep on motor cyclists, precisely because of the impression of speeding that noise gives. I would like to ask the Honourable and Gallant Colonel Hoare whether this crash helmet application includes Vespas and smaller mopeds which are being used by young ladies or older women taking their shopping to the market and so on. Are they going to have to wear a crash helmet as well? Are they in mortal danger? If that is the case even if the Government cannot agree with not having any crash helmets I hope they will agree to making an amendment that doesn't make the wearing of crash helmets compulsory on Vespas or small mopeds.

HON CHIEF MINISTER:

If the Hon Member will give way. The Attorney-General has explained that this is only enabling regulations to be made and the regulations will specify the particular kind of vehicles that will be involved.

HON P J ISOLA:

We want an assurance on this, Mr Speaker, because I looked at this Bill when it first came out and I have looked at the regulations and my memory on this - I may be wrong - is that as far as Gibraltar law is concerned - in England it may be different I may be wrong - the motor cycle and the Vespa and so forth are all treated exactly the same. In other words once you get a licence to drive a Vespa you can, in fact, drive a motor cycle as well and everything else.

One thing I would like an assurance on if we cannot get assurances on other things is that people on Vespas and mopeds will not be required to wear these crash helmets because I believe most of these motor bicycles only have a maximum speed of about 30 miles an hour. So I hope they will be specifically exempted in the legislation.

HON ATTORNEY-GENERAL:

I would like to say just one word before the Hon Minister winds up. I would like to congratulate this House in that nobody has called Crash helmets by that horrible name 'skid lids'.

MR SPEAKER:

I will call now on the Honourable mover to reply.

HON LT COL J L HOARE:

Mr Speaker, I am rather elated that a small subject like this should have evoked so much response and so much interest on the other side. I apologise to the House if I appeared to treat this with some nonchalance. This certainly wasn't the intention. To me it was so evident that I didn't expect to have to explain why it is necessary to have crash helmets in Gibraltar or anywhere else in the world. And may I say that all this legislation stems from an article in a paper very closely allied to the gentlemen on the other side, of the 11th of January. That was where the suggestion was first made. We thought it was jolly good and we followed it up. It was so self-evident to me that I thought as the recommendation had come from this paper which has the ear if not the voice of the gentlemen on the other side. But let me go a little bit further into this analogy to UK that they travel at 70 miles an hour. The regulation applies to anybody driving a motor cycle anywhere in the United Kingdom whether they are in the 30 mile restricted area or elsewhere. They don't have to be ^{only} on the motor way to have a crash helmet. As has already been explained it isn't the speed at which one travels which is relevant, the great difference between a motor cycle and a car - and here I will take issue with the Honourable and Learned Mr Isola - the car itself on the roads of Gibraltar is a method of protection. The trouble with the motor cycles is that you are thrown over the top and your only protection is your crash helmet. This is why it is necessary. I think the Honourable and Gallant Major Peliza who was not in Gibraltar at the time of the fatal accident cannot be very aware of the tremendous increase in motor cycles in the last six months. In fact, if he had been here he would have read in various papers that the police were very worried at the incidence of motor cyclists riding 6, 7, 8, abreast along Devil's Tower Road and along the Reclamation Road. Youth sees no danger in anything and therefore this is why they have to be protected against themselves and a crash helmet is necessary to protect them. Mention was made also of the greater number of motor car accidents. This to me isn't a matter for

it had
then
appeal

comment at all. The number of motor cars compared to the number of motor bikes on our roads makes this a ludicrous suggestion. There was the case of the person who went over the top of Apes Den in his car and he was killed, but in all the other cases the accidents have been mostly to pedestrians or to other car users.

MR SPEAKER:

Let us come down to crash helmets and motor cycles.

HON LT COL J L HOARE

Therefore, I have heard nothing from the other side and I hope they agree in principle because it is for the benefit of the individual. I will use my powers of persuasion, little as they are, when we make the regulations to exclude those motor cycles which travel at less than 10 or 5 miles an hour. This will include Vespas. No Vespa and no Moped can go at more than 5 or 10 miles an hour even in Gibraltar especially when they are going uphill.

HON M XIBERRAS

I didn't understand what he meant about using his powers of persuasion when the rule making comes. Does he have any idea whether this Bill is going to be used to apply to Mopeds and Vespas and if he doesn't it is a shame and if he does he should inform the House.

HON LT COL J L HOARE

This Bill at the moment merely allows regulations to be made, and it specifically provides: "requiring, subject to such exceptions, if any, as may be specified in the Regulations, persons driving or riding (otherwise than in side-cars) or motor cycles". It is our intention to exclude them from Vespas and from Mopeds.

HON M XIBERRAS:

Well, this is what we wanted to know.

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

GOVERNMENT:

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

The following Hon Members abstained:

OPPOSITION:

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 Bill was read a second time.

The Hon the Minister for Public Works and Municipal Services gave notice that the Committee Stage and Third Reading of the Bill should be taken at a subsequent meeting of the House.

The Prison (Amendment) Ordinance, 1975

HON ATTORNEY-GENERAL:

Mr Speaker, Sir, I have the honour to move that a Bill for an Ordinance to amend the Prison Ordinance by allowing the Governor to release persons on licence be read a first time.

Mr Speaker put the question which was resolved in the affirmative and the Bill was read a first time.

HON ATTORNEY-GENERAL:

Mr Speaker, Sir, I have the honour to move that this Bill be now read a second time. Once a prisoner is incarcerated in the Prison, he cannot be removed until he has served his sentence, including any remission, except in circumstances laid down in section 57 of the Ordinance. As the Section stands at the moment he may be removed in pursuance of an Order of Court in the case of fire or other urgent necessity, for the purpose of work or recreation, and to remove him to hospital for purposes of examination or treatment. There is also a proviso that the Governor may order the removal of a prisoner to some other place of confinement if it is necessary to do so to enable the Prison to be repaired or altered, if a contagious disease breaks out, to attend Court as a witness or for trial and there is also a provision that a prisoner removed under these circumstances is deemed notwithstanding his removal to be confined within the Prison. Now, there is nothing at the moment which allows a prisoner to be temporarily released on what may be called humane grounds. Perhaps, a close relative is dying or has died, a mother, a wife, a child. There is nothing to let the prisoner go out to visit them in their last hours or to attend their funeral. ~~It is considered that such a provision should be included in the Ordinance, that there should be a power vested in the Governor to allow release not for a specific purpose but just to allow release.~~ Basically, he does so on the recommendation of the Prison Board, but there is a provision in the new clause which we are now incorporating in the Ordinance that in cases of emergency he can do so without the recommendation of the Board. Let us suppose late at night a member of his family is taken ill, it is quite impossible to convene the Board in time to make a recommendation to the Governor, the Superintendent of the Prison can then get in touch with the Governor and say: "Prisoner X's wife is dying, may he be released?" And in those circumstances the release can be without the recommendation of the Board. In fact the amendment as it has been drafted goes further than that, ~~ⓧ~~ expect most Members will know that in the United Kingdom there is a system of parole. Under this a prisoner serving a sentence of over a particular length of time may be released on the recommendation of the Board and he is still deemed to be a prisoner and can be recalled if he misbehaves himself; but the purpose is that he can be, you might put it, rehabilitated, he can learn to live with society again, particularly in the case of long term

⊗ ~~After the words "further than that" add the following sentence~~ "It is considered that a further provision should be included in the Ordinance vesting a power in the Governor to release persons not only for a specific purpose but merely to allow release".

prisoners which very fortunately we don't have in Gibraltar but persons serving sentences of perhaps 20 years or even 10 years, it is only right that in those circumstances there should be the power to enable them to be released on licence so that they can gradually rehabilitate themselves and, put it this way, catch up with the world again. That, again, will be able to be done if this Honourable House passes this amendment. It is, I think, an amendment which if it had been thought of when necessity has arisen could well have been incorporated in our law sometime ago. It is a humane it is a sensible solution and I would ask all Members of this Honourable House to support the Bill.

MR SPEAKER:

Well, before I put this question to the House does any Honourable Member wish to speak on the general principles and merits of the Bill?

HON A J CANEPA:

Sir, when I came into office as Minister of Labour and Social Security, one of the responsibilities which I wasn't aware of, which fell under my ministry was responsibility for the Prison, not the security aspects, of course, but other aspects of the Prison. ~~And The Vice~~ Chairman of the Prison Board and members of the Prison Board who called to see me shortly after I took office appraised me of their desire, their wish, to have a system of parole adopted in Gibraltar. The Honourable Leader of the Opposition, who in his time as Minister of Labour was also Chairman of the Prison Board is, I am sure, aware of the deliberations and the consideration which in his time the Prison Board gave to the matter. ~~and At~~ the time and even until fairly recently, Mr Speaker, one of the difficulties which the Board was encountering was that in the United Kingdom the system of parole because of the fact that there are longterm prisoners as the Honourable Attorney-General has said, ~~because of that, the system of parole~~ is a rather more sophisticated one, is a rather more complex one, and there was, therefore, the difficulty in applying legislation of a somewhat complex nature, possibly difficult to administer, to a situation in Gibraltar where the matter is a very much more straightforward one and where, by and large, prisoners hardly ever serve sentences beyond 2 to 2½ years. ~~and, therefore,~~ Sir, recently we were able to arrive at what I think is a very original way of getting around the problem posed by the UK legislation and meeting the realities of the situation in Gibraltar. The Prison Board under the amendment which is before the House now will also become for all intents and purposes a parole Board and it could well be that for reasons other than the purely humane reasons which the Attorney-General has referred to ~~of~~ the death or serious illness of a relative, for other reasons where a prisoner is under sentence for the rather longer period that we sometimes come across in Gibraltar 2½ or 3 years, ~~that prisoner can,~~ on evidence of good behaviour and so forth, be recommended by the Prison Board in its

that prisoner can

capacity as a parole Board ^{for} ~~to be~~ released on parole in order to facilitate his rehabilitation in the community of which he is to become a law abiding citizen and a useful member after serving ^{his sentence} ~~his period of punishment~~. I know that the Bill has the full support of the Prison Board and I, therefore, can commend it wholeheartedly to the House.

MR SPEAKER:

May I, this not being a controversial subject and for my own elucidation have explained the difference between section 57 which says: "a person confined in prison" - I am specifically referring to the humanitarian grounds for the purposes of this new Bill - a person confined in prison could mean precisely the type of people that I have in mind, encompasses everyone in prison, not necessarily a person serving a sentence. This one is right in that a person on remand can be released on humanitarian grounds, but the new Bill which reads: "a person serving a prison sentence", will not give the Governor the right to release a person on humanitarian grounds if he is there on remand and not serving a sentence. I am saying this not to interfere with the debate but to see whether there is a difference.

HON ATTORNEY-GENERAL:

I think the reason for the particular wording of this section, of course, is that a person on remand could always be released on bail. The application could be made to the Court.

MR SPEAKER:

Just the same as a person serving a prison sentence can be released in consultation with the Prison Board. We are talking about doing it quickly in case of emergency.

HON ATTORNEY-GENERAL:

In case of emergency there could be an urgent application for bail.,

MR SPEAKER:

Having interrupted the debate may I now ask whether there are any other Honourable Members who wish to speak?

HON M XIBERRAS:

In broad terms of course we support this Bill. As the Honourable the Minister responsible for the Prison has said this was something that was mooted in my time by the Prison Board and I think the House should pay tribute to its initiative which even though it might be invidious to single out one person I think deserves to be singled out and that is Mr Polly Abrines who started this and whose letters and suggestions I had in my possession and still have, when that unfortunate event of the election overtook the people of Gibraltar. I am delighted that his idea has come to fruition and I am sure that the feelings that moved Mr Abrines, the Minister and the Board are worthy of praise. However I would like to give further consideration to a number of minor factors for instance, the possible clash in responsibilities between the Prison Board being the Parole Board at the same time. I don't know quite whether there is a conflict there or not. It is certainly a novel idea but I'd like to give further consideration to that. But I think that even if certain safeguards have to go nonetheless the general spirit of the legislation is so welcome that that should not be an impediment to its being passed. A number of changes have taken place in the Prison and I think that the modernisation of, if we can call it the penal system in Gibraltar with only one prison, is a very important factor because the way we treat our prisoners reflects upon society just as much as anything else and, therefore, they should be able to go out and work, for instance, rather than be locked up in the summer when in other parts of the world, in England, there are prisons without walls and there are other innovations taking place, I think is a bit hard and we should try to take care against being too provincial here in Gibraltar. Mr Speaker, having said that I was rather curious to know what the reference the Honourable and Learned the Attorney-General made to the power which would be given to the Governor to remove a prisoner to another place, what that implied, the full implication of that statement. But, perhaps, the Honourable and Learned the Attorney-General could enlighten me and the House as to how far that statement would apply. Does it mean that under this legislation they can be removed to the United Kingdom or things of the sort. I am glad that this Bill will bring powers for people to be released for a time to attend the funeral of the family and so on. I remember one particular case which caused a tremendous amount of paperwork, a tremendous amount of comings and goings because a prisoner was ill and I had at the time to fight tooth and nail the Attorney-General of the time, good man as he was, and the Director of Medical and Health Services, simply to get this man to go to the United Kingdom for a while and to be examined, but we knew that the difficulty in breathing he was suffering from was nothing. It turned out luckily that the whole thing apparently was of no medical significance, but I am sure that the Honourable and Learned the Attorney-General who is very concerned about the expense that is incurred by the Government in these cases, will know that the valuable time of some very high officials was taken for about a good 10 days as this matter was dealt with at the greatest speed, I think this is right and proper. So, subject to two qualifications that I have mentioned, one, the functions

of the Prison Board as a Parole Board and, secondly, the powers of the Governor to remove persons or the indication the Governor might have power to remove persons under this Ordinance to another place which presumably might be outside Gibraltar, we think this is a good Bill and one which is worthy of our support and the support of the House.

MR SPEAKER:

I will call on the mover to reply.

HON ATTORNEY-GENERAL:

Mr Speaker, Sir, on the first point. This Bill does not give the Governor power to order the removal of a prisoner to any particular place. It enables him to allow a prisoner to be released. If I might, perhaps, read the existing provision. The Section starts off saying: "Every prisoner ~~should~~ be confined, ~~should~~ not be let out except cases A, B, C, D, provided that the Governor may order the removal of a prisoner to such other place of confinement as may be specified in the order for the purpose of enabling the prison to be altered, enlarged repaired or rebuilt, or in the case of a contagious or infectious disease breaking out in the Prison, for the prisoner to appear before the Court for examination trial as a witness or for any other reasonable cause and may at any time order that any such prisoner be returned to the Prison." It goes on; "a prisoner who has been removed from the Prison in pursuance to the provisions of this section shall notwithstanding such removal be deemed for the purposes of this Ordinance to be confined within the Prison", Now, other place of confinement. I do not think this would enable a prisoner to be removed out of the jurisdiction of Gibraltar. But let us suppose disease broke out in the Prison, then it would be perfectly in order for the non-infected prisoners to be removed by order of the Governor, taken to some other place for their own safety, their own health. Equally if for some reason it was necessary to rebuild part of the Prison, or provide better amenities, then whilst this was being done once again prisoners could be removed. They are still, of course, treated as prisoners and being confined during that time but this does not allow them to be transported, to be chained in the hulks or any such practice which might have existed in the 19th century. But this is purely for convenience when for some reason it is necessary to evacuate the Prison. Those are the only circumstances in which they can be removed to another place of confinement. Certainly, consideration can be given as to whether the Prison Board is the most suitable body to consider where a prisoner is to be released on licence other than for humane reasons, but the Prison Board is widely based, it is not a body with which I have heard any complaint and it seems to the Government that this would be the appropriate body to advise the Governor on these occasions.

Mr Speaker then put the question which was resolved in the affirmative and the Bill was read a second time.

HON ATTORNEY-GENERAL:

Mr Speaker, Sir, I beg to give notice that the Committee Stage and Third Reading of this Bill should be taken at a subsequent meeting of this Honourable House.

The Public Service Commission (Amendment) Ordinance, 1975.

HON ATTORNEY-GENERAL:

Mr Speaker, Sir, I have the honour to move that a Bill for an Ordinance to amend the Public Service Commission Ordinance (Cap 132) be read a first time.

Mr Speaker put the question which was resolved in the affirmative and the Bill was read a first time.

HON ATTORNEY-GENERAL:

Mr Speaker, Sir, I have the honour to move that this Bill be now read a second time. As the explanatory memorandum to the Bill says, there are certain sections of the Public Service Commission Ordinance which came into force on the 1st January, 1967, which conflict with the provisions of the present Constitution relating to the appointment tenure of office and other matters affecting the powers of the Public Service Commission. There is no doubt that where there is a conflict between the Constitution and an Ordinance it is the provisions of the Constitution which prevail, but, as I am sure members will agree, it is unsatisfactory to have conflicting provisions and therefore the present Bill is aimed at removing the provisions of the Public Service Commission Ordinance which conflict with the Constitution. I would like to stress that the Bill does nothing to remove, alter or fetter any of the powers of the Public Service Commission. Mr Speaker, Sir, I commend the Bill to this Honourable House.

MR SPEAKER:

Before I put the question to the House does any Honourable Member wish to speak on the general principles and merits of the Bill?

HON J BOSSANO:

Mr Speaker, the Ordinance that seeks to amend the Public Service Commission may not as the Honourable and Learned Attorney-General says do anything to limit what the Public Service Commission can do, but it appears to do a great deal to widen what the Commission can do and in quite an unnecessary manner. First of all, Mr Speaker, I would like to point out that certainly on my reading of the Public

Service Commission Ordinance, there is no conflict between any of the clauses there and what the Constitution has to say because under Clause 21 there is a saving provision that says: "Nothing in this Ordinance shall derogate from any provision of the Gibraltar Constitution Order, 1969." Therefore it would appear that if there is a clause in the Ordinance which in its operation would seem to be in conflict with the Constitution, then the provisions of the Constitution are paramount and, therefore, the conflict is resolved automatically without doing anything to change the Ordinance. This is already provided for. If this is indeed the case, the explanatory memorandum is inaccurate because it suggests that there is a need to remove the conflict when that need has already been provided for under section 21 of the Public Service Commission Ordinance. Secondly, Mr Speaker, the new provisions in the amendment Ordinance define what is a public office and this is, of course, a very sensitive matter. It is a matter which the House has discussed on several occasions in the past and it is a matter about which the Attorney-General has got certain ideas as to what constitutes a public office and what does not constitute a public office. Now, in the Public Service Commission Ordinance there is a definition of a public office which is being removed by the proposed amendment and that definition says that a public officer means any person holding a public office. And it says that Public Service means service in a civil capacity under the Government and it says that public office means paid office in a civil capacity under the Government with the exclusion of membership of the Commission a part-time office or an office the emoluments of which are payable at an hourly or daily rate. That definition is, in fact, the definition that I would say, Mr Speaker, 99% of our population understand by the public service and the civil service. Most people think of white collar workers in the employment of the Government of Gibraltar as the public service. In the Constitution, the definition that is given of public office is "an office of emolument under the Crown" and this is the definition that the Attorney-General wishes to introduce into the Public Service Commission Ordinance. I would say, Mr Speaker, that it is in nobody's interest that that should be done. It would appear to me that if the interpretation that the Attorney-General has put on the definition in the Constitution is correct, and that the interpretation that he has put is that public office as defined in the Constitution covers the entire public sector, including all industrials and all non-industrials in both MOD, DOE and in the Gibraltar Government. If that interpretation is correct - I myself have always had grave doubts about the correctness of that interpretation - but if that is correct, by transplanting that definition to the Public Service Commission Ordinance we are now making the Public Service Commission responsible for the appointment, promotions, dismissals and disciplinary action of the whole public sector and I can assure the Attorney-General if he does that he shall be facing the Public Service Commission or the Governor with all the appeals that I know go on in the whole public sector every time there is disciplinary action. Because if the authority that is responsible for disciplinary procedures for the whole public sector is going to be the Governor and the Public Service Commission then,

certainly, as far as I am concerned that is where I shall be taking any appeals that I am involved with outside the House. It may well be that the drafting of the Constitution has produced a situation which was not intended but I cannot accept, Mr Speaker, that one should compound what has been badly drafted in the Constitution by transplanting it to the Public Service Commission Ordinance where the drafting is obviously better, where in the law we say what everybody obviously understands by the Public Service and what everybody expects to be the public service, and I would honestly appeal to the Honourable and Learned Attorney-General to give serious consideration as to whether he should go ahead with the proposed amendment because I can assure him that there are a great many ramifications involved in controlling the rights of public servants and I would mention, for example, a clause in the Public Service Commission Ordinance which this amending Ordinance does not seek to amend and which it is high time it was amended. This is the same section 21 where a reference is made to instructions given by the Governor and in particular to instructions contained in Regulations under Chapter 2 of Part I of Colonial Regulations. Now, if, as a result of this amendment we find the whole Public Sector being made subject to the provisions of the Public Service Commission Ordinance and being made subject to Colonial Regulations, then, I can assure the Honourable and Learned Attorney-General that he is going to increase five fold the problem that he faced in the last industrial dispute when somebody had the bright idea of throwing the Colonial Regulations at Trade Unionists who were exercising their right to take industrial action. This is in effect what he will do if he provides the wide definition of Public Service inside the Public Service Commission Ordinance that is contained in the Constitution. Now, I have no doubt at all in my mind, Mr Speaker, that regardless of what the actual wording of the Constitution may say, the intention was never to make the whole of the industrial and non-industrial public sector in Gibraltar the public service. And I have no doubt of that because, in fact, in the Gibraltar Constitution Order in the despatch that is attached to it and signed by Michael Stewart, we have, in fact, a reference to the Public Service and in section 6 there it says: "There will be a single Public Service in Gibraltar". It is quite obvious that if the Public Service was intended to cover DOE and MOD then Mr Stewart was talking through the back of his head because we don't have a single Public Service in Gibraltar, we have three Public Services in Gibraltar because the MOD has got its own structure, the Gibraltar Government has got its own structure, and the DOE has got its own structure. So it is quite clear that the provisions of the Constitution and the references in the Constitution to the public service were intended to refer to the public service of the Government of Gibraltar and the City Council but not to any employment under the Crown. It may well be that the person who drafted this did not realise that employment under the Crown in Gibraltar covered a much wider ambit than the public service as it would do in the United Kingdom where the public service is a public service because obviously there is only one Government. But here in Gibraltar we have got the Crown in its civilian capacity employing people under different heads and the provisions of the public service to my mind were clearly intended

only to apply to the Government of Gibraltar and to the City Council because the City Council was merged with the Government of Gibraltar but not to MOD and DOE. If, in fact, the provisions included in these amendments which are extracted from the Gibraltar Constitution are made to apply to the Public Service Commission Ordinance and if the interpretation that the Attorney-General has given to the disqualification for standing for membership of this House - we have been told by the Attorney-General on other occasions that because a man is employed in the Dockyard or in the DOE he is a public servant because he has a place of emolument under the Crown - then he will be able to appeal to the Governor if he is dismissed or if he is put on a charge and this means, Mr Speaker, that ~~whoever~~ is dealing with disciplinary action in the Trade Union movement presumably will have to appeal to the Public Service Commission and to the Governor every time there is a dispute involving MOD and DOE and all the industrials in the Gibraltar Government and appointments and promotions, presumably. And indeed as, in fact, whereas the original Public Service Commission, Mr Speaker, excluded, for example, part time offices the emoluments of which are payable at an hourly rate whereas the new definition does not, it would mean, for example, that a Member of this House being paid at an hourly rate for teaching in evening classes in Mackintosh Hall would become a public servant because that definition would be eliminated and he would have to resign from this House of Assembly which, no doubt, would please the Attorney-General and a few other people on the other side of the House, Mr Speaker.

MR SPEAKER:

If there are no other contributors I will call on the mover to reply.

HON ATTORNEY-GENERAL:

Mr Speaker, Sir, I don't think I ever said that there was a need for this Bill. The last speaker I think, with respect, misquoted from the explanatory memorandum, if I could read it: "Certain sections of the Public Service Commission Ordinance which came into force on the 1st January, 1967, conflict with the provisions of the present Constitution relating to the Commission. It is considered desirable that the conflicting provisions should be repealed so that no confusion can exist as to the terms of tenure of appointment of members of the Commission". I also remarked that insofar as the Ordinance or any Ordinance conflicted with the Constitution, the Constitution was overriding and that is clear not only from a general principle but in Section 21 itself. I am merely taking out the conflicting provision. Now, turning to the particular point of the definition of Public Office, I would remind the Honourable Member that not all cases have to be referred by the Governor to the Public Service Commission and it is not intended that any more cases should be referred than are at the moment. It seems to me that this particular definition here which we take from the Constitution it is right that we should put it in because it conflicted

HON J BOSSANO:

If the Hon Member will give way. Mr Speaker, the Public Service Commission Ordinance in its definition says that for the purpose of that particular Ordinance, Public Service means a certain thing. To my mind it is better to say that for the purpose of the Constitution Public Service means the whole public sector if that is what we want to do, but for the purpose of the Public Service Commission, Public Service means something more restricted. If we take away that and we replace the definition of the Constitution, then we are saying the Public Service Commission is responsible for the entire public sector, by law. Whether the Governor chooses to make them fulfil their responsibility or not that is the Governor's prerogative. It may well be that other people will ask the Public Service Commission to intervene if they are responsible for it.

HON ATTORNEY-GENERAL:

Well, it's the point of view of the Honourable Member. My feeling is that it is more satisfactory to take this definition from the Constitution and place it in the Public Service Commission Ordinance.

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

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 H J Zammitt
The Hon J K Havers
The Hon A Mackay

The following Honourable Members voted against:-

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 L Devincenzi

The Bill was read a second time.

HON ATTORNEY-GENERAL:

Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of this Bill should be taken at a subsequent meeting of this House.

The Supreme Court (Amendment) Ordinance, 1975.

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to move that a Bill for an Ordinance to amend the Supreme Court Ordinance (Cap.48) be read a first time.

Mr Speaker then put the question which was resolved in the affirmative and the Bill was read a first time.

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to move that this Bill be now read a second time. Section 51 of the Supreme Court Ordinance provides that any person who serves as a juror should be entitled to be paid in respect of each day on which he serves the sum of 50p if he serves 4 hours or less and the sum of £1 if the service is more than 4 hours. This sum is payable irrespective of whether the juror has or has not lost any wages as a result of his service. In some cases a juror does not lose, for example, a civil servant, non-industrial, is paid his salary at the end of the month whether he is absent for being on jury service or whether he is in his office. But in some cases a juror does lose by such service and I think it was in a debate last year on Supplementary Estimates the Honourable Leader of the Opposition brought this matter up and Government undertook to look into the case. Now, we could approach this matter in one of two ways. We could either amend the Ordinance to provide that a specific sum should be payable or we could give ourselves more flexibility by doing what is done in the United Kingdom powers to make subsidiary legislation and that is the way we have chosen. There will now be power for the Chief Justice to make rules providing for a juror who has lost by being on jury service to be compensated up to a limit. If the juror hasn't lost, if he is paid whether he is on jury service or not then he won't claim anything at all but your proper case will receive more adequate compensation than he is doing at the moment. If I might digress for one moment I do understand that the Department of the Environment and the Dockyard do not penalise a person who is taken off for jury service. Nevertheless it is a good thing to have this particular ~~provision~~ ^{provision} in and the hard case will be now more adequately compensated. The second provision in the Bill, where a judgment debt has been entered and has not been paid by the judgment debtor, the debt carries interest from the date that the judgment is entered and the rate of interest is laid down in the United Kingdom Judgment Act of 1839 which is one of the Acts of Parliament applied in Gibraltar ~~under power~~ ^{under the} by our own choice ~~an~~ Application of English Law Ordinance, and the rate in that Act is stated to be 4%. Now, in 1971 the rate was raised in the United Kingdom. It was done by the Administration of Justice Act, 1970, which allowed the Lord Chancellor the power to make subsidiary legislation varying the

rate in the Act and in fact the rate was raised by the Lord Chancellor in the United Kingdom to 7½%. That is considered to be realistic bearing in mind current rates of interest prevalent in the country. If you are only having to pay 4% on a Judgment debt and by not paying the debt and having the money in your bank you are collecting 6, 7, 8%, it is worth your while not paying the debt. So for that reason the rate was raised in the United Kingdom. Due to an unfortunate misunderstanding here the Supreme Court which is responsible, of course, for computing the interest on judgment debts misunderstood the provisions of the amendment in the United Kingdom, thought that it actually amended the Act, which it didn't, and so since 1971 in Gibraltar judgment debts have been carrying interest at 7½% whereas in fact they should have been carrying interest at 4%. This was an error, it was a human error, but it is necessary for this to be put right and that is why there is now a clause in this Bill ~~delegating~~ *validating* retrospectively this miscalculation of interest. At the same time we are now giving the Chief Justice the power to declare what shall be the rate of interest on judgment debts and unless there is any good reason to the contrary I think the probable intention will be that we should follow the rates in the United Kingdom. But this will be done by subsidiary legislation, by notice or rules made by the Chief Justice and will be, I imagine, 7½%. I of course cannot bind the Chief Justice but I expect that to be so and that is realistic and I think generally acceptable. Mr Speaker, I commend the Bill to this Honourable House.

MR SPEAKER:

Well before I put the question to the House does any Honourable Member wish to speak on the general principles and merits of the Bill?

HON M XIBERRAS:

Mr Speaker, I am grateful to the Honourable and Learned the Attorney-General for bringing to the House the measure, the first part of it, in respect of jurors so quickly, bearing in mind the standards of the Government generally, so quickly after the undertaking was given. I think it is a much needed amendment to the law and, as I say, we welcome it. A lot of time is wasted in Gibraltar by jurors and indeed as I have found in my recent experience, by witnesses as well and I do not for a moment wish to minimise the acceptability of the measure to this side of the House for the measure insofar as it goes by suggesting that, perhaps, the question of witnesses might also be looked into along the same lines at some future date. At the moment it is something like £2 irrespective of the time, £2 minus a penny, I think, that you pay for the stamp irrespective of the time that you are asked to hang around the Supreme Court or the Magistrates' Court. I think that the system that has been adopted which is the UK system of having flexibility as regards how much the juror is going to be paid is, generally speaking, an acceptable one particularly since in the

United Kingdom it appears to have been successful but here in Gibraltar there are bound to be certain difficulties because we have some odd situations and I am sure the range of the claims of the jurors will be very great indeed. I hope that precedence can be established and these precedence, of course, I know will be equitably applied. But we do not want to be involved in an awful lot of paper work of claims about whether a juror should be paid 50p more or 50p less because then the whole purpose of the legislation which is I imagine to make jury service more acceptable, might very well be defeated by beaurocracy. So as I say I am grateful to the Attorney-General for bringing this piece of legislation to the House so short a time after it was suggested.

HON MAJOR R J PELIZA:

Mr Speaker, just one point on the question of interest. I notice that the Honourable and Learned Attorney-General when making comparisons with the United Kingdom and I think his argument which is very logical and very convincing is that a man who is earning interest from the bank and can continue derive his profits from his money, will delay payment. Then he went on to the question of the rate of interest and I think he said that we would follow the rate of interest in the United Kingdom but I think he should bear in mind that the rate of interest usually paid by the bank here is lower than in the United Kingdom and therefore I think in fairness he could make an adjustment to that.

HON ATTORNEY-GENERAL:

Can I deal with last things first, Mr Speaker, that is, I accept the validity of the point made by the Honourable and Gallant Major Peliza. It is a point for consideration when deciding on the rate here but, of course, banks are not the only sources where you could apply interest. However, it will be taken into consideration. Two points from the Honourable Leader of the Opposition. He congratulated me on bringing this so quickly. I would say it would have been considerably quicker if the point hadn't been raised by the International Women's Year that we might have compulsory women jurors. It took me some time to look into that and because of that I delayed this Bill because if we decided to do that this Bill would have had to be somewhat different. And the last point on the question of witness allowances. I don't like this. There is always the argument that if there is an allowance for being a witness, persons might be persuaded to come and give evidence which they may not otherwise give. This is not at all a pleasant ~~respons-~~
pos-ibility and for that reason as I understand it the countries of the common law have tended to shy off providing high remuneration for witnesses. But it is a matter into which I will look and see if it can be raised.

HON M XIBERRAS:

If the Honourable Member will give way. Will he alternatively consider having a system in the Court, or using his good offices to have a system in the Court, whereby witnesses are not made to wait for so long. The summons are issued in such a way that you have to waste a whole day and you don't know when your case is coming up. My knowledge of this does not stretch that far but I wonder whether it is possible because for £2 a day you can spend absolutely the whole day there and get nothing done otherwise.

HON ATTORNEY-GENERAL:

I can assure the Honourable Leader of the Opposition that certainly in criminal cases the Attorney-General's Chambers does its best to ensure that witnesses are not kept waiting longer than is possible and they try to summon them approximately at a time when they think they are going to be needed. However, it is always very difficult to assess how long a case is going to last, how long a particular witness is going to be and if you haven't got your other witnesses there then your jurymen, the judge, your Counsel, are all kept waiting. We do our best and will continue to do so but it is, as I am sure the Honourable Mr Peter Isola will agree, a very difficult thing to handle. We do the best we can.

HON M XIBERRAS:

It must be an ^{appropriate} moment, Mr Speaker, to remind the House that the ruling of the Chief Justice as regards the compellability of witnesses

MR SPEAKER:

No, we are not going to discuss this under this particular item.

Mr Speaker put the question which was resolved in the affirmative and the Bill was read a second time.

HON ATTORNEY-GENERAL:

Mr Speaker, Sir, I beg to give notice that the Committee Stage and Third Reading of this Bill should be taken at a subsequent meeting of this House.

The Stamp Duties (Amendment) Ordinance, 1975

HON ATTORNEY-GENERAL:

Mr Speaker, Sir, I have the honour to move that a Bill for an Ordinance to amend the Stamp Duties Ordinance (Cap 147) be read a first time.

Mr Speaker put the question which was resolved in the affirmative and the Bill was read a second time.

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to move that this Bill be now read a second time. The Stamp Duties Ordinance lays down, inter alia, the classes of instrument upon which Stamp Duty is payable and the formula for assessing duty on these instruments. In the case of leases the duty payable varies depending on the number of years to which the lease is granted - there are approximately 3 categories - and the annual rental payable in the lease, but the formula for assessing the duty remains the same, it doesn't vary. Now, where the annual rental represents the consideration which is to be given from the lease then there is no problem. However, not only in Gibraltar but also in the United Kingdom it often happens that a large sum is payable when the lease is granted and only a small sum is charged by way of rent, the reason for this presumably being that the lessor wishes to get his hands on a large sum at an early stage of the lease. I would stress that this is perfectly legitimate, perfectly within the law, and it is not in any way bending. In such cases the practice in Gibraltar is for the lump sum which is paid as the consideration to be ~~divided~~ *divided* by the number of years for which the lease is and the answer to that division added to the rent and then Stamp Duty is assessed upon that sum. But this does not produce as much Stamp Duty as it ought to do. Now, in the United Kingdom - and our Stamp Duty Ordinance is based on the United Kingdom Act of 1894 - there is a provision that where you have a lease your Stamp Duty is a double assessment. You are assessed on the actual rent and where there is a consideration that the lump sum paid in respect of the lease, you pay Stamp Duty assessed on that as if it were on a sale. Why this was never incorporated in our law, I don't know. It never has been but this present Bill would propose to do so. It is not an undue hardship and it will produce for Government a little extra money which is most useful and most welcome. What will happen is that we shall be in exactly the same position as the United Kingdom, if a lump sum paid duty is assessed on that and duty assessed on the actual revenue. Mr Speaker, I commend the Bill to this Honourable House.

MR SPEAKER:

Before I put the question to the House does any Honourable Member wish to speak on the general principles and merits of the Bill?

You are assessed on the actual rent and also, where part of the consideration is a lump sum, you pay stamp duty assessed on that lump sum as if it were on a sale.

HON M XIBERRAS:

Mr Speaker, there is a point that I might ask and that is, is the question of 2p stamps on receipts vaguely associated with this.

MR SPEAKER:

No, not even vaguely.

HON MAJOR R J PELIZA:

But is it associated with the Ordinance, Mr Speaker, because I think the Honourable and Learned the Attorney-General referred to the similarity of the Ordinance in England and the changes that we want to do here to bring them in line with the Ordinance in UK and, therefore, there is this element which is different.

MR SPEAKER:

We are amending the Stamp Duties Ordinance for a specific purpose. You can speak on the general principles of the specific purposes for as long as you like but nothing else. The Stamp Duties Ordinance deals with a tremendous amount of matters dealing with the collection of stamp duty.

HON MAJOR R J PELIZA:

What I am trying to say is that here is a difference in that it is all to do with the collection of money, Mr Speaker, as the

MR SPEAKER:

No, what I am trying to say is that whether you feel that we should go on the same way as the United Kingdom has on this particular issue you are free to talk about it as long as you like but just because we are amending the Stamp Duties Ordinance and just because we follow the United Kingdom on other aspects of the Stamp Duties Ordinance does not give you the right to speak on the other aspects.

HON MAJOR R J PELIZA:

No, Mr Speaker, I think the basic reason for bringing this change is the question of collection of money, getting more revenue for the Government.

MR SPEAKER:

In a particular way.

HON MAJOR R J PELIZA:

In this particular way. And I think, therefore, it is opportune since the question of money is directly concerned with this Ordinance, which is the reason for the existence of the Ordinance it appears, very largely so for the collection of money, here we have now discovered a need of collecting more money. Isn't this the appropriate time to look into perhaps bringing the Ordinance in line with the UK as obviously the Honourable and Learned Attorney-General is attempting to do, but in the full sense and do away with the 2p receipts which I think are a nuisance in any case.

HON CHIEF MINISTER:

One thing of course has got nothing to do with the other. The point is that at present if I have a freehold and I want to sell it for £50,000 - which I haven't - I would have to pay ad valorem duty on it as a conveyance, but if I give a 999 year lease, which is virtually the same, I would pay a pittance. Now, everybody knows that the bulk of the conveyancing that is being done in Gibraltar nowadays is the selling of flats, and flats are sold for a consideration whereas the purchaser of the flat pays a minimum rent on being assigned after the building of it and a consideration. When that flat is assigned now, it pays the full rate as a conveyance whereas when it is acquired it doesn't. It is an anomaly. It does bring money in, of course, but what it does is it removes an obvious injustice to some people as against another. People by so manoeuvring the transaction can get away out of paying what other people who do it properly pay. And this is what we want to do, to avoid this anomaly.

HON M XIBERRAS :

Mr Speaker, would it be in order for the Opposition to move an amendment at the Committee Stage of this Bill asking for the penny stamp on receipts, ordinary receipts, to be done away with. It would be our intention to do this if this were possible under this Ordinance.

MR SPEAKER:

No, it would be in order for the Opposition to bring in a Bill to amend the Stamp Duties Ordinance in any way they want to.

CHIEF MINISTER:

Mr Speaker, there are limitations in so far as the rescur angle is concerned.

MR SPEAKER:

I think the Bill they are envisaging ~~is~~ not to bring in money but to reduce revenue and, therefore, they do not need consent.

HON M XIBERRAS:

Mr Speaker, I am thinking of some Bills. I seem to recall some traffic bills which were introduced into this House by the Government dealing with one aspect of the Traffic Ordinance and then, by amendment, the Government introduced a completely different aspect into the same amending legislation. It referred to parking tickets and part-time taxi drivers.

HON CHIEF MINISTER:

It was an amendment which was published as if it had been in the Bill. It was printed and notice given of it as an amendment to take advantage of the Committee Stage but it had nothing to do with taxi drivers.

MR SPEAKER:

There was another instance in which if I remember well, the Gaming Tax Ordinance was amended so on the same principle. This is an Ordinance to amend the Stamp Duties Ordinance and I would not object if an amendment is brought to amend the Stamp Duties Ordinance in any other way.

HON MAJOR R J PELIZA:

In fact there is an anomaly already in this respect and I believe Co-operatives are exempt from Stamp Duty and therefore the Chief Minister should look into that anomaly as well.

MR SPEAKER:

I am sure there will be time to do that at the Committee Stage if the Opposition is still willing to do so.

Mr Speaker then put the question which was resolved in the affirmative and the Bill was read a second time.

HON ATTORNEY-GENERAL:

Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of this Bill should be taken at a subsequent meeting of this Honourable House.

The Pensions (Amendment) Ordinance, 1975.

HON ATTORNEY-GENERAL:

Mr Speaker, I beg to move that a Bill for an Ordinance to amend the Pensions Ordinance (Cap 121) be read for the first time.

Mr Speaker put the question which was resolved in the affirmative and the Bill was read a first time.

HON ATTORNEY-GENERAL:

Mr Speaker, I beg to move that this Bill be now read a second time. Section 8 of the Pensions Ordinance allows the Governor to require any police officer to retire from the public service after he has attained the age of 50 years and makes retirement for police officers compulsory at the age of 55 and a police officer is defined for the purposes of the Ordinance as all members of the Force other than the Commissioner or the Deputy Commissioner. I think I should, perhaps, add that to enable police officers to earn, if I might put it that way, the full pension their service between the 20th and 26th years count double time. Now, it is considered that it is appropriate to allow Prison Officers, *and other than* ~~Fire Officers~~ *in the case of Prison Officers* the Superintendent, and ~~in the case of Fire Officers~~ *other than* the Chief Fire Officer or his Deputy, to be retired at 50 and to be compulsorily retireable at 55 and this is what this Bill does. There is just one point. This ~~is~~ always the case as far as Fire Officers go under the City Council Ordinance. It is a matter of some legal nicety, if I might put it that way, whether the transitional legislation which refers to Fire Officers and to the Pensions Ordinance, whether they come under the Pensions Ordinance at the moment without the need for an amendment, but it is considered prudent to make it quite clear that Fire Officers can be retired at 50 and must retire at 55. The provision which I mentioned regarding double time is a provision contained in the Regulations and not in the Ordinance itself, and, therefore, if and when this Bill is passed there will be the necessary amendment to the Regulations to make service double time for Fire Officers and Prison Officers. Mr Speaker, I commend the Bill to this Honourable House.

MR SPEAKER:

Does any Honourable Member wish to speak on the general principles and merits of the Bill?

HON J BOSSANO:

Mr Speaker, the Honourable and Learned the Attorney-General has said, I think, that it is considered appropriate that the same opportunity for retirement at an earlier age should be given to ~~two~~ other sections of the public service, that is, those engaged in the Fire Service and those engaged in the Prison Service. I

am not sure what the criteria is but I imagine that part of the reason is that one wants more agile or able bodied persons engaged in areas where there may be quite strenuous physical activity involved in order to perform their duties and I would have thought that there is one other area where this logic might apply equally if this is indeed the reason for the amendment, I don't know if it is, but if it is then I would have thought the Port Department was an area where the seamen in the Port Department are required to lead quite agile lives and I would have thought that a man of 60 in the Port Department might have as much difficulty in climbing on board the ship and perhaps handling a patient in their obligations in relation to port health as a man of 60 would have in climbing up a ladder to save somebody from a fire or a man of 60 might have in handling a recalcitrant prisoner. So if the reason is that the service requires a certain degree of physical fitness and this is the reason for the police service and the prison service and the fire service, I would have thought that part of this logic applies also to the Port Department.

HON M XIBERRAS:

Have the public officers concerned been consulted about this Bill?

HON ATTORNEY-GENERAL:

My belief is that not only were they consulted but I think it came from them in the first place. I say my belief, that is my honest belief.

HON M XIBERRAS:

Will the Honourable and Learned Member perhaps make sure that this consultation has taken place before the next stage in the Bill is taken.

Mr Speaker then put the question which was resolved in the affirmative and the Bill was read a second time.

HON ATTORNEY-GENERAL:

Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of this Bill be taken at a subsequent meeting.

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to move the Suspension of Standing Order No 30 in respect of the Magistrates Court (Amendment) Bill, 1975.

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

The Magistrates' Court (Amendment) Ordinance, 1975.

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to move that a Bill for an Ordinance to amend the Magistrates' Court Ordinance (Cap 95) to provide for additional instances in which a person may be appointed to act as Stipendiary Magistrate be read a first time.

Mr Speaker put the question which was resolved in the affirmative and the Bill was read a first time.

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to move that this Bill be now read a second time. In general, matters which are determinable by the Stipendiary Magistrate are also determinable by Justices of the Peace. If, therefore, in any case, the Stipendiary does not consider it appropriate that he should sit and determine the case, for example, if one of the parties is related to him or is well known to him, he doesn't determine the case and the matter is heard by the Justices. Equally, of course, no Justice of the Peace will sit on a case in which he is related to or has an interest. There are, however, certain cases in which the law specifically provides that the matter be determined by the Stipendiary Magistrate. In such cases, the Justices cannot act, it is the Stipendiary or nobody. Two examples are proceedings under the Extradition Act of 1870 or the Fugitive Offenders Acts of 1967, that is one example, and the other is the hearing of appeals against decisions of the Trade Licensing Authority. Now, there ^{may be} reasons why it may not be appropriate in either of these cases that the Stipendiary should not determine the matter. Let us take a case. Supposing it was his brother for whom there was an application for extradition. It would be wrong and intolerable for the Stipendiary to have to determine the matter. Equally on an appeal under the Trade Licensing Ordinance, it might be that the applicant for a licence was related and once again it would be wrong that the Stipendiary should, being an interested party, determine it. As the Magistrates Court Ordinance stands, the Governor can only appoint a person to act as Stipendiary Magistrate if the Stipendiary is dead, retired, suspended or absent from Gibraltar. I would point out that at the moment if the Stipendiary Magistrate is ill and in hospital in Gibraltar no-one can be appointed to act in his place and this, of course, is ridiculous if one of the matters with which he alone can deal comes up for determination. For this reason - and I think I perhaps might explain at this stage why it has been necessary to bring this Bill at such short notice - There is a case in which, I say no more than this, an objection may be taken to the Stipendiary sitting. I don't know

one of the parties

whether it will, I don't know whether it won't, but if it is taken and upheld then it is essential that somebody else can be appointed to act and to determine the matter, and the proposed new subsection will, therefore, allow the Governor to appoint an additional Stipendiary Magistrate, where the Stipendiary is ill or where in the Governor's opinion the business of the court makes it desirable that this should be so. This is a provision which we have at the moment in the Constitution as far as a judge of the Supreme Court goes. If the business of the Court requires it ^{and} the Chief Justice cannot act, the Governor can appoint an additional judge. It is somewhat anomalous that he cannot do so at the moment under the Magistrates' Court Ordinance. It would be quite ridiculous *had to* ~~you couldn't~~ take the Stipendiary over to, say, Tangier, so that he is absent from Gibraltar merely to make a temporary appointment. *if you* It is for these reasons that this Bill is being brought to the House and I would commend it as a matter of common sense in practice. The reason it hasn't been before, I imagine, is that the necessity has never arisen to appoint a Stipendiary when the existing one is here, but the need may now arise and that is why the Bill is before this House today.

MR SPEAKER:

Before I put the question to the House, does any Honourable Member wish to speak on the general principles and merits of the Bill?

HON P J ISOLA:

Yes, Mr Speaker, this is a dangerous piece of legislation. It seems to me to be brought forward to deal basically with a particular situation arising under the Trade Licensing Ordinance. That seems to me to be the reason for the Bill suddenly coming on the statute book. I heard the Honourable and Learned Attorney-General say that there could be an objection to the Stipendiary Magistrate sitting on this appeal. I don't know whether he has had intimation that there will be for a matter of fact or not, I think we must allow the process of law to take place until an objection has been heard and adjudicated upon. I certainly would not agree to give the Governor powers to appoint an additional Stipendiary Magistrate if for any reason he is unable to perform the functions of his office as put in this section. In whose judgment is this appointment going to be made? I mean, the Honourable and Learned the Attorney-General has given instances where members might think quite properly an additional Stipendiary Magistrate should be appointed. But one can think equally of a number of circumstances to which members of this House might not possibly agree in which the Governor could decide to appoint an additional Stipendiary Magistrate for reasons only best known to the Governor and nobody else. This section as drafted, I think, is almost an attack on the independence of the Judiciary. Yes, Mr Speaker, it is no use the Honourable Chief Minister saying no,

HON CHIEF MINISTER:

It is not meant to.

HON P J ISOLA:

It may not mean to but this is what it does. Under the piece of legislation the Governor could in any situation in Gibraltar, because it suited the Governor, I don't mean it suited him because it suited a particular situation, it is very easy to say: "Well, the Stipendiary Magistrate cannot possibly perform the functions of his office in my judgment and appoint anybody pro temp to be a Stipendiary Magistrate. Now, here, Mr Speaker, the way the section or the Ordinance is worded, you could have any legally qualified person in the United Kingdom being appointed as an additional Stipendiary to meet any particular situation. It could be, for example, one of the law officers of the Crown. And in this particular case I would take great objection to one of the law officers of the Crown being appointed as Stipendiary Magistrate and I hope we shall get an assurance that in any event that will not occur because it is the Law Officers of the Crown that support the decisions of the Trade Licensing Committee on appeal, and I think it would be completely wrong to appoint any of the Law Officers of the Crown to sit in a judicial capacity under any Ordinance. I hope we can get an assurance in that regard. Mr Speaker, having eliminated Law Officers of the Crown who I hope will never be appointed under this Bill to sit as Stipendiary Magistrates, who have we got left to appoint as Stipendiary Magistrate in Gibraltar with legal qualifications? Only two sets of people, Members of the Bar or the Registrar of the Supreme Court. Now, Members of the Bar for an appointment in this particular situation to my mind are completely out because they are in the same way as I would object strongly to any of the Law Officers sitting as Stipendiary Magistrate, I would equally object to a Member of the Bar being appointed because they have the interest of people who apply for licences, so it would be equally wrong to have them. So, Mr Speaker, we are just left with the Registrar of the Supreme Court and I certainly would be much happier in having him named specifically so that we know who is going to be appointed than just any legally qualified person in view of the circumstances. That is one point I would like to make. Mr Speaker, the other point is that in my judgment there should only be provision for only one additional Stipendiary Magistrate to be appointed but I would like to see that Section changed quite considerably to specify the only circumstances in which this can be done. I know we have in mind the Trade Licensing Ordinance at the moment but this covers, Mr Speaker, a very great multitude of things and gives the Governor, and by the Governor I mean the Executive and by the Executive in the circumstances of Gibraltar the Executive means the local Government and the British Government, both or either of them and I think it is important that it should not be possible for an additional Stipendiary Magistrate to be appointed whenever it so suits the Governor. I think the Stipendiary Magistrate should have a very big say in this. The Section says: "If for any reason the

Stipendiary Magistrate is unable to perform the functions of his office" It doesn't say who decides whether he is able to do it or not and that is the important consideration. We must be extremely careful that this Ordinance is not used to attack at some future date by any sort of Government in Gibraltar or any sort of Government in the United Kingdom the independence of the Judiciary. So I hope, Mr Speaker, whatever the urgency may be in the Trade Licensing Ordinance that we are not going to be asked to vote on the Committee Stage of this Bill in these proceedings. The other point I would like to say, Mr Speaker, is this, that if, in fact, there is provision in the Constitution - I am not quite sure what the provision is - for the appointment of an additional judge, if required, I think we should try and keep the wording more or less the same because I think that it is the judiciary we are dealing with and not the Stipendiary Magistrate who may be from Gibraltar and a Judge who may not be. I think the considerations must be equally applicable.

MR SPEAKER:

The relevant section is section 59 of the Constitution.

HON P J ISOLA:

Mr Speaker, I think it is important as I said before they should be dealt with at the same time. The question of objecting to the Court is something that I have had to deal with myself and it is a difficult situation, but I think that the final decision as to whether a Stipendiary Magistrate deals with any particular matter must rest completely on the shoulders of the Stipendiary Magistrate and nobody else as, equally, with the Chief Justice. And if somebody is not satisfied then there should be a right of appeal from that decision to a higher judicial authority. But it should not be possible for anybody to go over the head of the judiciary. So, Mr Speaker, with these particular remarks I would certainly recommend that this particular section be looked at very carefully and that we get told very clearly the circumstances under which these powers can be used.

HON CHIEF MINISTER:

Mr Speaker, I think the House as a whole should be grateful to the Honourable Member for the points that he has raised which are fully shared by this side of the House. There is no question or any attempt at interfering with the judiciary and this House and this Government and the elected members, and there has been no intention, I am quite satisfied, on the part of the Attorney-General who has prepared this Bill and the elected members on this side of the House would be the first to thwart or to resist any attempt at interference with the independence of the Judiciary from whatever source that would come. Therefore all the sentiments that have been expressed are fully shared. I did remark whilst he was speaking my own first thoughts about this, and suggested

it to the Attorney-General, that we would like, perhaps, to get this through the second reading, on principle, and then, perhaps, we could take the Committee Stage tomorrow when we have had a little more time to propose an amendment that would cover it. I have thought of suggesting an amendment to the effect that if: "for any reasons the Stipendiary Magistrate certifies in writing that he is unable to perform the functions of his office". That would put the burden on the Magistrate to say: "I hereby certify that I cannot sit on this case", and one would then be perfectly clear. This is one suggestion, there may be others. The idea of appointing the Registrar to act in particular cases and looking at the Constitution and so on could be done over the recess this evening but the need for the appointment is a perfectly bona fide one, what we have to find is a way of doing it which would preserve what we all want to preserve the independence of the judiciary, and will not only not be but not appear to be an interference with the judiciary.

HON M XIBERRAS:

Mr Speaker, although it is the very principle of the present Bill which to our mind is offensive, if the amendment is going to be along the lines suggested by the Chief Minister we would naturally consider it bearing in mind the excellent contribution of my Honourable and Learned Friend on this, but I think at this stage, since it is the very principle in the Bill which my Honourable and Learned Friend has questioned we could not support the Second Reading. If the Government wish to carry it through then we will be prepared to consider it at the Committee Stage. The other point I wish to make is that I trust that the Stipendiary Magistrates himself was consulted about this legislation because if he wasn't this Bill which to my mind could be regarded as offensive in respect of the Stipendiary Magistrates, should not have come to this House.

MR SPEAKER:

If there are no further contributors, I will call on the Mover to reply.

HON ATTORNEY-GENERAL:

The first assurance I can give to the Honourable Leader of the Opposition is that when the problem was presented to me I discussed the matter both with the Chief Justice and with the Stipendiary Magistrate and both were in agreement. I take the point made on the other side. The reason why this was drafted in this form; to start off under the section the Governor is given power to appoint a Stipendiary Magistrate, and then in subsection 3, where he is suspended, absent from Gibraltar, again the Governor is given the absolute power to appoint a Stipendiary Magistrate. Then, of course, there is the provision at the end as to who qualifies as a Stipendiary

Magistrate. It is a person qualified to practice as an advocate or as a solicitor in any court of unlimited jurisdiction. I will give consideration between now and tomorrow as to the exact wording which might be employed to ensure that it is only when the Stipendiary Magistrate certifies himself unable to act that another appointment can be made. I could see difficulties in that. Let us suppose he has a mental breakdown. There would be no power, he couldn't certify himself.

HON M XIBERRAS:

What about in the case of the Chief Justice?

MR SPEAKER:

There are provisions in the Constitution.

HON ATTORNEY-GENERAL:

Section 59(3) of the Constitution states: "If the office of the Chief Justice is vacant or the holder is unable to perform the functions of his office, the Governor acting in his discretion, may appoint a person possessing such legal qualifications, etc." The Governor has got discretion in those cases under the Constitution. So, really, the Governor is expected to and does exercise his powers obviously in a reasonable way. He has got the power under the Constitution and we are at this stage giving him no more powers under this particular Bill. However, as the Chief Minister has said, consideration will be given as to, perhaps, cutting down the circumstances where illness or the nature of business will allow an additional Stipendiary to be appointed.

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

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 H J Zammit
 The Hon J K Havers
 The Hon A Mackay

The following Honourable Members abstained:-

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 L Devincenzi

The Bill was read a second time.

HON ATTORNEY-GENERAL:

Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of this Bill be taken at a later stage of this meeting.

MR SPEAKER:

I propose to call the Committee Stage now. We can go through the firsts Bills and recess when we get to the Magistrates' Court Ordinance.

Committee Stage

HON ATTORNEY-GENERAL:

Mr Speaker, I beg to move that this House should resolve itself into Committee to consider the following Bills clause by clause:

The Administration of Estates (Amendment) Bill, 1975;
The Criminal Justice Administration (Amendment) Bill, 1975;
The Banking and Financial Dealings (Amendment) Bill, 1975;
The Trade Licensing (Amendment) Bill, 1975; and
The Magistrates' Court (Amendment) Bill, 1975.

THE ADMINISTRATION OF ESTATES (AMENDMENT) BILL, 1975.

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

HON ATTORNEY-GENERAL:

Mr Chairman, I beg to propose the motion in my name as follows:-

that there be added to the Bill a new Clause 6 as follows:-

"Amendment of 6. Section 51(1)(a) of the principal Ordinance section 51. is amended by the deletion of the sign and figures "£3,000" appearing therein and by the substitution therefor of the sign and figures "£5,000"."

Mr Chairman, Section 51 of the Ordinance deals with the succession to real and personal estate on ~~the~~ ^{an} intestacy, that is where the person has died without making a will. Section 1 sub-paragraph (a) provides if the intestate leaves the husband or wife with or without issue ~~the~~ surviving husband or wife shall take the personal chattels absolutely and in addition the residuary estate of the intestate other than the personal chattels shall stand charged with the payment of a net sum of £3,000 free of death duty and costs to the surviving husband or wife with interest etc. The sum of £3,000 was fixed, I think, as long ago as 1933, ~~it is I think now £5,000.~~ The sum is now, perhaps, I won't say out of date, but it is more equitable that a larger provision should be made for the surviving spouse. As Members will perhaps be aware the Honourable Mr William Isola made this suggestion at the second reading of this Bill and Government is very happy to adopt it and, therefore, I have proposed the motion as it stands in my name.

Mr Speaker proposed the question in the terms of the above amendment.

Mr Speaker then put the question which was resolved in the affirmative and New Clause 6 was agreed to and stood part of the Bill.

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

THE CRIMINAL JUSTICE ADMINISTRATION (AMENDMENT) BILL, 1975.

Clauses 1 and 2 were agreed to and stood part of the Bill.

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

THE BANKING AND FINANCIAL DEALINGS (AMENDMENT) BILL, 1975.

Clauses 1 and 2 were agreed to and stood part of the Bill.

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

THE TRADE LICENSING (AMENDMENT) BILL, 1975.

Clauses 1 and 2 were agreed to and stood part of the Bill.

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

The Committee recessed at 8.10 p.m.

TUESDAY THE 13TH MAY, 1975.

The Committee resumed at 11.00 a.m.

HON ATTORNEY-GENERAL:

When I moved yesterday that this House should resolve itself into Committee, I did not at that time move that one of the Bills to be considered should be the Pensions (Amendment) Bill, 1975. In view of the fact that I am now able to assure Members opposite that the Staff Association Committees considered the provisions of the Bill and were in entire agreement with them, I will now propose that we consider the Pensions (Amendment) Bill in Committee.

THE PENSIONS (AMENDMENT) BILL, 1975.

Clauses 1 to 3 were agreed to and stood part of the Bill.

HON CHIEF MINISTER:

I was going to say, Mr Speaker, that now that we know that, in fact we knew, but now that it has been confirmed that the matter was thrashed out with the relevant Associations, we can proceed with this, we will not be unmindful of the suggestion made by the Honourable Mr Bossano about the question of seamen but this, of course, will require a report from the Captain of the Port and other people and investigation into the matter and consultation too. But the fact that we are proceeding with this is no reason why we should not take up the suggestion, investigate it and if found to be practicable and desirable, to bring an amending Ordinance to the effect.

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

THE MAGISTRATES' COURT (AMENDMENT) BILL, 1975.

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

Clause 2.

HON ATTORNEY-GENERAL:

Mr Chairman, I have an amendment to propose to this Clause which is as follows: "That clause 2 of the Bill be amended by the insertion in the new subsection (3A) set out therein, immediately after the words 'or if' appearing therein, of the words 'it appears to the Governor acting after consultation with the Stipendiary Magistrate that'." Perhaps, it might be easier if I now read

the sub-section as amended. The subsection will now read: "If for any reason the Stipendiary Magistrate is unable to perform the functions of his office or if it appears to the Governor acting after consultation with the Stipendiary Magistrate that the business to be dealt with by the Stipendiary Magistrates so requires, the Governor may appoint any legally qualified person as an additional Stipendiary Magistrate and any person so appointed shall have all the powers, privileges and duties of the Stipendiary Magistrate". The addition of the amending words will put the Stipendiary Magistrates or the appointment, shall I say, of an additional Stipendiary Magistrate to be dealt with in the same way as the appointment of an additional judge. It is provided in section 59 of the Constitution that if the business of the Court so requires the Governor acting after consultation with the Chief Justice, may appoint an additional Judge.

Mr Speaker proposed the question in the terms of the above amendment.

HON CHIEF MINISTER:

Mr Speaker, I said yesterday that we took the point raised by the Honourable Mr Peter Isola and that we were as anxious as Members on the other side to make sure that the purpose of the amendment was strictly for the reasons given and could not be used for other purposes and, accordingly, I submit that following the words of the appointment of an additional Judge in the Constitution, the proposed wording gives the necessary safeguards that we were worried about yesterday and I support the amendment.

HON P J ISOLA:

Mr Speaker, this does not meet in fact the objections for a very simple reason and that is that in fact the Magistrates Court as constituted under the Magistrates' Court Ordinance, consists of the Stipendiary Magistrates and a number of lay Justices who can sit as Magistrates and we would certainly consider that the amendment should be limited to appointments in respect of business which the Stipendiary cannot deal with in respect of the two Ordinances that were mentioned, that is, the Trade Licensing Ordinance and the Fugitive Offenders Act. In our view if the Magistrate is ill or for any other reason he cannot perform the functions of his office, in normal circumstances the ordinary lay Justices can sit. We don't like the idea of being able to appoint somebody because the actual Stipendiary Magistrate is unable to sit for any reason. The other point that we are anxious that provision should be made for as this is obviously a temporary appointment, is that the words "the Registrar of the Supreme Court" should be the additional "may appoint", and not any legally qualified person, so that if one were to alter that so that it deals with in respect of proceedings, unable to perform the functions of his office or if after consultation

it appears to the Governor, acting after consultation with the Stipendiary Magistrate that the business to be dealt with by the Court being in relation to, for example, the Trade Licensing Ordinance or the Fugitive Offenders Act, may appoint the Registrar as an additional Stipendiary Magistrate. I think it is a fixed Government policy that the Registrar of the Supreme Court should be a legally qualified person, and whereas we are dealing with the Trade Licensing Ordinance where on this side of the House we feel there is nobody in Gibraltar who is independent enough to deal with it other than the Registrar, on the other side of the coin in respect of the Fugitive Offenders Act I think we would wish that it should be dealt with by the Registrar in respect of any extradition proceedings. We shouldn't have anybody sent out, for example, from England to deal with the case. Again this would eat into the rights inherent in the jurisdiction of Gibraltar. So provided, we could particularise the Trade Licensing Ordinance and the Fugitive Offenders Act at the beginning of the clause, for example, and the Government would agree that the Registrar of the Supreme Court may be appointed an additional Stipendiary Magistrate we would go along with this amendment, otherwise I don't think we could.

HON ATTORNEY-GENERAL:

The problem, of course, of providing or specifying the Registrar could be that the Registrar in a particular case might not be able properly to act if it is a person well-known both to the Stipendiary and to the Registrar. It is no use whatsoever appointing the Registrar because the Stipendiary Magistrate has advised the Governor that he cannot act. We would find ourselves in exactly the same position and a complete stalemate would then be reached. Now, that is as far as the Registrar point is concerned. I would rather not particularise the Trade Licensing and the Extradition and Fugitive Offenders. I think Government would be prepared to provide that a case which is restricted to the Stipendiary Magistrates cannot be dealt with by the Justices but the words at the moment "if for any reasons is unable to perform the functions of his office", I think that is an indication that it would only be in a case where the Justices couldn't act. But if Members of the Opposition are concerned with this, then we would certainly be prepared to put in the proviso that it must be a case in which the Stipendiary is limited.

MR SPEAKER:

We might, perhaps, then have the proposed amendment.

HON P J ISOLA:

On the question of the Registrar the only point I would make is that I don't think the test is whether any of the litigants are well known to the Stipendiary Magistrate because I can think of many cases where the litigants are well known to the Chief Justice and he still sits. That is not a ground for objection at all. This happens more often with the Stipendiary Magistrate in fact I think the fact that he is well known to the Stipendiary makes absolutely no difference. It would only be in the case of a conflict of interests in both cases. I find it very difficult to think of a case where that could occur.

MR SPEAKER:

You might, perhaps, propose an amendment.

HON P J ISOLA:

Well, no, the amendment might just be: "may appoint the Registrar of the Supreme Court".

MR SPEAKER:

An amendment to the amendment.

HON P J ISOLA:

Yes.

HON CHIEF MINISTER:

Anxious as I am to meet Members opposite in this matter because it is a question of how best it can be done, I am not terribly happy about specifying the Registrar, I would have thought the Magistrate is sufficiently independent to be able to cry out if he were being squeezed out for any reason by anybody else despite the consultation with the Governor but I take the point about the other one to make sure that it means and it looks to mean that it is only in respect of matters which cannot be dealt with by Justices. In that respect I am quite happy to go along with that but I would be loath to agree specifically to any particular person because we might find exactly the same situation. But, certainly there would be the strongest objection on the part of the Government if there was seen to be any attempt to supplant the Magistrate who after all is human and has got his shortcomings like anybody else and could well be interested and so could the Registrar in the same case. But on the other one we are quite happy to put these words in.

HON M XIBERRAS:

Mr Chairman, so could, of course, the Chief Justice and it is within the limitations of human nature that we are trying to work equally in all three cases. I think there is an additional point and that is that it would also be wrong in these cases for instance a case involving Trade Licensing for the officers of the Crown, as legally qualified people, to sit. I don't believe that the Government amendment deals with that danger. Now, that to my mind is avoided by my Honourable Friend's amendment which I think at least puts the eventuality of a conflict of interests further removed and is therefore a practical proposition. In order of priorities I think the amendment should deal first of all with the position of the Stipendiary himself, that he should not be the object of any insinuation or attack. Secondly, that there should not be, if he were absent, an officer of the Crown sitting in his place where the Government has an interest and the amendment should see that such an eventuality is excluded and it is not at present and, thirdly, for practical reasons that it would be desirable for Members on this side of the House that a person such as the Registrar should be named in order to avoid confusion.

HON ATTORNEY-GENERAL:

Mr Chairman, I would propose a further amendment.

MR SPEAKER:

Could we possibly find out whether what you are going to propose now is acceptable to the Opposition? If it is I am sure the House will be delighted to give you leave to withdraw the last amendment.

HON ATTORNEY-GENERAL:

This is an additional amendment.

MR SPEAKER:

But it would have to be done by amendment to the amendment whereas, if you withdraw the amendment you can move a new amendment incorporating everything you want to do now. I am quite happy but it will have to be done by an amendment to the amendment if you do it this way. It is a question of procedure and nothing else.

HON ATTORNEY-GENERAL:

Then I would ask the leave of the House to withdraw the amendment.

MR SPEAKER:

Has the Honourable Attorney-General got the leave of the House to withdraw his amendment?

Leave was granted.

HON ATTORNEY-GENERAL:

The first part of the amendment is already known. It would then continue: and that a proviso be added at the end of the subsection as follows:-

"Provided that no appointment shall be made under this subsection if the business to be dealt with by the additional Stipendiary Magistrate can be dealt with by Justices of the Peace."

Mr Speaker⁵ proposed the question in the terms of the above amendment.

HON P J ISOLA:

Mr Speaker, we would support the amendment as stated if we could have an assurance, for example, that the additional Stipendiary Magistrate would, in fact, be the Registrar of the Supreme Court if he is able to act in the matter. I think if we had that assurance then we would go along with the amendment.

HON ATTORNEY-GENERAL:

That assurance can certainly be given, Mr Chairman. There would be no question whatsoever of the law officers of the Crown being appointed.

HON P J ISOLA:

I am glad to hear that, Mr Speaker. We were thinking more of the Registrar and we did have that problem in mind but, of course, it has not escaped our notice that in the past, in the Colonial past if I can put it that way, Law Officers have, in fact, been appointed to act as Judges in Gibraltar.

Mr Speaker put the question which was resolved in the affirmative and clause 2, as amended, was agreed to and stood part of the Bill.

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

THIRD READING

HON ATTORNEY-GENERAL:

Mr Speaker I have the honour to report that the Administration of Estates (Amendment) Bill, 1975; the Criminal Justices Administration (Amendment) Bill, 1975; the Banking and Financial Dealings (Amendment) Bill, 1975; the Trade Licensing (Amendment) Bill, 1975; the Pensions (Amendment) Bill, 1975 and the Magistrates Court (Amendment) Bill, 1975, have been considered in Committee and agreed to, in the case of the Magistrates Court (Amendment) Bill, 1975, and the Administration of Estates (Amendment) Bill, 1975, with amendments and I now move that they be read a third time and do pass.

Mr Speaker then put the question which was resolved in the affirmative and the Bills were read a third time and passed.

House of Assembly meeting of 12.5.75.

PRIVATE MEMBERS' MOTION

HON P J ISOLA

Mr Speaker, I have the honour to move the motion standing in my name which is: "That this House is extremely concerned by recent events affecting fares and schedules on the Gibraltar/London route and bearing in mind the public statements that have been made by affected bodies is particularly concerned at the effect these may have on Gibraltar." Mr Speaker, we did discuss the question of air fares earlier on in this meeting when certain questions were put to the Minister to elucidate the position and it appears, as the result of these questions, that the actual fares for Gibraltar although apparently agreed with the Government of Gibraltar have not yet been authorised by the Civil Aviation Authority because they have one objection before them from the Gibraltar Trades Council. And, certainly, it would shorten these proceedings considerably if I were to be interrupted in my speech by the Minister concerned and informed that the Gibraltar Government was now going to support the objections that are being taken at the Civil Aviation Authority and there would be no need for me to carry on talking. So if the Minister feels at any time that he can so interrupt me, I hope he feels absolutely free to do so and thus shorten these proceedings. But, Mr Speaker, the Government is, perhaps, a little obstinate in this. Mr Speaker, as you are aware a great number of bodies in Gibraltar have shown concern about the situation. Normally, certainly in the last three years, when there have been public statements and public protests and so forth it has usually been to do with wage negotiations or wage claims, statements by employers and statements by employees, but I think on the question of air fares, this must be the first occasion when the Government has been faced with a phaloux of objections from a complete cross section of the community. I don't think that there is any single representative body in the community of Gibraltar that has not raised objection to the position. We have had the Opposition raising it - I suppose we represent somebody, sometimes it is not always easy to find. Equally, the Government I suppose they feel they represent somebody too although on this occasion they must feel singularly isolated in the matter because you have had protests from the Gibraltar Trades Council, which we are assured represents every Union in Gibraltar, with one notable exception - I am not sure whether I am right, somebody could perhaps, correct me. We have had the Chamber of Commerce which says it represents trade, generally; You have had I believe the Hotel Association, which is part of the industry obviously affected; you have heard the Gibraltar Travel Association or Gibraltar Travel Agents, I am sure whether they are different, they probably are, also making representations. There has been shown, Mr Speaker, without any shadow of doubt, there has been genuine concern at the situation that has been revealed in the package deal made by the Minister. I don't think anybody can

doubt that. Now, Mr Speaker, you might wonder and the House might wonder how it is that people have been so concerned by the situation. Well, I think the answer is fairly simple. We have had the Minister informing us from time to time in this House during question time of all the moves that he is making to get improvements on the route, to get increased schedules on the Gibraltar route; to get more flights frequencies and so forth, and of course these statements have received wide publicity in Gibraltar. We have also had increases in fare, I think with unfailing regularity since the present Government came into office. Not once a year, but, as I understand it, about twice a year. It is true that fuel costs have gone up and it is true that expenses of airlines have gone up but it is equally true, equally true, Mr Speaker, that the operation that is being done on the London/Gibraltar route is almost a charter operation. If you look at the load factor on the route for 1974 which was 78%, this is far and above a load factor on a scheduled route. It is almost a charter operation. If you then look at the rates that are quoted by charter operators, and we have had many instances of this in the past, you have the Gibraltar Group, we have now, I believe, a number of chartered flights being operated by the Ministry of Defence during this summer - 6 flights - one sees that the prices that the airline consider are necessary on this route are far above any charter rates. So that, Mr Speaker, prima facie, two things come out clearly from the deal that the Government has made. One, that they have failed miserably in producing a situation that can provide for growth on the route. They have maintained the same number of flights even though there has been growth on the route during the last two years, there has been increases of tourism announced by the Minister proudly every year for Gibraltar. So even though that is the case and even though the Minister has stated that more seats are required for tourists and so forth, and earlier in these proceedings he told us that the Government reckoned there should be 6 or 7 flights more a week, he has in effect done a bargaining with British Airways that cuts down the proposed increase from 25% to 15%. No one quite knows why it should have been 25% anyway but cuts it down from 25% to 15% and in return there is no provision for growth on the Gibraltar route. That, Mr Speaker, is bad for Gibraltar; that, Mr Speaker, is bad for economic growth; that, Mr Speaker, is bad for the tourist industry in Gibraltar and that, Mr Speaker, is bad for the people of Gibraltar who will not be able to travel on flights of their choice because of the bookings on the aircraft. So, Mr Speaker, what was the point of the Government making this agreement and not going to the Civil Aviation Authority? We have been told by the Minister and he told us earlier on in the proceedings when explaining away the position with regard to the public common interest group fares, when explaining away their disappearance, he talked of the losses the line had suffered on the Gibraltar route. Let me just say something about this public common interest group fares. This was a fare which British Airways proposed should be made available to groups of

10 travelling to Gibraltar at the rate of £63.80 return as against the new agreed fare of £86.20. This creative public common interest group fares would have enabled, Mr Speaker, groups of people and travel agents to put a group of 10 together leaving on the same day and returning on the same day. This is calculated to stimulate traffic and, of course, it would do, and, in fact, they have done it from Malaga. And it stays with Malaga and Spain but for Gibraltar, because all of a sudden, mysteriously, the accountants of British Airways suddenly realise that they are losing £500,000 on the Gibraltar run, the Minister agrees to the withdrawal of this concession which of course had never taken effect in Gibraltar. It was proposed in February, probably as a palliative to any representations the Minister had been making, and he told us about this - he has been telling us about this for a long time, he had been negotiating this, his negotiations have been successful apparently in February but by March the colossus of British Airways overwhelmed the Minister with their loss of £500,000 which took him and shocked him and shocked the whole Government of Gibraltar. Strangely enough the same enormous loss had not shocked the Government of Gibraltar the year before when they had opposed the British Airways application for increased fares, because there British Airways told the Civil Aviation Authority: "Even if you give me all the increases I am asking, we will soon lose £400,000 on the Gibraltar route for 1974/75". The Government didn't believe it, the Civil Aviation Authority didn't believe it because they didn't give them 17½% which is what they were asking for, they gave them 12%, they didn't believe them, Mr Speaker. So what suddenly made the Government accept defeat so quickly, not only defeat but retreat? These are questions that remain unanswered. Mr Speaker, I will tell the Government this; British Airways say they have lost £500,000 on the Gibraltar route, we would certainly like to hear evidence of this not from the accountants of British Airways but otherwise. There is a very simple method under which the Government could have found out if British Airways, in fact, had lost £500,000 and that would have been to ask for a copy of a cheque for 25% of that sum which is being carried by an airline, a Gibraltar airline, on that route, 25% risk, which was announced by that airline when making its application to the Civil Aviation Authority in 1972 for a licence between Gibraltar and London. It was stated there that this particular airline was taking 25% of the risk of the Gibraltar run. So, presumably, there must be a cheque somewhere for £125,000 as their share of the loss in respect of 1974/75 and a similar cheque, presumably, for £100,000 in respect of the loss of 1973/74 and that is the only question the Gibraltar Government had to ask British Airways; "Just show me the copy of that cheque and we'll believe you". But the Gibraltar Government, for reasons which I hope the Minister will explain fully, took a different view in 1975/76 that it had taken in 1974/75 when it had successfully appeared and I say it and I commend the Minister for it, successfully appeared before

the Civil Aviation Authority on the matter. I don't know what brought the change to the Government but whatever brought the change about has had disastrous and will have disastrous consequences for Gibraltar and the tourism industry in particular. Now, we do not, Mr Speaker, in this side of the House, object to fares going up. We know everything has to go up, but what we say is that the situation on this route which is a monopoly situation, demands a very careful watch. And, in fact, the Civil Aviation Authority last year when dealing with the British Airways application noted that and said so, and it is all there, and they told them they had potential for growth in that route. But instead of growing the airline wants to contract on the route. Well, somebody must be right, somebody can't be accurate in their assessments in their findings of facts and so forth. So the short and simple answer is for the Government, to my mind, to say: "Since we made this deal with you certain other facts have come to our notice. The population of Gibraltar, the community of Gibraltar as a whole, as expressed by the different trade unions, associations and so forth, don't go along with this. We think you should prove your case to the Civil Aviation Authority." After all, Mr Speaker, this happened in England with the Common Market. A British Government signed the Treaty and now another British Government is going to put it to the people - a referendum - and if they want to go out that British Government will take them out, will break the Treaty which they ascribed to. This is a similar situation, Mr Speaker. We are all up in arms about the deal, we are all up in arms by what the airline said, or had the nerve to say, that on a route on which they have 78% load factor over a year, they required to reduce flights from 10 to 7. That is unheard of, Mr Speaker, and nobody would take that sort of attitude seriously. And, of course, the Minister now has - I think he has, anyway, so I was informed at a meeting that I attended last Friday - the Minister has information under which, apparently, it is stated that a scheduled service can be run to Gibraltar at a much lower rate than the figures suggested by British Airways. So the Government has an ideal opportunity to tell British Airways; "Having considered everything again, we are not totally unsympathetic to your increases in air fares but we think that you should, for our own satisfaction and for the satisfaction of the people that we represent, we think you should make your application to the Civil Aviation Authority and prove your case there." We think that that is absolutely essential and, of course, I don't have to, Mr Speaker, repeat here the communiques we have issued as a Party and the letter I have written to the Minister and so forth where we told him that we were prepared to cooperate fully with him on this. This is important. I didn't think when I put my motion down that it was still possible to change our minds. I thought that by the time this House sat, in fact, the air fares would have been approved by the Civil Aviation Authority in their meeting that was scheduled for the 6th or the 8th of May. But, apparently, this is not so because they had

an objection and obviously if the Government were to object they would of course add enormous weight to the objection and I think it is important in any other matter that the Government is thinking about, any other thoughts they may be having on things like the airbus that I have read about in the press or anything else, it is important that they should, if they are going to support ideas, it is important that the Civil Aviation Authority should see a certain amount of consistency in their conduct because they are bound to be asked when they support and if they support any application, they are bound to be asked questions by the Civil Aviation Authority and a lot of questions, Mr Speaker, and the Government may find it very difficult to answer how they consider it to have been reasonable for an airline to charge £86 return on a scheduled service or £128 return over a month on a scheduled service; how they have actually done a deal not even referred it to the Civil Aviation Authority and at the same time supporting another scheduled service suggesting fares at about half that price. They are going to have to answer a lot of questions. And how it is that they have supported one airline in their application and now support another? And how many scheduled airlines they think Gibraltar should be served by? The Government must be conscious of the decision made in 1972 by the Civil Aviation Authority where they said that two operators on the route was sufficient in their view, for Gibraltar. So that all these problems, Mr Speaker, are going to arise for the Government and I think that in view of the information which I understand the Government now has on the air bus, and the air bus service and on the information of cost of another type of plane to Gibraltar with fuel and so forth, I think the Government now has sufficient information in their hands to ask more questions of the British Airways about their alleged losses on the Gibraltar/London operation and I think it is important that the Government should appear to be fighting for the absolute minimum of increase for Gibraltar to the public because after all the Government uses its machinery of price control in Gibraltar as effectively as it can and there is no reason that because it is a big fish it shouldn't be similarly controlled. So, Mr Speaker, at this stage of the motion what we are doing and asking the Government is to consider seriously once more the question of air fares and schedules and to consider intervening in the matter before it is too late, before all these fares are fixed and saddled on us during the coming year with no promise of any additional schedules, with no provision for growth in the Gibraltar schedule. If at least the Minister had been able to announce that the increase is 15% and instead of 10 flights a week they are going to put 12 flights a week, and this will involve an element of risk so we have taken that into account in agreeing the increased fare, that sort of argument might have washed a little more with us. But for a Minister who told us earlier in these proceedings that we need 7 flights a week more to Gibraltar to have done a deal which put 15% on fares and gives you no extra flights, that, Mr Speaker, is a bad deal and

I hope the Government will consider in view of all the facts that have arisen since this deal was made, in view of all the circumstances that have arisen, that the Government will feel it possible to take the matter up again in the Civil Aviation Authority. Mr Speaker, there has been a lot in the press about applications to run a schedule to Gibraltar by Gibraltar Airways and others, and there have been a lot of allegations thrown about malpractices on the Gibraltar/London route. Mr Speaker, I don't know whether they are justified or whether they are not justified. I don't know which is the authority that is responsible for it. I certainly think that if there are malpractices, actually defined malpractices, they should be stopped and I think the Government should consider what the definition of a malpractice is as well in this process. Because I don't know what you call the situation of one person in an aircraft paying £35.00 for his ticket and the person next door having to pay £90 for his ticket. I don't know whether that is a malpractice. That, of course, probably isn't because it has the blessing of the airline. But I think these matters, Mr Speaker, have to be gone into if we are talking of malpractices. What does the airline think people should do, pay £90 if they can get away with £40? Pay £86? Why, so that the airline can make money? We must all become charitable institutions so that they make money but if any traveller tries to get his ticket a little cheaper that is a malpractice, that is to be condemned and so forth. Let us keep a balance on this, Mr Speaker, let the Government intervene if it can - and it would be able to intervene, of course, if we had a Civil Aviation Authority - on these malpractices. But let's define what a malpractice is and let's make sure both sides keep the lawful practices or whatever may be defined as lawful practices. Mr Speaker, I cannot end without saying a word about the Select Committee on Air Communications in which a lot of these matters could have been very usefully discussed. My friend the Minister is Chairman of this Committee and, of course, the prerogative for calling a meeting lies with him. The Committee since it was appointed met with dreadful delay.....

MR SPEAKER

You are not going to make a report on the Select Committee. You would be out of order.

HON P J ISOLA

No, Mr Speaker, the only point I wish to make is that the Select Committee has been moribund in effect for the last two years and that is bad and that is sad because these things could be discussed there. And what I would ask the Minister and the Government if they feel they cannot publicly today agree with the motion and they feel there are reasons that they cannot give publicly here why they cannot agree with the motion,

then I would ask the Minister or the Government to consider calling an urgent meeting of the Select Committee and being more forthcoming in that Committee and asking the advice of that Committee in detail on it and coming to a resolution whether on the balance of facts objection should be taken. Mr Speaker, in order to have a policy that is good for the future on the question of air communications which everybody on this House I am sure will agree is vital for the economic and social progress and development of Gibraltar, it must be a policy that looks ahead and it must be gone into. What has happened, Mr Speaker, has been a patching-up affair. I think the people of Gibraltar have a very strong case on the question of their only escape route out of Gibraltar. They have a very strong case on air communications. The Civil Aviation Authority last year - I think it is the only United Kingdom authority that has recognised this - recognised the obligations of the British Government to Gibraltar and recognised the obligations of that Authority to Gibraltar as a United Kingdom agency. So there you have got an authority that is receptive or has shown itself to be receptive, to Gibraltar in the past. My suggestion to the Government is, don't with a commercial airline don't just say it was either this or that, because it wasn't either this or that, because there is a Civil Aviation Authority that decides these matters, because there is a Civil Aviation Authority that can decide fares and so forth having regard to the service being given by the airline to Gibraltar. And that is why I believe, and this side of the House urges the Government not to just stand fast and say: "We have made a deal and that's it and we are not going to change it". There are many governments who have made deals in international affairs and have had to be changed because of changed circumstances. That is Government in every community and I urge the Government if they cannot agree at this stage, to agree at least to have out anything that they feel cannot be said in public in the confidence of the Select Committee on Air Communications and go in and object, because until you have told the Civil Aviation Authority that you are in trouble you can't expect sympathy from them. And if the Government is going to support actively and do the things that it has been asked to do with regard to another proposed scheduled service to Gibraltar, it will have a lot of explaining to do with the Civil Aviation Authority and I think its case will be helped much more by going there and saying: "On the facts we feel these are not reasonable air fares". If you lose your appeal or whatever it is then you can go back with more force, with more argument and say: "Well, because of this we are now in this problem and we want you to help us in this particular point". And the Civil Aviation Authority, I am sure, will then be far more helpful to the Government than I think it is going to be from the facts as they are known to this side of the House.

Mr Speaker, I commend the motion to the House.

Mr Speaker then proposed the question in the terms of the Hon P J Isola's motion.

HON A W SERFATY

Mr Speaker, when we are discussing this whole matter we should be able to distinguish between two different factors. One of them is fares, the other one is flight frequencies. The Honourable Mover has referred to last year's hearing in the Civil Aviation Authority when I was successful in reducing a proposed increase of 19% to 12½%, that is true, but the CAA I am convinced will not dictate to British Airways or any other airline the number of times it has to fly on the route per week, and this is fundamental. I am going to read the last paragraph of the decision of the CAA last April.....

MR SPEAKER

The decision on what?

HON A W SERFATY

On the question of the 12½% increase in which they referred to flight frequencies. "In the course of the hearing and in the light of the Gibraltar Government's expressed view about the elasticity of the market and of the high peak loadings on the scheduled services, we hope that the airline will also give consideration to the introduction of whole plane charter operations. This might help to relieve the losses suffered on one of the airlines on scheduled services operation without loss of facilities to the travelling public." Well, this is as far as the CAA will go. They will advise British Airways of how to increase flight frequencies to Gibraltar, but they will not dictate to them. When I was discussing these matters with one of the top executives of CAA in Gibraltar a few weeks ago, Mr Colgate - I mentioned this in the last debate - he said: "Of course we cannot dictate". You have the case of British Caledonian who are operating with our permission suddenly withdrawing from the route. And there is nothing the CAA did. If we went to the CAA to support the Gibraltar Trades Council objections, we are running a very great danger for Gibraltar, a very great danger, and that is that we would be back to seven flights a week, and I am not prepared to take that risk. The fact that fares have gone up 15% and 25% is to be deplored and we on this side of the House deplore it. But I would like to say that only a few days ago

HON M XIBERRAS

If the Honourable Member will give way. There is some confusion. Was the word deplored used in respect of the GTC application?

HON A W SERFATY

No, the fact that fares are going up. British Caledonian have said in CAA the other day that they might fly to Gibraltar in September but they are not happy at the proposed fare structure, and that they would like normal fares to go up even further than British Airways are proposing to increase them. I would like to bring to the notice of this House that even with the proposed increases ours still have about 17% advantage over Malaga, as a cabotage advantage and of about 23% over Malta. So the matter is not as tragic as the Honourable Mover tries to make out.

HON P J ISOLA

What about Tangier?

HON A W SERFATY

I haven't got the figures for Tangier, but Tangier doesn't worry us so much. The fare structure in Tangier is completely different to that of Gibraltar, Malaga and Malta, so there is really not much that can be said. In some cases Tangier is 25% higher than we are, in other cases it is 8%. This is what the Gibraltar Travel Association had to say on the 28th April, among other things: "Gibraltar must obtain greater flight frequencies at competitive price levels and cannot expect to do so whilst operators fork out non viable results". Let us not forget this, Mr Speaker, we cannot expect to get more flight frequencies if there are increasing losses in the route. May I also remind the House of what I said yesterday, that I have been told repeatedly by British Airways Executives that whereas before they could offset losses on the Gibraltar route on profits made on others, now the whole picture is one of losses and there is nothing against which they can be offset.

Let us not forget, as the Honourable and Learned Mr Isola said, this is not a fully scheduled operation, London/Gibraltar, and it is not a charter. It is what is called a part charter operation. Malta is also in difficulties for the same reasons because the majority of traffic/travelling on low yield fares and this is what the continuous complaint of British Airways, that the majority of traffic - theoretically it is about 50% sometimes it is more than that - is a low yield fare. The Honourable Mover mentioned an application from another airline to operate a weekly flight London/Gibraltar. I have full sympathy with this application and we are going to support it. But, of course, what is still pending is a decision on Government on whether we are going to underwrite this operation. At one time we were talking of a quarter of a million pounds in a year, now we are talking of £50,000 for a once a week flight. So all these things are much more complicated than the Honourable Mr Isola makes out. And another point on the question of load

/was

factors, Mr Speaker, we are talking of 78% load factors on seats offered and let us not forget that there are penalties on the Trident. I would say that one advantage of the proposed once a week flight is that it will be on a Boeing 727 which is a much more suitable plane for the Gibraltar route. This is true but even then they require a financial commitment from the Government on the basis of underwriting. But a Trident 2 and even more on the Trident 3, have large penalties, particularly in the summer. So when we are talking of a 78% load factor we are not talking of a 78% load factor as in other routes, it is much less than 78%. In the peak summer a Trident 3 can only offer 104 seats instead of 140. One hasn't got to be much of a mathematician to realise what the 78% then is when it is based on 104 seats if there are 140 seats on the plane. I am still pressing British Airways continuously on the question of flight frequencies. Only a couple of days ago I received one more letter where among other things they say: "I am sure you know that we are operating 10 flights a week to Gibraltar" The package deal was 9 to 10 and I am pressing for 10 and for more and this is what I am reminding them and what they are reminding me now. When I said yesterday, and I said so because I calculated personally that the optimum number of additional flights we should have in Gibraltar should be 6 to 7, I am pleased to say that the department of statistics which calculated it in another way, entirely agreed with me that we need 6 to 7 more flights to Gibraltar. But this is an optimum figure. It requires a lot of promotion and a lot of selling to fill these 16 to 17 flights and fill all the hotel beds. We are talking of an optimum figure. We are not the only people in trouble. I am quoting an article headed "More APTA talks with IBERIA - Further attempts to persuade the Iberia Airlines of Spain to rescind its scheduled flights cutbacks this summer has been made by APTA and APTA tour operators council delegation moved to Madrid, etc etc." I don't think the matter has been ended. So, Mr Speaker, I defend the package deal I have made with British Airways and I am not going to take the risk of going to CAA and have the number of flights reduced to 7. This is my personal judgment, it is my responsibility and I think that fares having been brought down now to 15% instead of 25% with the commitment of 9 or 10 flights, in the public interest I would never recommend to my colleagues in Government to fight it out and risk having only one flight a day to Gibraltar. I am sorry but I cannot do it.

HON J BOSSANO

Mr Speaker, the Honourable Minister for Tourism, Trade and Economic Development seems to be very confused about what he is trying to do and the way he is going about it. Let me make it quite clear, Mr Speaker, that the Gibraltar Trades Council has lodged an objection with the CAA to the proposed increases in fares and the reduced frequency in flights, so that if the Government supported this objection they would be supporting an

objection to a reduced flight frequency as well as to an increased fare. So there would be no problem of inconsistencies since the Government does not want the flights to be reduced and the GTC has stated to the CAA that it doesn't want to see the number of flights reduced, there is no question of the Government putting itself in an embarrassing position by supporting the GTC. It appears that the Government has already stated publicly what the GTC has stated to the CAA. It is of course very fortunate, Mr Speaker, for Gibraltar that the Gibraltar Trades Council did lodge an official objection otherwise we would already be paying the increased fares. In the regulations governing the manner in which the CAA conducts its affairs it states that the CAA must consult certain bodies before it approves any variation in the licences held by air transport operators and it is interesting to see, Mr Speaker, that where the flights connect with the Channel Islands the CAA must consult the Channel Islands Air Advisory Council, and where they connect with the Isle of Man it must consult the Isle of Man Airports Board and where they connect with Gibraltar they must consult the Secretary of State. Now, I don't know whether that reflects on our colonial relationship with the United Kingdom or not but both these other bodies are in fact bodies which are constituted - partly at least, I think, in the case of the Channel Islands and wholly in the case of Isle of Man - as subcommittees of the legislature of the elected representatives, of what is their equivalent of the House of Assembly. So although they do not have their own Civil Aviation Authority there is a requirement on the United Kingdom Civil Aviation Authority to consult the elected bodies in these particular dependant territories and ascertain their views before they take any decision. Now, in the case of Gibraltar they are required to consult the Secretary of State and not anybody from the Government of Gibraltar. Presumably through the Secretary of State they obtain the views of the Government of Gibraltar and in any case if the views of the Government of Gibraltar in this particular instance appears to be of no help to anybody I don't think one could achieve much by changing that situation at the moment until we change the Government of Gibraltar. But, Mr Speaker, the Gibraltar Trades Council has taken a stand on the question of the air fares because it is concerned with outgoing traffic and the Minister has taken a stand which, perhaps, is not identical to that of the Gibraltar Trades Council perhaps because it is more concerned with incoming traffic. Now, it must be quite clear I think to the Minister that until package holidays were available on the north bound route it was very difficult for Gibraltarians to take holidays in the United Kingdom and that if we are faced with the situation where the only way out of Gibraltar is by paying scheduled fare prices on scheduled flights, then we will be in fact ourselves party to the restrictions that the Spaniards have imposed on Gibraltar. We will be making those restrictions more effective than they have been in the last 10 years if the only way a Gibraltarian is going to be able to get out of

Gibraltar is by paying £100 for a return fare to UK or by encouraging the alternative, of course, of the backdoor to Spain which I am sure nobody in this House wants to encourage. So I think it is vitally important that the opportunity of taking a relatively cheap holiday in UK for the ordinary average working man and his family should be there and that it is possible to provide such an alternative is seen by the fact that there has been all the time available to UK Agreement workers in Gibraltar a cheap means of taking holidays in UK and to their friends and families in UK a cheap means of taking holidays in Gibraltar because there was a special deal between the DOB and British Airways which enabled UK based workers getting considerably higher wages than local workers, to take holidays in UK and their relatives and families to take holidays in Gibraltar. Apparently this did not worry BA. Apparently this did not concern them as regards the nature of their fare structure. The fact that they were giving X number of seats on each flight at a price without the need for accommodation that, apparently, was not a malpractice. That facility which was only available to a select group was not a malpractice it was perfectly reasonable and it did not affect their profits, apparently. Mr Speaker, when this was happening last year and another fare increase was being asked by British Airways, the Transport and General Workers Union Travel Service through its head office made it quite clear to BA that unless the same facility was made available to Gibraltar workers they would ground BA in Gibraltar. There would be no flight for anybody. And, therefore, BA decided that rather than give in to the Gibraltar workers they would take it away from the UK workers and they took it away. All this sort of background information, Mr Speaker, I think is important for the Minister to be aware of because he shouldn't take everything that BA says to him at face value. They are not as innocent and as young as they take them to be. The Minister seems to think that butter wouldn't melt in British Airways's mouth.

HON A J CANEPA

In Wedgwood Benn's.

HON J BOSSANO

Well, Wedgwood Benn is a different kettle of fish, Mr Speaker, I would not be diverted into talking about Wedgwood Benn otherwise we will be here for the next two weeks if I am going to enter into an eulogy on Mr Wedgwood Benn.

MR SPEAKER

I would not tolerate that.

HON J BOSSANO

So the situation is, Mr Speaker, that BA has been arguing with the Government on a set of premises and undermining those premises itself by its activities elsewhere. Now, the UK Departments, faced with the situation where this facility which they enjoyed was withdrawn, naturally concerned to provide a service for their employees who want to go home for a holiday or who want to bring relatives to Gibraltar for a holiday which is a good thing for Gibraltar, went ahead and provided a charter service for their UK based employees, a charter service which apparently didn't require special licensing from anybody or special applications to anybody. It was just done and it is there and it provides for a return fare to UK of £53 without the need to have accommodation, that is, somebody can just pay £53 and obtain a ticket to go to UK. There is a restriction on the length of the stay but I think most people would rather pay £53 and be restricted to staying a fortnight than pay £100 and be restricted to staying a month because after all you can/two fortnight trips for the same price. So the situation, Mr Speaker, is that the UK Departments have taken immediate and forceful action to protect the interests of their UK based workers and the Gibraltar Trades Council at the request of the TGWU Travel Service which is available to all GTC members, has also taken immediate steps to protect the interests of its members and the travel service itself has explored an alternative to the service provided by BA because, obviously, there is a need for such a service and if BA cannot provide it then one must look elsewhere. I think that the Minister must carry some criticism, Mr Speaker, for not having mobilised himself to the same extent as the UK Departments have mobilised themselves for the Agreement workers, the GTC have mobilised themselves for its own members and other parties have mobilised themselves. The Government received representations from individual associations in Gibraltar and I think they had an obligation to carry those representations forward to the CAA even if they felt themselves that on their own initiative they wouldn't have done it, they still had an obligation to go ahead and say: "Well, we are objecting on behalf of the travel agents". Or to go to the travel agents and say: "Look, we don't want to object therefore you must go direct to the CAA". It is fortunate that the GTC went straight to the CAA instead of going to the Government first otherwise there would have been no formal objection before the CAA and there would have been no reason for delaying a decision on the fare increases. And if it does transpire that there is a hearing and a Gibraltar Trades Council representative is sent to argue the case for lower fares I would have thought on the experience of the results of negotiations between the GTC on the one hand and the Government on the other, the prospects of getting a better deal would be quite good because the Government seems to think that if BA comes along and say they need 25% and they get away with an increase of 15%, they have done well. I would have thought

/take

that if they asked for 25% they are not really expecting to get more than 12½%. So one should start by saying that 5% is sufficient, that should have been the attitude of the Government I would have thought. So I don't think that there is a need for self congratulation yet. There may be if, in fact, we achieve an improvement on the existing fares and I don't think that the chances of obtaining such an improvement are going to be helped at all by the Minister saying here in the House that there is a very great danger to Gibraltar in the objection of the GTC succeeding which, presumably, is what he meant.....

HON A W SERFATY

If the Honourable Member will give way. I have not said that there is a grave danger to Gibraltar if the GTC objection succeeds. What I have said is that if I go to CAA then the agreement which I made with British Airways to have 9 or 10 flight flights falls to the ground which is a very different thing.

HON J BOSSANO

I take it then, Mr Speaker, that the Minister considers that if the GTC objections are successful in getting the CAA to cut down the requested increases, his agreement with BA still stand. British Airways will not come back to him and say: "Because the Gibraltar Trades Council has succeeded in its representations we can no longer fulfil the agreement that I made with you which was conditional on the increases being approved whether or not you support GTC". And I suppose he thinks that if he comes out supporting an air bus that is going to sell tickets at half the price of British Airways they will still say that the agreement that they made with him still stands. He can support the air bus without endangering the agreement but he cannot support the GTC objection without endangering the agreement. Perhaps the Minister is right. I can see that a certain inconsistency in that logic.

HON W M ISOLA

Mr Speaker I am not going to go over the ground which my brother and Mr Bossano have gone through but basically speaking the position as I see it is this; that the Minister made a package deal with British Airways and as a result of this package deal he was given 10 flights a week and the price was re-arranged. We start with that premise. Now basically speaking when this package deal, as the Minister refers to it came into being he had the Opposition strongly opposing the package deal, he has the GTC strongly opposed to him; he has the Hotel Association against him; he has the travel agents against him. In fact, Mr Speaker, he has everybody against him, and we are all urging him to go to the CAA and object. So he goes and objects and he has the support of everybody in Gibraltar.

And if by any chance British Airways which I don't think for one moment were to bring the number of flights down to 7 a week, he would have the support of the whole of Gibraltar, but they would not bring it down to 7 flights a week.

The position at present is this, Mr Speaker, that everybody in Gibraltar is against what the Minister has done at present. And yet the Minister stands his ground - I cannot see why. Merely because he is afraid that if he objects to the CAA, British Airways will say: "Now you have been a naughty boy and we are only going to give you 7 flights a week". I cannot understand, Mr Speaker, the Minister's attitude. I am just going to talk purely on tourism. In a question yesterday he says that he needs at least 6 or 7 more flights a week to fill the hotels and yet at the same time he agrees with British Airways to having only 10 flights a week. Now that, Mr Speaker, is completely inconsistent. One moment he is telling the House that he needs 6 or 7 flights more a week to fill his hotels and two or three weeks earlier he is agreeing with British Airways to have only 10 flights a week with an increase of fares and everybody against him. Now, is that not, Mr Speaker, completely inconsistent with his policy of tourism when he said: "We calculate that seat capacity is short of bed capacity by about 40%, and this without taking into account payload penalties which apply mainly in summer. Therefore if we get 10 flights, we should have 6 or 7 more to completely fill all our hotels". How can the Hotel Association, Mr Speaker, have any confidence in the Minister when he says that he needs 6 or 7 more flights and yet he agrees with British Airways to only having 10 flights a week. Might I suggest to the Minister that he still has time to fight in the CAA and he has the support not only of the Opposition but of the Gibraltar Trades Council, the Travel Association, the whole of Gibraltar. And yet he says that he won't fight because he is not prepared to take the risk that British Airways because he has objected to CAA will say: "Now you are a naughty boy and we will only give you 7 flights a week." Mr Speaker, with respect I urge the Minister once again to go to the CAA and fight British Airways once and for all and show British Airways that Gibraltar cannot be bamboozled by them. Let the Minister fight and if he loses, Mr Speaker, he has the whole of Gibraltar behind him but, unfortunately the Minister is not prepared to take that risk only because he thinks that British Airways will bring down the flight frequency from 10 to 7 when he himself in the House only yesterday said that 10 flights was not sufficient that he needs 7 more flights a week. That is most inconsistent and certainly very prejudicial to the tourist trade which the Minister says he is very interested in.

HON A P MONTEGRIFFO

Mr Speaker, I do think that apart from planes flying about there have also been quite a number of red herrings flying about too,

and I think this is a very serious matter. This side of the House share not only with that side of the House but with everybody in Gibraltar, the concern that we all have at the increased fares and the flight or frequency. I would start by saying that I was surprised to hear the Honourable Mr Bossano telling us to beware of a nationalised industry they are not as innocent as they appear to be. And with regard to the question of what the Services have done to cater for their own people, I think this is a worldwide agreement which one although I am not an expert on air matters - I am very much down to earth - one would describe them as charter flights. One must not lose sight of the fact that we are very much interested because of the siege we are suffering in Gibraltar, and suffering proudly, that we should have scheduled flights, they are very important. So it is not the same to talk about what the Gibraltar Group can do or other groups can do privately for planes that are not going to be full or else they wouldn't get off the ground, we are talking about scheduled flights which we want to keep at all costs. The Minister has been severely criticised for his package deal with BA and one can accept the Opposition or anybody else questioning the judgment of the Government who do not claim to be infallible men, but they do have, fortunately, perhaps, for Gibraltar, the responsibility of taking decisions and making their judgment in what they consider to be the best interests of the people of Gibraltar and if the same Minister who has been praised for the deal he was able to obtain in 1974 when, incidentally he was only able to reduce the price down by 7½% surely, the same Minister was acting in the same good faith and he has the same intelligence I would assume and the same integrity that he had in 1974 and he took the decision of not going to the CAA for reasons which I need not repeat and which I think are right though perfectly questionable by anyone because if we are proved right nobody would ever bother, if we are proved wrong everybody will hit at us. It is exactly the same as with taxes, when you put taxes up everybody protests, everybody complains about taxes but nobody wants to look at the point rationally and dispassionately. I would like to end by saying that despite the fact that this deal has been achieved and that we were able to obtain this frequency of 10, it is not inconsistent by the mere fact that my Honourable colleague, Mr Serfaty, said yesterday that he would like to see 17 flights. When you are being brought down to 7 at least you try to achieve or to obtain more or less what you were getting from BA at that particular time and that is why we are supporting the air bus and 10 air buses if they were to come in, and that is why we are proudly supporting Gibair too. So I do hope that these things are looked at without passion. We are prepared to accept criticism, we are prepared to have our judgment questioned. Maybe they are right and we are wrong but we did it, and we have done it, and we stand by it in the firm belief that it is in the best interests of the people of Gibraltar. This does not mean that what has come out in the wash is entirely satisfactory to us. Of course it isn't. It is

what we thought was the best out of a bad deal and we have the same concern and we share the same concern of the Opposition and the whole of the people of Gibraltar.

HON M XIBERRAS

Mr Speaker, I find the words of the Minister for Medical Services strangely apologetic after the tone of the letter of the Honourable Mr Serfaty to my colleague which seemed to indicate that he was absolutely sure that he had been right all along. The Minister for Medical Services is now saying: "Well, we did it with the best intentions. We haven't got all we wanted but we tried our best." I would suggest that the Government has not tried its best. It appears to me from this discussion which might very usefully have been had in the Select Committee because of the technicalities involved and because, as my Honourable friend Mr Bossano has said, this is the sort of forum where matters are discussed in other territories such as the Isle of Man and the Channel Islands, yet we who are in the most colonial situation of all, do not take advantage of what Gibraltar forum we have set up by this House, namely the Select Committee, to discuss and thrash out what after all is a difficult and complicated problem, and this for all the assurances of cooperation and so forth that have been bandied about in this House. So if the doors of the Select Committee were closed to us temporarily we must go directly to the Minister. Of course, we could have as an Opposition, we could have gone to the CAA ourselves, as the Gibraltar Trades Council has done. But we went to the Government because most protests in Gibraltar were directed against the Government and there was a single purpose at one time in those protests and that is to get the Government to change its mind and go to the Civil Aviation Authority and protest about the fares. And there was a genuinely united front then to try to persuade our own Government to take a different stand to what the Minister had taken. But, Mr Speaker, we now find that not only were we blackmailed out of a reasonable set of fares but the Minister has implied that we were blackmailed out of going to the Civil Aviation Authority as well, and the Aviation Authority is the place to which we should be able to have recourse. The Minister has said there would have been a great danger if he had done what he has done along, appeal and fight the prices in the Civil Aviation Authority, if he had gone this time and fought the prices because there might have been a reduction in the frequency of flights. Was the pressure from BA so great on this occasion much greater than before when he successfully brought down the fares? And, if so, did this consideration weigh on him when he supported Gibair and when he supported the air bus? Presumably, the hypothetical reductions on the part of British Airways would have taken place because there were not enough passengers for the number of flights which we have at present. Now, what is the Minister going to tell British

Airways now that he has supported Gibair as well? Is he going to say: "Look, these people are going to bring new traffic to Gibraltar." Or is he going to be told by British Airways: "Look, these people are going to take away part of the traffic and therefore we are sorry but we shall have to reduce the number of flights." Now, surely, the Minister's attitude overall is liable to be questioned by British Airways and the risk of a reduction of flights is greater because of his support of another two ventures. What is he going to tell Gibair in respect of the support of the air bus? Is he going to say: "The air bus is going to bring in completely new traffic, and therefore you needn't worry coming on to this route, supplementing the number of planes which British Airways are prepared to bring....."

HON A W SERFATY

If the Honourable Member will give way. It is all a question of number of flights.....

MR SPEAKER

We are not going to have a debate within a debate otherwise we will never finish.

HON M XIBERRAS

On the frequency of flights, if this application by the GTC which has the support of the Minister - I wonder how deep the support is? - succeeds, what will he tell the other people he has supported - Gibair - who will say: "Look, there's going to be so many planes, one plane a week or whatever it is, by this new operator and this is going to take traffic away from us. It has been represented to the CAA that it is because the traffic is not great to Gibraltar that we must increase our fares." What is Gibair going to tell the Minister?: "You supported us, now you are going to support somebody else and you are going to take traffic away from us." And, finally, what has the Government told the people who are running the air bus?: "We had an indication of support reported in the papers." But, if the Minister has already agreed to a price schedule with British Airways and has foregone his right to fight that price schedule, surely, he has also agreed to the series of considerations which British Airways has put in support of that price schedule. And among those considerations are that there are not enough passengers on the route to fly the planes any cheaper and the Minister has given up his right to fight. So, therefore, will, if the matter goes to CAA, will the air bus be supported in effect by the Gibraltar Government in the eyes of CAA? I would suggest that this is not the case, that CAA will say: "It is just a question of expediency. The Minister could not get out of the way of the air bus and that is why he has

supported it." I have absolutely every sympathy with the point of view of my Honourable Friend Mr Bossano which he has expressed today. Certainly, the workers of Gibraltar should look after their own interests but the Government of Gibraltar, as the Honourable Mr Montegriffo has so clearly said, must have the overall interest in ensuring that scheduled flights come at the cheapest possible rates and the Government hasn't got a clue as to how they should go about attempting to achieve this. They have been completely inconsistent. Without intending to do so they have played false to each of the parties that they have supported, the British Airways, to Gibair and to the air bus. I am not saying that the Honourable Member has deliberately misled them but his policy will not prove to the advantage of each when taken together, to each of the persons that he has tried to support, and, I would say, they have created in Gibraltar the sort of rift which was most undesirable at this time before the Civil Aviation Authority meeting. How different from the attitude of the people of Gibraltar and the Government of Gibraltar, both administrations, on previous occasions when we were united in our support of Gibair, in our support of the scheduled flights and in our fight inside CAA to reduce the prices. But the Minister has foregone this right as if he could afford to. Mr Speaker, there has been a signal lack of leadership in this and a lack of coordination and thinking on behalf of the whole community by the Minister and the Government. Mr Speaker, the Minister has tried to defend his position by saying that we still have a 17% differential with Malaga and a 23% differential with Malta. Like the Honourable Mr Montegriffo and certainly in the eyes of Major Alfred Gache, I am no expert on this matter. My friends, the Honourable Peter and Willie Isola, do know about these things and that is why they are in the Select Committee. But it seems to me that so many people in Gibraltar could not be wrong about this one and if they kick they have a right to be heard. Whether people are kicking against Iberia or kicking against anybody else they have a right to be heard by their Government and they have a right to expect their Government to take their grievance up to the highest authority. And what their Minister has said is: "I cannot go because BA is pulling out or might pull out if I take this matter to CAA." Well, I shall ask the Minister another question. In his support of Gibair, which we on this side support as well, has he put any conditions? Because these certainly would have been relevant. We on this side have made our support clear but conditional. If those conditions are there and the Government is making a statement let the statement come out clearly and if the Government feels that these conditions cannot be made public let them take them to the Select Committee, let us get a coordinated policy. But let us not try to be clever and end up in an awful tangle, of supporting one here, one there and one everywhere, getting everybody very confused, not knowing whose side the Minister is on and foregoing all our rights in CAA.

That is a mess, a veritable mess, Mr Speaker, and the Minister, I am afraid, has failed in this matter not because he has not lowered the fares enough, but because he has not given Gibraltar the best opportunity to fight in so far as it is possible to fight these things. Therefore, it is not a vote of censure on the Minister because we always expect the Minister to change his mind. We hope that he will consider this but if he does not appear to have sewn up the whole thing with British Airways and played false to other interests and if he wants the full support of the people of Gibraltar, let us be agreed on one of two things. Either the Minister makes a public statement to the effect that he will take the matter to CAA and everybody will fight against BA on any possible reduction of flights. None of us wants British Airways to pull out - none of us. We see the danger of this. We see the danger even more the Minister himself is prepared to say. I think this half-hearted support for the air bus when he has not come out clearly as he should, not being quoted by the other side come out himself and say: "Yes, I support." It is going to do us some harm in the hearing whether the Minister appears or does not appear and I do not think it is going to do the air bus all that amount of good the reason being that if the Minister is supporting he should make this known to the Secretary of State and the Secretary of State has not objected to British Airways in any case so what sort of a mess is the Civil Aviation Authority going to be in when they say: "How does the Honourable Mr Serfaty and how does the Government of Gibraltar feel about the matter as a whole? He has not even come to see us." So the first suggestion is, make a public statement. The second suggestion is, take the matter to the Select Committee where it can be argued and let us have a reasoned policy, a reasoned and coherent policy for the good of the whole of Gibraltar and for the particular good of those most affected by this increase in fares. But if the Minister retreats as he has, if he does his deal, then there is no policy.

He said quite clearly before that this was a free country. In other words each interest in Gibraltar do as you please. Yes, this is the implication of the statement and that is not the function of the Minister.

The House recessed at 12.55 p.m.

The House resumed at 1.05 p.m.

HON M K FEATHERSTONE

The whole situation of air transport is going through a very considerable recession. One only has to pick up any paper and there is almost every day an article showing that somewhere in the world the airlines are suffering from losses. Even in America where airlines are almost a way of life there are

tremendous losses going on and I read yesterday that Eastern Airlines, one of the big companies, is trying to sell a number of Jumbo Jets because it is just not making money. British Airways, Sir, are cutting back this year by approximately 18%. They have been facing losses and it appears that the present Government policies are hardening considerably on the nationalised industries that losses can no longer be continually borne by the British taxpayer. You are hearing that British Rail are going to be put in the position of having to pay their way even if this means cutting down staff and cutting down frequency of trains and the same, of course, is going to apply to all the other industries that are nationalised, not least British Airways. British Airways represented to Gibraltar that they were making considerable losses on the route. The reason for these losses are varied not least the rather unhappy circumstances for Gibraltar that the British Airways fleet of, basically, Tridents, are not the most suitable planes for our runway. But this is a circumstance that we cannot easily change and we are, therefore, faced with the difficulty that we are served by an airline whose planes suffer a very heavy penalty load with the result that throughout the year they are running between 55% and 65% of the total capacity of the plane and this is not good economics. Now, Sir, the situation when represented to the Minister and brought by him to the Government that British Airways in facing these losses wish to put up two possible solutions. Firstly, to increase the fares to bring in more money and, secondly, cut down the number of planes so that those planes which did come in would be carrying a greater proportion, a greater percentage, and thus ameliorate the losses. And they even thought that doing this they would still make losses but this was what they felt they had to do, they had to keep some service to Gibraltar and they proposed - and they came from the highest authority - one plane per day. Now, Sir, the Minister and another high ranking civil servant went to see British Airways and they demanded figures and they demanded facts and they had a meeting which lasted for several hours and which was if not acrimonious quite strong words were said on both sides and the Minister pulled not punches in letting British Airways know exactly how he felt and how the Government of Gibraltar felt and what responsibilities we thought British Airways owed to this service. And at the end British Airways, after a certain amount of reluctance, agreed to some reductions in the fares and agreed to not reducing the frequency which was one of the most important points felt by the Minister and felt by the Government on which we could not give way in the slightest. The Minister came back and reported to his colleagues and Government itself had quite a considerable discussion on the whole matter. Now, Sir, the CAA are not going to tell any airline that they have to continue making unnecessary losses. They can tell airlines that they cannot make too high profits and they should reduce. One thing that we must remember is that British Airways is a nationalised airline. If it were a capitalist run airline, well, we have

seen what they do. The first time that they run into difficulties and troubles and are making losses they remove all their planes with practically no notice whatsoever. We saw this from British Caledonia. They said: "Sorry chums, we are not making money on your route, we have gone, finished, you've had it, get on with it." But British Airways did appreciate their responsibilities and they made this package deal and Government had to consider the package. Consider whether one should go to the CAA possibly be unsuccessful and then have to face the position that since we had not accepted the package British Airways could quite legitimately say: "This route is not viable. We will still carry on but we must make it as reasonably viable as possible. One plane per day and 25% increase overall. We offered you a package, Mr Minister, you refused it, you wish to take your chances with the CAA, the CAA has found in our favour, now we must insist on this system." This was the position that Government had to consider of whether one should take this calculated risk or should one accept the package. And Government felt that the package in the circumstances, was not too unreasonable and should be accepted. The Minister is accused of how is it that he can support the application of the Gibraltar Airways. Well, that application's support was to some extent part of the package because as everybody must know British Airways are an interested party in Gibraltar Airways and all the possibility of Gibraltar Airways if they receive their licence starting operation quite quickly was done with the full knowledge and full agreement of British Airways and this was part of the package. Gibraltar Airways were going to take over, I believe, three of the scheduled services. But the Minister pressed even further and he obtained the agreement from British Airways that even should Gibraltar Airways application fail still British Airways would maintain the frequency of 10 planes. The final accusation, Sir, is how can the Minister justifiably support the air bus. Sir, it is not unreasonable that any Minister worthy of his salt should support any possible improvement in air services to Gibraltar. The air bus has come up as a possible improvement. So far the terms of the air bus are rather vague and nobody knows exactly what is proposed except that it appears that the operators, who I am sure are commercially minded, wish Government to underwrite the whole scheme so it would appear to be rather an interesting commercial proposition that if you are suffering losses well then Government pays the whole lot but if there is a profit well then the commercial people involved take some of the profit. And I am sure that if they found that it wasn't very viable they wouldn't hesitate to start saying: "Oh, well, we did this but we are not doing as well as we thought. We have got two possibilities we might cancel it but of course we know Gibraltar wants it. We will carry on but we will have to put the fares up." That is quite a possibility. But of course Government supports the air bus. The Minister has tried many companies to see if they wish to come to Gibraltar but,

unfortunately, they all come up with the same basic answer that the Gibraltar route is not a very viable route and therefore they have not taken up the Minister's pressures to put other planes flying to Gibraltar than what we have at the moment. Thus, Sir, I don't think it is reasonable to accept this suggestion of the Honourable Mr Xiberras irrespective of the Travel Association, the Hotel Association, the Gibraltar Trades Council or whoever wishes to write to Government and to say: "We are not happy with these fares, you must go to the Civil Aviation Authority." It is right that they should say that they think the Minister should go but, surely, the ultimate decision must rest with Government and that is why Government is there for. I think only once in the whole history of Parliament has Parliament ever given up its prerogative to govern - we will see this on the 5th of June - I think there are a lot of heart searchings in Parliament that the Referendum should ever have been permitted to go forth - I don't think the British Government will indulge in referendums in the future. They are the persons placed there to make the ultimate decisions and in this instance, Sir, the Government of Gibraltar has the difficult task of making the decision whether to go to the CAA, or whether they take the risk, whether to put the package deal into jeopardy. They have said that they should not go I feel it is a fully justified decision.

HON MAJOR R J PELIZA

Mr Speaker, I think every Member of this House is aware of the delicate and complex matter that air communications is and how vital it is to us. No one expects any Minister to go like a bull in a china shop into the Civil Aviation Authority, of course not. But neither, I think, does anybody expect him to go there under fear of blackmail which is the impression that he has certainly given me here in the House, that if he had pressed too hard for a reduction in fares then there was a danger that BA might have reduced the number of flights to Gibraltar. Obviously, anyone who goes to argue under those inhibitions is very unlikely to come out of it with any kind of victory and hence the failure, the failure all round of his mission. But, of course, the failure started long before he went because being the Chairman of the Select Committee he ignored that Committee completely and, therefore, he went there only with his own idea of what could be done and not sharing those of the whole of the House as would have been the case if he had made greater use of the Select Committee. I consider this to be very strange because when the present Government took office the Chief Minister then made a gesture of cooperation. In fact, I think he got rather annoyed when I at the time rejected the idea of having a member of the Opposition in the Planning Commission. Well, here was an occasion to demonstrate his anxiety to have more cooperation and instead we have the Minister on one of the most important issues concerning Gibraltar completely ignoring the other side of the

House in this respect and then saying that he is afraid of the consequences on the results going to the Civil Aviation Authority. Therefore, because there is no consensus, no united effort, we have that the conflict of interest are now appearing in a very dangerous way because the real conflict is between the interest of tourism and the interest of the locals being able to travel in the same plane. That is the real conflict of interest in that because we have got to bring down the fares for tourists it has got to go up for the Gibraltarians. This is the real conflict, and hence now we find the Gibraltar Trades Council acting on its own and trying to say: "We must look after the interests of our members and to hell with tourism in Gibraltar." This is the situation that the Minister has himself created. And it is no use laughing about it because the consequences have not ended. It is going to carry on now much more seriously than before and I am afraid that he may find that then he is going to start losing his flights to Gibraltar. Let us suppose that the CAA agrees to the new air bus. Then we find that the fares come down very considerably and British Airways apparently if they are suffering such losses will be unable to compete and one by one they will be reducing their scheduled flights and there will be no BA operating to Gibraltar. No BA at all. This is the great conflict of interests that I am afraid the Minister has brought up to the surface. Something that he could have easily avoided had he made full use of the Select Committee and then brought in all the interested parties in Gibraltar to find a common solution for all. Because I have no doubt that the workers of Gibraltar are as much interested in having tourism developed in Gibraltar for their own interest, for the common interest of Gibraltar, as I think the tourist trade themselves are. But because there has been that lack of leadership, of imagination and of good government we find a terrible situation now where we are disintegrating on this issue, completely disintegrating. This is the real situation. I think that we are talking a lot about fares but we are not getting down to the root of the trouble. It is about time we did tackle it seriously. We do have in Gibraltar at least two air operators who know their way about it. One has applied, as we know, to the CAA already directly. And it appears that the Government has given its support. The Minister could at least have told British Airways - not that I would - but at least he could have said: "We agree to your fares provided that you guarantee 10 flights." And then to Gibair: "We support you provided you put those 3 extra flights." Then you would have had 13 flights which is apparently one of the Minister's great ambitions. Unfortunately, 13 is not the right number. Perhaps the Minister could agree to 12. Well, and having done that carry on then with a much more far sighted policy of making use of two local operators who seem to be very keen in operating, and Government participating in whatever policy they were going to select. I think the Minister for Education told us just now how terrible

things are in the world, how things are going up and obviously we can expect them to go higher still. Therefore, unless we now make provision to reduce the cost as much as possible in the future, obviously, next year we will be sitting round here going over the same things that we are doing now. Therefore, now is the time to tackle the bull by the horns, it should have been before but at least let us start now. Let us find out if it is possible to operate as has been suggested at least by one of the local air lines or local air operators, if it is possible to operate and if they do require some Government underwriting I think the Government should be prepared to look at that - of course they should.

The point is that all this has got to be worked out with figures and facts. And if it is obvious at face value that it does have a prospect of being able to operate at no immense risk, then I think the Government should undertake it. There is no doubt about it. As I see it even a fund could be built up in time. Profits above a certain margin could form a kind of insurance for the future in case suddenly things were to change and losses had to be faced. There are lots of things that could be done but what is important is to get down and do the thinking and get people to cooperate and bring everybody who knows into it. I think everybody in Gibraltar would be prepared to help and produce something, but as we are now we find ourselves with the fares having risen and the Minister himself seems to have no hope of being able to do anything about it. He is not prepared to go back to the Civil Aviation Authority to see what he can get in the light of even alternative operators who have come with lower fares. I think the Minister should react to responsible public opinion and not just sit down and say that there is nothing he can do about it because I am sure that there is something he can do about it. And at the same time, in order to avoid the conflict that is arising, see if he can introduce perhaps by starting again a number of night flights, a way of reducing the fares for the local people. That I think may reduce the conflict to some extent. I understand looking at the figures for instance that night flights.....

MR SPEAKER

We must not go into these details.

HON MAJOR R J PELIZA

Mr Speaker, what I was getting at is the air fares themselves, the cost of the ticket to the passenger, this is what I was coming to in that I think we obviously want to reduce the cost for certain elements. We know that the tourists are getting the best they can because this is necessary for tourism, we find that the local people cannot get on those cheap fares more so

now because if they do through the back door it is considered malpractice so let us see if we can find a way of reducing the pressure from that side and I think that the introduction of night flights.....

MR SPEAKER

No. We must not go into the viability of the operation.

HON MAJOR R J PELIZA

The price is much lower - I am just going to quote the figures. That is all, Mr Speaker. For instance £43 I think it was in winter and £47 - that was in 1973. Now, I believe there was a proposition of £59 and £64 and that was never pursued and I believe withdrawn. At present the cheapest fare as you know is £94 and £86. Is there not a way then of satisfying the Gibraltarian. Alright, give so much to the tourists but what about the Gibraltarian? You have got to bear in mind that he is locked up here. Why can't the Minister go back and try and reduce the air fares and find a way out for the local people? The Minister seems to have completely lost consideration for them. I don't think the Minister can protest if he finds that the Unions are finding their own way out. Of course they will and before you know where you are if they can't get it this way they will start having charter planes and apply for charters to Gibraltar and that is going to reduce the traffic of British Airways. I see in the Minister's attitude lack of judgment, lack of common sense, lack of foresight, lack of knowledge, lack of interest for the local people. I cannot really but say that the Minister should take heed of what has been said here in the House today. I think we have been constructive. I put it to him that he goes back to the CAA to try and reduce the fares and see what can be done in the future by using the Select Committee and by using local knowledge and local firms if possible.

HON CHIEF MINISTER

Mr Speaker, I will avoid the inevitable repetitions that there have been in this debate and apply myself to a few bare facts that may not be completely coherent in order to make them as brief as possible. In the first place I would like to say that we are not inhibited under any circumstances by any support we are giving British Airways from supporting other airlines. That should be made quite clear. It has been made quite clear from the beginning. The second one I think has not been directly touched here but we ought to make it quite clear and we have spoken a lot about penalties for landing and a lot has been made in one of the communiques, perhaps one of the less thought out communiques and it was not either of the Trades Council or the Travel Association - I think it was the Chamber

of Commerce - about the question of subvention from the British Government on this. I would like to say whether one is entitled to or not I would like it made clear that the bulk of the penalties is suffered by the length of the runway and not by the landing procedure adopted by the Spaniards. Some suffer as a result of that but the bulk of it and in fact more recently there have been new procedures issued by the Civil Aviation Authorities in respect of short runways further putting penalties to safeguard the interests of passengers. That is a fact which I think we ought to remember quite clearly. Now, the other point which I think is missed mainly is that the simple contention of British Airways is that the greater the number of their flights the greater their loss. Therefore that is one of the matters that cannot be disregarded in approaching the judgment that the CAA could make on this matter. I will just quote from a CAA spokesman at a meeting held with the Minister in February 1975 when he said that: "the CAA needed to examine the economic liability of the airline under the terms of the Civil Aviation Act and they were required to make a 12½% return on their investment."

MR SPEAKER

Was that a meeting in Gibraltar?

HON CHIEF MINISTER

In London. That is a CAA spokesman in the course of talks. On the other side at a meeting held again in London by the Minister and others on Wednesday 2nd April with British Airways there is a note here "that instructions had been received from the Chief Executive that frequency should be cut to one a day." Now, Mr Speaker, those who are connected with the law and with litigation in particular should know and in fact know what it means to have a 'without prejudice' agreement rather than have a fight and that is that you can settle something which you think is a good settlement out of court rather than fight and either side losing. This is what has happened in this case in so far as the British Government and the British Airways is concerned. There were conditions from both sides. The conditions on the side of the Government were that the frequency of the flights had to be guaranteed and that the reduction of the fares in some respect had to be made. The condition on the other side was that they would give that guarantee and that they made a reduction if that was brought in as a package. If that was not the case of course the Minister can go to the CAA now from scratch and then that agreement is no longer binding on either the Government or British Airways because that was an agreement for the settlement of a dispute. All the things that have been said in this connection, the bulk of it, really goes to a matter of judgment of whether the Minister was wise in his judgment or not in coming to this deal. He and the Deputy Governor visited London. The Governor had previously done that

and having talked all round they came to this conclusion. This is why when a third party such as the Gibraltar Trades Council makes an objection it does not bind us in the sense that we are not in breach of any agreement it is their privilege to object the same as any individual can object at the Brewster Sessions for the granting of a particular licence in which the revenue authority and the applicant may well say that there is no objection the right of people from outside to object is sacrosanct and they will be heard. But as far as the Government is concerned it is a deal, it is a settlement out of court. That is what it is a settlement out of court, a settlement out of court made in the best interests of Gibraltar in the judgment of the Minister and in the judgment of all of us who have.....

If the Honourable Member wishes me to give way I shall do so.

MR SPEAKER

No, do continue.

HON CHIEF MINISTER

It seems that it is very difficult for this side of the House to be heard in silence. It is only the privilege of the other side that this side behaves properly.

HON J BOSSANO

Has the Honourable and Learned the Chief Minister considered the repercussions on this agreement if the CAA as a result of a hearing that is going to be heard take a decision on this matter? Is he telling the House that regardless of what the CAA decides he has an undertaking from British Airways that that agreement stands?

HON CHIEF MINISTER

No, I have not said anything of the kind. What I am saying is that as far as we are concerned we are honouring the agreement and we can expect the other side to honour it whatever the Civil Aviation Authority decides. That is what we are saying. That is absolutely correct because that is what we have agreed and quite obviously with a considerable amount of criticism and a considerable amount of opposition. It would be much easier for the Minister to have taken the plane and gone to object to the CAA than to fight this debate here. But if other people have ideas about this let them give credit to those who also have principles and who also have judgment and who also abide by what they think is the best interest of Gibraltar.

MR SPEAKER

I will now call on the Mover to reply.

HON P J ISOLA

Mr Speaker, if I may just deal with the last point raised by the Chief Minister when he likened these proceedings to a settlement out of court. The only difference is, in this case of course, that there isn't a settlement out of court that the matter is going to court and the Government cannot escape the fact that as far as the court is concerned it has to consult the Secretary of State on what is submitted by British Airways.

HON CHIEF MINISTER

If the Honourable Member will give way. It is on a point that I omitted and I would like to say this quite clearly, Mr Speaker, because I don't want any misunderstanding at a later stage. I wanted to be as brief as possible and I am grateful to the Honourable Member for having given way as it is the last opportunity I will have of speaking in this debate. We are concerned about air fares, we are concerned about frequency and we will support the motion.

HON P J ISOLA

I am glad to hear that Sir. In fact, the Government support everybody now. The point about settling out of court that I wish to make is that it is going to court, that under the Civil Aviation Authority regulations the Authority is bound to consult the Secretary of State, that in accordance with undertakings given by the Secretary of State to the Gibraltar Government, I think in the last Government, the Secretary of State is bound to consult Gibraltar Council and that, therefore, the Secretary of State will, in fact, tell the Civil Aviation Authority that they agree to this. There would be a positive act by the Government here. To that extent the Government is objecting to the GTC objection, if I may put it that way. The GTC objectors are faced with a reply from the Civil Aviation Authority that the Government of Gibraltar supports the application of British Airways. Let us get the record right there. I mean, you can support different people but there comes a time when you have got to make up your mind. And such a time will arise in the Civil Aviation Authority. The GTC will find themselves when objecting with the solid mass of the Gibraltar Government, representing the people of Gibraltar, saying it is OK, we have agreed the deal. The other point I wish to make and it really, Mr Speaker, arises from the contribution by the Minister of Education who, in fact, has disclosed to the House for the first time and to Gibraltar for the third time, the full extent of the surrender of the Minister

and the Government on this to British Airways because we now discover that the application for Gibraltar Airways' licence which they support will result, purely and simply, in British Airways reducing ten flights to seven and Gibraltar Airways taking over 3. It is true that British Airways has an interest in Gibraltar Airways but it is not a majority interest, so that to that extent, Mr Speaker, British Airways have come out extremely well. Because, in fact, it is providing, in effect, $8\frac{1}{2}$ services a week instead of 10. I think my mathematics are right. So what has Government achieved in these negotiations? It has saved $1\frac{1}{2}$ flights, that is all. Let us be clear about that. They have agreed to a reduction of $1\frac{1}{2}$ flights because Gibraltar Airways does not belong to British Airways. So what British Airways has said to the Government is "I will maintain 10 flights whether Gibraltar Airways gets a licence or not. But if Gibraltar Airways gets a licence we will go down to 7". So the Minister has not achieved anything positive, has not achieved any advantage for the people of Gibraltar in practical terms as far as frequency is concerned in supporting the Gibraltar Airways application. All it has ensured - and I am sure it has ensured that - is, perhaps, more stability on the route. Another operator who is prepared, perhaps, to come in despite these huge losses that are made on the route. Mr Speaker, I am not going to speak very much on this because I think the difficulties we are in must be so absolutely obvious that I don't think it is really necessary to enlarge on it. My first objection when all this came up was that to me it appeared that the Gibraltar Government had been subjected to blackmail and that the Gibraltar Government had succumbed to that blackmail and that rather than succumb to that blackmail the Gibraltar Government should have gone to the Civil Aviation Authority and then gone to British Government. There happens to be a little pledge at the back saying "sustain and support". I cannot see how a British Airways decision to reduce flights to Gibraltar because of their Chief Executive saying so, to 7 a week on a route that 78% of the seats are being occupied and therefore showing inadequate capacity on the route, would not have been overruled by the British Government if there had been a proper and forceful appeal to them in those circumstances. Because I don't see how the British Government could have said they were justified their support and sustain pledge on Gibraltar. And the political right of appeal was undoubtedly there and I would have hoped would have been used by the Government with the Opposition fully in support. It is nonsense to talk of reducing flights when you have got 78% load factor on the route. And there is another point, Mr Speaker, that I would like to tell the Minister about because I congratulated him on his success in 1974 but I didn't congratulate him for what he did in 1973, or what he agreed to. And that is that 50% of the seats on the aircraft are SGIT fares and that those fares are not determined in consultation with the Gibraltar Government at all. That is the sole privilege of the airline.

It hasn't even got to go to the Civil Aviation Authority. That was a decision taken in 1973 by the Civil Aviation Authority. So that this airline that says it is losing in the Gibraltar run and has control of 50% of the seats on the Gibraltar run and fixes its own fares on the Gibraltar run, I would suggest that they look at those fares if they think they are losing money and not so much at the fares that the ordinary people in Gibraltar are forced to pay and that, Mr Speaker, was the Honourable and Gallant Major Peliza's point when he said there was this conflict of interest. And that is the conflict of interest that is not new to the Select Committee on Air Communications. We talked about the question of providing a reasonable balance at our preliminary meetings. And then the Minister does not seem to have achieved much in that direction.

HON A W SERFATY

I would like to explain that when we came into office in 1972 already SGIT fares did not go to the CAA and certainly there was no consultation with the Gibraltar Government. Maybe Major Gache can explain better than anybody here present now. But we are now pressing.....

MR SPEAKER

I think you have made an explanation which is reasonable. You must leave it at that.

HON P J ISOLA

Well, Mr Speaker, as I said the only time it has appeared in 1972, 1973 and 1974 seems to be in the Authority decision of 1973. That is why I referred to it. But, of course, I stand to be corrected. Mr Speaker, on this side of the House we want a stable service between Gibraltar and London primarily. We make a lot of objections with British Airways because we feel we are being dealt poorly by them. But we do not want - let us be clear - British Airways to leave this route. We support the Gibraltar Airways application, again, so long as this produces stability and reasonableness in the route but we do not support these airlines at all costs and at any event. Therefore, this is why we think and we believe that there is an authority to deal with the situation and if we feel that we are not getting the right deal, if we feel as we feel on this side of the House, then we should not make out of court settlements. We should not be subjected to the pressures of negotiations and so forth and lots of figures being flung at us and lots of allegations being made which is what has happened. In 5½ hours I can assure the Minister he could not have found out everything that has to be known about air communications. I think here, on both sides of the House, we are pretty young in this still. I think British Airways are far greater experts on this than we are and obviously Gibraltar Airways as well.

That is why I think that the sensible thing to do is, in a situation like this, to go to the Civil Aviation Authority. If their decision is one that you feel Gibraltar cannot stand then you have to go to the higher authority still which is the British Government. There is procedure for appeal to the Secretary of State in the regulations of the Civil Aviation Authority but quite apart from that there is the political right of appeal on the pledge of sustain and support given by the British Government to Gibraltar, isolated as it is. There is some useful purpose in the Government supporting this motion because I think and I hope that this motion and the resolution of the House will go to the Secretary of State and put before the British Government the very real concern we have in Gibraltar for the situation that exists.

Mr Speaker then put the question in the terms of the Honourable P J Isola's motion which was resolved in the affirmative and the motion was accordingly passed.

ADJOURNMENT

The Honourable the Chief Minister moved the adjournment of the House sine die.

This was agreed to and the House adjourned sine die.

The adjournment of the House was taken at 1.50 p.m. on Tuesday the 13th May 1975.