

GIBRALTAR

HOUSE OF ASSEMBLY



HANSARD

17 JULY 1980

REPORT OF THE PROCEEDINGS OF THE HOUSE OF ASSEMBLY

The Third Meeting of the First Session of the Fourth House of Assembly held in the Assembly Chamber on Thursday the 17th July, 1980, 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 J Canepa - Minister for Economic Development, Trade and Labour and Social Security
The Hon M K Featherstone - Minister for Public Works
The Hon H J Zammit - Minister for Housing and Sport
The Hon Major F J Dellipiani, ED - Minister for Education
The Hon Dr R G Valarino - Minister for Municipal Services
The Hon J B Perez - Minister for Medical and Health Services
The Hon E B Pizzarello - Acting Attorney-General
The Hon R J Wallace CMG, OBE - Financial and Development Secretary

OPPOSITION:

The Hon P J Isola, OBE - Leader of the Opposition
The Hon G T Restano
The Hon Major R J Peliza
The Hon W T Scott
The Hon A T Lodo
The Hon A J Haynes

The Hon J Bossano

ABSENT:

The Hon I Abecasis - Minister for Tourism and Postal Services
(who was unable to attend due to illness)

IN ATTENDANCE:

P A Garbarino Esq, MBE, ED - Clerk of the House of Assembly

PRAYER

Mr Speaker recited the prayer.

CONFIRMATION OF MINUTES

The Minutes of the Meeting held on the 25th March, 1980, having been previously circulated, were taken as read and confirmed.

DOCUMENTS LAID

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

- (1) The Pilotage Administration Charge Rules, 1980.
- (2) The Port (Amendment) Rules, 1980.
- (3) The Pilots (Amendment) Rules, 1980.
- (4) The Merchant Shipping Ordinance (Amendment of First Schedule) Notice, 1980.
- (5) Gibraltar Registrar of Building Societies - Annual Report, 1979.
- (6) The Employment Survey Report - October, 1979.

Ordered to lie.

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

- (1) The Postal Order (Amendment) Regulations, 1980.
- (2) The Motor Vehicles Insurance (Third Party Risks) (Amendment) Rules, 1980.
- (3) The Motor Vehicles Insurance (International Motor Insurance Card) Rules, 1980.
- (4) The Tourist Survey Report - 1979.
- (5) The Hotel Occupancy and Air Traffic Surveys Report - 1979.

Ordered to lie.

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

- (1) Accounts of the John Mackintosh Hall for the year ended 31st March, 1980.
- (2) The Education (Independent Schools) (Free Dental Treatment) Order, 1980.

Ordered to lie.

The Hon the Minister for Municipal Services laid on the table the following document:

The International Trunk Calls Charges (Amendment) Regulations, 1980.

Ordered to lie.

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

- (1) The Copyright (International Conventions) Order, 1979.
- (2) The Companies Rules, 1980.
- (3) The Jury (Amendment) Rules, 1980.
- (4) The Supreme Court (Civil Procedure, Temporary Provisions) Rules, 1980.
- (5) The Supreme Court (Amendment) Rules, 1980.
- (6) The Supreme Court Fund (Amendment) Rules, 1980.

Ordered to lie.

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

- (1) The Import Duties (Drawback) Regulations, 1980.
- (2) The Income Tax (External Decorations and Repairs) Rules, 1980.
- (3) Supplementary Estimates Consolidated Fund (No 1 of 1980/81).
- (4) Supplementary Estimates Improvement and Development Fund (No 1 of 1980/81).
- (5) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No 8 of 1979/80).
- (6) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No 9 of 1979/80).
- (7) Statement of Consolidated Fund Re-Allocations approved by the Financial and Development Secretary (No 1 of 1980/81).
- (8) Statement of Improvement and Development Fund Re-Allocations approved by the Financial and Development Secretary (No 3 of 1979/80).

(9) Statement of Improvement and Development Fund Re-Allocations approved by the Financial and Development Secretary (No 1 of 1980/81).

(10) Treasury Minute on the First Report of the First Session (1979) of the Public Accounts Committee.

Ordered to lie.

MR SPEAKER:

May I say that two records have been broken. I think this is the longest list of papers that the Financial and Development Secretary has laid on the table since I have been sitting on this Chair and I think the Government itself has broken its record of laying papers on the table, this is the longest list that I have ever had.

HON J BOSSANO:

I wonder if I could interrupt here. I don't know whether this perhaps is the appropriate time but I thought before we got on to the formal business of the House, I think Members and certainly I would like to know that the Hon Mr Abecasis is making satisfactory progress.

MR SPEAKER:

May I say that as the inquiry is one of showing concern as to the state of health of Mr Abecasis, I am delighted to be able to give an opportunity to the Chief Minister to inform the House.

HON CHIEF MINISTER:

It is very kind of the Honourable Mr Bossano to inquire. Mr Abecasis is making excellent progress, he is physically fine, he is mentally very well, certainly, with regard to memory. His forward thinking is still a little subject to training but he is making excellent progress and I think that he will be back in the House after the recess, hopefully, with full power.

MR SPEAKER:

I am delighted to hear that and may I express I am sure the wish of the House when I say that I hope the progress continues satisfactorily and that we will see him here after the recess.

ANSWERS TO QUESTIONS

The House recessed at 1.10 pm.

The House resumed at 3.25 pm.

Answers to Questions continued.

The House recessed at 5.15 pm.

The House resumed at 6.05 pm.

THE ORDER OF THE DAY

MR SPEAKER:

The Hon the Chief Minister, the Hon the Minister for Housing and Sport, the Hon the Minister for Education and the Hon the Minister for Municipal Services have all given notice that they wish to make statements and I therefore now call on the Hon the Chief Minister.

HON CHIEF MINISTER:

Mr Speaker, I have given notice of two statements. The first one is on Engineer House.

The House will recall that in answer to Question No 16 of 1980 by the Hon Major R J Peliza on 25 March, 1980, the Minister for Economic Development, Trade and Labour and Social Security gave the House an assurance that definite steps would be taken to ensure that the Engineer House site would be taken over by the Government. I am pleased to be able to inform the House of the successful conclusion of negotiations between the Government and the liquidator appointed to deal with the affairs of L W Dayfenn (Gibraltar) Limited whereby it has been agreed that the Government will purchase the residual interest of the company in the Engineer House site for 286,000. This agreement has been conveyed to the liquidator's legal advisers and, once the Supreme Court has approved the transaction and the purchase price has been paid, the site will become the property of the Government.

As previously stated, the Government proposes to develop the site essentially for residential purposes with provision being made also for recreational facilities, landscaping and parking. The plans, which provide for the construction of approximately 30 flats, also envisage the widening of Engineer Lane along its frontage with the site. The flats will be made available to the general housing pool and pedestrian access will be provided from Engineer Lane to Castle Ramp.

It is proposed to include this development as an item in the next Development Programme.

HON MAJOR R J PELIZA:

Mr Speaker, I am glad this has come to a conclusion after, I think, 30 years of waiting. I do hope that full use will be made of the land available. I haven't seen the plans, but it seems to me that 30 flats is not much when one considers the size of the area. Is that the full use of the area?

HON CHIEF MINISTER:

It is precisely a site where we do not want a very high density area because it is heavily populated and it should be part on the lines of that area in some respect. I am sure my Hon Colleague will be only too happy to show Hon Members, particularly the Hon Member earlier than others if he is interested, the outline plans that he has. The other statement I have to make, Mr Speaker, is on the Public Works Department.

HON J BOSSANO:

The Hon and Learned Chief Minister said that once the Government obtains the land it is intended to include this project in the next Development Programme. Would the Government consider it worthwhile, rather than leave the place in its present state, to try and make some temporary use for it either in terms of parking facilities or, perhaps, as a temporary playground or something because if we are not going to make use of it for the construction of this project for the next couple of years, then it would be a pity not to make any use of it at all in the interim period.

HON CHIEF MINISTER:

I am told that the plan is a fairly straightforward one and likely to figure early but I entirely agree that if any practical short term noncommittal immediate help can be made in any respect, that would be looked into. Parking, certainly.

MR SPEAKER:

May we have your second statement.

HON CHIEF MINISTER:-

Mr Speaker, in my statement on the Estimate of Expenditure at the meeting of the House of Assembly held on 21 April, 1980, I informed the House that during the course of February and March I had held meetings with Ministers, and with Heads of Department and senior officials who work to Ministers, and impressed upon them the need to concentrate on achieving greater efficiency in carrying out departmental responsibilities and greater and constant awareness of the need to contain the growth of public expenditure.

It is now intended to institute a programme to investigate the level of efficiency in the execution of departmental responsibilities. The largest spending department of the Government is the Public Works Department and it seems appropriate that it should be the first department to be looked into.

Arrangements are accordingly being made to appoint a Commission to inquire into the role of the Public Works Department, its performance, its structure and its organisation. Sir Howard Davis has kindly agreed to chair such a Commission, the composition and terms of reference of which are being considered. The relevant Staff Associations will, of course, be consulted in this exercise and outside bodies and members of the public may also wish to comment or submit representations. An order of priority will be worked out for carrying out a similar exercise in respect of other Government departments.

HON P J ISOLA:

Mr Speaker, it is with very great pleasure that I welcome the statement by the Chief Minister. I think it was stated in our party political programme that the roles of the different departments in our community should be closely examined and I am glad to see that the Hon and Learned Chief Minister, in his statement, closely followed the wording in our manifesto. We welcome this investigation into the role of the Public Works Department in our community because as all Hon Members are aware, certainly on this side of the House, we have been considerably concerned over the years at the way that this department has been discharging its role to the community and we have been pressing to have this sort of look at the department. We welcome this statement by the Chief Minister and we certainly look forward to seeing the results of the inquiry.

HON J BOSSANO:

Can I ask the Hon Chief Minister to clarify that the objectives, in terms of improving the efficiency of this department, is effectively to find better ways or alternative ways of organising the work in order to achieve, perhaps, greater output from the same resources rather than the other direction, to maintain the same output with lower resources and possibly lead to cuts and redundancies.

HON CHIEF MINISTER:

That would presuppose that we are satisfied with the present setup in which case, of course, we would not have an inquiry. Of course not. The idea is to make the most of the staff and the personnel we have and to make sure that the department works well. I would like to say that there has really not been a thorough investigation into this department and, in fact, not even the merger of the City Engineer's Department and the Public Works Department in 1959 was done methodically and in fact there are many areas where it requires to be looked into. It is one of the highest spending departments and it is not an exercise to start-cutting but an exercise to start making the best of what we have.

MR SPEAKER:

I will now call on the Hon the Minister for Housing and Sport.

HON H J ZAMMITT:

Mr Speaker, Sir, I think I have given notice of two statements. As I mentioned in answer to Question No. 168 earlier this morning, I will be making a statement concerning the increased postal charges.

MR SPEAKER:

Perhaps you might start with your other statement first.

HON H J ZAMMITT:

Very well, Sir. Then I will deal, Sir, with the financial assistance given to Sporting Associations.

Mr Speaker, Sir, there seems to be some misunderstanding of the manner in which financial assistance is given to local sporting associations participating in events abroad. I therefore wish to make a brief statement to clarify the position.

The Government has provided and will continue to provide financial assistance to local Associations which represent Gibraltar at sporting events abroad and which enter for these events after qualifying in full official international competitions organised by the appropriate international governing body of the particular sport. Those participating in sporting events abroad by invitation or other arrangements are not eligible for financial assistance.

Grants to governing bodies of sport are considered when applications are called for by the Committee appointed for this purpose. It is then up to the governing bodies of sport to select their priorities within the grants provided.

HON P J ISOLA:

Mr Speaker, I do not welcome that statement. Does the Government not consider that there is a need to look, without commenting on sport

MR SPEAKER:

May I interrupt you. I have always established the practice that when a statement is made I always give the Leader of the Opposition the opportunity to make a comment on the statement itself. Insofar as questions are concerned this is not question time and only points of clarification should be raised.

HON P J ISOLA:

It is really a comment that I wish to make.

MR SPEAKER:

Fair enough.

HON P J ISOLA:

Mr Speaker, we cannot agree, on this side of the House, that when talking of sport and helping sport, no distinction can be made between what we would call broadly senior sport and junior sport. We believe that when you are talking about under-16's and under-15's, clearly different criteria should apply in giving assistance. It is part, we feel, of following a policy that was found to be good policy in the House, generally, of supporting young people, getting them out of Gibraltar for periods of time and giving them assistance in the development of whatever skills they have and this is why we have been critical about the Government's lack of support to the Gibraltar Junior Football League because there we are talking of 400 young people under the age of 16 who compete with each other, 10 teams, 20 teams, under 15 and under 16 and from whom a team has been chosen to go outside Gibraltar and I don't want to enter into debate at the moment on this issue but we certainly think that a distinction has to be made, a very clear distinction has to be made, of what I would generally call, men going out from sporting events and people under 16, school children, who are helped and encouraged to develop their sporting interests and we think it is unfortunate they are both dealt in the same way. As far as senior sport is concerned

MR SPEAKER:

No, because I think your reply is going to be longer than the statement itself.

HON H J ZAMMITT:

Mr Speaker, I tend to see the reason but I think the Hon and Learned Leader of the Opposition will have to concede that no Government could be able to stand the expenditure that young teams, possibly under 15, of their own free will and volition wish to go to America, Brazil or Moscow. Moreover, when it is known by Government that these youngsters have been afforded every single item and money for this particular trip.

MR SPEAKER:

I think you should now move to your second statement.

HON H J ZAMMITT:

Mr Speaker, Sir, as I mentioned in answer to Question No. 168 this morning, I would be making a statement concerning the increase of postal charges. Sir, as a result of an undertaking given by my friend and colleague, the Hon I Abecasis to inform the House whenever postal charges are reviewed, it falls on me to make this statement on the next increase which will become operative on the 1 August, 1980.

The last general review of postal charges took place on 1 January, 1977.

Since then, the cost of postal operations has increased considerably, mainly as a result of periodical revisions of salaries and of rising costs at all other levels.

In presenting the new rates of postage, I would like to point out that particular care has been taken to keeping these increases as low as possible, while at the same time ensuring that the running of the Post Office is financed as much as possible by its users.

In essence the new rates are as follows:-

Local Postage is increased by 1p, ie from 3p to 4p for a letter weighing 50 grammes.

Overland or surface rates from 6p to 9p for a letter weighing 20 grammes.

Airmail rates to Europe by 3p, ie from 12p to 15p for a letter weighing 20 grammes.

Airmail rates to other destinations and other postal services are also increased.

HON P J ISOLA:

Mr Speaker, whenever the Hon Member makes a statement I can't welcome it. How can the Government justify these rather large increases - overseas mail at 15p has never become more expensive than from England to Gibraltar. From England to Gibraltar the postal charges are 13½p. By the Government putting it at 15p we are going to find ourselves in the position that a lot of our mail from England is going to be held up in the Gibraltar Post Office because people have put the English rate on and we find ourselves having to pay . . .

HON A J CANEPA:

The UK rates are also going up on the 1st August.

HON P J ISOLA:

Then we have parity in postal rates. So far the Gibraltar Post Office has managed to send our mail to England at a cheaper rate than they send to us but that now disappears. One is concerned with the quality of postal delivery, we don't know where the fault lies but certainly I think users of the Post Office will agree that delivery of mail between Gibraltar and England and, in fact, Gibraltar and other places going through England, is most unsatisfactory and I hope the Minister now that we are being made to pay the going rate, I think the public are entitled to a decent service. On local postage, Mr Speaker, I wonder whether the Government ought not to reconsider the increased charge to 4p for taking two days to deliver mail from one part of Gibraltar to another. Can the Government, in increasing the charges to 4p, give any assurances to people who post letters on one day that they will be delivered the next?

HON H J ZAMMITT:

Mr Speaker, there are a number of points that I think he has raised by way of clarification I think I have to answer. First of all, I think I should say officially that the postage rates from England to Gibraltar and England/Europe and Gibraltar/Europe will be increased to 15p as from the 1st of August. I have been assured, Mr Speaker, by the Director of Postal Services that every endeavour will be made to try to improve the service in Gibraltar as far as is possible and there are certain rates, Mr Speaker, where in fact we are lower than in UK but I agree, Sir, that the Hon Member is right in saying that we should offer a similar service as is done in UK and we will do our utmost, I assure you, Sir.

HON J BOSSANO:

Mr Speaker, could I ask two points? Given that the basic reason for the increased charges is to make the Post Office self-financing, could I ask the Hon Member whether he has any indication of the cost to the Post Office of local mail, as opposed to United Kingdom mail, which would justify the local postage and, secondly, whether in fact given that in the cost of the Post Office there are the charges made by other Government Departments for things like water and electricity, whether the Post Office is not entitled to charge the Government for delivering the water and electricity bills because apparently it seems to me that part of the cost of running the Post Office is providing a service to this department who in turn treat the Post Office purely as one more customer but get privileged treatment themselves? Has he looked at either of those two points in his consideration of the need to make the Post Office self-financing?

HON H J ZAMMITT:

Sir, firstly, let me say that the Post Office has for quite a number of years been subsidised and subsidised quite substantially by the Philatelic Bureau. This was because there was never advance knowledge of the cost of pay settlements but one now more or less has an indication of what a pay settlement will cost and therefore we will not, I don't think, need 3 or 4 years to find

MR SPEAKER:

This is a statement, you have been asked a simple question. You have been asked whether you have taken into consideration in the increases of the local postage from 3p to 4p, the fact that you deliver mail for Government free of charge when Government charges for water and electricity, that is all you are being asked.

HON H J ZAMMITT:

Well, I think I've answered the first part of the question, Mr Speaker. The second part is that of course Government has pre-paid postal services.

HON CHIEF MINISTER:

Mr speaker, I bear that this is being done in the United Kingdom now ie making departments pay their own postage and perhaps that may be one way of getting more revenue from one department and making it cheaper for the Post Office but I would like to make a statement now that we do not propose to abolish a monopoly.

HON J BOSSANO:

I wouldn't for a moment dream, Mr Speaker, of suggesting de-nationalisation by the Hon and Learned Chief Minister. What I am saying is given that the statement, Mr Speaker, started off I think by pointing out the need to try and get the consumers to pay for the service and Government itself is a consumer of the service provided by the Post Office, I've asked the Minister if in arriving at his calculations of the financing of that service he has taken into consideration that part of the cost borne by the Post Office is the cost of delivering Government mail free of charge?

HON H J ZAMMITT:

That certainly was not taken into consideration, Sir, it may be a point we will have to consider.

MR SPEAKER:

I now call on the Minister for Education.

HON MAJOR F J BELLIPIANI:

Mr Speaker, whilst Gibraltar students have always paid the same tuition fees as UK students, and will continue to do so in the future, maintenance allowance and other special allowances have not been the same as those applicable to students in the United Kingdom where there is a mandatory awards system covering all students, including initial and post-graduate teacher training courses. The Educational Awards Regulations have already been examined by Government with a view to bringing maintenance and other special allowances for students more into line with those applicable in the United Kingdom, including the determination of parental contributions. Whilst it will not be possible to bring the Gibraltar system entirely into line with that applicable in the United Kingdom, in that the United Kingdom system is much more complicated than our own and in terms of parental contributions is related to a much more complicated income tax system, it has already been decided that with effect from September next the Educational Awards Regulations should be amended in such a way that the parental contribution to individual scholarships will be reduced by an average of £130 per annum. This contribution will now be met by Government by adjustment to the scale for the calculation of parental contribution. In addition the basic maintenance allowance will be increased to £1,600 in the London area and £1,400 elsewhere. The increased gross maintenance figure together with the reduced parental contribution will mean that students will receive between £250 and £350 per year from the scholarship fund than is the case during the current academic year. The special allowance for equipment applicable to specified courses will also be increased and the discretionary provision delegated to the Minister for Education in relation to individual hardship cases will also be increased. The minimum grant will be increased to £250. These changes will result in students being significantly better off financially during the next academic year than was the case during the present academic year. It is intended to review maintenance and special allowances applicable to students in the near future under the Educational Awards Regulations on an annual basis.

MR SPEAKER:

I will now call on the Hon the Minister for Municipal Services.

HON DR R G VALARINO:

Sir, the report of the British Post Office consultants was received on 28 April 1980. The recommendations deal with the system to be used and the measures to be taken to meet our needs with regard to the growth of the telephone system and the introduction of ISD with automatic call charging. Specifications have now been completed and have been sent to the three major manufacturers of exchange equipment in the UK with an invitation to submit tenders.

The closing date for tenders is Friday 8 August. The tenders will be examined by the Telephone Department in conjunction with the British Post Office and the contract will be awarded on Monday 15 September, 1980.

This is a complete turnkey project. The equipment will be delivered, installed and tested with the aim of bringing it into service in October, 1982. It is intended that the whole project will be commissioned by the 20th December, 1982.

While on the subject of the Telephone Department, the House may wish to know that the cable replacement and expansion programme is progressing as arranged. Subscriber carrier equipment was received in June 1980 and the Department is now in the process of installing and commissioning this. This type of equipment enables the capacity of a local exchange cable network to be doubled without adding extra cables or involving any expensive civil engineering works.

As the House knows, the Cable and Wireless Satellite Earth Station was commissioned on 20 June 1979. During the course of this year the Department has further increased the number of both way satellite circuits by seven, bringing the total to twenty-six, thus continuing the improvement in semi-automatic international tele-communications.

Negotiations have continued with Cable and Wireless regarding our desired increase in terminal shares. A provisional viability study has been produced by Cable and Wireless and the final viability study including their projected figures will be sent to Government by their Head Office in London by August. These figures will be examined closely and further discussions will be held with Cable and Wireless. It may nevertheless be necessary to increase the revenue for the Department by increasing charges for the two telephone lines used by each telex and by increasing charges for calls to UK and beyond via the Satellite as from 1 October, 1980. These increases would affect mainly businesses with telex lines and not the average subscriber to any large extent.

MR SPEAKER:

The next item on the Order Paper are Government motions.

HON CHIEF MINISTER:

Mr Speaker, I beg to move that the order of business should be amended in order that the motion standing in my name on the Gibraltar in Europe Group should be adjourned until Monday morning.

MR SPEAKER:

In the normal order of business this motion would have to be heard today but since it has been agreed that we should not deal with this matter until the Members of the Gibraltar in Europe Group are in Gibraltar, it is suggested that under Standing Order 7(3) the order of business be changed in order to enable us to go on to Bills.

This was agreed to.

BILLS

FIRST AND SECOND READINGS

THE SOCIAL INSURANCE (AMENDMENT) ORDINANCE, 1980

HON A J CANEPA:

Mr Speaker, I have the honour to move that a Bill for an Ordinance to amend the Social Insurance Ordinance (Chapter 145) 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.

SECOND READING

HON A J CANEPA:

Mr Speaker, I have the honour to move that this Bill be now read a second time. Mr Speaker, it is really clauses 2, 5, and to a lesser extent, clause 6, paragraph 2, which contain the main objects and principles which we are intending to legislate for. Perhaps, I might deal with the other clauses therefore in the first place since they are of less import. Clause 3 merely repeals a transitional provision which was made in 1970 and which is now obsolete. Clause 8 also deletes an obsolete reference to Colonial Regulations and Financial Instructions and in the case of clause 9 the opportunity is being taken to revise certain penalties for offences thereby bringing them more into line with the level of penalties in the United Kingdom. In clause 6, Mr Speaker, the first paragraph is a minor amendment which has been advised by the Attorney-General in order to make the meaning clearer but in sub-paragraph (2), however, we are removing an anomaly whereby in a very few instances a reduced widows' pension converted when the widow reached the age of 60 and thereby become entitled to an old age pension, in a very few cases depending on the average number of contributions, they converted to a lower old age pension. This is clearly anomalous, it is something which we discovered about a year ago, some time in 1979, and in the interim period before we were in a position to bring legislation to the House, we have been carrying out an adjustment by paying the person

concerned the difference in supplementary benefits so that there would be no element of loss so we are rectifying this anomaly in this clause. The real guts of the Bill, however, Sir, are in clause 2 and in clause 5. Clause 2 redefines self employed persons in order to include ministers of religion and members of religious orders. We are thereby giving an opportunity to these people who are not insurable at the moment to become compulsorily insured. Many of these would not be able to qualify for anything like a full pension in due course and therefore in clause 2 we are giving them the option to join the scheme only if they so wish so that any member of a religious order who are too old to contribute between now and reaching pensionable age a sufficient number of contributions to make it worthwhile for them to acquire entitlement to a substantial pension, need not contribute, they can opt to stay out. All future members of the clergy and religious orders who arrive in Gibraltar from the date of implementation of this legislation, namely, from the beginning of 1981, will have to become compulsorily insurable unless they are already contributing to a similar scheme elsewhere so it is a further looking measure and we are affording an opportunity to the existing clergy, if it is in their interests to do so, to join the scheme. The other substantial point covered by the Bill, Sir, is clause 5 which confers on a man the right to an old age pension by virtue of his wife's insurance as happens in the case of a woman who now enjoys the right to a pension by virtue of her husband's insurance. This amendment will not take effect, however, until 1985 and the reason is that we are applying progressively a directive of the EEC by which, by 1985, we are required to remove the option which a married woman or a widow have not to pay contributions if they so wish, we are required to wipe that out and also to bring their contributions fully into line with male workers. At the moment a female employee does not pay the same contribution as a male, women pay slightly less, but over the period of the next four years from 1981, we are required by an EEC directive to bring these contributions into line, the same for women as for men, and therefore the Government considers it is only right that if a woman is going to pay the same contribution, in the same way as a man on reaching the age of 65 is able to confer on his wife a pension, a woman should also be able to confer on her husband a pension when she reaches the age of 65, if he doesn't have a pension in his own right because either he is not contributing or has contributed but is getting a pension lower than what he can get on his wife's contribution so we are introducing equality of treatment in this respect. The other two clauses, Mr Speaker, 7 and 10 are purely consequential. I do not know whether the Honourable Mr Bossano is perhaps outside but for the record, with your leave, Mr Speaker, because although germane to the Bill it is not totally relevant, I would ask your leave to inform the House that in December, 1978, the Honourable Mr Bossano, in question No. 285, asked the Government to look into the matter of reviewing the conditions under which credit for social insurance contributions may be granted to see whether it was

possible to help those who were chronically ill and had exhausted the credit to which they are entitled, so that their entitlement to long term benefit should not suffer because of long gaps in their contribution record. I think it is an opportune time, if you allow me, Sir, to inform the House that having studied the matter it has been decided to provide for the granting of unlimited credit (a) to persons who are permanently incapacitated for work because of physical or mental incapacity and (b) to persons incapacitated for work as a result of an industrial accident or an occupational disease. Such persons, of course, would have to fulfil the appropriate conditions for the grants of credit in the first instance but instead of that being limited to I think it is a maximum of 26 weeks I believe now the Director of Labour and Social Security will be given power to grant unlimited credit. It is not something which is being dealt with in the Bill, it falls to be dealt with by regulation, but I thought I should inform the House because the next three amendments to the Social Insurance Contributions Regulations is already being prepared and will be made later this year in order to come into effect at the same time as this Bill. Sir, I have much pleasure in commending the Bill to the House.

MR SPEAKER:

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

HON P J ISOLA:

Sir, we welcome this Bill. On the question of the religious orders and the new set of self employed persons that can come in or the amendment of that definition so as to allow ministers of religion to become eligible to the insurance scheme, we agree with this clause, I think it is a very fair one and obviously one has to bring them in on a compulsory basis and it is fair to say that anybody who comes after 1st January, 1981, will have to comply. Those who are already here, already active will have the option to join. Is the position, I would like to ask, that an opportunity will not be given to the people who qualify under this to pay a lump sum like others were given and get the full benefit, is that the position?

HON A J CANEPA:

That is the position.

HON P J ISOLA:

The only thing I would observe here, on the Social Insurance (Amendment) Ordinance, and I am glad to see that the Committee Stage will not be taken until a subsequent meeting, I hope the Minister can consider between now and the Committee Stage, whether now that he is giving an option to certain classes of

people, and rightly so, to join the scheme, whether consideration might not be given to extending that option to persons who are still not in the Social Insurance Scheme. I would like the Government to think about it, we will think about it, I am not quite sure how it can be done or what can be done, but since the Bill is before the House I think if something can be done to ameliorate the position of old age pensioners who are not getting an old age pension, I think the opportunity might be taken. The introduction of equality between women and men, I think that must be welcomed and this is good and this may help, I think, or it could help people who are not eligible today to the old age pension under the Social Insurance Scheme, it could help them if they could now receive the pension through their wife's contributions but I suppose that that would not be of much benefit or use to them if it is not going to come into effect until 1 January, 1985. I appreciate that the Government is considering bringing it in in accordance with EEC directives but what I would like to ask the Minister when he replies is whether there might not be some alleviation possible for the position of some old age people who are not eligible to old age pension under this Ordinance if the date for bringing this into force could not be advanced somewhat. I know this is a highly technical matter and I may be talking through my hat but perhaps the Government could think about this between now and the Committee Stage to see whether by making a man entitled to an old age pension by virtue of the insurance of his wife, by using these provisions and bringing them into force earlier, the lot of the man who is obviously older than the woman but who is not in the scheme, whether he might not be brought in this way. I think that anything that can be done to help the situation of those persons to bring them into receiving an old age pension under this Ordinance I think would be welcomed and supported by this side of the House so whilst welcoming this Bill that is before the House as an improvement as being perfectly fair and just I would pose the question to the Minister whether he could not improve on its provisions between now and Committee Stage to achieve the objects that I have set out.

HON A J CANEPA:

The question of re-defining self-employed persons in order to allow the clergy to qualify was a matter that was considered by Council of Ministers at the end of November, 1979, over seven months ago. Obviously, the moment that the Government was giving consideration to bringing people into the scheme who are not now within the scheme, the question of the category of people that the Honourable Member has referred to immediately obviously came into the picture once again, so I do not need to between now and October when the Committee Stage and Third Reading is taken to give the matter further thought, the matter was given thought at that time. In the case of clause 5, the amendment about equality of treatment, on that decisions were taken by Government in June, 1979, so again the time gap of about five months in considering what

should be done about the clergy was motivated because we were giving consideration precisely to this point so I cannot offer a great deal of hope to the Honourable Member that we will be able to come up with something between now and October. The question of a lump sum payment covering arrears by the clergy does not arise. When I was approached by the Bishop and asked to consider whether the clergy would be eligible to qualify for payment of social insurance contributions he made it abundantly clear that he saw this as a forward looking measure, something for the future. He recognised that the older clergy had, perhaps, missed the boat and he really wanted to ensure that having regard to the progress that is made nowadays and having regard to the need to put the position of priests in the future on a firmer footing than what has been the traditional case, certainly with regard to the fact that there was never any provision for their old age, whether the Government could do something in this respect and I was agreeable on that basis because it was a forward looking case and would not open up the canard, if that is the right word, of this big issue of the people outside the scheme. The question of the equality of treatment and why we have phased this. In 1977 I brought amending legislation to the House in order to give an option to married women and widows not to have to pay insurance if it was not in their interest to do so. You could have a case where a widow was already getting a full widow's pension and was in employment and through contributing she would get nothing out of it because she already had a widow's pension and you cannot have two pensions. Likewise there were cases where women opted to pay the reduced rate of contribution which only covers them for employment injuries because they were covered through their husband's contribution and they did not consider that it was worthwhile for them to contribute. That was provided for in 1977 and it was, I don't mind telling the House, rather annoying for me two years later to be asked and to be told through an EEC directive which we had no option but to comply with, that we now had to put the clock back and something that had been seen in Gibraltar as a good and a progressive measure had to be repealed, effectively. As I say, I didn't like that and I did not think that in the circumstances of Gibraltar what the EEC want met our requirements and we made representations about it and we were told that there was nothing that we could do and that in fact United Kingdom ministers had felt the same way and had not been able to get anywhere with Brussels. Therefore, since the applicable date was 1985, I thought I should recommend to the Government that the process of bringing into line women's contribution with men's, in other words, increasing them should be spread out over as long a period as possible so that the impact would not be very great. After 1985, a widow in employment already getting an old age pension will have to contribute without getting anything out of it because she cannot get a higher pension and the only thing that she might be covered for will be unemployment. Likewise, a married woman will have to make the full contribution even

though she is covered by her husband. In that case of course she will be entitled to a pension in her own right at a single person's rate which might be higher than the addition that she would get on her husband's contribution. That is why we are spreading it out over five years to 1985, but because I did not like having to take these steps I thought that it was only fair that I should bring women into line and give them the same rights as men have otherwise a woman would only get a pension for herself be considered the same as a man and not get any addition. In fact, this will only happen in a handful of cases because there cannot be many cases in Gibraltar now where a woman is working and contributing and her husband is not, very, very, few cases, I would hazard a guess, a handful and I mean a handful. I thought it was equitable to do so but by the same account it would not be equitable to confer this right before 1985 because the woman will not be paying full contributions before 1985 unless, of course, we were to bring forward the date on which she is made to contribute the full amount to 1981/82 and then concurrent with that she could pass on this right to her husband and as I say we are only talking of a handful of people that will benefit out of that whereas it is not a handful of women who will have to pay the full contributions by 1985 so balancing the two things together I thought it was better to proceed as I have indicated.

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

HON A J CANEPA:

Sir, I beg to give notice that the Committee Stage and Third Reading be taken at a subsequent meeting.

THE GIBRALTAR COURT OF APPEAL (AMENDMENT) ORDINANCE, 1980

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to move that a Bill for an Ordinance to amend the Gibraltar Court of Appeal Ordinance (Chapter 170) 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 the Bill be now read a second time. Mr Speaker, it is a short Bill consisting of two clauses. The first one being the interpretation clause and the second is a substantive matter. The principle purpose of this amendment, Mr Speaker, is to empower the Court of Appeal by order of the President made with the consent of each party to sit in the United Kingdom on any interlocutory matter and to defer any interlocutory matter on written submission

without hearing the parties. It is a novel departure, Mr Speaker, for the Court of Appeal of one country to sit in another but the purpose of the Bill is to avoid delay by enabling matters which are of small procedural substance at the moment to be dealt with away from Gibraltar. This would avoid delay and would also reduce the number of matters for which the Court need come to Gibraltar thereby saving costs. The House will wish to know that the Chief Justice favours the proposal and the Bar thoroughly approves of it. 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?

There being no response 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 later stage in the meeting.

This was agreed to.

THE BUREAU DE CHANGE ORDINANCE, 1980

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to regulate bureaux de change in Gibraltar 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 FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, Sir, I have the honour to move that the Bill be now read a second time. The purpose of this Bill, which is a major piece of legislation, is to regulate the operation of bureaux de change in Gibraltar. The buying and selling of foreign currency constitutes trading within the meaning of the Trade Licensing Ordinance under which a licence is accordingly required. In the expectation of the frontier opening quite a number of applications were received for such licences to trade in foreign currency. The Government, however, considers that Gibraltar's image as a tourist and financial centre could be marred if it acquired the flavour of an uncentred money changing centre. Secondly, that dealing in foreign currency is a highly specialised trade requiring expertise, prompt access to overseas information

and resources capable of absorbing losses from currency fluctuations and, finally, that the Licensing Authority established under the Trade Licensing Ordinance was not equipped to control and assume responsibility for the provision of financial services in Gibraltar. It therefore had to take urgent steps to introduce tighter control over the establishment of such businesses known as bureaux de change i.e. those places at which foreign currency is bought or sold by way of business. Accordingly, a directive was issued in the public interest, under the provisions of Section 16(3) of the Trade Licensing Ordinance, to the effect that the Trade Licensing Authority should not proceed to hear or determine any applications for a licence to trade in foreign currency without the prior consent in writing of the Financial and Development Secretary. This directive, Mr Speaker, was only designed to control the situation until proposals for suitable legislation to be brought to this House and it is the intention behind the present Bill to introduce those controls. Before proceeding further, Mr Speaker, I should like to stress that the proposed legislation is only intended to cover trading in foreign currency, that is, the buying and selling of foreign currency as defined in Clause 2 of the Bill by way of the business. It will not apply to any receipt or payment in foreign currency made in the ordinary course of other business such as, for example, in payment for goods or services. In other words, Sir, if I am a visitor to Gibraltar and I go into a shop and wish to buy a watch or scent or whatever and I have travellers cheques in sterling or in deutch marks or whatever the currency, the salesman can change travellers cheques he can give the change in whatever currency I ask him and if he happens to have it and I get the purchase. That is the normal arrangement. It is only the buying and selling of the actual foreign currency which will be controlled by the Ordinance. If I may, Sir, I would like to touch on the broad details of the Bill. Clause 5 provides for the setting up of a Licensing Committee comprised of the Financial and Development Secretary as Chairman and two other members to be appointed by the Governor. The Government's view is that these members should be senior members of the Treasury and intends to advise His Excellency the Governor accordingly. It is proposed that the Committee should deliberate in camera and that an officer of the public service should be appointed as an investigating officer to the committee. I think, Sir, it is important that Honourable Members should appreciate the difference between the proposed bureaux de change licensing committee which would be set up under the Bill now before the House and the existing Trade Licensing Authority. Although the latter has the general responsibility for public interest it also has the important role of considering private interests and for that reason is empowered to hear objectors to the issue of trade licences. The main function of the Bureaux de Change Licensing Committee, on the other hand, would be to examine applications under this Ordinance, having regard to the need to protect the economy of Gibraltar and its reputation in relation to financial matters and tourism. In considering

and determining applications, the Committee will be guided by the criteria listed in 16(2) of this Bill. These include such matters as the financial standing, financial experience and reputation of the applicant, whether the business will have effective and competent management, the proposed amenities, the size and locations of business, the hours of business, existing facilities and arrangements that will be made for the disposal of foreign currency balances surplus to the requirements of the operator. I would at this junction, Mr Speaker, like to give notice of my intention at the Committee Stage to substitute the word "his" for "local" at the end of the second line of Clause 15(2) sub-paragraph (3) of the Bill. If I may just revert for the clarification of Members, at the moment the subsection reads: "arrangements proposed by the applicant for the disposal of foreign currency that is surplus to local requirements". That should read: "arrangements proposed by the applicant for the disposal of foreign currency which is surplus to his requirement". I am sorry that this error has crept into the Bill, Sir. The point here is that it is normal and necessary for a Bureau de Change operator to make forward cover both so that he is covered in his operations in the event of violent swings in the currency market. As the criteria for determining applications of Bureaux de Change licences form part of the criteria used in assessing applications for licences under the Banking Ordinance, the Government considers that persons who are licensed under the Banking Ordinance to carry on banking business offering current and deposit accounts and cheque facilities, that these should be excluded from the application of the provisions of the proposed Ordinance other than those included in the clauses specified in paragraph 4 of the explanation and that is Clause 32 under which the Financial and Development Secretary may give directions; Clause 33, relating to the production of documents to be kept; Clause 34, providing consequentially for offences and Clause 36, relating to regulations otherwise than for licensing matters. Licences issued under the Ordinance will not be transferable and will relate to specified premises. There is provision for their renewal, variation and also for cancellation for a stated cause and suspension pending the determination of an application for cancellation. There are rights of appeal to the Governor in Council against decisions of policy and the Stipendiary Magistrate where licences are cancelled on essentially factual grounds. There are also included in the Bill, Sir, transitional provisions to allow for those persons who hold, at the commencement of the Ordinance, trade licences authorising them to carry on the business of Bureaux de Change to be deemed licenced under the Ordinance for a period of 3 months and for pending applications made under the Trade Licensing Ordinance that are caught by this Ordinance, to be determined under the new Ordinance. The First Schedule of the Bill provides that certain fees and these, Sir, are considered necessary to meet the cost of administering the Ordinance. Sir, I would point out to the House that whilst it is a major piece of legislation and it

is complex, it is important that new legislation to control Bureaux de Change is passed at an early opportunity as possible. The present arrangement whereby the Trade Licensing Authority cannot proceed to consider a licence to trade as a Bureau de Change without the consent of the Financial and Development Secretary is a holding measure, it is unsatisfactory and, if I may say so, Sir, I think it is probably less fair to applicants than would be consideration under the proposed Bill. Sir, I commend this 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 or merits of the Bill?

HON P J ISOIA:

Mr Speaker, I think I agree with the Honourable the Financial and Development Secretary, it is a complex Bill. It has only come to us five or six days ago, we do not think, frankly, that this Bill should go through all stages during this session. In the first place the question of Bureaux de Change is not quite as an emotive subject as divorce, but it has evoked some interest judging from the number of applications that I have seen and I think the chance should be given to members in the trade and the public to comment on the Bill and to make representations, if they wish to make them, either to the Government or to ourselves. I do not think it would be right to insist on this Bill going through all its stages. I appreciate the present situation is unsatisfactory but I think once the Bill has been published I do not think it would come as a surprise to anybody to find that the Financial and Development Secretary is no longer giving consent to the hearing of particular applications until the Bill comes into force which it could come in October. I say this having heard what the Financial and Development Secretary said. I do not think it would be right to put this Bill through all its stages, certainly I would like to have more time to consider it and I am sure Honourable Colleagues on my side of the House would too. Let us say straight away the criteria by which we are governed in approaching the problem of Bureaux de Change. We would not like to see Gibraltar becoming a little "Zoco" where lots of little shops change money or having Bureaux de Change all over Gibraltar, we would not like to see this. On the other hand, equally, we would not like to be overprotective, let me put it that way, of the existing banking institutions that have bureaux de change. We think there is no reason why responsible and respectable people who wish to engage in this sort of business, which I think can be very risky, should not be able to do so provided they fulfil the criteria set down in the Bill, in other words, we agree there should be regulation of bureaux de change and it shouldn't be an unregulated trade and therefore we agree entirely with having a Bill to regulate this. Things that I think we would certainly like to

think a little bit more, Mr Speaker, is questions of the composition of the licensing committee for Bureaux de Change. I see the merit of having the Financial and Development Secretary as Chairman and I would like to be assured that he will be the Chairman and not somebody else. If it is going to be him we agree entirely but I would not necessarily agree to it being somebody else. As to who the other two members should be, senior officials, personally, perhaps, I would go along with that, others might feel that there might be more representation not on the Committee but some people may say that the Financial and Development Secretary is well represented by having himself there. He does not need two other officials necessarily and there might be a case for having somebody from outside, I don't know, we would like to think about this. We are not against the idea in the Bill but I think that we would like to have a think about that. Mr Speaker, another point on which I would certainly like to have a think on are the criteria for granting a licence. At first reading they seem alright but on the other hand there may be other things that we would like to see in it. We would like to be assured that the criteria that has been set out has not been set out too much in consultation with the banks in Gibraltar, I think we want a little elasticity but respectability. We certainly would like time to consider this Bill. I think one would like to allow time for members of the public or interested parties to make representations on it. The next point, Sir, that we would certainly like to consider, I would have thought, is the question of appeals. This is an important one. As a matter of principle I am not very happy with the idea of having an appeal on some grounds to the Governor in Council and an appeal on other grounds to the Stipendiary Magistrate. I am not happy, Mr Speaker, with the idea of an appeal going from the committee to an executive body, the Governor in Council. There may be good arguments for it I suppose but when one considers that the Financial Secretary, for example, sits with the Governor in Council, ex officio, I do not think it is such a good thing, as a matter of principle, that an appeal from the committee should be heard by what is essentially an executive body. I think we should keep the Governor in Council for making policy decisions and governing but not as far as possibly taking judicial decisions of an appellate nature. This is important, I agree, and it might be a good idea to have appeal direct to the Supreme Court in cases of Bureaux de Change. This is something that I certainly would like to think about and I am sure other Hon Members would like to think about. Another point I would like to make is the question that no licence shall be transferable. I see the point but if we are going to give effect to that point I think we will have to make some provision under which shareholding in the case of a limited company cannot be transferred. If shares are transferred in the company owning the licence then he loses the licence unless he has got consent. I would have thought that was important otherwise people just form a company and that is it and they go on transferring and they have got a marketable security. So, Mr Speaker, these are our first reactions

to the Bill. We do support the idea of regulation and we do support the idea of control of Bureaux de Change, we do not want the free-for-all but on the other hand we are not here to protect the situation of existing banking institutions although we have the greatest respect for them. I think there is no reason why people who may wish to set up in this sort of business should not set up. Generally on the Bill, Mr Speaker, we support the principles of the Bill, we support what is said in the Bill but we feel, however, that opportunity should be given to interested parties and members of the public to make representations on the Bill either to the Government or to the Opposition and we ourselves would certainly like to have a look at the points that I have mentioned in my address. Thank you.

HON. CHIEF MINISTER:

The reason why we put it for Committee Stage in this meeting, Mr Speaker, is because we do not like the present methods that have been used to put a stem to this by acting on a Governor in Council direction by the Trade Licensing Committee. But on a balance of convenience, if Honourable Members opposite do not object to that having to continue as it has to continue because otherwise this one has to be substituted, of course, we have no difficulty in allowing this to go on until October and hear representations from them or anybody else.

HON MAJOR R J PELIZA:

I welcome the Honourable Chief Minister's decision to allow this matter to receive some attention from the interested parties in Gibraltar which I think they might be many. I think the local trading community will see an opportunity here of perhaps benefitting their own position. I do not believe that they should be deprived of that opportunity. With the present criteria this may well prevent quite a number of reputable firms in Gibraltar from being able to enter this kind of business which obviously in my view may well be very profitable in the circumstances foreseen. Because of that I think, Mr Speaker, the criteria is very important that it should receive a little closer attention. One aspect is the financial standing and financial experience. What is going to be demanded in the form of experience? If, for instance, a firm were able to get an employee from another institution which dealt in financial matters will that be considered financial experience? Well, if something like that is going to be the case then it will certainly open the door to local businessmen to be able to undertake such business if other things are approved but if the criteria of financial experience is the fact that the business must have been established either here or abroad for a number of years, that is certainly going to close the doors, I think, of Gibraltar. Perhaps the Financial Secretary, in reply, could expand a bit more on what the criteria means because the terms I think are open to a lot of interpretations. I think an elucidation of those interpretations would be very valuable as to the comments that will later be made, I hope, by

interested parties in Gibraltar and certainly by the Opposition. I think we all agree that we do not want to see little tables all over Main Street carrying out exchange to the extent that we see in other parts of the world, that I think would be contrary to the wishes of businessmen in Gibraltar. On the other hand I think that kind of competition that we see in free enterprise should not be restricted by that consideration which I think can be avoided quite easily and at the same time give enough margin for local businesses in particular to be able to make use of this new situation. Otherwise I think we create monopolies which in the long run will not be in the interests of Gibraltar and naturally the exchange rates will vary with the amount of competition that may be available in our market so I think we must balance one thing against the other. I see our Hon Minister opposite shaking his head, but that is a fact, some Bureaux de Change do in fact have lower rates than others and this I think the Honourable Minister will find out if he goes abroad that not necessarily all the bureaux have the same rates of exchange. Therefore, I think it is in the interest of Gibraltar that the rate of exchange should be the lowest possible so that it does attract the tourists because that in itself is going to generate more business in our shops. Therefore, Mr Speaker, I think that whilst one does not want to see every shop in Gibraltar becoming a bureaux de change, I do believe that it should be borne in mind that we do not want to create monopolies and I also believe that if in the decisions that are going to be taken by this Committee, which is obviously a very official committee and if the decisions are not going to be satisfactory to the applicants in many instances who feel that they have not had a fair deal, like my Honourable Friend the Leader of the Opposition has said I think that somewhere in the open the appeal should take place where all the factors involved in that application will be able to be discussed openly and in public. That I think in itself will give an assurance to the applicant for the licence that the whole matter is being fairly and not only that I think generally in Gibraltar it will be seen that that was the case otherwise I think it will lead to all sorts of interpretations and I believe that that is not in the interests of good legislation or good Government and in that respect therefore, Mr Speaker, I think that those points should be borne in mind and I would certainly - I think this is important - I would certainly welcome from the Financial Secretary in his closing address to expand in detail as to what he means by the criteria and the terms used under the different clauses. I think this is very important so that when we start thinking of what this will represent we can make a judgement as to whether we can support as it is laid down in the Bill or whether we would like to introduce amendments.

MR SPEAKER:

I will now call on the Honourable the Financial and Development Secretary to reply.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, Sir, first of all I would like to assure the House that I am not proposing some comfortable, cosy arrangement that might lead to a monopoly and those Members of the House who perhaps know that those cases in which I have given my consent, have come before me already and which has gone through the Trade Licensing Authority, there is no question of it being a tight, cosy arrangement particularly with only the Banks having the rights to act as bureaux de change.

HON MAJOR R J FELIZA:

If the Honourable the Financial and Development Secretary will give way. I wasn't obviously referring to him personally but the law is the law and his successor may not have the same liberal view that he has.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, the Honourable Member is ahead of me. I am replying really to the points made by the Honourable Leader of the Opposition, that there is really no question behind the Government's thinking or behind that of the Treasury who put the proposals to the Government, that that should be a cosy arrangement that might lead to a monopoly situation and the decisions that we have made so far indicate that. I think that also both in the way in which we are looking at cases at the moment, before consent is given or withheld, it is quite clear particularly where it is withheld that people know why it is withheld. It is important, I agree with the Honourable and Gallant Member, that people should know why their case has been turned down. In all the cases where consent has been withheld we have spelt out in a letter to the applicant why and we were quite happy to discuss with them further should they wish. Specifically, in the Bill now before the House, it provides that where an application is not accepted, that the reason for withholding acceptance are set out, this is a safeguard which is necessary. As for specific criteria, the Honourable and Gallant Member referred to the financial experience and do we run financial experience that could possibly be imported or learned locally, well, indeed, we are not suggesting that it could only be people who come in from outside who would have this experience, the experience could be local and on financial standing clearly one will need to be assured that the funds behind the organisation are adequate for the extent of business that they are proposing. Whether or not the proposed management of the business is likely to be effective and competent that will have to be judged on its merits and the experience of persons who are to be engaged in the bureau de change, whether they have the necessary experience. The amenities offered, hours of business, etc, proposed size of the business and turnover, I think speaks for itself. Proposed location links up with the existing facilities. One does not want necessarily too many bureaux de change in one

part of the town and another part of the town empty of facilities. The arrangements proposed by the applicants for the disposal of foreign currency, has he come to an agreement with a bank or any financial institution either here or outside Gibraltar for coverage so that the foreign currency surplus to requirements can be disposed of in an orderly fashion rather than putting him at risk by having the whole currency over too long a period when there could be wide fluctuation. Whether or not the proposed business will be the only business to be carried on in the proposed premises, this is important because in the Government's view it would be wrong to have a bureau de change in a shop in which other business is being transacted and where persons could go up, change their money and come back again. The provision that if a person goes into a shop to buy goods and presents a travellers cheque or foreign currency, that that can be accepted, should be adequate for the shop but for the orderly conduct of business our view is that it should be a separate, distinct, discreet premises. It may be operated by a person who owns another shop but it has got to be, in our view, a distinct premises except insofar as such places as travel bureaux, a hotel, a bank or other financing institution or credit taking institution. However, Sir, we have noted with interest the points made by the House and as the Chief Minister has already indicated we are content that the Committee Stage and Third Reading should wait until the next meeting of the House. I would point out that this will mean a consequential amendment to clause (1) subsection (2) because the intention was that the Ordinance should come into operation on the first day of August.

HON MAJOR R J PELIZA:

Could I just ask the Financial and Development Secretary one question? One the question of financial experience - I am coming back to this because I think this is a very fundamental - you say 'local financial experience'. What do you mean by 'local' that they have to own a bank or in which way?

HON FINANCIAL AND DEVELOPMENT SECRETARY:

It could be that a person who is going to work in a bureau de change has had experience working in a bank in Gibraltar or elsewhere.

HON MAJOR R J PELIZA:

Thank you.

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

THE INCOME TAX (AMENDMENT) ORDINANCE, 1980.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to amend the Income Tax Ordinance (Chapter 76) 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 FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that the Bill be now read a second time. There are four major changes to the Income Tax Ordinance proposed in the Bill now before the House. The first is to remove the exemption from income tax that applies to allowances of members of the Gibraltar Council and this House. The second is to exempt from income tax interest received from deposits in banks and building societies in Gibraltar made by non-resident persons or by tax exempt companies, and the third is to provide the same rates of taxation and allowances to non-resident individuals as apply to persons ordinarily resident in Gibraltar, and the fourth to ensure that dividends paid by companies licenced under the Development Aid Ordinance out of profit not chargeable to tax under the provisions of that Ordinance, should be exempt from tax in the hands of persons to whom they are distributed as dividends. Sir, Members' allowances. The Income Tax Ordinance provides that the allowances payable to Members of the Gibraltar Council and of the House of Assembly are exempt from tax. Following the Pring Report, there is a move to introduce salaries for Members of the House and that such salaries should be taxable. For the avoidance of any doubt, the provisions in the Ordinance at Section 7 which exempts allowances of Members of Gibraltar Council and of this House from tax would be deleted but the operative date would be the date on which salaries are introduced. The second change is Non-Resident Bank Accounts. Sir, in 1966, acting upon the advice of the Economic Advisory Committee, an administrative ruling or extra statutory arrangement was to the effect that interest received by non-residents holding deposit accounts with local banks should not be charged tax. This has since been extended to exempt companies, that is, those companies registered under the Companies (Taxation and Concessions) Ordinance. There is no provision in law to allow this administrative concession.

More recently, representations have been received on behalf of locally registered Building Societies, that interest earned by non-residents on deposits with the Societies should be granted similar exemption. Sir, the Government attaches great importance to this part of the general banking business. It is understood to be a substantial and provides an important incentive in attracting outside capital. Without this concession Gibraltar would no longer attract such capital with a consequential loss of business to the banks and very likely an adverse effect on Gibraltar as a finance centre. It is therefore proposed that the Ordinance should be amended to provide that the interest received by non-residents, including tax exempt companies, irrespective of amounts deposited with local financing institutions, should be exempt from tax. The House should perhaps be aware that interest earned by non-resident depositors from financial institutions in the United Kingdom, Jersey and certain other territories is exempt from tax. The third change is the proposed Non-Resident Taxpayer. Prior to 1969 the Income Tax Ordinance provided for a special type of taxpayer who was defined as a 'permitted person'. This category was designed to provide that persons who were not resident in Gibraltar and who came into Gibraltar on a day-to-day basis to carry on a trade or business or to exercise any employment, profession or vocation, should derive the benefit of the allowance and lower rate of tax applicable to resident taxpayers. When the frontier opens, there is a likelihood that persons residing outside Gibraltar may once again take up regular employment here without necessarily residing in Gibraltar and it is accordingly proposed to re-introduce this category of taxpayer. I think that I should also mention that this is pertinent in the context of the EEC where since December, 1979, the Commission has been considering proposals for a directive concerning the harmonisation of income tax provisions with respect of the freedom of movement for workers within the community. The proposal's main provisions are that frontier workers should be taxed in the member state of residence with credit being given for any tax withheld at source by the member state of employment, but other non-resident workers should be taxed in the member state of employment on terms no less favourable than those applied to resident workers. These proposals are at present being carefully studied in the House of Commons.

Development Aid Licences, Sir. Section 6 of the Development Aid Ordinance provides that where a licence has been granted to a company, dividends paid out of profits not chargeable to tax shall not be treated as assessable income to the shareholders. The spirit of that legislation was that the relief should apply to the ultimate beneficiaries and we have looked back to the 1963 debate on the Development Aid Ordinance, the second reading debate, which, if my memory serves me correctly, stems from proposals by the now Leader of the Opposition and it is quite clear and

was stated that the tax concession should go through to the ultimate shareholder, the person who draws the dividend. Unfortunately, the way in which the Ordinance is drafted, this is not possible with interlocking company arrangements. A strict interpretation of Section 6 of the Development Aid Ordinance does not permit the Commissioner of Income Tax to extend the concession beyond the immediate shareholders of the company holding a Development Aid Licence. For that reason, Sir, it is proposed by means of clause 4 of the Bill to amend the section so as to give effect to the original intention retrospectively to the 12 December, 1963, when the legislation was enacted. 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 or merits of the Bill?

HON P J ISOLA:

Mr Speaker, I notice that a lot of the clauses in this Bill are deemed to have come into operation some years back and that the Bill itself shall be deemed to have come into operation on 1st of July, 1980, so that, accordingly, I presume that no harm is done by again leaving this Bill for the next meeting of the House. We would not like to have to pass all stages of this Bill at this meeting principally, Mr Speaker, because I think we require a little more information about clause 3 of the Bill. I think we would like to consider this particular clause a little more. I notice that the Honourable the Financial and Development Secretary said these EEC proposals or directives were being considered in the House of Commons at the moment. I think before we are asked to pass this into law I think we ought to have a little more information about it. I am not quite clear what the position is and I don't know whether it is the appropriate time to ask questions about it. Certainly, I would have thought that as far as non-resident workers in Gibraltar are concerned, or non-resident individuals, put it that way, there are no EEC members involved at the moment and there are no EEC members likely to be involved when the frontier is opened immediately until such time as other things happen in the European Economic Community or that Community is enlarged. I would certainly like to know a little more about the repercussion on the revenues of Gibraltar and so forth. It may be that it is perfectly fair that a non-resident individual should have all the deductions, etc, allowed but I think we want to consider that, I would certainly like to look at the particular sections in the law it refers to and especially as it would seem to me that if this is passed now quite a large number of non-resident individuals may be entitled to relief that they are not at the moment entitled to. I

don't know what the financial repercussions are but we certainly would like to know something about that. I think that is the main reason, I think that clause 2 of the Bill saying that it be deemed to come into operation on the 1st April, 1966, can wait two months and still go back and the other one on the development aid which one agrees with, that is a question of regularising, I presume, what is an administrative position and on that one, Mr Speaker, we would certainly like to know a little more of the financial results that this will have. I know this is controversial but certainly we would like an opportunity to move an amendment to this Bill following what has been said and what we have heard and what we have debated on, and that is the question of an amendment to this Bill to take the opportunity that we have got an Income Tax Bill before us, to take the opportunity of exempting elderly persons' pensions, income received from elderly persons' pensions under that particular Ordinance from income tax. I know the Chief Minister, I cannot remember when it was, since the Budget in April when we raised the matter, I do remember encouraging sounds having been made by him then during the election campaign more or less said that the Government would consider favourably exempting elderly persons' pensions under the Ordinance from tax. I think during the budget he said that these matters had to be considered by the Government carefully and again I think that if the Bill is left for October, the Government may have an opportunity to consider this particular point so that it can be possibly introduced. As far as we are concerned we certainly would like to have an opportunity to draft a clause in this Bill to make an amendment of that nature. So, Mr Speaker, as there are two points about this Bill that are of considerable importance, one is the new section 3 which we certainly would like to consider further and we think that again as in any democracy we think this does introduce a section of some substance into our law and again I think affected parties ought to be given an opportunity to make representations on it. The other point, as I said, is the question of the elderly persons' pension which we feel should be received free of tax by the recipient and we feel that the Government should consider that in the context of this particular amending Bill. We would ask again that the normal course should be followed with this Bill of leaving the Committee Stage to the next meeting of the House.

HON CHIEF MINISTER:

Mr Speaker, we have been looking at this matter and I am surprised that so much time is required for what is a reasonably short Bill. If the Bill is not passed on this side of the summer then, of course, in fact, the frontier opens and workers come they will be taxed but they will have none of the allowances and that would be a source of early grievance that they might feel. I wonder whether in order to try and accommodate Members opposite as far as possible, we could leave the Committee Stage and Third Reading as the last item of this meeting next week.

HON MAJOR R J PELIZA:

As I see it, it is obviously a matter which has to be clarified. If this is a question which is being discussed by the House of Commons to what extent are we committed? Perhaps the Financial Secretary can explain. Mr Speaker, if the Chief Minister not necessarily now, but between now and later - I don't know whether the matter can be left at rest at this moment and I don't know whether we are about to adjourn now - but if the matter can be left for the moment, perhaps by tomorrow we might be able to get together and really thrash the matter out.

MR SPEAKER:

The Honourable the Chief Minister has said that whilst he is not in a position to defer the Committee Stage and Third Reading to the next meeting for the reasons that he has stated, he is quite prepared to defer the Committee Stage and Third Reading of this Bill to a later stage of this meeting.

HON P J ISOLA:

If it is going to be left for a later stage in the meeting that helps.

MR SPEAKER:

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Mr Speaker, first of all, I apologise if I have muddied the water of this Bill by referring to an EEC directive. The position is as the Honourable and Learned Leader of the Opposition said, that at the moment no EEC residents are affected by this. All I was merely trying to indicate was that what we proposed to do is something which would be in accordance with the spirit of future EEC legislation. The other important point made by the Honourable and Learned Member was the question of financial loss. On Clause 3, there are at present no individuals who would pay less after the enactment of this section. All that has happened, as my Honourable Colleague the Chief Minister has pointed out, that if Spanish workers were to come over and this section were not enacted, they would not be able to draw the allowances under the Income Tax Ordinance. The loss to the Government then would depend entirely on the number of Spanish workers working here and going back into Spain, being resident in Spain. On section 4, on the Development Aid Ordinance, there again there is going to be no loss of revenue to the Government because the tax concession is already there and it is going into the companies concerned.

The problem is that where you have a series of interlocking companies the concession stops with the first company and it cannot pass on the concession to dividend holders in the parent companies, it goes into a subsidiary company and it is locked in there. The subsidiary company gets the concession but they cannot pass it on and therefore the Government would not be losing any revenue at all. So there is no question of loss of revenue on either of these clauses. I hope I have made that clear.

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

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

THE SUPPLEMENTARY APPROPRIATION (1980/81) ORDINANCE, 1980

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I have the honour to move that a Bill for an Ordinance to apply further sums of money to the service of the year ending 31st March, 1981, 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.

SECOND READING

HON FINANCIAL AND DEVELOPMENT SECRETARY:

Sir, I now move that the Bill be now read a second time. The Bill seeks to appropriate, in accordance with Section 55(3) of the Constitution, a further sum of £205,823 out of the Consolidated Fund. The purposes for which the sum is required are set out in Part I of the Schedule to the Bill and in more detail in the Schedule of the Consolidated Fund Supplementary Estimates No. 1 of 1980/81 which I tabled at the commencement of this meeting. The Bill also seeks to appropriate, in accordance with Section 57 of the Public Finance (Control and Audit) Ordinance, the sum of £777,908 from the Improvement and Development Fund for the purposes noted in Part II of the Schedule to the Bill and in the Schedule of Supplementary Estimates No. 1 of 1980/81 for that Fund which I also tabled at the beginning of the meeting. Mr Speaker, 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?

There being no response Mr Speaker then put the question which was resolved in the affirmative and the Bill was read a second time.

HON FINANCIAL AND DEVELOPMENT SECRETARY:

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

MR SPEAKER:

We will now recess until tomorrow morning at 10.30.

The House recessed at 8.00 pm.

FRIDAY THE 18TH JULY, 1980

The House resumed at 10.30 am.

MR SPEAKER:

I will remind the House that when we recessed yesterday evening we had finished the First and Second Readings of all Bills. The next item on the Order Paper is Committee Stage and Third Reading.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

Sir, I have the honour to move that this House resolves itself into Committee to consider the following Bills clause by clause:

The Gibraltar Court of Appeal (Amendment) Bill, 1980, and

The Supplementary Appropriation (1980/81) Bill, 1980.

This was agreed to and the House went into Committee.

THE GIBRALTAR COURT OF APPEAL (AMENDMENT) BILL, 1980

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

Clause 2

HON ATTORNEY-GENERAL:

I have the honour to move that Clause 2 be amended by the deletion in line 5 thereof of the word "interlocutory" and the substitution therefor by the words "interlocutory matter".

Mr Speaker put the question in the terms of the Hon the Attorney-General's amendment which was resolved in the affirmative and Clause 2, as amended, was agreed to and stood part of the Bill.

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

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

THE SUPPLEMENTARY APPROPRIATION (1980/81) BILL, 1980.

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

Schedule

Schedule of Supplementary Estimates Consolidated Fund
(No 1 of 1980/81)

Item 1, Head 2 - Customs, was agreed to.

Item 2, Head 3 - Education

HON P J ISOLA:

Mr Chairman, could I ask on the £4,000 that is now required? I presume that is not the total cost of the sponsorship of the scheme for children attending MOD schools? Is that the effect of not phasing it out and putting back what it would have cost in a full year, is this what it is?

HON M K FEATHERSTONE:

This is the extra number of children who will become the intake of this year.

Item 2, Head 3 - Education, was agreed to.

Item 3, Head 7 - House of Assembly, was agreed to.

Item 4, Head 11 - Labour and Social Security, was agreed to.

Item 5, Head 13 - Law Offices

HON P J ISOLA:

Mr Chairman, the replacement of Crown Counsel who will be coming between September 1980 and 1981. Is it proposed to advertise for this or is it proposed to get somebody here on secondment, or is it proposed to invite applications from the local legal profession?

HON ATTORNEY-GENERAL:

It is proposed to get a contract officer out.

HON A J HAYNES:

What is he required for?

HON ATTORNEY-GENERAL:

Replacement of Crown Counsel during the incumbent's absence on study leave in the United Kingdom.

Item 5, Head 13 - Law Offices was agreed to.

Item 6, Head 14 - Medical and Public Health, was agreed to.

Item 7, Head 15 - Police

HON P J ISOLA:

Has all this work now been done?

HON M K FEATHERSTONE:

No, Sir.

HON P J ISOLA:

Can I be told how much of the £13,000 has been spent so far?

HON M K FEATHERSTONE:

I think, roughly, £8,000 to £9,000 has been the cost of purchase and about £5,000 is for the work.

HON W T SCOTT:

Is there any question of traffic lights included within these signs?

HON M K FEATHERSTONE:

No, Sir.

Item 7, Head 15 - Police, was agreed to.

Item 8, Head 19 - Public Works, was agreed to.

Item 9, Head 25 - Trading Standards and Consumer Protection, was agreed to.

Schedule of Supplementary Estimates Consolidated Fund No. 1 of 1980/81 was agreed to.

Schedule of Supplementary Estimates Improvement and Development Fund No. 1 of 1980/81.

Item 1, Head 101 - Housing, was agreed to.

Item 2, Head 104 - Miscellaneous Projects

HON P J ISOLA:

Mr Speaker, regarding the improvement in the Hostel accommodation, is the cost almost doubling then, is that the position?

HON A J CANEPA:

When the original estimates were drawn up I think we were talking in terms of about £270,000 and it has escalated, mind you, with some further improvements on what was envisaged originally, it has escalated to about £470,000.

HON W T SCOTT:

What is the relationship, Mr Speaker, between (a) Provision of Services - Key and Anchor Club, on this particular Head and the one which we have just voted for £1,700 at item 4 on the Consolidated Fund?

HON A J CANEPA:

It is not connected with the premises which are being modified to enable Campo Area pensioners to be paid their pensions there. There is no connection between the two, or with the furniture for which we have provided funds under the previous Schedule. There is no connection.

HON W T SCOTT:

Could I therefore ask what is the nature of the outstanding commitment amounting to over £4,000?

HON M K FEATHERSTONE:

Basically, Sir, it is to provide electricity and water from the Government supply rather than from the MOD supply which it had before.

Item 2, Head 104 - Miscellaneous Projects, was agreed to.

Item 3, Head 105 - General Services was agreed to.

Item 4, Head 106 - Government Offices and Buildings, was agreed to.

Item 5, Head 107 - Port Development

HON P J ISOLA:

Mr Chairman, on this question of the Port Feasibility Study on which the Government is going to spend quite a substantial amount of money, £90,000, can I take it that if this study is

in relation to the development of the Port right up to the year 2000 I think the Minister has said, can I take it that this report or this study when made will be made available to the Members of the House?

HON A J CANEPA:

We will have to consider that, Mr Speaker, when the report is made available to the Government. I wouldn't like to commit myself at this stage. There could be information there of a highly confidential nature, generally, which it may not be possible to make available to the Members of the Opposition. We will consider the matter carefully, without commitment, and we will try and give the Opposition as much information as possible. Again, without committing myself, it might be possible to make parts of it available and not other parts. It is not the first time that a report has been expurgated and parts of it have been published. But as I say these are just considerations and I wouldn't like to commit myself, at this stage, one way or the other. I realise the enormous interest that it has for Members opposite, that they are being asked to vote £90,000 for this study and I think it is a fair point that they should be given as great an opportunity as possible to know what there is in the report. We will see what we can do when we obtain the report, Mr Speaker.

HON P J ISOLA:

This is of some importance because if it is a report that is going to look and project the Port of Gibraltar as part of the economy over the next 30 years, my view is that it would be wrong not to allow this report to be made available to Members of this House. If it contains matters that the Government would wish to keep confidential for a number of reasons, then I think it could be given to the Opposition on a confidential basis and such confidence would be respected but I think it is a bit hard to ask the Opposition to vote £90,000 for a study and then for them not to be able to see it even on a confidential basis.

HON A J CANEPA:

I see some validity in the point that the Leader of the Opposition is making, Sir, but I think it must be realised that there are matters which are of crucial importance to Gibraltar particularly at a certain juncture in the life of Gibraltar. I remember, for instance, in 1969, the IWP Government commissioned a report on manpower planning, the Beeching Report, and that report was not made available to the Opposition, the Government did not consider that it could be made public. I would have said that when I came into office in 1972 and saw that report, it did not seem to me, personally, that there was a great deal of matters of a very highly confidential nature in it. Nevertheless, in the exercise of their judgement, that administration did not

consider that they should make it public. I can foresee that in this particular report there are bound to be matters which are going to be highly confidential. I see the point that the Honourable Leader of the Opposition made that the Opposition will regard that as being in confidence, but in confidence for Members on this side of the House is not quite the same thing as for Members on that side of the House, with all due respect, Sir, because we are the executive and they are not.

HON CHIEF MINISTER:

Mr Chairman, I would like to add on this one that it could well be, apart from the fact that we are bound ourselves, it could well be that there are some aspects of the report which deal with matters on which the Leader of the Opposition is himself currently consulted and on which others are not and in which case of course if it was in that line of confidentiality he would share that responsibility. There would, naturally, be what is normally called the "expurgated" report which would be published and then there could be a second-tier report with matters which are of a confidential nature available to Members and there may be other matters which though not available to Members may well be available to the Leader of the Opposition particularly if it is in a line of confidentiality on which he and I share. I think that is as far as I can go now.

HON P J ISOIA:

Mr Chairman, the difference between this and the Beeching Report, for example, is that this is being paid from taxpayers' money, from public funds. I appreciate there could be a problem but I don't think that if something is given to Members of the Opposition in confidence that it would be disclosed, or parts of it in confidence. But I think it is important that we should not get into a position with this report as we unfortunately did with the Preece, Cardew and Rider Report. I can understand in this report there being things that perhaps are of a highly confidential nature, there could be. I cannot imagine that possible, for example, in the Preece, Cardew and Rider Report yet we did not see it and I think it is important for Members of the Opposition to see a study that is provided for Gibraltar because it is being paid by the taxpayers' money, it is important that as many people as possible should see this feasibility study, should see the way it is considered by experts the Gibraltar Port should be going and be able to contribute to the debate on the matter rather than have a situation where the Government gets a report and then keeps it to itself, implements what it thinks should be implemented without giving an opportunity for discussion to other people, to other elected representatives, to discuss whether what they are implementing is enough of the report or not enough of the report. All I imagine that would happen would be

that the Government would say: "Well, we are going to do this. This is recommended by the Port Feasibility Study", but they will not tell us what they are not going to do which is also recommended by the Port Feasibility Study. So if it is not made available to Members of the Opposition it is difficult for them, I think, to discharge the very important role that they have in public life. Certainly, having said that, we think it is a lot of money, £90,000, for a report but we will certainly vote for it on the understanding and on the basis that most of the report will be made available to us and anything only affecting the security or something highly confidential will not be made available.

Item 5, Head 107 - Port Development, was agreed to.

Item 6, Head 110 - Electricity Services, was agreed to.

Item 7, Head 111 - Potable Water Service

HON W T SCOTT:

Mr Chairman, presumably, as was the answer to a question earlier on in this meeting, the Government will be in a position to assess whether water can be abstracted economically within the course of the coming year?

HON M K FEATHERSTONE:

Yes, Sir. A preliminary report is going to be prepared and it should be available around the end of August and I do not think that I will have any difficulty in making this available to Members of the Opposition but as I have said we cannot definitely state that all is well until we have had at least one year's pumping tests. When that is done and completed we will then have a final report and we will then know whether we can reasonably proceed with the abstraction of water or not.

Item 7, Head 111 - Potable Water Service, was agreed to.

Schedule of Supplementary Estimates Improvement and Development Fund No. 1 of 1980/81, was agreed to.

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

Clauses 2 to 4 were agreed to and stood part of the Bill.

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

The House resumed.

THIRD READING

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to report that the Gibraltar Court of Appeal (Amendment) Bill, 1980, with an amendment, and the Supplementary Appropriation (1980/81) Bill, 1980, have been considered in Committee and agreed to and I now move that they be read a third time and passed.

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

PRIVATE MEMBERS' MOTIONS

HON J BOSSANO:

Mr Speaker, I beg to move that: "This House considers that there is an urgent need to amend the Matrimonial Causes Ordinance to bring the law in Gibraltar closer into line with that of the United Kingdom". Mr Speaker, I want to be able, in asking Members to vote in favour of this motion, to stress just how wrong it would be to vote against the motion and precisely what is the only possible interpretation that can be put on a vote against the motion. Let me make clear first of all that effectively the motion asks the House to recognise the inadequacy of the present law without committing it to the degree of reform that is required. It could well be that on the question of the degree of reform it may not be possible to get unanimous agreement. I, for one, would tend to favour the view of socialist parties that the dissolution of a marriage should be based on mutual consent. This may appear to other Members to be seeking to liberalise the law too much but the motion does not commit Members to the degree of liberalisation only to a recognition of the fact that there is a need to reform a law that basically is a reflection of European practice in the last century which basically is consistent with the position outside Gibraltar in 1857. And if Members refuse to support this motion and refuse to recognise that effectively they are saying either that they consider that the law in the rest of Europe should have stayed as it was in 1857 or that the mentality in Gibraltar is that of 1857. I think it is regrettable that the Church has reacted the way it has done to this motion because, of course, nobody in this House of Assembly represents any religious denomination and in the House of Assembly we are not empowered to legislate about the religious beliefs of individual citizens which is a matter for each person's own conscience and we do not live in a theocracy in Gibraltar and consequently unlike what is happening in Iran, I am not trying to in Gibraltar build a state based on Islamic law or Catholic law or any other law other than secular law. In addition to that, of course, the fact that

the law may permit something to take place does not mean that anyone who is a devout Catholic has got to make use of that law any more than devout Catholics should not be making use of the existing law which permits existing divorces which apparently are also unacceptable to the Church. Therefore, I think the question of religious considerations should have no influence at all on the voting on this motion because this is purely something that the Church continues with its teaching and those who are practising Catholics and wish to live their lives by the teachings of the Church should continue to do so regardless to what the law may permit for others and we are legislating for the whole of Gibraltar and not for a section of the community. The contention, Mr Speaker, that any amendment of any description to our existing law would effectively bring about a total breakdown of family life, presupposes that family life in Gibraltar is very unstable and only exists under a facade of stability perpetuated by coercive laws and at the moment that the law was changed there would be a stampede of people wanting to get divorces. Well, that is absolute nonsense, Mr Speaker, because if there were that many people living unhappily together in Gibraltar they would cease to live together regardless of what the law says because the only thing the liberalisation of the divorce law does is permit people to re-marry. There is absolutely nothing now to stop people who are not living together living with someone else, the only thing is that they cannot get married to someone else and it may be that we prefer to live in a society where we are turning a blind eye to what is going on around us and provided we do not recognise it, provided we do not admit it, provided we do not legitimise it, we do not mind. I think that is a totally hypocritical society, I think it is important to recognise the reality of modern life in Gibraltar which is basically no different from that of anywhere else, to realise that the true stability in a union between a man and a woman must be and can only be on the basis of mutual love and mutual respect for each other and nothing else. There are no laws that can make a happy marriage out of a marriage where the husband beats up his wife every day and it would be totally immoral to say that it is a more serious crime, a crime that permits the separation of that man and that woman, that man should go with another woman to bed once than that he should beat her 52 weeks a year. These are the practical, non-emotional realities of what marriage can mean or cannot mean for different people and the refusal to take a second look at our laws to try and improve them would be to deny happiness to a lot of our constituents, a lot of people who have voted for us to be here who are entitled to happiness and it would not be imposing anything on anybody that doesn't want to make use of it. It would be simply making something available to people to whom it is denied now. And let us not forget, Mr Speaker, that our law in Gibraltar recognises divorces granted in the United

Kingdom and that people who are determined to have a divorce and who have got the means to be able to go to the United Kingdom for the period of time, can get a divorce there and come back and it is recognised under our existing law so that this tends, like so many other pieces of legislation, to work against those of limited means because we all know, Mr Speaker, that whatever the law may say, there is always a way of going round the requirements of the law if one has got enough money to foot the bill. I would wish, Mr Speaker, that the House, in giving consideration to my motion, would do so in all seriousness and out of the knowledge that whatever else we may be doing here, we have got a responsibility to give a lead in Gibraltar even on controversial issues and that it is not simply a question of saying that there are people who disagree with divorce and there are people who agree with divorce and that those who disagree have got the right to deny to those who think otherwise because in looking at legislation I think we must look at the creation of a democratic pluralist society where we give people the maximum amount of freedom consistent with their obligation not to interfere in the freedom of their neighbour and if anybody wants to make use of the provisions in the law to get divorced that is a purely, personal and private thing which no one else has got the right to deny to that person. I commend the motion to the House.

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

HON CHIEF MINISTER:

Mr Speaker, I think I should first of all acquaint the House with the attitude of the Government, the collective responsibility the Government has taken in this matter in the past and then explain how we propose to deal with this matter. Let me say at the outset that from my own religious point of view I have no qualms about divorce because my religion does not oppose divorce and even if that were so that I could have a different view but it happens, not to be so, so my own remarks in this matter apart from reporting, as is my duty as Chief Minister, my own remarks are purely my own and they can be as blunt one way or the other as the mover has thought fit to put but I think that the matter is sufficiently serious not to be disposed of by means of a 3½ or 4 minute speech with a 5 or 10 day notice of motion to deal with a fundamental matter which, whatever one may think, does cut across society in Gibraltar and I do not think that that is the way in which we should carry out our responsibilities. The matter was first brought to the attention of the Government for action in relation to the International Woman's year by the Housewives' Association in 1977. The decision taken by Council of Ministers on the 23rd of November 1977, was that the Housewives' Association should be asked what measure of

support they enjoyed for their proposals and they were so told in a letter following that decision. Then they said: "We wish to say that our proposals followed the many representations made to us by members of the Association and others since 1975". We pursued the matter, the matter was again looked at by Council and it was agreed that in the absence of any evidence of a substantial demand for a reform in the law further consideration should be deferred for the time being. That was in October, 1978, and the Housewives were told: "The view of the Government is that there is little evidence of a substantial demand for a reform in the law on the lines suggested and consequently further consideration is being deferred for the time being". Then it was followed up by a letter in January, 1979, arguing that there is a demand but not giving the evidence about the question of a general meeting, as they had explained at the beginning that it had been decided. When further representations were made; "It was agreed the question of divorce was a fundamental issue in Gibraltar on which direct consultation with the people might be necessary and the matter should therefore be pursued on this basis". And that was the last that we heard from the point of view, officially. It has been the view of the majority of the Members of the Government and therefore the collective responsibility of the Government, that there should be more tangible evidence that substantial amendments to the law of divorce carry support and I think it is regrettable that the Honourable Mover, despite the fact that I may agree with some of the remarks he made, did not see fit to include such fundamental changes as he thinks are necessary in his Party manifesto at the election. It may well be that he would be elected just the same but whether he would have been elected with the votes he got or not is a matter for conjecture and that is why I think we ought to go carefully as to how to approach this matter. As far as my Party is concerned we are a pluralist Party and we do not have a whip on this matter. Each one should vote according to his own conscience and that is how the matter will be dealt with in this House. I should make no apologies to say that I would generally agree with the sentiments expressed by Mr Bossano on the necessity to amend the law, as an individual, but the collective responsibility of Government is in this correspondence which I have read. When a motion is brought independently then, of course, people are entitled to vote according to their conscience and there is no question of any Government whip or any Government majority being exercised. I think Mr Bossano is wrong when he talks about the law being as in 1857, that is not the case. The law of Gibraltar is like it was in 1937 in the United Kingdom. Because the 1857 Act required that when a wife claimed for divorce the husband had to be guilty of adultery plus cruelty or desertion whereas when the husband claimed for divorce he only had to satisfy the fact of the adultery of the wife. In 1937 the law was exactly the same as it is in

Gibraltar today and it was in the A P Herbert Act of 1937 that changed the law of divorce and following the book he wrote called "Holy Deadlock" where he drew attention, not to the question of the inadequacy of divorce at the time, but the improper use that the single act of adultery was being put to, the farce that it was being made in order that people would get a divorce and this business that there was of getting chambermaids to recognise somebody who had obtained a woman just to be seen in a nightdress reading a paper when the breakfast was brought in in the morning and showing a photograph and so on. It made a farce of the divorce laws and A P Herbert greatly advocated and carried through a private Bill of divorce and that was a private Bill in the House of Commons in 1937 that changed the law. The law as I remember was changed in this respect and that is that it provided three more grounds for divorce in addition to adultery precisely to deal with the fact that the grounds for adultery were being used improperly and in fact people were not only not committing adultery but were committing perjury to obtain release from their marriage and that was culpable desertion for three years physical cruelty and incurable insanity and I think also imprisonment for more than 10 years. Later on, the amendments that have been made in 1969 and so on practically changed the concept of the matrimonial offence to the breakdown of the marriage and of that there has been considerable controversy in the United Kingdom and I think in fact the present law does not do away with the culpability because in fact it still maintains that if adultery is committed it can become impossible for one party to live with the other and therefore it can be said that the marriage has broken down irretrievably, it was a very typical English compromise of the matrimonial offence with the breakdown of the marriage. Having said that, I think the most helpful attitude that the mover has taken is to say that the motion does not mean that we ought to follow the pattern of the English law. I do not think, even if there were, as there is, need for amendment of the divorce law in Gibraltar in certain circumstances subject to certain conditions, that Gibraltar's society is sufficiently sophisticated to absorb the kind of free element of divorce that there is in England to such an extent that it can now even be obtained by post. I do not think that despite the fact that there may be very hard cases which could be cured by amendment of the law if perjury is not to be committed or one of the parties is not prepared to provide the necessary evidence in order to do that, I do not think that some of the grounds on which divorce is granted in the United Kingdom would in any case be applicable to Gibraltar. But in the United Kingdom, the change of divorce has taken a different aspect, there people have been more concerned about the distribution of money than about the grounds for divorce. In fact, all the cases that come before the Courts now on divorce are very rarely defended cases. They are all cases of how the money is going to be distributed and how is the house going to be dealt with and these are serious matters

which of course require considerable discussion. Therefore, I would like to say that Members of this side of the House will express their personal views on this matter as a result of which we will see how the debate proceeds. Thank you.

HON P J ISOLA:

Mr Speaker, if this motion were to be taken as just one other motion that has been brought before the House and discussed absolutely on the merits, the House would expect the mover of the motion to give grounds for his motion, to give grounds especially why he considered that there is an urgent need to amend the law. If this was an ordinary debate and I was against the motion, as I am personally, I would say the mover has not established any urgent need for any amendment himself, he has not given us the reasons why in July, 1980, instead of February, 1980, why there is an urgent need in July, 1980, and there was not an urgent need in February, 1980, or in 1976 when he led a Party to an election. After all, he complains we are 100 years old, why didn't he take it up when it was 90 years old? There must be a reason for the Honourable Member coming to this House and saying there is an urgent need now in July, 1980, to have the divorce law amended but he hasn't said anything about urgency, he has told us that he himself believes that people should be able to get divorced by mutual consent. That is his belief, we know how he is thinking. We know what he thinks therefore of marriage as a solemn matter between two people. But that is neither here nor there. What I am trying to get at is that if this was just an ordinary motion which it isn't, it is a motion that I think produces great emotive issues, it is a motion on a greatly emotive issue so far as Gibraltar and its people are concerned and the Honourable Mover must know that because he moves around so much among the people of Gibraltar. So that really we do not know, we have not been told by the mover why it is that on July the 17th, 1980, there is an urgent need to amend the laws of divorce which didn't exist in February when he was preparing his Party manifesto as its leader or when he led his three groups in the elections in 1976. Perhaps when he replies he will tell us that but as I said that is of no importance, really, Mr Speaker, because once the issue is before the House, once there is a motion before the House then we have to consider the issues that are raised in the motion. I think it is childish to expect Honourable Members of this House to believe that divorce is not a highly emotive issue, that divorce is a highly fundamental issue in any society. Perhaps other societies have grappled with this problem earlier than we have, perhaps, they have come to other solutions than we have. But it is childishly absurd to put in a motion of this nature in the way that it has been done, on a very low key basis, without expecting strong reactions from people who feel differently to the mover. The mover complains, for example, that the Catholic Church was wrong to have come out, that it was unfortunate for the Catholic

church to have come out against this motion. I see no basis for this because the Catholic church, like politicians, like political parties, like trade unions, like Chambers of Commerce, like Shipping Associations, are entitled to speak out on matters that affect the way they think and the principles on which they think. I cannot object to anybody speaking out on an issue such as this which is highly emotive and on which people of different shades of political opinion and thought have very strong views. As far as the Democratic Party of British Gibraltar is concerned, Mr Speaker, this is an issue which it has not considered in depth, representations have not been made in the past to the Party on this issue, on the demand for reform and therefore we will not, obviously, take a policy decision on a matter as grave as this without mature thought and consideration. Therefore, in the same way as the Chief Minister has said with his Party and with Members of his Party will act and vote and speak according to how they personally feel and how their consciences dictate, in our Party the position will be identical. Honourable Members on this side of the House are free to express whatever opinions they feel should be expressed or ought to be expressed on this issue. Therefore what I say on this motion and on the issue of divorce is purely my own personal views on the matter and not those of my Party or indeed of my colleagues, until we have had an opportunity to look at it. Mr Speaker, we live in a democracy and in a democracy elected Members in a House, especially those elected on a Party ticket, have a responsibility to carry out or try and carry out what that Party has stated in their election manifesto which is on the basis on which they have gone to the people. Clearly, there are a number of matters that are not in a manifesto with which a Party deals in the course of public duties during their term of office in the House and, of course, it has to adopt attitudes to these matters and take decisions. There are, of course, generally recognised amongst political parties, a number of issues, not many, which are fundamental to society and which obviously require a mandate to put into effect. If, for example, the Government were suddenly to say: "We will nationalise all shops in Main Street", we would accuse them of doing things that they were not and for which they did not have a mandate, nationalisation not having been in their Party political manifesto, and rightly so. There are a number of fundamental things in a society that for elected politicians to legislate on really require a mandate and it is my view, and I hope it is also the view of Honourable Members on my side of the House because I am sure it must be the view of the Honourable Mover, that divorce is precisely one of those subjects on which a political party requires a mandate, it requires a mandate to put it into effect, it requires to be able to go to the people and say: "We are going to amend the law of divorce", either in this way, as the Honourable proposer would like, so that people can just write to each other and say: "We are divorced", mutual consent, and that is it or: "We are

going to permit now, in addition to adultery, we are going to agree to desertion and cruelty and we are going to do this and we are going to do that". Before a Party puts that in its election manifesto it has to consider obviously the consequences of it and make a judgement on it and then go to the people and then the people can say they like it or they don't like it, and decide. On a question such as divorce, judging purely and simply from the reaction there has been to the mover's motion, it is quite obvious that it is a highly controversial subject. For example, the leader of the Housewives' Association, Mrs Summerfield, I think, wrote in the Chronicle saying how the Housewives' Association supported it. The Honourable and Learned the Chief Minister has cited examples. Only this morning I read in the Chronicle 16 housewives writing saying they are in the Housewives' Association and they do not support it, it wasn't discussed. So even there one sees controversy. There is no question, for example, as to how the Catholic Church stands on this point in this community and I think we are bound to take account of the views of the Catholic church in Gibraltar because there are a great majority of Catholics in Gibraltar over all other denominations. Fortunately, the relations between the different religious communities in Gibraltar have always been good and I am sure they will continue to be good and there is no reason why they shouldn't be but we have to acknowledge as a fact that the Catholic community is a majority community in Gibraltar and the Catholic church has thought fit to speak out on this issue and we have to take some account of that. The Honourable Mover may take no account at all. Others may feel justified in taking a lot of account of what it said. One cannot, unfortunately, necessarily divide religion and secular entirely on this issue because it is fundamental to the way of thinking, in my view, of a Catholic that marriage is sacred and marriage cannot be dissolved. This is how some people think. There are obviously, and I appreciate it, there are a lot of hard cases, a lot of cases where there are good grounds possibly and so forth but it is very difficult when you are up against principles. It is very difficult when you are up against people who feel that marriage is indissoluble and genuinely feel it. You may call them archaic, you may call them out of fashion, you may call them what you wish but they exist and they feel strongly on it and I do not think this House can move into a reform of the divorce laws without a proper mandate and without proper consideration, without proper investigation. That is my own obviously personal view. Certainly I would say that as the Leader of a political party I would not agree to support a measure, as a Party, in respect of which we do not have a mandate. That would be undemocratic, that would not be democratic. Mr Speaker, as far as I am certainly concerned, I am against divorce as a matter of principle on two grounds. One is on religious grounds and I don't think I should really go into that, on the firm conviction that I am not entitled to dissolve a marriage and I have no right to be a party to that, that is on the religious grounds but then I am not convinced

on social grounds that divorce, or easy divorce put it that way, because divorce exists already but that easy divorce is necessarily a good thing for society as a whole. I think that the strongest unit in any society and the only thing that seems to have stood up to the ravages, the history and the ravages of change and the ravages of time, is the family, the family as a unit of society. The family is the most stabilising influence of any stable society and I believe that the history of divorce in different countries has shown that easy divorce has tended to destroy the stability of the family in a society. I think that the family as a unit has been greatly weakened in certain countries which have adopted the sort of divorce law that the mover would wish us to adopt in due course and in time and that is divorce by mutual consent. That, really, now exists in England and it exists in America. I don't know about Russia, but in Russia it presents no problem because there things are done and that's it and as for debate, well, we will forget about that for the moment. Sir, Russia I am afraid we cannot compare at all in this instance. In America and in England there has been divorce by mutual consent, in other words, the principle that the Honourable Mover has put before this House of divorce by mutual consent has been accepted and the result on society has not been good. I want to be honest with the Honourable Mover, I haven't got an open mind on this issue in the sense that I have firm convictions in this matter but what I am saying is that in Gibraltar we have, I think, a very good family society, we do have it, I think the family is all important, the pride of parents in their children and how they come up, our concern and so forth is very marked in our society and the family unit is extremely strong. It is perhaps a unique society in the world that we live in. In other countries sons and daughters do not want to come home for their holidays, they want to go somewhere else, they want to go all over the place it is different, I don't know what the reason for this is but I think that on practical grounds before a political party or before a legislature makes changes that could profoundly affect that society, they want to think very, very carefully, they don't want to do it because a motion is popular, because they are under pressure from hard cases and, unfortunately, there are hard cases, there is a well known principle about hard cases making bad law but there are hard cases in a society and we do not want to move into an area without knowing what we are letting ourselves in for, without knowing the consequences, not over a few years but over a period of time, over one or two generations. Perhaps, Mr Speaker, I will concede, perhaps I am overstating the position, perhaps I am exaggerating a bit, it may be true perhaps that is because of my bias in the matter for which I apologise to the House, but I think basically my thoughts on the matter at this stage are that we do not have a mandate to legislate on this matter without very much more research and consideration into the matter and very much consultation with the people. Mr Speaker, I have probably just now written off 1,000 votes

but that cannot be helped. I do hope the Honourable Mover accepts that I cannot in conscience accept the plausibility of the arguments that he puts forward for change and certainly I would like to hear from him when he replies what it is that has made him feel now that there is an urgent need to amend the law. Thank you, Sir.

HON A J CANEPA:

Mr Speaker, I am going to vote against the motion and I am sorry that the Honourable Mover has given us already without hearing those of us who are going to vote against the motion, without hearing our views, he has already given a somewhat aggressive interpretation as to the manner in which we are voting and the implications of such a vote. I am not too deeply involved at this stage about the merits or otherwise of the issue of divorce. I am more concerned at the manner in which an attempt is being made to amend the law on divorce and I stress regardless on the merits as to whether the law on divorce should or should not be amended. I am not going to bring my religious views into this debate, that is a matter for me and for my Creator, and therefore I will limit myself to supporting from a purely social point of view the point made by the Honourable Mr Isola that divorce should never be too easy because I do not think that it is a good thing for young people to enter marriage without some sense of commitment and without some sense of reflection about the seriousness of the step which they are taking. And if it was possible in Gibraltar to obtain a divorce merely because two people have been living apart for two years and they consent to that divorce as is the case in the United Kingdom, I think that there is a very distinct danger, a very real danger, that young people would enter marriage without the sense of commitment that I have referred to, with the attitude that, well, if it does not come off, if they do not get on together, they can wait two years and get a divorce. That is a social point of view and I will not have anything further to say about the merits of the matter. What I dislike about the manner in which an attempt is being made to change a fundamental law, is the fact that only five months ago, or five years ago, or two or three years ago, five months ago, there was a general election held in Gibraltar. And whereas in 1976 one of the candidates, Mr Ellul, had himself made of divorce an issue at that election, that was not the occasion this time, even Mr Ellul himself played down to some extent his commitment to reform of the divorce laws compared to the stand that he had taken in 1976. Neither in 1976 nor in 1980 did Mr Ellul obtain substantial support from the electorate. If he had been returned to this House I would have said that Mr Ellul had a mandate to bring such a motion but the Honourable Mr Bossano is in a different category altogether because the Honourable Mr Bossano did not in 1976 or 1980 include the question of reforming the divorce laws in his election platform or manifesto as is the word more currently used in British politics rather than in American

politics. In 1976 Mr Bossano's Party did not support Mr Ellul and I think it is a pity that Mr Bossano has not told us in his short introductory address why his Party did not include the issue of divorce in its electoral manifesto; why they did not as individual candidates have anything to say in the articles which appeared under their names in the press, why in their addresses over television they had nothing to say about divorce and why they did not go around the streets of Gibraltar clamouring for a reform in the divorce laws. I think it is a pity, Mr Speaker, that the Honourable Mover has not answered these points to the House and perhaps when he exercises his right to reply he might have an opportunity to do so. Again I wonder, Mr Speaker, I really do wonder, whether the Honourable Member would have obtained 4,900 votes if the issue of divorce had been included in his manifesto. I am not a betting man, my guess is that he would not. And perhaps that is why it was not included in the electoral manifesto. I notice, Mr Speaker, from the issue of the Gibraltar Chronicle of Monday that in a report on the Bishop's Pastoral letter, a paragraph which may have escaped the attention of some Members of the House and of the public referring to the reform motion being introduced by Mr Bossano, and going on to say: "At the Party's annual Assembly last March, Mr Joseph Baldachino said; "It was wrong to condemn people who found their marriage had broken up, to a life of unhappiness. The existence of broken marriages", he went on to say, "is a matter to be regretted but it cannot be prevented by forcing those who are unable to make a success of their marriage to stay together in the eyes of the law rather than giving them the opportunity to find happiness elsewhere". From this short paragraph one gathers that the issue of divorce was raised at the Party Assembly of the Honourable Member's Party in March, Mr Speaker. What a pity that Mr Baldachino or whoever raised the matter, did not bring the issue at the Party Assembly held in late January to select candidates for the general election to be held on the 6th of February. That would have been a very honest step to adopt. The issue should have been posed there with a view to including it in the manifesto and it is not in this manifesto but what there is in this manifesto, Mr Speaker, in paragraph 9, in Spanish, is something about "apertura democratica", which I translate as open democracy. With the leave of the House and your leave, Mr Speaker, I want to translate into English that particular paragraph and if I do not do so accurately enough perhaps the Honourable Mover might chip in and correct my translation. "There is a need to democratise the system by which Government takes decisions in order that it might be known more deeply that the reasons for these decisions should be known more deeply or more fundamentally. And there is a need for those sectors of the community which are affected by one decision or another to participate in this process". I hope I have translated that fairly accurately. This is what the issue is all about. This is why I am voting against the motion because I do not think that those laudable sentiments as to an open system of Government of which the Honourable

Mover is the apostle, those sentiments and those principles have not been abided by the Honourable Mover only his Party in presenting this motion to the House. I do not say, Mr Speaker, that as elected Members we do not have a duty to consider in between one general election and another and to debate in this House and consider seriously issues of great public interest as and when they arise, we have a duty to do that. In 1970, under the administration of the Honourable Major Peliza, a very fundamental step was taken regarding national service even though that had not been an issue in the 1969 elections. But there must be clear evidence that it is an issue and I refuse to believe that in a Gibraltar in which people are so politically aware and where people are so ready to put pen to paper we have seen with Parson's Lodge, with a controversy over recreational areas being put aside for coach parking, I refuse to believe that in the same way as people feel so strongly about these issues and organise themselves and rush to put pen to paper and send letters to our newspapers, that the same thing would not have happened with divorce if there was a real feeling within the community and a strong point of view that it was urgent that the divorce laws should be changed. Against the background of such agitation I think the House would have a duty to debate the matter but I do not think that these conditions have been met in this case. I understand, Mr Speaker, that on the soundings that have been carried out, the likelihood is that the motion as it stands will get a small majority of 8 to 6 and I want to question, Mr Speaker, whether 14 elected Members of the House have a right to decide as a matter of conscience, without having sought a mandate from the electorate five months ago, have a right to decide without an attempt being made to test, to verify, to assess what does the rest of the community feel about it. Fourteen individuals voting in keeping with their conscience have a right to tell 25,000 individuals for the majority of whom divorce may also be a matter of conscience how they should behave without obtaining the views of those people. I do not think that that is the case. I do not think that although we have a duty to give leadership because we have the opportunity to give such leadership five months ago, I do not think that we have a right to do that. Today it is divorce, tomorrow what is it going to be? Could it be that someone is going to be elected to this House on a very moderate manifesto and then because secretly he is a staunch believer of the liberalisation of the laws on abortion he is going to introduce a motion in the House at five days' notice and perhaps get a majority? I don't think, Mr Speaker, that that is democracy, that that is good Government. I do not think that that is the British approach to politics and I think that what it does is to seriously undermine the principles of democratic elected representation. It had not occurred to me, Mr Speaker, in fact, that there is only a need for five days' notice to be given because in fact, the Honourable Member gave greater notice. Notice was given on the 1st of July so let us say

we had a fortnight and because of that it had not occurred to me that in fact it is only five days notice that needs to be given. I want to underline that it is because of the manner in which the Honourable Member has gone about it that I feel at this stage that I cannot support his motion. If a general election were to be held and the matter was made an issue at that election and a Member who had come out clearly in support of a reform in the divorce laws were to move a motion here then, perhaps, I might adopt a different point of view and I might actually debate the merits of the issue. But there is, I think, Mr Speaker, a need to test the views of the electorate on this matter and perhaps that can be done without necessarily having to wait for a future general election, I think an attempt can be made to put the matter to the test and to see what is the evidence one way or the other. Apart from the numerous letters that have appeared in the press on this matter, Mr Speaker, the statements that have been issued, I am sure that a number of Members must have received letters from the general public. I have received a letter myself from a very prominent citizen who because of the position that he occupies in the community is not able to write on these matters to the press but I think it is only fair that I should acquaint this House with the stand that this prominent citizen takes and his views happen to coincide with mine to a very great extent. He says: "I also believe that the method which has been adopted in order to raise this matter is wrong. This is clearly a highly controversial issue on which people feel strongly and it cannot in my view be right that a motion with such far-reaching social consequences should be decided upon on five days' notice - as I said before in this case of course more notice was given - and without the proper opportunity for members of the public to express their views and for Hon Members to consider these and to study all the complex implications. There has been talk of a possible referendum as well as suggestions that the matter should be made an issue at the next general election". May I intervene here myself to say what my own view is about the question of a referendum. I think that if a referendum is to be held on a fundamental issue there is a need also to tell the electorate beforehand that such a referendum is going to be held and this is what the Labour Party did during the 1974 general election in the United Kingdom. They told the electorate that if they were returned to Government they would put to the test through a referendum the issue of whether Britain should continue in the EEC or not. Notice they were not elected and decided 6 months later to hold a referendum, they actually told the electorate they would do that and I would commend that approach taken by a Party which I know the Honourable Member supports wholeheartedly and a Party the right wing of which I support wholeheartedly as well. I would commend that approach to him. That is what I feel about holding a referendum of this issue that I think there is a need to tell the electorate

again beforehand that such a step is going to be taken. I continue with the letter. Referring to the general election the writer goes on to say: "The latter seems to me to be the most reasonable and democratic way of proceeding". He then suggests "that the motion should be amended in order to provide that the question of amending the divorce law should be referred to a Select Committee of the House which would be charged with the task of assessing the weight of informed public opinion on the question and reporting back to the House. Such a procedure, if agreed, would enable the major social and religious implications of this issue to be considered with the time and attention they deserve. It would also enable the public to express their views directly to Honourable Members. Because there is no mandate it seems to me that they have a democratic right to do this and that they should not be deprived of that right". And the concluding paragraph. "I am confident that because Gibraltar is an essentially and fully democratic society, the above suggestions will receive the most careful and favourable consideration. The deliberations of the Select Committee would enable Honourable Members to formulate a policy based on their own judgement but also on the mature consideration of reasoned arguments and views presented by all those who are concerned about this matter, whether for or against". Mr Speaker, I am not going to move an amendment to the motion to provide either for a referendum or to provide for the matter to be put to a Select Committee and I am not doing that because I am against the motion and I do not wish to give the impression that because it appears that the motion would otherwise carry a majority that I who am against the motion am attempting to pre-empt the vote being taken in this manner but I hope that the views that I have expressed will merit the serious consideration of Members generally and in particular of those who have not participated in the debate and if I have succeeded in convincing perhaps any of those who were going to vote in favour of the motion that an amendment, perhaps, referring the matter to a Select Committee should be put to the motion, I would find myself able to support such an amendment and as I say I really hope, having regard to the views that I have expressed and to the manner in which I have put those views across, I very much hope that Honourable Members will think deeply about these issues and I would be very happy if I have succeeded in convincing any of those who would support the motion that perhaps an amendment is warranted.

HON A T. L. OF DO:

Mr Speaker, I have known Mr Rossano for a good number of years and I must say that today is the first time that I am almost completely in agreement with him from which you will gather that I will be voting for the motion as it stands and and at the same time I realise I have probably signed away 1,000 votes myself. There are two important things, Mr Speaker, we must not lose sight of. One is that we already

have divorce in Gibraltar and the church does not accept that. Fair enough, that is how it should be, and the other thing that we must not forget is that we are a multi-religious society. In my address on television when I stood for election I thanked the Lord that we were a democracy and that we did have a vote by secret ballot so that once we were elected you were a servant of the public and you never knew, you could never possibly know how people had voted. Just after the election results were announced I was stopped and congratulated on having been elected by so many people who said that they had voted for me that at one point I began to wonder how Sir Joshua had topped the poll again and not myself and the truth of the matter is that I was stopped and congratulated by members of the different religious persuasions in Gibraltar. I have no wish for a confrontation with the church but similarly I do not wish to hide behind the skirts of Holy Mother the Church and if in this House we are not going to take decisions on controversial matters precisely because they are controversial, I don't know what we are doing here. I don't think that is why we were voted in. One thing which is established in British law is divorce between Church and State and I think that is how it should be, so there we have another case of divorce which we accept and we have in Gibraltar. I do not want to get into a theological argument because I am not theologian but purely from a layman's point of view, it appears to me that the Catholic Church to which I belong, allows its faithful to correct any mistake that they make with the exception of one, and that is a mistaken marriage. We have cases of people in holy orders who after a number of years realise that their vocation wasn't as strong as it was when in their youthful exuberance they decided to take vows which are binding forever. The church in its wisdom in this case allows these persons to leave the order and to marry and I think that is an enlightened approach. Paradoxically the church complains that there are too many young people living together who are not married.

MR SPEAKER:

May I bring to the notice of the Hon Member holding the floor that we are not talking other than as to whether the law of divorce should or should not be changed. We are not debating the merits of the church's stand on the issue of divorce. We must not depart from the subject of the motion.

HON A T LODDO:

Thank you, Mr Speaker, as I was saying, if I may finish the last sentence, it is frowned upon but at the same time if they marry then they can never get divorced. On the question of the stability of the family which has been brought up, I agree but let us not forget that the Jewish people have probably a stable family system as good or better than anybody else and they have divorce and they have gone through

persecution and torture as we all know. This happy, stable family can only be in a happy family. If you have an unhappy family, an unhappy situation, quarrels, beatings, drunkenness, you cannot have a happy stable family and I would say that one splits the family into two happy units rather than have one unhappy family. Again the idea that because the law would be widened there would be a mad panic rush for people to get divorced, I think that is pure conjecture. The only people who would rush to get divorced are those who are already doomed to separation. By all means the church should condemn divorce and should dissuade people against it and they should encourage reconciliation but by the same token they should also show compassion and tolerance and humanity and humility. It has been suggested that this question of divorce should be put to a referendum. I, personally, am opposed to this. A referendum, as the Labour Party promised in the case of entering into the EEC, is quite acceptable. That would have been something which would have affected everybody. This is something which might affect everybody but I doubt that everybody in Gibraltar will want to get divorced. This is like the law of duty free. Just because you are entitled to take a bottle of whisky and a bottle of wine and 200 cigarettes, if you are a non-drinker and a non-smoker you will not avail yourself of the duty free. As I said, I am in almost complete agreement with Mr Bossano, but the only thing, possibly, where he has slipped up is that he has only given 14 days notice to the Government.

MR SPEAKER:

Notice of motions are not given to Government they are sent to the Clerk of the House who submits them to the Speaker.

HON A T LODDO:

I beg your pardon. I stand corrected. Possibly, if he had said that he would be raising this in October it would have given more time for us to gauge public reaction but it has not happened, we have got it here and we are faced with it. As it stands, as I said, I will be voting for it. I did say at some earlier stage that there are things that separated an honest man from a fraud and to me if you are vote catching you are a fraud. I have given away 1,000 votes today, I think, and I think I can be called anything but a fraud. So, Mr Speaker, as the motion stands I will be voting in favour.

HON J B PEREZ:

Mr Speaker, Sir, I would like to begin my contribution on this motion by making a comment on the contribution which was made by the Honourable the Leader of the Opposition. I think it was unfair for the Leader of the Opposition to attribute to Mr Bossano the intention that he was asking

the House to vote in favour of the motion on the basis that he wanted divorce laws to be changed on mutual consent. I think, Mr Speaker, that that was not, in fact, what was said by the Honourable Mover of the motion. I made a very careful note of two of the things which Mr Bossano said. The first one was when he said: "I am asking the House to recognise the inadequacy of our present law and not the degree of reform", and he went on to say at the end of his contribution that what he was asking the House to do was to consider taking a second look at the present state of the Matrimonial Causes Ordinance. Having said that, Mr Speaker, I have asked myself the question; what is it that we are being asked to vote for in this motion? Clearly, we are not being asked to vote on the principle of divorce, whether we agree with divorce or whether we don't, and I say so, Mr Speaker, for one simple reason, that divorce is recognised within our legislation. The only thing is that divorce is only available in the case of a wife to petition on the husband's adultery or the unnatural offences such as rape, sodomy and bestiality, whilst in the case of a husband petitioning for divorce against the wife, our laws only permits him to petition for divorce on the grounds of adultery. So, Mr Speaker, what is the Hon Mr Bossano asking us to consider and what is he asking us to vote in favour of? I think it is convenient at this stage to consider very carefully the actual wording of the motion before the House. First of all let me say that I do not agree with the word "urgent" being in the motion for one simple reason. Either we agree there is a need to amend our laws or we agree that there is no need to amend our laws. So I fail to see why the word "urgent" has been inserted there. Having said that, Mr Speaker, I think I ought to give my own personal views on the question of divorce, on the question of possible amendment to the Matrimonial Causes Ordinance. Let me say straight away, Mr Speaker, that I see no moral or logical or any justification for not including desertion and cruelty as a ground for divorce in our Matrimonial Causes Ordinance. In my view, I do not see the difference between a woman, for example, who is beaten up continuously by her husband who comes in drunk at night, beats up the wife and beats up the children, and this has been going on for years, and she cannot petition for divorce, she has to put up with the husband, and the case where if that man were to be caught out by the wife for committing adultery on one isolated occasion, on one fling then that woman is entitled to petition for divorce. To me it is an absurd situation. But I go even further. I also mention the case of desertion which I do not think has been mentioned by the Honourable Mover. Let us take, Mr Speaker, for example, of a husband who deserts his wife and his children and leaves Gibraltar. The wife doesn't know where the husband is and he has been away for 5 or 10 years. That woman cannot petition for divorce either and that woman may have young children, that woman may be in love with another man. That, in my view, Mr Speaker, is unjustifiable, in other words, I do not see any difference between a

woman petitioning for divorce on the grounds of adultery and for not including desertion and cruelty. With that, I agree, entirely and there is no doubt in my mind but if I can get back to the wording of the motion. There is one aspect of it which I cannot agree to and that is the second part after it says: "an urgent need to amend the Matrimonial Causes Ordinance", with which I agree for the reasons I have stated but the motion also says; "to bring the law in Gibraltar closer into line with that of the United Kingdom". My view, Mr Speaker, is that it is unfortunate that the Mover chose those words in this motion and I say so for one simple reason. That in the United Kingdom they have moved away, in my view, from the matrimonial offence. It is not a question of guilt, is the husband at fault, is the wife at fault? In England there is only one ground for divorce and that is to show irretrievable breakdown of the marriage and that is the only ground and there are several ways in which the Courts must be satisfied that the marriage has broken down irretrievably. But if that is the case, then in my own conscience, Mr Speaker, I feel I must agree with the comments that my Honourable Friend, Mr Canepa, made to this House because if we are being asked to vote in favour, let us say, of a reform to bring it in line with the United Kingdom, in my view that is a major reform which we are being asked and as my Hon Friend on my right said, nobody has a mandate on this, whether we are entitled to have a major upheaval of the Matrimonial Causes Ordinance. Having said that, Mr Speaker, let me add that although I agree entirely with the spirit behind the motion because I do not agree with Mr Isola's interpretation of the Mover's motion, nevertheless I cannot go with the actual wording of the motion. My reservations are twofold. One is, to what extent are we being asked to change the laws? Mr Bossano said that he is not asking us to actually say what we would prefer, what changes we want. I don't think I can go along with that, I think one cannot just say; "Yes, we agree to look at it", and not look at the reform, we must look at both things together.

HON J BOSSANO:

Mr Speaker, surely the Hon Member will agree that the passing of the motion leaves the divorce laws totally unchanged at this stage, all it produces is a commitment on the part of the House to change it and consequently it would be when the amending legislation was brought to the House, which presumably would be after a lot of consultation amongst all Members, that the specific measures would have to be introduced. At this stage we are not amending the divorce laws, the motion doesn't amend the law at all, all it does is it produces a commitment to do so.

HON J B PEREZ:

I am glad for the comments of the Hon Member, Mr Speaker, because the amendment which I will subsequently be moving to this motion I think will cover adequately precisely what he has just said. Coming back to the point I was making on the question of reform, let us assume that the present motion before the House as it stands is passed by a majority of say eight to six which is my forecast, what can the Government do after that, where you may have the situation whereby within the Government we don't agree on the actual reform? I have stated my position quite clearly, I would like to see desertion as a ground and cruelty, there is no doubt about that in my mind but I would be even prepared to consider any other possible grounds that anybody else may want to put forward but I can see a severe problem within the Government in which we won't be able to agree. Somebody may say; "I don't agree with desertion" and another one may say; "I agree with cruelty", and somebody else may say, like Mr Isola would probably say; "I don't agree with anything". The point I am trying to make is that the motion as it stands and in my own mind wanting to see a reform of the Matrimonial Causes Ordinance. I do not see any point in having this motion passed because I don't think it will achieve anything in practice because it would be an impossibility to present a Bill to the House. What does one do, look at the grounds or go towards as the motion asks 'in closer line with the United Kingdom', that is, doing away with the matrimonial offence and just having one ground? It is a very real and practical problem if this motion is passed on this basis and that is why I will subsequently, as I said, be proposing an amendment to it which I hope the Hon Mover and other Members of the House will be able to support. My second reservation on the motion, Mr Speaker, is the one mentioned by the Hon Mr Canepa on the question of a mandate because it is my view that if one wanted to change our Matrimonial Causes Ordinance and bring it in line with the laws in the United Kingdom, we would not be entitled to do that. So I feel, Mr Speaker, there are three ways of tackling this problem, three alternative ways. The first one would be to propose that a referendum be held now but I think, Mr Speaker, that that begs the question, a referendum for what? What are the people going to be asked in a referendum? To vote in favour of including desertion and cruelty? To vote in favour of just having desertion? To vote in favour of just having cruelty? To vote in favour of bringing our legislation in line with the United Kingdom? I can see tremendous problems of having or proposing a referendum at this stage today. The second solution could be to say; "Well, we have no mandate whatsoever to bring any reforms whatsoever, let it be an election issue at the next General Election whenever they will be". I cannot go along with that, Mr Speaker, because I would like to see our Matrimonial Causes changed to include desertion and cruelty so I would not support that. My third alternative, which is the one I will propose to the House is that we set up a Select Committee of the House to

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look at the need, if any, to amend the Matrimonial Causes Ordinance. I think, Mr Speaker, that that would be the most dignified and the best way out for the House to proceed in this matter. By forming a Select Committee to consider the need, if any, I think it could be supported by people like myself who are in favour of a change in the Matrimonial Causes Ordinance, it could be supported by Members who share the view of Mr Canepa who feels we have no political mandate, that can be considered as well, and it can also be supported by people like Mr Isola who are not in favour because Mr Isola did say that he had an open mind.

MR SPEAKER:

I think he corrected himself.

HON J B PEREZ:

The point is, Mr Speaker, that I think that the Select Committee would be composed of Members of the House, it would go in depth into the actual Ordinance, into the actual law, it would consult people, it would consult representative bodies, it would consult the Church, it would consult Trade Unions, get the view of a cross-section of the community, look at whether it is advisable to include desertion, cruelty or any other grounds, look at the possibility of the United Kingdom law being applied here and at the same time the Select Committee could consider the three ways of going about it, that is, bring a Bill to the House, (2) having a referendum after we have identified what should be done, what we think is right to be done and I think that would be the best way. So, Mr Speaker, I therefore propose an amendment to the motion, and the amendment, Mr Speaker, would be; "To delete all the words appearing after the word 'considers' in the first line thereof and the substitution thereof by the following words: "that a Select Committee of the House should be appointed to inquire as to the need, if any, to amend the Matrimonial Causes Ordinance". I move accordingly.

Mr Speaker proposed the question in the terms of the Hon J B Perez's amendment.

HON J BOSSANO:

Mr Speaker, I cannot support the amendment of the Hon Member. I cannot because in fact I have no doubt about the need and I don't think we need a Select Committee to establish if there is any need because, in fact, if that were the case I wouldn't have said there was an urgent need to reform the law nor does the Hon Mover of the amendment himself have any doubt that there is a need because he's fully committed to extending the grounds for divorce to things like cruelty and desertion. I take the point that he was making about where does one go from passing a motion that the subject is that there is a need to reform the law, what is the next step? And the next step, as far as

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I am concerned, would be quite acceptable that there should be a Select Committee in view of the fact that this is a very personal issue where within the parties there are different points of view, it would be clearly better to have a cross-party body to try and obtain a view as to, to what extent the need that there is to update our legislation has got to be met, to establish the degree of the need, this I would accept would be a matter of follow-up. Having decided that we need to have a look at our law and to reform it, then the degree of the reform can be the subject of the Select Committee and then that Select Committee after taking everybody's views into consideration can come up with a recommendation as to what extent the law should be reformed but I would not accept that the Select Committee within its terms of reference should have to decide, basically, whether the law as it is now is perfectly satisfactory or not because I am totally convinced that the law as it stands now is not perfectly satisfactory and that that it is so patently obvious that one doesn't need a Select Committee to decide that point. The point, of course, is that if the Hon Mover of the amendment says that the Hon and Learned Leader of the Opposition would be able to support that amendment because he would be able to go along with the "if any" qualification on the assumption that there is not any need to reform the law, that is, that the law is satisfactory, but in fact the Hon Member's opposition to divorce must of necessity include existing divorce so he should want to amend it in the opposite direction. He is completely convinced as well that there is a need for reform as I am, the only thing is that he wants to reform it back and I want to reform it forwards. So I don't think we need to have the words "if any" there at all. We have all agreed in this House, even those who oppose divorce on fundamental grounds that there is a need for it, though those who oppose it on fundamental grounds would obviously wish to abide by the teachings of the Church in this matter, that it is a sacred institution and an unbreakable bond and an unbreakable bond is an unbreakable bond, there is no way of compromising with that point of view and I respect entirely the point of view of the people who believe like that themselves for themselves. What I believe they don't have the right to tell me is that my marriage is an unbreakable bond, that I don't believe and I don't believe that even 99.9% of the electorate

MR SPEAKER:

No, that you will be able to say when you reply to the motion.

HON J BOSSANO:

Well, Mr Speaker, I am making that reference because, in fact, the Hon Member said, in moving the amendment, that one of the things that the Select Committee could look at would be the question of a referendum.

MR SPEAKER:

He said that on the general motion.

HON J BOSSANO:

Yes, but in moving the amendment he said that it could be decided whether the findings of the Select Committee could be put to referendum or not be put to referendum.

MR SPEAKER:

Precisely, but let us not discuss what the findings are going to be.

HON J BOSSANO:

No, I am discussing the principles of the referendum in a matter like this which I think in terms of practical legislation I would go entirely along with the idea of a Select Committee of the House to make proposals in an area where technically I think other Members of the House are better qualified than I am. My view is a very simple one and a very simplistic one which perhaps cannot be codified in law effectively. I think that people should live together because they want to live together and not because the majority of the community thinks they should, it is as simple as that, and I think that a stable, happy, married life is based on the exercise of free will and not on coercion by anybody else and I cannot go along with the idea that a Select Committee should try and establish whether a need exists or not because I am convinced that there is a need the only thing is that I accept that the degree to which that need may be met may not be a view held by everybody to the same extent that it is by me and that it is better to get half a cake than none and consequently I am prepared to make compromises in the exercise of how we feel about meeting that need. I would support an amendment on those lines, Mr Speaker.

HON J B PEREZ:

Does he not realise, Mr Speaker, that he himself could be a Member of the Select Committee and make his own views known?

MR SPEAKER:

That is pre-judging the issue and, anyway, you will have the right to reply.

HON J BOSSANO:

Presumably if there is a Select Committee the House will decide who goes into it and I would presumably be asked in view of the fact that the matter has been brought to the House by me, Mr Speaker, but what I am saying is that as a

way of changing the decision, in principle, to reform the law into a practical pragmatic step to carry that decision out, I would say that then there should be a Select Committee, perhaps, an addition to the motion, not a total replacement of the motion, that went on to say that it considers that there is a need to reform the Matrimonial Causes Ordinance to bring the law closer into line with the United Kingdom and that a Select Committee should be set up to investigate how best this need can be met, or words to that effect, I would accept that, that was something that we do if we are agreed that we need to do what the motion said we need to do but I cannot accept that the decision basically that I am asking the House to make its mind up on should be instead devolved onto a Select Committee. It seems to me the amendment to the motion effectively says that it should be the Select Committee that takes the decision in principle on the motion that I am asking Members of the House to take because if we vote that there is a need, we have decided that there is a need by a majority in this House and then we can select Members of the House who should look in depth at the matter to establish just how great that need is and to what extent it can be fulfilled but I would not accept that we should set up a Select Committee to tell us whether there is a need or not particularly when there is such a close balance and the balance in that Select Committee might be a different one from the balance in the House.

MR. SPEAKER:

May I ask the Hon Member whether he wishes to speak on the amendment or on the motion?

HON. MAJOR F. J. DELLIPIANI:

I wish to speak on the amendment. Mr Speaker, the Hon Mr Bossano is on an easy wicket when he talks about divorce because as we all well know, and I respect his views, he is an atheist. I am a Catholic and I have to think of my Catholic teachings but at the same time respect the views of others. It is far more difficult for me in my mind to divorce myself from my catholic teaching and the beliefs and wishes of other people. Divorce exists in Gibraltar, whether it is the right kind of divorce or not, it is a fact of life, divorce does exist in Gibraltar but we are talking here of the need to see whether these grounds for divorce should be reformed or should stay the same. The Hon Mr Bossano claims that he sees the need already, he did not see that need in February or in 1976, the need has suddenly materialised in July and to me that is a contradiction in terms. I see that there is a need to change the divorce laws even though I am a catholic and I would abide by the teachings of my religion. I do see that there is a need to inquire whether the divorce laws should be changed and I will support the amendment. It is a fundamental issue, it is not an ordinary law about which people do not feel strongly. We are living in a catholic majority even

though our Chief Minister is Jewish, and we must respect the wishes of the majority of the people and we do not know what the wishes of the majority of the people are on this issue and we must sound that majority view. We cannot do it by the original motion as presented by the Hon Mr Bossano because he should have taken it as a matter of policy in his manifesto, he should have said it in his electoral address over television or by radio. I have never heard it or seen it written, I think he mentioned it somewhere in Varyl Begg because somebody asked a question. On this question of divorce I cannot ignore the fact that there are a lot of people suffering, I know that there are people suffering but what I am saying is we must sound the opinion of the people of Gibraltar as a whole. We were not given a mandate to create this urgency over the divorce laws at this very moment.

HON P J ISOLA:

Purely speaking on the amendment, I think there should be a much more cordial relationship between the Hon Mr Bossano and myself and I think he ought to come and see me before he puts a motion because he seems to be a very unfortunate man, every time he puts a motion down there is an amendment that deletes everything that follows the word 'considers' and I feel he must be labouring under sense of grievance on this especially today when the forecasters speaking in the House have been saying that his motion is going to be passed eight to six and then he is suddenly told just at the last minute that there is going to be a little amendment and victory is taken away from his grasp. I do feel a lot for him especially after the very spirited support he got from my Hon Colleague on my right who will now be disciplined, I hope. Mr Speaker, I did not agree with a lot that the Hon and Learned Mr Perez said but I cannot answer him now. I will only say that I notice that in his intervention on the amendment the Hon Mr Bossano did seem to pursue his point of divorce by mutual consent because really that is the logical conclusion to the divorce procedures as they have developed in the civilised countries. Therefore because of the insertion of the words "if any" in the amendment, I feel I can support this amendment so long as the ambit of the inquiry is to the extent and in the way that the Hon Mover has suggested. In other words, sound any opinion that wishes to be sounded and let the Select Committee do its work. Let me assure the Hon Mr Bossano that if the forecasters are right in the majority in this House of eight to six and we may never know it, but if they are right, I certainly would consider it right and proper that the pro-divorce protagonists should have a majority on the Select Committee; obviously. I would not like to see a Select Committee composed of Members that do not reflect the attitudes that have been reflected in this House. I agree this is much less than what the Hon Member was asking the House to decide because if the Hon Member's motion is passed I suppose there is a commitment in the House to change the law. How or in what way no one is quite

clear and I agree with what he says, but on the other hand I think that the Hon and Learned Mover's amendment, after a speech in which I feel that I was unfairly dealt with by him but nevertheless the Hon and Learned Mover's suggested amendment I think does provide a way in which all the conflicting views that have been put and will be put later on in the debate on this subject of divorce, can be brought together, can start the procedure of democratic inquiry and let us see what that brings. Mr Speaker, despite my views on this subject, I do feel I am able to vote for that amendment. I hope the fact that I am able to vote for that amendment will not make others say then this is the amendment that must not go in. I do say that I am able to vote for this amendment because it does seem to want to start off a responsible inquiry by a Select Committee of the House into the matters raised in the motion.

HON CHIEF MINISTER:

Mr Speaker, I want to speak very briefly on the amendment because it seems to me that we might find ourselves, if some kind of amendment is not carried, in an impasse. I did not want to hide behind the difficulties I am going to mention now in order not to give support to the original motion in general terms as I did because I feel that the matter should be looked into and that there is need for an element of amendment to the divorce laws, of that I have no doubt in my mind and in my own conscience. But it seems to me, as Leader of the House, that if the motion were passed just as it is and nothing else, we might find ourselves in a state of suspended animation because the Government would not, and I may have to take advice on this, be able to bring forward any draft Bill unless it were one with all sorts of options for the House and it would perhaps require then the appointment of a Select Committee to decide what was decided if the amendment is carried out as it is now because it really gives no directive of the kind of thing that the House is asked to do.

MR. SPEAKER:

The motion as it stands now would only express an opinion.

HON CHIEF MINISTER:

That is right, but then if motions are meant to have more effect than those of the United Nations, we would hope that that should be seen in more active application of them. I do not want if the motion is passed as it is that the finger should be pointed at the Government, that the Government has not done what the House of Assembly has decided, that is the difficulty, because the Government if it is directed to do something, it would be incumbent upon the Government to carry out the wishes of the House but the wishes of the House as the motion stands are just nebulous in the sense that it would leave it in a way that the Government would not know which way to turn. That is why, whatever

happens, whether it is by accepting this amendment and carrying on to proceed to a Select Committee or not, if this motion is passed as it is there will have to be another motion some time in which it will be decided how to deal with this. So why have to do that if there is such an urgency after, his 8 or 10 years in public life suddenly for Mr Bossano to bring about this motion, it is going to be further delayed by having to have another session and having to decide how to go about it. I do not feel, and I am thinking purely from my practical parliamentary point of view, I do not see if the motion is passed as it is that the Government would be compelled to produce, what? That is the difficulty, unless of course this would be followed by another motion from the Hon Mover with a draft Bill of what he wanted which would require, first of all, leave to introduce and then to go through all the motions one of which would be the appointment of a Select Committee on the Second Reading. That is the difficulty I find myself in. I did not want to say this at the beginning as I did not want it to be thought a subterfuge not to decide as far as I was concerned of how I felt about the motion but that is a point that Members should consider. That is why I support an amendment that a Select Committee be appointed.

HON MAJOR R J PELIZA:

Mr Speaker, I think the proposer of the amendment spoke a lot of sense and I support the amendment but I think he should give a time limit because this can go on forever. I think he should add to that "report to the House by a certain date" because otherwise this will never finish. I do not want to create more division than there is already but it seems to me that we shall see little progress if there is no target date set. I think we are dealing with a very serious and delicate matter which really touches the soul of most individuals, certainly those who are married and also the first party that we tend to forget which are the offspring of that marriage, of which we have said very little here. These are very serious considerations which the House has got to take and which I agree is a matter for a Select Committee to look carefully as to the need for reform one way or the other for our community because as has been stated this has had no real public debate in Gibraltar perhaps for the reason that it is such a delicate matter that can really raise a hornets nest if it happened that politicians will find it extremely difficult to speak their mind in public for fear of losing votes. At one stage, perhaps before an election, this is very much in mind. But what we have got to think is that there is definitely a number of people affected of which we hear very little in public but who suffer very silently and I do not believe that it is fair for any society to allow that to continue for personal or religious reasons or whatever political reasons that that should continue in the way that perhaps it is going on today here in Gibraltar. This is why it is necessary that this matter should be brought to the public notice in the way that it has now arisen in this

House but what we must not do one way or the other is to sweep the matter under the carpet because then we would not be fulfilling our duty as elected Members of this House. I have my own views on divorce which, perhaps, are neither here nor there. I have my own personal convictions and my own religious beliefs but I try to rise above them and look down to the people for whom I am responsible and see the picture objectively rather than subjectively to my own personal point of view. My own circumstances, happily, are such that perhaps I do not see the need as strongly as if my circumstances had been different.

MR SPEAKER:

I take it that you are speaking on the motion.

HON MAJOR R J PELIZA:

I am speaking generally to the motion and I do not propose to speak again. I think that we have got to see from four aspects. We have the matter of conscience which is the religious side and as we know there are different religious denominations in Gibraltar and people in some instances have very, very strong views on this matter and no amount of talking will ever convince them differently because religiously they have faith in their own religion and faith is above every other argument and therefore, Mr Speaker, it is beyond convincing. Then we have the social aspect where we see it from the point of view of whether it is good for society or not and this again is a very difficult assessment to make because it is a fact that in some instances, and I know cases where people who have divorces have been able to find another partner and live very happily after that and it has been good for the children as well so it is not all one way. On the other hand there are cases where there have been divorces and second attempts have been a failure, another divorce and so on and so forth. So it is not black and white, there is a lot of grey and it is very difficult for any individual to try and say it is right or it is wrong from the social aspect, I am not talking about religion which is a different matter. That is beyond any other logical argument that you wish to bring into it but even from the social aspect it would be unfair for anybody in this House to make one decision one way or the other. I will tell you what I am driving at in a moment. From the democratic point of view I do not believe it is an election issue to start with. It isn't an election issue because when you are talking at election time you are just not talking about divorce, you are talking about many other things and the people who vote for that party are not just going to vote for that party or against that party because of divorce because there are other bigger issues that affect individuals directly, this doesn't affect individuals directly, this affects a number of individuals in our society and we must respect those few who unfortunately find themselves in that situation so I don't

believe that this is really an election issue and I would not like to see it is that way. I think this is a matter of which people have views, silent views, views that they will express when you speak to them in the street but it is not something by which they personally are going to have a gain so it is very unlikely that they are going to start moving heaven and earth to have the law changed except, of course, for a few as I said before who have very strong convictions and then, of course, they can be very loud when the issue arises publicly as has happened now and this is why you have many letters in the press, people taking very entrenched positions and I think we have got to see it in a completely different light. We have got to be fair and just to every man and woman in Gibraltar and children because the children must also be taken into account when we make the decision. Therefore, I think, Mr Speaker, if we want to act really and truly democratically and also if we look at it from the political aspect, as I said before, because this is an issue amongst many, then, in my view, Mr Speaker, this must be done by a referendum. This is the way in which public opinion will be tested directly, every man and woman here who is entitled, I think, to participate in the decisions of the community will be able to decide whether he or she believes that it is in the interest of the whole community to say yes or nay to any changes that we may wish to make. And this is why I say any changes because we already have divorce in Gibraltar. There are people who are even against that kind of divorce that we have in Gibraltar and we must not forget them either. So, what we should do is have a Select Committee, by all means, and that Select Committee should not say if there is any need, I believe that there is really a need to look into the matter, there is definitely a need, to look into the matter in my view and I am not going to change it because this is better than nothing and even a crumb I think is better than no cake. I think that there is a need, the need is there. The Select Committee should look into what the people, generally, are thinking and from there, I think, should be drafted what should be put to this referendum. If I had my way I would have put the question that a referendum should be held on the issue, that a Select Committee should be appointed to look into how the referendum was going to be put to the people, this is what I would have drafted myself. I know it is not going to carry support so there is no point in wasting my time. This, it would appear to me, because it is so wishy-washy, let's put it that way, is going to have support and one move even if it is a slight move, is better than no move at all. So, this unifying process, I hope, will continue and progress and so lead to what I think Gibraltar needs on this issue. We just must not forget about it, this is what I am trying to get at. The need to put the question to the test to every man and woman in Gibraltar, through a referendum, in clear terms. Before the referendum is held, anybody who wants to speak on this issue will be able to do so in exactly the same way as was done prior to the 1967 Referendum where, as we all know,

the matter was publicly debated, people will hear about it, people then will be in a position to make up their mind intelligently, which I think is very important, not emotionally, but intelligently. I think, certainly the politicians will stand up and speak, societies which are interested one way or another, the different churches will be able to do that and so I think eventually the Gibraltarian will have a very informed opinion of how he should react to this proposition. To me this is the logical, sensible way of proceeding with this issue but let us hope that this is not just a way of forgetting about the whole matter, of shelving it, because that, I think, would be unfair, certainly unfair to a number of individuals who perhaps are going through a very hard period and I think it is only proper that this House should proceed. I will certainly vote for this amendment, I have expressed my view, Mr Speaker, but in the circumstances I do hope, Mr Speaker, that the House will accept the amendment.

The House recessed at 1.10 pm.

The House resumed at 3.30 pm.

MR SPEAKER:

I would remind Hon Members that we are now on the motion moved by the Hon Mr Bossano on the Matrimonial Causes Ordinance and that we were considering the amendment to the motion as moved by the Hon Mr Perez. Does any other Hon Member wish to speak on the amendment?

HON MR R G VALARINO:

Mr Speaker, I welcome the motion of the Hon Mr Bossano on the urgent need to amend the Matrimonial Causes Ordinance. I doubt whether there is an urgent need and I am sure that any urgent need can be delayed over some time to allow all Gibraltar or most of Gibraltar to be asked for their views. I stand up basically because I shall be voting against the amendment proposed by my Hon Colleague and I shall be voting for the motion as proposed by the Hon Mr Bossano. There is no doubt, as Mr Bossano has said, that divorce exists in Gibraltar. Unfortunately, some people do not know the often devious tactics that clients and lawyers have had to go through in order to obtain a divorce. It therefore shames me to find out that lawyers when they find progress coming to the House, they prefer to vote against the motion rather than in favour of it but this may well be for other reasons and not for real reasons. Therefore the few words I want to utter today are really this. Personally, I will vote for the motion of the Hon Mr Bossano and I shall vote against the proposed amendment of the Hon Mr Perez.

HON A J HAYNES:

Mr Speaker, I don't think enough has been said on the merits for and against divorce and I would like to start by addressing myself to that particular aspect of the motion as proposed. In the first place, as a lawyer, I have often encountered cases of people who wish to obtain a divorce and I as I think any other lawyer and any other person, one feels sympathy and apart from sympathy for those who wish to divorce, who are undoubtedly going through a severe trial, one also senses that the law is inadequate and as such one would hope that the law could provide more thorough and convincing remedies and further it is my submission that change in the law of divorce on the lines proposed by the Hon Mr Bossano will only be to the benefit of those presently married in society and that as such as a civil remedy for those it is something which is desirable because although the Church has strong views on the matter one can elect to follow those as one's conscience dictates. Having said that, I would like to state that my personal views on the matter are that there should be no change in the law of divorce the reason being that though a change in the law of divorce will be to the benefit of those who are already married, it poses a serious threat for those who have not yet taken that step and I take issue with the Hon Mr Bossano on his point that the family units would be very unstable and would be a farce if on the introduction of the law of divorce everybody went off to get married. That is not the way I see it, I accept that for those already married it can only bring some form of help but I, as my Leader, believe that the family unit is the keystone of our society and that nothing should be done to threaten that keystone. If I can go further, the family unit is the mainstay of any democracy and where any motion, any legislation is mooted and eventually passed whereby that institution is threatened, then that motion or that law must be strenuously attacked and I believe that in a society where divorce can be obtained at will, that in that society marriage will be taken as an institution of not great worth and that as such people will marry without taking into consideration the real importance of that institution. Of course, logically, if one extends it one would ask for legislation to make marriage more difficult but that I think would be a non-starter and as such what one must have is some form of penalty clearly in the minds of those who are to embark into marriage so they are fully aware of the step they are taking. I think one of the ways of doing that is by having legislative problems for when it comes to undoing a marriage. I think people see the hardship that is caused by separation, because it is not the divorce law that causes the hardship, the hardship is caused by a couple who wish to separate and the divorce laws are what bring it to the public eye. If the people are made aware, as they have been till now, of the considerable unhappiness that they will have to undergo when their marriage falls through, then perhaps they will take the step of marriage more seriously and that as such the family unit will remain the keystone of our society

and as such democracy will continue and since Mr Bossano I don't think has either contemplated this issue or answered it or given any statistics to contradict what I am saying, that he has not put a case of considerable or substantial merit for his motion to be approved. The merits of divorce are apparent for those who are already married and the disadvantages are in the future. As such, a decision on the matter really weighs up the present with the future and it is clear that a short-term policy, a policy which all are readily aware of, will carry a lot of weight especially with the political animal who is conscious of his political stature and wishes to remain in politics. I would suggest, however, that the braver decision is the long-term decision, the decision which encompasses the future and protects the youth of Gibraltar. Again, I question the seriousness with which this motion has been put forward when the Hon Member had his facts as to the law wrong. It is not fact that the law we are presently influenced by is that of 1857, we find ourselves in the pre-Herbert 1937 Act and these miscalculations, lack of information as to our legal status, must reflect on the considerations that were given to this motion when drafted by the Hon Member. Again, one has heard a lot of debate on the importance of a mandate in order to be able to put through legislation of this type and I think it is accepted in this House that there has been no mandate and, furthermore, it has been abundantly made clear that Mr Bossano could well have made this an election issue and that he failed to do so and if he failed to do so one should logically come to the conclusion that he didn't do so because he would have lost votes and as he lost votes it is because the people don't want divorce. This takes us into the amendment which proposes that a Select Committee be formed. I remember the Hon Minister for Economic Development saying that it is pitiful that only 14 people should decide this. I wonder if the Select Committee will mean instead of being 14 it is 7 or 5 or whatever. Nevertheless, if the Select Committee will, as one of its aims, seek to formulate a suitable questionnaire for a referendum then I will adopt that amendment. Unfortunately I am not sure that the amendment is clear on that. One of the reference points for the Select Committee which takes it outside the ambit of the morality of the pros and cons of divorce, is something which the Hon the Chief Minister touched on which is that pre-Herbert stage the law was becoming a farce and again the Hon Dr Valarino touched on that. There may, perhaps, be a need to change or modify the divorce laws to protect the law from itself because it is an even more serious issue when the law becomes a farce and then that could threaten again democracy but not in the far distant future but in the near future. We must not allow our law to become a mockery and if the Committee also seeks to find and research into the attitude the courts are taking at the moment with regard to divorce then, perhaps, they will feel that it is in the interests of Gibraltar that the law be protected from itself from becoming a farce. That is all I have to say and I hope the amendment will result in a referendum and that the Select Committee will formulate a proper questionnaire.

HON H J ZAMMUTT:

Mr Speaker, Sir, the more that I listen to arguments both for and against, I am all the more confused. When I first saw this motion I thought that it would be a straight forward issue with obviously contributions from both sides of the House, knowing that there would be no party whip, but quite honestly I think we have deviated from the point at issue. I do not think we are discussing the merits or demerits of divorce and I was quite taken aback, with respect to the Hon and Learned the Leader of the Opposition, who made a contribution basically on religious grounds because I think none of us here are elected on religious grounds and the proof of the pudding is simply to see the overwhelming majority that Sir Joshua, who is a non-Catholic, obtained and I am sure that possibly a very large proportion of his votes had of necessity to be drawn from the Christian population. I think it is very wrong that we should allow, as politicians, our religious formation to guide this particular issue. If one looks at the laws of Gibraltar on matrimonial causes there is little doubt that it is lopsided, that the man has the upper hand in most cases, that the reasons given for divorce of adultery, sodomy and bestiality are of course, to some degree immoral because as we all know that these things can, although the law calls for particular care by the courts to elicit the truth, it is quite simple to fake these requirements and obtain a divorce but whether it is bestiality, sodomy, adultery or call it what you like, those of us that are Roman Catholic must, of course, agree that the church will never accept divorce. It does not matter what we speak about or talk about, in the laws of Gibraltar as they stand the Church will not accept divorce and, in fact, the Church does not accept divorce even as the law stands today. I very much doubt if the laws were to be amended that the Church would accept a reform of the divorce laws. It is true, as the Hon Mr Haynes pointed out, but I cannot agree with him, that he sympathises as a lawyer with those cases that come before him but, quite honestly, as a lawyer sympathy really gets people nowhere. Therefore, unless that sympathy can be transformed into a direct way of alleviating that particular problem, all the sympathy in the world still does not get anybody anywhere. There is little doubt, certainly in my mind, that our laws on this issue are antiquated. As has been mentioned here this morning it may not be that we require the total extent of complete parity with the United Kingdom but I do feel, and bitter experience has shown, that we possibly do require a reappraisal of this particular Ordinance. Mr Speaker, having said that I am no doubt leading you all to the belief that I support the motion. I am afraid, Sir, that I do not support the motion but I do not support it not because of what I have said, because what I have said obviously is in agreement for the Ordinance to be looked into. I do not, and my colleagues know this, I cannot support the motion because I do not feel that none of us here as individuals, as we are talking today, or collectively within our own respective parties, have had the courage of our own convictions in gambling our political career by putting this in our manifesto.

Whether the Hon Mr Bossano obtained nearly 5,000 votes on the GSLP ticket or on a personal ticket, one does not really know, and one does not really know if Mr Bossano, had he mentioned it in his electoral manifesto would have obtained another 3,000 votes or lost 4,000 votes but I do think that in being honest with ourselves, those of us who have been in politics for some years and one can honestly say that the Leader of the DPBG has had sufficient experience and the Leader of the GSLP has had sufficient experience and, of course, my own Party has had sufficient experience, is that possibly we all fear to put this in our manifesto because of the political consequences, not the religious consequences, and that is why I differ so bitterly with the Hon the Leader of the Opposition. It is to me alarming, as was mentioned by my Hon Friend Mr Canepa, that the urgency seems to have sprung up in July and where I cannot find justification for the Hon Mr Bossano in bringing this motion in as a crash exercise is because although no major party made this a political issue, there certainly was one member who stood as an independent who has on two occasions brought this to the forefront. One could argue that possibly in 1976 his main political argument was repugnant to the immense majority of Gibraltarians, in 1980 he was quite mellow and came out with an economic political approach but still mentioning divorce whereas in the other main parties contesting the election if any of us talk about housing the other party talks about housing, bettering that manifesto promise. but no party had the courage to pick out from this particular candidate's electoral promises the question of divorce and I think it is immoral of us, of any Member here, to bring in an issue which was made and had been made on two separate occasions a political issue at General Elections and which failed, to try and make it a political issue without the mandate of the community. It would have been the best possible exercise because I feel personally that even if there is a Select Committee the people that are affected, through shyness, through embarrassment or what-have-you, may not want to come forward and give evidence but behind that little curtain, when somebody is told "we voted for you," as possibly it was with the case of Mr Loddo, you accept it at face value. No one can say who voted for you. He can say it but it may mean nothing because possibly he did not vote for you and that is where one would see the true desire of the Gibraltarian community in wanting or not wanting an amendment to the laws. Personally, I feel there should be a re-appraisal of the Divorce Laws of Gibraltar but the only way of establishing this with background force and vigour is by making it an electoral issue. Then one would have the mandate to come here and saying the divorce laws ought to be amended. There is no excuse, Mr Speaker, with respect to my friend the Hon Mr Bossano, to bring this along because an issue was raised in March in his Party Assembly. I think it is not proper, I think a thing so emotive as divorce requires much, much more consideration and I think, on this side of the House, collectively, you have been informed that we had received an approach from the housewives way back in 1977 and the matter had to be considered carefully and I do not think that in an address from the Hon Mr Bossano, a five-minute address, and

even the contribution of independent members should really impose upon the people of Gibraltar something they may, and I sincerely hope they do, but equally something they do not want to have and that is what we have to be careful about. But we cannot, under any circumstances, criticise one sector of the community or another, or His Lordship the Bishop. I think His Lordship the Bishop is completely entitled to lead his own flock. I think that we would be doing disservice to the community if we exceeded the powers that we have been given by the people in trying to impose upon them something they have not asked us to do. There has been very little reaction to this motion and I have had people from both sides criticising the move and some, on the other hand, have praised it, but we have to be very careful, Mr Speaker, and not do things or say things just to be popular, just to make sure that we will not make 1,000 votes or lose 1,000 votes. That should not be our concern now, our concern should be to legislate for the better government of Gibraltar and this issue is one that deserves very serious consideration and one on which we should tread with caution and not take it tongue in cheek. I therefore urge members, Mr Speaker, to accept a Select Committee, to accept the amendment to this motion and, possibly, the Select Committee might come up with the idea that it is too hot a potato as the major parties possibly considered it was so at the time of the elections.

HON W. SCOTT:

Mr Speaker, since most contributors to the debate have made the House familiar with their own particular religious beliefs I think it would be less than fair if I were not to also make the House familiar with my particular religious beliefs. I am a believer in the Anglican communion and a member of the Church of England. The Anglican Church does not recognise divorce and is, in fact, stricter on this issue although members might not be aware and indeed the general public might not be necessarily aware of this but it is in fact stricter than most other churches. What the Anglican Church does do, Mr Speaker, is that it recognises the existence of people to whom divorce might be acceptable on certain grounds and on that issue, which I subscribe to, I hopefully would try to divorce the church and the state. Because, quite frankly, we are not here to talk of religious matters, with respect to Hon Members. We are only here to talk on social and humanitarian grounds. On those grounds and on these grounds alone, Mr Speaker, I am of the opinion that there is a need to amend the divorce laws in Gibraltar. It is unfortunate, perhaps, that the Hon Mover has chosen to use the adjective "urgent" whereas perhaps another adjective would have been more acceptable, at least to me. There is certainly, Mr Speaker, an anomaly within the divorce laws in Gibraltar because as the Hon Mover suggested earlier on this morning civil marriages are recognised in Gibraltar where two consenting adults are allowed to marry having previously been divorced outside Gibraltar on grounds that are not acceptable within the divorce laws of Gibraltar. So there is certainly,

Mr Speaker, a certain anomaly there. It would appear to be only available certainly to resident Gibraltarians who either have the circumstances, inclination, resources and the opportunity to displace themselves from Gibraltar, acquire the right of residence, perhaps, in the United Kingdom, use those grounds which are at the moment not acceptable in Gibraltar, obtain their divorce, return to Gibraltar and subsequently remarry. Let me hasten to add, Mr Speaker, there are quite a number of people who have already gone through this process and we are all aware of at least some of them. This, Mr Speaker, I find most undemocratic. As to the issue of the mandate from the electorate, I do not think quite honestly that the issue of divorce will ever be presented in an election manifesto by a substantive political party precisely for the reasons that have already been said here this morning and this afternoon. We are elected not only for what is contained within our manifesto but because we are deemed to be responsible men acting within our own conscience and commitment and when issues of this nature arise, as indeed with other issues, we are expected to act within those parameters and my conscience with this particular issue requires me to support the motion as I firmly believe that there is a requirement to amend the divorce laws in Gibraltar. I will now move, Mr Speaker, to perhaps even a thornier subject. It seems to me that the argument, both inside and outside the House, has been not whether the divorce laws should be amended but whether, indeed, there should be a divorce law at all. This, in my opinion, would be retrogressive in our hopefully progressive society that we all hope Gibraltar is and will become. I really cannot see my way to supporting the amendment of the Hon Mr Perez as having recognised the need for an amendment to the Ordinance, I cannot agree to the inclusion of the words "if any". There has been also talk, Mr Speaker, of a possible referendum and I question whether that would be a wise step to take in the sense that it could lead to a very dangerous precedent. There is the obvious one of the difficulty in the subsequent framing of the wording of the referendum and also, perhaps, its subsequent legislation. But if there is going to be a referendum it would be less than fair, honest and democratic if a question were not to be put to the electorate to include whether there should be a divorce law at all. I feel, Mr Speaker, there has been ample opportunity over the last few years if this should be the case for this House to have considered repealing those laws and it has not taken that step. I really cannot understand this, but, however, Mr Speaker, I cannot see my way to supporting the amendment but I do agree with the Motion.

HON M K FEATHERSTONE:

I would not like to support the amendment. I would prefer that the original motion were defeated but it seems obvious that the original motion will get sufficient support to go through if it were allowed to and therefore I will support the amendment as the lesser of two evils. I am going to give a biased view and I do not apologise for that in the

slightest. The Hon Mr Bossano says that I am going back to 1857, I think I would go back to 1200 or 1500 when the Council of Trent first made its pronouncements on the indissolubility of marriage. After all, Gibraltar basically is a Catholic community and I feel that our laws on fundamental principles should be geared to the faith of the majority of the people. The Church has to stand firm on this and all credit to them for doing so. I know that all sorts of claims are made - this modern world, we have to be progressive, etc. - and we get enthusiasts for all sorts of ideas these days. They claim that they are consonant, even necessities in the modern world - contraception, abortion, euthanasia, divorce. Perhaps we will see the time when the euthanasia enthusiasts come forward and suggest that this should be a good thing for Gibraltar, a step in the right direction. We may even get to the stage that people at 60, I am afraid poor Sir Joshua would already be on the list, and I would be pretty close to it, would go up the chimney and be used for phosphate recovery as we saw in Brave New World. If we accept the basic tenets of the Church, and if we are real Catholics we must accept them, then there is no way we can reconcile this new thinking with the accepted and fundamental principles of our faith. Either one accepts all the rules and regulations or one should opt out. One cannot say "I am a supporter of the Church this far and not that far". You do all or nothing. You cannot have all the pleasures and all the benefits of a church wedding, something which I know the ladies in particular are very keen on and which means whether they realise it or not, although they are pretty well advised beforehand, the sacramental exchange of vows in which they accept that it is for better or for worse, in sickness or in health, till death do us part, and then as soon as things get a little tough to turn round and say "Let us get a divorce". In fact, some of the youngsters today say "We'll get married and if it doesn't work out in a couple of years we will get divorced and try somebody new". I think it would be better to have what is called a "junterita decente" than do that. Do we want the American society, where you read that so-and-so has married such-and-such, it is his sixth wife and her fifth husband? Do you want a brood of half and quarter siblings none almost knowing from day-to-day who is their parent and shifted around from one place to the other never knowing exactly where they stand, is that progress? Is that the aim of our future family life? As the Hon Mr Peter Isola said family life is one of the basic and most essential features of Gibraltar, something which up to now we have been proud of and something that we must sustain in every way in the future. I know some people writing in the papers recently claim that in Spain if you have sufficient influence and money the Catholic Church will give you an annulment. In Spain the Catholic Church, I have heard it said, is a law unto itself like most things Spanish. And even if this annulment were possible in my view it is wrong and I do not think if such a wrong does exist it can be used as a justification to make a flouting of the rule and pretend that it is right! As has been said by most of the speakers, we have quite recently had a General Election and only one person put forward to any extent the question of

divorce as part of his political programme and he was resoundingly defeated at the polls. If it had been such a big issue he would surely have made a far better showing. Nobody here can say that he has a mandate from the electorate for divorce. One thing that I would urge is that we do not always slavishly follow English legislation. It does not mean to say that because the legislation is there in England it is good for Gibraltar and I would comment there are instances when English legislation is based on their religious tenets. I believe it has recently been a question in Parliament that the Prince of Wales should not marry a Catholic and remain heir to the throne based purely on English religious grounds. As I have said, Sir, this may be a biased view but I do not apologise for it. I would prefer that the motion was defeated but as I have said it does seem to have, unfortunately, a measure of support from certain people who I would have thought might have considered otherwise and therefore I will take, as I say, the lesser of two evils, I will accept that there should be a Select Committee who, I hope, will find in the long run that they will have to throw out the whole of the idea or at least that they should go to a referendum so that the actual voice of the people in this most important and essential subject should be clearly known.

HON G T RESTANO:

Mr Speaker, other than the issue of foreign affairs, I think this is the most controversial and emotive subject which has come up in the House whilst I have been in the House. The fundamental difference is that whereas in foreign affairs there is virtual unanimity in Gibraltar, on the question of divorce I think Gibraltar is split down the middle. The depth of feeling from both factions is really immeasurable. On the one hand we have those who argue in favour of divorce and who put forward the social arguments, the humanitarian arguments. On the other hand we have those who put forward the religious arguments and their religious convictions. On the one hand, we have those who say that any easing of the divorce laws of Gibraltar would lead to a destruction of the family life as we know it and there are others who believe that the divorce laws could re-establish normal and happy life for those who have not found it so in their first marriage. I think that there is something to be said for both sides of the argument. It is not a matter of black or white. One can take the good side and the bad side of both examples, of a good divorce or a bad divorce, of a good, happy married life or an unhappy married life and the effect that this has on the children of those marriages. You can have, for example, a couple who do not get well together, unfortunately, with children, they argue all the time, they have fights and very often they can take it out on their children. It is the innocent ones who very often take the can for what is happening in that particular case. On the other hand, of course, you can have instances where a divorce can lead to the children being equally unhappy with their new step-parents. But you can also get instances where

a new life for the children, where before they had been unhappily treated, perhaps a new marriage could see them well cared for and loved. Really, there are arguments for both sides, for the side of not having the divorce laws amended and there are arguments for having the divorce laws amended. My own belief is that divorce should be something between the individual and his conscience and his religious beliefs. Where it comes to the question of divorce there has to be an examination of conscience between those people who are contemplating such a step. I do not think that any amendment of the divorce laws necessarily means that religious views as such are contravened. A religious person who does not believe in divorce is entitled to have those beliefs and is entitled not to make use of any possible amendment in the divorce law. I do feel that there could well be a division between the religious law and the law of the country. It does not mean to say that because there is a law allowing divorce that those people who feel that they should not do so because of their religious convictions should take advantage of those laws, that is why I said that I feel it is something basically and fundamentally between the individual, his conscience and his religious beliefs.

The last speaker did speak about the question of annulment and he did say that, in his opinion, annulments were wrong, too, as well as divorce. But the fact is that the Catholic Church does allow annulments after it has joined in matrimony those people who married within the church. Whilst I take his point that as far as he is concerned two wrongs don't make a right, I think that two wrongs don't make a right perhaps in the other way. If there are grounds within the Catholic Church to recognise annulment in a marriage, there must be reasons for those annulments and I do not really see where the distinction is really made. Mr Speaker, this motion as has been brought to the House by the Hon Mr Bossano and I do want to make the point that his Party never mentioned this at the election and had they really had the courage of that particular conviction that they wanted divorce then they should have brought it up at the election. I do not think, as others have said before, that anybody in this House has a mandate to impose upon the whole of the people of Gibraltar either an amendment or not to have an amendment of the divorce laws because none of us, not one single one of us who stood for election, ever brought up the subject during our election campaign and for that reason I could never have supported the motion as it stood. I do not think it is right or just for the Members of this House to take a decision when not only we ourselves in this House are split but there is even a bigger split within Gibraltar as a whole. If one walks down Main Street and talks to one person or talks to another person one gets a tremendous feed-back and always the points of view are very strongly held. As far as the amendment is concerned, Mr Speaker, I do not really think that the amendment goes quite far enough as far as I am concerned. I brought to the House with me this morning another amendment which I will not be putting to the House but I would like to inform the House about it so that the House does know how I

certainly feel personally and my amendment was that there should be a referendum because it is up to the people to take a decision and also that a Select Committee be appointed but that a Select Committee be appointed to decide upon the wording and the way in which the referendum would be put to the people of Gibraltar. I would put it to the Select Committee, whenever it is appointed, that they should bear this very much in mind. The way that the amendment has been drafted makes it a rather watery amendment, that a Select Committee of the House be appointed to enquire as to the need, if any, to amend the Matrimonial Causes Ordinance, I think it should have been more specific. However, there is no need to add to any controversy and I will support that amendment. I would suggest that that Select Committee directs its attention to the type of reform that may or may not be required and to the wording of the referendum to be put to the people. It is important that there should not be at the end of the day instant divorce. I think divorce should not be made an easy thing to obtain, it should not be something which should be made too difficult to obtain, it should be there but it should not be made too easy with the obvious consequences. I must say that in today's debate one name has come up time and again, that of Mr Ellul. His name has been quoted more today than anyone else I have ever heard in any single debate. I do not think it is fair to say that he was not elected because of the divorce issue. That point was made and I think there are other circumstances involved. I do not believe that divorce should be made a case for a general election, I think it is definitely something which must be made in a referendum. In a General Election the major parties represent big chunks of the community and those chunks of the community are split right down the middle and it would be completely unfair and unjust for any political party to press for divorce in its election campaign because half its members may be against divorce and the other half for divorce. I put it very strongly to the Select Committee to be, not to recommend that it should be a General Election issue. I noted, Mr Speaker, that when the mover of the amendment moved his amendment he did suggest that Mr Joe Bossano should be in that Select Committee and Mr Joe Bossano did react with alacrity and said he would expect to be in that Committee and I hope he will be in that Committee but the way in which Mr Bossano elects to join one committee or another seems to me to be lacking in a certain amount of continuity. For example, when after the election he was asked by the Hon Leader of the Opposition which seats that the Opposition held in Select Committees of the House he would like to serve in he did not choose the one for which he himself has always said that he is the expert in this House, which is Public Accounts. Mr Speaker, I feel that a referendum is essential on this issue and I think that most important it has to be the people of Gibraltar to decide what they want in Gibraltar, whether they want to have the laws amended or whether they do not want to have the laws amended and I put that very strongly to the Select Committee.

HON J B PEREZ:

Mr Speaker, Sir, in view of the lengthy debate that we have had I will limit myself entirely to answering some of the points which have been raised in particular by the Hon Mover of the actual motion, Mr Bossano. The Hon Mr Bossano said that the main reason why he was going to vote against the amendment which I moved was due to the fact that it had the word "if any" because it was the Hon Mr Bossano's view that as far as he was concerned there is a need to amend our present laws on divorce and therefore he felt he could not support the amendment. The Hon Mr Bossano should also recall that in my contribution and in my moving the amendment to his Motion I said that I was also in favour of extending the grounds for petitioning for divorce and I think I went even further than the mover because I actually stated desertion and cruelty and I still believe that it should be made grounds for divorce here in Gibraltar. But I am rather disappointed with the Hon Mr Bossano because by actually doing away with the words "if any", by actually attempting to rush the motion through the House saying that there is a need to change the laws, what we are really doing is not giving the people of Gibraltar a chance to say whether they want divorce or not, we are ramming that down their throats and I think that is wrong. That is why, Mr Speaker, I made my position clear. I said I believe in divorce and I believe the grounds ought to be extended but, ultimately, it must be the people who have to decide. It is wrong for 14 members of the House to actually decide that there is a need to change the laws of divorce in Gibraltar and I think, Mr Speaker, it has been a complete departure to a principle which I thought the Hon Mr Bossano held sacred and that was the principle of open government, the principle of consulting the people of Gibraltar on matters of this importance. There has been a clear departure by the Hon Member on this particular principle but there is another point also on this that I have to make quite clear and that is, if in the amendment we do not have the words "if any", if it just reads "there is a need to change the law..." and therefore the Select Committee should just consider what changes to bring forward, that is wrong because we would be limiting the actual consideration of the Select Committee because I honestly believe that the way the Select Committee should function is to sound out a cross-section of the public to see what their views are on this particular point but if we just limit the Select Committee to looking up what changes they want, then we are excluding the views of people like the Hon Mr Featherstone and the Hon Peter Isola and I think that is entirely wrong although I would repeat again that I am in favour of a change in our divorce laws. Mr Speaker, I move the amendment to the motion.

Mr Speaker then put the question in the terms of the Hon J B Perez's amendment and on a division being taken the following Hon Members voted in favour:

The Hon A J Canepa
The Hon Major F J Dellipiani

The Hon M K Featherstone
The Hon A J Haynes
The Hon P J Isola
The Hon Major R J Peliza
The Hon J B Perez
The Hon G T Restano
The Hon H J Zammitt

The following Hon Members voted against:

The Hon J Bossano
The Hon Sir Joshua Hassan
The Hon A T Lodde
The Hon W T Scott
The Hon Dr R G Valarino

The following Hon Members abstained:

The Hon F E Pizzarello
The Hon R J Wallace

The following Hon Member was absent from the Chamber:

The Hon I Abecasis

The amendment was accordingly passed.

HON DR R G VALARINO:

Mr Speaker, Sir, I think the amendment fell short of the desired feelings of the House and since there are only two speakers left, The Hon Major Dellipiani and myself, I feel that in honour bound it is my duty to put another amendment before the House and this is to delete all the words appearing after the word "that" and add the following words in substitution thereof "the provisions of the Matrimonial Causes Ordinance are inadequate and that a Select Committee of the House should be appointed to inquire to what extent these should be changed and make recommendations to the House within a reasonable period of time". I think this is the amendment we have all been looking for but like a needle in a haystack it is sometimes difficult to find. This amendment emphasises a recognition on the part of the House that there is need for reform and it bears in mind the original motion of the Hon Mr Bossano whilst leaving it to the Select Committee to look into it in greater depth and coming up with the relevant answers. I shall give time to Members to have a look at the amendment but I feel and I do not know whether the Hon Mr Bossano will feel the same, I feel that this is the practical amendment that is needed and I hope that the House will think likewise.

MR SPEAKER:

Before I propose the question to the House, I would like to make it clear that the question of acceptance of amendments

is at the discretion of the Chair and one has to bear in mind certain established principles otherwise the debate could turn into a farce. I will say that in accordance with the practice in the House of Commons an amendment is out of order if it is inconsistent with an amendment already agreed to or if it is substantially the same as an amendment to the same motion which has already been negatived. I have had doubts whether it is not inconsistent with the amendment which has already been passed to the extent that they are both agreed to the appointment of a Select Committee, I feel that perhaps, in the circumstances, one should allow it but may I say that I will not countenance any repetition on the contribution that any member wishes to make on this particular amendment.

Mr Speaker then proposed the question in the terms of the Hon Dr R G Valarino's amendment.

HON J BOSSANO:

Mr Speaker, having opposed the previous amendment, I stand in support of the amendment now proposed by the Hon Dr Valarino - which I drafted - because I feel that fundamentally, in bringing the motion to the House, I was asking the House to recognise that there was a need for reform and the passage of the previous amendment was possible by the support of those who are against reform - the Hon Mr Featherstone. I think the Hon Mr Featherstone made it quite clear that he was supporting the amendment of the Hon and Learned Mr Perez precisely as the lesser of two evils because it is seen by him as an advantage to be able to delay a commitment on reform because he obviously feels very strongly that if one were to reform the law one should do it by doing away with the permitted causes for divorce today instead of by adding to them. In asking the House to support the amendment now in front of us we are asking the House to recognise the need that exists, and let me say that I found it very difficult to follow the arguments of the Hon Mr Haynes who made a very good case for saying that the law was inadequate and then went on to say that he would not support changing it so, presumably, he wishes to continue the inadequate provisions of our law. He said that if we reform the law it could only do good for those who are already married but be a bad thing for those who are not married who are not, of course, in a position to get divorced and I do not think that people would get married any more easily by virtue of the fact that they knew they could get divorced easily. In fact, if people place very little value on marriage they would not get married, they would just live together, and then they would not need any divorce laws, they would just separate when they were fed up with each other. I do not think that there was consistency in his argument and I would put to him that if he himself is perhaps professionally aware of the inadequacy of the laws, then he can support this amendment which recognises that fact whilst still not being committed at this stage to the degree of reform that we require because that will be a matter looked into in greater depth by the Select

Committee who would be charged with making recommendations to the House within a reasonable period of time thereby taking up the point made by my Hon. and Gallant Friend Major Peliza about having some sort of time-scale within which we expect movement on this issue otherwise we run the risk of the Select Committee getting bogged down on whether there is a need or there isn't a need and never doing anything practical to bring up proposed amendments to the legislation. Let me say, in passing, that I do not think it is a question of a referendum or a question of an election campaign on this issue because I do not think that is the sort of atmosphere where a subject like this can be treated objectively and rationally without emotions and without religious bias. I found that in a way the debate on this issue has been one of the healthiest that we have had in the House because we have seen contributions from all members violently opposed to each other which is, of course, a great step forward since usually they are all violently opposed just to me. I found myself with all sorts of unexpected allies and all sorts of unexpected opponents on this motion, Mr Speaker. Therefore, in a way what we have done today is not a negation of the mandate we have from the people but, in fact, possibly one of the few occasions when we have debated something with feeling, with conviction and with honesty and not with an eye to vote-catching or an eye to what is more prudent or imprudent to do. I hope there will be a majority in support of this amendment because this will enable us to give practical, positive help to meeting this need and let me say that in the absence of any practical move towards amending the law I will be in no difficulty in persuading the House of the unsatisfied need because I shall just put an advert in the paper and ask every person who wants a divorce to approach me and bring a Private Member's Bill for each individual and then the House will see just how great the need is.

HON A J CANEPA:

Mr Speaker, I cannot support this amendment because in the first part of it, namely where it states that the provisions of the Matrimonial Causes Ordinance are inadequate, the House is being asked to make a judgement and that is what I consistently was against this morning and therefore I will not make a judgement on this issue - if it had come to a vote on the original motion I would have voted against it - and that is why I will also vote against this one. Without any attempt to prejudice any issues, what is required is that a detailed and honest investigation of the whole matter should be made. I think I would probably be able to support a further amendment in which the words "are inadequate" were left out and something along the lines of "the provisions of the Matrimonial Causes Ordinance need investigating and that..." but that is what of course the amended motion really seeks to do, so I think it amounts to the same thing. To that extent in that the House is being asked to exercise a judgement, I feel I cannot support that amendment.

HON P J ISOLA:

Mr Speaker, if this amendment is defeated then we are back to the previous one which is the one that I think is the right one because, and I agree with what the Hon Mr Canepa has just said, the previous amendment I think was a genuine attempt to have an inquiry into the Matrimonial Causes Ordinance to let people who feel about the situation, who feel on the question of divorce, to come and make representations to the Select Committee of the House, that is why the Hon Mover, Mr Perez, said and talked about a full inquiry leading possibly to a referendum. I know some people here are in favour, some people are against, we would leave it to the Select Committee to work all that out. This particular amendment tries to get a statement of fact rammed down the throats of those here who cannot accept the situation and also again puts into the arena of this House entirely the responsibility for amending the divorce laws in respect of which not a single member of this House has any mandate from anybody in Gibraltar whatever. It seems that the vote of members of this House, depending on whether they believe in divorce or they don't, is going to be used to run a piece of legislation down the people of Gibraltar's throats whether they like it or not. The previous amendment could have resulted in that, I agree, but at least it was done in elegant fashion and at least it left the matter open and the House supported it. I think the Chair had a difficult job in deciding whether this contravenes practice on debate but I say that as a matter of fact this new amendment seeks to overturn the decision we have just taken. That is a basic reason why I am going to vote against it. I think that the previous amendment as was passed, and I respect the people who voted against it, and they voted against it because they thought it was a bit too wishy-washy, but this is also wishy-washy. When you say "within a reasonable period of time", Mr Speaker, what is a reasonable period of time? If we talk, for example, without in any way anticipating another motion before this House, what is a reasonable time with the Varyl Begg Estate? This amendment tries to ram down our throats that the provisions are inadequate and the Select Committee must come back and amend that law and that is what we cannot stand because the House has just said by a majority of 9 to 5; "Look into the law of divorce, inquire into it, see if any changes are required and inquire into it in a way that you give everybody an opportunity to make representations and not bulldoze it through the House because there happen to be individual members in this House who feel strongly one way or the other and therefore the public will get it whether they want it or not and forget about election issues, forget about election mandates, forget about referendum, it does not suit us here. Let us calm down and let us have this issue inquired into in a proper and responsible manner and then let us have our fights at the end of the day when the recommendations come through and then we divide up whichever way we have to divide up because everybody has their own feelings on the matter but at least let us divide and fight each other or fight for whatever principles we think are right in these circumstances after we have had the benefit of a full and proper inquiry by a Select Committee of this House."

That is why I oppose this amendment in order that we may get back to what I consider to be a more reasoned amendment, one that will bring about the sort of enquiry that nine elected members of this House have thought should be done and which this seeks to overturn.

HON CHIEF MINISTER:

Mr Speaker, having voted against the first amendment, I have got to ask myself whether there is anything here that warrants my supporting it or not. It seems to me that this amendment deals with two matters which have been criticised in the course of the debate on the general motion, one which I mentioned and the other one I did not mention but other members mentioned. One was mentioned by many people about there being an urgent need. That is disposed of in the sense that the motion no longer says that there is an urgent need. The other one which I referred to in my original contribution was the question that I did not think that it should be in line with that of the United Kingdom as at today because I think the United Kingdom legislation, prior to 1969, is more in line with what might be required in Gibraltar. If I am to be consistent, these two matters, which were the only two matters that have been really in my mind, the second one in particular, but I said that I did not want to hide behind that objection in order not to show my support for the motion in general terms because the way it was presented it did say that that was really only one way of looking at it but he was prepared to look at the whole spectrum of the possibilities of change. They are dealt with by this amendment and therefore I will support the amendment.

HON MAJOR R J PELIZA:

I am going to vote in favour of the amendment although I voted in favour of the other amendment but I think that explains itself by what I said earlier that I did feel that the previous amendment was wishy-washy and I am glad to see that now we are getting nearer the crunch. We have to face the situation, it is no use avoiding it by postponing the issue. The issue is here with us and we have to tackle it. We, the politicians, are the people who are elected to resolve these issues and we are failing in our duty if we do not use our skill and ability as politicians to find a way which will satisfy the people of Gibraltar in this very much controversial issue. This is the part that we have to play in this problem. I said before I would have liked to see a date to the previous amendment. Now we are getting nearer. It does say that recommendations should be made to the House within a reasonable period of time. Secondly, it does give the indication that there is a need and no one can possibly say that there isn't, that there is a need to look into this Ordinance. Whether the representations that are made, and I cannot see why representations should not be made to the Select Committee, as it was intended it should be made

earlier, I cannot see why the parties interested should not come to the Committee and make their representations. I cannot see why someone cannot come to the Committee and say; "Not only do I think that the law is inadequate but it should be scrapped off our books!" There is no reason why anyone should not make representations. Therefore, in that respect I do not see any great difference between one and the other in that sense and the views that I expressed earlier on the other which I would follow are still preserved by this amendment. My views fit within the scope of this amendment. Therefore, Mr Speaker, as I said before, I will be consistent in this and I will vote in favour. There is just one point and I do not suppose there is going to be another amendment but I will differ with the proposer of the amendment on the question of how this should be decided and not because I agree with the amendment do I agree with the other points that the mover of the amendment made earlier when talking on the amendment. That is that I do not believe that any of us here have a mandate to make the final decision as to whether the law should be amended and therefore whatever the recommendations may be, whatever the drafting, eventually, when the recommendations are made this House will have to decide whether they are going to be the actual recommendations as they are made, whether those recommendations will be amended as to the wishes of the Members of the House and, finally, how the House is going to decide to legislate, whether it will be put to the people by referendum or whether it will go straight ahead and legislate. This is the point I am trying to make. At this point and my views are very definite on that, I do not believe that we should go ahead with legislation before putting it to the people to find out because we don't know, this is a fact, we don't know whether the majority is in favour or if they are against the amendment. I am making that reservation but not because I am supporting the amendment do I necessarily agree with the way the Hon Mr Bossano wishes to continue after the recommendations and therefore my view that it should be put to the people by referendum still stands.

HON H J ZAMMITT:

Mr Speaker Sir, I am all the more baffled and I apologise because I just cannot see how the Hon Member can ask the House, collectively, to agree that the Matrimonial Causes Ordinance is inadequate and ask for a Select Committee to look into it. If the Matrimonial Causes Ordinance is inadequate then we as political leaders should have the courage to change the law if we are absolutely certain and there should be no need for a Select Committee and we should not hide behind the Select Committee's findings and therefore this in actual fact is a reversal to the original motion which was defeated and the only way.

MR SPEAKER:

The original motion was not defeated.

HON H J ZAMMITT:

You are quite right, Mr Speaker. And I think that if we are all absolutely convinced or a majority of the Hon Members of the House are convinced that it is inadequate but without referendum to the people, surely, Sir, the original amendment would be the one where one would have the views that the House is seeking but I do not think it is right that we should have an amendment which prejudges. The House should not prejudice this issue because we are not here to do the work of the Select Committee. Mr Speaker, I really cannot see the consistency certainly of the last speaker in having voted for one and now changing and voting for the other. I cannot see the consistency at all. I am absolutely baffled, Mr Speaker, and we can be here all day and probably more than one day if we carry on with this attitude.

HON A T LODDO:

Mr Speaker, what is certainly obvious is that Gibraltar is divided. Division is seen plainly in this House so therefore there is a need for an updating and it is not a question of the courage of one's convictions because here every Member has spoken quite openly, it is the practicality and therefore I think that the amended motion as it now stands, it is a very satisfactory compromise motion because the problem does exist and by shutting one's eyes to this problem it just will not disappear. The matter certainly is controversial but we cannot, as elected leaders of this community, shirk our responsibility and sweep it all under the carpet. Mr Speaker, I will be supporting the amendment.

HON M K FEATHERSTONE:

As the Hon Mr Canepa has said, it is not, for us in this House to judge whether the Matrimonial Causes Ordinance is adequate or inadequate. I agree it may require investigation but I do not think the Select Committee should have, as it were, hanging over its head the decision of this House that it is already inadequate when it starts its deliberations. I think therefore the only reasonable way to treat the present amendment is to vote against it.

HON G T RESTANO:

One of the things which the previous amendment which was passed by the House sought was that the Select Committee should inquire from people, generally, about their view on our divorce laws. We are not talking here about our own personal views. The Select Committee was to inquire and investigate from entities, from individuals, how they felt about the Matrimonial Causes Ordinance and then give their opinion. This new amendment is not at all in the spirit of that first one and it certainly does not seek for the Select Committee to really ask people what their views are.

It is prejudging the issue and I think the Select Committee should go into it with an open mind. We all have our own views on this but the Select Committee should be reflecting the views of people, generally, leading, I hope, to a referendum and, therefore, I see no need for this new amendment and I will not support it.

HON MAJOR F J DELLIPIANI:

It is getting awfully confusing. I feel there is an element of truth in saying that if we say in this amendment "inadequate", we are prejudging the issue already. I had experience of Select Committees of the House in the Declaration of Members' Interests and, in fact, the Public Accounts Committee and it is true that we get things done quickly and we move and work quite well. I have every confidence in Select Committees of this House of Assembly and I think that the wording of the first amendment is adequate. I have complete confidence in the system of Select Committees of this House and I am sure we will get on to it and we will get down to doing things properly. There will not be any question of shirking responsibilities.

HON DR R G VALARINO:

There is not much to say on this amendment except that it will obviously prove to be a much better amendment than the previous one because at the end of the day, a tie will undoubtedly result and therefore we shall in all probability lose the amendment. Nevertheless, I feel I have done the House a worthwhile service by putting this amendment forward and trying to at least better that amendment which was proposed by my Hon Friend Mr Perez.

Mr Speaker then put the question in the terms of the Hon Dr R G Valarino's amendment and on a division being taken the following Hon Members voted in favour:

The Hon J Bossano
The Hon Sir Joshua Hassan
The Hon A T Loddo
The Hon Major R J Peliza
The Hon W T Scott
The Hon R G Valarino

The following Hon Members voted against:

The Hon A J Canepa
The Hon M K Featherstone
The Hon A J Haynes
The Hon P J Isola
The Hon J B Perez
The Hon G T Restano
The Hon H J Zammit

The following Hon Members abstained:

The Hon Major F J Dellipiani
The Hon F E Pizzarello
The Hon R J Wallace

The following Hon Member was absent from the Chamber:

The Hon I Abecasis

The amendment was accordingly defeated.

HON J BOSSANO:

Mr Speaker, I would like to make use of the right of reply although the motion that stands before the House in my estimation fails to achieve what the original motion was intended to achieve. I regret that the amendment was moved in the terms that it was because it seems to me that this amendment has been carried primarily by the support of those who were against the original motion and had that not been the case there was a good chance of the original motion being carried or certainly an even better chance of the amendment we have just defeated. The only reason why I want to make this point is because it is, of course, only through a certain amount of incompetence on my part in that I did not realise that having spoken to the Hon and Learned Mr Perez' amendment initially you were then going to rule that I could not move this amendment myself. I thought that I could move an amendment and I was wrong but I would like to make the point because the Hon and Learned Mr Isola charged into me as if this was a Machiavellian plot to reverse the considered view of the nine members of the House when in fact what was most obvious about the considered view of the members of the House is the total confusion which was prevalent throughout the contributions of many members who made a speech which clearly indicated to everyone that they were going to vote in favour only to end up by saying that were going to vote against. Those of us who are more obviously committed to reform will now have to make do with the little we have managed to salvage from my original motion and try and make that work. It is clear that the views expressed in the House are such that this is not an issue which really a political party can take up honestly on behalf of its entire membership and of all its supporters and I am surprised that members in this House who recognise that nevertheless did not fail to take the opportunity of accusing me of having done something wrong in not having made this an election issue on behalf of my party whilst at the same time recognising that in every Party, including the GSLP, there are people who do not agree with this. We have gone further than any other political party in that we took a policy decision recently which is now part of our programme and we are now committed to this unless a future general meeting reverses that policy. Within our own ranks, as within the ranks of other parties, there are people who give much greater weight to religious views, who have much greater misgivings about the wisdom of

reforming the law. Even those members, Mr Speaker, who have most vehemently opposed the reform of the law, have nonetheless recognised that the present one is unsatisfactory, that the present one does not preserve stable family life, that the present one leads to people inventing infidelity where it does not exist as the only way of achieving it and that is a bad law, that is an inadequate law, so how can any member having recognised that need a Select Committee to tell him that that is inadequate. The trouble is, of course, that one cannot speak often enough in this House, I would like to stand up every time somebody else says something to put my ear in but I cannot so I have to wait till the end when it is too late. I may succeed now in persuading everyone but now the vote has been taken. The vote now will be, of course, merely a ratification of the amended motion as it stands. Certainly, the Select Committee, in my view, must be seen as working primarily towards reform because it is obvious that reform is required and it is obvious even to those who feel misgivings about the reform for other reasons. The Hon Mr Zammit has not said that he doesn't think the law needs reforming, he says he does not think he has a mandate to reform it. Therefore, the fact that the Select Committee may come up and tell him that it needs reforming does not give him a mandate. Having supported the motion to inquire into whether there is a need, which he is convinced already that there is, he now will find himself if that need is in fact substantiated, as incapable of doing anything about it as he is today unless he changes his mind about his right to reform the law without having to hold a referendum or without having to go to an election. It is important, Mr Speaker, that now that the Motion has been brought to the House, and I think it is better that it should have been brought to the House in the earlier part of the House rather than towards the end of the House where electoral pressures might have been greater at work, and we certainly do not want to find ourselves in the sort of situation there was in Malta with the Catholic Church issuing pastoral letters as to how to vote. I am making the point that it is better that it should be now rather than towards the end of the House of Assembly where making it an election issue could include a possibility of the Church trying to influence, because of the strongly-held religious views on this matter, the behaviour of the electorate which I do not think would be a good thing for democracy in Gibraltar, that the Church should say to people; "Do not vote for so-and-so."

MR SPEAKER:

I must bring you to order. This is a new issue which has not been raised in the debate. You are exercising your right to reply.

HON J BOSSANO:

The issue that has been raised in the debate has been the issue of whether this should have been fought out in the last

election campaign and I am making the point in reply that not only do I not believe it should have been fought in the last election campaign, I do not think it should be fought in the next election campaign and that therefore the timing in bringing this motion is correct in bringing it towards the beginning of the House of Assembly when we have got plenty of time to debate it without putting ourselves in a situation whether other considerations and other allegiances can cut across political loyalties and political considerations. That is the point I am making, Mr Speaker, and it is a point that requires to be made because I am not making any apologies for the timing of the motion. I think the timing is right and I hope that now that we have started on this we will treat the matter with urgency and serious consideration and, hopefully, notwithstanding the conservative elements in the House that would like to put us back to the year dot that we do move into the twentieth century.

Mr Speaker then put the question in the terms of the Hon J Bossano's motion, as amended, which read as follows:

"this House considers that a Select Committee of the House should be appointed to inquire as to the need, if any, to amend the Matrimonial Causes Ordinance".

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

The Hon J Bossano
The Hon A J Canepa
The Hon Major F J Dellipiarri
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon A J Haynes
The Hon P J Isola
The Hon A T Loddo
The Hon Major R J Peliza
The Hon J B Perez
The Hon G T Restano
The Hon W T Scott
The Hon Dr R G Valarino
The Hon H J Zammit

The following Hon Members abstained:

The Hon F E Pizzarello
The Hon R J Wallace

The following Hon Member was absent from the Chamber:

The Hon I Aecasis

The motion was accordingly carried.

The House recessed at 5.25 p.m.

The House resumed at 6.00 p.m.

HON J BOSSANO:

Mr Speaker, I beg to move that: "This House considers that the system for granting scholarships should be reviewed with effect from this year in order to establish the same right to statutory grants as exist in UK for those who obtain a place in further education on the minimum educational requirements accepted in UK."

Mr Speaker, this is a matter that I have raised on previous occasions in the House of Assembly though not in the form of a motion. I have raised it in at Estimates time when we have been discussing the provisions of funds for scholarships and I have raised it at Question time more than once. I would remind the House that when we have discussed this on previous occasions we have been told sometimes that in attempting to widen the availability of scholarships we would be providing public funds for people who might not be able to benefit fully from the opportunity. I recall one specific case one year where the Hon Mr Featherstone, then Minister for Education, told us that we were scraping the bottom of the barrel in seeking to provide additional grants for people who failed to meet the minimum pointage and subsequently some of those students, one student in particular that I recall, did so well that he finished up with post graduate grants in the United Kingdom doing a doctorate and has now got a teaching job in a UK university. The importance is that one should have an understanding of just how imperfect examination results are as a means of testing ability. This is why one of the clearest trends in education today is the move away from taking decisions purely on the results of an exam taken at a point in time and towards continuous assessment which is a much more adequate method for measuring ability. We have to recognise that the obtaining of grades at a particular exam is in itself also an imperfect system. Not only do we have a situation where somebody can be doing excellent work all the year round and then get examination nerves but even the grading system tends, generally speaking, at GCE levels, tends to reflect to a certain extent the calibre of that particular year. One gets a situation where the pass mark is fixed at a percentage of the total candidates taking the exam and consequently the performance of that exam can be determined as much by who else is taking the exam at that point in time as by the objective standard of the candidate himself or herself. Given all these factors, it is obvious that a pointage system that is determined by grades is far from being an accurate measure of the potential of that child to benefit from an opportunity in further education. In seeking to commit the House to move away from the system we have operated for a number of years in Gibraltar to the one that there is in the United Kingdom, where a statutory grant is provided to anybody obtaining a place in further education on the minimum entrance requirements laid down by the Department of Education and Science, I am not only reminding the House of the inefficiency of attaching too much importance to examination results at one point in time, but also bringing home what I consider is a necessary political commitment to

give our future generations in Gibraltar the same opportunities as they would have enjoyed if they had been born and lived in the United Kingdom. I think a child that would have got a place in a UK university and a grant to go to that university, if he had been born in UK, should not be deprived of that opportunity because he is born in Gibraltar. In fact, he is only deprived of that opportunity under the present system if his parents lack the means because any child, generally speaking, in Gibraltar, given the importance that is attached to education here by most families at all income levels, any child who gets a place in UK will have his family making enormous sacrifices, if necessary, to meet the cost of his education in UK if the Government is not providing a grant and there are people in that situation in Gibraltar and there have been throughout the period when our scholarships have been operating. It is something that we should rectify. Effectively, it means spending more money because we are talking about providing money to those who fail to obtain it but I think that we have got a fundamental obligation given the importance that we attach in Gibraltar in the development of our welfare state to modelling ourselves on that of UK, clearly it is a philosophy we shall need to suspend for the time being, for the short period that Mrs Thatcher is in Government, since she is in the process of dismantling the welfare state, so I would ask the House that we carry on with progressive improvements to our own system until that happy day when the Labour Government is returned to power in the United Kingdom and they can restore the situation and try to catch up with our standards.

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

HON MAJOR F J DELLIPIANI:

Mr Speaker, if I were sitting on that side of the House this would be the kind of popular motion I would bring to the House but I am not sitting on that side of the House, I am on this side of the House, and I have certain responsibilities as a Member of the Government and as Minister for Education. I do not think the Hon Mr Bossano, who is an economist, quite realises the extent of the financial implications that this would involve. I do not think he quite realises that in a town of our size there is at any given moment something between 100 to 130 students in the United Kingdom under scholarships. I do not think you could find a town of the size of Gibraltar in England with that kind of contribution towards education. I would remind the Hon Mr Bossano that we have already done something about increasing scholarships in that not so long ago we lowered the pointage system from 14 to 12 points. What the Hon Mr Bossano is suggesting is tantamount to saying that anyone who can get a place in a university will automatically get a scholarship from Gibraltar. It is quite well known that in England the system of education with regard to universities is that they work on grants according to the number of students they have. It is very easy for some universities in order to maintain them-

selves as universities, to take in just about any student that they like in order that they can say: "We have 2,000 students, we require so much money in grants from local authorities".

HON J BOSSANO:

If the Hon Member will give way. I have got in the Motion a reference to minimum educational requirements. I am not talking about a university accepting anybody who just applies. I am talking about universities being required to consider in UK anybody who has got the minimum of two 'A' Levels and the fact that the Government in the United Kingdom will provide a grant to anybody who gets in with the minimum requirements but not to anybody who gets in without them.

HON MAJOR F J DELLIPIANI:

I still maintain that the minimum requirements in the United Kingdom in some cases are very low indeed, it just depends on which university you want to go to. For example, if you want to go to Cambridge University or Oxford University they require at least two A's at B level or three A's at A level. They require very high standards while other universities and polytechnics are not so demanding. I think that a country the size of Gibraltar with the money that we have already spent on Education cannot afford to open the flood-gates of scholarships to that extent. The Government has moved already in that direction, from 14 to 12 points, we have to keep a sense of proportion on what the economy of Gibraltar can afford and we have to keep wastage rates in mind. At the present moment the wastage rate in the United Kingdom fluctuates between 22% and 25% of the student population giving up or failing. In Gibraltar, despite the high grades that we demand, according to the Hon Mr Bossano, our wastage rate is 13%. Can we afford to have a wastage rate of 25%? I do not think we can. I think that the money that we can use can be used in Gibraltar in other spheres. I think there is enough money already voted for the scholarships in the United Kingdom. I did quote a figure of 100 to 130 students and this is a remarkable achievement on the part of a town the size of Gibraltar. It would be ideal for me to say "Yes", I would become very popular but I am not here to be popular, I am here to be pragmatic about things and we have to face reality. We just cannot afford to give scholarships where there is quite a bit of doubt as to whether that scholar are going to be successful in UK. We have to get value for money and if we are having now a 13% wastage with the high standard that we demand from our scholars, what kind of wastage rate are we going to have when we open the flood-gates? Can Gibraltar afford to waste that kind of money? I do not think we can. Certainly, as a matter of policy at this juncture I would vote against it. If the situation changes in the future and we become so rich that we can afford to maintain the standards that the Hon Mr Bossano is asking for now I might change my mind but I have a duty not only to my

ministry, as Minister for Education, but I also have a general duty to the people of Gibraltar, to the taxpayers. I have to be responsible in the way that money is spent in Gibraltar. I am here to look after the way my money is spent in the ministry for the benefit of all taxpayers and for the benefit of the children and I do not think it would be to the advantage of children as a whole if I mis-spent the money on students who do not have the capability to go through and benefit through an open system like the one the Hon Mr Bossano is advocating. We should be very worried at the way things are going in UK. I am convinced that the situation in the UK is going to change very quickly in the grant system to universities and I do not think that we in Gibraltar can afford it.

HON A T LODDO:

Mr Speaker, today must really be a red letter day because once again I find myself agreeing with the Hon Mr Bossano. I did ask a question earlier on which has a bearing on this and I do believe that within financial restraints but certainly no one should be deprived of further education through lack of means. I cannot agree with the Hon Minister for Education that we have reached the limit. This year we will be saving over £40,000 in tuition fees and not only that but the Education

HON MAJOR F J DELLIPIANI:

If the Hon Member will give way. He seems to forget that the grant of scholarships has been increased this year and there is no question of £40,000 being raised this year.

HON A T LODDO:

But still the Education vote has gone down by £12,000 so in this day and age of inflation we are not maintaining our standards. To maintain the standard you have got to increase the vote by the same amount that inflation eats away, we have decreased the amount so we are making a saving. But it is not just University that students can aspire to but also to Colleges of Advanced Technology and if we are lowering our points surely that is for university and not for colleges of advanced technology.

Mr Speaker, I think I have spoken enough today, I will be supporting Mr Bossano.

HON M K FEATHERSTONE:

Mr Speaker, I think the Hon Mr Bossano's ideas, if we lived in Utopia, would be very worthy of commendation. I quite agree that if we had unlimited resources it might not be a bad thing that everybody who aspired to further education could go for it. We might even get Members of the House,

they might aspire to further education and they might get perhaps a sabbatical so that they could go and study economics and come back and be, perhaps not as good, but more capable of dealing with our economists than we are at the moment. We have to live in the world that we are in today and we have to appreciate that our economy is not unlimited. The Hon Mr Loddo claims that we are spending less on education this year than last year, I am not sure whether that is correct, but I think I can say we are spending as much or even more on the people we are sending overseas on scholarship courses, as last year. I think this Government has a pretty good record on scholarships. Back in 1972 when we first came into power, some half a dozen people were being sent each year and this is now well beyond the thirty figure. Basically, it cannot be levelled against us that we have not done a pretty good amount of work in sending as many people as we possibly can and who we think are justified in being sent. When I took over in education, we did a points system in which in the 'A' levels one had to obtain fourteen points and you got a mandatory scholarship. This worked very well but since we are a progressive Government we looked into this and we reduced the pointage from fourteen to twelve. I am not saying that it might not be possible in the future to even make an improvement on that, but the Hon Mr Bossano wants to follow a system which appears to be the system in the United Kingdom, although there are certain facets in it by which that pointage would be reduced to two because there are instances in the United Kingdom where people pass two 'A' levels at Grade E and D, manage, for various reasons, to get into a University or a Polytechnic or some other place of Higher Education, perhaps the University of Netherwackwash which has never been heard of until recently, it is built of red brick, it has got to maintain its staff and obviously it has got to provide sufficient numbers of students to justify the staff and the grants that it gets from the Central Government. Therefore, we find, in many instances, and youngsters of Gibraltar have fallen into this trap, that when they first apply there are no vacancies whatsoever but as the time for the term commencing gets closer suddenly vacancies appear simply because they have not been able to fill up their classes with the higher grade students and they are willing to take a lower and lower grade. We have had in Gibraltar youngsters approaching me, who have done very poorly in their 'A' levels, perhaps with a D and an E, which would be equivalent to three points, saying: "I have got a place in a University, why cannot I be sent?" There is another facet that should be considered. Are we to spend the taxpayers' money simply to give further education for the sake of further education or are we justified in saying that whatever money we devote from the taxpayers' pocket into further education should, as far as is possible, be of some benefit to the general community of Gibraltar. If we have people going away for further education very often in disciplines which are of little use to Gibraltar, I think one of the favourite disciplines today is Sociology, can Gibraltar stand a surfeit of sociologists? Or are we going to have, and I do not say it with any depreciation of the job, the dustman with a degree so that perhaps he will no longer be called a dustman

or refuse collector but a garbologist? If that is the aim eventually so be it, but I do not think at the moment we can justify that the taxpayers' money should be almost frivolously spent for people who wish to do one, two or three years of further education which to the ultimate will provide very little to the benefit of Gibraltar as a whole. We have also had knowledge of the rather high failure rate of people in Britain who do manage to get into universities with very low pass marks, unable to keep up the standard that is required and after perhaps one year or eighteen months it is counselled to them that they should retire. This is basically a sheer waste of money and is something which I do not think we in Gibraltar could easily condone. I agree with the Hon Mr Bossano that examinations are an imperfect system. I believe that great humourist Mr Parkinson said there were two systems of examination, the civil service system which is testing people on a set number of items, or the Chinese system in which you are shut up into a room with as much paper as you wish and you have to write three poems of forty lines and two poems of twenty lines and anyway the job is given to the relative of a friend of the person who is doing the interview.

It is, I think, not unreasonable that persons who, because of examination nerves, do not do quite as well in their 'A' levels as one would hope, they are still given opportunities, as far as the Gibraltar Government is concerned, we have had a number of instances in the past where people who have gone before the Selection Board and have been quite impressive and yet have not done as well in the 'A' levels as one would have hoped and they have been given scholarships. Of course we do give scholarships, even today, to people on the technical side where it is not a question of 'A' levels but a question of how they have done partly in their exams and partly through the year's or two years' work prior to the exams as assessed by their teachers and headmasters, we give them scholarships so they can go forward and improve their technical career and I am very happy to say that in most instances the sending of these youngsters to the United Kingdom is not only justified but has given very good results and in fact in my own Department I have quite a number of youngsters who have done extremely well and I have just heard of one youngster who has just passed his degree with First Class Honours and I hope he will come back and be somebody that Gibraltar can be proud of. As I say, if we lived in Utopia perhaps it might be the thing to say anybody who wishes any further education should have it. But we do not live in Utopia, we have to live in a world where the amount of money that is available is limited and we have to temper within these limitations the number of people we can send. I think we are sending at the moment a pretty fair quantity for the size of Gibraltar and I do not think that we can justifiably go very much further than we are doing at the moment. I cannot, therefore, support the Motion.

HON J BOSSANO:

Mr Speaker, I would like to express my gratitude to my Hon Friend, Mr Lodo, who spoke in support of the Motion. It reminds me of our revolutionary days when we were both in the Public Health Department. Mr Speaker, the Government has in fact produced the same inadequate reasons for not accepting this proposal as they have done in the past. It is not a question of Utopia, although a number of points that have been made by the Hon Mr Featherstone rather than by the Hon Major Bellipiani reflect a political philosophy in what education is about. It is not a question of political popularity because if in order to provide the money to pay for better educational opportunities one had to tie it up with an unpopular tax I would be prepared publicly to support both measures and one counteracts the unpopularity of one with the popularity of the other because I think that political direction in society requires, and this is essentially what we do in this House of Assembly, we administer public funds which effectively means we are taking money out of the pocket of consumers in order to provide them with things that perhaps they would not provide for themselves if they were left with the choice to decide for themselves. It might be that if we decided that we have got a responsibility to look after the public money so well then perhaps we should say to people let each family whether they want a bigger television set or a better education for their children, but we don't do that, we put a tax on their television set and provide them with the education for their children whether they like it or not. The consistency of that philosophy carried to its logical conclusion requires that we attach importance to education for its own sake and not simply as a means to an end. Indirectly it is a means to an end because an educated population, in my judgement, would produce a better and more stable society, one perhaps where one might not have so much difficulty in persuading other people of the need to reform the law on divorce. The Hon Member mentioned sociology as if when people study sociology they were doing a course of vocational training which at the end of the course produced sociologists that had to be employed on doing sociology as opposed to doing garbage collection. That is not the case, sociology essentially is the study of society and in my judgement it is a vitally important part of education because it teaches man something about himself and something about the way society functions, it enables more mature political decision-making to take place and, generally speaking, it produces a swing to the left which is a bonus that one gets for nothing. We have to distinguish between vocational training and education and I believe it is worth investing in education even if one does not get immediate material returns in terms of technical qualifications that can be put to immediate use and therefore the philosophy of the Government must be to provide the necessary funds to allow the widest possible opportunity of higher education to be made available to Gibraltarians. In our Party we have got a commitment which we included in the Manifesto to provide for every school leaver a place in further education because we think society should plan for what happens to children

when they leave school and not just say: "You are now on the competitive market and you fend for yourself." Apart from that, I would ask the Hon Member and the Government whether they are not being inconsistent in saying that there is a ceiling to the money we can spend on sending students to United Kingdom when presumably the whole role of the Education Department is to raise the standard all the time and to increase the number of students capable of going on to further education. On the one hand the Minister for Education is charged with the responsibility of creating an educational system in Gibraltar that produces more and more students and on the other hand it is charged with the responsibility of not sending them anywhere once they are produced because otherwise he would come across this tax feeling that he thinks he has got a responsibility to the electorate on the public purse. What would he do if as a result of improved teaching in Gibraltar he found himself with 200 people with 12 points, then presumably he would find the money to send the people with the 12 points.

HON MAJOR F J DELLIPIANI:

I would certainly try to find the money because then I would know that the wastage rate would not be so great.

HON J BOSSANO:

Mr Speaker, with all due respect to the Hon Member, whether the student gets 12 points or not is not correlated with the wastage rate and I would suggest that if he cares to obtain some statistics from his own department he will tend to find that the wastage rate is more correlated with the course that people go on than with the qualifications that they started off with. What quite often happens is that there is insufficient preparation prior to going to university to establish the attitude of the person for a particular course or, alternately, the degree to which a person going on a course will actually enjoy what he is studying. People who drop out of courses, generally speaking, do so because they find that it is not what they expected it to be and he will find that there is a greater correlation between the choice of subjects rather than the pointage system. In any case, in terms of choice of career, clearly the question of having an arbitrary pointage figure and the other argument about Gibraltar's needs in terms of the jobs that are available in Gibraltar would seem to run counter to each other. It seems to me that whereas all I have been trying to do with this motion is essentially to seek a political commitment that we say to ourselves that we do not wish our own youngsters to be less endowed in terms of educational opportunities than they would be in the United Kingdom, that is all I am saying, that is the essential political commitment that I am asking the House to make, that as far as we are concerned, as people, we want to give our children that same opportunity, and I make the point again that it is only those who lack the means who are deprived when they are denied the grant, apart from

that, certainly I would go along with an in-depth study of the whole question of the direction in which we channel our educational system, of the desirability of certain subjects being given greater priority than others in terms of giving people more that is limited because those are all things that are valid and are worth looking at but they are not arguments against supporting the motion and therefore, Mr Speaker, I would put it to Hon Members on that side, that the economic commitment that they would be taking on would not be to the extent that they imagine that it would be but that if it was necessary all that we would be doing would be giving the same opportunities in Gibraltar as exist in the United Kingdom and that is a worthwhile political commitment to take on even if it costs more money. The Hon Mr Featherstone is as out-dated in his approach to education as he showed himself to be in the previous motion before the House. He talks about a red brick university which is today used as a means of praise for universities in United Kingdom, he uses it in the sense in which it used to be used in pre-war days as a term of denigration, that the red brick is not quite as good as Oxbridge but, in fact, red bricks are producing some of the best brains in the United Kingdom and in Gibraltar. Mr Speaker, perhaps the Hon Member might well himself benefit from a sabbatical year which would enable him to catch with where 20th Century society has gone since he last had a last look at it.

I commend the Motion to the House, Mr Speaker, and having demolished the arguments on the Government side I hope they will now be able to support it.

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

The Hon J Bossano
The Hon A J Haynes
The Hon P J Isola
The Hon A T Loddo
The Hon Major R J Peliza
The Hon G T Restano
The Hon W T Scott

The following Hon Members voted against:

The Hon A J Canepa
The Hon Major F J Dellipiani
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon J E Perez
The Hon Dr R G Valarino
The Hon H J Zammit
The Hon F E Pizzarello
The Hon R J Wallace

The following Hon Member was absent from the Chamber:

The Hon I Abecasis

The motion was accordingly defeated.

The House recessed at 6.35 p.m.

MONDAY 21ST JULY, 1980

The House resumed at 10.15 a.m.

The Hon J J Caetano, acting Financial & Development Secretary, joined the meeting at this stage of the proceedings.

HON CHIEF MINISTER:

Mr Speaker, Sir: it is with exceptional pleasure that I rise to move the motion standing in my name. Before doing so, however, I wish to extend, on behalf of this House and of the people of Gibraltar as a whole, our warmest welcome to our guests from the European Parliament. The link which has been established with that Parliament, the visit of the six Members whom we are honoured to have here with us today and the object of the motion on the Order paper are all, I am sure, matters of momentous significance for Gibraltar and its people. I welcome Lord Bethell, the Leader of the Group, whose interest, foresightedness and initiative have brought this about; Mr Brian Key, the Vice-Chairman of the Group; Miss Gloria Hooper; and Mr Alfred Lomas. It is unfortunate that Mr Kenneth Collins and Mr Adam Fergusson have been unable to visit us on this occasion but we look forward to welcoming them to Gibraltar as soon as they are able to come. In the meantime I have the greatest pleasure in welcoming Mr Michael Gallagher and Mr Paul Howell who, though not formally Members of the Group, are also interested in our affairs and will, I am sure, build a firm and lasting friendship with the people of Gibraltar.

I trust that the stay of our visitors in our City will be a pleasant one for them. We regret having to add more travel to their lives but hope that, at least, they will find the change agreeable. We regret also having to add to their labours, for we know how busy they are, and for having prepared such a full programme for their visit. I am sure, however, that they will understand our feelings on this. We felt it important that they should meet as many people as possible of their adopted City and we thank them for the burden they have assumed.

Sir, I now move the motion standing in my name that:

"This House -

- (1) resolves that the following British Members of the European Parliament, having expressed their willingness to represent the interests of the people of Gibraltar in the Parliament, are formally recognised by this House, on behalf of the people of Gibraltar, as representing their interests:

Lord Bethell
Mr Brian Key
Mr Kenneth Collins
Mr Adam Fergusson
Miss Gloria Hooper
Mr Alfred Lomas;

- (2) wishes to express the thanks and appreciation of the people of Gibraltar to the aforesaid Members of the European Parliament for their interest, for their goodwill and for their initiative in ensuring that Gibraltar is represented in the European Parliament, as an interim arrangement, in an indirect way;
- (3) warmly welcomes the Gibraltar in Europe Representation Group on its first visit to Gibraltar".

Well Mr Speaker before the direct elections to the European Parliament were held last year, representations were made to the British Government by the people of Gibraltar who, as nationals of the European Community, felt strongly that they had a right to be represented in the European Parliament. These representations were not successful. There were, and still are, it is true, certain difficulties. On the one hand, it is not easy to claim that an electorate of some 16,000 persons should be represented directly in the Parliament by a Member from Gibraltar; most European Parliament constituencies in Britain have something like half a million voters; on the other hand, there might also be difficulties in making the Gibraltar electorate a part of a United Kingdom constituency, though this difficulty is perhaps not insuperable.

Whatever the difficulties, one thing is clear to all of us in Gibraltar, irrespective of Party affiliation; we are nationals of the European Community and it would be undemocratic, as well as unjust, to deprive us from having a voice in the European Parliament, by whatever method might be devised to achieve this.

The Leader of the Opposition and I had the great privilege of visiting the European Parliament in April this year. I must pay tribute, and express the gratitude of the people of Gibraltar as a whole, in particular to Lord Bethell. It was his initiative that led to that visit. We are deeply grateful to him for this. We are also deeply grateful to Madame Veil, the President of the European Parliament, to its various Vice-Presidents and, indeed, to the Members of the Political Groups in the Parliament who, in spite of the other very pressing issues that lay before the Parliament at the time of our visit, still found the time to listen to the views we expressed on behalf of Gibraltar.

It is interesting and significant to compare the way in which we were heard, on the one hand, by the United Nations during the course of our various appearances there, and, on the other hand, by the European Parliament. Let me just say that,

in the European Parliament, we were listened to by Members of all shades of opinion represented in the Parliament. They naturally had different views on different points in our exposition of our case; but one thing was common to them all: they work in a democratic institution and they are concerned, above all, with people. They have been elected directly by the people of Europe; they are not, as in the United Nations, subject to the instructions of a national Government; and they appreciated, as that other international body did not, the aspirations of the people of Gibraltar to live their lives according to their democratically - and freely-expressed political choice and in friendship with their neighbours. This was a breath of fresh air. We were delighted to be in such company.

In Strasbourg - and I refer to our visit in April and not to our visit in November 1977 - we found for the first time, outside the British Government, an audience that understood our aspirations. We did not ask that audience to adjudicate on the merits of the dispute between Britain and Spain over Gibraltar. Indeed, Monsieur Rey former President of the Commission amongst others, made it clear to someone else who attended, for a short while, our first meeting in Strasbourg, that this was not their function. Even today, we are not asking the Parliament to adjudicate on the merits of the dispute between Britain and Spain. What we are asking, and this is fundamental to the concept of the European Parliament, is that the rights of European Nationals, however small a community they may be, are worthy of protection. It is our belief that we have found worthy champions to protect us.

Our first meeting with the Political Affairs Committee of the European Parliament was held on 15 April. This was only 5 days after the Lisbon Agreement had been announced. Before that announcement was made, it had been our intention to address the European Parliament on 3 issues: the restrictions placed on Gibraltar by Spain, the right of the people to self-determination and the question of the representation of the people of Gibraltar in the European Parliament. In the event, we did not raise the question of the restrictions because the statement issued after the talks in Lisbon stated that the Spanish Government had decided to suspend the application of the measures in force against Gibraltar. We took that statement at its face value and decided, in good faith, that that particular, and very serious, issue should not be raised. It was, in fact, referred to incidentally, but only because a former Spanish Foreign Minister, who served under General Franco, and who was subsequently asked to leave the meeting, provoked us into doing so.

We accordingly concentrated on the other two issues. In so far as the right of self-determination of the people of Gibraltar is concerned, it must by now, surely, be clear to everyone not only that, in common with any other people in the world, we are entitled to this right, but also that no elected representatives of the people of Gibraltar have at any time suggested, in our particular circumstances, and because Britain, with its respect for international law,

continues to observe its commitment under the Treaty of Utrecht, that the right of self-determination of the people of Gibraltar goes beyond choosing between Spanish and British sovereignty. It is, unfortunately, part of the Spanish legalistic approach to this question that stands in the way of their recognition of our right to self-determination. It must by now be clear to everybody that Gibraltar - the territory - and its people - will never become Spanish unless the people of Gibraltar decide that it should. It must also be clear that the people of Gibraltar do not aspire to independence or to any other solution. There is no doubt where the self-determination of the people of Gibraltar today leads us to. It leads us to continuing association with Britain. It is, of course, possible that one day the people of Gibraltar might decide otherwise. There are at present no signs of this. This is hardly surprising. As some of the more enlightened Spanish politicians and journalists have recognised, and quite apart from the deeply-felt loyalty and affinity with Britain that is part of the Gibraltarian way of life, the Spanish Government can surely never expect the people of Gibraltar to alter their way of thinking when, in spite of the change to democracy in Spain, the Spanish Government continues to maintain a policy of total hostility, in spite of having publicly recognised the identity of the people of Gibraltar as such.

I have been saying for some years now that the difficulties between Gibraltar and Spain can only be resolved in a European context. It is with regret that I now say that there appears to be no Europeanism in the Spanish approach to Gibraltar. By this time, the restrictions should have been withdrawn, but they have not. Once again, the people of Gibraltar have been disillusioned, and it is hardly surprising if their feelings towards Spain, exacerbated by 17 years of hostility and repression, should now be less than warm. It is not even surprising that the people of Gibraltar should now be turning their backs on Spain and that many should not be in favour of the re-establishment of communications. I do not myself share this view in principle but fully understand how it is arrived at. I have said on many occasions that there can be no reconciliation between Spain and Gibraltar without genuine goodwill. We have offered ours but it will become increasingly difficult for us to continue doing so when there are no signs whatsoever of any response.

I appreciate that the Spanish Government may have its own internal problems on this issue - though I sometimes think they are over-stated - but this is not our problem, any more than the incompatibility between the CSCE Conference in Madrid in November and the requirements of the Treaty of Rome with the present situation in Gibraltar are our problems either.

To turn now to the third issue - that of representation in the European Parliament, - here, I am glad to say, there are ample grounds for satisfaction. Our representations on this issue before the European Parliament were received with great sympathy. The matter, as is now known, is to be considered

further by the Legal Affairs Committee of the Parliament prior to the next direct elections in 1984. In the meantime, and thanks to the initiative of the British Members of Parliament who are with us today, we now have a representation in the European Parliament. Although this is necessarily indirect and to some extent informal, we have no doubt that those Members of the European Parliament who, on their own initiative, have come forward to offer to represent our interests will do so in every possible way.

I do not think it would be possible for me to overstate, on behalf of the people of Gibraltar, our feelings on this matter. Their spontaneous offer to represent our interests clearly springs from their appreciation of our difficulties and of our right, as European Community nationals, to be represented in one form or another. We are deeply grateful to them. We welcome them to Gibraltar with all the warmth at our disposal. We hope that this will only be the first of many visits. We hope that, in time, they will feel that they belong to Gibraltar in the same way as, through their initiative, we now feel, more deeply than ever before, that we belong to Europe.

Mr Speaker, I move the motion standing in my name in the full confidence that it has the total support of every Member of this House and of every citizen of Gibraltar who, no less than any other citizen of any of the Member States, is also a citizen of Europe.

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

HON P J ISOLA:

Mr Speaker, I have much pleasure in supporting the motion moved by the Hon and Learned the Chief Minister. I must say that the reception to the motion today is likely to be far more hopeful for the Chief Minister than the reception or his words of support for the amendments that were moved on Friday to the motion by my Hon Friend Mr Bossano when the way he voted didn't seem to coincide with the way his Party felt and I fared little better, Mr Speaker, on this side of the House. We both seemed to be in the minority on the amendments that were moved in the House on the motion and my Hon Friend Mr Bossano seems to have a knack to be able to do these things. Mr Speaker, I am sure, however, that on this motion the Chief Minister will receive the full support of his Party and I am sure that I will also receive the full support of my Party in supporting the worthy objects of this motion and I am sure, dare I say, that even the Hon Mr Bossano will find himself happy to join with us on this happy occasion. Mr Speaker, the question of Gibraltarian representation in the European Parliament, you will recall, was something that was raised in this House a number of times before the European elections were held and I think it was my Hon predecessor, Maurice Xiberras, who put a motion in this House before the European elections asking the support of the

British Government for Gibraltarian enfranchisement in the European Parliament. In one of his unusually lengthy speeches, I think this one was unusually long, I think he set out fully the arguments for Gibraltarian enfranchisement in Europe and I think if any Hon Member would like to be refreshed on them may I suggest that he refers to the Hansard reports which I am sure will be easily available. It was, I think, unfortunate that we didn't get a vote in Europe. We know there were problems in this respect but we were members of the community and, as I said, perhaps not enough thought was given to the question of Gibraltarian representation and as a result we have no member of the European Parliament or even a bit of the member of the European Parliament, I think as far as Members of the House were concerned, I think that on this one we would have been happy to have used our 16,000 votes to try and swing the result of these 80,000 majorities that came about in the European elections in England. But that was not to be and I must say and I share what the Hon and Learned Chief Minister has said, that I myself was enormously impressed with the warm support that we received when we went to Strasbourg on this issue of representation of the people of Gibraltar. Warm support, of course, from British European Members but also, I am happy to say, from Members of Parliament of other nationalities who couldn't quite understand why Gibraltarians who are EEC nationals hadn't taken part in this bold enterprise of elected representation in the European Parliament. That was very comforting for us and it was much more comforting to see how quickly our British friends in Strasbourg came forward to suggest that we might like to have some sort of representation through British European Members of Parliament in Strasbourg and of course we eagerly grasped this opportunity of representation because once you say that you will represent us in Europe, let me say, Mr Speaker, they have let themselves in for quite a lot because if they are representing us, of course, they must do what we would like them to do, I am sure they will, of course, but they have to represent the feelings of the people of Gibraltar on the very important issues with which we are faced today and that is the problems of the Spanish claim to Gibraltar, the problems of the attempted or possible attempted absorption of Gibraltar into the Spanish state using the excuse of European unity which, of course, we all subscribe to on this side of the House and on the other side, obviously, but European unity with Gibraltar forming part of the British part of Europe, let me put it that way, and this I am sure, will pose a lot of problems and cause a lot of difficulties but I am quite sure that the Members of the European Parliament who have happily agreed to take on this burden, I am quite sure they will know how to discharge it in accordance with the wishes and the interests of the people of Gibraltar. As far as my Party is concerned, Mr Speaker, I just have to ask them to bear in mind object No.1 of my Party which is to keep the people of Gibraltar and the territory British in accordance with their wishes. The message from my Party is a comparatively simple one but like everything simple it has its complications and one of the complications, of course, is Spain and I am glad the Hon and Learned Chief Minister has referred in his address to the

apparent inability of the Spanish Government to comply with their side of the bargain of the Lisbon Agreement under which they committed themselves to lift the restrictions without any conditions, to lift the restrictions in the spirit of friendship and in the spirit, I believe, of the Treaty of Rome, which says that there must be no frontiers between people and countries. It is appropriate that the Members of the European Parliament who have heard from us at first hand in Strasbourg the question of the Lisbon Agreement and who heard from us at first hand that by June 1st the restrictions would be lifted in accordance with the Lisbon Agreement, I am glad that they are here to see that we are now on July the 21st and the frontier gates are still firmly shut and show no sign of opening although they have shown signs of rejuvenation, I believe coats of paint have been applied and things like that. I think it has to be made very clear from this side of the House as much as it has been made clear by the Chief Minister from that side of the House that the Gibraltar people feel very strongly on their right to determine their own future and on their right to decide for themselves what that should be and we were very glad to see in Gibraltar that following the Lisbon Agreement, the Lord Privy Seal in the House of Commons stated very firmly the British Government's position when he said that British sovereignty over Gibraltar would not be altered without the expressly and democratically stated wish of Gibraltarians. That he said surely was as clear as it could be and therefore as far as we are concerned and as far as the people of Gibraltar are concerned their confidence in Her Majesty's Government to uphold their pledges is in no way diminished by recent events and now our confidence in British elected representatives grows too stronger with the acceptance of this onerous burden by the British European Members of Parliament to represent us in Europe. I know, Mr Speaker, that the Gibraltar Branch of the European Movement of which I have the honour to be a Vice-Chairman, will particularly welcome this motion as they themselves also took a significant part in trying to get representation for Gibraltar in Europe. We think this is a very good second best and we are hopeful that we should be able to keep the British Members of the European Parliament fully au courant with what is happening here and fully documented, I will put it that way, with our wishes and how everybody stands on Gibraltar. We are particularly glad to see that the burden has been taken equally by Conservatives and Socialists and this sort of bipartisan support to Gibraltar both in Strasbourg and in London is very comforting for us in Gibraltar where we do have I think, generally speaking, a bipartisan approach to the important issue of Gibraltar and the future of its people. Mr Speaker, I don't think there is much more that I should say on this, I would like to join very much the Chief Minister with his warm words of welcome and may I hope that the visiting Members of the European Parliament plus the two who are not representing us but who I am sure will now also, I hope, support us in the European Parliament in any way they can, I hope they will have a very pleasant stay with us, I hope that it won't be too hot, they seemed to have hit one of our hot patches, and I hope that they will during these two days learn a lot about us and our people and feel much more competent to represent us having seen us, having lived with us

and having seen how we all feel on the issues that are of vital importance to Gibraltar. Mr Speaker, I welcome the motion.

HON J BOSSANO:

Mr Speaker, as the Hon and Learned Leader of the Opposition said, it is one of the rare occasions when I am able to agree with most of the things both he and the Hon and Learned Chief Minister have said. Let me say that I associate myself fully with the motion and the welcome that has been extended to our new representatives in the European Parliament, in fact, I think if we think about it carefully perhaps we shouldn't be so concerned to spell out that it is an interim arrangement because if one takes the figures of the Hon and Learned Chief Minister of one European Member for every 1m we seem to have exchanged 1/20th of one MP for 6 MP's, so we might be doing rather better off this way than if we had direct elections and I think the concept of direct elections really which we all supporter was more for its symbolic value, giving us a direct say in the European Parliament and not because we ever thought really that the 1/20th of one MP would make a major impact on decision making processes in Brussels or Strasbourg. I think that the willingness of the Members to act on behalf of the people of Gibraltar is something that reflects, in fact, the goodwill that we know we enjoy in the House of Commons and in the British Parliament I have got a personal knowledge of one of the Members, Mr Alfred Lomas, who has been a very good friend of Gibraltar for very many years, a staunch defender of the labour movement in Gibraltar and the Trade Union movement in Gibraltar and certainly I can vouch 100% for his commitment to our people and to working class interests here and, of course, one of the most encouraging things about the nature of our representation is that I see that the balance of power as between Socialists and Conservatives is at last moving in the right direction at least in our representation in the European Parliament if not in the House of Assembly. I should just like to say two things, Mr Speaker, about the points made by the Chief Minister because although my main objective in standing up is to show that there is absolutely no division on this issue, there are two points that the Hon and Learned Member made with which I cannot entirely agree and therefore I would like to record our own position in this matter. He did say that no one has ever suggested that the right of self determination goes beyond choosing between Spanish and British sovereignty. I don't think one can qualify the right of self determination and therefore I have said on many occasions that if Gibraltar ever reached the stage of not being associated with Britain it would not necessarily follow we would have to be associated with Spain. I would agree with him that there is no indication of anybody ever having wanted to be associated with anyone else but I cannot accept that the choice is between the two. Secondly, he mentioned that there was no doubt that the exercise of self determination would lead to continuing association with Britain. Well, I have no doubt at all about that either but I think that should not be mis-

understood to meaning a continuing colonial association with Britain because I have no knowledge myself of any colony having exercised its right of self determination to continue as a colony and therefore given the clarification as far as I am concerned on those points, Mr Speaker, which I think really is not entirely relevant to the motion but were remarks that were made, I would like to say how warmly I welcome the representation that we are having in the European Parliament and I am sure that Gibraltar's interest, particularly the interest of its working people, will be adequately protected.

MR SPEAKER:

Do you wish to speak, Major Peliza?

HON MAJOR R J PELIZA:

Yes, Mr Speaker, because I am so much interested in this matter I think that I would like to say a few words. First of all, I associate myself entirely with the words expressed so far in this House. Secondly, I think it is an opportunity to thank the Chief Minister and the Leader of the Opposition for the miracle they produced in their visit to Strasbourg of which we are already beginning to see the results. I think it is also an opportunity to thank those who worked so hard from the beginning which extends I think first of all to Sir Peter Kirk who at the time when I approached him in London was very keen and responsible for the European movement and did not hesitate to move heaven and earth, you might say, to ensure that the branch of the European movement in Britain was extended hereto Gibraltar. In that way I think we were contaminated to an extent that I would have thought that the Europeaness of the Gibraltarian today is very great in practically every quarter in Gibraltar. Also I think Lord Thomson who came together with Peter Kirk here to open the branch and said the famous words that it would be inconceivable for Spain to be able to join the Common Market without first lifting the restrictions. We must also thank all the branches of the European movement who at a Congress in London in 1977 passed the following resolution unanimously. Mr Speaker, I think it should be recorded in the Hansard.

MR SPEAKER:

Anything that is said in this House is recorded in the Hansard.

HON MAJOR R J PELIZA:

Yes, I know but the reason why I mentioned that, Mr Speaker, is because I am going to read it. At the annual congress of the European Movement held in London on the 26th November,

1977 at which all United Kingdom branches were represented, the following motion was approved unanimously by acclamation. It reads as follows: "Recognising that Gibraltar and its citizens are within the European community under Article 227(4) of the Treaty of Rome, and in view of the proposed enlargement of the community and the forthcoming elections to the European Parliament, the European Movement in Britain resolves (1) to press Her Majesty's Government and other European Community Governments to recognise that Spain would be in breach of Community rules if admitted to membership whilst continuing to blockade Gibraltar, and (2) to campaign for the enfranchisement of Gibraltarians in the election to the European Government on lines similar to those applied to overseas territories of other member states." I think, Mr Speaker, that in this connection it might be of interest to this House to know that there are, in fact, French colonies spread all over the globe some of them with a small population of 4,000, who do have representation in the European Parliament and it seems very strange that here we are, Europeans, almost full members of the EEC with the exception of matters which I shall read later explained by Mr Roy Jenkins to whom I have written on a number of occasions on this matter, Mr Speaker, and unfortunately so far we have not had the opportunity of being represented. I do vote for a member of the European Parliament and by a happy coincidence he happens to be the leader of this delegation as I happen to be in his constituency. I live in England, yes, I live in Europe as well Mr Speaker.

MR SPEAKER:

We are departing from the terms of the motion.

HON MAJOR R J PELIZA:

Mr Speaker, I think it was an interesting aside in that at least one member of this House does vote in the European elections. I felt at one point, and I think it should be read, Mr Speaker, that the commission for whom in some way we look to as we do look to any other institution of the EEC to bear the case of Gibraltar in mind. Again we have been very lucky to have as President of the Commission Mr Roy Jenkins and I must say that every time that I have approached him he had been most interested in our affairs and I think has promptly dealt with the questions put to him notwithstanding obviously the many other difficult problems that he must be facing. Now on the 10th of October, 1977, I wrote to him in connection with three points. One was the question of the lifting of the restrictions.

MR SPEAKER:

We must not go into that.

HON MAJOR R J PELIZA:

Could I then, Mr Speaker, just refer to the answer that he gave which I think might be of interest to the House and also to the members here present from the European Parliament. The answer, Mr Speaker, reads as follows: "Under Article 227(4) of the Treaty of Rome, only certain of its provisions regarding the free movement of goods, apart from other certain agricultural products, persons, services and capital, apply to Gibraltar. That Gibraltar is not an integral part of the community in the sense in which you use the term, ie, in the same way as in the United Kingdom or Metropolitan France. As a result, the act on direct elections signed by the member states, include in its Annex 2, a statement specifying that its provision will for the United Kingdom apply only in respect of Great Britain and Northern Ireland. Gibraltar is thus excluded from the ambit of direct elections to the European Parliament." Another point which might be of interest to the House is EEC passports which has not been touched upon here. "With regard to the EEC passports discussions are still in progress within the Council of the community on this question. However, once agreement is reached on the form of the passport, the issue of this document will continue to be governed by the domestic legislation of the different member states. The eligibility of Gibraltarans for the passport will therefore depend on the relevant provisions of the United Kingdom legislation in introducing the passport change. The provision of the treaty on free movement of goods, persons, services and capital will apply to Gibraltar and Spain if and when Spain becomes a member of the European Community." Mr Speaker, that is, I think, a rather concise but very much to the point answer which I think certainly we have to bear in mind in this Parliament. And now I think that we do have representation in two Parliaments or at least members willing to represent us in two Parliaments, the lobby in the House of Commons and now another lobby in the European Parliament. I think it is our duty here as elected members to do everything we can privately and, I also believe, publicly, because it is important that the public should know here and in the United Kingdom of the need of this movement towards greater integration of the people of Gibraltar and of the community in the form of representation and in every other form that it is possible within the needs of special protection for Gibraltar because of our special situation, one of them geographically and I think on the question of international politics at the moment. It would be also I think important, Mr Speaker, before ending, to pay tribute to the members of the European Movement in Gibraltar who have kept the torch alight right from the beginning and who have worked so hard and will continue to work so hard in the future. I think there should be a word of warning though. It is possible that in the same way that now we have got a lobby in the European Parliament, the Spanish Government will also try to have a lobby of their own there. Because of that I think we have got to be all that more active in keeping the members who have so kindly and willingly come forward to represent us, fully informed of the situation by

passing on information and encouraging them to stand up on our behalf. Mr Speaker, this is a great historical day for Gibraltar. It has produced a continuation of our very loyal links with Britain, a continuation of that link into Europe, a Europe that I think most Gibraltarans would like to see united and in peace as it is at present, within our own territory making progress, advancing our quality of life and not just within us but also playing an influence in the rest of the world so that the freedom, the democracy, the standards that we enjoy can spread all over the world and bring greater peace. I know we are very small to make that contribution but I think that as our past has shown, small as we are we do appreciate certain values and we are prepared to stand up in defence of them. We have endured 11 years of siege, Mr Speaker, and we are still battling.

HON CHIEF MINISTER:

Mr Speaker, there is very little that I would like to say in exercising my right of reply. First of all I would like to thank all members for the support of the motion. I stand slightly corrected by the Honourable Mr Bossano but I share with him the view that he expressed. Because Britain's legalistic attitude to the Treaty of Utrecht continues to observe its commitments, it is impossible to go beyond choosing between Spanish and British sovereignty. I, with him, do not think that that will be for ever but in fact for as long as the status of Gibraltar Britain claims rightly to some extent to come under the Treaty of Utrecht, perhaps it should be under the charter of the United Nations on the basis of self determination, these limitations are imposed, they are not freely accepted but imposed by sheer necessity. Other than that, Mr Speaker, I would just like to reiterate our warm welcome to our friends and hope that this will be the beginning of many happy sessions.

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

HON J BOSSANO:

Mr Speaker, I beg to move that: "This House considers that Her Majesty's Government should ensure that special arrangements are concluded with the EEC, in the context of the negotiations leading up to Spanish entry, to give full protection to the economy of Gibraltar and in particular its labour force." Mr Speaker, now that we have a Gibraltar Europe Representation Group perhaps it is very appropriate that we should in fact be looking at the adequacy of the arrangements as a result of which we are, in a way, members of the European Community with certain limitations. I think, Mr Speaker, that the passage that was quoted from a letter by the Honourable and Gallant Member, Major Peliza, perhaps would be more relevant to this motion than to the other because it points there to the way, effectively, in which our

present membership of the Common Market is almost totally dependent on the interpretation that the United Kingdom puts on that membership, whether we are talking about passports or anything else, and therefore my motion points towards Her Majesty's Government as the responsible administering authority for the territory of Gibraltar, in having an obligation to protect Gibraltar's interests in the context of the negotiations leading to Spanish entry like other European nations are in fact laying down the conditions that they consider necessary, the safeguards that they consider necessary, to protect their national interests. Let me say, Mr Speaker, that in supporting the existence of the European Community, one does not necessarily have to be in favour of a Europe moving towards a totally integrated unitary state with a central government and a central bureaucracy and that the policy of my party in this respect is in fact in line with that of the British Labour Party who, in its draft manifesto for 1980, have called for a move towards a looser federation of European states retaining national sovereignty. Let me say also, Mr Speaker, that the motion is not an anti-Spanish motion, it is a pro-Gibraltar motion and that the only reason why it points the finger at the necessity of doing something in the context of Spanish entry to the Common Market and in the context of a possible open frontier with Spain, is because although in 1973 we granted the theoretical right to 300 million Europeans to establish themselves in Gibraltar, we all knew very well at the time and Hansard of that date recorded, in fact, the point being made in the House of Assembly, we all knew very well that it was a purely theoretical right, that there was no immediate prospect of us finding 300 million Europeans suddenly landing on our doorstep. But, in fact, whether we are talking about equal right to employment or equal right to trade, if we are talking about granting that to only 32 million European nationals who happen to have access to Gibraltar directly, never mind the other 300 million, we are talking about a different situation altogether and it is important that we protect Gibraltar, that we protect its identity, that we work towards its survival as a community and we cannot do that unless we are conscious of the risk that we run if we allow Gibraltar to be treated, when it suits other people as an equal partner in the Common Market when we find that this is not the case in other respects. We cannot have a situation, Mr Speaker, and this is a point which is of relevance to the other motion standing in my name on equality of rights, we cannot have a situation where one talks about being treated as an equal when one is a community of 20,000, and therefore in the context of a European Community we must understand that with a situation like there is of an island economy today but which is bound to disappear prior to Spanish entry or coincident with Spanish entry, with a situation of an island economy we have physical limitations which effectively put a ceiling on the extent to which the theoretical right of establishment in Gibraltar can be taken up, in a situation where Gibraltar has got total access to its natural economic hinterland in the Campo Area, if we do not take the necessary measures now before it is too late, Mr Speaker, to protect Gibraltar's economy and to protect jobs in Gibraltar and to protect trade in Gibraltar, we could find that Gibraltar ceases

to be under the control of the Gibraltarians and then questions of discussing sovereignty or not will cease to have any relevance. We will have lost any question of sovereignty over Gibraltar because we will have lost control over the economy of Gibraltar and, effectively, political decision-making in the long run tends to reflect the balance of economic power. I would point out to the Hon and Learned the Chief Minister that the remark that he made in a newspaper interview recently when he was asked about protecting Gibraltarians business interests and jobs in this context of an open frontier and the right of others to come in, when he said that small business in Gibraltar had an advantage because we were already here in competition with outsiders, I think this is a totally incorrect analysis, Mr Speaker. In fact, every national industry in Europe today is seeking the protection of its Government against the American multi-nationals. It is only a difference of scale but there is no question about it the British Motor industry, for example, the inherent weakness of British Leyland is precisely the fact that it is a UK-based industry with a UK-based market and it has difficulty in competing with multi-nationals like the American multi-nationals or the Japanese multi-nationals that have got a very widespread chain of factories and markets all over the world. The magnitude of the problem, reduced to Gibraltar's scale, may be simply one small shop in Gibraltar competing with an enterprise that has got shops throughout the Iberian peninsula but, nevertheless, the essence of the disadvantage, the disadvantage of size, is there and one of the arguments that are used by national industries today, even when on the one side people are talking about an integrated Europe and European unity, the argument is still used that we still are in a situation of national interest and it is still in the national interest to have control of major segments of your own economy because if that is not the case if in fact all the private sector of Gibraltar were controlled by subsidiaries of outside companies then, effectively, we would find in Gibraltar that those subsidiaries would tend to have to do what they were directed to do by their head offices and those head offices might be subjected to pressures from other quarters whereas if in fact the business is Gibraltar-based, it has no choice but to pursue the line that the Government of Gibraltar wishes to pursue because by being in power the Government can persuade people to do the things it wants to do simply by pointing out that if they fail to be persuaded they can be coerced and the Government has got the right to give direction to the economy of Gibraltar, indeed I would say it has the obligation to give directions to the economy of Gibraltar and I have spent many years trying to persuade it of the necessity to do this but I would put to the Government that, effectively, the one thing that could weaken any attempt to run a planned economy in Gibraltar for the benefit of the whole community would be that both labour and commerce, both the investor and the producer, should be subjected to pressures or controls over which we would have no say and therefore it is important that we move on this and that we move on it quickly, Mr Speaker. We have to be conscious of the fact that it may not be an immediate danger but it is an increasing danger and that it is an irreversible process.

If we do not do anything to stop this taking place once it has happened it cannot be undone.

I commend the motion to the House.

Mr Speaker then put the question in the terms of the Hon J Bóssano's motion.

HON CHIEF MINISTER:

Mr Speaker, it is very difficult not to agree with the general terms of the motion but unfortunately we cannot really solve problems by making exhortations of general interest without being able to prove our case. It is the first indication or they were when Spain first applied to enter Europe, of the conflicts that have to be overcome between what we would call our national interests, which is Gibraltarian interests, and our Community duties. We have been exhorting earlier on this morning our right to be represented in the European Parliament and if that is so it is precisely because we have European Community obligations to honour so that to state the problem in the general terms really begs the whole question because nobody would quarrel with the fact that we should protect ourselves as much as possible. First of all, let me say that the Gibraltar Government has, of course, considered the implications of Gibraltar's interests of Spain's application to join the EEC and has expressed its views to the British Government. I ought to say, of course, that this was done in March, before the Lisbon Agreement. I think, in essence, it really does make very little difference that shortly after that the Lisbon Agreement was signed because that is intended to do something else but it only makes it the more urgent because of the possibility that the Lisbon Agreement may be honoured and therefore that the forces that would come about as a result of Spain's entry and the inconceivability of a closed frontier with Spain's entry would come about earlier by reason of the Lisbon Agreement if and when it is implemented. At this stage I do not think it would be in the general interest to say what the case of Gibraltar was in March but, of course, it can be readily appreciated that it was in order to safeguard the interests of the Gibraltarians as much as possible in the context of the Community obligations. But I can say that all the important aspects of the implications of Spain's entry into Europe were included in the representations which were made including, of course, economy and labour being the two most important aspects of the matter.

Therefore I have been wanting from the remarks of the Hon Member to identify the main areas which worry him to see whether they coincide with those that worry us and though he has put it in a different way I think I could describe them mainly as the economy, trade and employment. He describes it in another context as labour and commerce but I think the economy is particularly important. It would be no use passing these resolutions and the motion as it is now and sending it up to London for implementation unless of course we accompany it with a case because we have to make a case

to get whatever changes are required in the terms of the Treaty of Accession to which Gibraltar was a party and in order to do that it would be difficult in any case but it would be much more difficult if we do not make a reasoned case both on the economic side and on the human physical side. The answers that I gave was a very general answer given at the time for a very quick interview which was really geared to something else, it was an attempt to show that we were not informing the people and it was a general answer which was covered by an additional note saying that of course one was open as a Government to any ideas that people have and I am glad to say that people are taking an interest in this matter. Already I have received a letter from a former member of this House which precisely supports the point that we must make an analysis and a study before we can make representations if they are going to be successful. That is why I say that the vagueness of the motion in its terms cannot get our support though I am sure that I will be able to make at the end of my contribution an amendment that I am sure will be acceptable to the Mover because, as I said before, we have to identify the problems, analyse them and suggest solutions. Nobody will look for solutions to our problems, we have to find it and we are old enough to be able to do so and the burden is to convince other people that these are the right solutions and that they carry the weight not only of the people here but of their support because of the justice of them, that is where we have to lay stress. It may even be necessary to start a Working Party on this matter and the offer made by the Hon Mover in respect of his contribution to identifying items of the economy might be a possible way of dealing with the matter. Of course, if the proposals that I am making are acceptable then it would follow that it would have to be an attempt to have an in-depth study locally first to prepare the sort of brief for people who can then help us in the presentation of it in the context not only of the obligations that we have under the Treaty but of the variations that have been made for various countries. For example, I understand that in respect of Luxembourg there are limitations to the obligation that she has, and she is a founder member and a very important member, there are limitations with regard to the question of the entry of labour simply because in the middle of Europe, Luxembourg cannot absorb all the people that are employed in the surrounding countries. Mr Speaker, if in fact I have identified clearly the main problems which are the economy, trade and employment, it seems to me to be the main items raised by the Hon Member, I have left the items until I saw how his presentation went and that is why I am adding them now in that order. In that case, Mr Speaker, I would move in these terms: that the motion be amended by the deletion of all the words after the words "this House considers that" and the substitution thereof by the following: (1) A study should be made of the following matters in the context of the negotiations leading up to the Spanish entry into the European Community: The economy, trade and employment; (2) If the result of such a study warrants it, Her Majesty's Government should be requested to seek to conclude special arrangements with the EEC in order to protect Gibraltar's interests."

Mr Speaker, I have the honour to move this amendment.

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

HON CHIEF MINISTER:

Mr Speaker, I would just like to reiterate what I said earlier that the Government have made representations on all these aspects in March, after a full study and cooperation from various departments and I would not like it to be thought that this is completely new. I appreciate that the situation has now changed somewhat and that in any case this House should support the further study of this matter to pursue the matter. I would not like it to be thought that this is the first time the representations have been made but I agree that a continuing one and with general approval of the House is bound to be much more helpful.

HON P J ISOLA:

Mr Speaker, let me just say that on this side of the House we would support the motion in the way it is being moved. Let me also say that we support the amendment provided it is further amended to include "in the context of negotiations leading up to Spanish entry." In the first part it says; "a study should be made of the following matters in the context of negotiations," and then we say "to seek special arrangements with the EEC." I think we should add after that "in the context of the negotiation leading up to Spanish entry." This is what I think should go in. But as I said if that goes in I think more or less the motion is saying the same thing. Let me say straight away that the context of Spanish entry to the EEC has in fact worried my Party considerably because we agree with what the mover has said that at the moment we have potentially 300 million who can come in but they have to catch a plane or they have to find a house and since there are about 1,500 Gibraltarians who do not seem to be able to do so it is not going to be that much easier for people from outside. Therefore, one is not particularly worried so long as Spain is not in the European Community but once Spain comes into the European Community then I agree with the Honourable Mover that a very different situation arises. Let me say, however, straight away that I have myself represented to the Governor on behalf of my Party that this matter has to be looked into very carefully in the context of Spanish entry into Europe. I think Gibraltar obviously has a case to have some special arrangement made but, equally, this will be no easy matter because when I was in Strasbourg I certainly found a very strong spirit in Strasbourg that Europe should be one, that every one should conform to the rules and that there should be no exceptions, so it is going to be no easy task. The question of free movement of labour, free movement of trade, the right to establishment within Europe, those principles are very firmly held in Strasbourg by Members of Parliament right across the European spectrum. However, having said that, it

does seem to me that there are countries in Europe, part of Europe, who seem to be able to get round these rules because I am told, for example, that it is no easy matter for any European to set up business in Italy or to get a work permit and Italy is a full member of Europe and I am told, equally, it is no easy matter in France to do the same thing. Somehow or other they have become experts in dealing with this. Mr Speaker, what I think is necessary is to get some consultants. This is a field where we should get some consultants into, some Community consultants, some people who are very conversant with the way the Commission works in Brussels, who are very conversant with the way the Council of Ministers work, who are very conversant with the different rules and regulations and with the arrangements in different parts of Europe especially the smaller countries. The Honourable and Learned the Chief Minister has mentioned Luxembourg, there may be other countries in Europe whose vital interests have been recognised and safeguarded by the Commission and by the European countries. I think it is important to have a study made but not just a study in Gibraltar such as getting advice, for example, from the Foreign Office necessarily or anybody else - although they are always I know very helpful - but I think there is a need for somebody who knows his way around Europe, someone who knows what the position is, to start making a study and to start advising to what is the sort of line the Gibraltar Government should take. I agree entirely with the Chief Minister when he said that a motion like this is passed and it will have no effect at all unless Gibraltar makes a case because if we are talking of concluding arrangements with the EEC, the EEC are pretty hard bargainers as a community and I think that a case would have to be made and it would have to be made in the face, presumably, of Spanish opposition and in the face of other opposition from other countries whom it may suit to oppose a special case for Gibraltar because of their own arrangement, because they do not want to make a special case for larger countries who do not desire a precedent to be created in relation to fundamental principles of the Treaty of Rome. This is no easy matter and I don't think anything can be done quickly. I took a note of what the Honourable Mover was saying that we must move on it quickly but if what he means by moving on it quickly is that we should start negotiating special arrangements with the EEC, I think that is a waste of time at the present moment because they haven't even made up their minds as to whether they are going to admit Spain or on what conditions or what the transition period should be as regards Spain. If he means by moving on quickly, however, that a study should be undertaken, that we should get consultants in, that we should get some really expert advice from somebody who moves around Europe, consultants who may specialise in this, I don't know whether there are any who do, then I would agree with him. I think this is a problem that Gibraltar is going to have to face and it is a serious problem because when we are talking of the economy, trade and employment, we are talking in an area where European principles appear to be freedom of trade, freedom of employment, freedom of establishment, and when we are talking of the economy trade and employment we are flying really in the face of the European ideals and in the face of European principles. So just a motion passed in the House, either in the form

that the Honourable Mr Bossano has put it or in the way amended by the Honourable and Learned the Chief Minister, will get us nowhere unless a real tangible case can be prepared on Gibraltar and we may even have to consider, I hope it never happens because the European ideal is a great ideal, and I think in the long run must be of benefit to Gibraltar, but we may be faced with the question of: "Well, if you want all this protection for Gibraltar, it is impossible, you will have to look for it outside Europe." I hope we are never faced with that decision but if we are not going to be faced with a decision of that nature then I think it is vital that the Gibraltar case is assessed very carefully and that a case is made out that can find favour with the European Community bearing in mind their own problems, bearing in mind how the individual countries feel on the question of making exceptions. The trend nowadays seems to be not to make exceptions, if you are in the club you have to follow and abide by the rules. But I think that the Honourable and Learned the Chief Minister has mentioned Luxembourg where their case has been seen and some exception has been made, obviously on Gibraltar it does seem to me that with Spain in, there is an extremely strong case for some derogation being made to the Treaty as far as Gibraltar is concerned to enable Gibraltar to continue to function as an identifiable community with its own citizens protected as reasonably or as legitimately as they can be. Mr Speaker, I don't think I have to actually amend, I do not want to get involved in amendments, I don't think I have to seek to amend it as long as it is understood that the Government agrees with it, that it is in the context of negotiations leading up to Spanish entry that we have to move. Let me assure the mover of the motion that certainly my Party is fully alive to the problems connected with Spanish entry. We are also fully alive with the problems connected with the Lisbon agreement, we are fully alive to all the problems that seem to surround Gibraltar where Spain and the EEC are concerned and, certainly, we would welcome, we would certainly welcome a study being made of our problems and we would certainly vote in favour of funds to enable expert consultancy advice to be obtained by the Government of what goes on in Brussels and on all the particular derogations there have been in the Treaty of Rome in relation to all the different countries in Europe because we may find that although they are not relevant to our problem, they are relevant for establishing the precedent. Mr Speaker, as I said before, we are in the happy position of being able to vote for the amendment and also for the motion as proposed by the Honourable Member because we support all the sentiments expressed in the amendment and in the motion subject to the additions that I have asked to be considered because we think this is a serious problem and I think it is one that has to be dealt with and has to be studied and prepared for now although, as all Honourable Members must realise, the question of Spanish entry into the EEC appears to be something that is going to take a little time but, of course, we should be prepared I am glad to see the Government has already made representations on it, I certainly have and I think we would all welcome the expertise of the Honourable Member, Mr Bossano, in saying in what way the Gibraltar position can be protected

bearing in mind, as he must surely do, the principles of the Treaty of Rome, the obligations that we have already undertaken in our legislation, bearing all these things in mind, I think it would be a useful exercise again on this, something that affects vitally the interests of everybody in Gibraltar, it would be a very useful exercise if our efforts in this matter could be fully coordinated and I certainly would welcome very much working with the Honourable Mr Bossano as indeed with the Chief Minister and his Party and my Party in trying to solve what is likely to be one of the biggest problems that will face us once Spain begins in earnest her negotiations for entry into Europe. Thank you, Mr Speaker.

HON A J CANEPA:

Mr Speaker, on the Government side I think we accept without any reservation the intention of the Honourable the Leader of the Opposition that the second part of the motion namely, were the British Government to be approached with a view to seeking to conclude special arrangements with the EEC, that that approach must be seen in the context of the negotiations leading up to Spanish entry into the European Community. We can say that without reservation because Hon Members who were here in 1973 will recall that at the time that we joined the community we were afraid that the very many millions of EEC nationals were going to flood into Gibraltar and disturb our labour market and disturb our economy. That, in fact, has not materialised because as Mr Isola rightly said it was a case of flying over to Gibraltar or coming by other means but in the context of an open frontier with Spain, whenever that happens, the threat is of course a much more real one and a much more serious one. I think Members of the House should welcome the timing of this motion, generally, not because no thought has been given by either the Government or the Opposition to these problems but because I think it is important that the public, the people of Gibraltar, should know at this very crucial juncture in our affairs that Members of the House are all at one that we should have this opportunity to manifest by the manner in which we vote that we are completely united in the need to first of all recognise and identify the problems that Gibraltar has to face and, secondly, that the House is determined to try and find ways and means of protecting these essential interests. Now, Sir, with regard to the problems of trade and commerce, I would like to say that we recognise the fact that the small trader in Gibraltar is going to be unable, perhaps, to cope or to meet a situation in the manner in which large chains of shops are able to handle goods to their advantage, a point which I think the Honourable Mover made. There is a danger that we could lose control over our economy and, perhaps, the danger has been overstated in that I do not accept for one moment that traders in Gibraltar, having regard to events since 1964, are solely motivated by the profit motive in so far as Spanish interests are concerned. I think that there is sufficient recognition in Gibraltar, of other considerations not chauvinistic considerations but a realisation of the need to protect the Gibraltarian identity and I am very hopeful and optimistic that traders will not

allow themselves to be put wholesale into a situation where the Gibraltar economy would be put at serious risk. I think people recognise the fact that we have got to avoid in an open frontier situation allowing the Spaniards to achieve what they have not been able to achieve over 11 years of economic siege in a closed frontier situation. But nevertheless the study has to be made, the problem areas in particular have to be identified. Shortly after it was announced Mr Speaker, that Spain had decided to lift the restrictions, something which we are all waiting for, the Chamber of Commerce immediately made representations to the Government, they had meetings with myself and I say myself because I was acting Chief Minister at the time when Sir Joshua was away in Strasbourg, and then subsequently when the Chief Minister returned there was a joint meeting at which they put their point of view across but at the time they were not finding solutions, the Chamber could see problems but it was apparent that they were not clear, they did not know what the possible solutions were, they spoke in terms of it being made a legal requirement that, for instance, any business wishing to set up in Gibraltar that there should be a controlling interest 51% of shares should be owned by a Gibraltarian. In the first place it might be impossible or very difficult to enact such legislation that the Community would accept and in any case as in the days of the Trade Restrictions Ordinance it would still be possible for any Gibraltarian who wished to lend his name to setting up a front to do so and there would be in effect no genuine protection in the fact that a Gibraltarian would own 51% of the share because he would not be genuinely the owner. As Mr Isola rightly said, it is not going to be an easy task in the field of trade and commerce in particular. I think Members of the House who were on the Select Committee on the Trade Licensing Ordinance will recall that the Foreign and Commonwealth Office took some convincing about the need to have the kind of legislation that we had in 1973 and which was then amended in 1978, I think it was, there were doubts as to whether they would go along with us on that and it was not an easy struggle to convince the Legal Advisers of the Foreign and Commonwealth Office that we were within our rights and, indeed, within the provisions of the Treaty of Rome in seeking to enact such legislation. A study has been made, Mr Speaker, already about the impact that the implementation of VAT would have in Gibraltar, about the effect of coming within the Common Agricultural Policy and also within the Customs Tariff. I think such a study was made in the days of the IWPB administration and advice was given about the arrangement that Gibraltar should seek to have negotiated with the community. But we have made a further study in great detail as to the effect of all the various regimes and it is clear that the impact on the Gibraltar economy would be catastrophic, the cost of living would go up by anything up to 30% as a result of coming under CAP and implementing VAT and it has been a very valuable exercise because we have in the process been able to carry Her Majesty's Government along with us on this road in that they recognise as well that the impact on our economy would be very, very serious indeed and therefore they are supporting us in the stand that we have taken in the context of the implications for Gibraltar of Spanish entry into the EEC that we should stay outside these areas. What we have got

to endeavour to do now, Mr Speaker, as a result of whatever study is undertaken is the same, to present the solutions to the British Government, don't expect them to do the work for us, it is not easy for the Foreign and Commonwealth Office to find solutions for us, we must be the ones that must indicate what the possible solutions are and we must be the ones that must take as firm a stand as we can in convincing them that within the provisions of the Treaty of Rome, as far as possible, that special consideration must be given to Gibraltar. I thought I should mention, Mr Speaker, that perhaps the consultants that are carrying out the Port Feasibility Study, since they are dealing with some aspects of the EEC such as the setting up of free trade zones could be asked to look at this but I recognise the point and I agreed with the Honourable Mr Isola that really we do require, perhaps, generally, a different type of consultancy, what we really want perhaps is more of a legal consultancy, people who are fully familiar with EEC regulations and are able to try and see whether there are any loopholes or any case can be made to find our way around these regulations. I feel, Mr Speaker, that I can give the House a great deal of more information on the labour side of the problem and, perhaps in this context there is not such a need for a study to be undertaken, I think the study should concentrate more on trade, commerce, on the economic considerations. As far as the labour situation is concerned I have no doubt that in the Department of Labour and Social Security we already know, we have identified what the problems are, and we can already point to possible solutions that we know what it is that is required for Gibraltar to safeguard our interests. With your leave, Mr Speaker, I would like to dwell on this, perhaps, at some length and use copious notes in quoting from various EEC regulations and, in doing so, accurately. Under EEC regulation 1612/68 Article 20 already a member state may inform the EEC commission and through them, other member states, when it suffers or foresees a disturbance of its labour market which might endanger the living standards and employment in a region, supplying all appropriate particulars and it may request the Commission to state that in order to restore the situation to normal, the system which is operated for is termed "vacancy clearance" should be partially or totally suspended. Although this, Mr Speaker, would not prevent the many thousands of unemployed Spaniards in the neighbouring region of Spain or those who, indeed, may be employed but may want to take better or more remunerative employment in Gibraltar, they would not be prevented from exercising their rights as EEC nationals in due course to come freely to Gibraltar and compete for jobs with Gibraltarians or even to come to Gibraltar with jobs already arranged with a prospective employer, that we should make such a case to the EEC would not prevent that. The Spaniards would be able as EEC nationals to come and exercise such rights in due course but at least there would be control in the sense that by foreseeing a disturbance of the situation in Gibraltar, by pointing out these dangers to our living standards, there are other ways and means such as with regard to problems such as housing where we can get exceptional treatment and an exception can, indeed, be made for Gibraltar. It is clear already, Mr Speaker, that on Spain's accession to

the EEC there are going to be transitional measures for achieving freedom of movement of workers between Spain and the Community in stages and particularly with regard to access to employment. Such measures, it is clear, are likely to be of sufficiently long duration to avoid, generally speaking, disorganisations of manpower and serious tension in the EEC labour market. There are indications that these arrangements could be for periods of up to 10 years but I think, perhaps, Mr Speaker, Gibraltar needs to have a safeguard that depending on the situation which develops within Gibraltar over such a transitional period of 8 to 10 years, that we should be allowed if necessary and if possible to extend that period perhaps even permanently. The dangers to Gibraltar in the labour field I think are obvious, Mr Speaker, and there is perhaps no other case in Europe of a situation where there are two adjoining territories to a small community of which one, Gibraltar, is a densely overpopulated territory of about 29,000 people and with a labour force of 12,000 and within that community unemployment is virtually negligible, as against another region, a very large one, where you have a nation of 40 million, with a very serious problem in unemployment, indeed I think it is at a level of about 10% of its labour force and, indeed, of whom about 60% of those who are unemployed are in the under-24 age group including as well a very high proportion of first job seekers, people who would be quite prepared to uproot themselves from that community in order to get a job, so desperate are they in fact. Of course these problems that I have mentioned, generally, about Spain are even more acute in the neighbouring region. In such a situation it is vital that Gibraltar should be able to maintain statutory control over the number of foreigners who come to work to Gibraltar. I think it is vital, Mr Speaker, to be exempted from all or most of the provisions of this Regulation 1612/68, especially Part I of that regulation which is the one that deals with access to employment and the right of workers' family who take up residence if they find suitable accommodation. I would like to turn now, Mr Speaker, to what has been mentioned with respect to Luxembourg. Because of the special population problems of Luxembourg, a protocol dated the 25th March, 1970, a protocol to the Treaty of Rome which empowered the EEC Commission when forming regulations of freedom of movement of workers, was included in the Treaty to take account of this special demographic situation in Luxembourg and it was Regulation 1251/70 which duly provided that the Commission could lay down at the request of Luxembourg different conditions from those normally provided for in respect of the right of workers to remain the territory of Luxembourg. This regulation was made after Luxembourg had been a member of the EEC for some time but before the accession of the four new member states in 1972. The regulation was made in 1970 as a result of representations made by Luxembourg under the Protocol of 1967 and with the view to the enlargement of the Community in 1972. Let me say, Mr Speaker, that as far as the public sector of employment in Gibraltar is concerned, we will continue to have full statutory control under any situation because the article 49 of the Treaty of Rome on free movement of labour does not apply to employment in the

public administration, in this case in the Crown, the public sector, so we will always be able to retain control over about 60% of our labour force even with respect to EEC nationals. It will be a requirement that if any of the official employers wishes to employ an EEC national, it will be a requirement after Spanish entry as it is now that they require a work permit in order to employ an EEC national. That gives us a very considerable measure of control and it is of course the private sector that we need to worry about. Some Members of the House, Mr Speaker, I think will recall that in January, 1979, I attended a conference at Wilston Park on the EEC and its external relations and I had an opportunity there not only to put the case for Gibraltar but also to hold discussions with Mr John Biffen, a Member of Parliament who was then in the Conservative shadow cabinet and who is now the Financial Secretary to the Treasury, in other words, the No 2 Man in the Treasury under the Chancellor of the Exchequer and I was able to point out to him the problems that Gibraltar would have to face on Spain's entry. I pointed out that there were more Spaniards unemployed in the neighbouring province of Cadiz than in fact there are workers in Gibraltar and I said that Gibraltar would probably be asking Britain to approach the community to negotiate special arrangements for Gibraltar, at least transitionally and, hopefully, permanently and that we wanted to see Gibraltar being exempted from the provisions of the Treaty of Rome in so far as the free movement of Spanish workers is concerned. I should underline, I think, that it is not intended to prevent Spanish workers from being employed in Gibraltar, perhaps that would be undoubtedly discriminatory, already, in fact, there are and have been for many years well over 200 Spanish workers in Gibraltar. But only what is necessary is that we should be able to continue to apply the provisions of the Control of Employment Ordinance to them. Another problem that we might have to face, Mr Speaker, if we cannot get permanent arrangements is that even if there are transitional arrangements for Spanish workers, the EEC may require, in the interim period, in the transitional period, that Spanish workers should be given priority in access to employment over non-member State nationals and I think that that would be a very serious problem for Gibraltar. Not only would it not solve the problems that I have indicated and which we can already envisage, but it could create very serious difficulties vis-a-vis our Moroccan workers who constitute about 25% of the labour force and who have served Gibraltar for many years. I think we would be placed then in the position of having to be fully dependent on Spain to fill virtually all our requirements of labour from abroad were experience over the years has rightly shown that it is in Gibraltar's interest to diversify, as far as possible, the sources of labour. Other very important and related aspects of Spain's accession to the EEC, apart from trade, commerce, the economy and labour are social security obligations, housing, education, health care for workers and their families. I do not propose at this stage to go into all these but merely to point out that there are also factors which, although coming under the social services side, there are also factors which affect our economy very very closely because they constitute very serious drains

on our revenue. With Spain's entry there is a danger that we will be at the receiving end of all these arrangements. We have had to comply with EEC social security regulations and I mentioned to the House on Thursday evening, in connection with the equality of treatment for women, that we were having to repeal previous legislation in order to comply with the EEC. We have amended legislation over the years and it has not been a very serious disturbance to Gibraltar but once Spain were to be in I think that we would be at the receiving end and the benefits, the so-called benefits, that might accrue on the basis of reciprocity and nothing like for Gibraltarians to what they would be for Spaniards. One does not envisage any substantial number of Gibraltarians taking up employment in Spain, if they did, politically, I think, that would be to our detriment in any case. My own view, Mr Speaker, is that we must do everything in our power to preserve the Gibraltar that we know and we cherish and not allow ourselves on Spain's accession, to be crushed by the obligations which will fall upon us and which, by having very few, if any, benefits in return, will spell disaster for Gibraltar. There must be therefore ways by which a territory within the EEC, because of its size or other consideration, can be prevented from being inundated and virtually taken over by another much larger country or territory. I have indicated in the field of labour the possible avenues that there are for us to explore, we have apprehended these, we were aware of these well before Spain made an application for Spanish entry, in fact, shortly after France died it became clear that Spain was seriously thinking of joining the Community and in the Department of Labour and Social Security we turned our minds to these problems and we have been able to formulate the kind of views and proposals that I have put to the House. It is in the field of trade and commerce where I am particularly rather more worried. I feel that I do not have anywhere near the knowledge that I have on the labour side, perhaps, the Government itself doesn't have the expertise and it is there where I feel that the study which is envisaged in the Chief Minister's amendment can be particularly beneficial to enable Gibraltar to put a case to Her Majesty's Government for special arrangements to be concluded with the EEC. Mr Speaker, I wholeheartedly support the amendment.

HON MAJOR R J PELIZA:

Mr Speaker, the Minister for Economic Development and Labour and Social Security deserves praise from every Member of this House for the amount of work that he and his Department have carried out with considerable foresight. It is indeed a pity that the other problems which are so obvious have not received the same careful attention from the Government. I think it is obvious that it does not require a lot of study to identify what the problems are. I, on my own, because I am personally interested not only as a Party but also as an individual, way back in December last year wrote to Mr Jenkins who may be getting tired of receiving so many letters from me by now, precisely asking that on the assumption that Spain is conforming with the Treaty of Rome has to lift the

restrictions and re-open the frontier, how can a small community protect itself from being usurped. Would we be permitted to (a) control immigration (b) control employment and (c) control investments. I think it is obvious that those are the danger areas and therefore I think that we are more than entitled to seek some protection especially as we know the intentions of Spain are, and they don't mince their words about this, in fact it is very clearly stated in the Lisbon communique, that they stand by the position that Gibraltar has to be integrated into Spain. It is not just a question of protecting ourselves from vicissitudes that follow the consequences of belonging to communities which are trying to integrate with one another but the mere fact that there is, in fact, a nation which according to Lord Bethel who was here today, in an article he wrote on Gibraltar, defined as a planned, demographic and political invasion of Gibraltar. Those, Sir, I think are very striking words that we in this House should take seriously into account. What reply did I get from Mr Jenkins? I am afraid it is not very encouraging because the difficulties are pointed there very clearly. He said: "I know that the various points you mention in your letter are very real and important problems to the people of Gibraltar and I hope that the following information will be useful to you. First, it may be useful to recall that the existing position of Gibraltar - Article 227(4) of the EEC Treaty - makes it clear that the Treaty applies, except where otherwise provided for, to Gibraltar, as a European territory for whose external relations the United Kingdom is responsible. Among the provisions of the Treaty which apply without exception to Gibraltar, are those concerning the movement of workers - Article 48, and following. These provisions accord to nationals of other members states the right to enter and move freely within the territory of Gibraltar in order to apply for employment without discrimination and also the right to freedom of establishment. As regards capital movement it is the Council Directive of 11th May, 1960, as subsequently modified that applies. Second, there is the question of Gibraltar's position after Spain's accession to the community. Subject to any transitional arrangements which may be fixed in Spain's succession Treaty, the provisions which I have mentioned will apply in Gibraltar in favour of Spain and will apply equally in Spain in favour of Gibraltar. As regards transitional arrangements for other sides at the present state of the negotiations it is not yet possible to give you any definite indication." I emphasise, at the present state of the negotiations. I say this because we should bear in mind that negotiations are going on and that we must not in any way delay, in my view, our representations. I think it is obviously very important, as my Honourable Friend has stated, that we should present a case and, equally as the Chief Minister has said, we have got to present a case otherwise I think the paper will not be worth the ink it is written on but I believe that we mustn't waste any time about it and that in the same manner as the Minister for Labour seems to have now quite a good case to put forward and it seems very reasonable that it should have support in many quarters, I believe that we should go full steam ahead now looking into the other two points which is the question of immigration and

the question of trade in Gibraltar. To carry on with the letter, Mr Speaker, Mr Jenkins says: "It follows that subject to any possible transitional measures, Gibraltar will be able to control immigration, employment and investment in conformity with the relevant community provisions. For example, freedom of movement for workers can only be restricted case by case on grounds of public policy, public security and public health." It is very difficult, I think, to know what is meant by this, as a layman so I decided to ring up the representative of the Commission in London and I put it to him. He thought it was very difficult, perhaps with the exception of public health, to control movement of labour into Gibraltar. He said that any person who is refused employment or feels aggrieved, can always apply to the Courts and try and get some kind of satisfaction. Spain's accession will not in itself affect the question of Gibraltar's eligibility for aid because I also asked about aid from the European Regional Development Fund which is governed by Council Regulation 724/75. "This, however, is a question which the Gibraltar authorities will no doubt wish to discuss also with the British Government in view of the responsibility for defining the areas eligible for regional aid. I hope you will understand by those remarks that the Commission have the situation of Gibraltar very much in mind and appreciate the importance of this question during the period of negotiation for Spanish accession. We hope that the present difficulties between Spain and Gibraltar will be satisfactorily resolved before Spain becomes a member and that conditions can thus create the harmonious development of relations within the enlarged community." We know from the experience that we are already going through that there doesn't seem to be a quick solution to our problem even now after the Lisbon Agreement. We know that somehow we have got to find some form of protection if we are going to survive as a community once Spain joins the EEC community. It will, of course, I think, bring problems. If we insist on certain protections Spain may well put a case that there is no reason why she should lift restrictions under those circumstances. The mood in Gibraltar of course as we know it today do not make the lifting of restrictions to be all that end all in this world so I believe that we are in a strong position to ask for our very legitimate rights; Mr Speaker. I believe that the Government, knowing that they have the full support of this House, should move without any hesitation into producing a case for the protection that our small community requires. Small, Mr Speaker, is beautiful, I think that the Community is very much aware of that. All this harmonisation of the laws are seen in the context of the bigger communities which did not in the process be extinguished from Europe, Mr Speaker. Ours is a very special case and I think it deserves very special treatment. It is up to us, Mr Speaker, to make the case and press hard and try and influence all those people who can be sympathetic to our case. We have seen it today that we have members of the European Parliament who support us and I am sure that we also have members in the British Parliament where, perhaps, this is even more important because the representations will not be made in the European Parliament Mr Speaker, representations will have to be made on our behalf by the British

Government who is responsible for our foreign affairs as this letter and the previous one I quoted very clearly state. Therefore, Mr Speaker, I think we should now move without delay so that whatever the wording of the amendment to the motion moved by my Honourable Friend Mr Bossano will receive the urgency that it merits. As my Honourable Friend here very clearly stated he will support the motion, he will support the amendment and I think for the sake of unanimity I will follow the same trend, Mr Speaker, I obviously support the motion but I also support the amendment to show unanimity and therefore give strength to the idea.

HON J BOSSANO:

Mr Speaker, all my motions in the House seem to suffer the same fate. Everybody says that they are in agreement with it and then they go on to remove all the words after the words "considers". I imagine that if they were against it they would remove the first three words in the motion as well. Let me say, Mr Speaker, first of all, that there is a fundamental element in the amendment of the Honourable and Learned the Chief Minister that I cannot accept and that is, to my mind, the element which is of the same order of the element in the motion on Friday, in the amendment moved by the Honourable Mr Perez, which I find so difficult to accept. The House will recall that whereas I was prepared to accept in that other motion that the Select Committee should look at the changes that were needed, I wanted the House to accept the principle that it had already been established that changes were needed. This amendment in the second part says that if the results of the study warrant it, Her Majesty's Government should be requested, notwithstanding that every Member of the House is already convinced that it is warranted otherwise they should have had a study already before they made any representations. The Government has already made representations and the Honourable and Learned Leader of the Opposition has already made that representations and I have certainly already mentioned it to the Governor so we are all convinced that it is warranted and therefore if we are already convinced of that it might be a more practical way, it may be that the drafting of my motions leave a lot to be desired, Mr Speaker, but the point is that there should not be any question of having to wait until we have the result of the study before we put Her Majesty's Government on notice that there has to be special arrangements concluded for Gibraltar because it is inconceivable that the study could prove that there is no need when all of us are already totally convinced and it is so obvious that there is a need. It is a thing that is simple common sense that in our situation in Gibraltar the question of the freedom of movement of labour, and I think it has been very useful to have the Honourable and Gallant Major Peliza quoting to us the text of that letter where the aims of the Treaty of Rome as the Honourable and Learned the Leader of the Opposition pointed out earlier, the fundamental aims of the freedom of movement of labour, in that letter it says that it is a question of giving people the freedom to enter and move freely in the territory of Gibraltar. Of course, if the 1½ million

unemployed in Spain decide to enter nobody is going to move freely in the territory of Gibraltar, we won't be able to move at all. Let us consider what it is that we are talking about when we are talking about giving them equal rights as EEC nationals. What we are saying is effectively that we have got an economy in Gibraltar, we talk about labour which as Members will appreciate is a thing that I tend to emphasise most because of my own ideological position, we are talking about an economy which has got 10,000 jobs and we have got an indigenous labour force, a Gibraltarian labour force, of 6,000. That is a very fortunate position to be in today in Europe, there isn't any other national economy that has got an excess of 50% in jobs which have to be filled in by non-natives. And we are talking about giving our immediate neighbours, that is, the 1½ million unemployed, the right to compete with the 6,000 for the 10,000 jobs in exchange of which our 6,000 can join their 1½ million long unemployment queue. I don't think we need any study to establish whether there is something there that warrants stopping, it springs to mind straight away. I agree entirely with the Chief Minister that the case that has to be made, has to be made so well that it cannot be faulted.

HON CHIEF MINISTER:

If the Hon Member will give way. I will certainly get a colleague of mine to move an amendment but I want to make sure that if another amendment is moved it is going to be accepted. I entirely take the point made. It was unintentional but I think perhaps the second part could read and I am not moving it because I have already moved, that when the results of such a study are completed, Her Majesty's Government should be requested to seek to conclude special arrangements.

HON J BOSSANO:

Mr Speaker, that would meet the point I made completely.

HON CHIEF MINISTER:

That can be moved by someone else.

HON J BOSSANO:

Mr Speaker, I appreciate the effort of the Honourable and Learned the Chief Minister to meet this point, in fact, it would meet it completely if we made that change. The only other thing that I would like to say is that it seems to me, from what the Honourable Minister for Labour has said, that there is already a lot of ground work that has been done and therefore we may be in the fortunate position of not having to start from scratch but to build on the substantial work that is already there. One other thing is that in terms of

our approach to this, I think, effectively, the only counter argument that we might have to face in presenting the study is that we might be accused of wanting to have our cake and eat it and that would be a legitimate counter argument. If, in fact, we were told; "Well, if you feel that there is such a danger in allowing freedom of movement into Gibraltar then of course the only way you can get freedom of movement in Gibraltar is by accepting curtailment of freedom of movement out of Gibraltar." It may well be that today there are, perhaps, a dozen or 20 Gibraltarians who as a result of our membership of the EEC are able to go and seek employment without work permits elsewhere in Europe although in practice, as the Honourable and Learned Leader of the Opposition said, there seem to be all sorts of bureaucratic delays which national Governments have got in other places in Europe where they are paying lip service to their community obligations but one needs to go through such a lot of red tape that, in fact, they sort of tire people out before they get the necessary documentation so there is a gap between what is supposed to be happening and what is really happening. But if, in fact, we have to deprive some of our own citizens of that theoretical right, then that might be a necessary sacrifice in the interests of the bulk of the population who have no intention of leaving Gibraltar and intend to stay here.

HON MAJOR R J PELIZA:

If the Hon Member will give way. It is interesting, Mr Speaker, that with regard to the Isle of Man and the Channel Islands in fact that exists, "The right enjoyed by Channel Islanders of Manxmen in the United Kingdom shall not be affected by the act of accession. However, such persons shall not benefit from the Community provisions relating to free movement of persons themselves."

HON CHIEF MINISTER:

Mr Speaker, the point is that neither the Channel Islands nor the Isle of Man are members but they are growers of tomatoes and other important things.

HON J BOSSANO:

The only point I wanted to make, Mr Speaker, was in terms of the difficulties that there may be in persuading Her Majesty's Government, then I would envisage that the difficulty would be of the order of being told: "You cannot have everything you have got now if you want to give up some of the things you have given."

HON M K FEATHERSTONE:

Mr Speaker, I beg to move that the Chief Minister's amendment be amended by the deletion of the word "if" in the first line

or (2) and the substitution thereof by the word "when", and by the deletion of the words "warrant it" in the first line of (2) and the substitution thereof by the words "are completed".

Mr Speaker put the question in the terms of the Hon M K Featherstone's amendment to the amendment which was resolved in the affirmative and the amendment to the amendment was accordingly passed.

MR SPEAKER:

We now have the amendment before the House, as already amended and if no one else wishes to exercise his right to speak on the amendment I will call on the Hon and Learned the Chief Minister to reply.

HON CHIEF MINISTER:

Thank you very much, Mr Speaker. I think this further amendment is quite satisfactory. The Hon Mover was making the point precisely at the end of his last intervention which I made at the beginning and that is that it is no use asking for privileges if we haven't got a reasoned case to make that there are grounds for such privileges or for such special treatment, perhaps privilege is the wrong word, because of the particular circumstances of Gibraltar. I would have thought that from what we have heard from the Minister of Labour, the labour aspect in respect of the EEC, we have another aspect of it which we will be dealing with later in another motion, is reasonably contained in two respects. First of all, in respect of the fact that the employment in the Crown which is a good proportion is really protected already. Secondly, the private sector has limitations, physical limitations, in terms of employment, jobs and so on but nevertheless I think the point that was made in general terms and which was identified by my colleague about Luxembourg is a very appropriate example of the things that happen and this is why if we are to have any special treatment it is no use saying; "Well, if you don't want anything of it you better leave it," we can't leave it because for as long as Britain is in Europe we must be in Europe otherwise we would be out on a limb completely and therefore it is necessary that any encroachments that are made into the general principles which are set out in Mr Roy Jenkin's letter should be fully justified and I entirely agree with the Leader of the Opposition that what we need is not only a consultancy on the manner of doing but in a study of the Treaty a study of the numerous regulations that have been made exempting people from different things. There are hundreds of regulations, one sees them in the laws that come through in the various supplements we get in the profession and it is necessary to have the expertise, the European expertise, and, of course, we must primarily, as the Hon and Gallant Member has said, we must primarily convince the British Government that we have a good case so that they can take it to Brussels and fight the case for us. It is no use our going on our own, although we would probably get help from Members if there was

unjustified obstruction. I therefore feel that this amendment, as already amended, meets the point and I did not emphasise that we appreciate the fact that urgency is important because even though the treat may take a long time, different parts of the negotiations by Spain to go into the Common Market are set for different dates and they have an overall aim at finishing by 1983 but even then a lot of things can happen in various matters which could be said to have been dealt with much earlier than that if there are no other major difficulties encountered in the sense of the postponement, generally, of the new membership.

Mr Speaker then put the question which was resolved in the affirmative and the amendment of the Hon the Chief Minister, as amended was accordingly passed.

MR SPEAKER:

We now have the original motion, as amended, and if no one wishes to speak on the original motion I will now call on the Mover to reply.

HON J BOSSANO:

Mr Speaker, I won't be saying much in reply. I think most of the points have already been made by the various speakers. The one point I would like to emphasise is the one made by the Hon and Learned Leader of the Opposition about a total united front on the question in the House of Assembly. I think it is of vital importance that when we come to protecting the interests of the whole of Gibraltar we move together and when those are protected we then start quarrelling amongst ourselves again and then we can retain the enjoyment that we get out of having differences in the House as well as the enjoyment of being unanimous. It is, I think, important that this motion, no doubt it will be brought to the notice of Her Majesty's Government, that they should be aware that this thing is in train and that we intend to proceed with this as soon as it is possible to get the thing going so that they know that it is in the pipeline, as it were, that they are on notice that they shall be receiving these representations on behalf of the whole House of Assembly.

MR SPEAKER:

I will put the question which is that: "This House considers that -

- (1) A study should be made of the following matters in the context of the negotiations leading up to Spanish entry into the European Community; The economy, trade and employment.
- (2) When the results of such a study are completed, Her Majesty's Government should be requested to seek to conclude special arrangements with the EEC in order to protect Gibraltar's interests."

The question was resolved in the affirmative and the motion was accordingly passed.

HON J BOSSANO:

Mr. Speaker, I beg to move that; "This House cannot accept that Spanish Nationals can be given full equality of rights with Gibraltarians in Gibraltar." Mr. Speaker, the motion is effectively a quotation of a phrase that appears in the Lisbon Agreement which has caused, perhaps, more concern than anything else because it has never been defined. The matter was raised by Mr. Patrick Wall in the House of Commons who attempted to get from Her Majesty's Government a definition of what full equality of rights meant. Mr. Patrick Wall gave a number of examples and asked Sir Ian Gilmour to say if the examples that he had given were not in fact what the phrase meant then what did it signify, and he failed to get an answer because all that he got in exchange for that was that the matter would be implemented in the course of the negotiations but we still don't know what it is that is going to be implemented. I can tell the House that I myself asked the Foreign Office representative in Gibraltar whether this meant full equality of rights with Gibraltarians in Gibraltar or full equality of rights in the sense that whatever rights we asked for in Spain we would be expected to give in Gibraltar which is in fact the question of reciprocity which the motion makes no reference to but which in the Lisbon Agreement is linked with the question of full equality of rights. Let me say that I believe that there is a fundamental difference between reciprocity and full equality of rights. I think it is difficult to argue against reciprocity although even there I think one can qualify reciprocity but that would be since the implementation of any reciprocal agreement would have to be a matter for negotiation, the qualifications on what reciprocity means would have to be treated case by case. Clearly, in talking about reciprocal treatment, one must look at the size of the economy of Gibraltar and its potential, and its geography, at the extent of land that is available in Gibraltar, and it isn't the same, of course in any of those areas. When one talks of reciprocity we do not have the opportunity to give others the same rights in Gibraltar as they could give us in their own land and, clearly, if one thinks merely of the possible congestion of traffic in Gibraltar, something as simple as that, unlimited access to traffic from Spain into Gibraltar is not the same thing as unlimited access to traffic from Gibraltar into Spain and therefore when one talks about reciprocity I think if the Spanish Government insisted that allowing every Gibraltar registered car to circulate in Spain on the basis of reciprocity would mean allowing every Spanish registered car to circulate in Gibraltar it would make an utter nonsense of the thing but in any attempt to implement reciprocal bilateral agreements this point would have to be made and if it is impossible to reach agreement then, clearly, it would not be applied to any area where we felt that we were being asked to take on too big a burden for the size of our economy. I am disposing of that element, Mr. Speaker, although it does not

form part of the motion, I am disposing of that element because, in fact, my motion is not concerned with that because I am pointing to the part of the Lisbon Agreement that goes on to talk about full equality of rights and I am specifically adding "with Gibraltarians in Gibraltar" because for me the danger in the interpretation of full equality of rights is precisely that, it is giving a Spanish national in Gibraltar exactly the same rights as a Gibraltarian has. It is a difficult thing, really, when one talks about liberal progressive moves in Europe to harmonize legislation and to create equal opportunities for every European and on the other hand the genuine need that people in Europe have to preserve their identity as a people in the different nation states. Nowhere in Western Europe is the danger greater than in Gibraltar because nowhere in Western Europe does the disparity between two neighbours exist to the extent that it exists between Gibraltar and Spain and nowhere does any European community, any European people, have a giant on its doorstep whose avowed aim it is to absorb them and have them disappearing as a separate entity with their own separate national character. We have had 270 years of British colonialism and they have not made any serious attempt to anglicize us, perhaps because they don't particularly like anglicising their colonials, but I don't think we would last two years of Spanish colonialism without being transformed whether we like it or not into good, law-abiding Spanish citizens. I think, Mr. Speaker, that this goes to the very heart of the fight of the Gibraltarian people to emerge as a people in their own right and I honestly feel that at no time in our history has our sense of identity been under greater threat than it is at this moment and therefore it is vital, I believe, that we should place this top of our scale of priorities and accept that if we differ, we differ sometimes, perhaps, in the methodology of how to solve the problem but not in what we want the ultimate solution to be. I don't believe any Member of this House, and I believe very few people outside this House, want to see a Spanish Gibraltar or want to see the disappearance of the Gibraltarian. Therefore, Mr. Speaker, let us in giving consideration to this motion, and I hope Members will be able to look favourably on this one and not want to amend everything after "This House", let us, Mr. Speaker, understand that all I am trying to do is to, shall we say, shut the door before the horse has bolted and not after. I commend the motion to the House.

Mr. Speaker proposed the question in the terms of the Hon J Bossano's motion.

HON CHIEF MINISTER:

Mr. Speaker, for as long as the Hon Mover continues to be the enfant terrible of this House and throw out motions all of which are very popular but the study of which requires very serious consideration because of the possible repercussions, he will find that the words after "this House" will be amended by something else which, hopefully, he will accept the same as he accepted the previous one because his approach is

a very simplistic one and if I were in his position perhaps I would take the same view but when unfortunately or fortunately, I think fortunately in this case, one has very serious responsibilities in connection with the study of matters and so on, one cannot take the matter in the simplistic way in which the Hon Member has approached it but I can understand his good motives and I can understand why he does it. He does it because he has the feelings which we all share but perhaps some of us are not as afraid of the consequences as he may be in the context of a particular situation. We made our position clear before on this question of reciprocity and full equality of rights and I think this should be a very good opportunity to re-state our position in more detail. There has been some criticism and I think understandable in Gibraltar and indeed in Spain, funnily enough, of the fact that not much information has been divulged about contacts between the British and the Spanish Government in the communique which was issued in Lisbon last April. As has been explained previously these contacts are of a confidential nature and it is very difficult to divulge the knowledge that one gets on a confidential basis of the exchanges but as I have said so many times the fact that we are consulted even on a basis of confidentiality, gives us the strength to be able to bring Gibraltar's case at every stage when it is being considered and the Gibraltar point of view and on this the Leader of the Opposition and I are ad idem on this matter and have approached this matter on that basis and also after consultations that we always have and then we refer back to our own colleagues. But on the other hand though these contacts are of a confidential nature and therefore it is not for us to breach that confidentiality, when anyone, certainly in Spain, particularly anybody in authority in Spain, makes a comment or the press carries a report which relates to these exchanges, I certainly comment immediately. Thus it was that when the Spanish Foreign Minister was reported in The Times of the 16th of June as insisting that reciprocal treatment must be granted to Spaniards on the Rock and Gibraltarians in Spain at the same time as the gates were opened, I then expressed my own views on the matter and they appear as well as the views of other Members, the Leader of the Opposition and the Mover, in the Chronicle at that time. Similarly, when Mr Tito Benady accused me in a letter to The Times on the 23rd of June of having made certain statements I immediately wrote to The Times re-stating my position and the position of my colleagues which reads as follows: "Paragraph 3 of the Joint Anglo-Spanish Communique, issued in Lisbon contains the simple statement that the Spanish government has decided to suspend the application of the measures at present in force." This statement is not qualified in any way, no conditions of any sort are attached to it. A decision was taken to lift the restrictions and it was envisaged that preparations for doing so would be completed not later than 1st June. That there have been administrative problems and difficulties one can, of course, understand. If, for instance, everybody in Spain were to be arguing where coaches should be parked in La Linea it is quite likely that the Frontier would never open but, seriously, we accept that problem of administration and co-ordination of the different Ministries must have presented a much greater difficulty for Spain than it is for us. It was,

however, disappointing to learn, as reported in the press, that the Spanish Foreign Minister had linked up the opening of the frontier with the question of equality of rights and that on the 5th of July the Spanish officials charged with coordination of the work of Spanish Ministries concerned with the re-establishment of communications should similarly be reported as having linked the two. I have already pointed out that the decision to suspend the restrictions is not qualified or conditional. I now turn to those parts of the Lisbon communique directly referred to reciprocity and full equality of rights. The relevant statement reads: 'Both Governments have agreed that future cooperation should be on the basis of reciprocity and full equality of rights, they look forward to the further steps which will be taken on both sides which they believe will open the way to closer understanding between those directly concerned in the area.' Now this statement speaks quite clearly of future cooperation. It cannot therefore have any bearing on whatever may have happened in the past and I refer specifically to the 1969 Decree of the Franco Government dated 11th of July, 1969, which just over a month after the final and total cutting out of all communications between Spain and Gibraltar, offered Gibraltarians the opportunity to become Spanish citizens and to enjoy a number of rights in Spain. These opportunities had not been sought by the people of Gibraltar who, except for a mere handful, took no notice. The timing of that decree, the nature of the Government which promulgated it and the motives which led to it, make it as irrelevant now as it was then. It is, in fact, totally irrelevant, specifically in terms of the Lisbon Agreement, because this speaks of future cooperation, it speaks of further steps, that is, in addition to those already decided in Lisbon, the agreement to start negotiations and the decision to suspend the restrictions in order to open the way to closer understanding between those directly concerned in the area. It is with these thoughts and objectives in mind that the two Governments then committed themselves to being prepared to consider - and I quote directly once again from the Lisbon communique - "any proposals which the other may wish to make recognising the need to develop practical cooperation on a mutually beneficial basis." The cooperation referred to can only be clearly the future cooperation referred to earlier. I also particularly want to stress the phrase 'mutually beneficial basis'. This phrase obviously excludes any agreement which might be prejudicial to the rights of interest of either side or even simply not beneficial to one side or the other. There can therefore be no area in which reciprocity or equal rights can be agreed to, and this seems to me to be elementary common sense, which might run contrary to the vital interests of any of those concerned. The question may be asked; "Who is to determine whether an agreement to reciprocity or equality of rights in a particular area will or will not be prejudicial to the rights and interests of the people of Gibraltar or their benefit?" To my mind there can only be one answer to this. Only the people of Gibraltar themselves, through their elected representatives, can determine this. The Foreign Secretary himself stated in the House of Lords on the 14th of April that "any negotiations with the Spanish Government will include

representatives from Gibraltar". The British Government position as to the rights, wishes and interest of the people of Gibraltar has been consistent throughout the years since the question of Gibraltar was first discussed in the United Nations in the early 60's. The British Government have throughout insisted that the rights and wishes of the people must be respected. The British Government does not say; "We think this is good for the people of Gibraltar so they must have it". I have no doubt therefore that when the negotiations commence, if they commence, proposals for any cooperation on the basis of reciprocity and full equality of rights will be discussed freely. They will also be agreed upon freely and on a mutually beneficial basis and with the way to closer understanding between those directly concerned. As Lord Carrington has said; "Gibraltarian representatives will be present at the negotiations." I will remind the House that in answer to a question in the House of Commons which sought a detailed explanation, as the Honourable Member has said, of the statement in the Lisbon communique on the subject of future cooperation on the basis of reciprocity and full equality of rights, the Lord Privy Seal said; "This part of the statement must be read in context. It was agreed that negotiations would start and direct communications be re-established. The detailed application of reciprocity and full equality of rights on which future cooperation will be made, will be determined in the negotiations." This is, I think, putting the matter very succinctly and very clearly and I have complete confidence that always we shall have the full support of the British Government and Parliament in protecting, if this should be necessary, the rights and wishes and interests of the people of Gibraltar. Therefore, I can well understand the fears and misgivings that have given rise to the motion before us. I think that our position in this matter could be worded in a different way but in a way which will fully safeguard and protect our rights and our interests. It will be recalled that when the Lisbon communique was published in Gibraltar on 11th April, on 12th April the Leader of the Opposition and I issued a joint communique in which, inter alia, we stated that our aims were to protect and safeguard our British sovereignty, our identity as a people and our practical interests, in particular matters such as housing, employment and full security and proper immigration control. We have maintained these aims and will continue to do so. I do not know what proposals may be put forward by the Spanish Government when the negotiations commence for future cooperation; they don't seem to be in much of a hurry about it, what is quite clear, as far as we are concerned, is that any such proposals must be considered in the manner laid down in the different communiqués to which I have given in what I have said today the only possible interpretation that it can have. I am, therefore, proposing an amendment which will incorporate the essential elements as I see them. I hope that the Honourable Mover will agree that the motion which I will put rewording his views will equally safeguard the possibility of unanimity. It would read as follows: that the question be amended by the deletion of all the words after the words "This House" and the substitution thereof by the following words: "considers that, following the Lisbon Agreement in

April 1980, and once direct communications have been re-established, consideration of any proposals for future co-operation on the basis of reciprocity and full equality of rights must be on a mutually beneficial basis and, in so far as such proposals relate to the rights and interests of the people of Gibraltar, should not be acceded to without the agreement of their elected representatives who will safeguard the legitimate rights of all sections of Gibraltar and the identity of its people." I think that the mover will approach this amendment in a sympathetic way because the mover himself on the 18th of June, when asked to comment on the statement by Sr Oreja in the Chronicle to which I referred previously, he is reported as follows: "Mr Bossano said that there were two possible interpretations of paragraph 3 of the Lisbon accord, one was that the Spaniards had the same rights as Gibraltarians on the Rock - which the GSLP rejected entirely and so do we - and the other was that Gibraltar should give the Spaniards some rights on the Rock in exchange for similar rights in Spain. The latter, Mr Bossano said, was a possibility but it had to take into account the relative size of Gibraltar and Spain." I agree entirely that relative size must be taken into account but I am sure that the Mover will agree that the other factors I have mentioned which are incorporated into the amending motion must also be taken into account.

HON J BOSSANO:

If the Honourable Member will give way, I would like to make a point. In fact, what he has quoted from the Chronicle was something that I said in moving the motion and in drawing the distinction between what reciprocity meant and what full equality of rights meant. This is why I cannot go along with any question of giving Spanish nationals full equality of rights because as far as I am concerned the question of giving them some limited rights in exchange for other limited rights is amply covered by the question of reciprocity.

HON CHIEF MINISTER:

I can understand the Honourable Member saying: "I do not agree to this being argued," but the point is that we have to live with the Lisbon Agreement, you may not wish to live with it but we who have the responsibility to advise the British Government, must agree with it and make the best of it, not the worst of it and in that respect I entirely agree that relative size must be taken into account. Reciprocity means precisely that and there cannot be reciprocity, there cannot be fair reciprocity or acceptable reciprocity which would give 33 million people the same rights in 2½ square miles of territory than 23,000 people in the whole nation which has 40 million people. I hope the Hon Member will agree that other factors that I have mentioned which are incorporated into the amending motion must be taken into account. The amending motion safeguards our position completely but it also leaves the door open to the possibility which the Honourable Member envisaged last month. Therefore, Mr Speaker, this motion,

which has been the subject of consultation with the Honourable and Learned Leader of the Opposition, we propose as being the broadest way in which we can safeguard the interests which are specifically mentioned here and, indeed, is a directive from this House as to what the main parameters should be of any representations that may be made in connection with these matters. I commend the amendment to the House.

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

The House recessed at 1.00 p.m.

The House resumed at 4.30 p.m.

MR SPEAKER:

I would remind the House that we are debating the amendment to Mr Bossano's motion.

HON P J ISOLA:

Mr Speaker, I think there is a danger that motions are put forward in the House putting forward an interpretation of an Agreement which is not one that is acceptable, the interpretation is not acceptable. The motion, and the Hon Mover when he was moving it, seem to imply that Spanish nationals, under the Lisbon Agreement, are entitled to be given full equality of rights with Gibraltarians in Gibraltar. Therefore, we move that they should not be given it and therefore if you are not in favour of that then you are agreeing that the Spaniards will be given full equality of rights with Gibraltarians in Gibraltar. That is not what Lisbon says and I think it is dangerous to give the impression in Gibraltar that that is what Lisbon says so that at some future date somebody can say, "But you people knew, if that is what Lisbon said and you accepted it, that is why you passed a Motion in the House saying they must not have it and therefore you were against the Lisbon Agreement because you agreed that it said that." I think the Lisbon Agreement, if I may say so, has to be read, as far as the Gibraltar position is concerned, by what the British Government said in that statement. It was a joint Anglo/Spanish statement that clearly put the point of view of each Government and I think the overriding statement in the Lisbon Agreement is that the British Government will fully maintain its commitment to honour the freely and democratically expressed wishes of the people of Gibraltar as set out in the preamble to the Constitution. Therefore, anything that fundamentally affects the status of Gibraltar must be subject to the freely and democratically expressed wishes of the people of Gibraltar. That is, to my mind, what we must put forward as our own point of view, the fundamental thing in the Lisbon Agreement and anything that is put forward that is a contradiction of that must fall. This question of the wording of the communique again I think it is quite clear that the Spanish Government agreed to suspend the application of the measures at present in force.

That is the next obvious fact and then, coming from that the frontier having been opened, the restrictions having been lifted etc., both Governments agreed, as a matter of policy, that there should be some cooperation in the future in the area which of course is not unnatural. If the relations are friendly and everybody has settled down to a period of normality it is not unnatural that we should not provoke one another more than is absolutely necessary. Therefore, they agreed that future cooperation should be on the basis of reciprocity and full equality of rights and I take that phrase as one phrase, not as two distinct phrases. There should be reciprocity and full equality of rights when one side is giving something to the other by agreement. I cannot think of many concessions that we would want but supposing we wanted freedom to establish in Spain for Gibraltarians, the Spaniards would be entitled under this communique to say that there must also be freedom for Spaniards to establish themselves in Gibraltar and then we would say, presumably, "That is all very well, we are 20,000 or 30,000, you will not notice our establishing there but if you all decide to come to Gibraltar we would not be able to fit you in," and there must be a certain amount of give-and-take. Then, I suppose, also, the Spanish workers who come and work in Gibraltar, as I think inevitably they will do, they should be entitled to join a Gibraltar Trade Union just as much as a Gibraltarian worker or a Moroccan worker can join a Trade Union. When we start interpreting this sort of agreement we must be careful not to interpret it in a way that is not what it says. I think that the next paragraph talks of practical cooperation. Again, Mr Speaker, there it is, it talks about a mutually beneficial basis so if any particular aspect of the matter is not beneficial to Spain then they will not agree to it, I suppose, and if it is not beneficial to us we will not agree to it and this is the way, I think, we must go about interpreting this agreement if there is going to be any measure of goodwill or any measure of normality to be returned to this situation. We are not going to have anything thrust down our throats the same way as we are not going to be able to thrust down anything down the Spaniards' throats. This is going to be an open frontier situation, we presume, in which normal frontier good neighbourliness, call it what you like, will presumably exist and there will be no compulsion between one side and the other. I think to look at the Lisbon Agreement as the opening of a new era of compulsion is to misinterpret it and to misunderstand it. If what is going to happen is that we are going to have to accept everything that we are told to accept, then there is no new spirit, no new friendship and this is why it is important to realise and to grasp that as far as we are concerned, and I think it is true to say as far as the British Government is concerned, the lifting of restrictions on the border has to be done as a matter of good faith and as a matter of honour, it has to be done with no pre-conditions of any kind and if we are getting into the situation where we are being asked for pre-conditions and conditions are being placed, then the Lisbon Agreement is not being honoured and then, presumably, in that sort of spirit the frontier may not open and if it does not, so be it. What we have agreed on the Gibraltar side, as I understand it

is, to accept the Spanish gesture of lifting restrictions and having direct communications once more and then in that sort of spirit to discuss all matters on which we have disagreed in the past. I think it must be abundantly clear to the Spanish Government that this is not going to be a way in which things are going to be rammed down our throats and that is clearly set out, that is on the basis that we had accepted the Lisbon Agreement and is set out on the British Government's commitment to the people of Gibraltar. Having said all that, I do not think that we should be party to a motion that itself seems to misinterpret the Lisbon Agreement. If normality comes back to the situation, if the Spanish Government show genuine appreciation and understanding of the rights and feelings of the people of Gibraltar, then it is possible in that atmosphere that a modus vivendi may come along and so forth. It is on that basis, on that sort of understanding, once direct communications have been re-established, that any proposals that are put forward for future cooperation on the basis of reciprocity and full equality of rights, must be on a mutually - beneficial basis and obviously any proposals that relate to the rights and identity of the people of Gibraltar and the interests of the people of Gibraltar, are proposals that cannot be acceded to without the agreement of the elected representatives of the people of Gibraltar and this is something obviously that we must all fight for. We are not going to, after having spent 15 years standing up for our rights, we are not going to merely because direct communication have been re-established, we are not going to give up one single bit of our heritage and for what we have fought for. Of course we are not. If in so far as any proposals that come along for future cooperation appear to be contrary to what we conceive to be our interests and our wishes then, of course, they will not be agreed. They cannot be agreed because they will not be mutually-beneficial and we must be the judge as to what is beneficial to us or not. The amendment that has been proposed by the Hon and Learned the Chief Minister on which he has consulted me I think is an amendment on which we can all vote especially in so far as it goes towards clarifying, if that is necessary, our own attitude and our own interpretation to the Lisbon Agreement which we must stand for. We cannot go saying that the Lisbon Agreement means that a Spaniard can come to Gibraltar, set up and vote in Gibraltar because the Spanish statute of 1969 which a Gibraltarian could take and take all his worldly goods to Spain, would allow that Gibraltarian to vote in Spain etc. They cannot come to us and say; "We gave you the "Decreto" in 1969 now you give us your "Decreto" in 1980 drafted in similar phraseology so that any Spaniard who wishes to come to establish in Gibraltar can sell his worldly possessions in Spain or bring them to Gibraltar without paying import duty. etc. Then he can come and vote in our elections and have all the civil rights that a Gibraltarian has. This will be said, I have no doubt about it, I have no doubt the Spanish Government will say the Gibraltarians have a right to come to Spain, of course they will say that, I have no doubt they will, but we will say "Yes, so what? We did not ask Castiella to invite us all to leave our homeland and go and set up in Spain. We did not ask him to give that invitation to us, he did it freely

under no compulsion." We are not disposed to do the same thing, of course we are not, because by doing that we are in effect asking for Gibraltar to be absorbed into the Spanish state and that is what we have been fighting for for the last 15 years. These facts, Mr Speaker, are so obvious to my way of thinking that to put them into question in a motion, to make suggestions that elected members to this House are less loyal to the principles for which we have fought for for the last 15 years just isn't fair. We recognise or at least a lot of Members of the House recognise that Spain exists and we recognise that is a fact of life that we must live with. Others are more reluctant to recognise it and so be it. I think it must be made plain and every time a motion of this nature is proposed we have to make it plain by amendment, if necessary, where we all stand in this. As I said before, in agreeing to the Lisbon Agreement, although with reluctance, we will say and we said it, we did not agree to negotiations taking place, we accepted it and we accept it on the basis of the fundamental safeguards contained in that agreement. As long as we are elected representatives of the people of Gibraltar I cannot see any British Government seeking to push down our throats any sort of status or any suggestion that in effect affects the legitimate rights of all sections of the people, be it trade, be it the worker, be it Trade Unions, all these institutions that we value so highly or be it the identity of the people of Gibraltar. But if it is necessary to say it, we say it, that anything in the amended motion that relates to the rights and interests of the people of Gibraltar cannot be or should not be acceded to without the agreement of the elected representatives who will obviously safeguard the legitimate rights of all sections of Gibraltar and the identity of its people. I hope that the Hon Mover will realise that in moving this amendment the House itself is clarifying its position and the positions of the collected representatives on what may well be a thorny point in the Lisbon Agreement but it will be one that we will have to fight with once the situation arises, once the direct communications have been re-established without pre-conditions and without any derogation from the spirit of the Lisbon Agreement which was meant to be, as we understand it, and I think as the Spaniards tried to put it forward, as the opening of a new era where force was not to be the governing factor, siege was not going to be the weapon that was going to be used against the people of Gibraltar. We like to think it was that, if subsequent action would appear to indicate the contrary or would appear that the Spaniards are still intent on trying to get Gibraltar by siege or by harassment, if that is the case, then we shall just have to carry on the way we have done for the last 15 years and this will just be another landmark in the historic struggle that the people of Gibraltar have been waging.

Mr Speaker, we will support the amendment to the motion and I hope the Mover will also support it so that we can have another nice unanimous resolution as we had in the last motion.

HON J BOSSANC:

Mr Speaker, I am very grateful to the Hon and Learned Member for his contribution because he has helped to convince me completely that I should oppose the amendment. The Hon and Learned Member seems to have an innate knack for insinuating that there is some ulterior motive in almost every motion that I bring to the House and I take particular objection to his remarks that there is presumably a suggestion that some elected members in this House are less loyal than others and he said that this is not fair. I assume that he was referring to me having made such a suggestion and I would ask where, in the opening remarks that I made in support of my motion or in the content of the motion itself, I at any time suggested or put in doubt the loyalty of other members of this House. I am entitled to question their judgement but I was quite at pains to distinguish between common objectives and differences in methods where I might be at odds with other members as to which is the best road to pursue in order to arrive at the place we all want to arrive. I take the strongest possible objection to any insinuation that I have put in question the loyalty of any member of this House and let me say, Mr Speaker, that if I ever want to do that I shall not mince any words in doing it, I shall say so quite categorically and not insinuate it. He has also pointed out the danger in putting an incorrect interpretation to the Lisbon Agreement. Well, I haven't put any interpretation to the Lisbon Agreement, Mr Speaker, what I have said is that I am unable to obtain an interpretation of the Lisbon Agreement from the people who signed the Lisbon Agreement and if the Honourable and Learned member is better informed that I am then, perhaps, he would do me and the rest of Gibraltar the courtesy of telling us exactly what it means because I do not know what the Lisbon Agreement means, I don't know what the words 'full equality of rights' means. I know one thing, I know that Sir Ian Gilmour refused to spell it out for Mr Patrick Wall in the House of Commons, that I do know, and I know the Foreign Office refused to give me an answer, that I do know. So I am not saying to the people of Gibraltar or to the House of Assembly; "I know what full equality of rights means, I know the commitment that we have entered into," I am saying that I don't know and because I don't know I would rather block one possible negative interpretation which may not be there but I would rather eliminate the danger even if it doesn't exist, and err on the side of caution, than contradict myself the way the Honourable and Learned Member has done in his contribution just now by saying, first of all, that we shouldn't do what he insinuated I was doing and then going on to do it himself. It may be that when the time comes and that clause is going to be put into effect, we may have to fight once the situation arises but then if we say we may have to fight once the situation arises but then if we say we may have to fight is he not saying that may be that is what it means, otherwise what is there to fight about? If he is saying that in fact there is full protection already in that the Lisbon Agreement is subject to the approval of the people of Gibraltar, then why the amendment; why do we need further protection in having any implementation having to be subject to the agreement of the elected representatives if we already are fully protected,

as he says? If we are already fully protected then the position of the Honourable and Learned Member and of the other Members of the Opposition should be that my motion is superfluous and that there is no need to introduce another motion in its place because in fact like every other amendment that I am subjected to this is another motion, this is not an amendment to my motion and let me say that although I shall not be supporting this amendment because I draw a distinction between the implications of the word "reciprocity" and the implications of the words "full equality of rights," I draw a distinction and I am entitled to do so in the absence of an answer from the British Government as to what it means to them, and they are the ones who signed it. If the British Government said to me: "We signed this agreement with Spain and we have made it absolutely clear to Spain what it means." But if the answer that I get from the British Government is "What that means will become apparent in the course of our negotiations", then I am afraid I am not prepared to leave it in the air and the other 14 members of the House may wish to do so and it may be that they are right to be more trusting than I am. That does not mean that they are less loyal than I am, they have got every right to be more trusting and then if my mistrust is misguided then nothing will have been lost but if their trust is misguided then they will have to answer for it but not me, Mr Speaker, because I am not prepared to go along that road. I am not prepared to say that I will accept the Lisbon Agreement with reluctance, either I accept it or I reject it and I reject it and my Party rejects it because either we enter into it because we want it and because we believe it is a good thing or if we have got mixed feelings about it we make it absolutely clear that it has nothing to do with us. If the British Government wants to go ahead, fine, that is the British Government's responsibility but we are not prepared to be half in and half out. I think that our position may be simplistic, as the Honourable and Learned the Chief Minister says of the motions that I bring to this House. I prefer to think it is simple, as simple as the feelings of the man in the street. Perhaps, because our policies are closer to what the man in the street wants and the motions that I bring to this House reflect what people think and feel in Gibraltar. I believe that to have passed the motion in its original wording would have been simply to state categorically unambiguously what 99.9% of Gibraltarians feel. There is no set of circumstances that can be envisaged where we would want to give Spanish Nationals full equality of rights with Gibraltarians. I have not said that the Lisbon Agreement says that. I am saying we are saying that we are not prepared to grant such a concession to Spain. I haven't said that we disagree with the Lisbon Agreement because I know that the others would not be able to support such a motion. I haven't said we should break the Lisbon Agreement because I know that that is impossible for Honourable Members who have already committed themselves and if in fact the Lisbon Agreement in its clause which has reference to full equality of rights, does not mean what my motion means then that is fine one is not in conflict with the other so what is the objection to supporting it? I was at pains, Mr Speaker, in introducing the motion to identify the fact that the words "equality of right" did appear in the Lisbon Agreement but that I had added to those

words "with Gibraltarians in Gibraltar" because when I have asked for clarification of that phrase I said to the Foreign Office: "to me there are two possible ways of understanding equality of rights. Do you mean that in the context of reciprocity whatever rights Spain gives a Gibraltarian, Gibraltar gives a Spaniard, or do you mean that the Spaniards will be in all respects equal to a Gibraltarian in Gibraltar?" And I was told that they didn't want to speculate. Well, I have never known anybody to sign an agreement and then not want to speculate about what he signed. There is no need to speculate, you sign something and you know what you sign. And if people ask you and you have got nothing to hide, you tell them. Perhaps, Mr Speaker, if this thing was being handled the way I would have liked to have seen it handled, with far more information coming out in public, there would be no need to speculate. I am not an advocate of speculation but in the absence of information, speculation cannot be stopped. And when one gets one version by ringing up the Embassy in Madrid or the Ministry of Foreign Affairs in Madrid and another version in London. Mr Speaker, there are two parties to an agreement and one party says they are not prepared to say anything and the other party is prepared to give some information, then some information is better than none and if the information that the Spaniards are giving out is incorrect and deliberately twisting facts, then where does that leave the Honourable and Learned Member who is reluctantly accepting an agreement with a party that is deliberately twisting everything that agreement says? How can he be so confident that there is already sufficient and full protection in that agreement and then why do we need to make it subject to further approval by Members of the House? He has said that the spirit of the Lisbon Agreement is that we are entering a new era where we will not have to accept whatever the Spaniards want but that in fact they would be removing all the restrictions without pre-conditions and then we have agreed to discuss all the matters which we have disagreed on in the past. Yes, Mr Speaker, not just the matters we have disagreed on in the past, the matters we have refused to discuss in the past as well and I haven't agreed to do that. Other Honourable Members may have agreed to discuss anything that the Spaniards want to put on the table but I haven't agreed it and the Honourable Member was very intense about whether one had a mandate to amend divorce laws on Friday but he does not seem to be equally intense about whether we have a mandate to agree because Lord Carrington and Sr Oreja decided so in Lisbon that once the restrictions are removed Gibraltar's sovereignty can be discussed between Britain and Spain notwithstanding the fact that we have got a motion that has been passed unanimously in the House of Assembly saying that sovereignty is not a matter for discussion between Britain and Spain. I am sorry that I have had to take the line that I am taking now, Mr Speaker, but I feel I have been drawn into it because I have not until now given an indication in this motion anyway of precisely how fundamental my disagreement is with our acceptance of the Lisbon Agreement as a fait accompli and I have not done that because I have chosen to make my own point and give other Members the benefit of the doubt confident that in fact their loyalty to Gibraltar

and its people and its future is as unquestionable as mine is but I cannot go along with them in their willingness to agree to things reluctantly which they know in their hearts that their feelings on this issue really are as strong as mine. The fact is that quite often one finds that people are prepared to express things during the tea break which they are not prepared to express once it goes down in Hansard. Mr Speaker, I can only say one thing all the time and I don't beat about the bush so I am afraid I will not be supporting the amendment of the Honourable and Learned Chief Minister although I must say that if, in fact, it helps to make the situation safer and tied up better than it did in the Lisbon Agreement, which I am not sure whether it does or not because on the one hand the Honourable and Learned Leader of the Opposition says it does but on the other it doesn't, if it does make things better by making it subject to the acceptance of the elected representatives, then I am glad because it seems to be a step in the direction that I want to move. If it is no greater step than is already there in the Lisbon Agreement then in fact I think the time of the House of Assembly is being wasted in passing a motion that is superfluous because we are already fully protected as we have been told by undertaking in the context of the Lisbon Agreement that whatever is agreed will be subject to the approval of the people of Gibraltar. I would certainly prefer that anything that is agreed, if ever anything is agreed and if ever the restrictions are removed, will then be subject to debate in this House and to a motion in this House and at least even if it is passed it may well be passed by 14 to 1 like many other things, Mr Speaker.

HON MAJOR R J PELIZA:

I think, Mr Speaker, that I am usually very critical on matters of the nature that are being discussed today and I feel very strongly the same as my Honourable Friend here on my left, about the safeguards that we should have. I have listened with great attention, Mr Speaker, with what has been said and I got a letter published in The Times not so long ago in which I drew attention to the question of the reciprocity that we are discussing today. I think we should take into consideration the fact that we are not directly responsible for foreign affairs and that when our leaders approach the problem of Gibraltar vis-a-vis Spain, whatever consideration the British Government take into the matter we simply have to somehow try and be as accommodating as possible because otherwise I think our position would be in an extremely difficult situation with regard to Her Majesty's Government. One has, I think, to realise that foreign affairs at the best of times is walking over a very tight rope and it requires an enormous amount of skill and diplomacy to be able to get across the wire. I personally am very pleased with the position which the Chief Minister and the Leader of the Opposition have taken here today. I think it has been as strong and firm as I could possibly expect it to be and I think the Chief Minister and the Leader of the Opposition both know that I am usually very critical on these matters. It

takes a lot I think to satisfy me on these matters. I think we had a motion on the question of the negotiation on sovereignty and it was fully established that it was objectionable to the elected members and the motion was passed. The only possible loophole that I could see in the Lisbon Agreement that could undermine our position, there may be others, was the question of equality of rights. Having listened to the arguments used today by the Chief Minister and the Leader of the Opposition, I can see that they are very determined to see that there is no undermining of our position in Gibraltar in any possible way. The extension that my Friend, Mr Peter Isola, made with regard to the preamble of the Constitution in which in fact I can see being stated here in the motion when it refers to "in so far as such proposals relate to the rights and interests of the people of Gibraltar", I think that makes in my view very strong indeed the position that the Chief Minister and the Leader of the Opposition have taken in this matter. I was very concerned myself about the interpretation of that particular sentence. I think Gibraltar was very concerned with that particular sentence. I am much more relaxed today after having heard the position that the Chief Minister and the Leader of the Opposition have taken. I don't think we can ask for more. What more can we ask that if they are in difficulties they should come back to this House to see how best we should tackle it. I am not suggesting for a moment that we are going to be in difficulties but if there is doubt in the town, I think it is good that the matter should be cleared in the way that it has been cleared in the House here today. As far as I am concerned I fully support the amendment.

MR SPEAKER:

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

HON CHIEF MINISTER:

Mr Speaker, I am glad of the remarks on the last speaker particularly on this question of responsibility for foreign affairs. The mover speaks as if we were running the world from this little House of Assembly and that we are fully responsible for everything that happens between Spain and Britain over Gibraltar. I think we have reached a stage where our voice and our advice is increasingly valuable and increasingly listened to and we have reached the stage where the Foreign Secretary has undertaken to have representatives of Gibraltar at any talks in the future and as I say it is not our presence at any talks, in my view, just to make sure that the assurances in the Lisbon Agreement are carried out by the British representatives but in order to be able to bring home to the other side what the people of Gibraltar feel. I think it is almost a masochistic exercise to try and devise every possible phrase that can be misinterpreted and putting it into words. There are hundreds of things

that we are not prepared to do but we do not have to spread them all out here. The things that we are prepared to do may be much more limited and these are the ones that we have to be careful about. I really do not understand the difference of approach by the Hon Mover to what the Hon Mr Isola said because though we have only had a brief discussion on this it looked to me very much that though taking it from a completely different line we were both following exactly the same thinking which I think is what is important, that our thinking on this matter should be ad idem. Therefore, I do not know why he has reacted much more violently to the remarks of the Hon and Learned Leader of the Opposition than to mine. The amendment seeks to obviate something that should not be taken for granted and should also not be such as to have to bring it to the House to do away with it because the matter has not yet arisen. There are many matters that will arise and it is only by our representing the feelings which we know so well and which we carry so well in our hearts in this matter that we can make progress. I think what the Hon and Gallant Major Peliza had said before is true. There are 28 lines in the Lisbon Agreement at an average of eight words per line, about 225 words in the Agreement and we could think from now until doomsday of all the permutations that you can give to those words, but it is the spirit in which we have to approach this matter and the undertakings that exist in the Agreement which has been entered into by the British Government fully aware of what they mean and that, I think, is the greatest safeguard. For as long as we have to rely, and I think it would be a sad day if we did not have to rely on Britain to look after our foreign affairs because I think that the only alternative for the time being would be that somebody else would look after our foreign affairs, but as long as the foreign affairs of Gibraltar are looked after by the British Government and for as long as they give us the undertaking that safeguards the people of Gibraltar, we have to also walk the tight rope of diplomacy.

Mr Speaker then put the question in the terms of the Hon the Chief Minister's amendment and on a vote being taken the following Hon Members voted in favour:

The Hon A J Canepa
The Hon Major F J Dellipiani
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon A J Haynes
The Hon P J Isola
The Hon A T Loddo
The Hon Major R J Peliza
The Hon J B Perez
The Hon G T Restano
The Hon W T Scott
The Hon Dr R G Valarino
The Hon H J Zammit

The following Hon Member voted against:

The Hon J Bossano

The following Hon Members abstained:

The Hon F E Pizzarello
The Hon J J Caetano

The following Hon Member was absent from the Chamber:

The Hon I Abecasis

The amendment was accordingly passed.

MR SPEAKER:

If there are no other contributors I will call on the Hon the Mover to reply to the motion, as amended.

HON J BOSSANO:

Mr Speaker, I do not intend to say much more. I shall just want to put on record that I shall be abstaining on the final vote having made the point on the amendment, because it is obvious that the wishes of the House are as contained in this motion and I do not question the loyalty or the goodwill of any Member of the House, I just question their judgement.

MR SPEAKER:

I will then put the question which is that: "This House considers that, following the Lisbon Agreement in April 1980, and once direct communications have been re-established, consideration of any proposal for future cooperation on the basis of reciprocity and full equality of rights must be on a mutually beneficial basis and in so far as such proposals relate to the rights and interests of the people of Gibraltar, should not be acceded to without the agreement of their elected representatives who will safeguard the legitimate rights of all sections of Gibraltar and the identity of its people."

On a vote being taken the following Hon Members voted in favour:

The Hon A J Canepa
The Hon Major F J Dellipiani
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon A J Haynes
The Hon P J Isola
The Hon A T Loddo
The Hon Major R J Peliza
The Hon J B Perez
The Hon G T Restano
The Hon W T Scott
The Hon Dr R G Valarino
The Hon H J Zammit

The following Hon Members abstained:

The Hon J Bossano
The Hon F E Pizzarello
The Hon J J Caetano

The following Hon Member was absent from the Chamber:

The Hon I Abecasis

The motion was accordingly passed.

HON P J ISOLA:

Mr Speaker, I have the honour to move: "That the Hon Peter J Isola do have the leave of the House pursuant to Standing Order No 26 to introduce a Bill for an Ordinance to provide that the holders of certain public offices shall not be disqualified for election, that the holders of other public offices may stand for election and for matters incidental thereto."

It will be recalled that in the Constitutional Conference of 1968 it was agreed that the question of who could or could not stand for election to the House of Assembly was a matter for the elected representatives of the people of Gibraltar. This is what was agreed at the Constitutional Conference. However, when that agreement was translated into legislation, the Constitution said: "if the legislature shall so determine."

The word used was the "Legislature" and I was reminded that Legislature means the Governor and the Executive and the Elected Members of the House. As a result of that, the whole question of eligibility seems to have been going backwards and forwards for some eight years. At the ceremonial opening of the House I did say that this question of eligibility for standing for election was something on which we felt strongly and that I would be taking the unusual step, unusual in this House, I do not think it is unusual in Westminster, of introducing a Bill or getting leave to introduce a Bill on this point which, I said, would suggest amendments to the law on which I hope the House could take a decision. Mr Speaker, the Bill that I am seeking leave to introduce is based on our existing House of Assembly (Public Offices) Ordinance, 1976 the format is the same but, of course, I have expanded on what is in the existing law. I think it would be a good exercise for this Bill to be discussed in detail in this House at a later stage, if leave is granted, when it comes for Second Reading and, possibly, to a Select Committee of the House. I say this because I believe that it is in accordance with the spirit of the Constitution of 1969, following the constitutional discussions that were held in 1968, that the question of who should be able to stand or not to stand to the House of Assembly was an internal matter for the elected representatives of the people of Gibraltar, it was an internal matter for the people of Gibraltar, subject, of course, to the overriding respon-

sibility of the British Government. I think we have got to deal with this once and for all and I think that the appropriate place is in this House early in the life of the Legislature, rather than at the end of a Legislature when people can say: "You want this changed because of this or that." It is better if we do it now because there are 3½ years to go to the next Election and we should clear the position. Mr Speaker, what the Bill seeks to do that I am introducing briefly is to extend the number of people who can stand, first of all in the Ministry of Defence Departments. Just before the elections I tried to get the Governor to use his powers under the existing Ordinance to enable a particular grade in the Ministry of Defence to be prescribed as a grade equivalent to or below the grade of Clerical Officer. I was unsuccessful on the technicality that it was not an equivalent grade even though the man concerned was just getting £5 more a year than the grade that was allowed. That is all past history but in the course of my discussion a note was given, which I was given, as to this particular office and I was told it was the office or the grade of Accommodation Services Accountant and the advice that the Governor got, and I was given the piece of paper, was that the Accommodation Services Accountant is not in first-line management, which was one of the prohibiting criteria when establishing the rule as to who could or could not stand, he was not in first line management and the impression I got from the discussions I held then was that that was the law and the Governor could not make this promulgation because Accommodation Services Accountant was not a grade equivalent to or below the grade of Clerical Officer. I detected a feeling amongst the Ministry of Defence people that I had dealings with on this that they were not particularly worried about Ministry of Defence Civil Servants standing for election as long as they were not in first-line management and a few other grades dealing with confidential matters.

In the Bill I have said, in the First Schedule, that any office of emolument under a department of the United Kingdom which is non-industrial employment except such offices of emolument of a grade which the Governor may by order prescribe to be managerial. Mr Speaker, on that I should say that when the Bill is published I am going to insert a word in front of managerial, "middle" managerial, because I understand that there is low-managerial, middle-managerial and high-managerial and I understand that an EO is low managerial and then HEO is middle managerial and I do feel that EO's should be able to stand in the Ministry of Defence and therefore I am modestly going a little further forward to middle managerial, anything under HEO in the Ministry of Defence should be able to stand for election in accordance with the rules of the Ministry of Defence. In this connection it is interesting to see that there are regulations in the Ministry of Defence for people who stand for election and get elected from which we could take a lead. There is provision for reinstatement. Within three months of ceasing to be a member, anybody who resigns after standing for election, there is provision for paid leave for industrials or non-industrials who get elected and are not in Government and then there is provision for reinstatement for a person who becomes a Minister although they do not oblige him to resign

but if he does resign there is provision for reinstatement. The Bill will suggest that we apply an entirely different test to Ministry of Defence employees than to Gibraltar Government employees because Ministry of Defence employees do not work for the Government of Gibraltar, they work for the British Government and I am suggesting that anybody under middle managerial grade should be able to stand for election in the Ministry of Defence. The Second Schedule of the Bill which deals with the persons who can stand in the Gibraltar Government, seeks to amend the present position which is that only people in industrial employment in the Gibraltar Government are allowed to stand. This Bill brings in non-industrials, allows them to stand for election. In fact, in the intervention of the Chief Minister at the time of the motion of the Hon Mr Bossano in the December session just before the election, there were proposals which he said he was prepared to discuss which did include non-industrial grades being able to stand for election. Hon Members will remember my own intervention on that and what I have done here, again I have not been anything like as radical as I am sure my Hon Friend Mr Bossano would have liked me to have been in this Bill, I am seeking to go forward slowly and experimentally and what we are seeking here is that any Clerical Officer prescribed by the Governor or any officer as being a grade equivalent to or below the grade of clerical officer should be able to stand, that is taking the step as exists in the law as far as the Ministry of Defence and then I am asking the House to put in two specific types of Government employees, one is the Government teacher and the other is the Government nurse who are not employed in the administrative grades and, again, I should say that in the published Bill that comes out there is going to be again a slight alteration here in case there should be any misunderstanding of what I mean. I will say that any office of emolument under the Government of Gibraltar which is of the grade of qualified teacher, in the published Bill it will be qualified or graduate teacher in case it should be misinterpreted that a graduate is not a qualified teacher, the intention is any qualified or graduate teacher other than head teacher and deputy head teacher or of a teacher grade prescribed by order of the Governor as being a grade equivalent to or below the grade of qualified or graduate teacher. So we are asking for teachers to be allowed to stand for election. Mr Speaker, I recognise in the Bill that there may be a case for people holding responsibility posts not to be allowed, I don't think there is, but that is something that is left ad referendum and I would suggest that a Select Committee of the House could look at the detail of that but the principle that teachers should be allowed to stand is enshrined in the Bill that I am asking the House for leave to introduce. The next one is the nurse and there what I have put is the grade of nurse other than nursing sisters or charge nurses, in other words, nurses who are in charge of sections or whatever in the hospital. I would be quite happy to have them in the Bill but again what I am trying to do in this Bill is to move modestly forward but to move on this issue of eligibility which has been the subject matter of election speeches, it has been the subject matter

of controversy for many, many years and I want to put a Bill before the House that the House considers and they either accept the principle that civil servants in certain areas may stand or they do not but let us have it out and let us have it out clearly. The Bill that I am seeking leave to introduce is a modest, and I stress it, a modest advance, I think, which should not really harm or upset too much the sensibilities of those who feel that civil servants should not be able to stand. Of course, under the Bill all these people will have to sign the undertaking that they will resign if elected to the House of Assembly and then they will resign as civil servants so that all this Bill will do, really, is to enable people to be nominated, stand for election at least, and make them resign only when they succeed. If they do not succeed they go back to their jobs, that is all it is seeking to do. I want to be clear because there are a lot of other permutations that could be worked out in a Bill. I would hope, Mr Speaker, that the Gibraltar Government would make the same sort of rules about reinstatement as the Ministry of Defence has done in its efforts to make it that much easier for people who wish to stand for election and wish to contribute to public debate. Mr Speaker, at this stage I am only asking for leave to introduce this Bill, I am not suggesting that Members who vote in favour of giving me leave to introduce the Bill are then bound to vote in favour of the Bill once it comes to Second Reading in the House but I do think that I certainly owe it to those who elected the DPBG in the last election and I think everybody who has talked about this, and the Government has from time to time talked about allowing certain persons or certain grades in the civil service to stand, I think that the Bill should be allowed to proceed in this House and that, eventually, on Second Reading, I would be quite happy if it was passed in its present form but again knowing the sensibilities of the Government and, indeed, the Honourable Mr Bossano, on this matter perhaps the House might agree to put it to a Select Committee to look at it, a Select Committee representing all sides of the House, to try and come to some liberalisation, if possible, by agreement, but I think that we have to face the problem of eligibility and I think we should face it long before an election, not six weeks or six months before one. Mr Speaker, I commend the motion to the House and I hope the House, in accordance with the democratic traditions that exist in Gibraltar, will give me leave to introduce the Bill.

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

HON J BOSSANO:

Mr Speaker, I shall be supporting the motion that the Honourable Peter J Isola do have leave of the House but I shall not be supporting the Bill that he will be introducing if he does get leave of the House because, in fact, it is a matter that we have discussed before and indeed I think that the timid steps that he himself admits he has taken are so small in rectifying the situation that all that they would succeed in achieving would be to put off the much deeper

reform that is required. I support the motion because I support his right to introduce a Private Members' Bill, I think it is a good thing for the House that there should be attempts at legislation from the Opposition benches as well as from the Government benches and, of course, I welcome an opportunity to air my own views on the subject which discussing the Bill will give me. I think, perhaps, his final suggestion that as an alternative there might be a Select Committee to come up with proposals acceptable to all parties provided, of course, that the Select Committee was able to work on the subject fairly quickly and I myself am sceptical because I have only served on one Select Committee and that one had to have its work cut short because the House of Assembly had finished its four years and the Select Committee had not finished its work. Because of that experience I tend to be somewhat sceptical about Select Committees but it doesn't have to be repeated, may be I was just unfortunate on the one I served, Mr Speaker, but I will be supporting the motion.

HON CHIEF MINISTER:

Mr Speaker, I think the Honourable mover has gone into areas precisely to persuade Members to accept it but I am not going to deal with the merits of the matter that he has raised because I don't think this is the time to do so. This matter was last discussed in the House of Assembly on the 5th and 6th December, 1979, when the Honourable Mr Bossano proposed a motion which was defeated, it was not even amended. During the course of the debate, I pointed out the difficulties inherent in the problem and the principles on which the GLP/AACR had approached this matter and I went on to describe that approach and summarised the proposals. I referred to the list of grades which the Government was prepared to include but the motion was defeated. The matter was subsequently discussed with the Leader of the Opposition outside the House but agreement could not be reached on the list of grades which I provided. The House of Assembly was dissolved shortly afterwards and the matter has not been raised until now. I do not want to deal with the merits of the matter because I think that should not be dealt with at this stage but this often quoted agreement of the 1968 Constitutional Talks is something that there will be a time when we will want to see the minutes of whatever was agreed because in my recollection this was something that was raised outside the conference proper by the then IWBP. As the Honourable Mover has said, the interpretation given is something with which I have had nothing to do. Ministers are prepared to vote in favour of the motion for leave to introduce the Bill. This is because we wish the matter to be discussed and not because we agree with the terms of the Bill in its present form. For one thing I have asked that the Ministry of Defence should be asked formally what their views are and not just rely on the particular person who may be in a particular job at a particular time. In that respect I have no qualms whatever the Ministry of Defence agrees in so far as their employees are concerned. Our principle is based

on something different, it is not in limiting the people but in the principle of master and servant. Therefore, whatever comes out of the consultations with the United Kingdom, good luck to the promoters of the Bill because there is no problem as far as we are concerned. In fact, we did make what was considered then a breakthrough when the original consent was given at the time of Mr Alan Lennox-Boyd, when he was Secretary of State, it must have been somewhere around 1958 or 1960, when consent was given to people of the clerical officer grade or equivalent and that was a great step forward, Clerk Grade 1 in those days, and then later on, after many many consultations with Maurice Xiberras, we did make some progress in some areas, cut the areas of difference, but there are still areas of difference but we do want this matter to be discussed, we do not want to discuss the matter at this stage, we want it discussed and we want to air our views and explain our views because it is not an anachronistic view it is I think a realistic one based on principles. At the time of the debate, the matter was not proceeded with because the Opposition were not prepared to accept the Government's list of grades but wanted to add others. This issue will be discussed in the Second Reading of the Bill debate and not during the debate on the motion for leave to proceed, that is why I do not propose to deal in detail with a number of matters raised by the Leader of the Opposition. I think I would be less than fair if I gave any impression that Ministers are in agreement with the Bill. Therefore it should be made clear at this stage and I hope that before the Bill is published the Leader of the Opposition will look at it more carefully because apart from the mechanics of it I think some of the elements of the Bill are really bad because it goes back and throws a lot into the executive to decide and really puts back the ball from where it has been brought out from leaving it to the Government to decide particular grades in particular circumstances.

Anyhow, that is a matter for the mover. Finally, the Governor has signified that the Bill relates to a non-defined domestic matter and the Bill itself therefore as well as any amendment thereto require the consent of the Governor under section 35(2) of the Constitution. Section 35(2) of the Constitution says: "Except with the consent of the Governor, acting in his discretion, signified by the Attorney-General or by the Financial and Development Secretary, the Assembly shall not proceed upon any Bill (including any amendment to a Bill) that, in the opinion of the Governor, acting in his discretion, signified as aforesaid, relates to or closely concerns a matter that is not a defined domestic matter."

MR SPEAKER:

We would most certainly need the leave of the Governor for the purposes of considering the Bill.

HON CHIEF MINISTER:

I am not saying that we are debating this Bill because the Governor has given us permission to do so. What I am saying is that the Governor has signified his clear intention from the beginning, because there should be no misunderstanding, that the Bill will be considered to be a Bill in respect of a non-defined domestic matter and his consent will, of course, be necessary.

HON J BOSSANO:

If the Hon Member will give way. Mr Speaker, I would have thought that in the light of what the Honourable and Learned the Chief Minister has said, that it would be desirable that the Honourable the Leader of the Opposition should find out whether that consent would be forthcoming otherwise, surely, the House would be left in a very embarrassing position of having approved a motion giving leave and then find that the

HON CHIEF MINISTER:

If the Honourable Member will allow me to finish.

MR SPEAKER:

Perhaps the Honourable Chief Minister will finish and the matter will be made clear.

HON CHIEF MINISTER:

The position is that the Governor has been informed that Ministers do not agree that the Bill as drafted should be passed and I have given an undertaking to this effect and to the effect that amendments that may be proposed will be first discussed in Gibraltar Council. In the light of this undertaking the Governor has signified he will allow the Bill to go through for discussion. I think, perhaps, we ought to clarify that the Governor is acting on the advice, so far, on the advice of Ministers who have advised the Governor that we do not accept some terms of the Bill. The Bill must be discussed in Gibraltar Council where matters of a non-defined domestic nature are discussed and, of course, whatever decision is taken there with the advice of Ministers, will be reflected in the way in which we proceed because we ourselves have indicated that we do not like to bring it if it were a defined domestic matter. The position is that the Governor, having regard to the views that we have expressed, will act on the advice of Ministers in this respect.

MR SPEAKER:

May I, in furtherance of what the Chief Minister has said say that I have received a letter from the Hon the Attorney-General dated 15 July 1980, which reads as follows:

"Dear Mr Speaker, His Excellency the Acting Governor is of the opinion that the motion proposed by the Hon P J Isola to introduce a Bill for an Ordinance to provide that the holders of certain public offices shall not be disqualified for election, that the holders of other public offices may stand for election and for matters incidental thereto, relates to a matter which is not a defined domestic matter. His Excellency consents in exercising his discretion to the Assembly proceeding upon it." May I say that when I received this letter from the Hon the Attorney-General I felt that what the Attorney-General was signifying was the Acting Governor's consent to proceed with the motion. I, of course, wrote to the Attorney-General saying that, with respect, under the Gibraltar Constitution the House of Assembly does not require the consent of His Excellency the Governor to proceed on any motion whatsoever. Should the House grant Mr Isola his consent to proceed with this Bill in the light of His Excellency the acting Governor's opinion that the Bill relates to a matter that is not a defined domestic matter the House will most certainly require His Excellency's consent before he can proceed with the Bill. The position, as far as the Constitution is concerned, is exclusively as to whether the matter which is going to be introduced in the Bill is a non-defined domestic matter because if it is, in the opinion of the Governor, then he must give his consent and we cannot proceed without his consent.

HON J BOSSANO:

It seems to me that I accept that the Hon and Learned the Chief Minister has told us, basically, that it does require His Excellency the Governor's consent and that His Excellency has indicated that he will give his consent because he knows that the Bill as it stands will be defeated. We may have a thoroughly enjoyable time here discussing something the end result of which is already pre-determined. However, I would have thought that the power of the House to grant leave to the Hon and Learned Leader of the Opposition which I was prepared to support is an empty power if that is then subject to further conditions and I am not really sure that I want to associate myself in that context with supporting a motion to give leave to introduce a Bill which is only able to be discussed on the understanding that it is not going to be passed in its present form.

HON CHIEF MINISTER:

~~May I clear up the~~ matter and let me say that I am not the spokesman of anybody except myself. The Governor has got power under the Constitution to decide what is a defined or what is not a defined domestic matter. If I may say so,

this is not something that has been considered since notice of the Bill was given by the Leader of the Opposition. This is a matter which has been considered since the elections because it was part of the proposals on the other side to come to this stage and naturally when it is a sensitive area Government and the advisers of the Governor naturally look into this matter with all detail. This has been the subject of consultation with the Attorney-General over a long period. Even if it were a defined domestic matter and leave was being asked for it and we would consent to leave being asked for it, I would in all honesty say; "You are getting leave in order that the matter be discussed, but we are against it." What is happening now is that precisely because I think it is in the public interest that the matter should be discussed that I have advised that the matter should be proceeded with, not at this stage, at this stage we are agreeing to it being proceeded with on our own because it is nobody else's business. It would be just the same if it were to alter the Birds and Animals Rules, if it were purely a defined domestic matter, but it would be remiss of me not to say now that it has been described, particularly having regard to the remarks made by the Hon Member at the beginning of his introduction about the agreement at the Constitutional Conference, that it is declared, and on that the Governor takes legal advice and nothing more that it is a non-defined domestic matter when it comes. As far as I am concerned, irrespective of whether this is a defined domestic matter or not, we have objections to the Bill. Whether the objections are as far as the Governor would want to go or not is another matter to be seen in detail. We have not discussed this matter in Gibraltar Council but if the objections to the Bill are the same objections as the Governor has in respect of aspects of it, then it proceeds with his consent as a non-defined domestic matter because the Government's view and the Governor's view appear to be the same.

Having said all that what we say now is that we want the matter debated, we want the elected Government view expressed in debate and the matter thrashed out. If I did not refer to this now and referred to it later because it was not necessary now, then you could have said: "Why weren't we told at the time?" And if you say so too soon they say: "Why are we told now, it is not required." It is better that the matter should be known now because the Constitution has certain limitations and the fact that they have not been highlighted in the past is because there have been no occasions when this could happen. This is nothing new because the IWP Government were attempting to do this for two years and ten months and they were not able to do it.

HON J BOSSANO:

I was not aware of this, Mr Speaker, and when I spoke initially in stating the position that is very similar to the Government in saying that I would not be supporting the Bill as it stands but nevertheless supporting the motion because of the opportunity it will give the House to debate

it. I am grateful for the Hon and Learned Chief Minister's contribution because it brought a piece of information to light that I was not aware of but which is something I have to take account of in reconsidering my original position when I spoke in support of the motion because there is at least theoretically if a Member of the Opposition brings a Bill to the House, even if knows that the Government is not supporting it, theoretically the reason why members of the opposition can stand up and make speeches is in an effort to persuade the Government and if we know that it is impossible to persuade the Government

MR SPEAKER:

Let us leave it at that and see what happens.

HON MAJOR R J PELIZA:

Mr Speaker, first of all I think I should start by clearing up the point at the Constitutional Conference, and from there all the other arguments will flow. I remember distinctly and I am sure my Hon Friend on my right will remember distinctly and if we wanted some public evidence we could get Mr Solomon Seruya, as he was present too. At that time Lord Shepherd very clearly stated, after we had been pressing for at least teachers to be able to participate, the argument then used by the AACR was that in Gibraltar the Government remunerated the teachers whilst in the United Kingdom that was done by a local authority and a distinction was drawn which I think is purely technical. I think the functions of the teacher here and the functions of the teacher under the public authority are identical and therefore since the AACR for the purpose of reducing the chances of other parties getting into power

MR SPEAKER:

I must call you to order.

HON MAJOR R J PELIZA:

Anyway, the AACR did not agree with that situation and Lord Shepherd who was obviously very willing to concede the point said: "It is up to you to decide," those were his words. I do not know whether they were recorded in the minutes, if they were you will see that is what he said. Since then the IWPB tried very hard when we were in Government to try and get the Opposition to agree - the then Opposition was the AACR, - to the people within the Government and outside the Gibraltar Government, working for UK Departments, of arriving at who and who could not stand for election. That was a very long-drawn process because we wanted unanimity. Unfortunately, it then caught up with us and we were unable due to the General Elections to pursue the matter in consultation with

the Opposition. We were trying to be as fair as possible. Unfortunately, time was against us so that is the reason why the IWPB did not go ahead with the review of who could and who could not stand for election. What I cannot understand today, Mr Speaker is the opposition that has come from two quarters, the Government and my Hon Friend Mr Bossano, who appears to me that for different reasons is adamant in not seeing the further democratisation of the candidature in Gibraltar. I think it is logical that if you cannot have the whole a whole loaf you will settle for half a loaf if your intention is really sincere in that direction. I suspect that at least Mr Bossano, with whom I agree on many occasions, must have some other reason as to why he is not supporting the Bill since, obviously, a step in that direction would certainly help him to go further. It is not because we do not want to go further, I think we are obviously very keen in going further than we have said, but even that is not acceptable by the Government and even that is coming across all sorts of constitutional barriers which are being set up now purely and simply to defeat democratic progress in Gibraltar. I cannot understand how a Governor of Gibraltar, anticipating the decision of this House, says that he will not give his consent.

MR SPEAKER:

He has not said that, he has given his consent. Perhaps the Hon Member has not been listening to what I said. I was very explicit and I do not think that I have left any Member in doubt as to what has happened. Her Majesty's Attorney-General wrote to me to say that His Excellency the Acting Governor was of the opinion that the motion to be brought by the Hon Mr Peter Isola for the introduction of the Bill was a non-defined domestic matter and that therefore under the Constitution he gave his consent for the motion to be proceeded with. My only distinction is the fact that the House of Assembly does not require the consent of His Excellency the Governor to consider any matter by way of motion but His Excellency the Governor on advice, thinking that that was so, has actually given his consent for the motion to go ahead. Therefore, it is incorrect to say that His Excellency the Governor has not given his consent as you have just said.

HON MAJOR R J PELIZA:

I have not said that, Mr Speaker, with respect.

MR SPEAKER:

Order. With due respect to you, you have said so and Hansard will show it.

HON. MAJOR R J PELIZA:

I said that he had signified to the Chief Minister that he would not give his consent if that Bill went through, that is what I said. What the Chief Minister said was very complicated but that is the way I understood it, that he had given his consent because he knew that the Ministers were not going to agree with the Bill. That is the position, Mr Speaker, and if you look at the Hansard I am sure that is what I said.

MR SPEAKER:

As far as the constitutional position stands now, His Excellency the Governor is of the opinion that this is a non-defined domestic matter and has given his consent for it to be dealt with by the House of Assembly. Let there be no doubt about that.

HON MAJOR R J PELIZA:

In fact, this is the reason why my Hon Friend Mr Bossano stood up and said he thought that it was a farce to bring the Bill into the House and that he would not support even the motion because it would be a farce. Whether it is a farce or not I hope that my Hon Friend the Leader of the Opposition will go ahead with the Bill. This is, perhaps, the way that constitutional progress can be made in Gibraltar, Mr Speaker, not by immediately withdrawing because we are going to find some organised opposition of the Executive and the elected members of the Government and the only way that we should make some progress even against the wishes of the Association for the Advancement of Civil Rights which I think is a misnomer in this context. I do hope, Mr Speaker, that this will become a public issue in which the people of Gibraltar will really get to know what is going on with regard to democracy in Gibraltar. When the time comes, Mr Speaker, we shall have plenty of opportunities to discuss the Bill that see the merits but to go ahead even of reaching that point and the Government obstructing it by saying just now that it is really no use to bring it.

HON CHIEF MINISTER:

If the Hon Member will give way. Will he stop speaking absolute rubbish, absolute ministerpretation, absolute hysterical nonsense. I said nothing of the kind. I want a good debate and I want to see how much we can agree or where we differ. What I am not prepared to do is for the Hon Member to come from London to tell me how I should run the Government to which I have been elected and to which I have a majority.

HON MAJOR R J PELIZA:

Every time I disagree with the Chief Minister he does not

look at the logic, he calls it rubbish, that is the only argument he has.

MR SPEAKER:

Let us go back to the debate.

HON MAJOR R J PELIZA:

Mr Speaker, the merits of the Bill should be seen and discussed at a later stage. I would have thought that the truly democratic way of proceeding is to listen to what the Bill has got to offer but not to say even before, even to the Governor, that the Ministers are against it and therefore the Bill will not get through. Therefore, we can now surmise and infer from that that the Governor will not have to give his consent. That is the position, Mr Speaker.

MR SPEAKER:

I am afraid the Hon Member is misinterpreting. Whatever the Chief Minister might have said to His Excellency the Governor, His Excellency the Governor has given his consent.

HON MAJOR R J PELIZA:

His consent, Mr Speaker, to present the Bill but it is obvious that the Bill will not go through.

MR SPEAKER:

All the Chief Minister has said is that in so far as the Government is concerned they have given advice to the Governor as to what they feel should or should not be done, no more or less.

HON P J ISOLA:

I understood the Chief Minister to say that the Governor was giving his consent to the Bill against an undertaking from Ministers that they would be voting against the Bill. To me that is shocking.

HON MAJOR R J PELIZA:

Mr Speaker, I may have put it more strongly but that is in fact what happened.

HON CHIEF MINISTER:

Mr Speaker, in respect of something the Hon Leader of the Opposition said now I think I should say that what I said was that we had advised that the Bill, as drafted, was not acceptable to Ministers. That means, of course, that we are entitled to have a view on any Bill that is brought to this House.

HON A J CANEPA:

Mr Speaker, I do not know whether the situation is not similar with regard to the Government expressing its views on a measure that comes before the House to what goes on at Committee Stage where amendments are proposed by members of the Opposition to a Bill. It may become abundantly clear in the course of the Second Reading of the Bill that the Government will not accept certain amendments from the Opposition. Knowledge of that does not prevent the Opposition from moving an amendment at the time when we reach a particular clause and arguing the issue with the Government. The opposition may not succeed in convincing the Government but it does not alter the fact that they are exercising their democratic rights in this House to put and to press for acceptance of a particular point of view. Surely, the Hon Member of the Opposition know, having regard to the debate on this House in December, that the Government is not in agreement to teachers and nurses, for the reasons that were given at the time here, being given the exceptional treatment which the bill which the Hon Leader of the Opposition seeks to introduce would afford them, they know that. The Government has taken a very firm stand on that matter and therefore it would be hypocritical of the Chief Minister if he were not to make it clear that to the extent that the Government votes in favour of the motion it is doing so because it wants to see free debate in this House. If we voted against the motion and the Hon Leader of the Opposition was not given the leave to introduce the Bill it would be said that we were fettering him, that he was not being allowed to exercise his democratic rights. We are warning them that it is the view of Ministers as a whole that the proposals are not acceptable as drafted and that we would vote against them. The other thing that the Chief Minister was very concerned to do was to explain what the constitutional position is. I think that the situation is fair, the Government is being honest with Hon Members opposite and surely on that basis they can have no quarrel.

HON MAJOR F J DELLIPIANI:

I think it would be dishonest of me not to say that I am completely opposed to the Bill as drafted and I would have been inclined to vote against it but because we live in a democracy I am not going to vote against it. I am going to abstain and my abstention is purely to demonstrate how strongly I feel against the Bill as drafted.

HON P J ISOLA:

I am surprised that the Minister for Education is the only one on the Government side that is going to abstain because I know from a periodical of the Gibraltar Teachers' Association "News and Views" about a meeting and writing to the Chief Minister on the question of eligibility to stand for election. The issue was referred to the Chief Minister about teachers standing for election which was duly acknowledged and results were pending. Why couldn't the Chief Minister or the Minister for Education when they meet with teachers trying to sort out their problems, why don't they tell them straight: "You are never going to stand for election." They don't because it suits them on particular occasions to bring them along with them and keep them sweet and when they bring a thing like this up they are told: "We are thinking about it." Why doesn't the Chief Minister or the Minister tell them that they will never allow teachers to stand. Now the Hon Minister for Education can clarify, if he wishes.

HON MAJOR F J DELLIPIANI:

It gives me great pleasure to tell the Leader of the Opposition that at a meeting I held with the Gibraltar Teachers' Association to discuss a whole number of issues and they brought this very issue to me, I said very bluntly to them that I would oppose it. I didn't care what the Government said but my own view was that I was dead against it and it is recorded in the minutes. I told them and I will tell them again and I told them before these elections and after these elections and I will continue to tell them for as long as I am a Member of this House.

HON P J ISOLA:

The Hon Minister must have told them because they wrote to the Chief Minister and they are waiting for his reply. I only mentioned that on passant. I will try and be very restrained and I will first deal with the substance of the motion which has been clouded over by what I will call the alarming revelation as to the use of the Governor's powers in the Constitution. Let me repeat what I said. This is a Bill that seeks modest advances for civil and public servants to stand for election. The Hon Mr Bossano, who always tries to be very logical, is at his illogical best when he has to support a motion brought by the DPBG. He supports it and then he says he is going to vote against the Bill because, he says, we are not radical enough. He must have the whole lot he must give the Governor, the Deputy Governor, the Attorney-General and the Financial and Development Secretary, they must be allowed to stand for election and keep their offices otherwise it is not good enough for him. That is what he said in his motion in December.

HON CHIEF MINISTER:

If the Hon Member will give way. In a different way the Hon Mr Bossano is doing exactly what Mr Maurice Xiberras was doing for the last five years which is rather than give way in small bits he wanted the whole cake.

HON P J ISOLA:

I would not agree with that statement at all because I have discussed this matter with Mr Maurice Xiberras. But Mr Bossano will not go some way, he wants the whole lot which he knows absolutely crystal clear that he will never get. What I am seeking to do is to allow more people to come forward in public life to stand for election because it was quite obvious to me from the last elections that the only people who are able to stand as candidates were people who were in private employment, not private employment even, people of almost independent means and professional people because others could not. This is obvious to me, it is obvious to the great majority of the people of Gibraltar and it must be obvious to the Government who will soon, I am sure, amend the law as their older brethren have to retire from public life because that is a fact of life in Gibraltar. I am just seeking a modest amendment. I know that the Government do not want teachers to stand because they happen to be the most highly qualified people in Gibraltar and people like the Hon Mr Canepa and my predecessor, the Hon Mr Xiberras, whom I have said many times has contributed enormously to public life in Gibraltar, there are to be no more of those unless they are prepared to take the gamble, resign before the election and if they do not get elected then to hell with their family and to hell with everything else. That is wrong and it is wrong for the people of Gibraltar to put those conditions on teachers to stand for election, stay teachers for 21 days, and then if they are elected they resign. What are we talking about, objections of principle on the part of the Government to this? It is not objections of principle at all, it is objections of expediency but, as I say, this is just a motion for leave to introduce and what I did say in my opening statement was that I would hope that the Bill would be committed to a Select Committee of the House. I agree that, specially in civil service grades, there is probably a need to identify those who can stand or cannot stand for election. In fact, I have toyed with the idea of leaving it to resolutions of the House to decide who could or could not stand. But I went away from that because I thought that if we do that the argument was going to be that every time you have a problem somebody is going to come with a resolution and this is not so, what about the Governor, he has got a say in this, which I say he has not, I don't mind telling the House, I say he has not. It is clear if the Constitutional Conference is going to be upheld I say he has not and I ask him to read the minutes of that Conference and I shall try and dig them up if I have got them somewhere because that is not what Lord Shepherd, who the British Government Minister at the

Conference, said and the legitimate fears of the civil service were provided for, were taken into account in the Constitution itself. In Section 28(4) it says "If it is so prescribed by the legislature..." not the Governor or the Gibraltar Council acting executively, no "If it is prescribed by the legislature" - (a) a person shall not be disqualified for election as an Elected Member of the Assembly by virtue of his holding or acting in a public office specified by the legislature." Then it says: "a person may stand as a candidate for election as such notwithstanding that he holds or is acting in any public office specified by the Legislature if he undertakes to relinquish or, as the case may be, to cease to act in that office if he is elected as an Elected Member of the House." So what the Constitution prescribes and what nobody can change, not even the Governor, only the Constitution can change it, and this was a compromise at the Constitutional Conference. "If you chaps want people to be able to stand we will let you decide that point," that is what they said, but that person must resign from his Civil Service job. What are we all arguing about? We are arguing about 21 days, Mr Speaker. The day when the House is resolved to the writ for a General Election or a Bye-Election from the Governor. That is what we are talking about, that is why Lord Shepherd, in the Constitutional Conference, left it to us to decide. If the Financial Secretary wants to stand for election he has to resign. If the Legislature feels that the Financial and Development Secretary should be able to stand, or even the Governor himself, he would have to resign if he is elected. That is the safeguard to the British Government, that is the safeguard to the civil servants, the people who really govern us. Let these chaps decide, if they want anybody to stand, let them stand but they have to resign and that is what is in the Constitution. I object strongly, Mr Speaker, to the Governor's attitude in this matter. I am not sure but I will, of course, whilst the Speaker is in the Chair and whilst the Speaker decides these matters as he inevitably does.

MR SPEAKER:

With due respect, the Speaker does not decide in these particular circumstances what is and what is not a non-defined domestic matter, it is the Governor who decides and if you look at Section 35(2) it says "Except with the consent of the Governor, acting in his discretion, signified by the Attorney-General or by the Financial and Development Secretary, the Assembly shall not proceed upon any Bill (including any amendment to a Bill) that, in the opinion of the Governor, acting in his discretion, signified as aforesaid, relates to or closely concerns a matter that is not a defined domestic matter." It is up to the Governor's judgement as to whether any particular matter is or is not a defined domestic matter.

HON P J ISOLA:

Mr Speaker, you are, of course, absolutely right. What I am saying is that I do not believe that the Governor is acting properly within his discretion when he decides that a Bill of this nature is a non-defined domestic matter and this is something that we can, of course, take up with the Secretary of State because I think it is a matter of great principle to the elected representatives of the people of Gibraltar, this particular point. When a Constitutional Conference comes along and says the elected members are going to decide and some civil servant or other somewhere along the line says no, because the Governor is now going to decide this is a non-defined domestic matter when the protection for the Crown and for the civil service is actually in the Constitution.

It is the legislature who has to decide, not the Governor, who shall stand for election. I must say at this stage that I disagreed entirely with my Hon Friend as he will remember when he was Chief Minister in trying to do this through Gibraltar Council. I said it is for the legislature to decide, that is my strongly held view. The Governor has decided it is not a defined domestic matter. May I say that I express my surprise at that decision having regard to the clear wording of the Constitution on this matter - Section 28(4) - I am most surprised by the Governor coming to that conclusion having regard to the Constitutional Conference and I would ask the Governor to refer to the minutes of that Conference and to the record of that Conference. But, anyway, it seems that the Governor has given his consent because he believes the Bill will be defeated, well, time will only tell whether that is so or not but I hope that the Hon Members on the other side, even if they disagree with teachers standing or even if they disagree with some of the things that we have put forward will, at least, agree with me that it is for this House to decide who should stand for election to the House of Assembly and not the Governor of Gibraltar. As the public debate continues on this issue, as it will continue, we shall see what the attitude of the Government is to any particular issue. I have suggested a Select Committee, Mr Speaker, because I think that this should go to a Select Committee. I think a Select Committee should ask the Admiral or whoever it is who is in charge of the Ministry of Defence to come to the Select Committee and put down their reasons for not allowing somebody to stand for election.

MR SPEAKER:

You are exercising your right of reply and I do not think that anyone has referred to the Select Committee.

HON P J ISOLA:

No, but the Hon and Learned Chief Minister has said that he has already asked for the views of the Ministry of Defence as the largest employer.

HON CHIEF MINISTER:

I did not say that I asked for the views, I said that in order that we should know our approach we want to know what the Ministry of Defence think about it and I should imagine they are entitled to have a say in it even if it is a matter for the Legislature as to what happens to some of their executives.

HON P J ISOLA:

Mr Speaker, absolutely, I don't doubt for one minute that their views of course, are entitled to be taken into consideration and they have got the ultimate function, of course, as employers, they have the ultimate function to tell their employees: "If you wish to stand, then that will be it," but when it comes to standing for public office and resignation, when it comes to that, then it is the Legislature who must decide and the reason why I said a Select Committee is that I think that a Select Committee should take the views of the Ministry of Defence on the matter and if the Ministry of Defence views are views that convince I am quite sure the Select Committee will adopt them. I am not suggesting that this House should embark on a useless exercise, Mr Speaker, under which the Government has promised the Governor that they will vote against the Bill. I wouldn't like to enlarge on that and I would not like the Government to give me leave to move this Bill on the basis that they are just going to throw it out at the Second Reading. I am going to suggest at Second Reading that it is committed to a Select Committee of the House and precisely because and principally because it is my strongly held view and strongly held conviction that it is the elected Members of the House who must decide who stands and who does not stand for election and I think it is to that Select Committee that representations should be made by Unions, traders, Ministry of Defence, Civil Service of Gibraltar, it is to that Select Committee because it is my firm recollection of the Constitutional Conference that the British Government commitment at that Conference was that the elected representatives, the people of Gibraltar, should decide who stands and who does not stand for election and they provided for it in the Constitution but subject to certain conditions, one of them, of course, being that they must resign and that is why I hope that my Bill may not end up in the form that it has been drafted, it may require amendment, I agree, there will be fights of principle on the question of teachers, I agree, let us have them out in the open, but at the end of the day let us have a Select Committee of the House deciding this, not in the secrecy of the Governor-in-Council or particular civil servants who have particular views on the matter, let a Select Committee of the House take their views and then make their own decisions. Mr Speaker, I am glad the motion is going to be supported, I only hope that support will continue despite everything that has been said.

HON A J CANEPA:

Mr Speaker, if we wreck the tables by so much banging we may not have sufficient funds next year for air conditioning.

MR SPEAKER:

We had better not bang the table then.

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

The Hon A J Canepa
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon A J Haynes
The Hon P J Isola
The Hon A T Loddo
The Hon Major R J Peliza
The Hon J B Perez
The Hon G T Restano
The Hon W T Scott
The Hon Dr R G Valarino
The Hon H J Zammit
The Hon F E Pizzarello
The Hon J J Caetano

The following Hon Member abstained:

The Hon Major F J Dellipiani

The following Hon Members were absent from the Chamber:

The Hon I Abecasis
The Hon J Bossano

The motion was accordingly passed.

The House recessed at 6.30 pm.

The House resumed at 6.50 pm.

MR SPEAKER:

I understand that we are now going to proceed with the Committee Stage and Third Reading of the Income Tax (Amendment) Ordinance. You will recall this Ordinance was not considered in Committee when we did the other Bills because the Opposition needed time to consider its contents.

COMMITTEE STAGE

HON ATTORNEY-GENERAL:

Mr Speaker, I have the honour to move that this House should resolve itself into Committee to consider the Income Tax

(Amendment) Ordinance, 1980, clause by clause.

THE INCOME TAX (AMENDMENT) BILL, 1980

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

Clause 2.

HON FINANCIAL & DEVELOPMENT SECRETARY:

I have the honour to move that paragraph (tt) in Clause 2 (2) be amended by the addition of the words "except an individual to whom Section 23 (3) applies" after the word "person" in subparagraph (i) thereof.

MR SPEAKER:

Will this amendment mean that there will be an increase in tax rates?

HON P J ISOLA:

No, Mr Speaker, this amendment is a similar amendment that I moved when I asked for the taxable allowances to be doubled. We are not charging the revenues of any payment, we are reducing the revenues, loss of revenue but not charging the revenue. This is an Income Tax (Amendment) Bill that is before the House and it is a comparatively simple matter to move an amendment and we wish to take the opportunity that there is an Income Tax Bill before the House to move an amendment and do away with the taxation of income received under the Elderly Persons (Non-Contributory) Pensions Ordinance. Mr Speaker, I am not going to speak for a long time. I think that all political parties before the elections received representations not only before the elections but for some considerable time before the elections. There are a number of pensioners who are not in receipt of Social Insurance Pensions for a lot of reasons that we have discussed here who feel, and I think rightly so, that the Elderly Persons Pension received under this Ordinance should be tax free for a very simple reason that under the Social Insurance Ordinance any pension received under that Ordinance is tax free whether the recipient is a person of means or not. The basis on which it is sought to justify it is that people have contributed towards it. Well, people have contributed to a lot of things which they still have to pay tax on but that is not the reason. The reason, I suppose is, that under the Social Insurance Ordinance they want to give the full benefit to the recipient and not cream off anything for the state which they do with other pensions, Ministry of Defence pensions or Gibraltar Government pensions, but the Elderly Persons Pension, Mr Speaker, is a small amount that is given, a lot of people who receive it do not qualify, it is true, for supplementary benefits because they are just on the bread line. Others who receive it are well off, this admitted, but

the principle is that if a Social Insurance Pension is free of tax then the Elderly Persons Pension which was brought in to a certain extent to help those who were not in receipt of pensions, should also be tax free. This was the commitment of my Party, we actually committed ourselves in the manifesto, in our election manifesto, and so we have a duty to seek an amendment of the law once we have a Bill before us into which this amendment can be included. We have had debates as to whether the Hon and Learned Chief Minister, on behalf of his political party, gave undertakings during the elections on Elderly Persons Pensions. We have a recording in which he gave encouragement to the thought, let me put it at that, that his Government, if elected, would do something about taking tax away from Elderly Persons Pensions. I know I have not given the Government much time to take a view on this and, therefore, I suppose they will vote against it but I would ask them to consult and to consider whether with regard to the whole history of social insurance pensions, the problems that have arisen in relation to them and having regard to the elderly persons a lot of whom receive pensions and who feel strongly, and I think rightly so, that they should be treated no differently as far as tax is concerned from those in receipt of Social Insurance Pensions, to consider whether it would not be fair having, regard to the size of the pension in the hands of the recipient, that this should be received free of tax. We think, in principle, that Government should not charge tax because Social Insurance Pensions are also free of tax Government pensions are earned pensions but they pay tax, Ministry of Defence pensions are earned pensions but they pay tax, Social Insurance Pension does not pay tax and we think and we strongly believe that elderly persons should not be made to pay tax on their pensions. I would go further, if the Government feels that there may be some very wealthy people receiving Elderly Persons Pensions it is wrong in principle because no distinction should be made but if the Government feels that anybody who is paying tax about whatever it is should pay on his Elderly Persons Pensions so be it but we say that as a matter of principle no tax should be payable on the Elderly Persons Pensions and if it is going to be made payable it should only be made payable for people in receipt of income from other sources well above the breadline. I commend the amendment to the House.

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

HON A J CANEPA:

Mr Speaker, I had thought that this matter was going to come tomorrow morning and I had intended to bring along with me the Hansard of the meeting of the House in January, 1974, so that I could quote from the debate that took place then when I introduced the Bill setting up the Elderly Persons Pension but I have a fairly good memory and if any Members doubt what I am going to say, I am prepared to produce the Hansard and show them the authority of what I am going to say. The Hon the Leader of the Opposition, however, need not worry about the

Government having had or not having had time to reach a view on the matter. This is a matter that was considered by the Government during the Budget in the context of the general review of allowances that was held when, prior to our introducing amendments to the Income Tax Ordinance, and in particular with reference to the greater income tax relief that we gave to the over 65's. The Government did consider the matter in March and April and it has not caught us by surprise. In January, 1974, Mr Speaker, when I introduced the original Bill to the House, I remember distinctly the then Leader of the Opposition, Mr Xiberras, speaking on behalf of the members of the Opposition, stating whether what the Government was proposing to do did not amount to allowing certain wealthy citizens in Gibraltar to go, as he said, in a Rolls Royce to College Lane, to the offices of the Department of Labour and Social Security to collect their Elderly Persons Pensions and that that was inequitable, that that was socially unjust. At the time, we had not reached a conclusion as to whether the Pension should be taxable or not, and I say that because it would have been during the Budget session in March of 1974 when, if amendments were going to be considered to the Income Tax Ordinance, that we had to take the decision as to whether this pension should or should not be tax-free. Therefore, in the interim period the pension was in fact tax free and it was in May, 1974, in the light of the debate in the House, when it was abundantly clear and already there were Members of the Government who did not consider at the time that the pension should be tax free, but in the light of the debate in the House, that the Government reached the conclusion then that the pension should be made taxable. This, as I say, was done in an amendment to the Income Tax Ordinance in 1974. In fact, the tax on the pension then was a very severe tax because a clawback mechanism was introduced along the lines of the clawback mechanism that applied to family allowances which had been introduced in the time of the administration of the Hon Member opposite. Something along those lines was introduced for Elderly Persons Pensions so that people precisely above a certain level, what the Hon Leader of the Opposition suggested should be done, should pay the whole of that pension back so that it would not be worthwhile for them to drive up to College Lane in a Rolls Royce to collect the pension. For the last 18 months or so the Government has been under pressure to go back by some members of the Opposition who obviously subscribed and supported the Leader of the Opposition at the time. I think it is important, Mr Speaker, that we should know why the social insurance, old age pension and widows' pension are tax free. As far as I know, Gibraltar is the only territory in Western Europe where not only is the Social Insurance Pension tax free but where we also give relief for income tax purposes in respect of the contributions paid into the Social Insurance Scheme. The practice normally is that if you do one thing, you do not do the other. If the pensions are tax free the contributions do not count for relief. If the contributions count for income tax relief then the pension is taxable and, in fact, I remember that we had an adviser on the fiscal system who in a very lengthy document advising the Government in respect of various matters to do with our fiscal system,

advised that we should have one or the other, but not both, and we rejected that advice. The Social Insurance Scheme was introduced in 1958, pensions were first paid in 1960 and then Old Age Pensions in 1965 and at the time the actual pension paid from the fund was £1 a week and another £1.10p supplementation was paid from the Consolidated Fund. So because the actual value of the element from the Social Insurance Fund was so low, the Government of the day decided to make it tax-free. Over the years the pension has increased enormously and, perhaps, one ought to consider whether it should or should not be tax-free. My own view is that it would be a retrograde step to make the Social Insurance Pension taxable. But, of course, having the old age pension tax free means that the Government is under pressure, because this concession exists, to make other pensions tax-free. We have not just had representations in respect of the Elderly Persons Pensions over the years, we have representations for other pensions to be made tax-free on the grounds that they have been earned and the argument that we have used against that is that already people aged over 65 earn greater tax relief than the under 65 in additional tax relief, that is in recognition of the fact that they have reached retirement age, and if the pension which ought properly to be regarded as income if it were to be made tax-free you are giving a tremendous advantage to people who are pensioners and who may not in any case be over 65, because my Hon Friend on my left is a Police pensioner. Should his pension be made tax-free and if all Government pensions are to be tax-free then you cannot make any exception to the rule, you then have a situation where a relatively young man has this enormous advantage for tax purposes or even an elderly married couple are going to be vastly better off than working people with similar income and with family responsibilities and that, in my view, is not equitable because what then happens is that your working people and people with family responsibilities are having to bear a greater burden in taxation to make up for the loss of revenue in respect of people who are classified as pensioners. If the Government makes a concession of the Elderly Persons Pensions which I am not in favour should be done in principle because it derives from Government revenue, it is non-contributory, it does not come from the Social Insurance Fund, it is derived from taxpayers' money and therefore the same as the pensions received by civil servants, they derive from taxpayers' money, from the Consolidated Fund, and therefore they have to be treated in the same way, if we were to make a concession on the Elderly Persons Pensions on the grounds that we are treating it in the same way as the Social Insurance pension, the next thing where pensioners would come back on the charge will be: "Well, why not the pension which we receive as ex-Government employees for which admittedly we have not contributed because the scheme is non-contributory in Gibraltar, but there has been some account taken of that," and that is the fact with the advent of parity where pensions are not contributory like with teachers and nurses in the United Kingdom where they pay superannuation, here they do not but they have 3% abatement from their salary. They could advance the argument that in a way they had contributed towards their pension because they have had 3% abatement made and therefore

if they have made some contribution towards the pension that they get from their employers why should they not be given the concession that the Elderly Persons pensioner is getting who has made no contribution whatsoever so the ability of the Government to withstand this kind of pressure would I submit be seriously undermined progressively and that is why the Government has decided to take a firm stand on the question of the Elderly Persons Pension and not treat it as a Social Insurance Pension which I accept that we are treating those people very advantageously whilst they are contributors and then when they become pensioners. In my view, we have had no choice really but to do that and the consequences otherwise would be very serious, the whole basis on which pensions are based could be thrown seriously out of gear. What the Government therefore faced with that, what we considered to be a problematical area decided at Budget time was to give further relief to persons over 65 by increasing their allowances. Let me tell Hon Members that at the time, when the Estimates of my Department were drawn up, the overall financial picture was not as rosy as it was borne out to be later on when we came to the House with the Budget. At that time we had made no provisions for any increases in Elderly Persons Pensions in January 1981 because we did not consider that we could afford that. Having had regard to the better budgetary position, I committed myself to further increases and we have been reviewing the level of Elderly Persons Pension year after year we always increase the pension and we have tried to keep allowances under the Income Tax system at a realistic level as far as the over 65's are concerned. Really that, Mr Speaker, for the reasons that I have given, is as far as the Government is prepared to go and we cannot support the amendment as a matter of principle.

HON P J ISOLA:

Mr Speaker, talking about Rolls Royces, I think the Hon Minister did not go far enough back. When the Elderly Persons Pensions was introduced, the Minister said very proudly that this was the first universal pension to be paid in Gibraltar, universality of pensions, and I think it was £2 a week but I think the point that my Hon predecessor took and which I as well at the time was, why not introduce Elderly Persons Pensions for people up to a certain income and give them more. Why give more to people who can drive to collect their pension in a Rolls Royce, why give them this pension? That was the basic objection to the original Elderly Persons Pensions from people on this side of the House. We thought that because it was going to be universal, the amount to be given was too low and we said there should be a distinction. It is true that the Government having done it then decided, after pressure and criticism to introduce the clawback system to take it away from those who drove the Rolls Royces and then they decided to leave it with the ordinary income tax. I think that is the history, something to be said for each side. I think a lot of people have relied on the Elderly Persons Pensions to live a little more comfortably than before and I think that a lot of people who could perhaps live a bit more

comfortably find themselves with a pension tax whilst the chap next door is drawing his social insurance pension tax-free. I think it is wrong to equate the Elderly Persons Pensions with Civil Service pensions, pensions paid by private employers pensions paid by the Ministry of Defence. I think Elderly Persons Pensions have to be equated with the social insurance pension. I agree and I concede that if the Government agrees to make the Elderly Persons Pensions tax-free, possibly pressure will increase to make other pensions tax-free but it is a self evident fact that to give all pensions tax-free would put on the economy a burden it cannot support although there may be something to be said for it if the present generation wants to look after the older generation but I do not think it would not be possible to do it in one clean sweep. I do not suppose any responsible Government would do that but we are not talking of that. I do not believe that if the Government makes the Elderly Persons Pensions tax-free, that that brings with it the consequences that the Minister for Labour has spoken about. I think it will be a constant sort of injustice and complaint to those who receive Elderly Persons Pensions to see their brothers receiving the Social Insurance Pension, both old age pensions of the state, as it were, free of tax and they paying tax on what is much more meagre pension. We think that the Minister has not made a case for not agreeing to the amendment because we do feel that there is a case even though we are aware that some people, if you like, would take some benefit in this but we wouldn't agree to deprive people who could do with those pensions being tax free because some wealthy people are going to get the money tax free. I would rather the Government introduced clawback for the wealthy people if that is what is stopping them but I think it is wrong that people in receipt of Elderly Persons who do not live very comfortably, should find that they are paying £1 or £2 a week on their pension whilst their brothers in receipt of Social Insurance Pension get a much larger pension tax free. I hope the Government, at least if not agreeing to this amendment today, will themselves introduce it in the not too distant future.

HON A J CANEPA:

I think the Government has another consideration in mind. I would not pretend that we are a Socialist Government a la Mr Joe Bossano, I do not consider myself to be a socialist in the same way as he is, but one thing that we do in this Government is to weigh very seriously how we use the money that is available for social services and for social benefits and to what extent we can benefit the greatest number of people who need to be helped by whatever limited funds become available. Within the Government we haven't had a very accurate estimate, because it would be an extremely difficult task to look through income tax assessments, to find out what would be the loss of revenue in respect of making the Elderly Persons Pensions tax free but having regard to the fact that there are over 900 pensioners and having regard to the fact that we are spending over £1m in making provision for the Elderly Persons Pension, I would say that, on a conservative estimate, if

people pay tax on that at 10% only, it must be £50,000 or in excess of that. When you give away £50,000 in tax relief which means that you don't have it available to use in increased expenditure which could be by way of increased benefits, one must ask oneself is this the best way of giving away £50,000? Aren't you giving away £50,000 to a number of people in receipt, obviously not to the 900, a number of people in receipt of Elderly Persons Pension who less need this income because the fact that they pay tax on it must be that they are better off than those who do not pay tax on it. The majority of people in receipt of Elderly Persons Pension do not pay tax on it, they do not pay tax because they have £1,500 of relief which everybody has, an additional £450 by virtue of the fact that they are over 65 and the other thing is that the lowest rate of tax is £500 at 20%, so they don't pay an appreciable amount, if at all, tax on their Elderly Persons Pensions. A minority of people in receipt of Elderly Persons Pension pay tax on it and fairly heavily at that, so you are really giving relief to people who, because they must have substantial income other than their Elderly Persons Pensions, are paying tax on both, so you are really giving away the money to those that are better off and this is another consideration that the Government, I think, has a duty to weigh up. If we are going to give away £50,000, what should we use that money on? Should we try to give something more to everybody? Should we earmark it for people on supplementary benefits? But here we know that we are giving it to those who are better off and they are complaining because they are paying tax but they are paying tax because they are in the higher income bracket. That is another consideration and, as I say, I am not a left wing socialist by any means but I do try to guide myself in my approach to these matters by what I consider to be, whether I am right or wrong, certain basic principles of social justice.

MR SPEAKER:

I have assumed that you gave way to Mr Canepa.

HON P J ISOLA:

What a give way, Mr Speaker. I think that the Minister has now tried to introduce the argument which I forestalled but, notwithstanding, he has introduced it. I have suggested to the Government that people of means could be stopped from receiving the benefits of the Elderly Persons Pensions by having a clawback system, I have volunteered that to the Government. I am not talking of those, I am talking of people, not on the bread line because I think some old people have a right to live better than just being on the bread line like a lot of people in receipt of social insurance pensions tax free makes them live a bearable life. They are paying some income tax as well and what I am asking for is that elderly persons should be treated in the same way. I will not be fobbed off, Mr Speaker, with the argument the Minister has just made because I told him "Have a clawback system for the wealthy recipients of Elderly Persons Pensions." I am not

concerned with that, what I am concerned is on the social justice aspect of somebody with social insurance pension receiving a pension twice as high as the one of the Elderly Persons Pensions and a person of similar means of that social insurance pension recipient, paying tax, not because he is making a lot of money but because nearly everybody pays tax in Gibraltar, that is the argument. I don't think it is fair for the Minister to adduce in a last desperate effort to justify the position of the Government, to adduce the argument of the wealthy because I have said that I think, in principle, social insurance should be equated with elderly persons pension but I have said, if what is troubling the Government is the question of those people with ample means then I would say introduce the clawback, that is all I say.

HON A J CANEPA:

Just on the clawback and I promise not to say anything else. We are in Committee, Mr Speaker.

MR SPEAKER:

Yes, but he has exercised his right of reply. On the clear understanding that Mr Isola will have the last word, most certainly.

HON A J CANEPA:

The clawback is never a good mechanism to use in an income tax system and I will explain why. These people do not pay tax on the PAYE unless they happen to be in employment also. If they are completely retired they are assessed in the old way. At the end of the year they make a declaration of income and they are assessed and they get an income tax return and they have to pay £x in tax. Where the income tax clawback was working very unfairly in a way, well not unfairly, but where the impact of it was very serious was that because these people used to go along to the offices of the Director of Labour and Social Security and collect their weekly pension. In anticipation, they did not know how much of that pension, what proportion of it, was in fact going to be taxed at the end of the tax year and they could be collecting £4, £5, £6 a week over the year, spending that money, using it and then when they were assessed the income tax clawback mechanism worked on their pension a very high proportion, 40%, 50%, 60%, 70%, 80% of the amount of money received in pension had to be paid back in tax and they would have an income tax bill of £150, £200, £350 to pay over the next 6 months or so and the impact of that was very bad and I used to have people making all sorts of representations to me because they could not afford to pay that very high tax bill because they had not made provision for it. That is why we did away with the income tax clawback mechanism because it was really having this drastic effect and the Government saw that it was better to do away with it and give an opportunity to people to adjust

throughout the year and not to be faced with his hefty tax bill.

HON P J ISOLA:

Mr Speaker, if they couldn't pay then they were obviously people who couldn't afford it, I don't know. I am talking of people of means, people who get their income tax bill and can pay, if they can't pay they are not people of means, I suppose, I may be wrong. I don't think that is an argument either, it need not necessarily be a clawback system, the Government could say: "Anybody in receipt of Elderly Persons Pensions whose assessable income is above so much shall pay tax in the ordinary way, or anybody whose assessable income is below so much shall receive his Elderly Persons Pensions tax free." There are simple ways of doing it if the will is there. We say there is a need to alleviate the situation of a great number of pensioners who are in receipt of Elderly Persons Pensions who are not on the bread line but who do not enjoy the same standard of living or reasonable standard of living as their counterpart in receipt of social insurance pensions. I am not talking of the rich or the poor, I am talking of people who are not in a comfortable position, let me put it like that, and this is why I am moving the amendment.

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

The Hon A J Haynes
The Hon P J Isola
The Hon A T Loddo
The Hon Major R J Peliza
The Hon G T Restano
The Hon W T Scott

The following Hon Members voted against:

The Hon A J Canepa
The Hon Major F J Dellipiàni
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon J B Perez
The Hon Dr R G Valarino
The Hon H J Zammitt
The Hon F E Pizzarello
The Hon J J Caetano

The following Hon Members were absent from the Chamber:

The Hon I Abecasis
The Hon J Bossano

The amendment was accordingly defeated.

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

Clauses 3 and 4 were 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 Income Tax (Amendment) Bill, 1980, has been considered in Committee agreed to, with amendment, and I now move that it be read a third time and passed.

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

The House recessed at 7.30 pm.

TUESDAY 22ND JULY, 1980

The House resumed at 10.45 a.m.

PRIVATE MEMBERS' MOTIONS

HON P J ISOLA:

Mr Speaker, I have the honour to move the motion standing in my name, that: "This House has no confidence in the manner in which the Government of Gibraltar has dealt with the problems arising from the construction of flats on the Varyl Begg Estate". Mr Speaker, we are bringing this motion

of no confidence in an attempt to bring to a head what can only be described as the disaster of the Varyl Begg disputes, if I may call them that. This problem has been with the House now for 4 years but the problem has been with the Government of Gibraltar since leaking roofs were detected late in December, 1974, which is almost 6 years. The first letter written by the Government on the matter to the consultants, if I remember rightly, was on the 25th January, 1975, that is 5½ years ago. During that period of time some 120 flats, 130 I think it was, were left unoccupied for a period of some 4 years, I believe, close on 5 years. Apart from the dramatic effect that this had on people on the housing waiting list, people forced to wait for houses that were actually built and ready to occupy if only the problems were resolved, apart from that, there must have been, in my estimation, a colossal loss of revenue to the Government from not collecting rent on these empty flats for a period of 5 years and, perhaps, somebody on the Government side could say what has been, in fact, the loss of rent. The matter has been discussed in this House at almost every meeting. I say almost every meeting, not every meeting, since 1976, so it cannot be said that the Opposition over the years have not expressed concern about the matter, it cannot be said that the Government has been allowed to put the thought of the Varyl Begg Estate out of their minds during any period of time. Despite all this pressure, despite the pressure of the Opposition on the Government to find a solution, despite the pressures of the housing list to find a solution, people who are homeless to find a solution, despite all the political pressures, the nearest we got, I suppose, to some action, some real action, some decisive action being taken by the Government was in December, 1979, just before the elections or perhaps June, 1979, round that time when the Government decided that they could allocate these flats that had been empty for some 4 years because they were told by the consultants whom they appointed, a year after they had made their report almost, that they could proceed to allocate these flats and it was then discovered that most of these 130 flats except for the top floor flats, most of these 130 flats could be allocated with just minor works being done to them, patching up, painting and so forth. So we discovered then that flats that could have been allocated 3 years before and could have been allocated three years before, had been left empty, vacant, despite the pressures of the housing list for close on 3 years. The facts that I am giving out now, Mr Speaker, describe the history of the Varyl Begg fiasco over the last 5 years, a fiasco that need never have taken place if Government had acted promptly and in accordance with the advice suggested on this side of the House. We are saying, as far back as 1977/78, that the Government should not wait to resolve its disputes with the contractors and the con-

sultants which it has not yet to this day resolved. We were saying in 1976 that they should not wait to resolve these disputes by negotiating procedures because they had talked for long enough and we said that they should proceed to carry out the repairs of the roofs and then take the contractors and the consultants to court and let the courts decide who was responsible or who should pay for the cost of repairs. As a result of the Government not accepting what we said back in early 1978, the cost of the repair job is bound to have increased so much that we believe that the possibility of a settlement is possibly today further away than it was in 1977 because of the high cost now involved both the contractors and the consultants will be less likely to come to a compromise arrangement. The result will be and may be loss to the public revenues of Gibraltar. The result may be that the Government will have to accept to pay part of the cost involved. That is how I see it going although I have no information to confirm that opinion but that is the way it seems to be going. The pressures on the Government built up so much before the elections that the Government stated that they would carry on and proceed to do the remedial works. That was just before the Elections. In January, immediately before the elections, there was a short announcement in the press about the Varyl Begg Estate and the consultants were coming the next month that was in February to put into effect the remedial measures. Later on, in the Ceremonial opening of the House almost six months ago now, the Chief Minister referred to the Varyl Begg Estate having regard, I suppose, to the very great play that had been made of the Varyl Begg situation by my Party during the election and having regard to the impact it had obviously had, he said: "In late January the Government considered and accepted, in principle," and I am quoting from the Hansard report of the Ceremonial Opening: "the Government considered and accepted, in principle, specific proposals for the construction of pitched roofs at the Estate and steps are now being taken for the implementation of these proposals and they are proceeding substantially in accordance with the time-table envisaged by the Government. At this stage it is expected that work in the Estate will commence in the Spring. The Government is also taking necessary steps to deal with the other matters requiring attention at this Estate and it is confident that substantial progress be made towards the comprehensive resolution of this difficult matter during the coming months." That was in February. In the March business meeting of this House, we asked questions, seeing to our way of thinking that Spring in Gibraltar more or less ends about May, we asked what was happening. What are you doing about it? When is work going to commence? We got an answer from the Hon and Learned the Attorney-General that work was expected to commence in the Spring. He conceded there had been some slippage, but the Government fully expected work to commence in June. On June 11, my Party put out a press release on this, called the attention of the public and of the Government to the fact that work had not yet commenced and it was already June 11th.

We ended up our communique by saying "The DPBG is concerned that the works on the roofs at Varyl Begg have not yet commenced and consider that a timely reminder to Government is necessary to avoid further slippage." Our concern is that the work should be commenced and that the work should be done, that is our concern. We think that after six years it is more than reasonable to have expected any Government, however lethargic, to have solved the question of whether there is a flat roof or a pitched roof in the Varyl Begg Estate. Six years is a very long time. I cannot conceive and think of any single private enterprise, any single undertaking that after six years would come to this House or would come to the public and say: "We are still discussing the question of liability between the contractors and the consultants." To me it is inconceivable. The answers that we got in the House on Thursday when we were told that all the plans were ready now - and about time too, if I may say so - but we are told still further discussions are taking place with the consultants and the contractors. The work has not gone out to tender. It is sensible that the contractor should do the work but are the contractors going to embark on the work when the Government has withheld money belonging to the contractors for some three years? I understand it is over £1m. Are they going to start doing the work without having assurances about payment if they do not accept liability? Who is the other party that can accept liability, the consultants. Are they going to pay these massive amounts of money if they are held responsible? And still, Mr Speaker, six years after this, no writ has been issued. Will the claim become statute barred, I would ask the Attorney-General? Are we in danger of not being able to claim because of the time that has elapsed? Can we go to arbitration still? Or is the Government hoping that some fairy godmother will wave the magic wand and there will be a settlement? And will that settlement cost the taxpayers a single penny? Or the British Government? Is it right that it should cost them a single penny? If we have to pay some money is it going to be because we have dithered and dithered year in and year out? When we are told about the contractors' responsibility, can the Government confirm in the course of this debate that the Government sought arbitration in August, 1977 with the contractors and then within a week they got a reply from the contractors accepting arbitration? Can Government explain why they didn't go on to arbitration to decide the issues of responsibility? Mr Speaker, if one looks at the questions and answers over the years, one can see the utter confusion in which the Government is in on this issue. The Government has gone from one point of view to another. The Government told us through the Hon and Learned the Attorney-General three years ago; "No, we cannot do any remedial works ourselves until the question of liability has been sorted out." Which to my way of thinking and to the way of thinking of any reasonable person was not exactly sense because then everybody could hold back building contracts by saying there is a dispute, no more work goes on, the owner of the property will have to wait till arbitration has been completed although proceedings have been completed five years before anything could be done to their property. That is nonsense, all you have to do is have the property surveyed, see what the cause is, get your experts in,

carry on and do the work and then claim the costs from the contractors and the consultants. But, anyway, that is what we were told three years' ago. A year ago we were told differently, the Government felt a year ago, with elections coming up, we were told "We are going to do the work, whatever happens the work is going to be done." There was a change of policy. But all these changes of policy and all these attitudes taken up by the Government have had one net result, that no remedial measures have been taken in the Varyl Begg Estate for six years and people have suffered, winter in, winter out, for six years. It is interesting to look at the first question asked in the House. In 1976, Mr Speaker, my Hon predecessor, Mr Xiberras asked: "Will Government confirm the existence of a dispute between the architects and the builders of the Varyl Begg Estate? (Question No 12 of 1976). In his answer, the Minister for Public Works said that the Government, early in 1979, pointed out to the consulting architects that the roofs leaked etc. Then he said: "A number of meetings between Government and both parties have taken place to try and resolve the situation." That was December, 1976, they had already had a number of meetings. We are now in July, 1980, four and a half years. Then at the end of the question I asked the last supplementary: "Mr Speaker, can the Government not consider, in view of the fact that the dispute seems to be between the architect and the builders, and the Government seems to be free from blame here, and the tenants are the innocent sufferers, can the Government not consider the possibility of initiating legal proceedings in the alternative against the architects and the builders to accelerate the solution of this matter?" The Hon Mr Featherstone: "That is probably the next step we shall have to take, Sir." What about my synical predecessor, the Hon Mr Xiberras, he asked: "When, in another two years' time?" Three and a half years have passed and still nothing has happened. Then there was another question about the number of flats. Mr Speaker, the story goes on in 1977, again in December 1977. It may interest the Government to know that two of their present Ministers, who were then on this side of the House, also joined in in questions on the Varyl Begg Estate but I shall not hurt their sensibilities by referring to these questions but I would ask those two Ministers what have they done since they joined the Hon Members opposite, what have they done to accelerate the solution to this problem in Government, having regard to the concern that they expressed from the Opposition benches? In June 1979, I asked questions again on this matter and I said: "In respect of the Varyl Begg Estate (No 85 of 1979) will the Chief Minister give the date of the first intimation given to Government by either the consultants or the contractors or the Quantity Surveyors or the Government's own supervisors on the project, that major faults of defects were suspected in the project?" The answer was: "The first three blocks were handed to Government on 4 October 1974. Roof leaks were detected a few weeks' later and the matter was immediately reported both verbally and in writing by the Public Works Department to the consulting architects. The first recorded written representation from Public Works Department to Sir Hugh Wilson is dated 24 January 1975." Then I asked in the following question (No 86)

"When did Government first deny payment to either the consultants or the contractors associated with the Varyl Begg project?" The answer was by the Minister: "Payment to the main contractors were withheld on 3 August 1977." It is interesting, that date, Mr Speaker, because shortly after, about seven days' later, the Government stopped payment to the main contractor which obviously is a breach of contract on the face of it and in order to justify the stoppage of the payment, they wrote to the contractor on 12 August and asked for arbitration under their contract. The contractors replied immediately that they agreed. That is the last, I believe, that the contractors heard on that matter to this day. Mr Speaker, more recently, in December 1979 and January 1980, the Government said: "We are going to go on with the work, even though we said in 1977/78 that we were not able to do any work until the question of liability had been sorted out, we are going on with the work." We said in the House to the Attorney-General: "Does this mean that now you are prepared to do what we were telling you three years' ago to do? Now, you are prepared to go to arbitration? Now you are going to take legal proceedings?" We got the answer that now was the right time or words to that effect. But, Mr Speaker, that was December, eight months have gone by and still no news of arbitration, still no news of legal proceedings, still no news of a resolution of the problem, still no date for the commencement of work. Can it surprise the Government that this motion is moved? It cannot surprise them. We have to bring to the notice of the public the incompetent and negligent manner in which the Government has acted as regards Varyl Begg Estate for a period of 6 years. After all, the solution, apparently, is that instead of flat roofs it should be pitched roofs. Mr Speaker, they have been telling me about this particular solution for the last 3 years, one has heard it, not officially from the Government until December, 1979, but unofficially this is the solution that has been given out. What has delayed the resolution of this problem? Why hasn't Government gone to arbitration? Why hasn't the Government issued proceedings? Why hasn't the Government commenced work? Talk about the Gibraltar problem, Mr Speaker, this is getting to the same proportion as far as talking is concerned and as far as meetings is concerned. What is the Government's policy going to be in at the next round of talks in August, I suppose it will be no, there is no agreement between the consultants and the contractors as to who pays for the remedial works? What is the cost of the remedial works? I think in an answer we were told it was over £1m. Have discussions taken place that even give any indication of agreement? Have the contractors indicated that they are prepared to foot the bill of £1m? None of these questions have been answered by the Government They have hidden behind the cloak that this is sort of sub judice. Well, it must be the longest case in my experience that has been sub judice of such importance to a community. There are cases that are not important, they can stay on the fill for 10 years as far as anybody is concerned, but this is public housing, not made available to the public, we have heard earlier in the House the small number of flats that are being produced this year, more, hopefully, next year and these are flats that have been empty for a long time -

130 - for a long time, they were allocated last year most of them, but still a number of flats on the top floor that are not allocated, that could have gone on the housing list if Government had acted promptly and with responsibility towards its people. So, Mr Speaker, we have no confidence in the manner in which the Government has dealt with the problems of the Varyl Begg Estate because we are not going to get answers today, I know. We are going to be told: "The plans are ready now, we are going to do them but we are having meetings again with the consultants and the contractors." But we are not going to be told: "and if those meetings do not meet with success in August and the whole question of responsibility is not sorted out on this basis, that the Government pays nothing, because the Government is free from blame on this, that the British Government pays nothing, because they are free from blame of this," if they are. We are not going to be told that but if we are going to be told that and on top of that they say: "and the deadline is August, 6 years, enough is enough and we will then go to arbitration," if they are still allowed too by their contracts - or: "we will issue proceedings." If we get that sort of answer, well, then we may be getting somewhere and the whole purpose of the motion will not have been defeated. But as the facts are no one can have any doubt at all that there is great merit in this motion. Obviously, I don't expect the Government to vote in favour of it but I commend the motion to the House.

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

HON ATTORNEY-GENERAL:

Mr Speaker, I trust you will permit me to refer to my notes. Mr Speaker, attention and debate over the problems of the Varyl Begg Estate have focussed, not unnaturally, on the roofing defects but at the outset I would remind the House that the successful resolution of the Varyl Begg project involves, as on all building contracts, the remedying of all defects which may arise from its construction. Mr Speaker, there are several aspects to consider, three main ones. First, of course is the question of the roof. The second, very important, the consequential damage which flows therefrom and, thirdly, other matters which seem to have been lost in the importance that has been given to the roofing problem which are other matters which also require remedy, such as, for instance, balconies, floor screeding and courtyard levels. Mr Speaker, the role of the Attorney-General is to provide legal advice and assistance to the Government in the comprehensive resolution of these matters. The Hon and Learned Leader of the Opposition has drawn attention to the fact that it was not until some time in 1979 that some houses which had been left vacant were then thrown into the allocation pool. Mr Speaker, Hon Members will be aware that it was only until May, 1979, that Government received the last of a series of reports which related to the roofing problem. These reports were, of course, given to our contractors and our consultants for study and of course, the Government itself studied this report with great care. It was then that on technical advice

that the Government took a decision that it would pursue the construction of pitched roofs at the Estate, there may have been a lot of talk before that about pitched roofs but it was not until 1979 that the Government actually took that decision. One result of the erection of these roofs, it was advised by the technical experts, would be to remedy the existing roofing defects. Of course, Members of this House will understand that that does not necessarily mean that pitched roofs are the only way to remedy the problem but the Government on advise, consider this to be the best way to proceed. In August, 1979, discussions were held with the consultants and the contractors and the consultants began to prepare preliminary plans for the construction of these roofs. These were submitted and approved by Government on technical advice in January, 1980. Government, after consultation with the consultants, decided on a programme of costing by the contractors and the erection of the roof together with the remedying of consequential and other defects by Government consultants in consultation with the contractors. There has been slippage. It was originally anticipated that the programme would be brought to the point where work would commence in the Spring. Detailed plans were duly complete but, unfortunately, the costing and the checking of the roofing and the plans took longer than what was originally contemplated. The Hon and Learned Leader of the Opposition has said that the matter is sub judice. Well, it has been treated as if it were a matter sub judice because negotiations are in progress, they are without prejudice and the matter is delicately poised. Since June, discussions have been in progress between the Government consultants and its contractors on costs and on a time-table. The House will be interested to know that the Attorney-General is at present in London conferring with the consultants on progress and preliminary steps have been taken to facilitate the early supply of materials. Naturally enough, schedules of consequential defects have also been prepared and are with the consultants for action with the contractors except in respect of a small number of flats to which it has not yet been possible to get access. There are other consequential aspects of the roofing problems which are under consideration by the Government and these will be referred to the Consultants in due course.

Since January, 1980, the consultants have been in discussion with the contractors to identify other defects and progress has been made on these matters in relation to courtyard levels, floor screeding and some piping work. The Hon and Learned Leader of the Opposition has talked of confusion, utter confusion, in the minds of Government. This is not so. There is a definite plan which Government is executing in order to come to a satisfactory settlement of the overall problems of the Varyl Begg Estate. The Government's decisions and objectives, through its consultants and contractors, is to comprehensively resolve the outstanding problems of the Estate. I have said, and I repeat again, that the work has slipped behind schedule but there has since August 1979, and I reiterate, been a definite plan to reach such a resolution and definite progress has been and is being made. It seems to me that it is not desirable to treat separately the execution

of the works on the roof and its cost, certainly at this stage. The Hon and Learned Leader of the Opposition has talked in terms of statute barred. He may rest assured the Attorney-General's Chambers are keeping a watchful eye on the time limitations and we are not statute barred. It does not follow from what I have said that there can be no firm prospect of a commencement date for actual work but I am afraid that I cannot give a date to this House. As Government's legal adviser, there is nothing further that I can really say to this House.

HON A J HAYNES:

Mr Speaker, I shall be looking down every now and then at my notes just so that I can warn the Chief Minister in case he wants to say bob up and down. First of all, in answer to Question 175 of 1980, we were told that the commencement date for the works at Varyl Begg given in March was an impossible date but that nevertheless it had been arrived at in good faith. There wasn't one date, there were two dates. First of all, there was a Spring date, which was given for the elections and then there was a 'by June' date given in March by the Attorney-General. This second date was given with an admission of slippage but was given in such an emphatic and assured manner that it was just a mere routine slippage, nothing special. But if, as we were led to believe in answer to the Question No 175 last Thursday that the June phase was, in hindsight, an impossible date, we should ask ourselves was there anyone familiar with the intricacies of the construction business as is the Minister could possibly make a blunder of such inordinate proportions innocently. I believe that the Spring date was given recklessly and that as such, such a date was both impossible in hindsight and in foresight and it is the foresight aspect which most concerns me. Surely, if the date is impossible now and it is not just a matter of mere slippage, surely if it was impossible it should have been foreseen and especially now when we have the situation where there is no date. How could they possibly give a reassuring date in January, February and March and then in July, when it should have already started, come up with no date at all? Surely, the time of giving that date must have been foreseeable? It must be foreseeable to somebody who deals with consultants and has given time for plans and not always are the consultants giving realistic time. Surely if you press them they can give you an indication that this is a sort of hopeful plan. In March things were apparently going according to plan, the plans had been done it was just the costing that was missing and now a month later, not just more slippage but now a month later, nothing at all, yet we know there are plans, we imagine the costing has been going on for some time and now there is nothing, not even a date. And I go back to the March meeting of this House. In that meeting we were not given any real indication on the state of the operation, certainly nothing as gloomy as we were informed on Thursday and we are being told now. Surely we are not being asked to believe that Government didn't know then that it was an impossible date, that it was farce? I believe that the

June date, and especially the Spring date, should have been qualified as a wild outside bet and that as such it should not have been proffered in January and February as an election promise when it was only an election carrot. I think, perhaps, Mr Speaker, in Varyl Begg we have the best example of the golden thread which underlines Government policy, the policy which we were informed of and which was propounded by the Hon Member, Mr Canepa, namely, that all that is desirable is not essential. We know that the tenants of the top of Varyl Begg can live there even if they are in appalling conditions, they do live there and perhaps that is what Government means when they say essential.

HON A J CANEPA:

Mr Speaker, if the Hon Member will give way. That policy applies to public expenditure, it doesn't cover other considerations. It was in the context of expenditure that I said that I was guided by what is essential and not by what is desirable and let the Hon Member not try and spread that across the whole board of Government policy,

HON A J HAYNES:

Mr Speaker, we have now the assurance of the Hon Member. I would submit that since that policy is directly applicable through the facts in question then one can argue that it is the policy which underlines all Government dealings and things are only essential (1) at election time and (2) when peoples lives are at risk because you can't get conditions worse than they are at Varyl Begg without declaring the place unfit for human habitation and throwing people out and yet up to the marginal element when they can just about live there they are left there for years. Mr Speaker, on travelling round Varyl Begg, one thing that distressed me most, perhaps, was the resignation of the tenants, those tenants particularly affected. Some, true, were angry but their bitterness as a whole was more pronounced than their desire for action on the matter. They were disillusioned, they had no serious hopes that anything would be done in the immediate future this disillusionment could have been helped by the Tenants' Association which I felt was lacking in its help there, and that is not Government's fault but I would like to make the point.

But, generally, for whatever reason, and, principally, I would argue for the reason that nothing has been done, the tenants are bitter, they are disillusioned, they do despair and as such one can say that they have no confidence and similarly I can say this House has no confidence that this matter will be resolved. That is all, Mr Speaker.

HON M K FEATHERSTONE:

Mr Speaker, we have heard a lot of comment from the Hon

Leader of the Opposition who obviously from that side can say many things which do not bear the absolute accuracy of the whole situation. He started off, and he has reiterated several occasions, that it has been six years and Government has done nothing. Many of the flats at Varyl Begg were not even completed until 1976/1977 so where he gets his six years from is basically the occurrence when some of the flats were completed in 1974 when moisture started appearing in the roofs. Government, immediately this moisture started to appear, took what I would think was the correct and obvious course of action. They said to the consultants: "Look here, moisture is appearing in the roofs. Will you please explain what this is?" The consultants came back and said: "It is nothing sinister, nothing to worry about to any great extent, it is the residual moisture in the concrete since this type of construction has a lot of concrete and in concrete construction you get what is called residual moisture. Government were told this by the consultants, consultants who I would once again state were not of Government's choosing, they were of the choosing of the previous Government or at least they were accepted by the previous Government even if they were chosen by ODA. But Government felt bound that they had to accept, in the first instance, the consultants' comments on what was causing this moisture. However, by 1976, it was obvious to Government, and Government had no hesitation in saying so at the time, that this was not, in spite of the consultants' continuing to insist that it was residual moisture, this was not the actual case, that there was some defect in the roof. Government, quite rightly, put it to its Legal Department and said: "What are we going to do?" I think a very sensible answer was given. Before you decide what you are going to do you must know what is wrong. Government said to the consultants: "Will you tell us what is wrong? Is the design of the roof faulty?" There were various theories put forward by various people. One theory was that the expansion and contraction of the roofs was such that it was creating strains, another theory was that perhaps the roof had not been done to specification. All sorts of theories were put forward and Government asked the consultants and the contractors what was wrong with these roofs. The consultants came back and commented that possibly some of the specifications of the roofs had not been complied with properly and the roofs should be looked at. This was put to the contractors and they at that time made a very important comment. They said that they accepted there might be some specifications that were not what they should be and they were willing to put it right but this would not solve the situation of water penetration through the roofs. Once again Government was put into the position of being told here is somebody saying we are willing to do a measure of work on the roofs but it is not going to be a solution. Government, obviously, could not say go ahead and do this if we were not going to get what was obviously necessary - a permanent solution to it. Government, on the advice of its Legal Department, decided that they would have to find out definitely what was wrong with the roofs so that a permanent solution could be looked for. So Government appointed an independent firm to look into what was wrong with the roofs and to make a thorough invest-

igation. This was done, initially, in April, 1978. A first survey was done, a second survey was done and the results of that survey were given to Government in July, 1978. This survey, which was conducted on three blocks, showed that there were certain specification faults and a suggestion was made by the consultants that the best remedy to the whole situation, not the only remedy but the best remedy, would be to construct pitched roofs. This was put to the contractors and they came back and argued that since only three blocks had been dealt with, this did not mean that it was generally the case and that they were willing to deal with the three blocks but they could not take the whole of the Estate as suffering from the same fault and so Government decided that a further investigation should be made by their independent consultants who then looked into fifteen blocks and came up with their investigation results which did show that the specification faults did show up in all fifteen blocks and that it would be not, in their opinion, unfair to assume that the whole of the eighteen blocks were suffering from the same fault since the same general specification faults were showing up in all the blocks that were being dealt with. They reiterated that in their view pitched roofs would be the best answer. I would like to make a little aside in this. I commented the other day that the work would be done by the contractor and I said "who originally did the work wrongly." Perhaps that was too wide an interpretation. It does appear from the evidence we have had that some work has been done wrongly but since this may eventually become a legal action, it may be classified if not de facto that it may become sub judice and I would not like to be quoted as stating point blank that the work was done wrongly by the contractors although evidence does show that in some parts some specifications were not followed. When we got this reply from our consultants about pitched roofs, we again consulted with the consultants and we said: "Here you have all the investigations by the consultants, they suggest pitched roofs, it seems to us to be a good idea, what do you think of it?" The consultants immediately turned round and said: "Yes, we agree with you, pitched roofs should be the answer." We said: "Obviously, we feel that Government should be absolved of any costs in doing this," and the consultants said: "Well, we do not know what the whole answer to that is but for our part we are willing to design the new pitched roofs and put this in as part of our contribution towards the cost," and they did design the pitched roofs and the designs were sent to my department around October/November 1979. My Department looked at these designs and saw various modifications that we thought would be an improvement and we put them back to the consultants and they agreed that these improvements were reasonable and modified their design so that these improvements could be incorporated. The consultant said also that he felt that negotiations with the contractors should be conducted through himself and that he was in touch with the contractors and that they had come to a reasonably happy working relationship. The next stage was that costings would be worked out both by the consultants' Quantity Surveyors and by the contractors' Quantity Surveyors so that the costings would be known. At this time, which was in January/February, 1980, Public Works

Department and through Public Works Department, Government were told that it seemed that costings would be completed by April and that work should be able to start in the Spring and the Spring, as far as I understand, starts on 21 March and ends on 20 June. That is why since in all good faith Government were told by the consultants who were conducting all the negotiations, that work should be able to start in the Spring, so Government passed this information on when questioned in the House in March and reiterated, quite honestly and in the fullest of good faith, that it was hoped that work would start in the Spring. It is a sad fact of life that in all types of work to do with building slippage tends to creep in and in this instance slippage has crept in and we have not been able to start work in the Spring, in fact, the costings took longer than were anticipated and the initial costings were not ready until late June. But I would comment that slippage is not something which only happens in Gibraltar as, perhaps, people might think from the way the Hon Mr Isola speaks. We have heard the Isle of Grain generating station in the United Kingdom where the slippage at the moment is running two years and we had another generating station where the slippage ran into something like 7 years. Perhaps, it is not only Gibraltar that suffers slippage but the United Kingdom which, to some of the gentlemen opposite, is the be-all and end-all of everything. While we are discussing what happens in the United Kingdom, legal actions there can seem to go even with important public buildings for quite a long time. I think Roman Point took fourteen years so.....

HON P J ISOLA:

If the Hon Member will give way. This is why we are very concerned because even if proceedings were started today the likelihood is that it would go on for four or five years. That is why we say it should have started before.

Can I ask the Minister, he has talked about costings having been completed in June, is he going to let us know what the cost is likely to be?

HON M K FEATHERSTONE:

As I said Roman Point took fourteen years and the Hon Mr Isola did not mention Roman Point, he is willing to concede it now but at the time he said: "Nowhere do you hear of anything lasting as long as the six years of Gibraltar." I am commenting that in England some of these cases do take a very long time. Anyhow, as I said, the costings were produced in June but there was some difference in the calculations by the contractors' Quantity Surveyors and by the consultants' Quantity Surveyors and I understand that they are meeting to reconcile the somewhat different figures that have been obtained and I think that it would not be advisable to give those figures at the moment. I think they will come out in due course when the whole negotiations which, as the Hon Attorney-General has said, are actually going on at this

moment in London, when they have been finalised. I would mention that in the meantime we have already been given to understand that some of the preparatory work for the pitched roofs is going ahead. I believe that measurements are already being taken for the actual sheeting and that the design drawings of the sheeting are being prepared and that the sheeting itself is going to be cut fairly shortly. Work is going on and it is hoped that work will commence as expeditiously as possible. On the question of costs, it is not for me to say what is going to be the ultimate situation but a point has been put forward and must be taken into consideration, do the pitched roofs involve any element of betterment and if there is some element of betterment then should not that be paid for by the Gibraltar Government, I don't think the United Kingdom Government is going to pay for it, but this is something that will also have to be resolved and will take some little time. I would comment that there is no question, as the Hon Mr Isola said, that we are holding back large sums of payment to the contractors and therefore they may feel that they should go slow on any negotiations etc. It is correct that the contractors have a lot of ex gratia claims but these are not specific amounts that are owing they are simply ex gratia and they will be resolved in due course and, of course, it is not only the roofs that are under consideration but various other defects some of which have been mentioned by the Hon the Attorney-General and the ultimate situation when the pitched roofs have been put on, the rehabilitation of those houses that have been so severely damaged by the rain penetration. I don't think there is much more that I can say on this. Government is dealing as expeditiously as they possibly can with this, it is not 100% in Government's hands. You can telephone the contractor, as I know he has been telephoned almost daily by the Attorney-General, and one is to some extent in his hands if he feels he must go a little slower than, perhaps, Government would wish. To some extent Government is forced to go along with it unless one wishes to have a complete break with the consultants and the negotiations that he is conducting with the contractors, and go it alone, but at the moment our advice is not to do that, that things are moving towards a conclusion and we hope that in the next few months we will see that that situation is satisfactory clarified. I would just, before I finish, make one little comment. It is not a question that Government has done absolutely nothing for the tenants at Varyl Begg who, I agree with the Hon Mr Haynes, have shown a very great measure of resignation or cooperation in this matter, Government did flinkote two of the roofs of the worst affected buildings and I believe that had very good results since it was done, there was no or very little further penetration so Government on its own has done something to ameliorate the situation in the worst cases and Government, also, did do up as many houses as was reasonably possible to do up, it would be obviously invidious to do up a house where the penetration is extremely heavy but Government did do as much as possible and there are a few more houses which we are actually doing at the moment which will be available for allocation. But as I say, Government is treating this with a sense of urgency but it is not 100% in our hands and I am sure

the Hon Leader of the Opposition will know from his own legal practice that however much you want to hurry along certain things, they often have to take their time especially when they are very complicated and very technical. Thank you, Sir.

HON W T SCOTT:

Mr Speaker, Sir, I, basically, have only two points to bring up, fundamental as we see it from this side of the House, but before I commence on my brief contribution to this debate I think it is perhaps a requirement that I should declare an interest, being a director of a local company that originally entered into a joint venture partnership to undertake the electrical extent of the work at Varyl Begg and subsequently on the liquidation of the United Kingdom part of this joint venture, undertook the extent of the balance for the electrical work in its own right. But here again, Mr Speaker, we are not talking about the contractors or the consultants as we believe that fundamentally Varyl Begg Estate was built for the people of Gibraltar, for the future tenants of the Varyl Begg Estate, and I think that sight has been lost of this in trying to subscribe any blame that there might have been to the consultants or to the contractors and Government, I feel, has lacked the responsibility and the commitment that it has to its electorate, to the people that put it in Government; precisely for this responsibility and commitment. That was my first point, Mr Speaker. My second one, which has also been raised in this House before, is that if the Varyl Begg Estate had been a private development, a substantial number of those tenants who live in conditions which quite frankly are shocking, would have perhaps taken legal action against the landlord and which they are incapable of doing because the landlord itself through the Public Health Ordinance, the landlord itself is the Government and Government cannot take action against itself, in other words, a case of perhaps begging the question, is Government itself above its own laws? I cannot see this happening in a private development where the Public Health or the Environmental Health would have used existing legislation to have taken the landlord to court. The Hon Minister for Public Works raised the point on the flinkoting of two blocks. Subsequent to the flinkoting of these two blocks the Hon Mr Haynes and myself went in our capacity as Members of the Opposition and in fact we saw the top floor flats of these two blocks, I think they are Royal Sovereign and Valiant House. We saw that certainly on a number of occasions in a number of flats with certain rooms within the flats that condition had been perhaps bettered insofar as instead of two pints of water coming down particular ceiling of every room every hour during the course of a rain storm, it is now down to one pint or whatever, but the problem still exists, it is still there and in fact because of this flinkoting some flats at that level that had not sustained any substantial damage due to the ingress of rain water have it now and the Hon Mr Haynes and myself have seen this.

HON M K FEATHERSTONE:

If the Hon Member will give way. Even if the pitched roofs were put tomorrow a quantity of water that is already residual in the roof screed is going to come through for a considerable period of time.

HON W T SCOTT:

I agree with that, Mr Speaker, but surely it is a remarkable coincidence that this should happen where there has been no rainfall and then within half an hour of rain coming down the rain comes through, let alone the effect of the inherent humidity within the walls, let alone the ceilings. Those were basically my two points, Mr Speaker.

HON MAJOR R J PELIZA:

Mr Speaker, I have a few things to say if nobody else wants to speak. I would have thought that usually we have a sort of ping-pong game here but for some unknown reason it would appear the other side does not want to bat.

MR SPEAKER:

I have never been aware of that, not a ping-pong game anyway.

HON MAJOR R J PELIZA:

Mr Speaker, perhaps I should start by saying that, as my Hon Friend here on the right who had an interest to declare, I have no interest to declare except the interest of the tenants and the interest of the public purse and the interest of good administration and it is because of this that I stand here now to speak on behalf of my Party and I think also on behalf of the general feelings in town. As an old soldier Mr Speaker, after hearing the Minister responsible for what is going on, after all he is responsible at Varyl Begg, I felt like singing the old song: "Tell me the old, old story, tell me the old, old storey." (SUNG) This is what we were hearing, Mr Speaker, the old, old story that has been going on now for years. No doubt this will go in the Guinness Book of Records, Mr Speaker, if we keep going on at this pace.

MR SPEAKER:

I think what will go into the Guinness Book of Records is the fact that for the first time in the House of Assembly a Member has tried to sing.

HON MAJOR R J PELIZA:*

Since, Mr Speaker, the Government seems to have no reaction to the spoken word, perhaps they will to the sung word. I doubt whether we shall move them any way because judging by the cast iron case that my Hon Friend has made today with facts and figures, a couple of the facts there, Mr Speaker, that listened to by an independent jury, not by a biased one as, of course, Government are since they listen to their own case, but by an independent jury, I have no doubt that they would have been guilty of incompetence. This is what has been proved today here that the Government has been incompetent with respect to Varyl Begg Estate and there is no excuse, Mr Speaker. All the arguments that have been given today here by the Minister for Public Works do not in fact coincide with the answers that have been given in this House which are on record and can be read. I think that to hide behind legal advice is not in itself a good argument that this side of the House can accept. I think the relationship between legal adviser and client is well known. The advice was given, it is the client who ultimately has to make the decision. Furthermore, perhaps a client who sees the consequences of following that advice, however good the advice may be, firstly in private enterprise would think of consulting an expert on the matter and getting opinions. I think that would fully justify the action or the non-action of the Government in the present circumstances. The fact is, Mr Speaker, that already we are hearing an indication that the Government is going to pay for something, this is what I inferred when the Minister for Public Works said that if they had the pitched roofs there might be improvements for which perhaps the Government should contribute. Already the thin edge of the wedge is there, Mr Speaker, I can see it coming. I don't know how much we are going to pay but this I suppose will depend on the legal advice that was given to them by the Attorney-General. Then, of course, if that is the advice given that under the circumstances the Government should foot part of the Bill, the Government will feel itself fully justified to pay and we will hear them in this House making a case as to why they have to pay. Of course, since they have the majority, I suppose the public will pay. We, of course, right from the beginning, Mr Speaker, have been stating under the present situation, whatever technical advice, whatever legal advice, the practical steps to have been taken would have been to find out what is wrong, put it right and then see who has got to pay by taking them to court if necessary if no understanding could be arrived at between the parties involved. That to me would have been the common sense way of approaching the matter. Above all, bearing in mind that the cost would be increasing day by day due to the galloping inflation that the world as a whole is going through. It was certainly not a business like approach, Mr Speaker, it was certainly not the approach of practical men trying to resolve the problem, it was a sort of approach of utter confusion which is so clear in the answers that can be read in the Hansards over the years. The picture, Mr Speaker, is there to be seen. It is important, I think, that people should know more about it otherwise, Mr Speaker, they will be saddled

with the same kind of Government that has brought so many disasters to Gibraltar in the past few years of which I think the Varyl Begg is the outstanding one, it sticks out like a sore thumb. I think that no doubt the Government has been acting in good faith, no one is accusing them of bad faith, it would be terrible to suggest that the Government is deliberately trying to continue the situation in Varyl Begg as it is, that has not crossed anybody's mind, but I am absolutely convinced that there is confusion and that therefore, Mr Speaker, they themselves have no longer any confidence, have no confidence in themselves of how they have proceeded through the years that they have been facing this problem. They certainly have no confidence of how to proceed and this is why, Mr Speaker, we are more than entitled at this very late hour because it is really a very late hour now and I doubt whether the wrong can be put right, in the sense of pounds shillings and pence. I don't see how we are going to recover all that has been lost in rent. I don't see how we are going to make good all the inconveniences that the tenants have gone through and in some cases hardship because people have not even been able to occupy the house. I do not see how we are going to compensate for that but this I think is the best we can do, Mr Speaker, is to bring it to their notice, as it is the duty of the Opposition, that there is no confidence within themselves on how to proceed and that certainly we think we are entitled to that there is not confidence in the Government with regard to this problem. Therefore, Mr Speaker, I do not believe that this has been done without considerable thought on the part of the Leader of the Opposition and on the part of every Member of the Opposition because a vote of no confidence against the Government is a serious matter. The Government of Gibraltar is as much my Government as it is of anybody else in Gibraltar and I hold them in respect. That does not mean, of course, that I do not exercise my right as a Member of the Opposition to criticise them and to criticise them in a manner that they feel it as much as possible in the hope that they will be able to produce better results in the future. This is what I have been elected here for even if I am in London, Mr Speaker, and I am very glad to say that although I went as an independent living in London in the previous elections in 1972, and I got in, I went in in 1976 with more votes Mr Speaker, than on the previous occasion, so it would show that notwithstanding the criticisms that I've heard in this House on many occasions about my residing in London about which the people are well aware because the Chief Minister makes it a point that they never forget, they thought that the performance that I was carrying out as an elected Member of the House of Assembly was something that they obviously put their trust in me in that respect and following that trust that has been placed in me, Mr Speaker, following that, it is my duty today, Mr Speaker, to vote in favour of the vote of no confidence that has been put forward by my Hon Friend, the Leader of the Opposition.

HON CHIEF MINISTER:

Mr Speaker, I am glad of this opportunity of answering one of

the last remarks of the Hon Member who has spoken to the effect that I occasionally remind him, or people, that he lives in London. I know that he left the jurisdiction whilst he had been elected whilst living here and that subsequently despite the fact that he made it clear that he was going to carry on living in England he was elected, I accept that, but I equally have the right any time I think proper to remind the House and the people that there are certain things that living in London you cannot be in touch with. I know he will say that he lobbies the House of Commons and he does this for the other but is that enough?

HON MAJOR R J PELIZA:

If the Chief Minister will give way. For instance, Mr Speaker, because I live in London I was able to bring the European Movement here and because of that, I think, we were very happy yesterday to welcome the Members of the European Parliament. Perhaps if I hadn't lived in London that would not have happened.

HON CHIEF MINISTER:

Is it because of that that we went to Brussels and to Strasbourg. It is because of what Major Peliza has done that we owe everything to him because he lives in England, gets his allowance for living in England as a Member of the House of Assembly in the Opposition and comes occasionally when he can manage to get the fares in time. We have also had him come rushing here from the airport straight to the House. I think I am entitled to say as often as I like that he cannot be in touch and that is seen by his supplementaries, by the questions he puts from a distance but mainly now, of course, he deals from London with the lavatories. His main area of questioning is on the state of the lavatories in Gibraltar. In fact, a lot of people are greatly surprised that we have a Member here living in England but there it is, it's a fact of life, but it is equally a fact of life that I am entitled to say it as often as I like and I shall continue to do so. I will just put the Member on notice that he will not be surprised. He is out of touch, completely out of touch with everyday life because a Member, to serve the House properly, must be in touch with the people every day and in fact that it was all Members do except, of course, the Hon Major Peliza. That he has his responsibility but let him not think that because he was elected I am not going to refer to it. Members of Parliament in UK, of course, even though they live in London go weekly to have their surgeries in their constituencies, here it depends on the date of the House of Assembly whether we see Major Peliza in Gibraltar or not. Anyhow, that is only by the way but I am glad to be able to explain to him and to carry on telling him that I shall remind him. When he said the other day, "I don't know whether I am here or there", I had to say: "You think you are there but you are here." Mr Speaker, one or two points deserve attention. Of course, it is a very unfortunate situation in Varyl Begg and

no Government would like a situation such as we have had to deal with. I often say that apart from the Spanish question one of the biggest problems I have ever encountered in my public life has been the Varyl Begg Estate. I will not go into the merits on who planned it, etc. We have inherited a situation which we have to deal with but there was a remark made by the Hon Major Peliza that we should have taken the matter to court, carry on with the repairs whatever the cost and carry on. Against that there is the argument that we are going to have to pay for betterment. Who can go into an action on a construction contract which are particularly tedious and difficult, in fact, most of the technicalities are dealt with by assessors and so on, who would go into that blindfolded without knowing what the end product is going to be particularly for as long as you have advice that other courses are better? It is true that courses take some time longer than one would want them to take but that is a fact. It would have been as easy as anything to have started an action and give satisfaction to people that we were taking the people either one or the other or the two together to court and that would be satisfaction but that would not have given satisfaction ultimately to the taxpayers of Gibraltar and it would certainly have been very irresponsible to have taken action on the Estate and at the same time legal action covering up, possibly, areas which would have been of the utmost importance to decide on the liability. I will say one thing and that is that since we had the dependent consultant's report, the way to the solution of the problem has been much clearer than it had been before and I would like to pay tribute to the Hon and Learned the Attorney-General, Mr David Hull, who is now precisely at this moment carrying out consultations in England because he has given me, as the previous Attorney-General had not given, advice on this matter with very clear thinking on how to proceed in the best interests of the Government. We have had advice before but we were getting on without a timetable, without really knowing where our purposes went but now we have that. We have also dates for the starting of the works but what is the use of giving a bona fide date now if in fact it is not possible to effect it by that time and then to be told that we had set a date and it has slipped by and even to the extent of saying that it was unwarranted, irresponsible, etc. We have dates but we are not going to disclose them now because if they do not come up to expectations then they will say that we have misled the House. Let me say that we have an aim, we have a target in every area of the procedures and that we hope, as the Minister responsible has said, that this will get off in the reasonably near future. We are not going to be moved to make any particular fixing of dates that would later might or might not be possible to implement. Let us make it quite clear that we know the way the matter is going and we are satisfied and indeed the Attorney-General himself, who has been dealing with this matter, has offered to answer in the debate but I would it was better that he should be in London at a particular critical time in these negotiations to try and bring them to a successful conclusion.

Reference has been made to the tenants of Varyl Begg. The only point that one should make is that not all the tenants of Varyl Begg are suffering difficulties, there are quite a number of them, of course, and I should really pay tribute to their forbearance. They have been very patient and I think despite the occasional outburst that they have made that the matter is going to be solved for them and, indeed, they want to remain in their dwellings and they want to see their dwellings repaired and they do not want to leave the Estate. It is no use saying that we hide behind legal advice and that is not a good answer and we have given sufficient explanations without the legal advice and it would be highly irresponsible to act contrary to legal advice. I do not know whether one could be surcharged but one could have a big responsibility to act against legal advice and find yourself with a huge bill that we would have to meet when in fact you were advised otherwise. Therefore, it is no use Major Peliza talking about the relation of client and barrister or client and legal adviser. It is the legal advice that the Government receives that governs the approach as to how matters are to be done in the political field without losing sight of the legal liability that one would undergo if in fact one were to act against the considered advice given by people dealing with this matter and I would say in this case since the Andrews, Kent and Stone Report was received, done so with great determination and great foresight of the Attorney-General, Mr David Hull, but I am not going to cover myself behind him. I accept the political responsibility that lies in taking whatever advice is given because ultimately we have to answer and we are quite happy that the way things are going is the right way.

HON G T RESTANO:

It seems surprising to me that on a motion of no confidence and on such an important issue as the problem of the Varyl Begg Estate, that only two elected members of this House on the Government side should see fit to get up and talk on it. Secondly, I notice that the Chief Minister just a few moments ago spent almost as much time on Major Peliza than he did on the very serious problem of the Varyl Begg Estate. I do not know whether this is indicative of the seriousness that he attaches to the Varyl Begg Estate. However, he did say, and we have heard this so often before, he mentioned that the AACR Government had inherited the problems of the Varyl Begg Estate, something which the Minister for Public Works also said when he said that the consultants had been appointed by the previous administration and that they had been lumbered with those consultants. As he knows and as the Chief Minister knows, the Government has always put the blame on the previous administration knowing full well that the money for the construction of the Varyl Begg Estate was negotiated by the previous administration was obtained from the British Government who in their turn appointed the consultants. There is not much that any administration, even the Government of today, can do if they ask the British Government for funds for a particular project and the British Government agrees to those

funds being given but at the same time stipulates particular consultants. It is really a false story that the AACR Government keeps bringing up time and again. I think it is well known that when the AACR won the 1972 elections, not a single brick had been laid at the Varyl Begg Estate. The first bricks that were laid were laid during the administration of the present Government and it was they who immediately knew whenever there were faults at the Estate. The Minister for Public Works in his intervention said that in 1974 moisture started to appear. He gave the impression, Mr Speaker, that that moisture was something which was not at the time considered to be particularly serious. However, I would like to quote from a motion on the Varyl Begg Estate just over a year ago where the Hon Mr Featherstone said: "I stated that on 4 October the first three blocks were handed over to Government and a few weeks' later roof leaks were detected." He continued: "I never said that they were serious defects. I never said that they were widespread, I said that roof leaks were detected and immediately the Public Works Department informed the consultants that there were roof leaks. Through the winter of 1974 these roof leaks persisted and the Public Works Department persistently informed the consultants that there were such leaks." He also said that the Public Works Department person who was in charge started in 1974 with a stream of reports and we are told that this was just residual water.

HON M K FEATHERSTONE:

If the Hon Member will give way. Is the Hon Member challenging the fact that the consultants did say that this was residual water?

HON G T RESTANO:

No, Sir, I am saying how could it possibly have been residual water when there was streams of reports coming through. But, in fact, the consultants said that it was residual water and that the problem would resolve itself. The situation did not remedy itself but the Government seem to have taken that explanation in their usual ostrich type attitude. They hoped that the whole position would be rectified, that the water would just disappear and not only that but knowing that the blocks had problems of more than residual water they kept on accepting new blocks made in the same way as the previous blocks, without proper inspection and paying for them. Why did they not say at the time: "Wait, you have completed another block but we are not satisfied and we are going to get the same problems on these new blocks as we have had with all the others. Let us do some proper investigation." Did they do that? No, they just continued accepting the flats knowing full well, especially in 1977 when the Minister said that the last of the blocks were being handed over, especially in 1977 when it was clear that it was not residual water, it was clear that they were major faults but yet they accepted the blocks and paid for part of them. There have been a multitude of questions and several motions in this House on

the Varyl Begg Estate and these show how concerned the Opposition is about the state of that Estate but all the Chief Minister could come up and say once was that the situation had been debated ad nauseam, this was last year, ad nauseam, as if he was absolutely horrified and fed up because it was being discussed. Well, I know that perhaps he is fed up that it is discussed but it has to be discussed because it is a great problem but that shows the irresponsible way of the Government as a whole towards the Estate. We all know the state of the flats, we all know the living conditions, the dampness, the electricity ducts which are full of water, the curtailment of proper living conditions at that Estate and even danger to life because of the water running down the electricity ducts and if the conditions were serious 31 years ago they are more so today. In moving this motion, my Hon Friend the Hon and Learned Leader of the Opposition, asked a question he asked the Government what was it costing the Government in the non-payment of rents but, of course, that question the Government will not answer because they do not wish it to be known how much the tax payer and how much the revenue of Gibraltar is being curtailed because there has been no proper investigation into the Varyl Begg Estate at the time. Just under 2 years ago, the then Leader of the Opposition, fed up, too, of being continually accused of his administration having been responsible for the defects at Varyl Begg, asked in a motion for a public inquiry into the Varyl Begg situation. He asked for a public inquiry with a genuine desire to find out where and who and how the responsibilities lay for the defects of the Estate. So we are talking about a motion of nearly two years ago and nearly two years ago the Government defeated that motion and said that it did not want a public inquiry and I will give you the reasons that they gave at the time for not accepting a public inquiry. The Hon Mr Featherstone said at the time: "Government are determined to press for some legal action in this" - nearly two years ago - "because the situation has got to the stage that we really must put the responsibility fairly and squarely on the people who are responsible", He also said: "This is a matter which Government is determined is going to be proceeded with in the legal field and I do not think that a public inquiry at the present moment, if one is necessary in the future, perhaps that can be considered in the future, but I do not think a public inquiry at the moment is going to do any good, perhaps it may do a little harm in the needs to have a legal inquiry". That was the Minister speaking but what about the Attorney-General? The Attorney-General said in October, 1978: "The matter, of course, was the subject of long negotiations" as the Chief Minister has said, and now that the Government has got the report of its consultants on the damage done, there is no reason why a writ should not be issued soon" and he said this in October, 1978. What on earth is the Government doing? They say one thing one year, they contradict themselves the next year, really, it is absolutely extraordinary. I think it is almost a cynical attitude that the Government has taken towards the Varyl Begg Estate. Of course, had Government taken legal action in 1978, perhaps, there wouldn't have been any need to have a motion here today because things would have already gone under way

but no, they reneged and they had to eat their word after because having said in 1978, that there was no reason why a writ should not be issued, then in 1979 when the Hon and Learned Leader of the Opposition brought another motion to the House asking for legal proceedings to be taken, this was defeated. Now they are saying that they don't want to take legal action or rather that they couldn't take it before but, of course, the Minister for Public Works said that he didn't want to comment on one of the matters this morning because it might become a legal matter. How long are we going to wait for Mr Speaker? And certainly when all this is taken in the context of the chronic housing problem in Gibraltar, the Government's record is deplorable and when it is taken with the chronic reaccommodation problem that Gibraltar has, the Government's record is deplorable and when one takes it in the context of the conditions of the tenants at Varyl Begg, the Government's record is deplorable. In that particular debate of 1979 last year, the Government introduced an amendment, in fact, the Minister for Public Works brought in an amendment. If I can remind the House, the motion at the time said; "That this House is gravely concerned with the problems still affecting those dwellings on the Varyl Begg Estate that are already occupied and deplores the failure of the Government in achieving the satisfactory resolution of all other problems which prevent the completion of the project." The Government didn't like the second part of the motion so they brought in an amendment and the amendment was: "and urges the Government to achieve the satisfactory resolution of all other problems which prevents the completion of the project, as promptly as possible". That amendment would have been acceptable to the Opposition but what did the Government do? The moment that Members on this side started criticising as it is entirely their right, out of pique they withdrew their amendment so one moment they were urging themselves to do something about it and in another moment they were withdrawing what they had said and that I think, Mr Speaker, is the type of seriousness that this Government is giving to the problems of the Varyl Begg Estate. And what about cost, Mr Speaker? How much is there in loss of revenue to the Government through rents? Is it true that the project which might have cost 3 or 4 years ago about £400,000 is now going to cost nearly £1m because it was not done at the right time? Who is going to foot that bill? Who is going to pay? The Minister for Public Works said that as far as the consultants were concerned their share could be the design of the pitched roofs. Mr Speaker, the Minister is saying no, but I took it down at the time, that the consultants share would be the design for the new pitched roofs.

HON M K FEATHERSTONE:

I said part of the share.

HON G T RESTANO:

Well, I did not hear "part" perhaps I didn't hear it but certainly if it is part I hope it will be a very small part.

He also said as far as the pitched roofs were concerned and about how much the Government might or might not have to pay, that in having pitched roofs there would be an element of betterment and therefore there was, perhaps, reason for the Government to contribute.

HON M K FEATHERSTONE:

If the Hon Member will give way. I didn't say there would be betterment, I said there might be betterment.

HON G T RESTANO:

Well, that there might be betterment and because there might be betterment in having pitched roofs the tax payer would pay. The reason why we have to have pitched roofs is because the design was wrong in the first place and the specifications were not adhered to by the consultants and the contractors and because of that, because of somebody else's negligence, the Government has to put up pitched roofs and therefore it is considered to be or there might be a betterment. And how much does it cost the tenants in terms of morale? How many tenants have had to spend quite considerable amounts of money repainting because they wanted to spend Christmas with their families in decent surroundings, knowing full well that the cost of the paint and the time element was a completely wasted exercise because only a month later all the dampness would return and this had occurred time and again at the Varyl Begg Estate and yet nothing has been done about it. Now we get the enormous breakthrough, now everything is going to be solved, now everything is going to be fine. Well, this is what they were saying some two years ago, that everything was going to be fine because legal action was going to be taken but yet they do not commit themselves to say how much it is going to cost, when it is going to start, who is going to pay, how long the work is going to take. Even if they started as it was hopefully said, I think, by the Hon the Attorney-General, in the near future, or as soon as possible how long is it before the last of those blocks is going to be finished? Why doesn't the Government come up and give clear answers to all this? Because they don't know, because they don't want to say, because they feel that if they did have to give all these answers they will be showing how inefficient they have been over the years. Of course, I agree with the motion, Mr. Speaker, the House has no confidence in the manner in which the Government of Gibraltar has dealt with the problems arising from the construction of the flats at the Varyl Begg Estate. I support it wholeheartedly.

MR SPEAKER:

~~I will call on the mover to reply to the motion.~~

HON P J ISOLA:

Thank you, Mr Speaker, I think there can be no doubt that the Government is going round in circles. No satisfactory answer has been given to the facts and points that have been put forward on this side of the House. No explanation has been given. I must, however, Mr Speaker, refer to three items that have been mentioned which would seem to me to indicate Government thinking in the matter. Item No. 1, the Minister for Public Works, in the course of an address in which he said very little, slips in the element of betterment value in the pitched roofs. Quietly, there is an element of betterment value there, that, Mr Speaker, is to prepare the tax payers and prepare the British Government, or whoever is paying for it, prepare them to accept a chunk of the amount it is going to cost. I know what they are going to say. A flat roof you only have to repair or you have to maintain every five years, a pitched roof is ten years or fifteen years, you don't have to do anything to it, the betterment value. That came in very quietly. £1½m the Gibraltar Government or the British Government has agreed to pay. The consultants, their contribution is going to be plans for pitched roofs and then as said, I didn't hear it but I must state, obviously, I accept his correction or I accept his version of his own address, it is going to be part of their contribution, what other part, what cash is coming in from the consultants who, if we are to believe the Government when they said originally that it was a design fault, that the contractors told them; "We'll do the repairs, we'll remedy the defects", they told us this about 4 years ago, "but this won't put matters right." And because it is a design fault, the contribution of the consultants is to be new plans for pitched roofs, generous contribution, Mr Speaker, hence the betterment point because the Government know that they are going to have to pay substantially for the remedial measures in Varyl Begg Estate because it is such a matter of public scandal now, 4 or 4½ years, and that the situation is getting worse and worse because the water coming through the roofs as it has been coming for the last 4 years is causing more and more damage to the edifice, so the work has to be done, of course, it will be done but we are going to have to pay for it, that is coming through loud and clear. Then another indication. The Hon and Learned Chief Minister praises the advice he has received from the present Attorney-General, how clear it has all been, leaving the imputation that the previous Attorney-General did not give the Government clear legal advice. Excuse No. 2 for the work not being done yet, put in succinctly, quietly. The present Attorney-General, he has given us great advice but the last one I don't know, shove the blame on somebody else. Then he says: "I'm not hiding behind the skirts of the Attorney-General."

HON CHIEF MINISTER:

If the Hon Member will give way because I think this is very important. I did not say that. What I did say was that since the Andrews, Kent and Stone Report and the matter being taken

up by the Hon David Hull, there had been a sat plan of how to proceed which was not there before.

HON P J ISOLA:

Well, Mr Speaker, I won't labour that point, the Hansard will show what the Hon and Learned Chief Minister said today and what he said yesterday in relation to the other Bill which was reported on GBC last night exactly as we understood him to have said it but, anyway, that is neither here nor there. Then the Hon and Learned Chief Minister said: "We are not going to disclose dates, we are not going to give these things, aims and targets because then we are told we haven't kept to them." The Government was very eager to disclose dates in December and January just before the elections and after the shock they got in the elections they disclosed dates. The same Chief Minister disclosed dates in February that work would commence in the Spring and the Minister for Public Works reminds us that the Spring goes on right through to Midsummer's Day, which is correct.

HON M K FEATHERSTONE:

June 20th and Midsummer's Day is June 24th.

HON P J ISOLA:

I stand corrected, Mr Speaker.

MR SPEAKER:

Order.

HON P J ISOLA:

He is technically correct. Midsummer's Day is 24th June but Spring doesn't end till the 20th of June so, logically, you would expect summer to end on June 28th, but it doesn't, of course, it goes on. We were given Spring but that has gone by and this is a matter for serious public concern, that the Government does not make an announcement about commencement dates and I think I know why. I think the Government is shifting back again to the policy it was following before, that until liability was sorted out work would not commence because why else would the Attorney-General be in London today trying to work out the question of liability before the work commences? We are back at the same old game and this seems to run contrary to what the Hon and Learned Attorney-General told the House on 25 March of this year in answer to Question No 20 of 1980. He said: "Government decided, in principle, in January of this year to proceed with the erection of pitched roofs at the Varyl Begg Estate. Since then the preparation of detailed plans and specifications

and costing of this work has proceeded. It is anticipated that work will commence at the Estate on the roofs by June. Agreement has not been reached yet between the parties as to liability. In deciding to proceed with the work on the roofs the Government has reserved its legal rights. Discussions on the question of liability are likely to be held next month. It should be understood that there is other remedial work to be undertaken at the Estate." When we asked in supplementary questions and we said: "Does that mean that you are now changing your policy, does that mean that you are going to go on with the work and leave the question of liability to be decided?" he more or less answered yes. But now we find no dates are being given, negotiations are going on as to liability, the consultants have said: "There is my share," the Minister says there is betterment value, no straight answer is given and I ask these questions when I tabled the motion: "Is the work going to go on or not? Whether liability is agreed or not?" No straight answer, Mr Speaker. We cannot have confidence in a Government that said in, 1978, as my Hon Friend Mr Restano pointed out, that they were anxious to take legal action and that that was why they would not have a public inquiry. I cannot have any confidence in a Government like that and when two years later it is still trying to get liability agreed instead of carrying on. Of course, we know that cases take years to get decided. The reason why we have pressed for action in the last three years is to get proceedings going. We have said: "You can start proceedings and you can go on negotiating but get the thing moving." Let us not have the position, which I think is a position of weakness, that the Minister for Public Works has told us about the Hon and Learned Attorney-General ringing up the contractors every day. Why should the Hon and Learned Attorney-General be running after the Consultants or the Contractors every day? Has the Government done anything wrong? Have the people of Gibraltar done anything wrong? If consultants draw up the wrong plans and contractors do the wrong work, why should the Government be running after them to try and get agreement? They should be running after the Government when they are faced with legal proceedings in which the Court will hold them responsible, not just for the cost of putting the Varyl Begg Estate right but for the loss of revenue the Government has suffered from having 130 flats empty for 2, 3 or 4 years. That should be the attitude of the Government, but because the Government has dithered from time to time and continues to dither today none of that redress is going to occur and the public of Gibraltar or the Ministry of Overseas Development is going to be forced to pay a substantial amount under the guise of betterment value. The people would be hoodwinked and the people will accept it because they will be so desperate. That is the way we are going and it is quite obvious. I agree that the questions of building contracts are extremely complex and that is why I told Government in 1978 that they could not expect the Hon and Learned Attorney-General with all the best will of the world to have the expertise to deal with a situation like this legally which in England is reserved to leading Queens Counsel who only do building contracts and do that side of the work. You cannot expect an Attorney-General, who has to be a legislation man, who has

to deal with hundreds of different varieties of matters to be an expert in this field. This is what we told the Government in 1978 and I still say the present Attorney-General may give very clear advice but you cannot expect the present Attorney-General to have the expertise in this that leading Counsel have because, Mr Speaker, we are talking here of over £1m. £30,000 or £40,000 in legal advice is peanuts and we are talking of over £1m. and we still do not know in this House today what we are talking about because the Minister for Public Works has refused to inform the House of the cost of the remedial works. He hasn't said: "The consultants say £1m and the contractors say £2m." He has not given any figures at all. The Government is afraid of these facts being made public because everybody knows that the work could have been done for a third of the price if the Government of Gibraltar had acted with the alacrity and efficiency that the public are entitled to expect of them and done something about it in 1978. Well, Mr Speaker, I think we have laboured the point. I think we have put our case very clearly. I think it is obvious that the Government has not been able to reply. The arguments that we have heard are arguments that they have been putting for the last four years. What is going to happen, and there is a Spanish word for this, Mr Speaker, is a "pasteleo", that is what is going to happen. What we do not know is how much "pasta" is going to be put on the roofs and who is going to pay for it. I know what will happen is that the Government will say: "We did this as a settlement because if we did not agree to this it would have taken another five years before the courts had decided liability." I know, and any businessman must know, that a contractor that is owed over £1m. in retention money is not going to agree to do further work at his own expense just because the Government is trying to persuade them to do it, without any compulsion, especially a contractor who agreed to arbitration in 1977 and that same contractor is going to say to the Government: "If you had agreed I will pay what I would have been made to pay in 1977 when you asked for arbitration and I agreed. I am not going to pay today's costs if you choose to take four years in working things out with the consultants." I can see all these problems coming. The Government has had warning of them from the Opposition over four years. The Government has ignored them fully. The Government has gone its own sweet way all along and the result is a mess, Mr Speaker, and that is why we are moving this vote of no confidence on the Government: which in our view is thoroughly well deserved. Thank you, Mr Speaker.

Mr Speaker then put the question and ruled that the motion was a motion of no confidence in the Government and consequently the ex-officio Members of the House were precluded from voting in accordance with the proviso to Section 44(1) of the Gibraltar Constitution Order, 1969.

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

The Hon A J Haynes
The Hon P J Isola

The Hon A T Loddo
The Hon Major R J Peliza
The Hon G T Restano
The Hon W T Scott

The following Hon Members voted against:

The Hon A J Canepa
The Hon Major F J Dellipiani
The Hon M K Featherstone
The Hon Sir Joshua Hassan
The Hon J B Perez
The Hon Dr R G Valarino
The Hon H J Zammit

The following Hon Members were absent from the Chamber:

The Hon I Abecasis
The Hon J Bossano

The motion was accordingly defeated.

MR SPEAKER:

It seems that the Hon J Bossano who has given notice that he wished to move a motion on the question of rent relief is not in the House. There is no reason why we should recess to a given time, he should be here when the motion is called. I will, therefore, call on the Chief Minister to move the adjournment.

HON CHIEF MINISTER:

Mr Speaker, I beg to move that this House do adjourn sine die.

Mr Speaker put the question which was resolved in the affirmative and the House adjourned sine die.

The adjournment of the House sine die was taken at 1.00 pm on Tuesday the 22nd July, 1980.